

Institution: Birkbeck College
Unit of Assessment: 18 Law
Title of case study: Achieving Accessible Justice: Research and policy development to support effective participation and high-quality advocacy in the criminal courts
Period when the underpinning research was undertaken: Feb 2011 to date
Period when the claimed impact occurred: 2014 to 2020
Is this case study continued from a case study submitted in 2014? N
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>Our empirical research on defendants', witnesses' and victims' experiences of the Crown Court identified causes of frustration, anxiety and distress, and factors impeding court users' effective participation in proceedings. Subsequent projects were commissioned by the legal regulators to examine the quality of advocacy in the criminal courts. Together our court studies have stimulated debate, analysis and campaigns on the part of justice reform NGOs. They have also informed policy and regulatory changes; and the development of practitioner guidance and training, aimed at enhancing efficiency of court proceedings, supporting court users' effective participation, and improving legal representation.</p>
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>From 2011-14, we undertook ESRC-funded research on defendants', witnesses' and victims' experiences of the Crown Court. Through qualitative interviews and court observations, the study explored the essential features of the Crown Court process, as experienced by court users, and the interplay between the different players in the courtroom.</p> <p>As we describe in the book <i>Inside Crown Court (i)</i> and associated publications <i>Out of the Shadows (ii)</i> and <i>Structured Mayhem (iii)</i>, the study identified multiple distressing, stressful and perplexing aspects of the Crown Court experience for defendants, witnesses and victims alike. For many court users, a great deal is at stake when they attend court; and the court environment often feels alienating and daunting. Court processes are complex, ritualised and elaborate, while also chaotic and inefficient. Nevertheless, most court users appear to have an implicit belief in the legitimacy of the court process.</p> <p>On the basis of our expertise in courts research, in 2014-15 we were commissioned by legal regulators the Bar Standards Board (BSB) and Chartered Institute of Legal Executives (CILEx) to review the quality of criminal advocacy in the Youth Court and in Crown Court cases involving young defendants. This research which aimed to inform potential regulatory interventions for improving the quality of youth advocacy had various elements including a survey and interviews with advocates and young defendants, and court observations.</p> <p>As reported in the <i>Youth Proceedings Advocacy Review (YPAR) (iv)</i>, we found wide variability in the quality of youth advocacy. Effective advocacy was found to be dependent on advocates' specialist knowledge of youth justice law; their capacity to communicate effectively and build relationships with young defendants; and professionalism. Factors identified as barriers to advocates' development of these attributes and skills included lack of training and limited opportunities to learn from peers' practice.</p> <p>Following the successful completion of YPAR (iv), in 2017 we were again commissioned by the BSB, this time in conjunction with the Solicitors Regulation Authority, to interview judges about their perceptions of advocacy in the Crown Court; more specifically, to explore judges' definitions of 'good' advocacy and views on the extent of good or poor practice in their courts. Our research</p>

aimed to support the regulators' efforts to improve the quality of criminal advocacy, including by identifying issues of regulatory concern that might require further investigation.

Our resulting publication *Judicial Perceptions of the Quality of Criminal Advocacy (v)* presents a mixed picture of standards of advocacy which emerged from our judicial interviews. While the interviewees deemed most advocates to be competent or adequate, overall standards were largely perceived to be declining. However, advocates were praised for their growing skilfulness and sensitivity in handling vulnerable court users.

The studies outlined above form part of an ongoing programme of courts research which is bringing into ever clearer focus the multiple facets to the legal principle of 'effective participation' in court proceedings, and the critical part this plays in achieving access to justice. We continue to explore these themes through research extending to non-criminal parts of the justice system: namely, tribunals and the Family Court (in recent Nuffield-funded research) and the coroners' courts (in a forthcoming ESRC study).

3. References to the research (indicative maximum of six references)

- (i) Jacobson, J., Hunter, G and Kirby, A. (2015) *Inside Crown Court: Personal Experiences and questions of legitimacy*, Bristol: Policy Press

Some reviews:

'...offers an important contribution to a body of knowledge that is currently extremely limited ... will be of interest to researchers, legal practitioners and policy-makers who are interested in developing a better understanding of the impact of the process on court users and who may be seeking solutions.' [Grech D., *Criminology & Criminal Justice* 2016, Vol. 16(2)]

'... an important book for those interested in applying theories of legitimacy and compliance to the real world of criminal justice. It is an even more important book for criminal lawyers and for judges, and all those wanting to "improve" the Crown Court process.' [Padfield, N. *Criminal Law Review* 2015, 10]

- (ii) Hunter, G., Jacobson, J. and Kirby, A. (2013) *Out of the shadows: victims' and witnesses' experiences of attending the Crown Court*, Victim Support.
- (iii) Jacobson, Jessica and Hunter, G. and Kirby, Amy (2015) *Structured mayhem: personal experiences of the Crown Court*, Criminal Justice Alliance.
- (iv) Wigzell, A., Kirby, A. and Jacobson, J. (2015) *The Youth Proceedings Advocacy Review: Final Report*, Bar Standards Board and CILEx.

Lord Carlile (Chair of the 2014 *Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court*) commented on *The Youth Proceedings Advocacy Review*: 'The BSB deserves plaudits for the quality of the Institute for Criminal Policy Research team's thoroughness and clarity', *Counsel Magazine*, February 2016.

Hunter, G., Jacobson, J. and Kirby, A. (2018) *Judicial perceptions of the quality of criminal advocacy: report of research commissioned by the Solicitors Regulation Authority and the Bar Standards Board*. BSB and SRA.

4. Details of the impact (indicative maximum 750 words)

We engaged with judicial, statutory, regulatory and non-governmental bodies throughout the period we conducted our research, and since, for the purpose of stimulating and informing policy, procedural and practice reform. Key impacts thereby achieved are detailed below.

4.1 Impact on the Leveson Review of Efficiency in Criminal Proceedings (2015)

Jacobson was consulted as part of Leveson's *Review of Efficiency in Court Proceedings* (2015) for the Lord Chief Justice. Leveson's review cited evidence from *Out of the Shadows (ii)* about the stress caused to court users arising from delays to hearings and associated uncertainties.

Leveson incorporated one of our recommendations into his recommendation 30 to improve scheduling of hearings [*Sources to corroborate the impact:1a*]. The Government in March 2015 responded by accepting all Leveson's recommendations in principle [*Sources:1b*].

4.2 Impact on judicial training

Judges are trained by their peers at the Judicial College. *Inside Crown Court (i)* is used in Judicial College training by two course leaders [redacted]. They also ensured *Structured Mayhem (iii)* was added to the College's learning management system, and arranged for Jacobson to deliver a lecture on her research to around 50 judges at a Judicial College training course on case and trial management in December 2018 [*Sources:2a,2b*]. Approvingly quoting a fellow judge who described it as [redacted] advised that the book has influenced training [redacted] specifically with reference to what it reveals about judicial interactions with court users [*Sources:2c*]. [redacted] has repeatedly encouraged attendees at the Judicial College to read the *Inside Crown Court*. [redacted] The Foreword to the book's paperback edition, issued in 2016, [redacted] says it '*makes a substantial contribution to our understanding of this critical component of the criminal justice system, and provides a great deal of food for thought for all with a professional or general interest in the subject.*' [*Sources:2d*].

4.3 Impact on advocacy: enhancing training and standards

The Bar Standards Board accepted *all* the recommendations in our Youth Proceedings Advocacy Review, committing not only to taking regulatory action to improve youth advocacy, but also '*to work with other agencies ... to address the systemic issues that the report identifies*' [*Sources:3a*]

One example of this was the BSB's work with the Ministry of Justice in relation to the Taylor Review of Youth Justice, the object of which was to consider possible reforms to the youth justice system. The BSB met several times with the Ministry of Justice and Charlie Taylor [*Sources:3b*] and when the Taylor review was published in 2016 the BSB noted '*The recommendations that the report makes in this regard chime with our own work in this area, following the publication of research we commissioned in November 2015*' [i.e. YPAR (iv)] [*Sources:3c*]. Specifically, YPAR findings informed the Taylor recommendation 22 for mandatory training for all lawyers appearing in the Youth Court [*Sources:3d*]. The Government's response to the Taylor review confirmed that it shared Taylor's concerns about legal representation in the youth court and welcomed the actions of both the BSB and SRA to improve such training; and advised it would consider if further measures were necessary [*Sources:3d*].

The BSB fulfilled its commitment to take regulatory action in light of YPAR's findings by developing the *Youth Proceedings Competences (2017)*. These detail what is required of barristers working with young defendants and highlight the importance of specialist training. YPAR (iv) is described as '*the baseline for the competences*' and recommended '*as a further point of reference when engaging with the competences*' [*Sources:4a*]. Rule s59.6 of the BSB Handbook now requires barristers to register their competence to undertake youth advocacy; and advises that the BSB may refuse to issue a practising certificate if the required declarations are not made [*Sources:4b*].

The Solicitors Regulation Authority issued a consultation *Assuring Advocacy Standard* in August 2019 which cited findings of *Judicial Perceptions of the Quality of Criminal Advocacy (v)* amongst the 'Evidence of standards falling short' which motivated the review [*Sources:5a*]. In its response to the consultation, and reflecting a key finding of *Judicial Perceptions (v)*, the SRA committed to working with the judiciary to support reporting of poor advocacy [*Sources:5b*].

The SRA consultation also encompassed a review of youth practitioners' training needs: citing YPAR's finding '*that advocates were lacking in training in specialist procedures and sentencing powers in the youth courts*', and the associated Taylor Review proposal for mandatory training for youth court advocacy [*Sources:3d*]. In its consultation response, the SRA identified a number of measures for enhancing youth advocacy standards, including the monitoring of training records of solicitors practising in the Youth Court [*Sources:5b*].

4.4 Informing the activities of NGOs

A number of NGOs have used our courts research to inform policy and practice development, and have built on this research, often in collaboration with us, to advance and promote their law reform agendas.

Out of the Shadows (ii) was the outcome of collaboration with charity **Victim Support**, who published the report in 2013. As stated on their website, Victim Support use their reports to ‘make a strong evidence-based case for particular public policy stances’. By highlighting the challenges associated with giving evidence at court, this report has furthered Victim Support’s work to support crime victims and witnesses and campaign for improved provision.

The **Criminal Justice Alliance** – a coalition of 160 organisations working together and campaigning to create a fairer, more effective criminal justice system – approached us with a request to publish key findings from our Crown Court research, in what became *Structured Mayhem* (iii). Their motivation in publishing the research was that it addressed a number of themes the organisation had focused on in the past [Sources:6a].

Our research, including *Structured Mayhem* (iii) and *YPAR* (iv), is cited in multiple outputs from research and development NGO the **Centre for Justice Innovation**, including their written evidence to the 2019 Justice Select Committee inquiry on *Court and Tribunal reform* [Sources: 6b]. [redacted] describes the research as [redacted]. He mentions specifically that the research underpins dialogue he and others have had with the courts service regarding court reforms [Sources:6c].

Jacobson and Kirby made a significant contribution to the work of **JUSTICE** – the all-party law reform organisation – both through *Inside Crown Court* (i) and more directly as members of a JUSTICE working party established to identify ways of enhancing court users’ participation. This working party’s report *Understanding Courts* (2019) describes *Inside Crown Court* (i) as the ‘starting point’ of its work, citing the book extensively throughout [Sources:6d]. *Understanding Courts* presents wide-ranging policy and practice-focused recommendations, and has informed JUSTICE’s submissions to consultations and inquiries. These include the Civil Justice Council consultation on *Vulnerable Witnesses and Parties within Civil Proceedings* (2019), several recommendations of which are said by JUSTICE to ‘mirror’ those of *Understanding Courts* [Sources:6e] and which directly references *Understanding Courts* to support the claim that many “vulnerable court users within civil proceedings ... would benefit from assistance or protection” [Sources:6e].

Our collaborations with NGOs have continued through and beyond the current REF period, and have included work as research partner on two separate projects with NGOs. The first, with the **Centre for Justice Innovation**, was a Nuffield-funded study of problem-solving approaches in the Youth Court, which in late 2020 is already [redacted]. The second, with charity **Just for Kids Law** and funded by the Dawes Trust, will consider the need for interventions to improve the quality of representation and advocacy by criminal solicitors in youth proceedings, building on the work of *YPAR* (iv).

4.5 Impact on the Criminal Procedural Rules Committee (2015) including production of materials for lay court users

Structured Mayhem (iii) was the basis of a presentation in 2015 by Jacobson to the Criminal Procedure Rules Committee, chaired by the Lord Chief Justice and responsible for the rules governing the management of criminal cases [Sources:7a]. [redacted] was particularly keen to consider recommendations to amend the Criminal Procedure Rules to reflect concerns raised in *Structured Mayhem* (iii); for example whether changes should be made to the time limits which apply when making applications for special measures [Sources:7b].

[redacted] later cited *Structured Mayhem* (iii) as demonstrating the need for more accessible written materials for court users. Addressing concerns identified in *Structured Mayhem* about the complexity of legal language, the Committee, in tandem with Ministry of Justice-based

consultative group the Defendant Voice Engagement Panel (of which Jacobson is a member), produced 'easy-read' forms for lay people attending the criminal courts.

5. Sources to corroborate the impact (indicative maximum of 10 references)

1. (a) Extract from Leveson *Review of Efficiency in Criminal Proceedings* (2015) showing references to our research and the recommendation it inspired.
(b) Extract from Government response to Leveson Review accepting all recommendations
2. (a) Invitation from [redacted] for Jacobson to contribute to training course
(b) Programme for Case and Trial Management course October 2018 showing Jacobson as speaker
(c) Testimonial from [redacted] containing the quotes shown
3. (a) Oliver Hanmer, BSB Director of Regulatory Operations, in *Counsel* magazine, February 2016, containing the quote shown.
(b) Agenda for BSB Board meeting May 2016 confirming that BSB met MoJ and Taylor several times in response to the YPAR findings.
(c) BSB Press Notice 12 December 2016 on the publication of the Taylor *Review*
(d) Extract from Taylor *Review of the Youth Justice System* (2016), recommendation 22.
(e) Extract from Government response to Taylor review, containing the quote shown.
- 4 (a) Extract from BSB *Youth Proceedings Competences* containing the quotes shown
(b) Extract from *BSB Handbook* – Rule s59 and s59.6
- 5 (a) Extract from SRA consultation *Assuring Advocacy Standards* (2019) detailing the motivations for the consultation.
(b) Extract from SRA *Assuring advocacy standards consultation response* (July 2020).
- 6 (a) Emails from [redacted] relating to the CJA request to summarise *Inside Crown Court*
(b) Extract from the Centre for Justice Innovation response to 2019 Justice Select Committee *Courts and Tribunals Reform* inquiry
(c) Testimonial from [redacted] the quotes shown
(d) Extract from *Understanding Courts* (JUSTICE, 2019) containing the quotes shown.
(e) JUSTICE response to Civil Justice Council consultation on vulnerability in the civil justice system containing the quotes shown.
(e) Extract from Civil Justice *Vulnerable Witnesses and Parties* consultation 2019 containing the quotes shown
- 7 (a) Invitation from [redacted] for Jacobson to address the Rule Committee, agenda item 'Discussion of *Structured Mayhem*', containing the quotes shown.
(b) Initial contact from [redacted] mentioning [redacted] of interest. Email contains the quotes shown.