

Observations in Magistrates' Courts: Space and Interaction

Stefan Machura
Bangor University

30 April 2018

Background theory

- People (defendants, parties, any really) expect procedural fairness from courts:
- Respecting rights, giving voice, neutrality, accuracy, benevolance (e.g. Leventhal, Lind/Tyler)
- If these are absent, the legitimacy of courts and their decisions is in question (e.g. Luhmann, Lind/Tyler)

Magistrates‘ Courts

- Over 80% of defendants to criminal charges
- Deal with „summary offences“ defined by law or „either way“ offences when chosen by defendant
- The lower criminal court for offences punishable by up to 6 months in prison (repeat crime cases: 12)
- If they feel a case needs harsher punishment magistrates can send it to the Crown Court for sentencing.

(Darbyshire 2017, 156-7)

The system

	England and Wales
Judges	Single professional judge (DJMC) OR panel of three – or two - lay judges with legal adviser
Dossier	Available in trial
Defense lawyer	Possible, but defendants may „choose“ to represent themselves
Prosecution	Crown Prosecution Service OR different agencies
Procedure	Adversarial (with inquisitorial elements?)
Main figure	Distributed roles prosecution and defense, then Presiding Magistrate (legal advisor?)

Different in youth court:

- Youth Offending Team expert, in prior contact with defendant
- Presiding Magistrate takes over trial after parties stated their case.

Lay Magistrates

- 17,552 in 2016
- Unpaid volunteers
- Serving for at least 5 years
- Predominantly white, 86% over 60 years old, middle class and from certain professions
- (Derbyshire 2017, 427, 429-)

Legal adviser aka „court clerk“

- „The most important person ... in the administration of justice“ (Lord Parker)
- Advises lay magistrates and DJMCs
- Lay magistrates depend on him „wholly“ for „law and practice“.

(Darbyshire 2017, 436)

Training & experience

- Professional judges have legal training (and magistrates some training, yet they are lay people).
- Prosecutors are not necessarily lawyers by training but will often have long experience.
- Legal advisers will be mostly trained lawyers today.
- Magistrates invite the legal advisor to join them towards the end of their deliberation. – Appearances matter, Mags need to be seen as in charge.
- Parties have to take into account which arguments are considered by the judges/lay judges and which not.

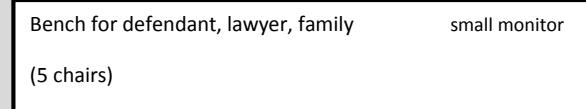
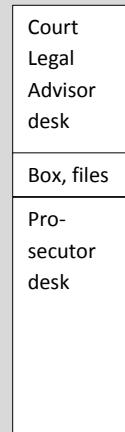
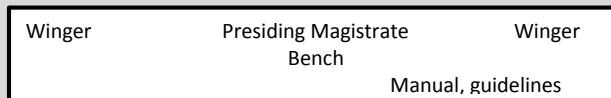
Empathy and impression

- Often long build-up of problem, can an answer be found in the courtroom situation?
- All this also needs to appear procedurally fair to the defendant and all involved.

The Layout of Courts in E & W

- Varies
- And at least in the cases we saw, this was reflected in court action.
- Big city court: prosecutor and legal advisor „on same side“
- Country court: prosecutor and lawyer sit „side by side“

Entry Magistrates



Row of folding chairs, door to dock

Dock for defendants, separated by thick glass wall



Legal Advisor

YOT

YOT
desk
(2
chairs)

Usher
desk
bible

Monitor

Pro-
sec-
utor
lawy-
er

.....(Mother)

Defendant

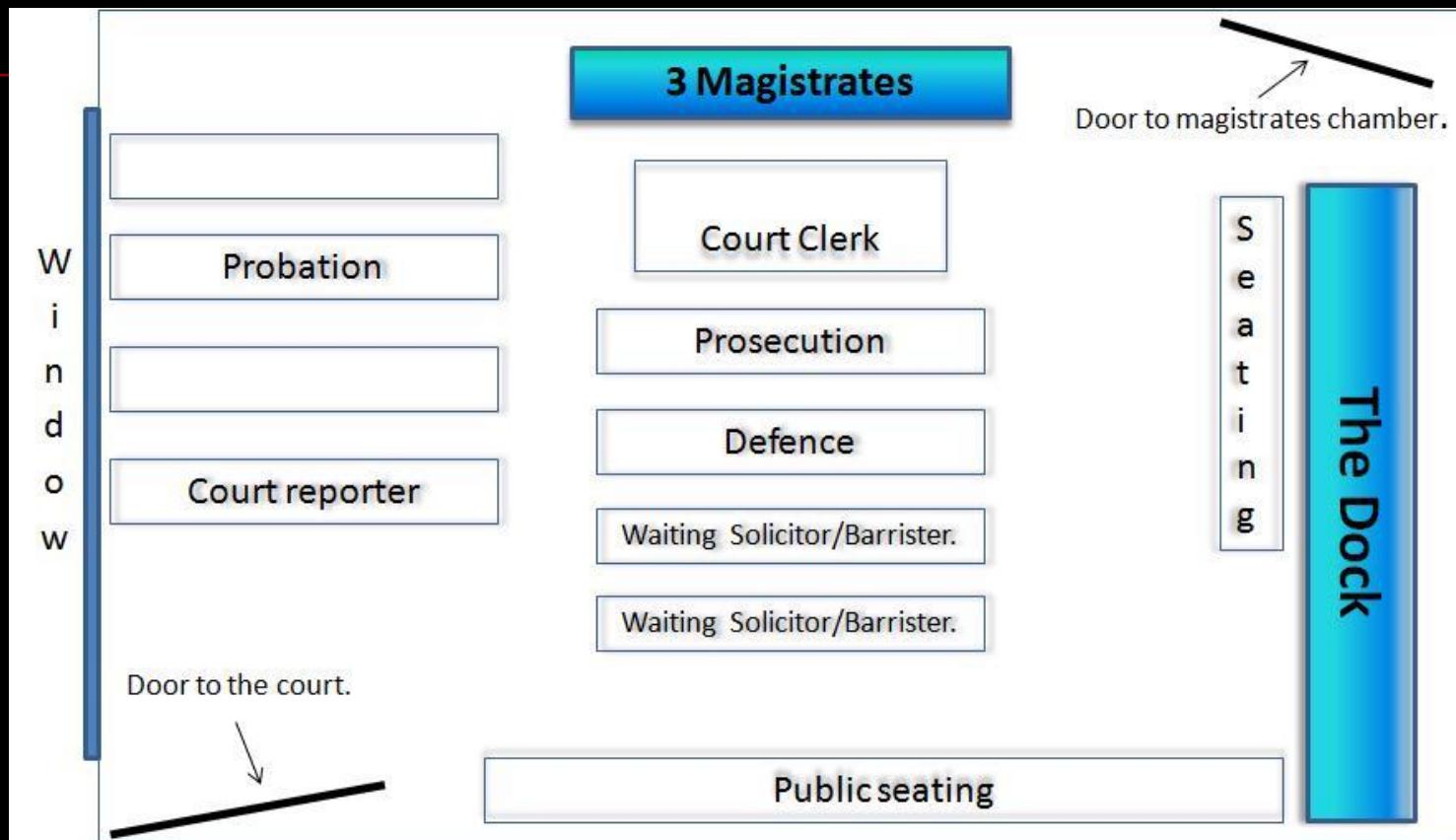
Row of chairs,

General entry

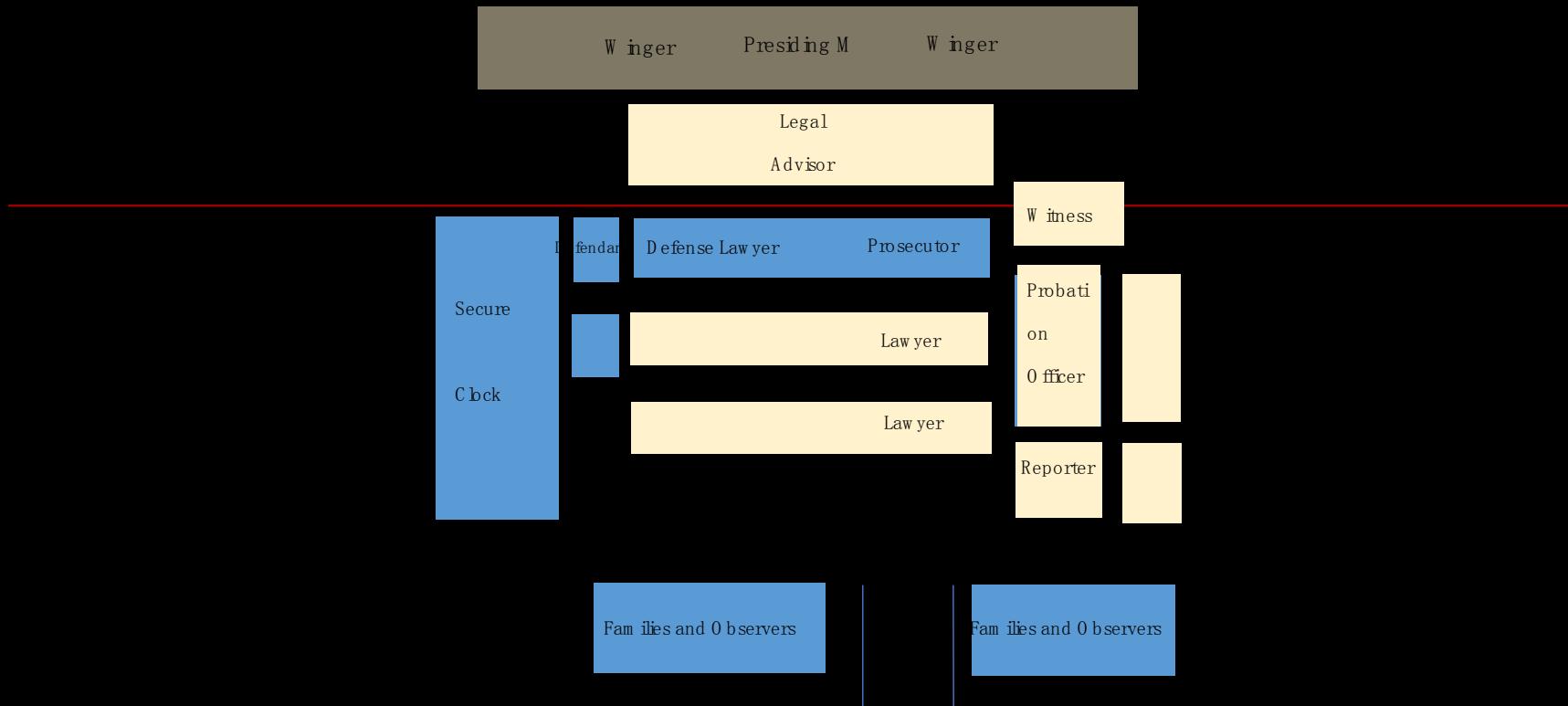


Magistrates' Court, Youth Court Room Layouts

Rural Magistrates' Court, Nov. 2017



Graph by James Alexander Ball, reproduced with permission



Rural MC Court

Graph: YaXian Qiu, reproduced with permission, adapted by presenter

Issues

- Acoustic: at least from observer's point of view, hearing can be difficult
- Often no suitable seating for defendants outside secure dock
- Overuse of secure dock
- Seating order privileging some professionals

Observations in the youth court

- Strong paternalistic, benevolent presiding magistrates in three courts
- One creating an extra „space“ for youth by switching to minority language for most intimate conversation
- „What do you want to do with your life?“

Underuse of MC expertise?

- In youth court we saw good examples of Presiding MC (and wingers occasionally) engaging in dialogue with defendant.
- In adult court, this resource is not tapped.
- Magistrates are just used as sentencers in adult courts.
- Consequentially, defendant is less engaged and may end up with an odd outcome.

Literature

- Darbyshire, Penny (2017). *Darbyshire on the English Legal System*, 12th ed., London: Sweet and Maxwell.
- Leventhal, Gerhard S., 1980, What Should Be Done With Equity Theory? In K. J. Gergen, M. S. Greenberg und R. H. Willis (eds.), *Social Exchange: Advances in Theory and Research*, vol. 9, New York: Plenum, pp. 27-55.
- Luhmann, Niklas (1985). *A Sociological Theory of Law*, London: Routledge and Kegan Paul.
- Luhmann, Niklas (2006). *Legitimation durch Verfahren*, 6th ed., Frankfurt at the Main, Suhrkamp.
- Machura, Stefan, 1988, Introduction: Procedural Justice. *Law and Policy*, 20, 1-14.
- Tyler, Tom R., 1990, *Why People Obey the Law*, New Haven: Yale University Press.
- Tyler, Tom R. und E. Allan Lind (1992). A Relational Model of Authority in Groups. In M. Zanna, (Hg.), *Advances in Experimental Social Psychology*, Bd. 25, New York: Academic, pp. 115-191.

A text version of this presentation is currently being written up.