INVISIBLE PRESENCES - THE ROUTINE PROCESSING OF THE LAY PROSECUTION WITNESS IN THE ENGLISH AND WELSH CRIMINAL JUSTICE SYSTEM

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by

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Preface

Why study prosecution witnesses?

The earliest origins of the thesis can be located in my professional involvement in a debate that was being held within Bedfordshire Police regarding the performance of the Force in detecting crime. The detection rate had always been the one indicator traditionally used to show the performance of a police force and Bedfordshire was achieving little in the way of success compared to other forces. The detection rate for crime was remaining consistently low and in a number of categories of crime was actually falling. The force, concerned about these issues, had set up a number of working parties to tackle the problems. As a member of one group, I became involved in the fundamental debate about what factors contributed to the overall detection process. Issues such as the use of informants, scientific evidence, house to house enquiries and other procedures were all discussed. One area which appeared to justify further research related to the role of the prosecution witness and their contribution both in providing the police with information and ultimately in securing a successful conviction at court.

It has become a truism to note that the police would be unable to detect many crimes if it were not for either the public directly reporting the incident or subsequently that the witnesses were questioned about the case by police officers. The public's evidence forms a crucial element in building up the prosecution case. The lay witness thus plays a major role in the acquirement of evidence and in securing a conviction for those cases where there is sufficient evidence to submit the case file to the Crown Prosecution Service (henceforth CPS). Subsequently discussions were held with a number of groups and individuals within the justice system such as Victim Support, police officers, the courts' administrative and professional staff and the CPS.

The consensus of opinion indicated that there were several issues relating to lay prosecution witnesses that justified further investigation. Accordingly there needed to be a move away from the original narrow focus on the practicalities of increasing the detection rate, to a more in-depth and far ranging study that would explore the hidden and uninvestigated 'career' perceptions of the lay prosecution witness.

Preliminary discussions had revealed that many criminal justice professionals considered that the experience of being a witness was not a particularly pleasant one. It also seemed that there might be parallels between the experiences of lay witnesses in Bedfordshire and some of the findings of writers such as Shapland *et al.* (1985) who had studied victims over a decade previously. There was a current and widely expressed belief that witnesses often found the experience uncomfortable and difficult, and so would not want to repeat the process. It appeared that potential witnesses were also being dissuaded from contacting the police because of perceptions or knowledge that they held about the experience. As the initial research progressed a number of themes began to emerge for example, how did the prosecution witness both relate to and fit into the justice system and what impact did the rise of public sector consumerism have on the witness? Other issues included examining the reasons behind the sudden political and media interest in the intimidation of witnesses in the mid 1990's in Britain and finally the tripartite relationship of the police, CPS and the witness appeared to be an important topic for examination.

An initial literature search indicated that little had been written by criminologists and social scientists directly on the subject of witnesses as a 'stand alone' group. Rock (1993: 4) had also drawn attention to this fact although this must be tempered by the recognition that considerable research had been carried out on a number of the other consumer groups that had connections with the Criminal Justice System (henceforth CJS). The defendants had always had some criminological interest shown in them (see, for example, McConville *et al.*, 1991, Bottomley *et al.*, 1991,

Hood, 1992, Sanders, 1994). Victims as a group had also captured the 'criminological imagination,' at least in the last two to three decades with work being carried out on their experiences under the broad stance of 'Victimology' (see, for example, Shapland *et al.,* 1985, Maguire and Pointing, 1988). It appeared, however, that there were few references directly on lay witnesses (but see, Ash, 1972, Raine and Smith, 1991, Rock, 1993, 1994, Maynard, 1994).

It was thus decided to carry out a comprehensive study of the routine processing of the lay prosecution witness. This would be from the time the witness first entered the system to the completion of his or her evidence within a CJS dominated by a largely administrative and professionally based organisation. The research would examine the issues from a broad social policy based focus and would be driven by broader intellectual questions rather than the original limited pragmatic focus on detection rate issues. The research being undertaken would seek to open up the closed world of the witness to further academic scrutiny and debate.

The thesis is structured as follows, chapter 1 sets out the main objective of the study. It presents the key areas of research together with what the study hopes to achieve. It explains why a number of witness groups were excluded from the study and explains the role of the police in the research. Chapter 2 reviews the relevant research and literature on the three groups that make up the 'occasional lay users' of the CJS, namely the defendants, the victims and the witnesses. The research on defendants is particularly interesting as it supplies us with the notion of the 'lay actor' in the CJS. Victimology contributes research on victims that draws some important parallels with this particular study of witnesses. This is followed by an examination of the key texts already written on the witness. In chapter 3 the various research techniques used in the study are discussed including their incorporation into the methodological approach of 'triangulation' (Denzin, 1970). Chapter 4 presents the reader with a chronological account of the process a prosecution witness goes through and how a trial is

constructed. It starts from when the witness initially contacts or is contacted by the police, right the way through to when they are dismissed from their duties and responsibilities as a witness by the court. Chapter 5 presents the results of the substantive research carried out on a sample of witnesses who attended Luton Crown Court. Chapter 6 examines some of the wider issues of consumerism and the growth of community action that may directly impinge on the witness process. Finally, chapter 7 concludes the thesis with an overview of the key issues that have been identified regarding the routine processing of the lay prosecution witness.

Chapter 1

The structure and objective of the research

Introduction

The English and Welsh legal system is adversarial in nature. At the apex of this adversarial system of justice is the trial which itself is steeped in the conflict between the prosecution and defence's legal representatives. In order for the system to work and for a trial to be convened, a process of case construction needs to be undertaken and followed. The police first of all need to collect and build up a file of information against the suspect collecting evidence from a variety of sources. Once the file is completed and sufficient evidence gathered the case is handed to the CPS who will then decide whether to proceed with the case. If the evidence and the reasons for bringing the charge are seen as sufficient, the CPS will take the case forward, representing the state rather than the victim against the defendant. The court's administrative apparatus then organises all protagonists to be brought together for the trial. The evidence from both the prosecution and the defence will be given in an arena founded on conflict and presented to a group of impartial representatives in the form of the jury and the judiciary on behalf of society. Although each trial may appear haphazard, Rock has observed that on the basis of his case study of one court that 'trials were done to formula. The logic of accusation and defence under the adversary system required such a strict sequence of standardised events that a trial at Wood Green could have taken part at any other Crown Court' (Rock, 1993: 28). Cases are socio / legal constructions, that in order to proceed, followed a complex set of rules and regulations, which ranged from being legally binding rules to obscure tradition. McConville *et al.* (1991) took the issue further and commented that 'criminal justice is not a system, which implies a relatively static unity with fixed boundaries, but a

process' (McConville *et al.*, 1991: 1). The heart of the prosecution process is evidence and albeit that there are other elements that make up the evidential structure, the witness is the main provider of the evidence used to record the incident and detect the crime and who then contributes to the proof presented in court as to the guilt or innocence of the defendant. Thus the thesis contends that the witness is vital to the CJS, both in the contribution to case building and his or her subsequent role in court. The case construction process, once it reaches the court stage, switches formally into an adversarial mode, an approach which relies heavily on placing the witness centre stage, allowing the two opposing forces to create their own interpretation of the events surrounding the incident.

Yet as a group, witnesses have received little attention from either the justice system in general or criminologists in particular. The lack of attention appears to be universal and extends equally towards American witnesses as noted by Ash (1972). Shapland *et al.* (1985), in their research on victims, also noted that 'the victim of crime has been the "forgotten man" of the criminal justice system'(Shapland *et al.*, 1985: 1). Nearly a quarter of a century after Ash wrote the article the lack of interest in witnesses remains. The paucity of research has also been identified both by myself (see chapter 2 below) and Rock (1993) in his work on the Crown Courts. Furthermore, it is only since the early 1990's that one can see either the beginnings of any support services or some areas of academic criminological or system related interest. Raine and Smith (1991), for example, carried out the original research that led to the setting up of witness support schemes at seven Crown Courts, which has now been expanded nationally to cover all courts. The witness schemes though do not operate with a centralised corporate 'voice', each court scheme tends to follow the ethos of being a relatively independent local unit, which is only loosely tied into the parent organisation. The system operates in very much the same way as do the other Victim Support schemes which were seen as concentrating on 'services to victims rather than rights'(Maguire and Pointing, 1988: 3).

The initial pragmatic consideration that led to the research study being set up was that if the witness process could be made more efficient and responsive to the needs of the witness, then this may improve the performance of the witness in court and that more witnesses may well come forward to help the police, especially if witnesses knew that the process was not going to be that unpleasant. This simplistic view was soon to be replaced by a recognition of the need to expand the study into a format that took into account wider and more intractable social policy issues.

A Cinderella at the criminological ball

The initial research indicated that the lay witness had never been invited to participate in the Criminal Justice Ball. That the witness could be viewed somewhat as the 'Cinderella' of the system. Prior to witnesses presenting their evidence they appeared to be often ignored and misused by the very system which needed their support. Yet for a brief period of time they suddenly become the princess emerging out of obscurity to give their evidence, centre stage and in full view of all those party to the proceedings. However, as quickly as 'Cinderella' left the Ball at the stroke of midnight the witness also disappears from view, once dismissed from his or her role by the courts. In a way the task of the research as the 'Prince' is to find the witness and elevate him or her to a more visible and socially valued status.

Explaining the neglect and lack of interest in witnesses proved difficult. Rock (1993) cited a number of issues including the point that 'the Crown Court is a territory inhospitable to academic investigation' (Rock, 1993: 4). In terms of the justice agencies, one explanation could be seen in terms of ownership, with no specific organisation being totally responsible for the witness group at a national level. Witnesses are case specific and up until recently there was no organisation to support them during their time at court. Even with Witness Support, resources are concentrated and primarily focused at a practical and local level to care for the individual witness,

supporting them during particular cases and trials. Why there is a lack of interest from academia is more difficult to ascertain. It is probably, as Rock (1993) has identified, due to practical difficulties in gaining entry to the information, for example, obtaining witness details for this research proved to be difficult even with my ability to access the data. It is also possible that the subject generates no real interest for researchers, Rock (1993) commenting cynically that 'British criminology's overriding interest is in the crowding of prisons' (Rock, 1993: 4). This is coupled with the growth of 'Administrative Criminology'[1]. Furthermore, sponsored research primarily initiated by the Home Office has concentrated on other more politically popular matters such as the current work being undertaken by the Police Research Group on 'Road Rage'. Maynard's work on witness intimidation (Maynard, 1994) is one of the first pieces in the 'administrative' tradition that examines witnesses as a stand alone group.

However, witnesses have not been totally devoid of interest and there has been research in certain areas, although the interest has been primarily psychological and narrowly technical in nature. Such psychological research has concentrated on factors such as the testimonies of expert witnesses[2] and memory recall. There has even been enough interest in this field to generate a journal devoted to the subject 'Expert Evidence' covering topics such as negligence problems for expert witnesses and debates on the need to have insurance cover to protect the expert from counter claims. Typical of this approach, Zaragoza *et al.* (1995) in their recent work on the memory and testimony of child witnesses were concerned with the accuracy of the statements given in evidence and the range of techniques that could be employed to improve the quality of the statements made by the children.

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[1] Administrative Criminology (Young 1994) involves a move away from looking at causes, for instance in explaining crime, to one where there is an acceptance that crime rates have risen with the research merely looking for methods to deal directly with the fact itself.

[2] The professionals such as doctors or scientists who regularly attend court to give evidence on technical and scientific matters.

The initial investigation of prosecution witnesses had revealed that little academic work had been carried out on what could be termed the totality of the witness process, that is from the time when witnesses first comes in touch with the system to when they are finally discharged from their duties by the courts. This dearth of research on witnesses also appeared to be in direct contrast to the work carried out on victims, their 'rediscovery' as such starting with writers such as Von Hentig (1948) and Wertham (1949). Although it is recognised that many witnesses are victims it is likely that a significant number of witnesses will also be the friends, relatives of the victim or even complete strangers. It seemed that further research was justified and witnesses unlike victims had never even been discovered let alone rediscovered. There were a number of questions that seemed to need an answer.

Witnesses - exclusions and inclusions

Before identifying the objectives of the research, it is necessary to define which type of witness was going to be examined. As there did not appear to be a legal definition for a witness within the CJS, the following one was created. A lay witness in the Criminal Justice process is 'someone who has been involved in or observed an act, which may possibly be seen as illegal[3] in nature and has been questioned about it by the police. There would have been a formal record kept of what was discussed between the police and the individual and the witness may or may not subsequently have to appear in court.' It was felt that there were a number of witness groups that could be excluded from the study in view of the purpose of the research. Expert witnesses have thus been excluded for several reasons. Many get paid for their services and although court attendance may be difficult it does appear to become more of a routine event. Furthermore, this particular group of witnesses is seen by the CJS as fringe members of the justice establishment, and to a certain extent are, therefore, part of the 'club'. Some

[3] As would be defined under English and Welsh Law.

experts in particular fields may also be used by both the prosecution and the defence in differing cases.

Children have also been excluded for a number of reasons. Most children appear at Crown Court because they have been personally involved in cases of a sexual nature, probably as the victim or at least very closely connected. Children, because of the often traumatic nature of the cases they are involved in tend to have a harder time in many areas but may have less administrative problems with the system than adult witnesses. For example, they will have the facility to wait in a private room and in some cases can give evidence indirectly, through the medium of close circuit television, if this is appropriate to the case. The support given to them tends to be more focused, with often a police officer from the child and family protection unit personally attached to the case to look after their welfare. They also make up only a small percentage of cases and as such are not part of the routine element in respect of processing witnesses and, although there may well be issues that apply specifically to children, it was also felt advisable to avoid the possibility of any further trauma for them and to exclude them from the study.

Witnesses for the defence have also been excluded. There tends to be less defence witnesses compared to the number of prosecution witnesses. They are normally at court to bear testament to such issues as the character of the defendant. Most witnesses, if they have something to contribute directly to the case, will be prosecution witnesses, having already been interviewed by the police. The police have the responsibility to produce all the facts of the case to the CPS and this should also include any negative elements. Furthermore, the defence has had plenty of time to develop their questions because they will know who the prosecution intend to call and what their contribution to the case is. By way of contrast the CPS counsel is often not aware of who the defence is going to bring, until the last minute, the typical surprise

witness of a 'Perry Mason' styled case[4]. Because of these factors, the defence witness is normally subject to less hostile questioning by the prosecution. The defence's legal advisors do not labour under the same restricting procedural factors as does the CPS, as explained later. The defence will have also established a closer relationship with the witnesses and organised their attendance at court. There will be fewer of the problems associated with delays because in many instances the defence are controlling this aspect of the trial. Furthermore, defence witnesses have few problems with intimidation or threats[5]. Another factor relates to there being less pressure on these witnesses to appear and although there are constraints in the legislation,[6] in reality their contribution tends to be more voluntaristic in that they wish to help the defendant.

These exclusions leave two core groups of witnesses to be studied: firstly, members of the public, the outsiders, including victims, friends or colleagues as well as complete strangers, that is the independent witness or bystander, secondly, police officers who in this respect at least can be viewed as marginal insiders and who appear to be moving even further towards the outer concentric zones of the courts suggested by Rock (1994). Police Officers have two major roles to play in the judicial process, firstly as the formal representative of the law that deals with the public either as officer in the case or in a number of similar contact situations. But secondly, officers are also witnesses in their own right and have to go through the same process as a member of the public. The CPS need the statements of the police just as much as they want the testimony of the public in order to prove their case and obtain a successful outcome. In initial discussions with officers it became apparent that the police themselves, although part of the CJS, often did not feel comfortable in the court environment. Changes discussed elsewhere in the thesis showed that the police felt their involvement in the system had been weakened since the middle of the 1980's. It was seen as valuable to

[4] Where the appearance of the surprise witness normally made the guilty person confess.
[5] Intimidation probably would only occur when, for example, there was a case involving a feud between families where the defence witness is being pressured not to give evidence.
[6] The defence can apply for an order through the court to make the witness appear at court.

be able to compare and contrast certain elements appertaining to both witness groups which operate on different sides of the justice system. It was thus decided to carry out a complimentary study on the police on a number of similar issues as had been asked of the public.

Witnesses, though, are only one means of securing a conviction. The use of forensic evidence also plays an important role in this but has recently suffered from credibility problems in that, in some instances, the evidence is being questioned and disputed and in some cases rejected. For example, DNA[7] evidence which was considered to be totally reliable has at a recent court case been thrown out due to doubts over its statistical validity, although work to re-establish its authority is being undertaken (Daily Telegraph Editorial 25th. October 1995). Thus the importance of the witness in the case may grow if the alternative scientific methods of securing a conviction become unreliable.

The objective of the research

Focusing on the county of Bedfordshire, the objective of the study is to carry out research on the routine process which lay prosecution witnesses as outsiders go through on their unique and personal journey within a bureaucratic CJS tied up with the processing of trials and legal tradition. It is hoped to detail problems of both success and failure by the justice system in terms of service delivery to a group that is little known. Consideration will also be given to the views of the insiders, those practitioners both professional and administrative, who constitute a diverse set of subgroups which come together at specific times to both make up the broad CJS and the trial in particular.

[7] The full chemical name is that of Deoxyribonucleic Acid.

The outcome of the research should open up the closed world of the career of the prosecution witness to sociological and criminological understanding. Despite the apparent unique and personal journey which the witness travels, the research would wish to produce an account of the shared experiences witnesses go through during their passage and time with the system. The study will be separated into two broad areas the first part examines the pre-trial period which includes both the witnesses' contact and relationship with the police, together with a review of the various administrative processes that takes the witnesses along to their eventual arrival at court. The second part of the study will focus on how witnesses spend their time when they are at court and specifically examines their relationship with the groups of professionals who operate within the CJS. Other issues that can affect the witness will also be examined, such as why the witness came forward to help and the issue of witness intimidation. Is for example, the picture of intimidation indicated by the media and the interest generated by the Government matched by the reality of the witnesses' own experiences?

Finally the research will then be positioned against the backdrop of wider changes and their impact on the CJS. The rise of the public sector customer and the enforced move for many public sector organisations, not least the courts, into a market driven approach is explored. Other issues will include an examination of the changing nature of citizenship and the growing appeal of the communitarianism of Etzioni (1994) within the debate on law, order and justice.

Chapter 2

Review of existing research on the routine processing of lay witnesses for the prosecution

Introduction

The purpose of reviewing the existing research is to present a general overview of academic texts that have direct relevance for the study of the lay prosecution witness. An immediate problem encountered related simply to the paucity of relevant material on the main subject of the lay prosecution witness. However, the witness is not the only lay participant in the CJS and the research that has been carried out on the other groups may well contribute to understanding the witnesses' experiences within a wider justice framework.

The review begins by focusing on the defendant's relationship with the justice system. More empirical work has been carried out on defendants than any other of the occasional users of the CJS. This issue has been tackled by examining the work of writers such as Baldwin and McConville (1977) on 'lay actors'. The key texts on victims are then considered, such as Shapland, Willmore and Duff's work on 'Victims in the CJS' (1979) and Maguire and Pointing (1988). Lastly, a review of the small number of texts directly focused on the witness will be presented. In particular we first review the work of Ash (1972) who examined the role of the witness in the American Legal System. Second, we examine the study by Raine and Smith (1991) who carried out the original research for setting up Witness Support schemes in England and Wales. Third, the seminal work carried out by Rock (1993) with his ethnographical account of courtroom life at Wood Green Crown Court in London is reviewed in depth. Fourth and finally, a Home Office study by Maynard (1994) on the intimidation of witnesses is examined.

Defendants as 'lay actors' within the Criminal Justice System

There are two groups of lay persons who are in direct opposition to each other but are brought together by the CJS, namely the prosecution witnesses and the defendants. It is interesting to note that, although they are diametrically opposed in terms of the desired end result of the trial itself, both groups arguably experience similar difficulties when they are being processed by the same CJS. Whilst it is not the purpose of the study to examine the role of the defendant in any detail, there is one particular element that makes an important contribution to the study of the lay witness, namely that of the well established research work on the 'lay actors' experiences within the CJS (see, for example, Bottoms and McClean, 1976, Baldwin and McConville, 1977, Bottomley, 1979 and McConville *et al.*, 1991). Such research work emphasised the difference between firstly, the professionals that make up the CJS and secondly, the defendants as consumers of the service that enter the system infrequently and then have to make sense of it all. It would seem that there are likely to be clear parallels between the experiences of witnesses and defendants with regard to this asymmetry of knowledge and experience between the lay consumers and the professionals.

On the basis of their research into the processing of defendants in the CJS, Bottoms and McClean (1976) contend that the professionals at court 'share also a common stock of experience which, despite their different roles in the courtroom drama, pulls them together, and enables them to communicate with each other in ways which are incomprehensible to an uninformed outsider' (Bottoms and McClean, 1976: 55). They note that there is nothing 'sinister,' merely a set of 'shared understandings'. The defendants however were often confused and dazed by the court's processing system and that this same system appears to do little in remedying the situation.

Bottomley (1979) has also noted that the justice process 'is that of an established set of institutional arrangements involving several groups of more or less

permanent actors dealing with an essentially transient group of consumers or clients' (Bottomley, 1979: 104). Defendants were being processed by a CJS that is adversarial in nature and is run by a number of professional groups with clearly defined and standardised routine legal practices. These legal practices have a high level of administrative and professional complexity and access to the knowledge is closely guarded and protected from those considered outside of the profession. Shapland (1988) also notes this where she identifies the differing groups of professionals who make up the CJS and the effort with which they guard their independence and territorial possessions. She noted that 'each "fief" retains power over its own jurisdiction and is jealous of its own workload and of its independence' (Shapland, 1988: 190). Bottomley (1979) had also recognised the divisions within the system noting that 'each group was only concerned with its own strictly limited goals and production targets' (Bottomley, 1979: 101). He goes onto to discuss the issue of 'routinised justice....getting through each day's crowded court lists as efficiently as possible' (Bottomley, 1979: 104). The thrust of this approach focuses on the difference between the system and those insiders who make up the sub groups such as the court's administrative staff and the outsiders in the shape of the defendant who has involuntarily wandered into their closed world. It can be compared perhaps to Lewis Carroll's 'Alice in Wonderland' where Alice appears to spend most of her time trying to make sense out of the strange environment she finds herself in. As Bottomley states, the 'defendant appears to be intrusive' (Bottomley, 1979: 106).

McConville *et al.* (1991) in their study of the prosecution process draw on the two models of the CJS developed by Packer (1968). The first model, that of 'Crime Control', illustrates the justice processing machine discussed previously. It is also viewed by McConville *et al.* (1991) as the dominant model in forming the routine practices of the prosecution process:

> 'The principle value statement underlying this model is that the interests of the citizen are best protected by repressing crime and rooting out offenders by any efficient means. The emphasis is upon confidence in the abilities of the police to detect offenders and to release any innocent people who wrongly fall under suspicion. Once the police make their initial judgement about guilt and innocence, therefore, there is little need for further checks; the rest of the process, including the court stage of the procedures, can operate on administrative rather than judicial principles.' (Packer, quoted in McConville *et al.*, 1991: 4)

Packer saw the 'Crime Control' model as a conveyor belt moving the guilty party towards the appropriate sentence; there is no error, merely procedure. Discussions held during the course of this research would seem to confirm that many officers and officials within the CJS in Bedfordshire would prefer to operate within the confines of this model. Officers and others appear to want to merely assemble, construct and process the case as had also been suggested by McConville *et al.* (1991) for presentation at court. The image McConville *et al.* (1991) paint is one of a bureaucratic organisation where routine and predictablity is 'King'. It is also not one that is satisfactory for the defendant according to this body of research and many defendants may well be upset and dissatisfied with the process. 'Due Process', Packer's other model of justice where civil liberty is emphasised, may be liked by the defendants but may not be welcomed by many police officers and officials, according to the 'Due Process' model:

> '(i) a value statement that the interests in protecting the citizen from unjustified punishment and general diminution in civil liberty outweighs the community interest in effectively apprehending and punishing offenders and (ii) a recognition of the fallibility of human institutions....and a corresponding need for checks, safeguards and reviewing procedures.' (Packer, quoted in McConville *et al.*, 1991: 4)

Finally Bottoms and McClean (1976) noted an interesting fact relating to the high levels of passivity of many defendants who entered the system, and they sound a warning of the 'possibility that the present structure and operation of the legal system might itself contribute to the apparent passivity and acceptance of so many defendants' (Bottoms and McClean, 1976: 227).

Key research on the victim

There are clear parallels between the experiences of the victim and the witness in the CJS. After all, a high percentage of victims will have attended court as lay witnesses to present their evidence. Furthermore, there appears to be certain similarities between the way victims were 'rediscovered' by criminology and the state of witness research in the mid 1990's in England and Wales. It is also possible that both victims and witnesses experience a similar set of problems in dealing with the same CJS. A small number of academic writers have examined certain aspects of victims, in a similar way as intended for the wider witness grouping. Comparing the relevant victim research with the work on witnesses may provide a valuable comparison in which to view how the lay prosecution witness is processed by the CJS.

Shapland *et al.* (1985) make an important contribution to this study as their work on victims has clear similarities with the intended research on witnesses. It is interesting to note that the first line in the book by Shapland *et al.* (1985) opens with a comment about crime victims being 'forgotten' by the CJS. The main focus of the book relates to a longitudinal study[8] carried out on victims from the time they have reported the incident until the end of their involvement with the CJS. Although the study by Shapland *et al.* (1985) provides valuable material on the way victims are treated, the source data was obtained before the advent of both the CPS and the Police and

[8] Approximately 300 people were interviewed from two areas in the Midlands, the study, focusing on crimes involving personal violence. The research was carried out between January 1979 and July 1982.

Criminal Evidence Act (1984) (henceforth PACE (1984) which changed certain functions in the way the police dealt with the prosecution process. However, many of the findings within the study are valuable, for example, in indicating the problems the victim has in the CJS, in particular the lack of both concern and information, which are recurring themes throughout the research. The research conclusions of Shapland *et al.* (1985) emphasise the importance of the victims for their contribution to the system by reporting the offence, detecting the offender and giving evidence at court but point to a mismatch between the victims expectations of what the system is going to deliver and the system's assumption about the victims' needs. The authors consider that the victims of crime should be seen as a genuine part of the justice system and that their contribution to the pursuit of justice is recognised and indeed 'respected' by all the professionals and others involved (Shapland *et al.*, 1985: 177). The issue of recognition still does not appear to have been addressed over 10 years on. Their key recommendation focuses on the victim having a formally recognised place within the CJS. The research will be returned to later as its specific findings should provide a useful adjunct to this research study.

Maguire and Pointing (1988) have edited a wide ranging collection of essays in their book on victims. One particular theme occurring throughout the book is the issue of 'secondary victimisation'. This refers to the experience of going through a justice system which is able in its own right to generate a form of organisational victimisation. This may be caused by a number of factors and may well be worse in its effects for victims of some categories of crime, such as sexual offences. Factors that can lead to this additional victimisation may include the way male police officers deal with rape cases (Corbett and Hobdell, 1988: 54). This area of conflict between lay actors and the organisations involved in administering justice clearly is one of the major issues that this thesis sets out to address. Both Mawby (1988) and Shapland (1988) also raise the subject of victims rights which may also emerge as an issue for witnesses. Mawby (1988) who appears to be in favour of 'rights' rather than 'needs' goes on to identify

two fundamental elements 'that victims have rights irrespective of needs....(and)....such rights should be substantive (Mawby, 1988: 134-135). Shapland (1988) goes on to highlight one of the difficulties with using rights to achieve change, 'success depends crucially on the willingness of individuals to institute legal action which will lead to judgements that enforce change' (Shapland, 1988: 189).

Walklate (1989) also examines the victim and the CJS and whilst not carrying out any direct research herself she does use to good effect the work from others, primarily that of the British Crime Survey. Walklate (1989) considered the position of the witness in the CJS compared to that of the defendant:

> 'As a witness the victim is in some ways more vulnerable than the defendant. Victims can be asked about their history and character, which defendants cannot, and once called they have to stand; a defendant may choose not to....victims often experience the court practice as frustrating and difficult to understand. This derives from their quite vulnerable legal status in the adversarial system.'
> (Walklate, 1989: 127)

Although, she also recognises that the defendant's experiences are similar to that of the victim noting that 'the victim shares much in common with the offender; indeed, in legal terms they are complainant and defendant....they are frequently both witnesses' (Walklate, 1989: 126-127). She goes on to consider that victims 'often experience the court process as frustrating and difficult to understand' (Walklate, 1989: 127). Walklate (1989) also importantly notes that, although victims have gained some power, 'it has not, however, been powerful enough, to date, to initiate the notion of victim's rights nor has it questioned in any way the fundamental structuring of the role of the victim in the criminal justice process' (Walklate, 1989: 129). Finally she observes that, although reparation and mediation schemes (explained elsewhere) have been useful at the individual level, the schemes appear to have little value in

improving the victim's position 'structurally' (Walklate, 1989: 126-127). Even more recently, Mawby and Walklate (1994) again observe that the same problems for victims noted in the late 1980's still seem to be evident. The authors considered that service provision needs to be tightened up by all the justice agencies involved. They identified issues such as problems of information for victims that had previously been raised by Shapland *et al.* (1985) ten years previously. However, Mawby and Walklate (1994) recognise that some improvements have been made to victim services, for example in dealing with domestic violence (Mawby and Walklate, 1994: 196). Furthermore, they note that there has also been some movement from the Government to improve services to victims with the introduction of the 'Victims Charter' (1990). They conclude with the comment that, if the victim is recognised as a citizen, then society should also bear some of the financial burden especially when victims are often disadvantaged by the crime (Mawby and Walklate, 1994: 198).

So far in this part of the chapter an attempt has been made to show that there are similarities in the experiences of the outsiders, be they the defendants, victims or witnesses in the CJS. It is also arguable that there are some parallels with the state of Victimology in the mid 1960's to the state of witness research today. Up until the 1960's victim research was psychologically focused on the victim's contribution to or participation in the incident. Up until the mid 1990's witness research had also concentrated on psychological issues but this time on factors of memory, recall and retention (see, for example, Zaragoza *et al.*, 1995). Only now is the witness as victim in criminological terms beginning to emerge in the same way as the victim was re-discovered nearly 40 years ago. Criminology's 'Cinderella' may indeed be going to the ball at last. Of particular interest to this study is the potential contribution which the CJS itself makes to the discomfort of the witness, in terms of 'secondary' victimisation. Having a justice system that brings in an additional level of victimisation which may well equal and perhaps even exceed the original traumatic incident is a particularly worrying phenomenon that needs addressing.

It may be appropriate to conclude our discussion on the victim with a note of caution raised by Fattah (1992). Fattah makes particular reference to the rise of an administrative 'Victimology' and he warns against the dangers of 'missionary zeal' (Fattah, 1992: 12) in that the victim is always considered as the most important character regardless of others such as the defendants. Victims of all kinds can generate powerful emotions in others and Fattah is seriously concerned about the 'value free' status of some researchers within the field of administrative 'Victimology'. He points out the possible implication that this narrowness of focus, with concerns expressed only about the victim, may lead potentially to an erosion in the rights of the defendant. Furthermore, he warns of the important need 'to differentiate between genuine concern for crime victims and their use as pawns in the politics of law and order' (Fattah, 1992: 5). This may well already be occurring in that the Home Office is now one of the major contributors to both funding and directing the debate on criminology. Fattah states that there has been a paradigmatic shift from:

> ' a victimology of the act to a victimology of action, the move from a scholarly stance to a lobbying posture, the switch from a theoretical discipline focused on the study of crime victims....to an activist movement campaigning on behalf of and for victims.'(Fattah, 1992: 10)

The points raised by Fattah (1992) on victims may well equally hold true on witness research.

Researching the lay witness

The majority of research on witnesses tended to be related to either the victim as prosecution witness, discussed previously, or work on expert and child witnesses who have both been excluded from the study. However, there are a small number of specific texts on witnesses that will contribute to this research covering the routine processing of lay prosecution witnesses by the CJS.

The Witness as a secondary victim: Ash's critique of the American system of justice

Ash (1972) undertook a critique on Criminal Court procedures in the United States which is worthy of consideration given its continuing relevance to contemporary processes in criminal courts in this country. Although the article concerns witnesses in the United States, Ash's essay does appear to indicate that the problems facing witnesses have been around for some time, are possibly international in nature and still may not yet have been resolved:

> 'Thirty three years ago the American Bar Association called attention to the way witnesses were then being treated....Intimidation of witnesses was said to be a problem and, where it existed, "the supreme disgrace of our justice"....Courthouse accommodation for witnesses was portrayed as inadequate and uncomfortable....too frequently were witnesses being summoned back to court again and again without being asked to testify.' (Ash, 1972 : 159-160)

Ash quotes Phillip L Graham who wrote in 1948 that there 'seems to be a widespread reluctance by many Americans to undergo the ordeal of being a witness.....(witnesses were) being forced into a contest against skilful opponents while knowing none of the rules' Ash (1972: 160). Ash also commented on the lack of

material and literature on witnesses and points to the treatment of witnesses as having the following effect on the prevention and detection of crime:

> 'first, the exposure to the criminal courts process as it actually exists discourages countless numbers of witnesses from ever getting involved again....second many crimes were committed by persons who might have been rehabilitated (etc.), but for convictions that were lost because of delay....third as Kenneth Penegar has said....not only is the habit of keeping people waiting expensive; more importantly it could quite conceivably have detrimental effects on the effectiveness of the whole system in terms of....deterrence....the syndrome of delays tells these audiences that crime is not really urgent public business.' (Ash, 1972: 160)

This thesis will examine the extent to which many of the issues raised by Ash continue to be relevant today in England and Wales. Ash presents an indictment of this whole area of justice:

> 'Nowhere is there hard data on witnesses in criminal cases. This absence is part of a larger pattern of blindness and neglect. In a real sense, our system does not 'see' witnesses in their human dimension. Consequently we are neglectful of their interests and problems.' (Ash, 1972: 172)

The sentiments expressed by Ash in many senses may well reflect the state and position of the witness in England and Wales until recently. One organisation, however, has been recently created that may help to alleviate some of the problems raised by Ash, namely Witness Support.

The creation of Witness Support

Raine and Smith (1991) undertook a project on witnesses[9] as part of a new initiative by Victim Support. According to the authors, there had been a growing perception by professionals within the justice system that witnesses were not being particularly well treated. Victim Support, together with the Home Office, had decided to set up a pilot scheme at seven Crown Courts[10]. The scheme involved the appointment of a funded witness co-ordinator at each court who would then service the needs of the witnesses. They would be supported in their endeavours, by the use of unpaid volunteers, very much in the way victim support services are operated for crime victims. The research:

> 'focused on the experiences at court of victims and prosecution witnesses and on the best ways of meeting their needs for advice and emotional support whilst attending to give evidence or to observe the process of justice, to learn through direct experience....how these needs might be best met in practice, and by whom, about the best methods of organising referrals of those needing advice and support at court and about the resource and organisational implications.' (Raine and Smith, 1991: 2)

Raine and Smith's (1991) main findings indicate that, whilst many of their sample of witnesses were 'reasonably' if not 'completely satisfied' with the service they received from the CJS, there were some areas of concern. However, there was also the recognition that there was some important areas where improvements could be made, especially when compared with the Victims' Charter (1990):

> 'probably of greatest concern....were the findings with regard to the paucity of information provided both in advance of attendance and on arrival, especially what to

[9] The study involved a standard quantitative research approach where 700 respondents were questioned by interviewers employed by a market research company.
[10] One of the courts used by Raine and Smith (1991) was Wood Green which was where Rock (1993) carried out his ethnographic account of court life.

expect with regard to court procedures, protocol and waiting times, and the failure to segregate witnesses from defendants....what most concerned witnesses was being left alone in the presence of defendants and / or their associates....when coupled with the point about information provision at court, would certainly seem to highlight the value of witness care taking the form of personal mentoring.' (Raine and Smith, 1991: 17-18)

The authors recognised the need for improvement in the provision of the services and indeed the major thrust of the research revolved around investigating the need for a national witness support service. The question as to whether the issues raised by Raine and Smith (1991) have been resolved will be returned to in chapter 7. Some of the other findings of their study will be used in chapter 5 for comparative purposes. Another major contribution to the body of research on the witness debate is that of Rock (1993).

Rock's ethnographic view of the English Crown Court

The work of Rock (1993) moves away from the quantitative methodology of Raine and Smith (1991) to a more qualitative case-study of a Crown Court. Rock has made a number of significant contributions to the study of those people who enter the CJS as either victim or witness (see Rock, 1990, 1991, 1993, 1994). Rock's work is particularly important in view of his pioneering analysis of the routine processes used in the administration of justice in England and Wales. The most useful contribution to this research relates to his examination, in the ethnographic tradition, of one specific Crown Court located at Wood Green in London. Rock's main views on the subject are contained within the book 'The Social World of an English Crown Court' (1993). The roots of this book can be traced to an article titled 'Witnesses and Space in a Crown Court' (1991). The article originally considered that:

'The social world of a Crown Court is differentiated into groups segregated

practically, symbolically, and physically. Prosecution witnesses, in particular, are kept apart from professional 'court users'. They are expected to behave in ways that present problems of control, and the special architecture and organisation of the court are a response. Their segregation may explain some of the pariah status of victims at large.' (Rock, 1991: 266)

Rock in the tradition of Garfinkel (1967) and Goffman (1968) concentrates on the interpersonal encounters that occur when a bureaucratic organisation with its own agenda and rules has to incorporate temporary outsiders into its organisational day. This article was subsequently developed into a more substantial work. The research by Rock (1993) offers a highly detailed picture of the world of the Crown Court, covering the minutiae of court life as well as an examination of the overall structure. The issue of the specific contact between the court and the witnesses themselves permeates the study, although the focus is often on members of the 'public', rather than the witness *per se,* the whole group being defined as 'outsiders' to differentiate them from the professional 'insiders'[11] at court. Rock also makes references to the work of Raine and Smith (1991) which he uses as source material for the customer's views on the process. Jackson (1994), in his review of the book, makes the general comment that:

'As a detailed testament of the limited role of the victim has in the English Crown Court, the value of Rock's work is that it raises questions not just about the role of the victim - witness in the English legal system but also about the structure of adversarial proceedings throughout the common law world.' (Jackson, 1994: 389)

Rock commenced his fieldwork in early 1989. Although attending court for a witness may be a new experience, and one that is a supremely important personal event, the author shows that for the professional on the inside, justice is somewhat

[11] Although here Rock (1993) defines differing levels for all the professionals and other staff involved in the justice system, for instance the inner most circle comprises the judiciary, Rock's 'first circle' (Rock, 1993: 181).

routine in nature. The professionals come from a variety of organisations both internal and external to the court itself. They might include defence solicitors, social workers and police officers as well as a wide range of internal court staff such as finance and administrative personnel. In a similar way to the body of work on defendant's experiences of the CJS (reviewed earlier), Rock shows that the professional's particular social world, if at all possible, is run for their own professional needs. Rock appears to consider that 'normality' is the key issue to be achieved and then maintained. Although operating on an adversarial system, courts did so within a framework of 'administrative justice' where there should be no unexpected surprises for the professionals concerned. However, witnesses caused the professionals problems: 'they threatened the conduct of cases. They threatened the appearance of neutrality so carefully cultivated by staff' (Rock, 1993: 179). Cases were not judged on their emotivity but whether or not they had functioned correctly according to the rules, created to ensure stability.

According to Rock, there are two central themes that constantly pervade the work of the court, namely those of time and space. By time Rock saw that the court's administrative systems functioned with time as a key element, for example, with the number of sittings, the timetable of the court, or getting the required number of cases processed throughout the year (Rock, 1993: 264). Rock gives another example, the fact that the witness recounts his or her experiences of an event from two different temporal perspectives: firstly, the memory of the event that may have occurred months if not years ago, and secondly the statement made subsequent to the event at the police station which was then allowed to be re-read minutes before going into the witness box (Rock, 1993: 42-43). Space, the other key variable, relates to the operation of the process within set geographical and physical dimensions. Here Rock, for example, points to the different levels of entry to the physical space of the court, with the public and witnesses having only restricted access (Rock, 1993: 261). Rock contends that the 'buildings principal mechanism was a system of circulation areas that diffracted and

isolated the....different social worlds....people were kept apart until they met in the courtroom' (Rock, 1993: 261).

Rock was at Wood Green at a particularly important time in respect to his concern with space, as a new larger court building had just been opened. Although the previous one had been old, small and cramped, it had apparently engendered a feeling of loyalty and was treated by a number of staff members with a certain fondness of memory for its more intimate nature and friendliness. Rock goes on to develop a major theme in his study where he visualises trials in true Goffmanesque style as a form of dramatic action: 'Trials are ceremonial, disciplined, and staged, and they unfold in set order. Participants come forward at their proper times to perform their stylised parts. Every appearance must be choreographed, precisely and unambiguously' (Rock, 1993: 29). Rock's use of drama is particularly apt, the use of specialised clothing, the robes and wigs, and the way the proceedings are stage managed by the ushers and clerks, the dramatic interjections of the defence counsel, all contribute to the setting of a real life drama. He discusses the strict order of how a trial unfolds, with the prosecution opening the case and setting out the case's structure. More importantly, he discusses in some detail the adversarial nature of English case law. Trials in Rock's view are centred around the conflict between the defence and the prosecution, with the judge performing the role of referee, ensuring that no contender exceeds the powers vested in them. The judge is there to ensure that the witnesses and defendant are treated fairly. It is the adversarial system that causes one of the key problems for witnesses. This relates to the attempts by the defence counsel to disprove or reduce the acceptance of the evidence of the witness in the eyes of the judge and jury. Rock points out that 'almost as a matter of course, victims would be represented by prosecutors as hapless and unsuspecting, as unwilling actors in their own tragedies....Defence lawyers would routinely try to turn matters on their head, transforming victims into....villains or fools' (Rock, 1993: 72).

He goes on to make an interesting point when discussing the oral nature of evidence. Witnesses are supposed to recite their evidence in an unnatural location and in a clear, precise and loud voice, quite different from natural speech. It is very much one that contains elements of classical theatrical melodrama. For example, obscenities uttered by the defendant may have to be enunciated by the witness especially if they were part of the original statement, for all to hear. Witnesses would often to seen to be on trial themselves and, during their performance, will be holding centre stage. Rock comments: 'a witness's bearing was....taken to provide a non-verbal commentary both on character and credibility....a witness's emotionality in the box could do him or her a disservice' (Rock, 1993: 51-53).

For Rock, conflict summed up the trial with the witness as a helpless participant pushed this way and that by the differing legal forces that pervade the courtroom. He goes as far to say that in many cases a level of 'anomie' is achieved where the witness becomes separated from the normal social world through the loss of contact with reality. The witness becomes confused, not being able to make any sense of his or her role, and then becomes anxious and upset. As part of his attempt to explain the complex nature of reality of court as an institutional setting, Rock portrays the Crown Court as structured into differing concentric zones of human relationships:

> 'The organisation of the crown court....may be likened to an array of concentric rings whose character was shaped by the workings of opposition and attraction. Opposition flowed from the dangers, antagonisms, secretiveness and contamination's of the adversarial system, and attraction from the bonds of those who had to work closely together in conditions of trust. Together they plotted a gradient of zones of trust whose outer reaches were open to all but whose inner recesses were restricted indeed. And to complicate matters further, within two of those zones, there were lesser contours and lines of differentiation that kept people and agencies apart.' (Rock, 1993: 181)

Rock thus sees the court as being an empty shell that fills at certain intervals with a wide variety of groups all with differing interests, viewpoints and objectives, although they may all be centred on one particular case. In order not to descend into chaos a set of unspoken and written rules have emerged where everybody, except the public, knows their place and what they can and cannot do. Rock likens the court to a meeting place, almost a market where people come together to sell their wares. The probation service, social workers, the police, judges and administrative staff all work in the same building at key times some stay there most of the time, others go in and out dependent on their commitments. The zones are important because they place the witness on the periphery of the structure. The witness is brought in when required, used, dismissed and forgotten about, there is almost an element of 'alienation' in the process. The witness is an event there to be controlled, merely part of the administrative process. Yet without witnesses there would be some difficulties in maintaining a working CJS.

He moves on at a latter stage of the book to examine the role of the various professional and non professional groups in the court. He discusses the role of the CPS which can affect to varying degrees the witness's experience of court in a number of ways. The CPS firstly, has the responsibility to decide if there is enough evidence to prosecute and subsequently which witnesses to call. Secondly, they have a responsibility to support the witness throughout the trial. Taking the first point Rock contends:

> 'Decisions to prosecute....were governed by....two general principles....one invoked 'public interest'....judgements invoking it turned on assessments of the triviality and gravity of the offence, its "staleness", the "realistic" prospects of obtaining a conviction and the fitness of an offender to plead....the other test was "evidential sufficiency"....the code demanded that questions should be asked about whether there was enough credible testimony from creditable witnesses to sustain a case: had the

evidence been gathered properly under the provisions of PACE.' (Rock, 1993: 157-158)

This element is important because the decision to prosecute has a clear affect on witnesses not least in that they see cases being dropped for no apparent reason which may lead to feelings of frustration and criticism of the system. The other element covered by Rock encompasses the CPS's attitude and contact with the witness. Rock notes:

> 'that prosecution counsel were not permitted to talk directly to their witnesses. Problems touching on conflict and the control of knowledge transformed contacts between lawyer and witness into a source of intellectual contamination....The particular epistemology at work in the court made it imperative to protect the artless innocence of a witnesses impressions.' (Rock, 1993: 160)

Although the CPS normally decide who should be called as a witness based on reading the original statements, they appear deliberately to avoid any significant contact occurring at court with the lay witness. This avoidance may lead to some confusion for witnesses who have considered that the CPS are on their side, but then are denied the contact that reinforces this view.

Rock also discusses the role of the police officer at court observing that the police are in fact often the main point of contact for the witness. Rock's work shows that the police officer presence in court is made up of two distinct groups. Firstly, the court will have a small resident set of officers having responsibility for such issues as court security and prisoner handling. Secondly, (the majority of officers) are those who are at court for a particular case. Rock saw that police officers 'were regarded as the natural chaperones, indeed the natural allies of prosecution witnesses' (Rock, 1993: 164).

In general terms, Rock's findings in respect of many of the issues raised are compelling. Witnesses although they might be inconvenient and problematic to the court's professional groups are an essential part of the process and it would seem that the court may deal with this contradiction by depersonalising the witnesses. The normal social interaction between the groups is formalised, witnesses are simply one of the many pieces involved in the complex jigsaw that is the social construction of a trial. To some extent, this will be one of the key concerns of the research study, raising questions about the state of alienation that the witness may feel, perhaps that of being an unwelcome guest.

As noted in passing earlier, Rock gives serious attention to the 'spatial aspects' of the court: 'The court was an icon or map of social organisation....the very arrangement of physical space in the Crown Court centre confirmed identities, segregated groups and managed relations' (Rock, 1993: 196). Rock went on to argue that the public space of the courts 'had its hazards for the insiders. There was no physical protection to be had there, and it was only demeanour, stagecraft and the presence of colleagues that offered a shield from unwanted overtures' (Rock, 1993: 216). Rock also identifies the problem of intimidation, where the two differing sides in a case are thrown together in the waiting areas before and during the trial:

> 'Prosecution witnesses were packed into those ....spaces, spaces that also housed their adversaries, the defendants and their support teams whose fate they were about to affect, whose character they intended to discredit, and whose conflicts they were about to revive. Defendants could be a threatening presence.' (Rock, 1993: 230)

The witnesses' 'time' was also not relevant to the smooth operation of the court's administrative system, the people merely had the responsibility to wait until the court required their services. People were to some extent graded by the system in terms of importance and the public clearly were a long way down the list. Rock saw the

witness as going through a 'dramatically alternating sequence: prolonged inactivity, then a hectic spurt of activity, a slump back into inactivity, a climax in the witness box, and the rapid anticlimax.' (Rock, 1993: 279). All in all quite a disturbing sequence of events for the lay witness.

Rock has presented an interesting account of the intricacies of every day life in the Crown Court. However, Rock's study focuses on processes 'within' the confines of the court and he does not directly expand on the perceptions, experiences and structures that exist outside. This thesis differs somewhat from Rock's in-court study in that it attempts to take into account the period prior to the trial as well. Furthermore although Rock's (1993) study does briefly mention intimidation a separate study produced a year later does go some way in opening up the subject for further debate.

Research on witness intimidation

Some of the most recent interest in witnesses in contemporary England and Wales in the mid 1990's has focused on witness intimidation. This mainly takes the form of research sponsored by the Home Office and Police or sensational media publicity about specific cases. Prosecution witness intimidation relates to the myriad points during a case where the defendant, family and friends may exert pressure on a prosecution witness to retract the statement or frighten them in some way so as not to give evidence or to forget what they have seen[12]. Police Forces like Greater Manchester and the Metropolitan Police have in recent years introduced prosecution witness protection schemes but they have tended to be for key prosecution witnesses for cases where organised crime and drugs were involved. Support may include changes of identity and relocation to another part of the country. Examining the issue from a legal perspective, Lord Denning (1980) made two key points. Firstly, 'it is vital

[12] Intimidation can of course exist in many guises in the CJS, for example with the police intimidating the defence witnesses.

to the administration of justice that they should give their evidence freely and without fear. Yet everyone knows that witnesses may be suborned to commit perjury - they may be threatened with dire consequences if they tell the truth' (Denning, 1980: 19). Secondly, 'if witnesses are in this way deterred from coming forward in the aid of legal proceedings, it will be impossible that justice can be administered. It would be better that the doors of the courts of justice were at once closed' (Denning, 1980: 19).

As a result of the public debate on intimidation, the Police Research Group at the Home Office was given the task of undertaking a major study on intimidation. Anecdotal evidence had suggested intimidation was an issue of concern with the public and that the relationship between the police and the public was actually suffering as a direct result of intimidation. Maynard (1994) was thus tasked with carrying out the first large scale study of prosecution witness intimidation throughout the country[13].

A random house to house survey was commissioned to examine the views of the public from a number of estates designated as being located within the 'Safer Cities'[14] programme, together with a national postal survey. Maynard (1994) importantly identified that there were three bands of witnesses who also appeared to get different levels of support from the justice system:

> 'A small inner core....who needed high level protection
>
> A middle ring of victims and witnesses....who had subsequently suffered non-life threatening intimidation or harassment

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[13] Just over 1000 people were interviewed on a number of housing estates by a professional market research company. The estates were located in towns such as Bristol and Hartlepool. The second part of the study involved a postal survey of 4000 victims and witnesses who reported crimes in five police sub divisions, together with a number of face to face interviews with both witnesses and the police (including myself).

[14] A programme funded by the Home Office aimed at increasing levels of security in certain areas, for example by way of financing closed circuit television.

> An outer ring....of the general public whose perception of the possibility of being threatened was such that they were not prepared to come forward with evidence to the police, even when they themselves were victims of crime.' (Maynard, 1994: 1)

Maynard felt that the police had traditionally concentrated on the inner core and that certainly both the middle and outer ring now required some attention. Maynard reported that on estates that already have a high crime rate about '9 per cent of witnesses and 13 per cent of victims receive some form of intimidation and that also there were serious problems of non reporting especially from those not directly involved in the crime' (Maynard, 1994: v). He noted, furthermore, that bystanders had only reported '29 per cent of all the crimes that they had observed' (Maynard, 1994: 12). Maynard concluded that if the fear of intimidation could be significantly reduced then this could lead to a greater reporting of crime. As a result of this, a number of amendments were suggested to the working practices of the various agencies involved in the administration of justice. For example, Maynard recommended the wider use of 'panic' alarm systems to allow witnesses to get an urgent police response should intimidation occur (Maynard, 1994: 30). Other recommendations included the use of screens in identification parades and the separation of witnesses from the defendants family and friends in the court waiting area (Maynard, 1994: 36-37).

Intimidation no doubt does exist and can affect many witnesses either at the time of the incident or during the trial itself. The report by Maynard thus appears to say, though not explicitly that intimidation is linked to location. A high crime area will generate more localised intimidation and subsequent non reporting. The study generally appears to imply that intimidation is still confined within relatively narrow boundaries. Interestingly, the wider questionnaire survey carried out on the police sub-divisions receives scant attention and has almost no references made to the results obtained. It is

difficult to gauge the depth and spread of intimidation from Maynard's research. There has certainly been a growth in the offence of perverting the course of justice which has risen from 652 in 1987 to 1565 in 1991, (Justice of the Peace, March 27th. 1993) although this might mean that simply more cases are being reported. Legislation has also been introduced to try to deal with the issue, the Criminal Justice Act (1988) Section 23(3)(b) provided for the first time the admission of statements made to the police as evidence in a trial, where a witness does not have to appear because of fear of intimidation. The 1993 Criminal Justice Act has for all levels of witnesses gone on to make intimidation an offence in its own right. Edwards (1989) interestingly discusses the definition of fear of intimidation. She considers that it is not enough to be scared of appearing but that the fear must relate to the anticipation of retribution following on from witnesses giving their evidence. This may, for example, apply particularly to cases of domestic violence. An article in Police Review (May 1993) discussed a system to change the voice of the witness electronically to help preserve their identity. The issue of witness protection and vulnerability is thus an area in which to watch out for future developments. The research study in Bedfordshire will attempt to explore what witnesses and the professionals think about the issue of intimidation both in the county and possibly beyond.

Conclusion

It would be pleasing to finish this chapter on a positive note and suggest that research on witnesses within the CJS will increase. However, if one compares Ash's comments in 1972 to the situation now, nothing much appears to have changed and, unless the 'cause' of the witness is adopted for other political purposes, there is nothing

to suggest that further political interest of any significance will be generated. Ash (1972) had seen that little had changed previously:

> 'Indeed through all these years and to the present, little has been written on the problems, interests, and rights of witnesses....one would think that the eradication of the problems delineated back in 1938 had proceeded a pace, that the witness is no longer the forgotten man of our CJS.....in fact the precise opposite is true and the witness, especially the witness in criminal courts is more abused, more aggrieved, more neglected, and more unfairly treated than ever before.' (Ash, 1972: 388)

Chapter 3

Research methodology

Introduction

The chapter sets out the research agenda used to gather the information necessary to complete the study. Rather than opting for one particular technique, it was seen as more effective to use a number of different research approaches including questionnaires, interviews and observations. This offers several benefits; firstly, the use of different research approaches may present a more balanced view of the subject, looking at the problem from different angles and combining both quantitative and qualitative data; secondly, as each research method has a number of methodological weaknesses, the use of a combination of techniques helps compensate for these individual deficiencies; finally, each approach provides the means to help validate the findings and ensure consistency.

Can research be 'value free'?

Before looking at the research methodology in more detail it is important to consider an issue that affects all those carrying out research and particularly those working within their own organisation, that of being 'value free'. Can a researcher within the police, view and report on the process dispassionately? Brown (1996) notes: 'the orientation of the researcher has an impact on questions posed and approaches taken which vary from the action-orientated pragmatism of the police officer to the theoretical concerns of the academic' (Brown, 1996: 188). Brown has identified four

broad types of research investigator [15], one of which appears to apply to this current situation that of 'inside outsider'. She has identified a new type of researcher within the police, that of the academically qualified civilian research worker. Brown is aware of the problems regarding bias, noting the argument that 'by the nature of their internality, "insider outsiders" cannot step back and take a dispassionate view of institutional structures because they have a vested interest in the organisation that employs them. (Brown, 1996: 183). Brown counters the claim by seeing that the publication of the work to critical view will help to identify any bias that the research might contain. Research totally free of the researchers view of the social world will be rare; what needs to be achieved is the recognition of the researcher's limitations and prejudices coupled with the need to view the issue from the differing perspectives of those involved. Furthermore, research needs to be well constructed. In fact Denzin (1970) takes a similar view and sees the researcher as an integral element of the process.

Research approach

Within the police, the normal basis of ascertaining views involves the use of questionnaires which are usually mailed. Although the standard quantitative approach has merit, it was considered important to adopt a number of research techniques in order to explore the issue of the processing of the lay witness more fully. The work of Denzin (1970) and his use of the 'triangulation' approach seemed to offer a method to overcome some of the technical difficulties contained within many research methodologies.

[15] The 'Insider Insider (in house police researcher), the Outsider Insider (former police officers turned academics), the Insider Outsider (professionally qualified civilian researchers employed by the police) and the Outside Outsiders (academics, Audit Commission etc.)' (Brown, 1996: 188).

The attraction of triangulation

It was decided to adopt a number of the methods involved in Denzin's concept of 'data methodological triangulation'. He makes the point that each technique reveals differing elements of reality. It is only when multiple approaches are used that a clearer picture emerges. Others have also adopted similar approaches to research (Bryman, 1988: 131). In simple terms the principle of triangulation is similar to the use of the term 'mapping'[16]. Denzin also makes the point that it is essential for the researcher to actively enter the subject's world and that the researcher is located at the centre of the research study. He argues that the theory behind the research is not isolated and is clearly grounded in the social, environmental and cultural contexts of the study and that the researcher is part of the process. Triangulation's main contribution to this study is the reduction of some of the technical problems in the different research techniques employed.

Limitations of Research approach

It is recognised that the research approach undertaken for this study has certain limitations. For example, there are a number of alternative approaches that could have been used. The use of a longitudinal study as carried out by Shapland *et al.* (1985) and generally discussed in detail by Hakim (1987) would probably have been more effective, although this approach does have methodological problems such as the depletion of the sample over time. The approach broadly takes a single sample or group and follows it up, with repeated data collections, over a long period of time. The use of the longitudinal method may well have gained more information and detail of the various key stages the witness passes through. However, the approach is expensive in resources, for example, witnesses, do not have their points of contact with the CJS

[16] By using a number of fixed points on a map it is possible to locate one's position with some accuracy.

occurring at the same time and thus the co-ordination process necessary to manage and then capture the specific data may well have been prohibitive.

Another approach that had merit is that of 'case studies'. Here a relatively small number of witnesses would have been selected and then studied in detail using a wide variety of research methods including documentation, interviews and observation. Hakim (1987) notes that 'at a minimum a case study can provide a richly detailed "portrait" of a particular social phenomenon' (Hakim, 1987: 61). Again the approach can be quite expensive in terms of resources but can produce a considerable amount of useful and detailed data. In retrospect this may well have been an attractive approach and certainly one that could have been considered. The disadvantage with the approach for this research, which focuses on the routine nature of justice, is that time and resources may have precluded following a large enough group of cases to obtain the type of information desired?

With respect to the methods eventually used, there are a number of weaknesses. The number of questionnaires returned is rather low and the sample, therefore, may not be representative of the larger population. Nevertheless the overall results when coupled with the other data collection methods do match the findings of other similar studies. This is discussed in more detail later in the chapter. Another technical weakness related to the timescales involved in the study, getting respondents to complete the questionnaire, in what in some cases could be a considerable time after the original event, may have been a problem in terms of their detailed recall of the event. This particular problem would have been resolved if the longitudinal method outlined above had been used.

In terms of the interviews carried out these were rather loosely structured and in retrospect could have been more focused and detailed. There were perhaps not enough of them and some more interviews would have been valuable especially with the CPS

and the defence. Indeed the judiciary were omitted and although difficult to access may well have had some useful views. Thus the twenty-one interviews actually carried out, were perhaps insufficiently developed, in view of their important contribution to the research methodology. The interview methodology also involved the manual transcription of the results of the interviews. Tape recording would probably have been a more effective way of recording the data and I think there was an error of judgement in not using the technique. It would have for example allowed for the complete transcription of all the interviews to be made. The rationale at the time was that taping the conversation could be seen as making a more permanent record of the conversation rather than my occasional notes and would restrict respondents in talking truthfully about the incidents?

Observation, the third element used was also under employed in the study. Although many hours were spent at court and in other areas, the observations served more as a background view of the study and merely confirmed the data rather than being an integral and reported on element within the research. Furthermore, the process appears easy but actually to make sense of one's surroundings is quite complex and in retrospect more skills and experience in this area would have probably obtained more useful information about the social interaction of the various participants.

In conclusion it must also be fair to say that although triangulation was set out as the methodological approach, the research has been skewed towards the questionnaire element with less emphasis being placed on the interviews and indeed the observational elements. These two approaches do appear sometimes to be additional rather than part of the triangulation process. The explanation of this failing is probably centred around time. Gathering the data for the questionnaire element took an inordinate amount of time and effort and to some extent interviews and observations slipped somewhat down my research agenda in terms of importance and commitment.

Methodology

Two questionnaires were distributed to, firstly, a number of lay witnesses and, secondly, police officers using a format which contained both closed and open questions. The lay witnesses were those members of the community that had either been witnesses or victims as witnesses to some form of offence which eventually ended with a trial at Luton Crown Court. Police Officers were those who held an operational role in dealing with members of the public and may also have been witnesses themselves. The second element of the research involved a number of people including witnesses and others in the CJS being personally interviewed. The interviews were structured around general chronological themes allowing the respondent flexibility in their response. Finally, where practical the different aspects of the witnesses' involvement in the system were personally observed.

The questionnaires

The use of questionnaires by police forces as a way of obtaining views over a wide range of issues has increased considerably in recent years. In Bedfordshire, mandatory surveys have been carried out on victims of various criminal offences such as burglary and the results reported to the Home Office. Although there has been a cultural acceptance of the postal questionnaire survey method by the police and others as an effective method of finding out information, there are inherent problems with the method such as leading questions. Such problems are already well documented in the academic literature on research methods (see, for example, Moser and Kalton, 1979, May, 1993).

The lay witness - questionnaire and sample construction

Obtaining the sample proved to be most difficult, as the necessary information is not only scattered throughout the police organisation but also located deep within the actual case files themselves. A number of different strategies were tried. One attempt examined individual case files but this proved unsatisfactory because often the full information was missing as the police often only held an incomplete copy file. In view of these problems an alternative method of delivering the questionnaire needed to be developed. During this period a draft questionnaire had been designed covering each part of the witness process based on discussions held with witnesses, police officers and others involved in the justice system. Victim Support also assisted at the pilot stage with a number of support staff testing the questionnaire. The initial pilot survey produced a low response rate and also comments that the questionnaire was too long. The questionnaire subsequently was reduced in size. At this point a general ethical issue emerged which merits some discussion.

Is it justified in reminding witnesses of what could be often unpleasant memories in order to simply gain data? It was likely that a number of witnesses' involvement with the CJS may well have been traumatic. To attempt to avoid this problem the covering letter attached to the questionnaire gave a clear option for the witness to take no further part and simply dispose of the questionnaire should this issue cause the respondent any problems. The original covering letter had not emphasised this fact and resulted in a call being received from someone complaining of this very point. The witness was trying to stop the case proceeding, by withdrawing her statement. The system, however, was forcing her to proceed against her wishes. The problem for the witness related to intimidation by the defendant. In fact after some discussion she returned the questionnaire with some extremely interesting information. This incident helped reinforce the view that research on witnesses was necessary in exposing the lay witness to scrutiny but that it was necessary to reduce the potential for

harm to a minimum. Subsequently to the change in covering letter there were no further complaints but this factor may well have contributed to the relatively low response rate.

The problem of the low level non response rate was felt to have possibly stemmed from the 'cold contact' situation, simply being sent a questionnaire, this coupled with the problem of obtaining sample details led to a more personal approach being devised. The Witness Support co-ordinator at Luton Crown Court agreed to make use of her support staff in the distribution of the questionnaire. All witnesses attending Crown Court during the agreed time period of one month were personally given the questionnaire in a sealed envelope with the request to complete it and return the document once their attendance at court was over. The Witness Support staff had specific instructions on what to say and would approach all witnesses during the day with the sealed envelope. The approach could not guarantee that all witnesses would be covered but that exclusion would be random. Witness Support does not automatically see all witnesses but that the ones excluded would be randomly spread (factors for missing witnesses included staff sickness, leave or other court commitments). Of the 400 questionnaires delivered a total of 127 respondents replied to the request for information about their experiences, a response rate of 32 per cent. It is also possible that the issue of intimidation may have also adversely added to this relatively low return rate.

Non response

Although the study produced a relatively low response rate it does compare favourably to other related studies, for example, the recent Scottish Office survey on victims (Grampian Police 1995) which achieved only a 18 per cent response rate. The fundamental question in non response is whether the people who did respond were different in some way to those that did not respond to the questionnaire? This is consistently one of the major problems with the use of the questionnaire method of

enquiry. The non response rate is important if policy decisions or recommendations are going to be considered as a direct result of the survey. A number of methods exist to help make a judgement about this issue. First of all that there was a reasonable spread and variety of responses received. The study fulfilled this particular criterion producing a diverse set of responses, ranging from those who experienced little or no problems to those that had quite significant problems over a range of issues. The second method involves comparing the data against other studies that have investigated similar issues (see Shapland *et al.*, 1985, Raine and Smith, 1991 Maynard, 1994). Many of the findings in chapter 5 echo the results contained within these studies.

Finally a comparison of the personal data of the respondents against both the 1991 census and the breakdown of respondents in the other studies will also help in ensuring data validity. The first category the data was compared against was that of age. There are similarities to the age spread found in Raine and Smith (1991). Three quarters of their respondents being under 44 compared to this study's 74 per cent of respondents being under 40. In respect of the ethnicity the 1991 census reported that Bedfordshire has just under 10 per cent of the population defined as coming from ethnic minorities. The survey overall recorded slightly less than that with 7 per cent. Raine and Smith (1991) again were not that dissimilar with 'non whites' recorded at 5 per cent. These lower figures may indicate some reluctance from ethnic groups to participate in the witness process. There was also some divergence in respect of the element of housing tenure. The census identified that of all households in Bedfordshire 74 per cent were owner occupied. This survey reported that at about half of the witnesses were owner occupiers, although there would have been additional people from the 'other' category who actually lived in owned property as part of a family. Finally in terms of work status the census reported that 54 per cent of all residents aged 16 and over were designated 'employees' in Bedfordshire, this compares favourably to the survey's overall 48 per cent response rate from that group.

Survey of Police Officers

A questionnaire was again designed and piloted across a small number of officers. The questionnaire format drew on the one used for the public together with ideas that emerged out of informal discussions with the officers themselves. Police officers are often inundated with questionnaires and interviews on other policing issues and the response rate for in-house research is beginning to be a problem. Given this situation it was decided to take a more personal approach in distribution in order to ensure as high a rate as possible. The questionnaires were distributed to Patrol Inspectors with the request that they were distributed to all officers in the section and to all the other groups who were on the same shift that have contact with witnesses. Again the officers had a specific set of instructions to read out and 250 questionnaires were distributed and 104 were returned a response rate of just over 41 per cent. Again the problem of non response needs to be addressed.

Non response

As with the survey of lay witnesses a good broad range of responses were given. The respondents also match, relatively closely, the force profile in terms of gender. About 17 per cent of the Force establishment of officers are female and the survey had a response rate of just over 19 per cent from that group. Likewise, the length of service spanned a spread of officers across the board, again not dissimilar from the force breakdown. The survey also had similar proportions of uniformed officers to the Criminal Investigation Department 65 per cent uniform and 35 per cent Criminal Investigation Department. Ethnicity was not originally requested because there were so few officers from ethnic minorities[17] that their chances of being selected was minimal. One or two ethnic minority officers had been involved in the initial

[17] Probably only about one per cent of the total police strength is classified as from an ethnic minority group.

discussions and no difference emerged in their views on witnesses, compared to any other officer. In respect of the length of service of the officers (see Table 53, Appendix One), it is interesting to note that over 40 per cent of female officers and 54 per cent of male officers had in excess of 10 years service. The force's personnel system identified that in the 10 year plus group overall the figure was approximately 45 per cent.

Interviews

The purpose of the interviews were to lay more detail onto the study and to attempt to 'bring alive' the more qualitative elements of the study. Lay witnesses had been asked on their questionnaire whether they would be prepared to discuss the matter further and nearly 25 per cent agreed. Eight of the respondents were selected at random and contacted either by telephone or letter to arrange a suitable time for the interview. They were offered the choice of meeting place, with the majority choosing their home. A flexible semi-structured approach was taken, with the format following the witnesses' experience chronologically. A copy of the interview schedule used is included in appendix three (including the one used for CJS professionals). Interviews normally lasted about an hour. An explanation of the reasons behind the study was given and then the witness was taken through the process which also allowed them to go off in directions and tangents that might not have been covered by the questionnaire and indeed observational elements, which they often did.

A similar approach was taken with police officers and the other professionals within the CJS . The objective was to interview a range of those professionals that had direct contact with witnesses or elements of the process that the witness actually goes through. Police Officers were accessed through my knowledge of the organisation. Other professionals were identified through the help of colleagues. In most instances after making the initial approach each person was contacted formally in writing to

make an appointment which was normally held at their place of work. Thirteen interviews were carried out covering the following personnel:

Identification Parade Officer
Operational Patrol Inspector
Fraud Squad Inspector
Prosecution Inspector
Police Training Evaluator
Patrol Officer
Patrol Officer
Witness Support Co-ordinator
CPS Prosecutor
CPS Senior Manager
Crown Court Administrator
Defence Solicitor
Clerk to the Justices

Interviews took on average about an hour. As with the lay witness a semi structured format was followed allowing for a flexible and far reaching discussion. Respondents were generally very open and in many instances were critical of their own organisation and indeed the CJS in general. In addition to these recorded interviews there was a wide range of informal discussions both long and short throughout the study with many of the personnel involved in the justice system. These conversations helped to build up the background data contained within the study. Officers and others were questioned about procedural issues, the Director of Victim Support supplied details about the organisation. Personnel at the Home Office were questioned over a number of issues such as the legislation involved.

Observation

Observation was the third element of the process. The observational techniques used in the study tend towards that of pure observation, rather than the participant observer end of the scale. Although it is important to recognise that the observer can never in social settings set themselves completely apart from the process. About sixty hours of observations were carried out at the Crown Court split equally between the

courtroom itself and outside in the waiting area or canteen. Observation took the form of sitting in the visitors gallery within a courtroom viewing a number of trials selected at random from the cases that were available that particular day. This often simply involved me in moving from one courtroom to another and observing as a lay visitor, the way the cases were dealt with and processed. Additionally time was spent sitting in the waiting areas observing the scene, how witnesses waited around, who spoke to them and for example the interaction they had with the police and the other professionals. Additionally there were other observational periods spent watching actual processes, primarily within the police on how case files were constructed and how Identification Parades were carried out and the procedures that this involved. Notes were taken and then transcribed into a composite view of the processes. Again a tape recorder may have been a more effective way of keeping a record of quite complex events although it could not have been used in some areas due to the confidential nature of the event.

Analysis and the presentation of the data

Once the questionnaires were all finally returned, the closed and open questions were checked and analysed. Coding schedules were then prepared to cater for the open ended questions and missing cases. All questionnaires were manually coded and the information transferred into an analysis package[18]. Initially a set of frequencies were produced to allow for data quality checks. Subsequently a series of cross tabulations were carried out on all the data, checking relevant variables against others for interesting factors, trends and discrepancies. This involved both manual selection and the use of statistical tests such as Chi Square[19] and Correlation[20]. A selection of the final cross tabulations which form the basis of the report are contained in appendix one.

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[18] A standard analysis package called SPSS for Windows (the Statistical Package for Social Sciences).
[19] A test that examines the difference between the observed and expected and whether the differential is significant or that the difference may have simply happened by chance.
[20] A test which estimates the closeness of the relationship between variables.

Where statistical significance is referred to in the text the corresponding statistical data is shown at the bottom of the appropriate table. Confidence levels will be to 95%. unless indicated. Analysis focused on examining the responses to the questions by the personal details supplied by the respondents, together with additional tabulations such as the type of witness. The transcriptions of the interviews and the observational elements were then woven into the quantitative questionnaire analysis in chapter 5 in order to offer the reader a deeper insight into certain areas of the process. Quotes from the surveys are indicated by giving the question number and the number allocated to that particular questionnaire respondent for reference purposes. Interviews are identified numerically with an indication as to the part the interviewee played in the system. Finally, both percentages and numbers are used throughout the tables in appendix one. Where multiple response questions occur the actual number of respondents is given rather than the totals.

Other research studies: alternative methodologies

Finally in view of the use made of other research texts there will be some value in examining two of them who approached the issues from quite differing methodological approaches, namely that of Raine and Smith (1991) and Rock (1993). Raine and Smith (1991) carried out a wide ranging standard quantitative study commissioned by Victim Support using professional interviewers involving a sample of several hundred. It is assumed that the methodological rules of randomness, significance and the other scientific criteria have all been applied, tested and found to be valid. The study is likely to have been quite expensive but in the context of what was required it has fulfilled this requirement to a reasonable standard. Its quantitative nature allowed for the commissioning agency to make policy decisions and the structure for a National Witness Support service was able to be developed. Yet the research approach does suffer from some problems. It lacks flavour and depth and

dehumanises people somewhat into straight forward classifications and percentages which is graphically shown when contrasted against the work of Rock (1993).

Paul Rock (1993) presented an ethnographic account of life at court. It gave a spatial and temporal picture of activity at Wood Green. It examined in fine detail many of the issues that made up the daily life of the court. Rock's approach may present some difficulties in its value for wider social policy issues. Is the view from Wood Green Crown Court a true reflection of Crown Court life and applicable everywhere or is it merely a snapshot of a specific location at a specific time? The value of Rock's study is in the wealth of detail and the issues raised for example with the concentric ring approach is a valuable development. Thus, for a customer such as the Home Office, it may be seen as an interesting and valuable view, but that it may lack the breadth and structure needed for national policy. However it might be assumed that Rock never saw it in these wider terms anyway but merely wanted to open up a closed world to academic scrutiny (a view also held by this researcher).

It may be argued both studies have contributed to the debate. Nonetheless it may be contended that the weakness of adopting one specific methodology makes the triangulation approach more attractive as it enables both the quantitative and qualitative issues to link up, intermesh and compliment each other within one research project.

Conclusion

This chapter has presented the research approach taken to gather information for the study. In general terms the methodological standpoint of triangulation appears to have contributed to the findings. Had simply the questionnaires been used then a balanced picture of the process may not have emerged. Although it is clear that there were alternative approaches that could have been taken in carrying out the research and that possibly a longitudinal study would have been the most effective method to have

used as it could have dealt with issues as they occurred rather than relying on the respondents recall of an event sometime in the past.

However, notwithstanding the above, themes from the differing approaches actually used, constantly inter-related and did create and build up an overall picture of the trials and tribulations of witnesses which will stand up to scrutiny. It was particularly valuable to personally observe many hours of courtroom drama, for without this the actual tedium, frustrations and the real stress that some witnesses have to go through would not have become apparent.

Chapter 4

Organising the prosecution process: the logistics of creating a trial

Introduction

In this chapter there are two linked objectives. Firstly, the presentation of a chronological view of how a case is constructed, building in the specific points of contact that the lay witnesses has with the different elements of the system. Secondly, to place the process within the physical structure of Luton Crown Court. There is a need to open up the process and structure of the CJS and to allow the research findings in the next chapter to be located and understood within a bureaucratic justice system of some complexity. An overview of Bedfordshire will also be of benefit to the reader in setting the stage where the drama is being re-enacted. Rock (1993) notes that the courts in particular were the '*terra incognito*' of British Criminology' (Rock, 1993: 1). This study additionally opens up the '*terra incognito*' of the pre-trial process for scrutiny as well.

Locating Bedfordshire within the study

Bedfordshire is one of the smallest counties in England and Wales with a population of 514399 according to the 1991 census. It contains a mixture of urban and rural areas and includes the major towns of Luton and Bedford. The police force one of the smallest in the country has approximately 1100 officers[21]. Bedfordshire is divided into four territorial police divisions with three prosecution departments[22]. The county has its own Crown Court located at Luton and a number of Magistrates courts

[21] Compared to for example, the Metropolitan Police who have over 28,000 officers, yet both forces cover a similar area of approximately half a million acres.

[22] Two departments that deal with all crime matters and the third devoted wholly to road traffic matters i.e. processing injury and damage only road traffic accidents.

set throughout the County. The CPS operate two units in the North and the South of the county allied to the two police prosecution departments responsible for crime matters.

General issues of law

The witness will often go through several processes before attending court, such as making statements, attending identification parades, using the 'photo-fit' process. Many of these have standard and formalised procedures, the majority of which are covered by legislation or 'codes of practice' and are documented in standard law texts (see, for example, Emming, 1985). The justice system, in England and Wales, operates on the basis of stated cases. Case law relates to where decisions made in earlier cases serve as the basis and precedent for future decisions when another similar case comes along. Murder as a crime, for instance, is the result of case law developed over hundreds of years. This differs somewhat to the law in most European countries where it is altogether more structured and based primarily on a set of clearly defined statutes. The feature that places the witness into the centre stage in the trial relates to the highly adversarial nature of English and Welsh Law where the contest is a fight between guilt and innocence with the witness having a pivotal role. 'The perennial issue was whether the Crown could prove its case to the satisfaction of the jurors, not establish what might "really" have happened' (Rock, 1993: 31). Rock goes on to note 'there was an antagonism that was so common....that trials were fought by two opposing sides....one prosecuting, one defending (Rock, 1993: 31). There will be more of this important theme later.

The routine pre-court processing of witnesses

The witness comes to the notice of the CJS if an incident is reported that requires some form of action by the police. This usually relates to issues of crime, public order or traffic related matters. The definition of crime itself is quite clearly laid out under numerous Home Office categories which also helps to define the appropriate sentences that are subsequently administered. The police also deal with a range of non crime incidents[23].

Recording and investigating the incident

Incidents normally have their first official existence when they are reported to the police. Subsequently the information is recorded, in Bedfordshire's case onto a computerised information system which operates both as an incident recording and a resource allocation system. Information normally comes by way of the telephone or a caller at a police station. In some cases the police themselves initiate the process when, for instance, they stop someone who is subsequently arrested and charged. The information held on the system covers the nature of the incident and how the resources were allocated in dealing with it. The incident has a classification of importance attached to it and officers are dispatched according to the perceived urgency[24]. In the majority of instances an officer will be dispatched if it is a crime and on arrival a formal record of the crime is then completed, the crime report. This contains details such as the property stolen and the *modus operandi*[25]. The information is then entered onto the system which provides data for the force, Home Office statistics as well as

[23] Which can include the majority of minor public order offences, some cases of indecency and false alarm calls together with a range of traffic issues.

[24] An immediate incident means one where either there is a life threatening situation or where the suspect is still at the site and there is a reasonable chance of arresting the offender.

[25] How the crime was carried out and whether there were identifiable techniques employed by the offender that might be used if other crimes are committed by the same person.

crime pattern analysis[26]. The crime report is then examined, and a decision is made using primarily the professional judgement of an officer in deciding the solvability of the case. The case is then allocated to either uniform patrol officers or the Criminal Investigation Department to carry out any further investigations. One process most witnesses will go through is a formal recorded statement. Heaton-Armstrong and Wolchover (1992) note that the statement:

> 'provides the basic structure which governs the direction of the inquiry, the selection of defendants and the choice of offence to be charged. In furnishing an advance blueprint of the shape of the evidence they enable the case to be prosecuted and defended coherently and the trial to be supervised fairly. In certain circumstances they may be read in lieu of live testimony i.e., in the event of death.' (Heaton-Armstrong and Wolchover, 1992: 162)

The authors go on to set out the uses of a statement arguing that 'the witness statement's chief function is the preservation of original testimony.' At the trial stage the statement will have two uses 'it will furnish a narrative from which months later witnesses can refresh their memory. It affords a text against which their consistency can be checked.' (Heaton-Armstrong and Wolchover, 1992: 162). The standard document used to record witness information is known as a section nine statement. This form follows a particular format which allows it[27] to be served on the defence and accepted as evidence without witnesses necessarily attending court. Once the initial interviews take place the witness may become dormant and will often only reappear in the process when a suspect is apprehended. Witness may then, for example, be called to attend an identification parade.

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[26] The identification of localised crime trends at an operational level, for instance in a professional group of criminals specialising in taking high performance motor vehicles.
[27] Under section nine of the Criminal Justice Act of 1967.

Finding the offender - procedural issues on the use of identification parades

The identification parade follows a strictly controlled regime within a legal set of procedural requirements. This issue can place the police under some pressure, such as when the parade has not been carried out in accordance with the formal rules[28]. The parade in reality merely identifies that witnesses recognise someone in a line-up at the Police Station. It does not automatically place the suspect either directly at the scene of the incident or at the correct time. To carry out an identification parade requires at least five police officers in a range of set tasks, such as the witness collection officer. No station within Bedfordshire has a purpose built unit (although this is planned for the future) and this may cause problems[29]. At Luton Police Station the lecture room is normally used as the identification parade room and is fitted with one way glass. Witnesses wait in a office next to the room and are brought in when required. The room is set up with audio visual facilities which allows the video recording of all parades. Witnesses will be taken to the station if possible, otherwise they have to make their own way. Many of the regular officers involved in the case will be able tell them little about the process as most have little or no experience of what actually happens themselves. Conveying the information tends to be left to one of the team on the night. There is no financial reimbursement scheme for any costs the witness incurs including transport, although they usually get tea and biscuits as they are told to arrive at 18.45 whilst the canteen is still open.

Parades suffer from two major organisational problems namely that of firstly finding police resources to manage the parade and, secondly, getting enough volunteers to match the suspect. Parades normally have eight volunteers but more are usually requested as the defence has the right to reject unsuitable ones. Volunteers are normally

[28] The process of running identification parades is legislated for by PACE (1984).
[29] In for example, the need to avoid contacts between the different groups means a constant headache for officers in making sure that the witness and the defendant never meet on the same staircase prior to the parade being carried out.

paid £10. Previous to the installation of the one way glass, witnesses had to physically identify the suspect. If the formal identification parade fails then it is possible to carry out the identification process by the use of a confrontational situation[30].

The identification parade unit at Luton will carry out over 200 parades a year[31]. The witness can refuse to attend a parade but officers will try to ensure attendance. The vast majority of identification parades are accepted by the courts, often without major debate, the results often being assessed by the judge as a separate issue. Identification parades interestingly can continue even if the person is known by the witness. The process is one of identification rather than proving the case. From discussions with the officers who regularly carried out parades they were not aware of threats to witnesses made at the parade and suspects at the time of the parade are clearly warned of the penalties of perverting the course of justice.

Since the inception of the study some of the rules regarding the use of one way glass have changed (at a national level) and are now in dispute within the legal profession. The process has had to revert to the old system of walking down the line with face to face identification. The use of special glass was stopped because the rules state that the witness will walk up and down the line and touch or clearly point out the suspect. However, this element has just been revised again, the law changing the 'walking' element to one of 'looking' at each member of the parade twice. One way glass can still be used but only in exceptional cases where the witness refuses to meet the suspect but this also needs the agreement of both the defence solicitor and the

[30] For confrontational parades a location like a restaurant would normally be utilised. The suspect is taken in by plain clothes officers sat down and given a meal. The witness is then brought into the restaurant to make the identification.

[31] The unit normally comprises a team of approximately 5 officers with clearly defined roles such as the 'witness collection' officer. The job of the unit is to organise the parade, ensure that the two opposing parties do not see each other until the time of the parade and that the stringent rules are followed correctly.

suspect. Confrontation identification is also allowed in the one way glass situation, but again only if the suspect and counsel agree.

The use of Photofits

Another area of contact the lay witnesses might have with the police relates to the construction of 'Photofits' of suspects. The picture of the suspect once produced is distributed both internally to officers and externally to the media if appropriate. Photofits are normally carried out at witnesses homes, the process beginning with a request for the witness to generally think about the person and then the picture is constructed element by element. The technique originally involved a manual system for males only which used a variety of acetates showing different ears or moustaches etc. together with other facial features. The system has recently been updated with a laptop computer using a Compact Disc system (still with no female elements). The old version used features which had been created back in the 1960's. Amendments were carried out using a primitive system of 'snopak', pencil and rubbers. It also took some considerable time to alter images the whole process taking approximately an hour. The new system has not only made the process quicker it has also made the process much more interesting for witnesses as images are built up instantly as they are discussed with the operator. The general construction principles have not changed, it is still an informal meeting with no pressure being exerted to make decisions on the likeness, a crucial element of the case should the photofit be used as evidence. Indeed, much emphasis is placed on this and the witness has to sign to say that he or she has constructed the likeness with no assistance from the operator.

The offender is identified.

The next stage occurs when a suspect is positively identified. At the moment there are two alternative ways that a suspect is processed by the police through the system.

Charge - where for example an offender is caught in the act of burglary, a clear case for charging. The person is arrested and then charged, although circumstances must be enquired into first[32]. Papers are prepared by the officer in the case and are submitted to the Administrative Support Unit which makes sure the case has been set out correctly, is up to standard and includes enough information to merit submission to the CPS.

Process - here the officer directly reports someone for the offence. The officer holds a certain amount of discretion, for example, they can deal with the incident by way of caution or indeed no further action. In this type of situation the police officer is often the key witness. The officer can in fact be the only witness but the need for corroboration by either another witness or support from a technical source such as a video camera is becoming more widespread (the CPS being reluctant to take action on the evidence of only one officer). Pressures thus are being placed on officers to ensure their role as a witness is well protected, evidenced and documented.

The cases themselves also divide into three broad categories primarily based on the severity of the offence. Firstly, 'summary' offences which can be dealt with by the magistrates courts and normally carry a maximum sentence of six months. Secondly, 'indictable' cases which are the more serious and that get heard at the more senior courts. Finally, there are also cases that are 'triable either way', these can be heard at

[32] Factors taken into account include whether the person is under the age of criminal responsibility, i.e. 10 years. Between the ages of 10 - 14 it must be proved that the offender knew they were wrong.

either the Magistrates or Crown Court[33]. Once the case file is finally completed by the police and contains all the necessary documentation including witness statements, it is passed to the CPS, who have their own set of criteria for deciding whether to proceed with the case.

The CPS is the body responsible for prosecuting the defendant at the Crown Court. It was set up as the result of the Prosecution of Offenders Act (1985) after there had been some notable miscarriages of justice. Particularly instrumental was the 'Confait' case[34] which after an initial inquiry had led to a Royal Commission being set up to investigate the wider justice implications. Other cases such as the 'Guildford Four' and the 'Birmingham Six' had also subsequently highlighted further the problems associated with the police holding the majority of prosecution powers (McConville *et al.*, 1991: 2-3). However, despite the establishment of the CPS, writers like McConville *et al.* (1991) have subsequently gone on to argue that the police are still the dominant movers in pushing cases forward with 'a continued police dominance of decision making, a propensity to prosecute....routinization rather than individualised judgement' (McConville *et al.*, 1991: 147). According to McConville *et al.* (1991) the police's power and influence is gained by the way they build the case. However, this research would contend that once the case gets sent to the CPS the police powers do recede somewhat and the CPS takes command, not least supposedly taking up the role of supporting the witness during their time at court. The CPS takes two approaches in deciding whether to proceed, firstly, whether it is in the public interest and, secondly, whether there is sufficient evidence to take the case to court. There needs to be a significant chance of winning the case before the CPS will move it forward.

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[33] These are dependent on the wishes of the defendant and magistrates the defendant has a right to trial in either way cases, if he or she wants to. The Magistrates Court may though decide that due to the severity of the case it must go to Crown Court.

[34] A case of murder caused by an arson attack which resulted in a number of juveniles being arrested and convicted. At a later stage the police methods used in obtaining the alleged confessions and evidence resulted in the convictions against the three boys being overturned.

Once accepted the case enters the combined administrative world of the court and the CPS. The system then takes over the management of the trial, arranging the court dates and organising the legal staff who are going to prosecute, together with all the administrative details. At about this time the defence solicitors become fully conversant with the case being made against their client. They get copies of all the witness statements together with name, date of birth but not the address. It may be the first time that the suspect learns in detail who and what the witness has been saying. Another problem for witnesses relates to the difficulties in fixing up a time and a court where all the interested parties can be present. This may mean that witnesses are often warned several times and cancelled on each occasion, they may well even attend court and not be required that day. The way the court's administrative process works often leaves only a short period of notice to warn all parties to attend. Witness will have some idea that the case might be heard shortly, but the exact time and date may well only be communicated the night before the trial starts.

The witness receives most of the documentation early on in the case including the information booklet 'The Witness at Court'. This is usually sent when the case has had its initial hearing at the Magistrates Court which may be many months before witnesses finally attend Crown Court. Before moving on to examine the court itself it may be of value to illustrate the position of the defence solicitor in the justice equation.

Defending their client

Defence Solicitors come into the process normally when a suspect is arrested. This will occur either by being contacted by their client directly or by being the duty solicitor who is on call to attend police stations to represent those who do not have a solicitor. An interview was held with a local solicitor who represented defendants and the results of the interview were discussed and generally confirmed by police officers

and specifically custody sergeants[35]. These officers are normally in constant touch with the defendant's legal representatives. The view given by the solicitor was that there tended to be two distinct approaches taken by the defence in the way they handled the contact with the police. The contention somewhat controversially is that there are those solicitors that seek to have a good relationship with the police and there are also those that work from an 'anti-police' perspective, with a range of different relationships in-between these two extremes. Arguably the ones that support the police do so because they stand to gain benefits for their client such as getting better bail conditions. Generally they also have an easier time in dealing with the custody sergeants and tend to get more help from the police with easier access and information. The other approach comes from those that adopt an 'anti police' approach. They were seen as achieving their particular goals by ruthlessly pursuing the police in terms of issues such as errors in procedure or by using the right to silence to its full extent and are constantly pressuring the police with their clients demands.

The defence solicitors from whatever perspective taken would actually have had almost no physical contact with the prosecution witnesses until they give their evidence and it was time for the cross examination. They will though have read the statements and may have also met witnesses in an identification parade situation, otherwise contact will be minimal.

Luton Crown Court

The final part of this chapter is an observational overview of the Crown Court at Luton. It is important, as Rock (1993: 6) emphasises, that in making sense of a structure that both 'spatial' and 'temporal' factors are considered. The Crown Court system was created as a result of the Courts Act (1971) replacing the previous system

[35] The officers who under PACE (1984) have responsibility for ensuring that all those arrested and detained are treated according to the rules of the act.

of assize and quarter sessions. The Courts were specifically set up to provide a forum to deal with the more serious cases and to ensure that procedures and decisions were generally similar throughout England and Wales. The new court system, Rock noted:

> 'was to be regarded as a single national body of superior jurisdiction that could sit at any centre and form as many courts at one location as necessary. It would be staffed by a permanent bench of circuit judges and administered....by the Lord Chancellor's Dept.... a single court which exclusively heard all cases on indictment and triable before a judge and jury.' (Rock, 1993: 11)

Although Crown Courts are unified they do operate at differing levels with a grading system related to the seriousness of the offence, each court being allowed to try a certain range of offences. Top Courts such as the 'Old Bailey' are tier one and try the most serious cases. Luton Crown Court is a class two court dealing with cases such as rape and manslaughter with access to a High Court Judge if necessary. The Crown Court at Luton is situated in the centre of the town next to the shopping centre, a relatively modern structure having been built within the last decade. Structurally faced in brick, it looks very much like many other office blocks, the coat of arms giving the merest clues that the building has an official status. The previous court at Luton was a very much smaller building which had some spatial similarities to the 'bunker' at Wood Green (Rock, 1993) in that it was very small. The new building exudes no great impact, unlike the dramatic effect of many other courts constructed as Victorian edifices.

Entering the building brings the witness into contact with the information desk staffed by security personnel or reception staff, after having to pass a security system which checks for weapons etc. The witness then needs to ascend to the first floor where there is a waiting area, advocates' rooms and the cafeteria which is for use by all members of the public and staff. Also on this floor is the administrative heart of the

court, the general office, the base for the majority of staff that control and administer the court's business[36]. It is also a general contact point for witnesses in terms for claiming expenses and other enquiries. Up a second flight of stairs are the six courtrooms, situated three at each end of a short concourse. The waiting areas have blue cloth covered chairs situated in the middle and at the side. Along the concourse leading to the courtrooms at the other end are various offices and rooms, one of which houses Witness Support.

Witness Support Facilities

The Witness Support unit at Luton normally operates within the confines of the court and is there to assist all witnesses including both victims and bystanders. The unit's role is one of support and advice, the organisation having a strict code of ethical conduct. They would wish, for example, to avoid being seen as giving too much encouragement for witnesses to perform well. For Witness Support to succeed they want always to be seen as impartial by both the defence and prosecution. The staff will approach witnesses and offer their services, getting their information from the court lists which show who is attending each case. The unit occasionally works outside the court's environment for instance where they supported a witness attending an Identification Parade at a Police Station. The unit also runs a 'help desk' staffed by the volunteers. Witness Support workers can also sit in on cases and have a space reserved for them behind the witness box, the judge normally explaining their presence to the jurors. In particularly distressing cases they will stay with the witness all the time he or she is at court. Otherwise they will get the witness drinks and magazines and will also explain the process the witness will be going through. They may well show the witness an empty court and indicate where everybody sits and what they do, as well as the procedure for giving evidence. The witness can also use their offices and

[36] The court staff includes the court clerks who run each court, listing officers who arrange the court dates, finance officers and security staff etc.

although cramped this does allow some witnesses to avoid any confrontation with the defendant's family and friends.

The Police at Court

There is, as Rock (1993: 162) identifies, two categories of police officers attending court. Firstly, a small regular group of officers who work in the Court Liaison office situated beside the waiting area at the far end of the concourse. The other group, the largest comprises those officers at court to participate in a particular case. The former group of officers have a number of set responsibilities, escorting prisoners and providing a security presence in addition to the one provided by a private security company. The officers will assist visitors generally and will for example show witnesses around an empty courtroom. Vulnerable witnesses can be given a separate room to wait in providing that the officer in the case has informed the liaison officer in advance. For most there are no segregated waiting areas and it probable that the witness will often come face to face with the defendant's family and friends. However, there are usually a number of police officers waiting or passing through and this fact probably goes some way in alleviating the problem, although more by accident than design. Police officers who are there for a specific cases have the advantage in that they can wait in a room reserved purely for police use. There have been incidents of violence and confrontation in court but the liaison officers are never far away and it is thought by court staff that their presence goes a long way in reducing the incidence of violence. But intimidation could easily be missed both in minor threats and indeed serious cases. In a recent case of attempted murder, a female junior barrister recounted that she had been intimidated and threatened by the father of the defendant but as there were no witnesses to the incident no action was taken by the barrister as the offence would have been difficult to prove without supporting evidence.

At court - procedural issues

The witness will have arrived at court and will know which of the six courts the case will be being heard in. There may or may not be some contact with the CPS legal representatives, either their clerks or the lawyers themselves. There might also be some contact with the court's administrative staff, either early on in the case or being told where to go, or later when claiming expenses. Basically witnesses wait to be called to give their evidence. The police officer in the case may also have some contact but this can vary in quantity and can often be minimal. Most of the witnesses' time is spent waiting. If and when the witness is required he or she is called for by an usher, escorted to the witness box and the witness will then swear the appropriate oath depending on religious or non religious persuasion. Once the evidence is given or the witness is no longer required, then he or she is formally dismissed from the case. The only remaining contact with the case is if someone decides to tell them the final outcome. In a number of cases witnesses will re-enter the court and watch the remaining trial themselves but in most instances they simply leave.

Conclusion

Two key issues have been covered. Firstly, the chronological path of a crime which subsequently becomes a trial has been portrayed and an indication given of where the lay witness fits into the puzzle. Each trial is different for the lay witness yet often routine for the professionals in attendance and the contact levels between the two groups can vary considerably. Witnesses move along the justice pathway, sometimes willingly, but are also sometimes forced along by the energy of the case and by being part of the prosecution process itself.

Although the logic of the way cases are built up and how the trial is organised is quite clear to the insiders in the system, for the witnesses, as outsiders, the passage can

be confusing, with long periods of inactivity interspersed with bursts of frenetic energy. Appearing at Court is not an instant process nor is it even one based on an appointment system. It is a system based simply of waiting for your turn which may or may not happen. There are also two distinct physical arenas, that of the waiting area and the courtroom itself, and the witness gravitates from the former where there is a distinct lack of knowledge and uncertainty to the latter when the lay witness takes centre stage, apparently needing to know everything about the case.

Chapter 5

Experiencing justice: the routine processing of prosecution witnesses by the Criminal Justice System

Introduction

This chapter examines the results of the research carried out on the experiences of the routine processing of lay witnesses during the time they spend within the CJS. It pulls together many of the strands of the research, incorporating the results of the surveys of both lay witnesses and police officers, together with the in-depth interviews held with criminal justice professionals and a number of lay witnesses. Also included are a number of observations of certain key processes recorded during the research. All these are linked together by drawing on my own 'grounded' knowledge of the justice process and in particular my experience of policing gained whilst a civilian member of the police force for over 10 years.

The chapter is divided into two distinct sections, that of the pre-trial period where cases are developed and processed by the police together with the CPS. The pre-trial period was often time consuming and it was not unknown for some cases to have taken over a year to finally get to court. The second part of the chapter concentrates on the period spent at court by lay witnesses. Witnesses serve two purposes in the CJS, firstly, by helping the police initially to detect crime and secondly, by helping the police to build up the case until it was suitable for bringing a prosecution against the defendant. Witnesses and the information they have are vital for the police in detecting crime. The police would detect little crime themselves if it was not for the public reporting it and then being prepared to become witnesses (see, for example, Reiner, 1992: 15, McConville *et al.*, 1991: 18). Police directed activities towards the detection of crime especially when it excludes the public assistance is often not particularly

successful, for example by the use of police powers to stop and search suspects. A recent check made on cases within Bedfordshire (1996) revealed a rate of less than six per cent for arrests resulting as a direct result of the stop search[37].

Entering the CJS for witnesses is not, however, an automatic right. The police have some discretion over who is allowed to enter the process (McConville *et al.*, 1991: 16). The police can, for example, choose if they wish to dispatch an officer to an incident, or when arriving at the scene the officer may decide not to take any action. In any event not all crimes even get reported to the police. The 1992 British Crime survey reported that approximately half of all the incidents identified by the survey were not reported. Reasons for the low level of reporting, ranged from 'being only a minor issue or that there was little chance of any satisfactory outcome in terms....of getting property back, or offenders caught' (Maung *et al.*, 1993: 17).

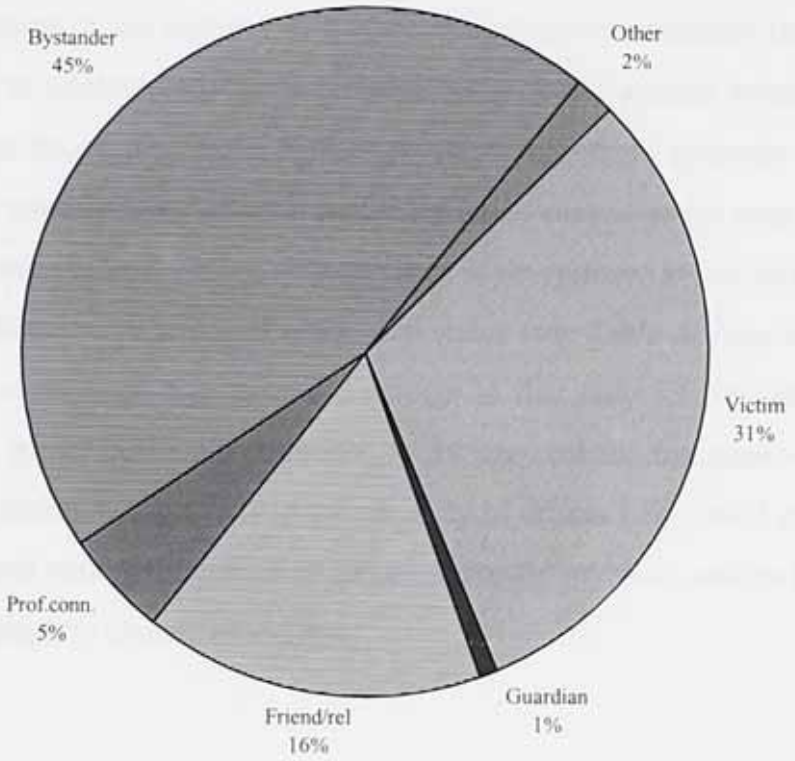
Once the witness has been accepted into the system then he or she can be categorised into what may be termed 'witness types'. Breaking these down into specific groups will help indicate the spread and diversity of the witnesses who responded to the research.

[37] Stop searches are authorised under PACE (1984) or if in relation to drugs is carried out under the Misuse of Drugs Act 1971.

Witness typology

The witnesses were initially asked what part they had played in the court case (see Chart 1 below)?

Chart 1. What part was played in the case?



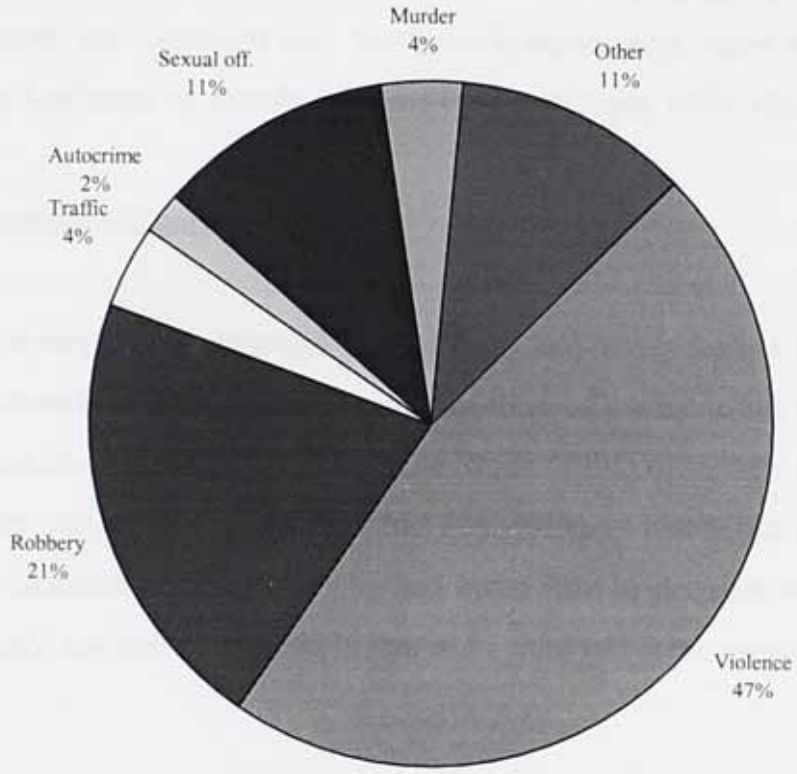
These results compared favourably to the 1991 study of witnesses who reported that 36 per cent of their sample had been victims (Raine and Smith, 1991: 7). The witnesses at Luton Crown Court came from a broad spectrum of ages (see Table 1, Appendix One) with a tendency to have more witnesses who were under thirty. This slight imbalance may well be explained when the type of case is examined, in that many cases involved violence and this may well reflect the fights and assaults that occur in clubs, public houses or similar locations. There would also appear to be a tendency for older people to appear more in the role of the bystander, 70 per cent (for

those over 55) compared to only 20 per cent of that age group who were victims. In terms of ethnicity (see Table 2, Appendix One) the numbers of 'non white' ethnic groups broadly matched the wider spread in the population at large in Bedfordshire but they were also relatively few in number in this survey (and in retrospect should have been catered for more effectively). The variable of gender (see Table 3, Appendix One) was a particularly useful way of breaking down the survey responses, partially because the numbers matched each other so well, (i.e. males and females were equally represented in the sample) but also because gender as an issue might show up differences in terms of the equality of treatment received by witnesses throughout the study. It might be conjectured that if discrimination occurs against women or indeed men, then there might also be a similar problem for ethnic minority groups. In response to the specific issue of what part the witness played in the case, gender was not significant although there were slightly more male victims, 34 per cent compared to 29 per cent females. In terms of residential status (see Table 4, Appendix One) an interesting and significant difference did emerge in that only 19 per cent of victim-witnesses were owner occupiers compared to 54 per cent for bystander-witnesses. It may be that, as mentioned previously the majority of crimes being tried are connected with violence, and younger people may be more directly involved, which may account for the lack of property owners as victims.

What crimes were the witnesses involved in?

Crimes of violence made up the bulk of the cases being tried at Luton Crown Court[38] (see Chart 2).

Chart 2. Type of case



Many cases were ones that involved violence against the person and this included murder. Nearly half of all cases were assaults, although if rape, murder and all other crimes involving physical contact were included then this would mean that the great majority of cases were crimes of violence. When the question was broken down

[38] All crimes are categorised by the Home Office numerically from 1 - 99 with sub classifications. For example, assaults may be classified as 5 wounding (Grievous Bodily Harm) or 8 malicious wounding (Actual Bodily Harm) whereas rape is classified as category 19.

by residential status (see Table 5, Appendix One) there were again significant differences in the type of cases house owners became involved in, only 33 per cent were assaults compared to 62 per cent for non house owners.

The figures for the Raine and Smith (1991) study broadly followed the same lines with about 60 per cent of all the cases dealt with across the 7 test courts relating to physical assault (Raine and Smith, 1991: 6). Rock in reporting on Wood Green's figures also made the comment that 'the Court's staple cases, more than two thirds were the Class 4 offences of assault, theft and burglary'(Rock, 1993: 14).

Previous experience of Court

The majority of lay witnesses (82 per cent) had never been a witness before (see Table 6, Appendix One) although probably some of the witnesses will have been at court, at least in some capacity. Raine and Smith (1991: 6) in their study reported that only 32 per cent of their respondents had attended court before but not necessarily as a witness. Shapland *et al.* (1985: 11), had noted that 46 per cent of their study's victims had made a witness statement before and a third had some previous experience of court.

In general terms, therefore, most people who had entered the CJS did so because of their involvement in cases of violence. It would also appear that owner occupiers and older witnesses had less chance of becoming victims in these cases and were more likely to have been at court as a bystander or as a professionally connected witness. Finally the sample of prosecution witnesses in this study appeared to broadly reflect the typical types of persons and cases which came before other Crown Courts in England and Wales.

The 'pre-trial' experiences of lay witnesses

The witness will have undergone a number of contacts with the CJS prior to his or her arrival at court. The range and depth of contact with the system can differ quite dramatically. Most contact will be with the police but there are also a number of administrative processes that the witness has to go through before he or she can finally give evidence in court.

Meeting the Police

Many of the respondents, that is 87 per cent, stated that they had experienced no problems in their dealings with the police, although this varied somewhat when analysed by ethnicity (see Table 7, Appendix One). Although there was a low number of ethnic minority respondents, there appeared some indication of a higher level of dissatisfaction with the police. With regard to this issue Zedner (1994: 1218) has identified the concept of 'differential victimisation', where differing ethnic minority groups may suffer differing levels of crime. It may be argued that the concept of 'differential victimisation', if also combined with the issue of 'secondary victimisation', that is victimisation by the system itself (Maguire and Pointing, 1988: 11), could place some ethnic minority witnesses under additional pressures compared to their white counterparts.

The amount of contact the police had with witnesses varied considerably and ranged from simply taking a statement to frequent and complex meetings covering issues such as identification. Notes from two interviews give examples of the types of contact that occurred between witnesses and the police:

> 'The respondent did not see the officers to whom she had spoken on the night of the incident again, but about a week afterwards she was visited by a detective constable.

She found him pleasant to talk to and made a written statement to him about what she had seen. He explained that she might have to attend court and said that he would keep her informed as to how the case was progressing. He failed to do the latter, something she found disappointing.

The next involvement with the police was when she was asked to take part in an identification parade. This took place at Luton Police Station about two months after the original incident. She and another witness were conveyed to Luton by the police. Whilst there she saw the detective constable who took her statement. When they first arrived at the police station she and her fellow witness were taken to the canteen where they were provided with refreshments. They were then taken around the building and shown where the identification would take place and the procedure was explained. In order to carry out the identification the respondent had to look through a one-way glass panel. She was glad that she did not have to go into the room itself to identify the offender as she would not have liked the idea of him knowing who the witness against him was for fear of any reprisals prior to a court appearance. However, if it had been necessary to walk the line of the parade in order to carry out the identification then she would have done so.

Initially she did not feel concerned about what was expected of her in terms of the identification parade, but when the police officer explained the procedure to her, he made it worse in his explanation and actually made her worry about it. She would have preferred him not to have made these comments as this caused her to feel nervous and conscious about the whole process when actually making the identification. However, overall she felt that the procedure and her treatment at the identification parade could not be improved. After the parade she made a further statement confirming the identification and this was the final contact with the police until she went to court.'(Interview 4)

The following transcription describes the experiences of another witness, a victim of an abduction, in terms of her contact with the police:

> 'Her first significant contact with the Police was when she was found and taken to a Birmingham police station at about 06.00 where she was questioned for a time. Bedfordshire officers eventually arrived at 10.30 and took her back to her local police station where she was questioned until about 19.30 when she returned home. She was quite satisfied with the service she received during this period in all aspects except one. Although she was offered the use of station facilities she would have liked to have gone home quite early on to have a bath and sort herself out. All officers were helpful and one was appointed to look after her during this time.
>
> She had some further visits from the police after that, all of which were satisfactory with no problems. They phoned to say they were coming and arrived on time. Due to the nature of the case she was supplied with a panic button system connecting her to the station. This aspect had caused her some concern due to the fact that the system was removed after a short period of time and given to somebody else.'(Interview 2)

Although most witnesses stated they were satisfied with the overall service given by the police (see Table 7, Appendix One) there were still issues of poor support, such as the lack of care or interest shown by officers involved in the case. For example, there was the female witness who had to go the police station alone in the early hours of the morning and was then released without any interest in checking whether she could get home safely. The witnesses who had problems with the police tended to be those who were involved in the more stressful cases or those that involved significant amounts of contact with the police. Shapland *et al.* (1985) identified similar issues, most victims being satisfied with their initial meetings with the police, with dissatisfaction growing the longer and deeper the contact went on. The same authors identified that the victim's problems focused on issues such as 'an uncaring, routine and hostile attitude....refusal to take action and to general unthoughtfullness or

disregard of obvious victim needs' (Shapland *et al.*, 1985: 30). These finding were similar to these found by others such as Maguire (1994a) who points to the 'casual' and 'unsympathetic' attitude of the police towards victims (Maguire, 1994a: 156).

The Police's contact with witnesses

Police activity normally centred around the basic policing action of dealing with and investigating incidents and part of the task often involved recording the evidence of victims and witnesses (see Table 36, Appendix One). About a fifth of officers also regularly spent some of their time delivering court warnings. This element of work, although a requirement for police action, may justify further research to ascertain if a more effective procedure could be introduced which minimises the police officer's time spent on this activity.

Shapland *et al.* (1985) make an important point regarding the relationship of the police to the victim of a crime, arguing that 'the police see their contact with victims, however, as required only when they need something more from the victim. Other contacts and helpful attitudes are for 'humanitarian' reasons or as general public relations, not as of right' (Shapland *et al.*, 1985: 94). This confirms my view that police forces still tend to be primarily task-orientated, with a short term pragmatic approach to dealing with situations[39]. In terms of the processing of the prosecution witness, the officer's concern is often the construction of a case that will eventually win at court. Discussions with officers reveal that they used the witness to 'add value' to the case. It seems this is based on the officer's own concept of 'evidential value', namely: firstly, how well did the information held by the witness help to prove the case

[39] Some officers will simply view themselves as a directed resource and once sent to deal with a problem will try to resolve it as soon as possible in order to deal with the next problem. Police forces have recognised this as a cultural problem and in order to resolve what is referred to as 'fire brigade policing' and have tried various approaches to deal with the problem. Forces often, for instance, create specialist units to ensure continuity of cover and service such as a team of officers dedicated to domestic violence, racially motivated incidents or burglaries.

in court and, secondly, how well would the information be presented by a particular witness. This finding is in accord with the work of McConville *et al.* (1991) who noted 'case construction implicates the actors in a discourse with legal rules and guidelines and involves them in using rules, manipulating rules and interpreting rules. It involves not simply the selection and interpretation of evidence but its creation.' (McConville *et al.*, 1991: 12). McConville *et al.* (1991) are critical of the consequences of this case construction for the defendant, however this approach by police officers may be a plus point for lay witnesses in that issues of race or gender may not be so relevant compared to the processing and construction of the case against the defendant. It is likely that officers may be more concerned with the priorities associated with obtaining a conviction rather than discriminating against the witnesses that they might need in building up the case.

In the survey, the officers were asked what types of problems they encountered when dealing with witnesses (see Table 38, Appendix One). The issue rated most problematic by nearly a third of all officers was that witnesses were 'not coming forward to help the police' with their enquiries. This is a matter of concern for the police on one hand but reassuring in terms of the study as one of the initial hypotheses that led to the research being carried out in the first place was that the public were reluctant to help the police. Officers specifically mentioned such problems as:

'the witnesses fear, real or imagined of reprisals.' (Q3/12)

'Witnesses not willing to supply the time required for statements.' (Q3/16)

'Due to case load, trying to keep in touch with witnesses.'(Q3/58)

One of the most important contact areas that officers had with witnesses was when the witness was required to attend an identification parade.

Identification parades: a police perspective

Identification parades although, a relatively small number (several hundred being held annually in Bedfordshire), compared to the total number of prosecution cases which occur every year, are important in that they involve witnesses and the police in what can be one of the most stressful situations that the witness faces outside of the witness box itself. The previous chapter concentrated on the logistics of carrying out a parade but here the experiential reality of the witnesses meeting suspects is explored in more detail. Slater (1994: 21) in his work on identification parades identified that 33 per cent of women were 'worried' about meeting the suspect and that 12 per cent were actually 'very afraid'. Maynard (1994) actually recommended that 'screened facilities should be universally available. To this end purpose built suites should be introduced' (Maynard, 1994: 23). The following account draws on my transcribed notes of an interview held with an operational inspector with specific responsibilities for identification parades and illustrates the difficulties and pressures witnesses face when they attend a parade:

> 'His concerns for witnesses started with the point that they receive no financial compensation for the part that they play in the identification process. The inspector quoted an instance where witnesses had to travel from Hull and Essex to take part in an identification parade. This meant that they had to give up a large part of their day as well as incurring the expense of travelling. It seemed ludicrous to him that even the 'stooges' who attend identification parades are given £10 for their time.
>
> Prior to an parade taking place the witnesses are required to wait in a room until they are needed. Sometimes there is someone available to sit with them. Often a constable will provide them with coffee at his own expense as there is nothing formally provided in the way of refreshments for witnesses.

Witnesses are often very frightened when required to take part in an identification parade. At present only one police station in the county is equipped with a one-way screen for identification purposes and this is at Luton. It was hoped that this would make the situation easier for witnesses. However, PACE (1984) states that the witness should walk the length of the parade. The window cannot be used at present following a High Court decision, by way of a stated case, that the screen contravenes the codes of practice. According to the officer, this causes problems for witnesses as they do not like having to walk the length of the parade. This means that they do not carry out the procedure properly as they just want to get the whole thing over and done with. He gave an example of where a young woman was the witness to an incident involving an adult and a juvenile. A group identification for the juvenile was arranged at Luton Airport arrivals lounge. The witness had no problems identifying the offender despite the fact that he had changed his appearance. Later the adult involved was subject of an identification parade. This was after the decision to stop using the window and the witness had to walk the length of the parade. She was very upset at having to do this and barely attempted to identify the offender. When spoken to by the inspector afterwards she said that she was so frightened she just wanted to get out of the room as soon as possible.

In his experience the officer has found that identification parades are very distressing situations for witnesses, for example, even when the mirror was still in use a witness was reduced to tears when having to make the identification. He stated that it is possible to see witnesses physically shaking when going through the process. When witnesses attend an identification parade he talks them through the events of the incident step by step so that it refreshes their memories and helps them to remember the defendant. However, this is a very traumatic experience to subject witnesses to as they are being asked to re-live what in many instances was a very disturbing incident. They are then asked to repeat the process at court. He felt that the police need to encourage witnesses to come forward again, but often following their experiences at identification parades many would not simply because they are too frightened. He felt that the police could help to some extent by speeding up the process and being more professional in the conduct of a parade.' (Interview 9)

There was also a specific concern raised by officers that the process favoured the defendant in that the parades usually take place a month or so after the original incident. This meant that the defendant has ample opportunity to change his / her appearance and that this fact was never questioned by the courts. Additionally, officers viewed the confrontational method for identification as being unfair to witnesses. The use of group identification[40] or one way glass was seen by officers as more effective with less stress being placed on witnesses. Although, for the witnesses these suggestions are admirable and would be welcomed, they may be less so from the defendant's point of view. Placing the witness into a more comfortable and secure position and allowing the witness to identify the suspect in complete security[41] may well increase the number of mistakes made in wrongly identifying the suspect. It is clear though that witnesses do not like the identification process primarily due to the stress of having to identify the suspect. The impression also given by officers is that the evidence gained from the parade was often not challenged by the courts and may not contribute greatly to the final outcome of the case, although there was no evidence to support this point. It would seem that there would be some merit in carrying out further research on this issue in terms of assessing the contribution identification parades make to the prosecution process.

[40] Where the suspect is picked out from, for example, a crowd in a shopping centre.

[41] For example by the use of a video image or picture of the suspect which is then mixed into a set of other video stills of similar people drawn from a large library of images. The witness then identifies the person from a television monitor. This system is already under trial in some forces.

Lay witnesses' overall satisfaction with their contact with the police

The majority of victim research carried out in Bedfordshire (Black and Mosley, 1996) reveals that victims were generally satisfied with the initial service they had received from the police. Shapland *et al,* (1985) also noted that satisfaction levels decline the more the case progresses (Shapland *et al.,* 1985: 85). The 1992 British Crime Survey indicates a slight downward trend in satisfaction levels with the police, that is 65 per cent 'satisfied' in 1992 compared to 68 per cent in 1984 (Maung *et al.,* 1993: ix). In general terms the many witnesses who attended Luton Crown Court during the study appeared to have few problems with the police part of the witness processing system. However, this was not true of all and a number of witnesses did appear to have some problems in their contact with the police. In fact just because witnesses were 'satisfied' might well be a misnomer and simply reflect low levels of expectation. It may be that many witnesses have little contact and that as the amount of contact with the police increases more issues of conflict will occur. Furthermore, dealing with the police in the situation a witness finds themselves in is never going to be easy. Witnesses were not necessarily willing participants and may be drawn into the CJS against their better judgement or wishes. The answer that seems to emerge for the way the police should deal with witnesses is one of 'reasonableness'. Witnesses expect to be treated in a reasonable way and be informed and supported by a professional police service during what many may view as basically an ordeal, especially for those who are victims. Issues that the police deal with daily are often major dramatic disruptions in the lay witnesses' normal lives. The police need to ensure that the gap never gets so wide that their contact with the public is one of common place routine with the police failing to recognise that crime can have a major personal impact on the individual witness.

'Trial by letter' and the witness warning process: the lay witness experience

After what can be a frenetic process of contact with the police at the time of the incident the case often settles down for several months during which time the case is being prepared and the trial arranged. The next contact the witness has with the system is when the courts start to arrange dates for the hearing. The system for notifying witnesses of the need to attend Crown Court and the issue of delays and adjournments appeared as a constant problem in discussions with witnesses throughout the course of the research. Interestingly the problem seems to be long-standing, widespread and indeed even international. For example, one case commented on by Ash (1972: 160) involved a witness in the United States who had on 19 separate occasions to travel over 10 miles to attend court. Rock (1993) also noted the long gap between incident and the 'sudden intense need to get the case started the following day' (Rock, 1993: 273).

Just under half of the respondents (48 per cent), (see Table 8, Appendix One) stated there were 'problems with the notification process'. The main issue was 'not enough notice given to attend court'. Indeed over a third of the respondents made this comment. Raine and Smith (1991: 12) also noted similar problems with their study reporting that 11 per cent of their witnesses were actually only notified the day before. Their study also showed that there were quite significant differences across different courts in this aspect of service delivery, ranging from 1 per cent at the Manchester Court to 27 per cent at Maidstone for giving notice of less than one day. This particular fact is quite interesting because it might imply that the problem is resolvable rather than being insurmountable which is the normal response given when this problem is raised in discussions with court officials. A transcription of an interview involving a prosecution witness in a bystander role illustrates the widely felt concern over the problem of the short time-scale of the notification process and other elements in the information giving process available to witnesses:

'The respondent was initially rather surprised at the length of time that the case took to get to court as the incident happened in May and the court case was the end of October. Furthermore, the respondent was dissatisfied with the very short notice she received of the start of the court case. She was informed by a police officer at 18.00, to attend Luton Crown Court at 10.00 the following day. This short notice made it very difficult for the witness to make the logistical arrangements necessary for a mother, with two young children to get to Court on time. Although there was a family car she did not have access to it on that day. She had a 4 year old son to arrange a child minder for, together with the fees payable in advance. She quickly decided not to take her children to court, in view of the environment, together with the inherent problems of keeping them satisfied and occupied. Another factor of concern related to her worries associated with what they were doing all the time, which would have been an additional pressure she did not want. She was also not aware of any facilities at the Court to look after children, and had no idea at the time of interview as to whether the fees would be reimbursed, especially as no official receipt for the childminder might have been available (in fact in normal circumstances the fees would have been paid regardless of whether there was a receipt). She, furthermore, had to make her own arrangements to get to court, by obtaining the necessary bus and train timetables. She was also concerned about being a single women travelling to Luton both early in the morning and at night after the case had finished. She did not relish the idea of waiting around Luton Bus Station in the early evening.' (Interview 1)

Another witness made some similar suggestions on how this area could be improved. Her experiences and comments via transcription were that:

'The notification of the trial period was received in October. She was then phoned at about 16.00 on a Wednesday in November to tell her that she needed to be at court the following morning at 10.00. The problems of short notification was discussed at some length and it was felt that the person who rings to inform of the need to attend court should be more helpful in terms of proactively advising people in terms of dealing

with logistical problems, advice on claims and the like. Basically the person who calls should either advise or be aware of the main problems affecting people getting to court and that this appeared not to be current practice. The main problem in this case was that the respondent was a supply teacher who had a teaching commitment already booked which she subsequently had to cancel and which she was unhappy to-do so. The expenses paid failed to cover her loss of pay and subsequently she made a number of formal complaints to CPS but did not receive a satisfactory answer. She was told that it was 'the rules.'(Interview 3)

Other comments made by witnesses reflected similar problems such as the case being postponed when the witness arrived at the court. The extreme edge of the situation is reflected in the following comment by one respondent which was not unique:

' Not exactly a problem, but over a period of 1 year and three months, I was warned 7 times to be prepared and nothing happened. Two weeks after the last warning I had a telephone call asking me to attend court the following day.' (Q5/10)

The warning process and the police's involvement: views from the other side

Police officers were also questioned as to their suggestions for improving the process of notifying witnesses of their need to attend court. Giving witnesses 'more time' and 'fewer changes' were a key feature here with the majority of all officers concerned about the 'short notification periods' and 'the constant changes to trial dates'(see Table 42, Appendix One). This was always an important issue to officers, probably because they experience similar frustrations and the officer's responses were very much in line with the responses of the lay witnesses. Shapland *et al.* (1985), discussing the issue a decade ago, reaffirmed the dissatisfaction of officers with this area of their work. According to one officer interviewed, 'the Crown Court warning system is a pain. They expect us to get in touch with witnesses on four or five

occasions and witnesses get fed up' (Shapland *et al.*, 1985: 61). This problematic situation would appear to remain in today's pre-trial process.

Informing witnesses - the supply of information

A closely linked issue related to establishing what information had been given to witnesses either prior to their visit to court or when they had arrived. Once again there are some crucial questions regarding the asymmetry of levels of knowledge between lay and professional participants in the court. Adequate diffusion of information may at least make some headway in improving the great disparity in levels of understanding and self confidence over the drama being played, noted in other chapters. The lay witnesses were given a number of options to identify which information details had been received (see Table 9, Appendix One).

It is clear that the poor level of information provided, further compounded the imbalance of knowledge for the lay witness compared to that of the professionals (see Table 9, Appendix One). One would have expected that most witnesses would have received a standard amount of information. In fact even in respect of the 'Witness at Court' booklet[42] which was supposed to have been sent to everybody, 33 per cent of witnesses stated they did not receive it. This was at least an improvement on Raine and Smith's (1991) findings where 68 per cent of their witnesses did not recall having received one (Raine and Smith, 1991: 11). Whilst it needs to be recognised that some witnesses may well have received it and then forgotten, it still probably leaves a significant percentage of witnesses that did not receive the document. Only half the people were also informed about such services as Witness Support (see Table 9, Appendix One). The question of what information witnesses need either before or after they have arrived at court needs to be resolved. Witnesses should not be disadvantaged

[42] A general nationally produced booklet which explains court processes and some indications as to the role of the witness.

by the failure to have detailed information about the justice process they have entered. Decisions need to be made about what should be mandatory for witnesses to have, what is desirable and at what time during the life of a case should they receive the information to achieve the maximum effect. The booklet 'Witness at Court' could play an important role in the process if it was developed into a more effective and far reaching document, although, this would need action by the Lord Chancellor's department. The pre-trial process has now come to an end, the second part of the chapter now goes on to document the experience of the witness at court.

The 'in court' experiences of lay witnesses

Although often a totally new experience for witnesses trials are routine events, taking on a continually regulated approach by the professionals at Luton Crown Court. As Rock (1993) has commented 'trials are ceremonial, disciplined and staged and they unfold in set order. Participants come forward at their proper times to perform their stylised parts' (Rock, 1993: 27). As previous research has shown such a highly regulated and staged ceremony may be experienced as a strange and alienating world for the outsider, such as lay prosecution witnesses or indeed the defendant.

The trial begins

The months of waiting are past, and on the day of the trial witnesses will have been arriving at the court since early in the morning, with most court sittings starting at 10.00. Several witnesses made reference to problems of parking and that the court was difficult to find, especially if they had come by public transport. The witness would have finally arrived at the waiting area after passing through reception and the security system. There would be a number of different waiting areas and witnesses would tend for some time to appear rather lost, with Rock (1993) seeing them as 'structurally isolated' (Rock, 1993: 230). There would be a lot of activity and movement at this time in all waiting areas. There would also be differences in activity levels that would be quite noticeable, particularly the purposeful direction and paths taken by the professional in the concourse compared to the aimless wanderings, clustering or isolation of the lay witness. Witnesses would also use the cafeteria in which there was a only minor attempt at separation of court staff from the public but any member of the public would easily overhear any conversation. Rock (1993) had also noted the 'collapse of the enforced segregation ....the canteen was where everybody met promiscuously....it was confused space where no one was clearly in possession or control and meanings were unclear' (Rock, 1993: 227). At some point, wherever they

are, they may come into contact for the first time with some of the groups that make up the professional cast of a trial. The two key contact groups would be firstly, the prosecution team made up of lawyers either Crown Prosecution staff or their agents together with the law clerks and assistants[43] and secondly, Witness Support. Witnesses may also meet a number of the original police officers involved in the case who may also be witnesses for the prosecution. The witness would also have some contact with the courts administrative staff such as the ushers who manage the routine court procedures of the specific trial. Let us now focus on some of the key actors and scenes from this highly staged drama.

The lay witness and the Crown Prosecution Service

In the lay witness survey the witnesses were asked if a CPS representative had identified themselves to the witness before they went into court (see Table 10, Appendix One). This question explored the extent to which the CPS had made efforts in greeting people and putting them at their ease. It was found that 62 per cent of all respondents had some initial contact with either the prosecutor or a member of the team. Although this was minimal with merely a 'good morning' being exchanged. Contact between the witness and the prosecution is not straightforward as there is a legal tradition of avoiding contact in case the witness is seen as being coached in some way. It is also worth remembering that the CPS sees itself as representing the State[44] rather than the individual. Thus these factors do not particularly help in placing witnesses at their ease as the prosecution staff may appear evasive on questions that the witness might have. In a similar fashion Rock (1993) noted 'that the CPS did not wish to be accused of tutoring witnesses about how they should give evidence "we don't talk about anything of the case" '. (Rock, 1993: 160). Furthermore, from the results of

[43] The legal, research and administrative support staff of the CPS. The defence also have similar support teams.

[44] The case against the defendant is brought by the CPS on behalf of the State. The indictment, the document that brings the charges is headed 'Regina' versus the named plaintiff.

the lay witness survey it was discovered that in nearly all occasions this was the first time that the lay witness and the Crown Prosecution representatives had met. There was no automatic procedure to identify witnesses to the prosecution staff and this was further complicated by there being a considerable number of people in the waiting area making the identification of individual witnesses quite difficult. During the case less than half of all the respondents had any further contact (except in the witness box) with the prosecution (see Table 11, Appendix One) and again this tended to be slight, involving such issues as clarification of points relating to evidence. When asked whether there were any problems in the contact with the CPS, over 80 per cent reported that they experienced 'no problems' and that the CPS assistance was 'satisfactory'. The few recorded issues of dissatisfaction related to factors such as disagreements with decisions not to prosecute or that the witness had been unaware of some of the implications of the case, for example that they would be identified in court. Raine and Smith (1991) also found there were only a small number of witnesses who recalled having a contact but that 'overall 56 per cent regarded the CPS as helpful, 73 per cent as friendly and 39 per cent as concerned.' (Raine and Smith, 1991: 15). Nonetheless, the general lack of criticism of the professionals should not be read as implying 'all is well' in that there may be a tendency not to criticise the justice professionals such as lawyers or the police, very much in the same way as there tends to be some reticence in telling the local medical general practitioner that one is dissatisfied with his or her explanation of your illness. There may possibly be some feeling that the professional must know best and that the witness is only fussing about something of little importance. This is probably further complicated by the professionals desire to protect their knowledge base. Rock (1993) noted that a CPS law clerk had seen the care of witnesses more as a police responsibility (Rock, 1993: 161). There was supposedly a natural affinity in 'that they both sought convictions and they both had a stake in witnesses acquitting themselves well' (Rock, 1993: 164). In reality this contact and

association between the lay witness and the police officer in the case often did not occur and officers actually spent little time with witnesses. Although in certain cases[45] there was a dedicated support officer allocated at least to the victim of the offence but in most once the officer has greeted the witness and exchanged a few words they tended to go to their own waiting room.

It became evident from discussions with the CPS that some of the senior staff recognised that they were not doing enough to help witnesses. Rock also noted this, identifying the lack of time and the pressure of processing the case. For example, Rock (1993) notes that a prosecutor stated 'my staff would like to do more but we don't have the time. To be honest we don't even know our witnesses. They're just a name' (Rock, 1993: 159). It was also noted by Rock (1993) that communication between barristers and witnesses had always been a problem, particularly at Crown Court where there was a traditional reluctance to talk to witnesses (Rock, 1993: 48). The normal procedure should be that the law clerk at Crown Court greets the witness and then sorts out any problems he or she might have. The CPS members interviewed in this study felt that this probably did not happen in all cases and especially those where the law clerks were still putting together the last minute case details. The CPS agreed that there was a particular problem about witnesses who were waiting outside the courtroom and their lack of information about what is happening in the case. It is again the responsibility of the law clerk to keep those waiting appraised of the situation but this rule is probably rather spasmodically applied in reality. One particular practical problem for witnesses identified by the CPS relates to the delay in time between the witness actually observing the event and the time the statement was made. This may well cause problems for the witnesses in that they have two distinct events to remember, namely the event itself and the information contained in the statement

[45] Primarily in any cases such as sexual offences, domestic violence or offences where children are involved. Although normally it will be only the victim or in the case of children their parents who actually receive this depth of service and support.

which may have been made some time afterwards and which may differ from the events surrounding the original incident.

The research suggests that witnesses often have little contact with the CPS and that the level and depth of support witnesses receive is often ill-defined. The CPS at a local level at least seemed to accept this[46] but stated that there were several problems needing to be overcome. Firstly, there are the pressures of work placed on the prosecution staff on the first day of a trial in preparing the case at exactly the same time as witnesses probably need most assistance. Secondly, there is the legal tradition of non contact which does make it difficult for the prosecution staff to directly impact on witness support. However, in reality the needs of witnesses are often not great nor time consuming and if the CPS's law clerks were to carry out more of their responsibilities towards witnesses, then some elements would certainly improve considerably, for instance in giving more details to witnesses about what is happening with the case. There was also some additional confusion both within the professional organisations and with lay witnesses about the role of the police and the CPS particularly over their differing areas of responsibility and this needs to be resolved. Finally, the thoughts of one witness does seem to encapsulate the current process:

> 'Court procedure is very different from ordinary life, it is fine and routine for those working in that environment, but very strange and overpowering for those who do not... Overall I felt that CPS should have made themselves known to me.'(Q17/5)

[46] Indeed at a national level the CPS are trying to resolve some issues of witness care. For example they are currently discussing with others in the justice system the possibility of taking over responsibility for all elements of the witness warning process. This would exclude the actual visits to witnesses to deliver the formal notice to attend court a task which would still remain the responsibility of the police.

Witness Support

About a third of all the respondents actually had little or no contact with the Witness Support service (see Table 12, Appendix One)[47]. Of those that did 84 per cent were 'satisfied' with the support they received. Raine and Smith (1991) had reported similar findings, their witnesses had seen Witness Support as 'helpful' (89 per cent) and 'concerned' (86 per cent)(Raine and Smith, 1991: 16). There were some slight differences in the dissatisfaction levels of the differing witness groups at Luton although few reasons for their dissatisfaction were given. Professionally connected witnesses were 'most dissatisfied' but this might be explained by Witness Support's concern with concentrating the available resources on the victim and their needs. One particular and significant area of interest was that there were nearly twice as many women seen by Witness Support (see Table 13, Appendix One). This is perhaps not surprising in that men may not wish to see themselves as victims and that they might need support during their time at court. There may well be elements of 'machismo' in the low take up of the service by males. In interview the Witness Support Co-ordinator stated that in her experience this fact was probably true. She suggested that men were generally very reluctant to partake of the services and to being seen as being tagged and so in need consequently of support and assistance.

Many witnesses though, enthused about how helpful the unit had been (see Table 14, Appendix One), they particularly liked being shown a court in advance. Some felt it was reassuring that a member of Witness Support would sit in the public gallery and silently be supporting the witness throughout their involvement in the trial. 80 per cent reported that they were 'friendly and reassuring' and 17 per cent commenting that 'they explained the procedures that a witness would have to follow

[47] The fact that a third of the witnesses had no contact directly with Witness Support also illustrates one separate issue in respect to the random distribution of the sample. Although the questionnaire was handed out by Witness Support to all witnesses, nearly 30 per cent had no significant contact with them and would thus reinforce confidence in the randomness of the distribution of the questionnaire.

and what would happen in court'. One negative comment related to the 'lack of childcare facilities'. This function, if needed, is normally supplied by the Women's Royal Voluntary Service nearby. But it is worth noting that in general more facilities could be provided for people who have to take their children along either in terms of changing facilities or methods of keeping the children amused.

The two following views sum up many of the witnesses' thoughts on the unit:

'I would just like to say if more people knew about Witness Support and how much easier they can make the whole experience, then I think more people would come forward and give evidence against offenders, they were brilliant.' (Q.9/3)

This was echoed in the transcription of a interview held with a witness:

'Staff from the Witness Support Scheme also spoke to them. When concern was expressed about the presence of the defendants, their families and friends in the same area she thought that Witness Support were marvellous. Having sorted out their accommodation, a member of staff then took the witnesses in small groups to the courtroom to show them the layout, where they would have to stand and what would be expected of them in for example the administration of the oath. They also supplied refreshments on a regular basis and would have arranged for lunch to have been brought in had the witnesses asked for this. Also, each time a witness went into the court Witness Support provided an escort. They then sat behind the witness whilst they gave their evidence. The respondent found this very reassuring. The public gallery was full of the offenders' supporters so Witness Support arranged for her sister (who was not a witness) to sit with them in the court near the witness box. She found this particularly comforting as she felt that there was someone from her side with her.' (Interview 4)

Finally, one particular organisational problem emerged in discussions with Witness Support which related to the lack of information about cases given to them by the courts. This reduces dramatically the unit's ability to be able to target resources to cases where there might be potentially vulnerable witnesses. The unit might know that a major rape trial is coming up, but can miss the more routine cases where there could indeed be a witness who needs some support. A closer system of liaison and greater access to certain case details, providing they do not breach the rules of confidentiality may assist the unit in offering a more effective service. Witness Support appeared to provide a useful facility to those that require it. The organisation also has some potential for expanding its services, both to Magistrates Courts and indeed to having some involvement in pre court support services for witnesses. It would also seem that the unit could play an important role in identifying issues of intimidation as they can often get quite close to a witness during the course of a trial. This role would probably be advisory, in explaining how to deal with the problem, rather than directly informing the police of the incident, given the confidential nature of the client's relationship to Witness Support. Finally, although the unit is part of the CJS, it may be that Witness Support is still not totally accepted by the other professional bodies at court. It may be argued that Witness Support was seen as somewhat of an addition rather than being part of the CJS and did not appear to yet hold full insider status. It is possible that they are viewed rather as a threat to the status quo of the routine that is associated with justice provision.

Waiting time at Court

Rock has pointed to the fact that 'the work of large organisations is co-ordinated by timetables devised to bring people together at fixed points for fixed periods....exceptionally so when they bring many strangers together to perform consequential and sometimes distasteful activities' (Rock, 1993: 263). This is a classic picture of the activity that culminates in a trial, with the witnesses waiting to be called

forward to play their part in the case. Shapland *et al.* reported that 'the major impression of victims was that of a cold, cheerless wait with nowhere to have a cup of tea and no possibility of going out to get one' (Shapland *et al.*, 1985: 62). This at least has changed at Luton, where generally the waiting conditions have improved and witnesses are able to get a cup of tea, although at a price! However, waiting around was still one of the main lay witnesses 'occupations' with their freedom to roam still being restricted.

Part of the witness process involves time spent at court, which may on some occasions be considerable and unproductive, and compared with the time actually spent giving evidence may well seem out of proportion to the overall time spent at the court. As Rock (1993: 279) noted, witnesses are at the bottom of the court's social order and they have to wait until required. 48 per cent of all witnesses in the study spent over 6 hours waiting at court (see table 22, Appendix One). This compares with only 24 per cent in the study by Raine and Smith (1991). Courts are now more financially aware and there is more pressure to get as many cases as possible through the system in the shortest period of time. Courts are expensive entities and a quick throughput is essential in order to ensure that the performance targets are met. There may thus be a tendency to have more 'floaters'[48] to fill empty courts should the need arise. Many of the witnesses though were not happy with the delays in general and the comments below sum up the consensus shared by many witnesses.

> 'I was very angry that I had travelled all the way from Birmingham and that a case from Luton was put on before ours. I think floating cases can cause a lot of problems. I had to find someone to look after my children. My house was left empty, I could have been burgled.' (Q17/12)

[48] Cases that are fitted in as and when and may or may not be heard, but that require all the witnesses to be there, just in case they are needed.

'As I had to travel nearly 500 miles round trip a much longer notice is required. Also a more positive time. Having been advised 10.00 I arrived to find this case was last on the list and I could have possibly driven up on the same day instead of the day before.' (Q17/51)

'I spent over 6 hours waiting as a possible witness 9.45 to 16.15 only to find that I was not required. In fact I found out at 16.15 that my written evidence had been accepted at 14.30.' (Q17/20)

Whilst witnesses were waiting around in court they were often wondering what was happening inside. What follows is a transcription of two observed cases which may illuminate these matters further:

'A case of aggravated vehicle taking. Due to have started at 10.30. Inside the court room at 11.00 there was still only the defence and prosecution legal representatives present, together with a police officers and an usher. There appeared to be a general discussion between the defence and prosecution on very friendly terms about whether the passenger in the vehicle could also be disqualified from driving. In fact the defence representative asked one of the Crown Court police officers, who supplied them with the answer. At this point the defence left the court room to discuss the case with his client. About 50 minutes had passed and the people waiting outside of the court still did not know what was happening. Ultimately the case did not materialise at all as a guilty plea on a lower charge was accepted.' (Observation 6)

Another case followed similar lines:

'The next case attended starting at 11.50 on another day involved a retrial on rape, indecent assault and actual bodily harm. There had been problems with the jury reaching a decision on the previous trial and a retrial was ordered. The next hour and a quarter related to a discussion by the prosecutor and the defence representative about the meaning in law of the word 'alternative'. No witnesses were called and no one

informed them what was happening. At 13.10 the Judge ordered a recess for Lunch.' (Observation 4)

The general impression given by witnesses was that, although they recognise that they will have to wait around at court, many are often unaware of how long this will be for. The problem was further compounded by the lack of information regarding what was happening within the courtroom itself. One court in the North of England has tried to ease the waiting problem by the provision of message pagers, which allows witnesses to go outside the court and be recalled quickly when they are required.

Whilst witnesses were waiting there were two additional events that could occur. Firstly, witnesses might be given the opportunity to wait in a separate room away from the defendant and their families and, secondly, witnesses could be allowed to refresh their memory of the event by rereading their original statement. 53 per cent of all respondents in the lay witness survey were given the opportunity to wait in a separate room (see Table 15, Appendix One). There were however significant differences by gender, in that the majority of those given the opportunity were women, (63 per cent compared to 42 per cent for men). Age was also significant (see Table 16, Appendix One) in that 82 per cent of those aged under 21 were also given the opportunity, compared to only 49 per cent of those between 30 - 40. Again residential status also significantly played a part (see Table 17, Appendix One) with only 42 per cent of owner occupiers being given the opportunity compared to 66 per cent for others. This probably reflects the proximity of those who witness violence to certain localities and that these witnesses required more support and protection. The court also appeared to have an assessment process for the identification of witnesses who were perceived as vulnerable. The process did not appear to be formalised to any great extent, but emerged through judgements made by the professional groups involved in the justice process.

In the survey witnesses who were not given the opportunity to be separated were asked whether they would have liked the opportunity. 44 per cent of all witnesses would have liked to wait in a separate room, 46 per cent were not concerned either way and the remainder 9 per cent said no (see Table 18, Appendix One).

Finally, in order to prepare the witnesses for their time in the witness box they should normally be allowed to re-read the original statement. It is both the statements that witnesses makes to the police, and their recall of the actual events that constitutes the evidence on which they are questioned in the witness box. Having two quite distinct pieces of evidence causes a problem for witnesses by allowing the defence solicitor to create contradictions in the evidence provided by the witness. Rock (1993) contends that the written statements are 'artefacts. Police questioning had given them a shape, relevance and coherence at times inconsistent with mundane experience' (Rock 1993: 43). Although statements should be based on the witness' recollections of the event, they are inevitably driven by the questions raised by the officer. The survey showed that 96 per cent of all respondents were given the opportunity to read their statement. This compares to 50 per cent in the study by Shapland *et al.*(1985: 63).

The Witness Box - presenting the evidence

Witnesses once in the witness box were then subjected to questioning by firstly, the prosecution and then the defence. The purpose of the prosecution was to provide the 'proof....a pivotal statement by witnesses.....to have seen or heard the offence as it occurred, perhaps actually having witnessed the offenders committing the offence against the victim' (Rock, 1993: 68). In the survey witnesses were asked how much time was spent in the witness box. The period of time varied with 60 per cent of witnesses spending under 30 minutes in the witness box (see Table 23, Appendix One). Raine and Smith's (1991) findings match these results extremely closely, their study

reported that 60 per cent of all their respondents on average spent 30 minutes or less giving evidence compared to this study's same average.

About three quarters of all witnesses who attended court actually gave evidence (see Table 19, Appendix One). The respondents were asked in the questionnaire to rate the difficulties of giving evidence. Most witnesses found the experience difficult (see Table 20, Appendix One) but women significantly as a whole found the experience much more difficult than men (65 per cent compared to 21 per cent for men). Explaining this difference is not so easy, both victims and bystanders responding in a similar way. It might be that some of the specific sexual violence cases females were involved in, generate more stress. Conversely it might be that men were not prepared to admit that they found the experience of giving evidence difficult. Raine and Smith (1991) noted that 'feelings reported while giving evidence were mostly negative, with less than 10 per cent indicating calmness or relief compared to 47 per cent feeling nervous, intimidated, worried frightened or upset' (Raine and Smith, 1991: 16). Shapland *et al.* (1985) stressed the 'passive nature of the victim....replying only to questions put to him, unable to affect the way the case is handled by the professional participants and vilified by the defence with no right of redress' (Shapland *et al.*, 1985: 63). Rock, however, pointed out the extreme feelings of witnesses: 'many witnesses detested cross-examination that they reacted viscerally....witnesses felt bullied' (Rock, 1993: 176). Observations and discussions with witnesses in the research project revealed how constrained witnesses felt whilst giving evidence. For example, questions by the defence restricted the range of answers that could be given, not allowing

witnesses to qualify their answers to the judge and jury as to what the response meant in reality. The following quotations illustrate the strength of their feelings about the process:

> 'made to feel a liar.' (Q12c/62)

> 'It was very upsetting re-living my experience, I found it difficult to remain calm when being cross examined.' (Q12c/7)

> 'I was nervous and frightened of the situation, possibly because I did not know what to expect and I personally felt on trial.' (Q12c/46)

The transcription of one of the more serious cases observed justifies inclusion in that it illustrates further the approaches taken by defence counsel and the pressures that they can exert on a witness:

> 'The case observed was one of attempted murder. The woman had been walking her dog in the woods near to where she lived and then when sitting down had been very badly attacked by the defendant. The victim was in the process of giving evidence. She was nervous but answered all questions reasonably well except at the point of being asked about another family of the same name as the defendant living in the village nearby and whether she knew them. Another problem emerged when she was shown a photo of the vicinity and asked to show the direction the attacker had come. The photo she stated had been taken from an unusual angle and it was not easy to explain the exact location of the attack. After several more attempts by the defence in a forcible way to clarify this issue the judge ordered a short break for the witness at which point she was asked to leave and not discuss the case with anyone. The point of the defence's questioning related to the amount of time the victim would have been able to see her attacker. The defence argument being that she would not have seen the defendant as she was attacked from the rear rather than the side. The judge then complained to the Crown Prosecution Service barrister about the lack of adequate

maps and plans of the two locations, especially as identification of the defendant was a crucial issue (although he had already been picked out in an identity parade). The defence was making the point that although she said she had never seen him before, that in the small village where they both lived this was unlikely to be true. The judge considered that the witness had enough problems and ordered an adjournment to the following afternoon when the police had to have suitable plans delivered to the court.

Next day the witness seemed quite convinced that the attacker was the person picked out in the identification parade. The defence then returned to the point it had made previously in trying to prove that she had in fact seen a member of the defendant's family before and, therefore, she may well have seen the defendant previously. The case had attracted a significant amount of press coverage, and there were also a large number of relatives and friends of the defendant in the public gallery which clearly appeared to unsettle both the victim and some of the other witnesses. The Crown Prosecution Service representative appeared unsure of the approach to take with the direction of the case and did not appear to particularly support the victim during her time in the witness box.' (Observation 3)

Rock, in his study noted the conflictual nature of law: 'the contested trial was palpably adversarial: Weinreb called it "a highly ritualised struggle between good and evil" ' (Rock, 1993: 30). Rock went on to say that 'the defence would employ argument and questioning to reveal inconsistency, error, improper motives, forgetfulness and falsehood in prosecution witnesses....almost as a matter of course counsel would....so blackguard the witnesses that they were no longer believable' (Rock, 1993: 34). The defence would basically argue that the prosecution case was a lie and that the prosecution witnesses were simply not telling the truth. The defence process relies on chaos and uncertainty, prosecution witnesses are best for the defendant when they are confused, nervous, and angry and defence solicitors would do anything that is necessary in court to disprove or discredit the testimony of a witness. Rock (1993) considered that it was 'the adversarial system in particular that translated

witnesses into objects in conflict. It was dedicated to pitting the testimony, credibility and reputation of victims and defendants against one another' (Rock, 1993: 86). My findings confirm that witnesses were part of a game played out between two groups with differing ambitions. The defence simply uses all the rules of engagement to the most effect. One reason for this may simply be that the defence prepares their case better and goes into court with a clearly defined set of objectives as it already knows the prosecution case, having had access to all statements. The prosecution team, on the other hand, have little or no knowledge of the direction of the defence being undertaken by the defending counsel. The CPS was also subject to some criticism from both police officers and the defence. There was a commonly held view, not unexpectedly, that the CPS were poor prosecutors. One case quoted by a defence solicitor related to where he had advised his client to plead guilty but before he could do so on the day of the trial the CPS had dropped the case for lack of evidence (Interview 18). PACE (1984) was also seen by both the defence and the prosecution to have given most of the advantages to the defence team. This was primarily because it was based on rules that allowed the police to make procedural errors which could be then exploited. The previous system had revolved around the 'judges rules' which were ill defined and, therefore, did not allow procedural errors to be disputed to any great extent. The defence solicitor commented that 'PACE enables a smart operator to play the system' (Interview 18).

Police Officers experiences at court: pain or pleasure?

Police officers are also witnesses and it will be of value to see if their experiences differed in any way from lay witnesses. On the basis of the police officer survey, a number of similar problems to those illustrated above faced the police when they themselves took the stand or at least attended court. Many felt that they had to wait around at court just in case their evidence was needed and that often they did not even give evidence in the witness box. Detectives tended to be more dissatisfied than uniformed officers at the 'lack of readiness by the courts': 44 per cent expressed

themselves as dissatisfied compared to 29 per cent for uniformed officers (see Table 46, Appendix One). This may well be explained by the fact the detectives normally deal with the more complex cases and tend to put a considerable amount of time into file construction. Discussions with officers revealed their concern about how the defence tends to prepare their case well in advance, whereas the CPS or their agent appears almost to decide action on the day. Less experienced officers also indicated that 'court procedures' caused them some problems. The probationers raised the issue that they currently receive almost no preparation at all for court, merely sitting in the public gallery at court for a little while. Research to establish the benefit of having officers well trained in presenting evidence may well be justified in order to maximise the effectiveness of the evidence presented to the judge and jury.

The survey findings, showed that a quarter of all police officers spent over a day in court. Officers seldom spent more than two days except in serious cases or complex cases such as fraud. In terms of giving evidence, 77 per cent of the officers actually gave evidence in the witness box which is about the same percentage as lay witnesses. However officers were often in the witness box for a shorter period of time (33 per cent compared to the public's 11 per cent giving evidence for less than 10 minutes) (see Table 48, Appendix One). Again, for the police officers who spent between 30 and 60 minutes in the witness box, these accounted for only 19 per cent of the total compared to the public's 37 per cent. A number of factors could explain this. It is possible that some police officers are there simply to corroborate events, and thus in many cases simply read their notes made at the time in their pocket book[49] and then leave, even though they may be cross examined by the defence. Another explanation might be that being seen as professionals they are not seen as needing the same acclimatisation process as the lay witness.

[49] The official notebook that all officers have to record incidents and activities.

Issues of intimidation

The problem of intimidation and threats against witnesses is an issue that has grown, at least in the media, since the original questionnaire was constructed. However, Shapland *et al.* (1985) had also reported problems with intimidation over a decade ago reporting that fourteen per cent of victims 'experienced some form of retaliatory behaviour' (Shapland *et al.*, 1985: 109). With hindsight, more information on this area would have proved valuable. Since the commencement of the thesis a Home Office study has been specifically carried out on intimidation, with Maynard (1994) identifying some serious levels of intimidation. The Luton study avoided direct questions on intimidation in respect of the lay witnesses' own experiences, as this may have raised ethical problems of whether there was a need to report an offence. Nearly half of all respondents felt there were generally problems with the intimidation of witnesses (see Table 28, Appendix One), with just under one third seeing no problems. Although not significant female respondents tended to register a higher level of concern regarding the problem (54 per cent compared to 41 per cent for the males). There were also slight differences when the data was analysed by residential status (see Table 29, Appendix One). The respondents living in rented accommodation stated that there was a higher risk of intimidation (55 per cent compared those who owned their property at 45 per cent) which again may link into intimidation being restricted to certain areas. The main causes of concern (see Table 30, Appendix One) related to waiting in the same area as the defendant, their family or friends, and this was of particular concern when there had already been some previous contact between the two parties. Men, tended not to like being in the waiting area (52 per cent compared to 40 per cent for females). The other issue that concerned witnesses related to the practice of their name and address being read out in court and the fear that this might lead to intimidation. Women tending to be more uncomfortable, with 31 per cent expressing concern; compared to 16 per cent for men. It must, however, be remembered that these were comments from witnesses who reached court. The number who refused to appear

due to intimidation, perceived or otherwise, is unknown. Typical comments on intimidation included the following remarks by witnesses:

> 'The defendant's friends were all waiting in exactly the same area as the witnesses and make one feel very intimidated.' (Q15b/17)

> 'Because the defendant's family were allowed to know where I live.' (Q15a/11)

> 'You are identified so much more by being a witness, they have a chance to find out about you.' (Q15b/26)

> 'Because I think it was very disgraceful that my address was read out ....I'm now worrying that maybe someone certainly knows where I live and they could harass me.' (Q.15b/27)

The transcription from one of the interviews illustrates an example of intimidation:

> 'She felt that giving evidence would have been easier if there had not been so many family and friends for the defendants present. Whilst she understood that the defendants would want support she felt that there were too many of them and some restrictions should be imposed. Prior to being found a separate room on arrival at the court the defendants' supporters kept making funny noises at her and pointing her out. After she had given her evidence she sat in the public gallery to watch the remainder of the case. When it was over the brother of one of the offenders lunged at her as she was about to leave the court room. Once outside the room the same individual made unpleasant comments towards her. Despite the fact that the officer in the case was present throughout this incident, no-one took any action and she was not happy about this issue at all.' (Interview 4)

The survey results show the disquiet at having to wait in the same area as defendants, with a number of witnesses reporting instances of hostile non verbal

communication. Some also stated that 'comments' had been made, and in a small number of cases as illustrated above there had been an attempt to physically attack the witness.

Police views on intimidation

The majority of officers felt that witnesses suffered from intimidation (see Table 51, Appendix One). A variety of actual cases were highlighted in the questionnaire where this had occurred. Comments were also made about the reluctance of people to help in the first place, and that there was a serious loss of witnesses due to fear, both imagined and real, especially where the various parties knew each other. The general concerns of police officers over witness intimidation are illustrated concretely by the following range of comments:

> 'Injured Party was approached and offered assistance with her new baby if case was dropped. Received silent phone calls. Her friends were continually told what would happen if case continued etc. Injured Party had to leave her part time job as offenders refused to be served by her.' (Q6/12)

> 'A case I'm dealing with at present involves a middle aged couple known to offender; they believe he will seek some revenge should they take the step of becoming witnesses and attending court.' (Q6/10)

> 'One recent case dealt with was where friends of two offenders on remand for robbery forced their way into Injured Party's house and threatened his friends.' (Q6/58)

Officers thus appear to see intimidation as a serious issue and one that they encountered on a regular basis during the course of normal patrol work. If the level of intimidation reported by officers exists then the problem may be even more serious due to the possible underreporting of the offence.

Summing up, the research in general terms has identified a number of problems for witnesses in terms of intimidation even before the trial started. Witnesses felt vulnerable to threats of intimidation, but seemed to be reassured somewhat when they had a efficient way of urgently calling for police assistance. The technology already exists in the form of either personal panic alarms or systems that could be fitted into the house or business. Witnesses who had them, found them very reassuring but often, due to the limited number of units available from the police, were only able to have them for a short period of time. Research should be carried out to explore how to improve the system of personal alarm provision and ascertain whether there are alternative technologies that would allow the more widespread use of this technique without too much of a cost implication. Discussions with officers revealed that where intimidation exists it is difficult for the individual witness to deal with as currently they have nowhere specifically to go for confidential advice. The use of a confidential 'helpline' both for reporting issues of intimidation or getting advice may justify some further research.

At a later stage in the case, the mixing of the family and friends of the defendant in the same waiting area as the witness proved to be unnerving and unsettling for a number of people. Maynard (1994) made the point 'that the Home Office....has issued a design guide recommending that separate waiting areas should be designed into all new and refurbished Crown Court buildings' (Maynard, 1994: 280) It may, therefore, be worthwhile setting up a feasibility study to ascertain if Luton Crown Court could operate with the separation of the two waiting areas into one primarily for defendants and the other being reserved for prosecution witnesses. Furthermore, the issue and legislation that surrounds the public reading out of the witness's name and address in court may need to be re-examined at a national level as witnesses often found this issue particularly disturbing[50]. Finally, in general terms

[50] The issue is often raised in legal debates as being unfair for witnesses. The current legal position is that the defendant has the right to know the name and address of all the witnesses. The fact that the case

there is the need to develop systems to both identify potential intimidation and to develop structures to ensure that the correct sanctions occur if any person attempts to pervert the course of justice. In other words, a system should be developed whereby all witnesses and defendants are advised of the intimidation issue and thus an effective structure needs to be set up to deal with and monitor the offence.

Why the public become witnesses?

Witnesses were also asked why they had come forward to help the police (see Table 31, Appendix One). Responses included being a 'public duty' (39 per cent) and to 'punish the offender' (also 39 per cent) followed by 'helping the police' (37 per cent). There were no major differences in the response to the question when the data was analysed either in terms of ethnicity or gender. Shapland *et al,* (1985) also discussed this issue; noting that a number of victims in their study saw it 'as a natural response' (Shapland *et al.,* 1985: 15). It is worth noting that the Luton study also revealed that 26 per cent came forward simply 'because they were required to do so' by the intervention of the police.

Police officers generally held similar views to the lay witnesses in respect of this issue. Most officers thought 'punishing the offender' was the most important reason (61 per cent). The police (see Table 39, Appendix One) not surprisingly thought 'helping the police' to be of equal importance to 'public duty' (54 per cent). The police thought that the least important reason was 'being required to do so by the police' (20 per cent). This incidentally was also scored relatively low by the public. The major difference between the two groups related to where witnesses came forward 'to help the victim'. The police tended to rate this factor higher (59 per cent compared

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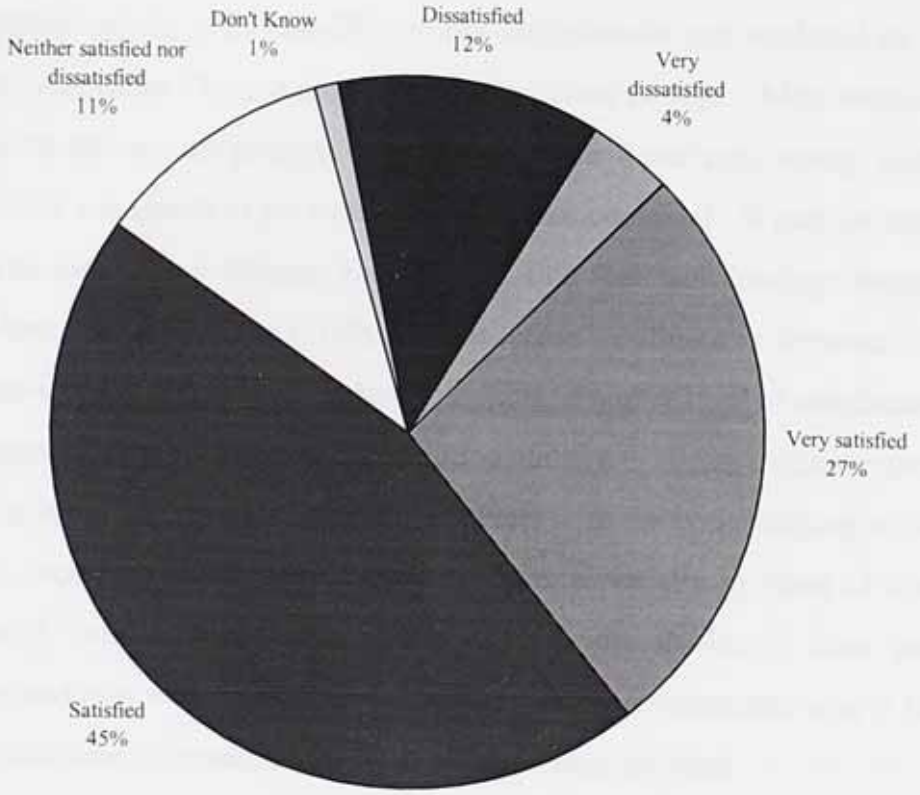
is in open court and that one might have sympathy with witnesses is understandable but should not infringe the position of the defendant to know their accuser. That there should furthermore, only be 'an exceptional or compelling reason for withholding the name' (Justice of the Peace and Local Government Law June 15 1996: 390).

to only 24 per cent for lay witnesses). Analysis by the gender of the officer produced no discernible differences (see Table 39, Appendix One), but length of service (see Table 40, Appendix One) showed some differentiation in that 70 per cent of probationers rated 'helping the police' as the major reason for coming forward, compared to 23 per cent for those with 2 to 5 years service. These latter officers are the ones likely to be most often at what officers call 'the sharp end', and this might reflect their disillusionment with the public's wish to help; this contrasting with the more idealistic views of the probationer with little experience of 'life on the streets'.

Overall levels of satisfaction with experience of being witnesses for the prosecution

Finally, in respect of their particular experiences of the CJS, lay witnesses were asked in the survey to rate their overall experience of the whole process they had been through (see Chart 3).

Chart 3. Overall satisfaction with the witness process



There were some variation in terms of age although not significant (see Table 24, Appendix One), the oldest group found the experience least satisfactory with 12 per cent indicating they were 'very dissatisfied'. It may be that this group had a higher expectation of the support and service they were going to receive, compared to younger

witnesses who, therefore, suffered less disappointment. In terms of ethnicity (see Table 25, Appendix One) not one ethnic minority witness indicated that they had been 'very satisfied' with the process, although conversely none were 'dissatisfied' (it is also recognised in retrospect that the survey failed somewhat in developing the views of those from ethnic minorities). The issue of race and its contribution to the debate is difficult to assess. The 1988 British Crime Survey reported that generally ethnic minorities tended to have a lower level of satisfaction with the police (rather that the CJS in general) than those of white victims. The survey noted that '61 per cent of white victims said they were 'fairly' or 'very satisfied' with the way the police had dealt with the matter, as against 49 per cent for Afro-Caribbean's and 44 per cent for Asian victims' (Mayhew *et al.*, 1989: 28-29). When the question was analysed by gender (see Table 26, Appendix One), a slight distinction does emerge. Men seemed more dissatisfied with the overall process than women, with 8 per cent saying they were 'very dissatisfied' compared to no women making that comment. It may be that more women use the services of Witness Support and find that their passage through the process has been eased somewhat. There were some differences between whether witnesses were victims or not, with victims recording a higher level of satisfaction (see Table 27, Appendix One). This may relate to the amount of contact victims have with the system; for instance they may have more contact with the police officer in the case and they may receive a more sympathetic approach, especially in cases of violence. Bystanders will tend to have less interest or concern shown to their personal circumstances and may well be viewed by the court as simply someone who is there to deliver their statement in respect of the events surrounding the case.

Overall about three quarters of the respondents expressed general satisfaction with the process. This very broadly matches the type of results shown in other surveys for a variety of contacts with the justice system. For example, the 1992 British Crime Survey reported that 65 per cent of victims were 'very' or 'fairly satisfied' with the police contact (Maung *et al.*, 1993: 39). Raine and Smith (1991) reported similar

figures to this study for the contacts between witnesses and the police with about three quarters of respondents being satisfied with the service (Raine and Smith, 1991: 15). Although the study by Shapland *et al.* (1985) reported a lower figure with only 53 per cent of victims being 'satisfied' with the Courts performance (Shapland *et al.*, 1985: 79). All studies however, consistently leave a significant surplus of respondents with a low level of satisfaction with the experience they have just gone through. Trying to measure the success or failure of the justice system in dealing with their lay clients is consequently difficult due to the range of responses, the different approaches taken and the ongoing changes within the CJS itself. The satisfaction levels of witnesses in this research study may in fact be very good if one takes into account the nature of the adversarial system and the justice system as a whole. It is likely that any person who becomes a witness will always have problems either in the run-up to the trial or at court where the process must be fair to both sides yet is founded in conflict. There is the possibility that in the next few years the prosecution witness will be in the ascendancy with some of the problem areas being resolved but that the defendant will conversely find the process harder with some restrictions being imposed on their currents rights.

The police officers' satisfaction with the overall witness process both for lay witnesses and themselves.

In the survey, police officers were asked to make a judgement on how well the police and the courts treated their witnesses. As one would have expected, the police scored better than the courts, but even so 12 per cent of officers felt that the police treated lay witnesses 'badly', whereas 61 per cent of the officers thought that the courts did. The more experienced officers (see Table 44, Appendix One) scored the level of service slightly lower for both the police and courts than did those with less service. Those officers who felt the courts treated their witnesses 'badly' were asked for their reasons (see Table 45, Appendix One). Most officers felt that 'consideration' or 'respect' for witnesses were the major problems for the treatment of witnesses by the

courts (44 per cent). Some police officers viewed the court as operating without humanity treating witnesses merely as information carrier's, although some observers might argue that this is exactly how the police treat witnesses themselves.

When the issue was examined from the police's own experiences of the courts, similar results were evident (see Table 49, Appendix One). A third of all officers (33 per cent) felt that they were 'badly' or 'very badly' treated by the system, and this applied to both male and female officers. Where differences did occur, they seemed to be related to length of service. Probationers tended to be less critical, with only 10 per cent of officers rating their treatment as 'bad' or 'very bad', compared to 39 per cent of officers with two to five years service. The low level of dissatisfaction for probationers may simply be that they may have only attended court on a small number of occasions. The main concerns focused on two issues (see Table 50, Appendix One) The first issue was that of being seen as 'untrustworthy'. The traditional acceptance of a policeman's word as inviolate is considered by some officers to have disappeared[51]. This was partially fuelled by cases where the fabrication of evidence by the police was found, or at least reported, to have occurred, and partially by the defence's attempts to disprove the police version of the events. The second issue concerned questions of 'waiting time' and 'availability', with the police officers feeling that they were at court simply in case they were needed, to give evidence[52]. Many officers felt that a significant amount of their time was being wasted. Nearly a third had not in fact appeared in the box at all.

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[51] Although some might argue that it was never there in the first place. The old saying 'if you want to know the time ask a policeman' was not based on the officers helpfulness but merely that officers in the 19th. Century tended to have acquired a number of watches from a variety of sources.

[52] Police officers make a formal written statement of their evidence which is normally included in the case file. However they are often requested to attend court just in case they are needed to be questioned. Often though their written statement is accepted without need for them to give evidence.

One particular point of contention related to the concept of 'deals'. This referred to arrangements made by the defence to change the plea to guilty on the first day of the trial for a more lenient sentence. There were some feelings expressed in discussions with officers that the CPS were always ready to participate in this practice to save court time and to obtain a conviction albeit at a lower level.

Summary of research findings

The research suggests that lay prosecution witnesses fall into three broad categories. There are those witnesses who experience little or no problems with the system, they make a statement, give their evidence and this is the end of their involvement in the case. The second group probably the majority, experienced a range of problems many of which will be relatively trivial but when added together may generate quite high levels of annoyance or frustration. There may also be individual incidents that can be extremely irritating for the witness; these might include lack of information, poor levels of support from the CPS, frequent cancellations of the court date and delays in giving evidence: All of these are important issues but not necessarily ones that create fear and worry for the witness. The third group, although relatively small, comprises these witnesses who might have a range of more extreme problems and difficulties. Issues here could involve intimidation by the defendant, aggressive questioning by the defence or having their name and address read out in court with the fear that this may generate for some witnesses. It is the second and particularly the third group that presents the CJS with greatest challenge in resolving some of these issues.

Generally, witnesses were not unrealistic, with many recognising that their experience was going to be difficult and often stressful, few expected the process to be very pleasant. Witnesses realised that they would have to wait and that giving evidence may be difficult but what they wanted was a reasonable standard of service coupled with

a reasonable level of information. They did not expect to be constantly updated over every minor change, and anticipated that there might indeed be cancellations to the case being heard. It was the relatively high frequency of these types of incidents and the accumulated affect that many witnesses generally found most irritating and wearing: Trials, for example, being cancelled a dozen times, or a total lack of information at court about the delays. It seems clear that witnesses accept that they need to go through the justice process but want the experience to be as short and problem free as possible. Ash (1972) makes a similar point in that 'in a real sense, being a witness means that one's liberty is restricted and that one's property (time and earning capacity) is taken away "for public use". It also means "servitude" to the court that may be involuntarily'(Ash, 1972: 197). It would also seem that there are those within the police, CPS and the courts that tend to view the witness as simply part of the case without recognising the human characteristics of the person involved. This research indicates that witnesses are somewhat dehumanised by the system, but whether this is deliberate or not is unclear but there might be links to the work of Goffman (1961) and his work on institutions such as hospitals and how the patients are treated and coped with by the staff. It may well be easier for the professionals to deal with a witness rather than an individual with a personality of his or her own.

Discussions with a variety of professional staff within the CJS revealed that many shared the same frustrations about the poor service and the problems experienced by the witness, but that at their level within the system they also lacked the 'collective voice', 'power' and possibly the 'will' to make the necessary changes to the system. However, for many of the lay witnesses, the Witness Support team provided welcome relief by treating witnesses as people and offering a range of services that does appear to greatly reduce the burden. The police and the CPS clearly need to make an effort to humanise their treatment of the witness from simply being an information recorder, that is something that can be switched off and on as required. Apart from improving their

service in supporting and informing the witness both organisations need to recognise and appreciate the contribution that the witness makes to the justice process.

The reality of being a witness for the prosecution is unlikely to be a perfect experience with no stress or worries. A system that requires all parties to be present at court on a particular day is likely always to have problems in ensuring that firm dates and adequate notice is given. Furthermore, the very nature of crime and the antagonistic relationships that may have developed between the witness and the offender starts the process from one already steeped in conflict. The English and Welsh legal system, founded on adversarial skills adds weight to the problem by its confrontational approach, making a stress-free time for lay witnesses unlikely. The research suggests that the witness in the CJS is considered by many of the professionals to be an 'outsider' and he or she are, on many occasions still an 'invisible presence' within the system. However, there is clearly much that the CJS can do to remove some of the institutional barriers to assist in raising the 'visibility' of the lay witness in the system.

Chapter 6

Refiguring the Prosecution Witness - Consumer, Citizen or Communitarian?

Introduction

In order to understand the role and the position of the lay witness in the CJS in the late 1990's in England and Wales, the witness process needs to placed in the wider context of the changes currently being absorbed by both the CJS and the public sector in general. For example, Leishman *et al.* (1996) noted that 'the government has unleashed a maelstrom of reform agenda for the police service' (Leishman *et al.*, 1996: 1). The witness needs to be examined at these wider levels because it is necessary to understand both the totality of the process and the differing levels of power held by the incumbents of the justice system and beyond. The judicial process in general terms is probably not that dissimilar from the processes going on in many other traditional public sector organisations. It is bureaucratic in nature with a variety of professional and administrative staff carrying out a wide range of tasks. To a great extent it is a monopolistic supplier of services,[53] has its own momentum and the Criminal Justice System is likely to resist change. Hambleton and Hoggett (1993) note that 'public bureaucracies are inherently incapable of transforming themselves, and the impetus for change and reform must be a constant pressure which derives strength, authority and power....which is outside the public institutions themselves' (Hambleton and Hoggett, 1993: 105). Thus it may be argued that the public sector structures are so large and the organisations so complex that change from within is difficult to achieve especially where there are competing interest groups involved.

[53] Although there are some threats to the monopolistic status of the justice system, for example certain areas of police non operational activity may be put out to Compulsory Competitive Tendering or Market Testing.

The witness has entered a judicial administrative and processing machine of some antiquity and uniqueness, which is also having to cope with the external pressures for change. These changes occurring throughout the length and breadth of the CJS are already forcing a number of the professionals within the system to reconsider their views on their customers and bring them into the justice equation.

'Customising' the Criminal Justice System

Change is now endemic in many parts of the CJS and has been present for some time, at least for the police where the first rumblings can be seen in the Home Office circular 114/1983 on Efficiency, Effectiveness and Economy. The Conservative Government, despite the general political tradition of not interfering in what can be loosely termed operational issues, has both in the running of the police, prison service and the judiciary crossed over into a number of operational areas formerly the province and responsibility of the professionals. For instance, the conflict in the summer of 1996 between The Home Secretary Michael Howard and Lord Chief Justice Taylor on the government's intervention into sentencing. In the 1980's and 1990's the Conservative Government appears to have tried to change the CJS in the same way that it has dealt with the Health Service and Education in driving them towards a business approach where every issue is performance measured and costed. The key leader in the change process has been the Home Secretary together with the Home Office although often the process of change has been administered by a number of different approaches and agencies all being broadly driven by central government. The Audit Commission, although an independent organisation, clearly has the direction and the issues it covers dictated by the paymaster the government. Clarke (1994) argues that the overall approach is a powerful attack on the public sector to break their monopoly status, in other words, that the Conservative Government wanted to 'dislocate the old regime' (Clarke, 1994: 5). Clarke (1994), in discussing the rise of the 'consumer revolution'

notes that in relation to social welfare, (which would also seem to hold true for policing), that:

> 'In constructing the figure of the welfare consumer, Neo-conservatism embedded him in its characteristic formulation of populist anti-statism, with the Neo Conservatives on the side of the people against the state. The promise was that they would unlock the monopolistic, paternalistic and unresponsive institutions of welfare and create a field of choice - a marketplace in which the welfare consumer could exercise power. The tax payer emerged as the central reference point for the first waves of public sector reforms (the pursuit of the 3 E's [Efficiency, Effectiveness and Economy]) and the quest for Value For Money.''[54] (Clarke, 1994: 5)

The Home Office constantly uses the similar rhetoric of the 'consumer' and the 'citizen' in its messages to the CJS. Clarke goes on to consider that:

> 'There certainly has been a 'customer revolution' in social welfare, based on transforming the citizen-client into the citizen-consumer at least in the public imagery of social policy. But it has been, in Gramsci's terms a "revolution from above" rather than from below.' (Clarke, 1994: 14)

The state has, in Clarke's view, adapted the newly created notion of the consumer as a method of implementing change within the public sector, namely a market-focused, finance driven set of institutions with the public seeing that the government is championing their rights to be consumers of that service. Johnston (1996) sees it as the development of 'active citizenship' (Johnston, 1996: 62). Leishman *et al.* (1996), noting the large amount of reforms thrust upon the police in the early 1990's particularly identify the rise of a new public management approach, as characterised by 'an ideological commitment asserting the superiority of the market

[54] This is also a Home Office led and directed initiative for all police forces to examine and be examined on the services provided and to report on areas where value for money has been achieved.

over the state....by "reorganising public sector bodies....closer to business methods" ' (Leishman *et al.*, 1996: 11).

The actual consumers of justice services had in fact received little consultation, with the government merely knowing what was needed and then representing their interests. Waters (1996) also made a point when he questioned whether the police's fascination with the quality of service initiative[55], is located within politics or whether it really does encompass a 'paradigm shift' in policing? (Waters, 1996: 214). Although the police have switched to a customer focused service, in some areas such as victim care, the question of whether this has fundamentally changed the attitudes of the police to all parts of the community and specifically to certain parts where relations are poor is unclear. It would appear that there has been some movement, but it is a selective movement, aimed at those who the police consider their customers to be, and particularly those who are useful or needy customers.

The growth of charter interest and the concept of the witness as being an active citizen in a market orientated public sector environment has grown at a extremely fast rate. Whilst professionals within the justice system may well be concerned with quality of service issues these changes must be viewed against a number of other factors. Both Clarke (1994) and Waters (1996) agree that there appears to be an attempt by the Government over the last 20 years in Britain to reduce the power and influence of local democracy. The abolition of certain County Councils may have already weakened local democracy and the creation of the new Police Authorities as well as the growth of Compulsory Competitive Tendering, all contribute to breaking up local control and accountability. Waters (1996) sees charters[56] in terms of paving the way for the move

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[55] A group of policies and statements organised by ACPO committees and others to change the police to a more service orientated role.

[56] We should note in passing that Charters were not the invention of the Conservative Government. Hambleton and Hoggett (1993: 103) identify that the first charters emerged not from the Conservatives but from Labour Controlled Local Authorities, one of the first was Harlow District Council who in 1989 developed its 'Charter for citizens rights'.

to a market centred existence. Hambleton and Hoggett (1993) also argue 'that charterism is merely "new managerialism"-an exercise in improving supplier responsiveness to customers but unaccompanied by any real shift in power to the consumers' (Hambleton and Hoggett, 1993: 103). Clarke (1994) also noted that 'many of the changes of the last fifteen years have been legitimated by reference to their value in enhancing the consumer role of the delivery of publicly provided....services'(Clarke, 1994: 1).

Additionally the change towards the market also produces a particularly useful by product for the government in reducing their direct accountability for most of the problems that occur in the CJS. This is illustrated by the debates in 1995 between the ex head of the prison service Derek Lewis, who ran the separately funded agency status service, and The Home Secretary Michael Howard. The argument here centred over what issues were considered to be operational and which were strategic. It would seem that anything that went wrong in the prison service was operational in nature.

Thus the magical rediscovery of the victim by practitioners, politicians and researchers and the partial emergence of the witness in public debates on justice may simply be tied in to the wider debate about who controls the direction of justice. Change has not necessarily been requested by the public. Individual victims and witnesses may be unhappy with the service but they have not directly asked for the changes. The movement emanates from Central Government, in hegemonic terms coming from the top downwards. It may also be possible that the interest can be viewed merely as another element of the Conservatives Party's conviction (and increasingly that of New Labour also) that the debates on law and order are a vote winner with the equation of one safe citizen equalling one vote.

From neglected presence to active consumer: changes in the status of the witness in the Criminal Justice System

The Conservative Government's focus on justice in recent years appears to have led to somewhat of a political sea change in the way the professionals have viewed the occasional lay users of the service. In accord with Waters' (1996) scepticism with regard to Charterism, there seems to be a clear move towards taking into account the views of certain of the users in some justice areas at least, although it can be argued that the changes are superficial in nature, with no major movement in the balance of power. Whilst victims of crime at the present time appear to be the greatest beneficiary of change in the workings of the CJS,[57] the processes and the reasons behind the move towards consumerism are equally likely to apply to witnesses and of course there is some crossover in definitions anyway of victims and witnesses. Some of the key changes to the status of the victim and witness included the Criminal Justice Act (1994) which made witness intimidation an offence, the publication of the Victim's and Citizen's Charters (1990,1991,1996) and the range of victim surveys and other performance indicators which were introduced for the Police in 1993 together with the Citizen Charter indicators which were also introduced the same year and have been expanded for the police each subsequent year. If witnesses really do begin to make an impact then is a separate witness charter that far away?

In a justice system that is being run more and more on business lines and with the concept of market forces at its heart, where does the lay witness fit in? Clarke (1994) raises an important issue regarding the definitions applied to those who use public sector services. If the police and other criminal justice professionals are expected to become a service industry then what relationship to them does the witness have? Is the witness a customer, user, consumer, purchaser, citizen or a client of the

[57] With the probable loser, the defendant, for example, in the reduction in the principle of the 'right of silence'.

CJS? Clarke (1994) in his examination of the rise of the consumer begins to give some possible clues. First of all he notes that many of these definitions have been already 'signed up to particular ideologies and discourses. For example, even the term 'user' which has been widely adopted as a neutral descriptor by academics....in order to avoid the connotations carried by the words client or consumer does not come free of charge. in particular, it implies volition - that welfare services are taken up by those individuals who wish to use them' (Clarke, 1994: 1). Clarke goes on to consider that originally the 'citizen was the key point of contact with the State but that the neo-conservative onslaught on the welfare state involved the deconstruction of the citizen....first into the 'tax payer' the people who pay for the services, secondly, the 'consumer' who actually uses the services and thirdly a negative element....a scrounger who takes advantage of whatever services are offered.' (Clarke, 1994: 2). Furthermore, Clarke notes that 'the "customer" has been identified as central to success in programmes of organisational transformations....with a stress on "front line" customer' (Clarke, 1994: 7). This very much follows the line taken by the Home Office with their development of indicators for the police in response times being set for attending incidents or how long the police take to answer 999 telephone calls. Of the options discussed by Clarke (1994), the closest link to the developing status of the witness in today's CJS would appear to be that of the customer. According to the rhetoric of the customer, Clarke (1994) considers that ideally 'the task of providers as being to convert consumers into customers, ensuring repeat business....in the process the provider aims to find ways of "taking into account of" the concerns of valued customers to engage them in a continuing relationship' (Clarke 1994: 6). There would be the clear analogy with the loyal customer in that the witness once he or she has had an experience in supporting the justice system and has contributed to the protection of society that they would return again and again in the future should the opportunity occur.

However, there seems to be some difficulties in whatever definition is used or culled from business circles because of difficulties such notions raise with regard to the issue of choice. Whatever words are attributed to the witness and whatever mechanisms exist to capture the views of lay witnesses, the main issues surrounding notions of the customer revolve around freedom and choice (where to shop, whether to shop, how to shop) which a witness does not have. The key, as Clarke points out, is whether there has been any 'shift in the balance of power' (Clarke, 1994: 8). What power has been transferred to the individual victim or witness from the state and has it for instance been enshrined in rights and legislated for? No matter what rhetoric is involved and whatever is promised by the State, without the actual shifting of 'active power' to the users the actions are meaningless, choice is useless if there is no choice. Hambleton and Hoggett (1993) introduce the work of Albert Hirschman who presents two strategies by which witnesses may have been able to exert their influence within the CJS. The first, 'Exit,' is where someone simply does not use the service provided. It would be seen as fitting in with the current Conservative Government's view of the consumer in Britain. It is apparently straightforward and non argumentative. However, in terms of the witness, the 'Exit' option only exists up until the time the police are involved, the witness can simply not report the incident. Once, however, the witness has been 'recognised' by the justice system the option has little relevance, ultimately witnesses can be arrested and brought to court forcibly, although once in the witness box the 'Exit' option reappears as what they actually say is their own choice to some extent[58]. Thus the witness has only a partial power of 'Exit' and this only at a very late stage in the proceedings. In terms of the second option 'Voice', Hirschman (1993) would see citizens 'expressing their dissatisfaction directly to the management....or through general protest addressed to anyone who cares to listen' (Hirschman, 1993: 104). The Conservative Government would not view this option as attractive in that it may return the customer back to the political arena as a 'Citizen' demanding their

58 The laws regarding perjury could be applied to a witness who in certain circumstances lies.

'Rights' rather than a 'Consumer' merely withdrawing their business from the market place. Hirschman (1993) noting that this option although it is 'messy' for the government it is relatively straightforward and easy for the citizen: 'Voice is political action par excellence' (Hirschman, 1993: 105).

However, the witness even in Hirschman's second option still holds a relatively weak position compared to other groups in the CJS. The only current national representative for the witness is the organisation Victim and Witness Support who as mentioned previously act only as a most mild pressure group in respect of victims and witness rights. Hambleton and Hoggett (1993) stress the importance paid by some of the more radical political groups, both right and left, to the need to 'assemble effective countervailing power to that of the public bureaucracies' (Hambleton and Hoggett, 1993: 105). Interestingly in June 1996 a new organisation was set up for victims. The 'Victims of Crime' trust was set up 'to help others who have suffered at the hands of criminals' (Daily Telegraph, 6th. June, 1996: 6). This charitable trust appears to be trying to achieve a more energetic approach in representing victims nationally, especially those that have suffered from violent crime. What the new charitable trust will achieve is unclear, but it might provide an additional forum for raising a range of topics about victims and witnesses. There are though two areas where some gains in power have already been achieved, at least to a limited extent and this is through the auspices of the reparation and mediation schemes (see, for example, Walklate, 1989, Mawby and Walklate, 1994, Zedner, 1994). Here the victim can at least seek recompense and under mediation attend a forum where certain victims meet the defendant in an attempt to reconcile the issues surrounding the particular crime. In America this has developed further and victims can make what are termed 'victim impact statements', which helps to set compensation levels and may also contribute to sentencing decisions. In some States victims are also consulted about issues of 'plea bargaining' and parole' (Zedner, 1994: 1233). The new Victim's Charter in this country now contains some of the American elements. 'The introduction of detailed

"impact statements" is intended to give victims the opportunity formally to explain the effect of what happened to them' (The Guardian, 19th. June, 1996). This will allow the courts and others to take into account the views in, for example, the sentencing of the criminal. There are of course clear dangers in some of these approaches in pushing the rights of the defendants to the background. There are other arguments against letting the victims contribute. Zedner (1994) for example, points to 'limitations on prosecution discretion; the danger that the victim's "subjective" view undermines the courts objectivity; disparity in sentencing of similar cases depending on the resilience or punitiveness of the victim' (Zedner, 1994: 1234).

However, for the majority of witnesses, little has changed. It might well be that both the witness and victim are consulted but unless change occurs, consultation is meaningless. There is no value in knowing that the warning system for witnesses causes problems without the mechanisms and more importantly that the will exists to change it. Clarke (1994) again has noted that although there had been a customer revolution it was one that was driven centrally from above and did not directly involve the consumers themselves. (Clarke, 1994: 14). Accordingly, changes for the victims do not appear to address the issue of giving the victim and witness both a 'voice' and a 'power' within the CJS. In fact has the CJS moved any way forward in satisfying the plea made by Ash (1993) nearly a quarter of a decade ago?

> 'Is it not time for us to begin to evolve a concept heretofore lacking in our legal tradition, one of "right of witnesses"? If we come to see witnesses as having human dimensions, as being persons worthy of dignity and respect, should we not extend to those persons the kinds of protections we describe as "rights"? (Ash, 1972: 198)

It would appear that the witness is still waiting for something to happen. However, there is one particular issue that has achieved some prominence in recent years that could at a wider level move the witness debate forward. This issue relates to

the interest in the power and responsibilities of the local community in dealing with its own social responsibilities.

The rise of community action: the witness as a citizen rather than a consumer?

Interestingly, the reduction of power at a local democratic level was recently matched with a renewal of interest among some commentators in both the idea of community and the social philosophy of communitarianism (see, for example, Etzioni, 1994, Hughes, 1996). The afore-mentioned approach, for example, may be viewed as offering the government a way out of the centralisation of decision making and viewed sceptically may involve passing responsibility once again to those below. In a way there is a 'reconstruction' of the same citizen that had previously been 'deconstructed' by Clarke (1994). One of the key and most controversial recent proponents of the philosophy is Etzioni (1994) whose object is to restore the importance of community action but apparently without a puritanical or an oppressive approach. Etzioni's approach to the 'reintegration of society' revolves around the re-assertion of the centrality of an appeal of community responsibility. Communitarianism emphasises the importance of the community and the responsibilities of the people making up the group. There are three themes with which the approach is interspersed, the shoring up of morality in civil institutions such as the family the issue that citizens are currently more concerned with their rights rather than their obligations, and the importance of the public interest as against special interests in political life (Etzioni, 1994). The communitarian approach according, to Hughes (1996), appeals:

> 'to real people in specific, bounded communities rather than abstract notions of liberty and individual rights but communitarianism also conjures up a socialistic society in which the collectivity counts for more than the individual....emphasis is placed....on duties and responsibilities to the wider civil society rather than freedom and rights for the individual.' (Hughes, 1996: 3)

The lay prosecution witness and the rise of interest in the communitarian approach to understanding the balance of rights and obligations makes for an interesting link. This study has shown that becoming a witness is seen by many of the witnesses themselves as a social obligation: that there is perhaps some notion of an inherent social responsibility for the public to maintain and protect society. Thus, within the communitarian approach, the view might be that in order to create a 'safe environment,' it would fall to the community itself to contribute to making sure the 'streets were safe'. Communitarianism without action, however, would appear to be weak and ineffective. An active community may well expect to take some initiatives against criminality and to some extent this already exists in this country. The growth of 'Neighbourhood Watch' schemes, the use of community volunteers in victim and witness support schemes and the use of unpaid Magistrates are all examples of community action. If the approach to 'community responsibility' in justice terms was to grow then this may well enhance the role and status of the witness. The witness would seem a valuable and natural ally and resource in the eyes of the local community, although more status might accrue if the philosophy is taken on and driven politically by the centre. It would appear that to some extent the appeal of Etzioni (1994) is apolitical in a party political sense and may find favour with whoever is elected, but it also has strong common sense authoritarian appeal for those who consider themselves as 'ordinary folks' as opposed to 'minority deviants'. The interest to some extent is already there with the Conservative Government and increasingly the Opposition stressing the importance of 'family values' emphasising the need for families to look after their own and making provision for their own needs and not simply relying on the State to pay. The philosophy of state intervention under the Conservatives, covering birth to death, at the present time seems to be reducing daily, even the promise of 'legal aid' to all is being altered. There may well be a certain political attractiveness in extending this philosophy of self care to the community in terms of having some responsibilities for community safety, law and order. This has already happened with the growth of private security organisations who patrol

residential areas and indeed extra police officers are also being paid for by certain local councils to cover the policing of specific localities.

In the communitarian scenario it is likely that the witness would become the bastion of public safety with responsibilities being placed on all citizens to report crime or lawlessness to the authorities. Etzioni's (1994) work appears to represent yet another attempt to return to the 'halcyon age' of some time in the past, where people never locked their doors and people 'cared' about their neighbours[59]. It would seem that if taken to the extreme then the approach could be attractive to the right wing middle class where whole areas become separated into zones of 'community security'. The Walt Disney built town of 'Celebration' in America where houses are being sold on the basis of a return to old fashioned values and where entry to the town will be restricted and all houses are connected by a community computer network seems to epitomise the approach (QED BBC Television, June 1996). Here we have a nostalgic image of a safe town with safe streets where the community are all involved as neighbours. What in fact is happening is that the poor and undesirable groups will be simply denied access to these areas. Viewed against this image of undesirables, the communitarian perspective gives the witness a key role in the growth of community action by being the cornerstone of the public's contribution to ensuring justice is administered and that the 'mean streets' are cleaned up. Whether this philosophy will extend outwards to more than a few wealthy areas is doubtful, given the pluralistic and differentiated society of late modernity.

The re-emergence of the witness as a visible presence in the CJS and in real communities may also be created not directly by government but by the groundswell of indignation by the ever popular 'silent majority' in respect of their concerns with the frightening 'descent into lawlessness' and the deterioration of public safety portrayed

[59] A cynic might argue that if this time ever existed the doors were only left open because most people had nothing of value left to steal.

by the media. The communitarian approach does have dangers in terms of authoritarianism and moral closure. The extreme 'right' and those with neo fascist tendencies may use the approach to mobilise the public to do their bidding and bring all deviants to the attention of the authorities. It can also be used unscrupulously by Government to move more social responsibility from themselves to the public level. This might already be indicated by, for example, the Government's approach to 'Care in the Community', where responsibilities for mental heath provision have become a local problem rather than a state provision. However, communitarianism still has a contribution to make in moving the debate on witnesses away from narrow legalistic and practical issues to the deeper waters of social theory and the question of constructing a 'social bond' between people where the balancing of rights and obligations is a crucial issue, partially bearing in mind that the lay prosecution witness is a classic example of the social and legal obligations of citizenship.

The future

At the danger of indulging in serious hyperbole, it may be suggested that in general terms power is now swinging back towards the prosecution element of the CJS and both the victim and ultimately the lay witness may see some benefits. Political and other pressures may start to emphasise both the obligation and the power of the witness under the umbrella terms of citizenship and community action. It is in my view likely that the defendant will see some of the controls that exist to protect miscarriages of justice eroded, but not quite to the same extent as had developed prior to the introduction of PACE (1984). There seems to be a move back to custodial sentencing and even the adoption of some of the more extreme American practices to 'take out' those who offend society even at a low level of criminality. However, whether the witness is going to have more power and recognition is less certain.

Clearly, the Conservative Government in 1996 still remains committed to the development of a business ethos in the CJS and it is likely that changes along these lines will continue to occur whatever the outcome of the next election in Britain. Whether the changes fundamentally shift 'useful' power to the witness is unpredictable. The growth of the power of the community and the emphasis on 'community safety' is not to be underestimated and, even with a change in government, the victim and witness may well ascend further up the political ladder but not necessarily for the right reasons and not necessarily with any major gains. Furthermore, the repackaging of the witness as 'customer' does not offer a credible way forward for the amelioration of the difficulties currently facing prosecution witnesses. The language of the customer belies the seriousness of the role to which witnesses are literally subjected to by the state. Instead it is suggested that the witness be viewed as a citizen in which rights and obligations to the state are equitably balanced rather than, as is currently the case, skewed in the direction of obligation.

The future of the witness and victim in my opinion thus centres on the issue of obligations and rights. Arguably both the victim and witness have needs of the 'emotional' and 'practical' type identified by Maguire (1994b) albeit that he wrote specifically on victims. The fundamental question is that assuming the lay witnesses expect and want an improved service from the CJS, should these expectations be simply 'intentions to be achieved' or 'enshrined in legislation'? These issues clearly form part of a debate that needs to be continued. Although the 'Charters' for Victims appear to define some rights the issues are relatively minor and not backed by legislation. Newburn (1995) notes: that 'while the Charter is valuable in staking out much of the territory....and, no doubt, provides useful leverage for those organisations attempting to respond to those needs, it falls somewhat short of guaranteeing rights' (Newburn, 1995: 169). Mawby (1988) also argues that victims may have a number of needs that should be addressed by society, either by 'informal arrangements or existing services' or with the alternative that victims should have rights and 'are thus entitled to

receive redress for the harm they have suffered or indeed recognition that they have been wronged' (Mawby, 1988: 127). Newburn (1995) points out that although Mawby and Gill (1987) have in an earlier publication identified rights in four areas, namely 'the right to play an active part in the criminal justice process; the right to knowledge; the right to financial help; and the right to support (Newburn 1995: 169) these had not been significantly been developed by the Government. However, this will change slightly in respect of the first issue with the revised 'Victims Charter' which allows the victim the beginnings of a say in the prosecution process. It would seem that Newburn is right when he cites Shapland's (1988) work on the way the different 'fiefs' created in the CJS by the various professionals groups are unlikely to welcome a 'lay contributor' to what they consider to be clearly their area of responsibility. Newburn is also right when he comments that 'both the major parties have pursued half-formed and in many ways half hearted policies in relation to victims of crime' (Newburn, 1995: 171). The question of rights versus needs has thus never been fully addressed by academics nor politicians alike.

A key element to moving this issue forward seems to be in setting up an active 'movement' for both the witness and victim. Just leaving it for the government or for academics to debate may not be enough. Likewise simply the expectation that legislated for rights will resolve problems may be misplaced. The American Constitution with the 'Bill of Rights' has not necessarily removed inequality. The development of a national pressure group may well have some potential for resolving many of these issues and currently the logical choice would be Victim Support. But unless Victim Support dramatically changes its philosophy and the way it operates perhaps in line with the approach adopted by its more radical and 'rights' focused sister organisation in the United States, it may be unable to fill the role (although there may be real dangers for the defendant if the line is followed). If the vacuum of representation can be filled and an active and committed organisation can represent the victim and witness at a National level then possibly the debate on rights versus needs

may be superseded. Real change for the witness will probably only occur when the group can exert 'power'. For instance a group such as Amnesty International may possibly be more effective for their customers through the pressure they can exert rather than if they had a whole batch of legislated for 'rights' which may be meaningless.

Chapter 7

Conclusion and recommendations

Introduction

The study set out with the objective of examining the lay prosecution witness and his or her chronological passage through the CJS in England and Wales. The research intention was to open up the rather shadowy and closed world of the prosecution witness to further scrutiny. The process was examined from the first tentative contact the witness has with the justice system to his or her discharge by the court. The final chapter will be divided into two sections. First the issue of witness intimidation, a topic subject to much public debate will be briefly addressed in order to assess if it is merely a 'moral panic' or whether there is a genuine crisis for the prosecution witness. The second section will revisit the main findings of the project including the relationship the witness has with the police and other professional groups focusing as well on the policy and practice recommendations which flow from the study.

The intimidation of lay witnesses: the wider implications for the debate on law and order

The issue of witness intimidation needs to be addressed both in its widest sense and at the local level studied in this research project. It is both a practical and policy issue that affects individuals, but may also reflect wider social issues. Witness intimidation can occur from the time of the incident right the way through the trial and after. In fact, some police officers in the study felt that intimidation was common practice in certain parts of the community. According to such perceptions, people simply were not coming forward as they anticipated the potential of being placed in an

intimidatory situation. Intimidation interestingly, has only recently evolved as a political or media issue (see, for example, Maynard, 1994, Campbell, 1995). Whilst it is recognised that intimidation exists as a serious problem, it is important to examine it in a sober and structured way and not necessarily be influenced by the current debate in the mass media. Much of what Maynard reports is not challenged by this research and in fact he provides an interesting analysis on the differing levels of intimidation.

Intimidation: media hype or realistic fears?

There is a danger that witness intimidation is being used by both politicians and the police alike for their broader political ends. Both have agendas where it may be useful to highlight the growth of intimidation as part of their wider concerns with the apparent breakdown in social order. It is suggested that there is a widespread fear that exists in communities with regard to crime in general but also particularly about offenders who are being freed, due to what are considered technicalities. It is even suggested that the general public who merely report a crime must fear for their safety in presenting their evidence at court. Campbell's article in The Guardian, 'Neighbourhoods controlled by crime' (Campbell, 1995) on witness intimidation in the North of England, for example, graphically portrays a harrowing account of intimidation on the streets. Campbell goes on to state that 'community crime is about a power struggle, a war waged by young men who become pirates asserting their power to police their own people' (Campbell 1995). Whilst the principle that there are areas where gangs of young men exert power over elements of the local community is not challenged by this research, it would seem to me that again the issue is whether there has been a change or an increase in the phenomenon. What is needed is further research on the matter preferably at a local level in a range of communities to try to ascertain the level and spread of intimidation. The research would need to take also into account the fear of intimidation in the same way that the fear of crime is given its importance in terms of community safety. Zedner (1994) notes that this fear of crime is located

mainly in urban communities and created by a number of factors such as 'local incivilities....a moral decline and other changes in the neighbourhood' (Zedner, 1994: 1219).

For the Government in the mid 1990's[60] (and indeed other parties), a strong law and order campaign has been seen to be a political vote winner and the issue of intimidation could be viewed cynically as an attractive political tool. Intimidation also fits into the government's 'Active Citizen' strategy where power is supposedly being returned to the public and the streets become safe once more for the community (see the discussion of citizens and community in chapter 6) . For the police there are similar but slightly different objectives. It could be argued that the police feel that their power base and status in the CJS has been eroded, with, for example, the creation of the CPS and recently the new Police Authorities. Justice has also been seen to have moved in favour of the offender and the police's ability to achieve a successful conclusion (in their eyes leading to the incarceration of the offender) has been reduced and that their witnesses (used in a possessive sense) and their own police officers are disadvantaged compared to the defendant. The use of the intimidation issue by the police service could be viewed as an attempt to swing power back towards themselves and away from what they see as an offender led justice system to one where the police return to being the main enforcement agency.

It is important, therefore, that the social scientific investigation of intimidation is not carried out in response simply to the wider political debate on law and order. Intimidation is a subject in its own right and should not be necessarily linked to the current populist belief in the breakdown of society both at a national and local level. There remains a desire by some to return to a golden age where the streets were safe and teenagers only took apples and if caught were summarily dealt with by the local

[60] The research project was completed before the election of a Labour Government in May 1997

constable. The contention here is that although intimidation is a serious problem, it is not necessarily a new problem. Intimidation has arguably always existed where power in any form is unequal, for example crimes between intimates such as domestic violence which will also exist across all classes. However, there may well be an increase in intimidation in certain types of crime and locality, particularly where drug dealing is endemic. Intimidation between non intimates[61] may still be contained within the same areas that have always been its traditional stalking ground, namely areas characterised by poverty, unemployment and marginalisation. This form of intimidation may not as yet have encroached itself into middle class suburbia and a rush towards yet another moral panic should be avoided at all costs.

Intimidation: specific issues for the lay witness

Ascertaining the true extent of witness intimidation by the defendant, their family or friends on the prosecution witness proved to be difficult and one where the current research project should have explored the issue at a greater depth. It is almost certain that there are people who are not coming forward to help the police because they have a fear, real or perceived, of some form of intimidation which may be of either a physical or psychological nature. Furthermore, it is possible that a number of people who have come forward have pressure applied to make them alter their statement or deter them in continuing the case. Subsequent discussions revealed that there is no mechanism at all to record the level and depth of this issue of threats against witnesses. Intimidation will normally emerge subsequent to the original offence and only becomes formally recognised if a statement is made and the person who intimidates is subsequently charged for the offence. It is up to the individual officer who is contacted over the matter by the witness to decide what action to take. It is suggested that officers

[61] That is the intimidation by others of the victim or witness who on reporting crimes as burglary, domestic violence, auto crime and criminal damage to property are pressured not to give evidence or retract their original statement.

will view their work as being completed once the defendant has been charged for the original offence and that there is likely to be a lack of interest shown in any subsequent threats. This factor is partially caused by the offence of intimidation itself, which is complex and can be difficult to prove in court. It would seem likely, therefore, that some intimidation is not being recorded and is often not pursued. Officers, if they feel there is a problem with intimidation, may simply advise the defendant to keep away from the witness and some officers will do this almost as a matter of course. This may mean that witnesses who do not positively inform the police but who are being intimidated do not receive proper support. It would seem that the method of dealing with intimidation by the police and others needs to be revisited in the way the issue is processed, recorded and dealt with.

If intimidation is to be examined as an issue then it would seem then there are two levels of intimidation. At its simplest, intimidation is merely a power conflict between two groups or individuals, one of whom is trying to stop the other giving their evidence. However, issues that led to the original point of conflict may be conditioned by wider factors. Poorly designed housing estates with high levels of unemployment, towns with a bored and restless 'Street Corner Society' (Whyte, 1943) and a Government which has allowed for high levels of homelessness among the young may not lend themselves to reducing the chances of intimidation occurring in certain locations. This research has tentatively indicated that intimidation appears localised and has a tendency to be more centred on communities where both the defendant and witness have some contact. Intimidation of the middle-class by non-intimates seems not yet to have developed to any great extent although it is recognised that intimidation between intimates goes right through the social spectrum for cases of violence and abuse. Intimidation of all kinds it is suggested is still a neglected or hidden crime[62].

[62] It is of course recognised that other forms of intimidation exist in the CJS from police intimidation to corporate intimidation by multi national companies of their smaller competitors.

'Servicing the witness': practice and policy issues for the professionals of the Criminal Justice System

The contact which the lay witness can have with the CJS can start from a number of situations ranging from the innocuous and mundane to a life threatening situation. Witnesses may be involved in the justice system merely to confirm a minor detail of evidence or they can be the victim of a case of attempted murder by a spouse. They might have had little previous contact with either the police in particular or the CJS in general. Furthermore, witnesses may not necessarily be willing players, as their presence can be demanded by the prosecution or defence counsel. The process can thus be straightforward with minimal contact with the system or it can involve multiple and complex contacts with the various professional groups who make up the CJS. The administration of justice itself can also be a very slow process and a case may take many months finally to get to the trial stage at the Crown Court.

The ultimate goal of the judicial process is the identification in court of the guilt or innocence of the defendant. In order to ensure that the principles of justice are not compromised it is important that both sides in a case are treated equally and this means that the witness has to take responsibility for his or her evidence. The prosecution process relies on proving the guilt of the defendant and the witness makes a contribution by presenting his or her evidence truthfully and impartially to the judge and jury who then have to decide whether the evidence is true and acceptable. It may be that in order for this process to function, the witness needs to realise the enormity of potentially depriving someone of their liberty. The witness has to be certain that the evidence is correct. If it were easy and if there were no pressures on the witness then it might be possible that the importance of the situation is not recognised for what it is. Too much protection for the witness may restrict the ability of the defendant to confront their accuser (a fundamental right). Thus it may be that, in order to ensure fairness to all parties, a witness will have to acknowledge a degree of pressure and an

acceptance of the responsibilities of the task. If it is accepted that the witness has a contribution to make to the justice process, and if this role is seen as having responsibilities, then the professionals within the system should recognise this and accord the witness the appropriate support and respect.

From the time the witness enters the system (either voluntarily or involuntarily), the research findings indicate that a number of them will have some difficulties and possibly some unpleasant experiences. The problems are not simply located between the witness and the defendant, in terms of for example intimidation, but the justice system itself appears to contribute additional problems. These points of systemic conflict are not randomly distributed but consistently display certain patterns such as the treatment of the prosecution witness by the defence solicitor. It may be that in some of the cases it is possible to resolve or at least reduce the level and frequency of the problem, without, however, compromising issues of justice. The first contact area to be re-examined involves the police, looking primarily at the service given by officers to the lay witness.

The police and the lay witness

The research suggests that many lay witnesses have a satisfactory experience in respect of their contact with the police. There are though a number of issues raised by some witnesses that if addressed could improve the overall service given. It would seem that although police officers are often concerned about the witness, the officer's first interest tends to be in obtaining the evidence and the statement. In order to improve witness support it is important that from the very first point of contact witnesses receive a high degree of assistance both in information and support, administered by competent and professional personnel. Witnesses need to be made to feel that their evidence is valuable to the police and that their co-operation is both welcomed and useful to the police force and the justice system in general. In order to

achieve this, it is necessary for the police to explain clearly the process and answer fully any questions the witness has (within the limits of not leading the witness). Lack of information was consistently seen by witnesses as an important issue and a major problem. Details that could be tightened up included basic housekeeping functions ranging from making sure that the witness understands the process, to ensuring that the witness gets home safely after making a statement. The research would suggest that ownership of the witness is important at all stages and that the witness would prefer to have a named individual rather than the system itself holding responsibility. Such a move also fits neatly for the police at least with the shift towards a customer-focused police service desired by the Conservative Government in Britain in the 1990's and about which there is probably cross-party political consensus.

The police officer in charge of the case and the witness have a relationship for the prosecution that needs to be nurtured and enhanced, regardless of whose responsibility the witness technically is. Both the witness and the police officer may well have firstly, shared experiences of the incident and, secondly, the police officer may have also supported the witness through several emotional and stressful periods leading up to the trial. It is also likely that the officer will be at court at the same time as the witness in order to give his or her evidence. There is, therefore, the likelihood of a shared affinity with those in similar circumstances and this should be cultivated. As noted earlier Rock (1993) reported that police officers were seen as having the responsibility for witnesses. Changes in operational policing practice may, however, reduce the link with the witness, for example, in the way case building is carried out by a central unit. However, the contact between the police and the witness appears to be important to maintain. Although there might be options to support the witness, it is arguable that at the present time neither the CPS nor Witness Support have the resources, and in the former very much interest, for taking over all elements of witness support. The witness can feel quite isolated in the process and may well suffer from lack of motivation in continuing with the case. It is important, therefore, that the

witness is seen as an integral part of the case and that there are the necessary systems in place at all times to provide the relevant support. The commitment should be formalised to ensure that all witnesses, regardless of their involvement in the trial, receive the same high quality of treatment and support from the police. This then may help to ensure that witnesses will return to the system again on subsequent occasions. The changes are not particularly difficult to achieve, as most witnesses did not have extraordinary expectations but simply wanted an effective and supportive point of contact between them and the CJS. They want to feel needed and secure and to know that the information they had about the case was really necessary and useful in securing a successful outcome to the prosecution process. The police need to have positive ownership of the witness and this may mean that a clearly defined contact point should exist. Some forces have in fact already appointed the witness liaison officer suggested by the Home Office in the various documents concerning 'pre trial issues'[63] to carry out part of this very function. In addition to this, the wider issues of normal contact also needs to be addressed and this would be best achieved by police officers being trained to recognise the importance of witness care, since unlike police officers, the witness has not seen it all before.

Summing up there are still many issues where the police could improve the level of service and support given to witnesses, although it is also recognised that in many of the normal day to day contacts between the witnesses and police many will be reasonably handled by the latter. What seems to be missing is an organisational acceptance of the value and contribution the witness makes to the case. It needs to be clearly set out what is expected from the officers when they deal with witnesses and also what help and information should be given. In order to move the witness away from merely being of 'evidential value' to the officer, the police need to recognise the individual nature of each witness. This may, for instance, require alterations to the

[63] A specific set of actions designed to improve the quality of case files and to impose a time scale for action in the processing of cases.

police training programme to ensure the necessary cultural change occurs. The witness needs to be supported through what can be a difficult ordeal and the police need to deliver a consistent service that recognises the witness as both an individual and a key player for the prosecution.

Normally the lay prosecution witness will not meet any other part of the justice system in the pre trial period other than the police[64]. It is only when they get to court that contact will be made with other groups such as the CPS and Witness Support.

The Crown Prosecution Service

The CPS should have taken over the responsibilities for witness care once the case has been accepted for prosecution. In reality though, there is no contact or support until the witness actually arrives at court. The research showed that witnesses, and this included police officers, have certain expectations as to the role of the CPS representatives[65] and that this expectation was not always met. It is nearly always Witness Support or the police officer involved in the case that provided the majority of support, guidance and information for the witness, although mention must be made of the Court's ushers[66] who do help, albeit in a fairly perfunctionary way, with directions and general court procedures. At court the CPS needs to make a more positive approach to supporting the witness although there may be some resistance to this in that the legal staff may not wish to break with the tradition of avoiding the 'contamination' of the lay witness. The CPS clearly though needs to make sure witnesses understood what is going to happen and that the staff are there to help. The law clerks appear to be those nominated to provide the majority of witness support on

[64] Although some victims may have contact with groups such as Victim Support or rape crisis centres.
[65] This can be either a Crown Prosecutor or an agent employed by the Service to prosecute on their behalf.
[66] The courtroom personnel who provide organisational support, collecting witnesses, showing the witness to the witness box, administering the oath etc.

behalf of the CPS but there seems to be little evidence to suggest that this is the normal state of play and steps do need to be taken to ensure that the clerks all carry out their designated tasks to as full extent as is practicable.

Finally, at a general level, there still seems to be some confusion of the roles and responsibilities of the CPS and the police, for example decisions to drop cases may be seen by some witnesses as a fault of the police rather than the CPS. The confusion incidentally extends not only to lay witnesses but to also some of the professionals. Williamson (1996) noted that there 'has been a continuing perception that the police are still the prosecution'[67] (Williamson, 1996: 28). The problems emerge because of the lack of clearly defined responsibilities for providing an agreed service to the witness[68]. Not only does the witness change from police ownership to the CPS at the time when the case is accepted for prosecution but the police still retain some contact with the witness through the auspices of the officer assigned to the case, as well as the force's responsibilities in further investigation and administrative issues. Additionally the court's own administrative staff also have an element of involvement in dealing with enquiries and general administrative issues that can directly affect the witness. Whilst it may not be practicable to have one owner for the whole period of time that the witness is in the justice system, the witness patently needs to know exactly who to go to and what level of service is to be expected. It would appear to be necessary and relatively simple for the three agencies (police, courts and CPS) to agree responsibilities, define standards of information and support and set up the appropriate measures to ensure that the information is conveyed to all witnesses at the time they most need the information.

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[67] The police had indeed been the main prosecutors body prior to the introduction of the CPS and it may well be that this element of their duties still retains some impact in terms of role definition by both the lay witnesses and the professionals in their view of who is responsible for the prosecution process.

[68] Although the latter may change somewhat with the publication of the revamped Victims Charter (1996) where for example 'the police will ask you about your fears about further victimisation and details of your loss, damage or injury. The police, Crown prosecutor, magistrates and judges will take this information into account when making their decisions' (Victims Charter, 1996: 3). Obviously this recent development could not be taken fully into account in the present study.

The CPS clearly is a major player in the lay witness process and they hold responsibility for some of the problems witnesses face. The major area for improvement is the period at court when the witness is waiting to give evidence. The CPS now has a responsibility enshrined in the Victims Charter (1996) to make sure witnesses wait no more than two hours before giving evidence and if there is a longer delay to explain why. They also have to introduce themselves and tell the witness what to expect. If the agency carries out these tasks fully then this will go some way to resolving some of the problems raised by witnesses during the course of this research.

Witness Support

Witness Support has a key role to play in ensuring the experience of giving evidence at court is as stress-free as possible. Although the scheme was established about five years ago it does not appear to have developed a wider focus and to represent the witness sufficiently at a national level. One of the main issues for witnesses in general is the lack of a 'corporate voice' that can influence the government's policy making process. However, whether even Victim Support could be viewed as having the status of a pressure group such as Friends of the Earth is debatable given their concentration on low level service delivery. It would seem, therefore, that no one organisation as of yet is able to put the corporate witness case before for example, the Director of the CPS or the Lord Chancellor's department who run the judicial system. Whilst recognising the aims of Witness Support to be impartial and primarily concerned with the local delivery of services and also recognising the difficulties involved in influencing policy, nevertheless there is a major opportunity being missed for someone to support the witness at a higher political level.

There is also the need for the court's administrative personnel and indeed the other professional groups formally to recognise and appreciate the importance of Witness Support as being an integral part of the CJS. At the moment it is tolerated

rather than being part of the establishment as identified by Rock (1993). Part of the problem may be related to unit's voluntary status and the existence of a divide over which the lay volunteers have some difficulty in crossing into the professional's territory. Mawby and Gill (1990) suggest that the problem may be caused partially by the lack of training and understanding by the professionals. They go on to note that 'professionals do not recognise the importance of volunteers, and they are still not encouraged by organisations to allocate sufficient time to volunteer issues' (Mawby and Gill, 1990: 121). The professional obdurance can be further overcome by also ensuring that Witness Support offers a professional service without compromising the unit's wish to be independent and non political. The key role for Witness Support is seen to be supporting the client and thus there may be issues which brings the unit into putting the legal profession under some critical scrutiny in order to ensure that the best witness service is delivered.

It is worthwhile to conclude this discussion on Witness Support by reflecting on the main findings of the original research by Raine and Smith (1991) which led to setting up Witness Support and consider if the scheme has resolved the original problems identified. The two major issues at the time of their study related to the lack of information and the possibility of intimidation. This research shows that these two problems still exist in some strength, and although Witness Support has made some inroads in terms of the issue of information, the incidence of intimidation does not appear to have been resolved to any great extent[69]. It must not be forgotten however that the unit receives little funding and has limited power to intervene in the administrative areas of court life. The minimal power base that it holds at court does not give it the power to demand the segregation of witnesses from defendants, although in practical terms the court layout would make this possible, albeit to a limited extent.

[69] Although Witness Support will allow vulnerable witnesses to use their offices to avoid problems, lack of space only allows a limited service to be offered.

Finally, it must be also be recognised that Witness Support is a relatively new organisation and is still to some extent finding its way.

Easing the burden of the lay prosecution witness

This research indicates that many of the problems witnesses experience at court are created or exacerbated by the justice culture and the environment of the court itself. It may be that the key to solving some of these issues lies in providing information that anticipates the problem areas both at the pre trial and trial stage. This can be achieved by good documentation, education and training. Witnesses need to have an appreciation of how the justice process works at a number of levels. They need a basic understanding of the process as a whole, but more specifically work on some areas such as an explanation of why trials take so long or the role of the defence counsel in the case. An appreciation and understanding of the techniques that the defence might use would help to alleviate the shock for instance of being called a liar. It is not suggested that a complex training programme be developed but merely that a format such as a video is produced which gives some mock situations and the best ways to deal with them. It could also explain how the court process worked and the roles of the different professionals. Alternatively the officer in the case or a CPS representative could have responsibility to cover a number of issues in an informal briefing session. The old adage 'forewarned, forearmed' clearly comes into play and witnesses may be more comfortable if they have a higher level of information about the relevant issues that make up the lay witness process. This said, care must be taken to ensure no coaching occurs, and that all issues discussed are of a general nature and non case specific and that the principles of evidence are not infringed (anything that could be seen as preparing witnesses for the case in the English and Welsh judicial system would appear to go against legal tradition). This incidentally is not necessarily the same elsewhere: the French Legal system with Examining Magistrates has a process where the judiciary have a much more pronounced role in prosecution which also

allows for a much closer relationship between the prosecution and the witness. Unlike the English and Welsh system, they will interview witnesses prior to the case coming to trial which may allow for witnesses to be better prepared when they eventually do attend court.

The issue of training witnesses also applies to police officers. Officers when giving evidence should be capable of delivering the evidence in a professional way and they should also be able to deal with the questioning by the defence in a similar vein. The research indicates that there may be a number of officers in the force that may not be able to deliver evidence in a way to maximise their effectiveness in court and that this is an issue that needs to be addressed by training departments within the police service.

Documentation plays an important element in supplying witnesses generally with information, and it is suggested that all the documentation currently being distributed should be reviewed. This includes both the documentation itself and also the delivery systems. Witnesses, both police and civilian, need a logical approach to information which would give them the right information at the right time to have the maximum impact. There is no point in sending out a 'Witness at Court' booklet six months before the trial starts as the witness will have forgotten the information it contains.

Witnesses, and this would include those of the defence, are in a sense customers of the CJS and as such their requirements, attitudes and views need constantly to be monitored in order to maximise high quality service delivery. However, I argued in chapter 6 that the witness is not a customer in a simplistic use of the word; they are in the justice system for a number of reasons including being summonsed to appear against his or her will. Again in that chapter I argued that 're-packaging' the witness as a 'customer' is not *in toto* a credible way forward. Serving as a witness is thus part of

the obligations of being a citizen in a broader political community. This is not to say of course that the monitoring of the experiences of witnesses as participants in and recipients of a Public Service should not occur. There is a lack of choice once 'inside' with few ways of getting out, although they may deliberately alter what they say once in the witness box itself and thus not deliver the promise of their original statement. Despite the limitations in the rhetoric of the witness as 'customer' it is suggested that witnesses should be subject to regular monitoring to ensure that the levels of satisfaction with the service received is constantly reviewed. The information on satisfaction levels could be obtained by way of follow-up questionnaires, distributed, for example, by including them randomly in the expense claim system. The complaints system, particularly with regard to what can be termed administrative or organisational complaints, should be reviewed and if necessary expanded, so that witnesses with a grievance have an effective channel and method of getting their problem addressed. It is interesting to note that the police, CPS, courts and judiciary all have separate complaints systems that operate in different ways[70]. Only since 1996 has there been any requirement to have a system in the police that addressed organisational complaints[71]. Now, witnesses in Bedfordshire have a clear process and procedure to ensure their complaints against the police are recorded.

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[70] It is already relatively easy to make and pursue a complaint against a police officer. for example, for incivility as there is an established system which can take the issue nationally to the Police Complaints Authority. It would be more difficult to pursue this same complaint if it was against a Crown Prosecutor or a member of the court staff as these complaints get dealt with more informally at a local or regional level. Complaints against judges have go directly to the Lord Chancellor at the House of Lords.

[71] The system takes into account all complaints not covered by the Police Complaints Authority, this would include for example, being kept waiting or the lack of information given about a case. Complaints would normally go through to the Divisional Commander for action. However there is no appeal procedure other than taking the matter elsewhere for example to the individuals Member of Parliament.

Who should hold responsibility for change at a local level?

Finally, the principle that the witness is a major resource of the CJS needs to be recognised and that a group within the system should have some responsibilities for taking forward the issues raised by this research. A body already exists at a local level at least, in the shape of the Crown Court Users group[72]. In order to maintain and improve the service given to witnesses it would be suggested that a regular forum is held by the group on witness-related issues. Information from the surveys suggested earlier could be fed into the group as well as discussions on issues such as intimidation and quality of service. One element would be to note developments being introduced elsewhere in terms of best practice that could impact on the service delivery for witnesses within the county. An example of how the group could work is indicated by the following issue raised during discussions with police officers. The police officers stated that they had serious problems in obtaining witnesses, especially on high crime estates where there may well be an under reporting of crime, due to a number of factors such as intimidation or poor police and public relationships. There was seen to be the need to develop a more proactive and co-ordinated approach to this issue involving a more rigorous consultative agenda including liaison with all agencies and community groups. The Court Users group if they considered that they are the appropriate body may wish to investigate the value of setting up a programme which concentrates on spreading the importance of coming forward to help both the prosecution and the defence with information about crime, it is after all as important to eliminate suspects as it is to implicate them, and that this message needs to be delivered to all socio economic and ethnic areas of the community. The approach could be achieved by encouraging courts to hold open sessions where members of communities or schools could visit courts and perhaps role play or by the production of another video that

[72] The group is made of the majority of professionals making up the court system and act in a multi-agency framework to ensure that everybody's views are taken account of. It is though a meeting managed by the courts rather than other contributors.

could be lent to schools and other community groups to show the wider issues of justice, the workings of a court and the way the witness contributes to the success of the justice system. Work also needs to be carried out to ensure a better response from ethnic minority groups and community leaders, however difficult this ambiguous term is to define, and that all the documentation should reflect this multi cultural diversity. Such developments would be one element in the broader 're-figuring' of the witness beyond that of the discourse of customers and markets. It is this broader political agenda on the prosecution witness as citizen which we still await in Britain.

Finally, the literature constantly referred to throughout this study shows the general lack of interest and limited research on the witness. Whether this will improve remains uncertain. It would be a shame if a researcher in 2026 starts his or her thesis with the comment noting the paucity of research on witnesses. Let us hope that the lay prosecution witness (and not just the victim-witness) is more widely 'discovered' and their contribution in maintaining a CJS is fully recognised and analysed, not least in academic research studies but also with the professionals within the legal system.

Appendix one

Lay Witnesses Questionnaire

Table 1 Please indicate what part you played in the case?

Age	-21		21-30		30-40		40-54		55+		All	
	%	No	%	No	%	No	%	No	%	No	%	No
Victim	45	10	41	12	28	11	18	4	20	2	31	39
Friend/rel.	14	3	11	4	23	9	18	4			16	20
Prof.conn.			3	1	8	3	9	2			5	6
Bystander	36	8	41	13	41	16	55	12	70	7	45	56
Guardian	5	1									1	1
Other			3	1					10	1	2	2
Total	100	22	99	31	100	39	100	22	100	10	100	124

Table 2 Please indicate what part you played in the case?

Ethnicity	UK White		Other		All	
	%	No	%	No	%	No
Victim	31	35	36	4	31	39
Friend/rel	16	18	9	1	16	19
Prof conn.	5	6			5	6
Bystander	45	50	55	6	46	56
Guardian	2	1			1	1
Other	1	2			2	2
Total	100	112	100	11	100	123

Table 3 Please indicate what part you played in the case?

Gender	Female		Male		All	
	%	No	%	No	%	No
Victim	29	18	34	21	31	39
Friend/rel	18	11	13	8	16	19
Prof.conn.	5	3	5	3	5	6
Bystander	44	28	46	28	45	56
Guardian	2	1			1	1
Other	2	1	2	1	2	2
Total	100	62	100	61	100	123

Table 4 Please indicate what part you played in the case?

Residential status	Owner Occupier		Other		All	
	%	No	%	No	%	No
Victim	19	12	48	27	33	39
Friend/rel	18	11	14	8	16	19
Prof.conn	6	4	2	1	4	5
Bystander	54	34	34	19	44	53
Guardian			2	1	1	1
Other	3	2			2	2
Total	100	63	100	56	100	119

Chi Square = 16.02827 Degrees of Freedom = 6

Table 5 Please indicate what type of case you were a witness in?

Residential status	Owner Occupier		Other		All	
	%	No	%	No	%	No
Assault/GBH/affray	33	21	62	36	47	57
Robbery	31	20	10	6	22	26
Road Traffic Accident	6	4			3	4
Autocrime	5	3			3	3
Sex offences/ children	5	3	10	6	8	9
Murder	3	2	4	2	3	4
Burglary	3	2	2	1	3	3
Abduction/kidnapping	3	2			2	2
Combination	2	1			1	1
Shoplifting	2	1			1	1
Fraud/deception	2	1	2	1	1	2
Rape	3	2	5	3	4	5
Other	3	2	4	2	3	4
Total	101	64	99	57	101	121

Chi Square = 23.69350 Degrees of freedom = 12

Table 6 Had you ever had experience of actually being a witness in court before?

	All	
	%	No
Yes	18	22
No	82	102
Total	100	124

Table 7 Did you experience problems with any aspect of your contact with the police?

Ethnicity	UK White		Other		All	
	%	No	%	No	%	No
Yes	8	9	27	3	10	12
No	88	100	73	8	87	108
Don't know	4	4			3	4
Total	100	113	100	11	100	124

Table 8 Did the system for notifying you to attend court cause you any problems?

	All	
	%	No
No	43	52
Not enough notice given	38	46
Conflict over pers. comm	7	8
Changes made to court date	6	7
Worried about going to court	2	2
Notification given by 3rd party	1	1
Long delay in case	1	1
Not enough information given	1	1
Had to travel long way	1	1
Other	5	6
Total	See note	

n = 121 (Multiple response question will add up to over 100%)

Table 9 Which of the following were you provided with information about?

Information received	%	No
Witness at Court Booklet	67	85
Information on how to get to court	55	70
Where to go when you arrived	42	53
Information on court procedures	58	73
Where facilities were located	49	62
What supp. services were available	50	63
The role of the officials	46	58
How to claim expenses	73	53
	See note	

n = 126 (Multiple response question will add up to over 100%)

Table 10 Did a CPS representative identify themselves to you before you went into court?

	All	
	%	No
Yes	62	77
No	31	39
Don't know	6	8
Total	99	124

Table 11 Did you have any direct contact with the staff of the CPS or their legal representatives during the case?

	All	
	%	No
Yes	44	54
No	46	57
Don't know	10	12
Total	100	123

Table 12 Were you satisfied with the service received from Witness Support during your time at court?

Part Played	Victim		Bystander		Other		All	
	%	No	%	No	%	No	%	No
Yes	61	23	56	27	61	17	59	67
No	13	5	13	6	7	2	11	13
Had no contact	26	10	31	15	32	9	30	34
Total	100	38	100	48	100	28	100	114

Table 13 Were you satisfied with the service received from Witness Support during your time at court?

Gender	Female		Male		All	
	%	No	%	No	%	No
Yes	73	45	44	24	59	69
No	10	6	13	7	11	13
No contact	18	11	43	23	29	34
Total	101	62	100	54	99	116

Chi Square = 10.20031 Degrees of freedom = 2

Table 14 Reasons for Satisfaction with Witness Support.

Reasons	All	
	%	No
Friendly / reassuring support	80	53
They explained procedures	17	11
Showed court room layout	8	5
Provided refreshments / magazines	5	3
Provided an office to sit in	5	3
Total	See note	

n= 66 (Multiple response question will add up to over 100%)

Table 15 Were you given the opportunity to wait in a separate room?

Gender	Female		Male		All	
	%	No	%	No	%	No
Yes	63	40	42	25	53	65
No	37	23	54	32	45	55
Don't know			4	2	2	2
Total	100	63	100	59	100	122

Table 16 Would you have liked the choice?

Age	Under-21		21-30		30-40		40-54		55+		All	
	%	No	%	No	%	No	%	No	%	No	%	No
Yes	82	18	61	20	49	19	38	8	13	1	54	66
No	18	4	36	12	49	19	62	13	88	7	45	55
Don't Know			3	1	3	1					2	2
Total	100	22	100	33	101	39	100	21	101	8	101	123

Chi Square = 17.42052 Degrees of freedom = 8

Table 17 Would you have liked the choice?

Residential Status	Owner Occupier		Other		All	
	%	No	%	No	%	No
Yes	42	26	66	37	53	63
No	57	35	32	18	45	53
Don't know	2	1	2	1	2	2
Total	101	62	100	56	100	118

Chi Square = 7.08670 Degrees of freedom = 2

Table 18 Would you have liked the choice?

	All	
	%	No
Yes	44	24
No	9	5
Not concer.	46	25
Total	99	54

Table 19 Did you actually give evidence in the witness box?

	All	
	%	No
Yes	73	91
No	27	33
Total	100	124

Table 20 How did you find the experience of giving evidence?

Gender	Female		Male		All	
	%	No	%	No	%	No
Very Difficult	24	12	3	1	14	13
Difficult	41	21	18	7	31	28
Neither difficult nor easy	31	16	50	20	39	36
Easy	4	2	19	8	11	10
Very Easy			10	4	4	4
Total	100	51	100	40	99	91

Chi Square = 23.36385 Degrees of freedom = 4

Table 21 Why was this?

Comments about giving evidence	All	
	%	No
CPS / court staff were helpful	8	4
Questions were easy to answer	8	4
Knew what to expect	13	7
Had difficulties with defence	11	6
Felt alone and isolated	2	1
Intimidating and nerve wracking	53	28
Word doubted, felt on trial myself	17	9
Difficult questions were asked	6	3
It was hard to remember all the details	8	4
Frustrated in not being able to say what I wanted	6	3
Things occurred afterwards that I wanted to say	6	3
It brought the bad experience back	6	3
Didn't know what to expect	6	3
Other	2	1
	see note	

n = 53 (Multiple response question will add up to over 100%)

Table 22 How long did you spend at court?

	All	
	%	No
Under 3 hours	11	14
3 - 6 hours	41	48
6 hours plus	26	32
Over a day	22	27
Total	100	121

Table 23 How long did you spend in the witness box?

	All	
	%	No
Under 10 mins.	10	9
10-30 mins.	50	43
Over 30 mins.	37	32
Can't remember.	2	2
Total	99	86

Table 24 How satisfied were you with the service you received overall as a witness taking all things into account?

Age	-21		21-30		30-40		40-54		55+		All	
	%	No	%	No	%	No	%	No	%	No	%	No
Very Satisfied	41	9	13	4	26	10	33	7	25	2	27	32
Satisfied	41	9	40	12	58	22	43	9	38	3	46	55
Neither Satis. nor Disatis.	5	1	10	3	8	3	14	3	25	2	11	12
Dissatisfied	8	2	26	8	5	2	10	2			12	14
Very Dissatisfied	5	1	7	2	3	1			12	1	4	5
Don't know			4	1							1	1
Total	100	22	100	30	100	38	100	21	100	8	101	119

Table 25 How satisfied were you with the service you received overall as a witness taking all things into account?

Ethnicity	UK White		Other		All	
	%	No	%	No	%	No
Very Satisfied	29	32			27	32
Satisfied	45	49	55	6	46	55
Neither Satis. nor Disatis.	8	9	36	4	11	13
Dissatisfied	13	14			12	14
Very Dissatisfied	4	4			4	4
Don't know	1	1	9	1	1	2
Total	100	109	100	11	101	120

Table 26 How satisfied were you with the service you received overall as a witness taking all things into account?

Gender	Female		Male		All	
	%	No	%	No	%	No
Very Satisfied	27	17	26	15	27	32
Satisfied	53	33	38	22	46	55
Neither satis. nor dissat.	8	5	14	8	11	13
Dissatisfied	12	7	12	7	12	14
Very Dissatisfied			8	5	4	5
Don't know			2	1	1	1
Total	100	62	100	58	101	120

Table 27 How satisfied were you with the service you received overall as a witness taking all things into account?

Witness type	Victim		Other		All	
	%	No	%	No	%	No
Very Satisfied	41	16	20	16	27	32
Satisfied	33	13	51	41	45	54
Neither Satisfied nor Dissatisfied	8	3	13	10	11	13
Dissatisfied	13	5	11	9	12	14
Very Dissatisfied	5	2	4	3	4	5
Don't know			1	1	1	1
Total	100	39	100	80	100	119

Table 28 Do you feel there is a problem of threats and or violence for witnesses who give evidence in court?

Gender	Female		Male		All	
	%	No	%	No	%	No
Yes	54	34	41	25	48	59
No	25	16	36	22	31	38
Don't know	21	13	23	14	22	27
Total	100	63	100	61	101	124

Table 29 Do you feel there is a problem of threats and or violence for witnesses who give evidence in court?

Residential status	Owner Occ.		Rented		Other		All	
	%	No	%	No	%	No	%	No
Yes	45	29	55	18	48	11	48	58
No	31	20	33	11	22	5	30	36
Don't know	23	15	12	4	30	7	21	26
Total	99	64	100	33	100	23	99	120

Table 30 Why do you feel problems exist?

Gender	Female		Male		All	
	%	No	%	No	%	No
In same area at court	40	14	52	13	45	27
Name and address given	31	11	16	4	25	15
Threats made by family/friends	29	10	8	2	20	12
Media said it was a problem.			12	3	5	3
Witness known to defendant.	3	1	8	2	5	3
Could be intim. to withdraw evidence	3	1			2	1
Other	6	2	12	3	8	5
Total	See note					

n = 60 (Multiple response question will add up to over 100%)

Table 31 Why did you originally come forward as a witness?

	All	
	%	No
To help the police	37	30
Because they were required to do so	26	21
Because they wanted to help the victim	24	20
A public duty	39	32
To ensure that the offender is punished	39	32
Other	1	1
Total	See note	

n = 124 (Multiple response question will add up to over 100%)

Personal Details

Table 32 Age

Gender	Female		Male		All	
	%	No	%	No	%	No
Under 21	23	15	11	7	18	22
21 - 30	27	17	23	15	25	32
30 - 40	30	19	35	21	32	40
40 - 54	19	12	16	10	18	22
55+	2	1	15	9	8	10
Total	101	64	100	62	101	126

Table 33 Ethnic Origin

Gender	Female		Male		All	
	%	No	%	No	%	No
UK White	89	57	94	58	91	115
Other (e.g. Irish / Italian)	3	2			2	2
Afro - Caribbean	2	1	3	2	2	3
Asian (e.g. Indian / Pakistani)	3	2			2	2
Black other (e.g. African / Mixed Race	3	2	3	2	3	4
Total	100	64	100	62	100	126

Table 34 Residential Status

Gender	Female		Male		All	
	%	No	%	No	%	No
Owner occupier	47	29	58	35	52	64
Rented	32	20	25	15	29	35
Other	21	13	17	10	19	23
Total	100	62	100	60	100	122

Table 35 Current work position

Gender	Female		Male		All	
	%	No	%	No	%	No
Employee	51	33	44	27	48	60
Employer			8	5	4	5
Self employed	5	3	16	10	10	13
Government scheme	2	1			1	1
Student	16	10	10	6	13	16
Unemployed	11	7	18	11	14	18
Permanently sick	5	3			3	3
Retired	2	1	5	3	3	4
Other	9	6			5	6
Total	101	64	101	62	101	126

Police Questionnaire

Table 36 Please describe the type of contact you have with witnesses in your current post?

	All	
	%	No
Statements / Interviews	80	82
Liaison pre / post trial / cont. point	33	33
Dealing with court warnings	22	22
ID parades	2	2
Operational police work	42	43
Enquiries	5	5
Total	See note	

n = 102 (Multiple response question will add up to over 100%)

Table 37 How often do you have contact with witnesses to crime or other offences in your current post?

Length of Service	0-2		2-5		5-10		10yrs+		All	
	%	No	%	No	%	No	%	No	%	No
All the time	45	9	62	8	94	16	67	36	66	69
Fairly often	45	9	39	5	6	1	22	12	26	27
Occasionally	10	2					6	3	5	5
Hardly ever							4	2	2	2
No Contact							2	1	1	1
Total	100	20	101	13	100	17	101	54	100	104

Table 38 What type of things cause you the most difficulties in your dealings with witnesses?

	All	
	%	No
No facilities for interviews	7	7
Difficulties of interpretation	2	2
Making appointments	16	16
Taking Statements	9	9
Witness not coming forward/intimidation	32	32
Explaining process	9	9
Distress of victim	4	4
Problems of attending court	8	8
Lack of information	3	3
Lack of time	12	12
Other	4	4
Total	See note	

n = 101 (Multiple response question will add up to over 100%)

Table 39 Why do you think prosecution witnesses generally come forward?

Gender	Female		Male		All	
	%	No	%	No	%	No
To help the police	53	10	54	44	54	54
Because they were required to do so	21	4	20	16	20	20
Because they wanted to help the victim	58	11	60	49	59	60
A public duty	47	9	55	45	54	54
To ensure that the offender is punished	53	10	63	52	61	62
Don't know	16	3	7	6	9	9
Total	See note					

n = 101 (Multiple response question will add up to over 100%)

Table 40 Why do you think prosecution witnesses generally come forward?

Length of Service	0-2		2-5		5-10		10yrs+		All	
	%	No	%	No	%	No	%	No	%	No
To help the police	70	14	23	3	50	8	57	30	54	55
Because they were required to do so	5	1	8	1	44	7	21	11	20	20
Because they wanted to help the victim	60	12	39	5	56	9	66	35	60	61
A public duty	50	10	54	7	63	10	51	27	53	54
To ensure that the offender is punished	65	13	62	8	69	11	59	31	62	63
Don't know	10	2	8	1	6	1	9	5	9	9
Total	See note									

n = 102 (Multiple response question will add up to over 100%)

Table 41 How do you think the CJS can get more prosecution witnesses to come forward and assist in helping to bring to justice those who offend?

Gender	Female		Male		All	
	%	No	%	No	%	No
Sentencing to be increased	25	5	25	20	25	25
Separation of witnesses	15	3	9	7	10	10
More anonymity for witnesses	35	7	32	25	32	32
More information for witnesses	10	2	9	7	9	9
Improvements in witness administration	25	5	22	17	22	22
A proper support structure	15	3	9	7	10	10
More Stipendary Magistrates			4	3	3	3
By treating witness as a valued person			17	13	13	13
By making the police more approachable			4	3	3	3
The use of alternative sentences	5	1	3	2	3	3
Better pay / expenses for witnesses	5	1	3	2	3	3
Other	5	1	3	2	3	3
Don't know	10	2	9	7	9	9
Total	See note					

n = 99 (Multiple response question will add up to over 100%)

Table 42 How do you think the process of warning witnesses to attend court could be improved?

	All	
	%	No
More time/a firm date /less changes to dates	54	49
More information	7	6
The magistrates system is OK	2	2
Police leave should be held by admin. units.	1	1
Avoid 'floaters'/just in case syndrome	3	3
Make CPS more responsible	3	3
The use of recorded delivery letters	1	1
Visits rather than letters	7	6
A 24hr. contact point	1	1
An early discussion of the case	4	4
Mandatory for witness to notify of changes	1	1
Take peoples commitments more seriously	4	4
Not using the police as messengers	2	2
Other	7	6
Don't Know	20	18
Total	See note	

n = 90 (Multiple response question will add up to over 100%)

Table 43 What type of problems do you think a witness faces, when they actually attend court?

Gender	Female		Male		All	
	%	No	%	No	%	No
Fear of the unknown	10	2	19	15	17	17
Lack of information/knowledge/	45	9	28	23	32	32
Not aware of procedures	50	10	74	60	69	70
Intimidation/threats	10	2	16	13	15	15
Waiting around/delays	10	2	5	4	6	6
Administrative problems e.g. parking	15	3	10	8	11	11
Remembering incidents	10	2	6	5	7	7
Being treated as a criminal	5	1	12	10	11	11
Boredom/frustration	5	1			1	1
Lack of support by professionals at court	10	2	9	7	9	9
The formal nature of the proceedings	5	1	3	2	3	3
Frustration with the result			1	1	1	1
Other			3	2	2	2
Total	See note					

n = 101 (Multiple response question will add up to over 100%)

Table 44 How well do you think Police Officers and the Courts treated their witnesses?

Length of service	Police										Courts							
	0-2		2-5 yrs		5-10 yrs		10 yrs+		All		0-2		2-5 yrs		5-10 yrs		10 yrs+		All	
	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No
Very Well	20	4	15	2			8	4	10	10	5	1							1	1
Well	55	11	62	8	35	6	40	21	45	46	16	3			6	1	12	5	10	9
Average	10	2	23	3	47	8	38	20	32	33	47	9	39	5	29	5	14	6	28	25
Badly	10	2			12	2	13	7	11	11	21	4	39	5	47	8	45	19	40	36
Very Badly							2	1	1	1	11	2	15	2	18	3	29	12	21	19
Don't Know	5	1			6	1			1	2			8	1					1	1
Total	100	20	100	13	100	17	101	53	100	103	100	19	101	13	100	17	100	42	101	91

Table 45 If you answered badly or very badly, why was this?

Court	All	
	%	No
Poor facilities	20	11
Delays/adjournments	13	7
No consideration/respect	44	24
Lack of warning	7	4
Harassment/intimidation	9	5
Lack of support	4	3
Bias in favour of defendant	15	17
Poor treatment by court	31	8

n = 55 (Multiple response question will add up to over 100%)

Table 46 What difficulties did you encounter?

Post	Patrol		CID		Other		All	
	%	No	%	No			%	No
Lack of readiness/communication problems	29	18	44	12			32	30
Manipulation by the court	5	3	11	3			6	6
Delays/adjournments	33	21	30	8	50	2	33	31
Court attendance	18	11	26	7	25	1	20	19
Court procedures	6	4	4	1			5	5
Other	8	5	11	3			8	8
Not Attended court	24	15	19	5	50	2	23	22
Total	See note							

n = 95 (Multiple response question will add up to over 100%)

Table 47 On your last visit to court as a witness how long did you spend at Court?

	All	
	%	No
Under 3 hours	29	30
3 - 8 hours	46	47
1 day +	24	25
Don't know/can't remember	1	1
Total	100	103

Table 48 On your last visit to court as a witness how long did you spend in the witness box?

	All	
	%	No
Under 10 minutes	33	22
10 - 30 minutes	37	24
30 - 60 minutes	19	13
Over 1 hour	10	7
Don't know/can't remember	1	1
Total	100	67

Table 49 How well overall do you think Police Officers are treated as witnesses by the CJS?

Length of service	0-2		2-5		5-10		10yrs+		All	
	%	No	%	No	%	No	%	No	%	No
Very Well	10	2							2	2
Well	20	4	15	2	6	1	11	6	13	13
Average	60	12	46	6	53	9	49	26	52	53
Badly	10	2	31	4	29	5	28	15	25	26
Very Badly			8	1	12	2	9	5	8	8
Don't know							2	1	1	1
Total	100	20	100	13	100	17	99	53	101	103

Table 50 If you replied badly or very badly why was this?

	All	
	%	No
Anti police culture	3	1
Expected to know everything	3	1
Seen as untrustworthy by courts	30	8
No status	3	1
No concerns about waiting time/availability	65	12
Unable to respond to verbal abuse	9	3
Case being dropped	9	3
Total	See note	

n = 30 (Multiple response question will add up to over 100%)

Table 51 Do you think many witnesses receive intimidation or threats?

	All	
	%	No
Yes	78	79
No	21	21
Don't know	1	1
Total	100	101

Table 52 Do you think many witnesses receive intimidation or threats?

Length of service	0-2		2-5		5-10		10yrs+		All	
	%	No	%	No	%	No	%	No	%	No
Yes	80	16	85	11	69	11	80	43	79	81
No	15	3	15	2	31	5	20	11	20	21
Don't know	5	1							1	1
Total	100	20	100	13	100	16	100	54	100	103

Personal Details

Table 53 Length of Service

Gender	Female		Male		All	
	%	No	%	No	%	No
0 - 2 years	15	3	21	17	19	20
2 - 5 years	25	5	10	8	13	13
5 - 10 years	20	4	16	13	17	17
10 years +	40	8	54	45	52	53
Total	100	20	101	83	101	103

Table 54 Police post

Gender	Female		Male		All	
	%	No	%	No	%	No
Section Constable	75	15	58	48	61	63
Patrol Sergeant			2	2	2	2
Detective Constable	10	2	30	25	26	27
Detective Sergeant	10	2	5	4	6	6
Other	1	1	3	3	4	4
Total	96	20	98	82	99	102

Appendix two

WITNESS STUDY - QUESTIONNAIRE

Q.1 **Please first of all tell me what part you played in the case, were you the:**

	Please Tick
Victim	1
Friend / Coll. / Relative of Victim	2
Professionally connected, (e.g. Employee or Employer)	3
A witness with no connection for example a passerby	4
Other (please specify).....	

Q.2 **Please indicate what type of case you were a witness in?**

.....

Q.3 **Have you ever had experience of being a witness at court before?**

Yes	1
No	2

(Now returning to the current case)

Q.4a **Did you experience problems with any aspect of your contact with the police?**

Yes	1
No	2
Don't Know / Can't Remember	3

Q.4b **If you replied YES to Question 4a what type of problem(s) did you experience?**

.....

.....

Q.5 **Did the system for notifying you for court cause you any problems?**

.....

.....

Q.6 **Which of the following were you provided with information about?**

The booklet " The witness at Court"	1	
What the Parking / Travel facilities were to get you Court	2	More than
How to find the Court	3	one can be
Where to wait when you arrived	4	ticked
What was going to happen to you during your time at court	5	
Where the Refreshment / Toilet Facilities were	6	
What Witness / Victim support services were available	7	
What to do in the Court room?	8	
The role of the officials	9	
How to claim any expenses	10	

Other (please specify) .....

Q.7 **Did a Crown Prosecution representative identify themselves to you before you went into court?**

Yes	1
No	2
Don't Know/ Can't remember	3

Q.8a **Did you have any direct contact with the staff of the a CPS or representative during the case?**

Yes	1
No	2
Don't Know/ Can't remember	3

Q.8b **If you replied Yes to Question 8a was there any aspect that caused you problems?**

.....

.....

Q.9a **Were you satisfied with the service you received from Witness Support during your time at court?**

Yes	1
No	2
Had no real contact	3

Q.9b **If you replied NO to Question 9a why was this?**

.....

.....

Q.10a **Were you given the opportunity to wait in a separate room?**

Yes	1
No	2
Don't Know/ Can't remember	3

Q.10b **If you replied No in Question 10a would you have liked the choice?**

Yes	1
No	2
Not concerned either way	3

Q.11 **Were you allowed to refresh your memory by reading your original statement again?**

Yes	1
No	2
Don't Know/ Can't remember	3

Q.12a **Did you actually give evidence in the witness box?** Please Tick

Yes	1
No	2
Don't Know/ Can't remember	3

Q.12b **If you replied YES to Question 11a how did you find the experience of giving evidence was it:**

Very Difficult	1
Difficult	2
Neither difficult nor easy	3
Easy	4
Very Easy	5
Don't Know/ Can't remember	6

Q.12c **If you replied DIFFICULT/VERY DIFFICULT OR EASY/VERY EASY in Question 12b, why was this?**

.....

.....

Q.13 **How long did you spend (a) at court and (b) in the witness box?**

(From the moment you arrived till you left the building)

a) At Court		**b) In the witness box**	
Under 3 hrs.	1	Did not give Evidence	1
3 - 6 hours	2	Under 10 minutes	2
1 day plus	3	10 - 30 minutes	3
Don't Know / CR.	4	Over 30 minutes	4
		Don't Know / CR.	5

Q.14 **How satisfied were you with the service you received overall as a witness taking all things into account?**

Very satisfied	1
Satisfied	2
Neither satisfied nor dissatisfied	3
Dissatis.	4
Very dissatisfied	5
Don't know /Can't remember	6

Q.15a **Do you feel a general problem exists for witnesses in receiving threats / violence about them giving their evidence in court?**

Yes	1
No	2
DK.	3

Q.15b **If you replied YES to Question 15a why do you feel this?**

.....

.....

.....

Q.16 **Why do you think witnesses generally come forward?**

To help the police	1
Because they are required to do so	2
Wanted to help Victim	3
A Public Duty	4
A combination of factors	5
Another reason (please specify)	

Q.17 **Are there any other points you would like to make about any aspect of your experiences in this case?**

.....

.....

.....

PERSONAL DETAILS

(These details are used to show whether groups may or may not be treated differently, for example whether any discrimination occurs)

		Please Tick
Age	Under 21	1
	21 - 30	2
	30 - 40	3
	40 - 54	4
	55+	5

	Please Tick
Gender	
Female	1
Male	2

Ethnic Origin

UK White	1
White other (e.g. Irish / Italian)	2
Afro-Caribbean	3
Asian (e.g. Indian Pakistani)	4
Black other (e.g. African / Mixed Race	5
Other	6

Residential Status

Owner occupier	1
Rented	2
Other	3

Please indicate your current work situation

Employee	
Employer	1
Self employed	2
Government scheme	3
Student	4
Unemployed	5
Permanently sick	6
Retired	7
Other	8

If employed, employer or self employed please state what the business or work entails for example Carpenter or Secretary?

.....

I would like to contact a small number of witnesses to get some more detailed information about the way witnesses are treated. If you would be prepared to be considered for this, please give me your Name and a Telephone Number where I can contact you. The interview would take place at your place of work or somewhere you choose and will last out 30 - 45 minutes

Name: .....Tel No: STD code.....Number .....

WITNESS STUDY - POLICE

Q.1 **Please describe the type of contact you have with witnesses in your current post?**
(For example: taking statements, warning for court)?
(If No contact please enter "NONE")

.....

.....

.....

Q.2 **How often do you have contact with witnesses to crime or other offences in your current post?**
(in the course of your normal policing duties)

	Please Tick
All the time	1
Fairly often	2
Occasionally	3
Hardly ever	4
No Contact	5

Q.3 **What type of things cause you the most difficulties in your dealings with witnesses?**
(If no difficulties please enter" NONE")

.....

.....

.....

Q.4 **Why do you think prosecution witnesses (excluding victims and police officers) generally come forward?**

	Please Tick
To help the police	1
Because they are required to do so	2
Because they wanted to help the victim	3
A Public Duty	4
To punish the offender	5
Another reason (please specify)	

More than one box can be ticked

Q.5 **How do you think the CJS can get more prosecution witnesses to come forward and assist in helping to bring to justice those who offend?**

.....

.....

.....

Q.6 **Do you think many witnesses receive intimidation or threats?**

(if Yes so from whom?).

(Please give examples of any case you are aware of)

.....

.....

.....

Q.7 **How do you think the process of warning witnesses to attend court could be improved?**

.....

.....

.....

Q.8 **What type of problems do you think a witness faces, when they actually attend court?**

.....

.....

Q.9 **Have you recently (in the last 6 months) been a witness in a case that went to court yourself?**
What difficulties did you encounter?

.....

.....

.....

Q.10 **On your last visit to Court as a witness how long did you spend:**
(a) at court and (b) in the witness box?
(From the moment you arrived till you left the building)

a) At Court

Under 3 hour	1
3 - 8 hours	2
1 day plus	3
Don't Know / Can't Remember	4

b) In the witness box

Did not give Evidence	1
Under 10 minutes	2
10 - 30 minutes	3
30 - 60 minutes	4
Over 1 hour	5
Don't Know / CR.	6

Q.11a **How well do you think a) POLICE OFFICERS and b) the COURTS treat their witnesses?**

	a) Police	**b) The Courts**
Very Well	1	1
Well	2	2
Average	3	3
Badly	4	4
Very Badly	5	5
Dk	6	6

Q.11b **If you answered Question 11a why was this?**

Police.....

.....

.....

Courts.....

.....

Q.12a **How well OVERALL do you think Police Officers are treated as witnesses by the CJS?**

	Please Tick
Very Well	1
Well	2
Average	3
Badly	4
Very Badly	5
DK	6

Q.12b **If you replied Badly or Very Badly in question 12a, why was this?**

.....

.....

.....

Q.13 **Have you any other comments about any aspect of the witness process?**

.....

.....

.....

PERSONAL DETAILS

Length of Service	0 to 2 yrs	1
	2 to 5 yrs	2
	5 to 10 yrs	3
	Over 10 years	4

Gender Female 1 Male 2

Current post: .....

I would like to personally interview a small number of officers to get a more comprehensive view of the witness process. If you would like to be considered for this please enter your name below together with an extension number where you can be contacted. If selected the interview would take about 40 minutes.

Name ..... Ext.....

Appendix three

Interview schedule for lay witnesses

(NB spaces have been removed in document to avoid waste)

Thank person for allowing me to see them.

The purpose of this interview is to carry out research into the experiences witnesses have when they enter the Criminal Justice System. Although a civilian member of Bedfordshire Police I am carrying out this research for a higher degree which I'm taking at Nene College in Northampton. The interview will take about 40 minutes.

The information is completely confidential and you will not be identified in any report. If anything comes up about the specific case then it will be up to you to decide if you want me to make further enquiries. Have you any questions? The interview will broadly cover two parts firstly your involvement up until the case reaches court and then secondly, your time actually at court.

Can you tell me a little about the type of case and how you became involved?

How was it reported and how did the police get involved?

What type of contact or experiences did you have with the police?

What are your views on the way the routine administration of the case was carried out (probe adjournments, time scales)?

Now moving on to when you arrived at court, can you describe what happened when you got there?

What contact did you have with the Crown Prosecution Service?

What contact did you have with the Police at court?

What contact did you have with Witness Support?

Did you give evidence (if so) can you tell me about the experience of giving evidence?

Discuss issue of intimidation if not raised.

Are there any other points you wish to comment on?

Thank person for their time

Interview schedule for Criminal Justice Professionals

Thank person for allowing me to see them.

The research project aims to examine the way the lay prosecution witness is dealt with or processed by the Criminal Justice System. Although a civilian member of Bedfordshire Police I am carrying out this research specifically for a higher degree which I'm taking at Nene College in Northampton.

The information is confidential and no names will be used. However, it is possible that in some cases a link might be made especially when there are specific identifiable posts. Would this cause a problem, if so I will terminate the interview. Have you any questions? The interview will take about 45 minutes and will broadly cover a number of issues related to the prosecution witness.

Can you tell me about your current role and what connection you have with prosecution witnesses?

How do you think witnesses are treated by your particular element (change as appropriate) of the Criminal Justice System?

Could the process be improved?

What causes you the most problems in dealing with witnesses?

How do you think they are treated by other elements of the Criminal Justice System?

Could any of these areas be improved?

What do you think about the issue of witness intimidation?

Are there any other points you would wish to comment on?

Thank person for their time

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