

Howard League for **Penal Reform**

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ECAN Facebook Group

The Howard League for Penal Reform is active on [Facebook](#) and [Twitter](#). There is a special page dedicated to the Early Careers Academic Network that you can reach either by searching for us on Facebook or by clicking on the button above. We hope to use the Facebook site to generate discussions about current issues in the criminal justice system. If there are any topics that you would like to discuss, please start a discussion.

Introduction

In September 2022 we welcomed over 250 delegates to our international two-day conference 'Crime, Justice and the Human Condition'. The event brought together contributions from academics and researchers at all levels, practitioners, policy makers, and experts by experience. They explored intersecting issues around crime, justice and the human condition, and were invited to 'reimagine' how the criminal justice system could work.

Our aims for the event were to develop our collective thinking and learning about issues relating to penal reform, with the view to helping inform our future strategies, approaches and policies. We were committed to ensuring that diverse voices and perspectives were incorporated including academic, practitioner, opinion former, activist and those with experience of the criminal justice system both in the domestic and international arena.

One of the key lessons emerging from the conference was the way in which a lack of public understanding about how the criminal justice system works engenders a lack of will to invest in it or change it. Emotive and strongly held views about crime and criminality are a barrier to reform. Sharing lived experience and human stories are essential in countering this. It is vital that we recognise the

value of lived experience and incorporate it meaningfully and authentically.

The conference also highlighted several strands of inequality and discrimination experienced by people in and around the criminal justice system. It highlighted a need for greater cognisance, and increased and purposeful consideration of protective characteristics.

This bulletin collates articles submitted by delegates following the conference, based on their papers. The first half of the bulletin builds on the conference's commitment to, and learning about, inclusivity and lived experience. The second half then showcases part of the broad range of research undertaken by delegates in striving for better social and criminal justice.

In *From imagination to reality*, Dwayne Antojado and Marietta Martinovic set out the disconnection, exclusion and polarisation of incarcerated people. The article explores ways in which this can be countered, for example through the work of the Behind Stone Walls Advisory Collective (BSWAC). The Collective facilitates the positive and meaningful inclusion of people with lived experience in learning and humane policy reform, ensuring that engagement has mutually beneficial outcomes for all involved.

Tina McPhee's article builds on this, with a call to action for the

meaningful involvement of people with lived prison experience. Using an autoethnographical approach as a formerly incarcerated university student, Tina identifies the tensions that exist within university-prison networks, including othering and stigmatisation. Yet despite these experiences, Tina identifies opportunities for equitable access, advocacy and culture change, starting with an honest conversation.

Dwayne Antojado, Marietta Martinovic and Diane Kahn explore cultural and media discourses of crime and punishment, and the ways in which lived experience narratives can shape this for the better. They highlight the impact of democratised and transparent sources of information in alternative media on public knowledge of and attitudes towards criminal justice. This power is harnessed by the non-profit organisation Humans of San Quentin (HoSQ), which publishes hundreds of written personal stories from people who are incarcerated.

Lauren Doyle explores the alternative media of the digital world through a different lens. Her article takes a zemiological approach, providing space for criminologists to explore the implications of behaviours that do not fall into the binary of 'crime'. The article focuses on the harms experienced by young people using social media, in particular on body image. Lauren problematises

the issues of harm and hate speech in relation to traditional definitions of criminality.

Janet Carter reimagines justice by sharing proposals for court reform, based on her own experiences in a career training magistrates and legal advisers. These proposals encourage us to reconsider current systems in light of lengthy and increasingly harmful delays among the courts.

Please note

Views expressed are those of the author and do not reflect Howard League for Penal Reform policy unless explicitly stated.

Features

From imagination to reality: Creating an inclusive and responsive criminal justice system through the voices of the formerly incarcerated

Dwayne Antojado and Marietta Martinovic

Introduction: Disconnection, exclusion and polarisation of incarcerated people

People who enter the carceral space are pervasively excluded from the general community and are removed from positive citizenship participation in broader society (Martinovic et al., 2022). In addition, the majority of people in prison come from disadvantaged, marginalised communities, and generally feel a disconnection to the wider, mainstream community (Ross, 2020). Despite being considered 'street smart,' they typically have low formal education attainment, and therefore lack self-confidence and self-esteem (Australian Institute of Health and Welfare, 2021). Further, the strict culture of the prison environment, based on risk minimisation and loss of individual autonomy, further restricts incarcerated people from believing that they can be worthwhile social contributors irrespective of their carceral



histories. This ongoing process of dehumanisation results in incarcerated people feeling ongoing self-doubt, subjugation within society, and non-worthiness to participate in important decision making processes or perceiving themselves as social change agents (Lerman, 2013).

The authoritarian regimes imposed in prisons are ubiquitous. These have an ongoing negative effect well beyond a person's time in custody. So much so that people who leave prisons have traditionally had to rely upon other people to advocate on their behalf (even though they usually do not have lived experience of the criminal justice system). The genesis of these advocacy efforts are often derived from service organisations which seek broader systemic change, sometimes at the cost of losing individual narratives. In other words, the unique individual experiences faced by people in the criminal justice system are too frequently lost in translation. As a consequence, these efforts fail to gain meaningful traction and momentum to influence meaningful change. These organisational platforms

are by virtue radical in their approach, leaving little room for forging critical partners to enliven effective change. Additionally, these organisations are considered by governments, at times, to lack in understanding and appreciation of the complexity of the socio-politics behind criminal justice reform.

The Beyond the Stone Walls Advisory Collective (BSWAC) offers a unique, safe space for incarcerated people to create connections and collaborate on ideas to generate solution-based strategies to improve criminal justice policies and practices. It is made up of individuals with three experiences of the criminal justice system – previously incarcerated people, practitioners and researchers. It was established by an academic from RMIT University's Criminology and Justice Studies discipline in Melbourne, Australia, and led by the voices of people with lived experience. BSWAC operates in close partnerships with government agencies, particularly the Department of Justice and Community Safety, and Corrections Victoria, Australia. It finds practical solutions to issues within the criminal justice system and collaborates with stakeholders to find holistic, responsive and relevant initiatives based on the voices of those with lived experience of the criminal justice system.

Moreover, inclusion and respect are core values of the BSWAC

which contribute to humanisation of people with lived experience and create an environment which proliferates self-worth, a strong sense of connection and belonging, and positive attitudes to finding contemporary solutions to social justice issues. Through the collaboration of ideas, sharing of information, and creation of innovative initiatives, self-esteem, self-belief and generally trust in one's abilities develops (Doyle et al., 2021). This paper describes the rationale, operation and outcomes of the BSWAC. Further, it discusses our role in two recent projects - "Between Blue and Green" for the Department of Justice and Community Safety (Victoria, Australia), and the Wyndham Law Court project of Court Services Victoria (Australia).

Lived experience engagement and its challenges

Over the last five years there has been an unprecedented interest from governmental organisations in Australia to include lived experience perspectives in policy and operational processes. This piqued interest in engaging with people with lived experience came out of the recommendations stemming from governmental inquiries and investigative commissions, such as the Royal Commission into Victoria's Mental Health System (Armytage et al., 2021). In fact, these inquiries have principally relied upon people's accounts and lived experience of policy initiatives established

by governmental and non-governmental organisations. The testimonies of those with lived experience have been taken as 'accurate' and 'indispensable' accounts of the realities of mental health services and care in Victoria (Australia), indicating a pervasive failure in care as well as hearing and including client voice. The findings and recommendations of all these proceedings indicate the need to include people with lived experiences in systemic reform, most notably, the policies and practices. Implementing this in practice is a challenge, as governmental procedures are set in rigid ways and substantive, structural organisational reform will take time to take effect.

The inclusion of lived experience and other diverse perspectives, which have been historically left out of governmental processes, may be discomfiting or discombobulating for industry professionals. It has been common for these professionals to resist participating in innovations, and sometimes they may have even gone as far as preventing the inclusion of lived experience perspectives. There is a contention here, where on one side lived experience requires buy-in from people currently working in the field, and on the other, people with lived experience need to appreciate the delicate reality of embedding lived experience perspectives in an occupational culture that has often been

regarded as flagrantly ignoring client voices. Irrespective, it is recognised that industry professionals feel threatened in the professionalisation of lived experience practice. However, the two are not opposing hinterlands of knowledge, but rather they should learn to work together in order to keep abreast and astute with contemporary criminal justice issues.

The establishment, present operation and future aspirations of BSWAC

The BSWAC was established as a post-release initiative to allow people with lived experience to continue speaking out about their experiences of incarceration. Upon release from prison, individuals who were a part of prison-based Think Tanks did not have a platform where they could continue to voice their opinions and advocate for change within the correctional space. As a result, the first community-based Think Tank was established in 2020 and then it transitioned into the BSWAC. It provides continuous engagement in shaping criminal justice policy for those exiting prison, as well as university students transitioning into professional practice and/or further study. Given members reside locally, interstate and internationally, BSWAC meets remotely every fortnight to discuss current projects.

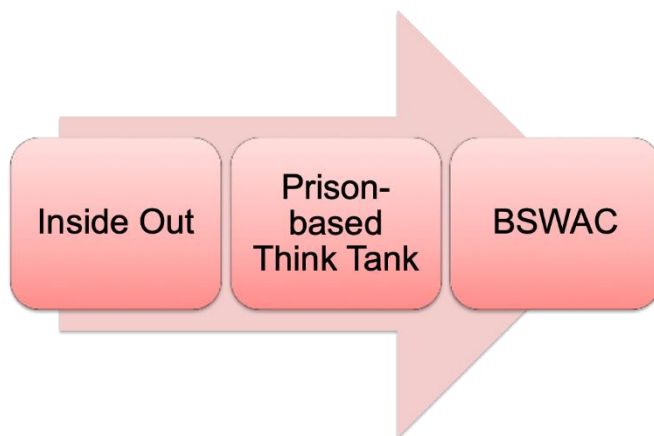


FIGURE 1: Progression of membership into BSWAC

Membership into the BSWAC is gained through graduation from the Inside-Out Prison Exchange Program and prior participation in a prison-based Think Tank located in one of six prison locations: Dame Phyllis Frost Centre; Tarrengower prison; Marngoneet Correctional Center - Karreenga annex; Ravenhall Correctional Center; Loddon prison and Middleton prison (Figure one captures this progression). Members of the BSWAC are trained on understanding the complexity of policy making, policy reform and the importance of incremental change (Martinovic and Liddell, 2020).

BSWAC is established under the auspices of RMIT University in partnership with the Department of Justice and Community Safety, Victoria, Australia. The overarching goal of the Think Tanks is to influence positive change inside and outside of the correctional system, as well as other social

justice-oriented areas, through effective collaboration with policy makers and other professionals. The focus of the Think Tanks is on developing long-term strategies to address the complexities which impact the likelihood of individuals entering, remaining in, or returning to the criminal justice system.

For example, in 2022, BSWAC has been working on the following two projects:

“Breaking Down Barriers Between Blue and Green” for the Department of Justice and Community Safety, 2021 (DJCS) (Victoria, Australia)¹:

This submission responded to the ‘Cultural Review of the Adult Custodial Corrections System’ addressing the terms of reference ‘Effectiveness and appropriateness of DJCS systems and processes to support the safety of people in custody.’ The submission explored issues surrounding dehumanisation, stigmatisation and the prison culture which cultivates division between incarcerated people and correctional staff. The positive impact of prison culture in Sweden and Norway was then discussed as well as the complexity of improving prison culture in Finland. Finally, an innovative ‘Between the Blue and Green’ program was created, with a separate workshop for new recruits and established staff, to improve

¹ ‘Blue’ and ‘Green’ refer to the colour of the uniforms that staff and people in prison wear.

relationships by developing mutual respect and understanding.

Wyndham Law Court project of Court Services Victoria, 2022 (Australia):

BSWAC was invited to collaborate with the Major Projects Division of Court Services Victoria in the development of the Wyndham Law Court in Werribee, Victoria. The Wyndham Law Courts Complex is a multi-jurisdiction precinct, comprising ten magistrates' courts, three children courts, four Victorian civil and administrative tribunal hearing rooms, three mediation rooms and 26 holding cells. The BSWAC report made recommendations supporting trauma-informed court design; the introduction of Client Liaison Officers who have lived experience of navigating the court process who assist people attending court; development of user-friendly technology; and offering post-court release support initiatives.

Martinovic and Antojado (authors) are exploring options to provide a training pathway into BSWAC which does not involve participation in Inside-Out or prison-based Think Tanks. They appreciate that criminal justice interaction can come in many forms, including community-based sanctions, which typically renders different lived experiences. This would provide the BSWAC with a pool of wide ranging experiences not limited to the carceral domain.

In addition, as BSWAC's work gains traction, the collective are looking into ways in which it can be established as a centre or institute of research, part of the RMIT University. This includes formalising its human resource structure, and the creation of community engagement platforms such as a website and social media accounts. In turn, these enhancements will place BSWAC as a leading advisory collective within the broader social justice space and attract more investment to allow it to grow and flourish well into the future.

Outcomes for ex-incarcerated people

The BSWAC is a unique initiative globally, being the only advisory group led by people with lived experience of the justice system, whose primary objective is to amplify lived experience perspectives in the criminal justice arena. The collective is an independent body without mandates or goals necessarily aligned with governmental or correctional indicators. The views of its members are not politicised or incentivised through motivations, other than to simply improve people's experiences of the criminal justice system, in recognition of the wealth of knowledge those with lived experience can bring to the table. These unique experiences illuminate the difficulties and challenges faced by those impacted by the criminal justice system and build policy and innovation in spaces that are often

overlooked by current policy and practice.

Formerly incarcerated people that engage in the BSWAC attain a sense of purpose, gain/regain confidence, and create prosocial networks built through mutual learning and understanding. Through these residual outcomes, previously incarcerated people feel that their experiences in the justice system are meaningful sources of knowledge with a real capacity to make social change. Members also frequently report feeling that they are in a space in which they belong, forging a sense of community among individuals which have previously been ignored and vilified by society. In turn, previously incarcerated individuals leave each fortnightly session with a heightened sense of achievement. Through project work, members of BSWAC are encouraged to undertake research and presentations. Exposure to various projects means that some individuals who have exited prison pursue further studies and careers, consequently building greater capacity for personal and professional growth. The possibility of obtaining employment within the social justice realm is a rewarding opportunity for many individuals affected by the criminal justice system.

As the BSWAC engages with a diverse range of people entangled within the criminal justice system, it is able to provide a multidimensional

perspective to a diverse range of contemporary criminal justice issues. For example, individual perspectives about the carceral experience itself may vary from those serving sentences in private prisons compared to public prisons. Continuous contact with individuals who do not have lived experience in the criminal justice system gives incarcerated people a regular sense of normalcy that is otherwise unobtainable. This has been most pertinent during the Covid-19 pandemic, where regular contact with the outside world was unreliable and transient.

The BSWAC is not just a program, especially for those that have been involved in this space for an extended period of time. For many, it is their only platform to openly and honestly discuss their experiences of the criminal justice system, and express the trials and tribulations they face whilst transitioning back into the community. It is through these unique and deeply personal experiences, reflected in the work of the BSWAC, that its members are able to feel proud of their contributions, and see their time in prison as being something meaningful and utilitarian to broader criminal justice discourses.

Outcomes for researchers and practitioners

Higher education graduates in criminal justice and related disciplines rarely have the opportunity to engage in meaningful dialogue with vulnerable people, especially

those entangled in the criminal justice system. Additionally, the material that the students learn through traditional mediums, such as textbooks and academic publications are not always indicative of the complex 'reality' and/or the deprivations people face in carceral geographies. Consequently, they are often oblivious of the impact of what an ineffective, bureaucratic, and highly regimented system can do to the incarcerated person and their families. By contrast, BSWAC provides university students (who go on to become practitioners and researchers) the ability to discuss and comprehend complex systemic and individual issues in a respectful and equal standing to those most affected by their work.

Through critical discussions in BSWAC, researchers and practitioners continually have their preconceived ideas and biases (which are often subconscious) challenged. Importantly, they no longer perceive incarcerated people as 'others', but rather as people who have the capacity to use their life experience to create social progress and cohesion in society. They also see people with lived experience of the justice system as humans with their innate qualities and characteristics - passion for improving systems which have affected their life, empathetic towards their peers and appreciative of the opportunities BSWAC provides them to voice their views. In turn, this allows students to

develop a nuanced understanding of disadvantage and subordination.

The researchers and practitioners develop employability skills which enhance graduate qualities and outcomes. Collaboration, innovative thinking, solution-based problem solving, rapport building, boundary setting, critical thinking and self-care are just some of the practical skills gained through being a member of the BSWAC. Moreover, researchers and practitioners learn the complexities surrounding changing public policies.

Conclusion

The unique inclusion of three groups of people with contemporary lived experience - previously incarcerated people, practitioners and researchers as collaborators in the BSWAC is well placed to humanely reform the social justice sector. It looks to further expand its reach and continue working with various organisations, ensuring that the diverse and contrasting voices of lived experience are amplified and incorporated into contemporary policy and practice.

References

Armytage, P., Fels, A., Cockam, A., and McSherry, B. (2021). *Royal Commission into Victoria's Mental Health System. Final Report*. State of Victoria. <https://finalreport.rcvmhs.vic.gov.au/download-report/>

Australian Institute of Health and Welfare. (2021). *Adult Prisoners*. Retrieved February 2, 2022, from <https://www.aihw.gov.au/reports/australias-welfare/adult-prisoners>

Doyle, C., Gardner, K., and Wells, K. (2021). The importance of incorporating lived experience in efforts to reduce Australian reincarceration rates. *International Journal for Crime, Justice and Social Democracy*, 10(2), 83-98.

Lerman, A. E. (2013). *The modern prison paradox: Politics, punishment, and social community*. Cambridge University Press.

Martnovic, M., A'Vard, T., and Antojado, D. (2022). Bringing together the voices of contemporary lived experience through prison-based and community-based think-tanks. *Advancing Corrections Journal*, 1(13), 150-161.

Martinovic, M. and Liddell, M. (2020). Learning Behind Prison Bars: University Students and Prisoner's Experiences of Studying Together. In D. Palmer (Ed), *Scholarship of Teaching and Learning in Criminology* (pp. 37-58). Palgrave Macmillan. <https://doi.org/10.1007/978-3-030-35158-8>

Ross, H. J. (2020). *Everyday bias: identifying and navigating unconscious judgments in our daily lives*. Lanham, Maryland: Rowman and Littlefield.

Martnovic, M., A'Vard, T., and Antojado, D. (2022). Bringing together the voices of contemporary lived experience through prison-based and community-based think-tanks. *Advancing Corrections Journal*, 1(13), 150-161.

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Move over! Creating space for lived experience scholars in the academy

Tina McPhee

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Lived experience (anti-) criminologist



This paper is as much a first-hand account of marginalisation at the hands of the university as it is a call to action for meaningful involvement of people with lived prison experience. I am in the unique position to be engaged in the struggle of navigating the experience of criminology and criminalisation simultaneously, and for this reason I have used an autoethnographical approach to foster a meaningful exploration of the “lived experience”, and to position our voices as experts in carceral discourse. By focusing on the university-prison nexus, I can extrapolate the tensions and opportunities that exist within this dynamic. Within this article I offer several personal narratives from my lived experience as a formerly incarcerated student trying to occupy the same spaces and access the same opportunities as citizens who have not been incarcerated. The following stories have been organised around notions of institutional violence that range from offensive labelling and Othering to insidious stigmatisation that severed my connection to the University. I should also point

out that the two most traumatic events happened during the COVID-19 pandemic where lockdowns and restrictions magnified any feelings of fear and doubt. I have also included an “update” that details the response from the University after hearing about this paper.

Let me start by introducing autoethnography and why it has been the best fit for me. Simplistically, autoethnography is narrative social science. Narratives of people with lived experience can help those of you without that experience imagine yourselves in our shoes; they can also uncover meaning or significance of the events we share with you, and hopefully illicit nuanced and sophisticated emotional responses that can eliminate indifference to our struggle. Reflexive narratives also encourage readers and listeners to focus less on interventionist thinking which tends to view folks like me as social problems in need of fixing, or as Prescott (2021) observes, ‘as targets for policy nudges and behavior correction’ rather than as

human beings with the same hopes and dreams as you.

Whilst my stories are written evocatively and authentically, I have also tried to treat my fellow citizens without lived experience gently and respectfully, understanding the damage that can be caused if individuals recognise themselves in the narrative. By adopting what the mother of autoethnography Carolyn Ellis (2004, p.46) calls 'an ethic of care and concern', I have reconciled the possibility of harming the reputation of oppositional actors with the fact that, although I recognise that a written account of a traumatic relational experience has the *potential* to injure both myself and others, the likelihood of that happening in this project is minimal compared to the value of interrogating epistemic injustice or violence and transforming problematic culture.

Now you know why I believe narrative is a powerful tool for developing a deeper understanding of lived experience, let me tell you a story.

It is 2018. My first day of university. I was thrilled to be offered a place in the Bachelor of Criminology as a first-generation student and was confident that the discipline would be a safe space for me and my voice. I had met two of the academics who had come to the women's prison to conduct research and I was so inspired by that interaction, I

wanted in. It was my first day outside of the prison walls in four and a half years and as I sat in the front row of the lecture hall with my prison-issued pen and paper, I listened to a respected criminologist refer to people like me as "prisoners", "offenders", and "criminals." It was a slap in the face and a brutal introduction to the world of criminology. These labels are part of the dehumanising project of the prison and the ease with which they are spoken in places of education demonstrates how the tentacles of the carceral system reach into so-called "neutral" spaces. Moreover, derogatory system language has been developed, represented, and legitimised in non-carceral settings where it continues the prison effect, leaving folks like myself feeling disparaged and increasingly fed up.

Fast forward to 2021. I began my honors year with a timely presentation requesting that fellow students refrain from referring to people like me using derogatory system language. I explained the harm caused and offense taken and argued that criminalised people have a right to be referred to using the descriptors that we choose. I provided supporting documentation with practical person-centered swap-outs. Yet from that day forward, I sat in every single class and heard the same offensive terminology I had been subjected to my whole degree.

Despite achieving first class, I regret choosing to do honors. I know this sounds dramatic but after I share this final story, my misgivings about universities make sense. As I came to the end of my undergraduate degree, I knew I had more to say and if I was going to embark on an honors project, I wanted it to be a powerful contribution to activist research. I was encouraged to author a thesis from a lived experience perspective by a nurturing supervisor, and with their support I plucked up the courage to write in my own voice for the very first time.

It was the second week of the year, and I was scheduled to present an overview of what my thesis might look like in its infancy. A week earlier our teacher had introduced himself as a former manager of a men's prison, and as we went around the room introducing our thesis, I self-identified as a formerly incarcerated woman and abolitionist. Two other people identified as abolitionists, which sparked a lively conversation about ideology and approaches to addressing harm.

As we were nearing semester break, it became obvious that there was a divide in the class between the three of us that were adopting abolitionist frameworks and the rest of the cohort. In addition to most students and academics completely ignoring my request to use person-centered descriptors rather than harmful labels, I attracted the collective scorn of numerous members of

the cohort as soon as I started to push back. At the same time, several of us were becoming concerned with the lack of theory being taught in that class and what this might mean as we develop our projects. We raised these concerns confidentially with our coordinator who took them to senior staff. Shortly after, we were asked to submit ideas for our major essays, and I wanted to write about the lack of formerly incarcerated scholars in criminology. The former-prison-manager-turned-teacher discouraged me from doing this, claiming it was too close to my thesis topic which was collateral consequences, and he recommended I write about victimology. As someone who was on parole and under the watchful eye of the state, I found this suggestion highly inappropriate and argued that any critical foray into the plight of people who have been harmed is surely dangerous ground for a person of my status. It had also been brought to my attention that other students were being given permission to write about the very theories that were underpinning their projects. This was the moment I realised that this man was not acting as my teacher, he was acting as my parole officer.

During this same week, the teacher sent a class email that referred to student concerns about his class, namely people with lived experience, and that he was being monitored by colleagues. The only person with lived experience was me.

A flurry of messages went around the Honors group chat, questioning why he had singled me out. How could he possibly know that I had raised concerns about him as part of a group complaint, confidentially? In addition to feeling exposed by someone senior in the college and targeted by the teacher, the unmoderated conversations in his class had rendered me speechless. They resembled pub talk at best, but most of the time I left that room feeling utterly dismayed. Two of us decided to meet with the head of the college anticipating some formal intervention. At this meeting I raised the issue of confidentiality and how someone from the previous meeting had clearly breached that principle and therefore, I felt unsafe with the usual complaints process. It was agreed that our grades would be monitored and re-marked if necessary, and they would need to get back to me regarding my safety as a formerly incarcerated student and any recourse resulting from the academic's conduct.

I have never heard back from the head of the college, nor did I go back into that classroom. I submitted my major essay titled 'Speaking Up: Creating Space for Lived Experience', knowing that I would be penalised for doing just that. In addition to receiving the worst grade of my entire degree, the comments from this man were extraordinary. The marking comments stated that the paper was 'unsupported by critical thought' and 'abounds with

accusatory jargon' in reference to the use of abolitionist language, and that my writing 'lacks remorse' and shows 'little regard for those with lived experience of criminal victimisation'. Apart from the hunch that this man appeared to be slighted after learning about my complaint, he was also applying "correctional" techniques to my abolitionist standpoints. Why do those of us who have served our sentences have to continually display remorse every time we speak about our rights? What level of remorse am I supposed to demonstrate and for how long?

This notion of adequate displays of remorse and confirmed redemption feeds into the very real phenomena of citizen surveillance, especially when a formerly incarcerated person self-identifies in spaces that they do not ordinarily occupy (Presser and Sandberg 2019, p.137). It is also a perfect example of what can go wrong when carceral actors enter classrooms. Although my paper had been remarked to a high distinction, I had concerns about this man's connections within the prison and parole system. Could I be at risk? In my world people on parole are returned to prison for all kinds of superfluous reasons. The fact that I felt as though I required protection from a university and its relationship with carceral actors was an unsettling revelation.

I had promised myself I would never go back on campus. I

had already declined to attend graduation ceremonies and alumni events. Yet in the Spring of 2022, members of the criminology faculty reached out for a meeting after listening to my presentation at the Howard League for Penal Reform's conference. I accepted the invitation to talk to them because they genuinely wanted to reflect on what had happened last year and ensure that it never happened again. To start the meeting, I presented a vignette from the conference paper I had delivered a few weeks earlier that detailed the harrowing events from last year. When I finished, I looked up and noticed that two of the staff were visibly upset, which in turn triggered my own swallowed tears. As one expressed their sincere apologies, they lowered their head in tears and whispered, "I couldn't protect you". Those words haunted me for weeks. Not only was this genuine remorse, but it was also a courageous expression of concern for me, and an insight into just how violent the academic industrial complex can be. Before this moment I was aware of my own suffering, but I had not comprehended the extent of the vicarious harm done to others. Well... a few of them anyway.

One of the most powerful criminologists in the team did not appear to share the same sense of regret about my experience with the university or connect on any emotional level with their colleague. It felt as if he was ignorant to the

purpose of the meeting, which was to listen and learn, and humbly reflect on what was being said. I mistakenly read his fidgeting and face rubbing as an uncomfortable reaction to the heightened emotion in the room. He leant back in his chair, deflecting, and began his "one bad apple" speech by telling me what I was thinking. It went something along the lines of 'I am wondering Tina, and I'm sure you're thinking the same...'. My arms crossed in front of my chest and every part of me bristled. Firstly, I am sick to death of criminologists, and men in general, speaking for me and telling me what I am thinking. Secondly, he failed to read any of those signals and launched into several (ill-informed) solutions to fix the "problem". As he was nearing the end of what was largely a defense of criminology, the remorseful colleague attempted to interject; to which he had the audacity to hold a STOP hand up at her face and demand "let me finish". The silence amongst the mostly female faculty was deafening. No one defended the target of his aggression, and no one called him out on his toxic masculinity. He was able to continue his talk, without question, as the superior "expert" in the room. What had played out in that moment is precisely why that criminology department is not a safe space for people with lived prison experience; in fact, I would argue that kind of culture is not a safe space for anyone.

These anecdotes demonstrate the tensions that exist in sites of

education. When describing the problematic relationship between universities and systems of oppression, Andrea Smith (2016, pp.38-40) uses the term 'Academic-Industrial Complex'. The expression is just as relevant to the university-prison nexus. Activist scholar Julia Sudbury (2016, pp.22-25) identified several functions that wed the university to the prison. One is the production of an educated carceral workforce that can tap into 'a plethora of new employment opportunities' as the carceral state expands prison, security, surveillance, supervision, and detention (Sudbury 2016, p.23). Another is that universities are 'the handmaiden for the punishing state' (Sudbury 2016, p.24); meaning, scholars are invested in producing carceral logics and social control mechanisms that have directly contributed to the punishment of more and more people and more and more behaviors. Reciprocally, prisons supply universities with the 'raw material for knowledge production, whether as experimental subjects, participants of social science research, or objects of mass media news stories' (Sudbury 2016, pp.23-24).

Given Australian universities have functioned as oppressive institutions of patriarchal power, founded on white supremacy, and responsible for peddling capitalist and carceral logics, can we, as people with lived prison experience in this country, ever be truly included, truly safe? The good news is,

that even I, the increasingly fed up one, believes we can. Successfully accessing the academy as a student or as a scholar with lived prison experience requires more than an open door. Like any project in equitable access, it needs deliberate action. We must begin with a historical reflection on the purpose and expansion of punishment beyond the prison, the role of coloniality in reinforcing racist and classist carceral logics in screening and surveillance, and the often-unwitting use of dehumanising language to "other" carceral citizens and reinforce all the unhelpful stereotypes that drive exclusion. This honest conversation can lead to successful advocacy regarding system and culture change, but to do that people that have been harmed the most by incarceration need to be resourced to pioneer those conversations rather than those who work with and for us. Finally, criminology, law, politics, and punishment systems need to proactively engage in this conversation – to trailblaze alongside system impacted people and think about how the projects, policies, and ideologies they are designing enhance or eradicate our struggle. I positioned this paper as a call to action and in doing so structured it to illuminate the challenges faced by those of us with lived prison experience in Australia. By focusing on the university-prison nexus that is most evident in today's criminology, it is hoped that we, as a collective, can advocate

for a prison to university pathway that does not leave formerly incarcerated students and scholars feeling harmed by an institution they turned to for transformation. This conversation begins with non-carceral citizens in positions of power or influence, including academics and those who design and staff the criminal legal system. They have the power and the privilege of non-carceral citizenship to support us to tear down the barriers and reclaim spaces where we can access opportunities. This might be the end of my paper, but the work does not end here. I am in this for the long haul; for all the hard work of pioneering, disrupting, and trailblazing that goes into abolitionist work. This is only the beginning.

References

Ellis C (2004) *The Ethnographic I: a methodological novel about autoethnography*, AltaMira Press, Walnut Creek, California, USA

Presser L and Sandberg S (2019) 'Narrative Criminology as Critical Criminology', *Critical Criminology*, 27(1), pp. 131-143, <https://www.proquest.com/scholarly-journals/narrative-criminology-as-critical/docview/2193894887/se-2?accountid=10910>, accessed 25 May 2021.

Prescott-Couch A (2021) 'Why social science needs stories: Statistics can illuminate the world, but narratives explain why the numbers matter.', *The New Statesman*, <https://www.newstatesman.com/ideas/agora/2021/12/why-social-science-needs-stories>, accessed 17 August 2022.

Smith A (2016) 'Native Studies and Critical Pedagogy: Beyond the Academic-Industrial Complex', in *Activist Scholarship: Antiracism, Feminism, and Social Change*, J Sudbury & M Okazawa-Rey (Eds), pp. 37-53, Routledge, Abingdon, Oxon, UK

Sudbury J (2016) 'Challenging Penal Dependency: Activist Scholars and the Antiprison Movement' in *Activist Scholarship: Antiracism, Feminism, and Social Change*, J Sudbury & M Okazawa-Rey (Eds), pp.17-32, Routledge, Abingdon, Oxon, UK

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I have just simultaneously completed both a 9-year custodial sentence and a First-Class Honors where I conceptualized, through autoethnography, the collateral consequences of conviction in South Australia. I have just been accepted into the University of New South Wales Law Doctorate where I will be progressing the conceptual work into a “live” database of collateral consequences. Through my experience as both student and object/subject of criminology, I’ve questioned the safety of universities, reentry services, and reform initiatives for people with lived prison experience.

The solidarity of carceral citizenship motivates my activism and storytelling, as does the struggle to see person-first language replace harmful system labels when referring to folks like myself. Abolitionist and decolonial feminist ideology inform my work and I locate myself amongst the small but growing body of activist scholars in this land-now-called Australia. In the words of the Coombahee River Collective (1977), ‘We realize that the only people who care enough about us to work consistently for our liberation are us’.

Humans of San Quentin: Humanising the incarcerated through social media advocacy

Dwayne Antojado, Marietta Martinovic and Diane Kahn

Introduction

Academic literature has long recognised the deleterious effects of media representations of people entangled within the criminal justice system (CJS). Dramatisation, simplification, titillation, conventionalism, and novelty are common themes often cited in research concerning crime reporting. Misrepresentations are often made about the individuals who commit crimes within the news headlines, especially when the media pursues sensationalist narratives which exacerbate personal characteristics to match the undertones and timbre of the news report (Jewkes, 2015).

Several studies highlight how these representations precipitate criminal offending in various ways (e.g., Farrington, 1977; Becker, 2018). For example, the concealment of emotions as is necessitated by mainstream conceptions of “masculinity” hinders the expression of emotion in a safe and prosocial way. Instead of vocalising these emotions through constructive and psychologically productive ways, it may manifest in



antisocial means such as violence and substance abuse. There is a much broader ethical and moral dilemma faced by media outlets, beyond the confines of the criminal justice discourse. Espousing one set of opinions is often proliferated at the loss of the contrary. These conundrums are not specifically only within the portrayal of crime and justice in certain perspectives, but these are also about amplifying a certain fidelity of truths against economic positioning, especially by large media corporations. Within knowledge, there is often a hinterland of truths, dispositions and beliefs. In other words, it is culturally loaded and expressive. No one source of knowledge is right, finding out the truth is a delicate balancing act, requiring a curious mind. Alternative media representations provide these nuances and offer an important counter-current to conventional media.

Humans of San Quentin (HoSQ), a humanitarian

nonprofit, was established in 2018 by Diane Kahn in an effort to create a counter current to media misrepresentations of crime, to appease punitive dialogue, and shift the narrative. Its aim is to give voice to people silenced in our communities by illuminating vulnerable narratives from within prison walls. Through the organisations' social media channels and website, HoSQ shines a light into prison cells around the world. With the use of social and restorative justice reform, they give people the opportunity to improve the lives of the underserved. They strive to provide a collective place to share resources, beliefs and to promote activism regarding social justice. They raise awareness and foster empathy by revealing the humanity that lives inside every one of us, story by story, person by person.

Media's traditional portrayal of crime and criminals

According to the media, in both fictional and factual types of programs and reportage, crime tends to be defined primarily as 'street crime.' Such crime is associated with personal terror and fear, and extreme violence is seen as central. Furthermore, the 'criminal' is distinctive and identifiably different from everyone else in society. Crime is sensationalised, general morality of people is declining, and fear is heightened by the way in which crime is seen to be random in nature, with anyone and everyone a possible target for victimisation (Jewkes, 2015). This narrative

has serious implications for unrealistically increasing the fear of crime particularly among the older sections of the population. Overall, the idea is that there is a continuing 'law-and-order' problem in society (Downes and Morgan, 2007; Mooney and Young, 2006), and that it is constantly getting worse.

Against this tide of disorder and lawlessness, the police and other crime fighters are generally portrayed as 'superheroes,' who are infallible and who use violence legitimately in order to counter the violence of the streets. For example, Reyns and Henson (2010) correlate the portrayal of police with similarities in the way in which comic book and graphic novels represent "heroes," while people involved in crime are depicted as "villains." Further, it has been demonstrated that the interests of the police and the media are entwined; they have a symbiotic relationship, in that the media rely upon the police for much of the information that sells their news product, and the police use the media to represent them in particular ways that reinforce the need for police, and the need for police to do something (Dowler, 2003). The media thus conveys a sensationalised image of crime, and they make unusual events into ordinary events in our lives.

The media are also important not only in shaping society's definitions of crime and crime control, but also in producing legal changes and reinforcing

particular types of policing strategies. 'Moral panics' (see Cohen, 1972) lead to more punitive changes in the law and the adoption of severe police methods. A common example of such policing methods includes increasing use of 'name checks' or 'stop and searches' in particular locales deemed high risk. At times, these policing strategies lead to the introduction of legislative amendments and initiatives; for example, denying sex offenders patronage from certain public areas. These legislative developments have even gone so far as to make people as young as ten years old subjects of criminal law. These reactions 'other' and group offenders into one category, depriving the judiciary the liberty from exercising discretion.

The pluralisation of alternative media

It is important, therefore, to separate the images and realities of crime in society. The media shape our perceptions of crime, and in the process they define crime in particular ways. Importantly, with the pluralisation of media and the growth of citizen-journalists, the conventional media representations of crime and criminal justice actors have come under scrutiny, and in some cases, are being undermined. Widespread access to the internet and mobile phones, along with information sharing platforms (Facebook and Twitter), has transformed the quantity and quality of knowledge production about crime, with alternative

media ranging from sharing research evidence (such as the Critical Criminology Facebook group) to the exchange of 'trauma porn' (Gatwiri and Mapedzahama, 2022).

An example of the proliferation of 'trauma porn' impacting criminal justice outcomes is the conviction recorded against the perpetrators of George Floyd's death in 2020, who happened to be law enforcement officers in the USA. It sparked renewed and more widespread support for the Black Lives Matter movement, representing a sweep of frustrations felt by the over policing of minority communities, especially in the western world. The 'noble cause' corruption so central to traditional media representations in real life shows such as 'COPS,' and dramas such as 'CSI' and 'Law and Order', compete with the memes and videos that depict the police, and the criminal justice system generally, at war against their own people.

The pluralisation of knowledge production (both good and bad) is changing what is known about crime, and what can be known about crime. It is too early in the life of new media technologies to predict how the increase in quantity of knowledge about crime will change the relationships between the state, its authorised criminal justice agents, and the subjects of criminal law. However, already, we are seeing that citizen-journalists, YouTube, and instant information sharing have

changed what we do as subjects of the law, but also that these technologies are forcing criminal justice practitioners and organisations to account for their actions. This increase through unplanned transparency is likely to have significant impacts on the adjudication of individual cases, but also impact on police and other criminal justice practitioners' everyday practices.

HoSQ: Changing the typical narrative

HoSQ, a humanitarian non-profit, was established in 2018. The aim of HoSQ is to give a voice to incarcerated people by illuminating and revealing the humanity of incarcerated people. These narratives appear on the organisation's website (including a blog and a video podcast platform) and social media channels. It provides the community with access to interviews with incarcerated individuals and provides hundreds of written personal stories from people who are incarcerated. Story by story, person by person, the goal is to raise community awareness and foster empathy. The work of HoSQ can be seen as a reflection of the pluralisation of media which impacts upon the way we forge identities of those interacting with the justice system.

HoSQ offers the incarcerated population a unique opportunity to share their narratives in the face of pervasively negative stereotypes typically presented about them. HoSQ staff work

alongside incarcerated people to help them craft their story. The key premise of the HoSQ is "that when we listen to each other's stories we will find that there is more that binds us together than tears us apart." In other words, HoSQ aims to create a tide against the negative current proliferated by the mainstream media.

The process through which incarcerated people articulate their life stories becomes a huge part of their personal journey of discovery - helping them to explain how and why they got to this point in their life. In this way, the reflexive practice induced by participation in HoSQ can also be therapeutic for the individual. In turn, incarcerated people are seen as complex and emotive human beings, directly countering the prevailing epistemologies of what it means to be a "prisoner" in popular consciousness. Overwhelmingly, incarcerated people are not inherently violent, sadistic, or unfeeling, as they are popularly portrayed in media and news coverage, but are instead subject to the same lapses in judgement, unhealthy behavioural patterns, and personal challenges that any of us face as human beings. Thus, when the life stories of incarcerated people are shared with people outside of the walls, these stories shine a light on our shared humanity.

Incarcerated people who share their stories are very complimentary of the process and subsequent impact that this

experience has on them. HoSQ regularly receives letters of gratitude from the people who have featured on their social media platforms, who frequently express that for the first time since their incarceration they felt heard 'in fullness.' They also often reflect about being deprived of the right to self-determination, and instead existing simply in their own complexity and their own narrative. They regard sharing their lives with the outside world as a huge opportunity to dictate who they are in their own words, without the interference from anyone else.

The process of writing and essentially engaging with the community beyond the walls is often described as cathartic by incarcerated people. To that end, we would like to share a letter received from "Freddy" who resided inside San Quentin State Prison:

How the Humans of San Quentin helps me cope

My name is Freddy. I am 33 years old and from Los Angeles. I've been incarcerated since the age of 16. Before coming to prison I was taught 'real men' never show emotion. We keep it bottled up. It is one hundred times harder in prison. Shedding tears when talking about our feelings is labelled as weak. Finding ways for release of stress often resulted in negative ways, such as fighting, drug use, obtaining cell phones, or taking aggression out on my family and friends.

It wasn't until I saw a flyer for the Humans of San Quentin, asking men with face Tattoos to write about our experiences and send it to their office. I had found a new and positive outlet for relieving stress. That night, as I sat down to write, I can vividly remember letting go of my feelings as I wrote, what I had been holding, in my head and heart.

When I was done, I felt like a great weight had been lifted off my shoulders. I felt better, as though I had emptied my bottle in a positive way. Months later I went to my first parole board hearing and included the story I shared with Humans of San Quentin in my packet. When asked why I included my story, I simply stated how much writing to them had helped me manage my stress. Writing in an open and vulnerable way has become a coping skill for me. I just write my emotions on paper without worrying about hurting my image or "looking weak".

The Humans of San Quentin has helped me find a positive tool for managing the stress in my life. Thank you and remember we are humans with human emotions!

*Don't let anything change that.
Sincerely,
"Freddy"*

The impact on those outside the walls who read the stories is similarly profound. Every single story that is shared on the HoSQ platform receives comments from the community; the readers express their

human connections with the incarcerated people. They relate to the human emotions and personal experiences that the incarcerated people share, and they often state that they realise that they have more in common with people on the inside than they could have ever guessed based upon their preconceived notions of what it means to be an incarcerated person. It could be argued that, in real time, human connections are drawn across the prison walls.

It is not just media portrayals of crime and incarcerated people that have a cumulative effect on those entangled in the criminal justice system. It is a much broader and bigger consideration which lies outside criminal justice discourse. The power that the media wields in purveying culture to its billions of subscribers worldwide has palpable implications in the way people behave. “Freddy’s” open letter, shared through HoSQ shows a great example of this, questioning masculine stereotypes about how to compose oneself. Indeed, whilst not explicitly mentioned, the essentialism of masculinity as being “prescribed” - to be tough and not to show emotion (Martino, 1999; Halberstam, 1998) - may have very well been an impetus in this individual’s offending. However, it is certainly having a pervasive and felt effect on the way in which “Freddy” is now coping in prison. The broader conceptual question here is, what are the moral and ethical dilemmas of conveying one set of views at

the cost of another? And are conventional media outlets equipped to grapple with these conundrums? The work of HoSQ goes far beyond repainting incarcerated people’s identities by highlighting the whole gamut of the human faculty, our vulnerabilities, and our challenges as a collective, incarcerated or not.

Conclusion

The pluralisation of media can be a source of relief for many people who are marginalised and historically painted within one set of brushes. Alternative media stations show the grey in what is often conveyed as black and white. It allows for nuances to be illuminated, and people are ubiquitously provided a platform to share their ideas, thoughts and feelings alongside conventional media without commodifying knowledge as needing to “sell,” such as the approach taken by mainstream media outlets, even to this day. Alternative media is not an industry led by an oligarchy of power-hungry individuals. It is simply about sharing knowledge, objective or subjective, irrespective it is knowledge in its rawest form. It is then up to us, consumers, to process this knowledge in whatever way we interpret, but it rebalances the halls of power from one motivated by money to one dominated by passion, truth and in the case of HoSQ, humanity.

References

Becker, H. S. (2018). Labelling theory reconsidered 1. In *Deviance and social control* (pp. 41-66). Routledge.

Cohen, S. (1972). *Folk Devils and Moral Panics*. Paladin.

Dowler, K. (2003). Media consumption and public attitudes toward crime and justice: The relationship between fear of crime, punitive attitudes, and perceived police effectiveness. *Journal of Criminal Justice and Popular Culture*, 10(2), 109–26.

Downes, D. and Morgan, R. (2007). 'No Turning Back: The Politics of Law and Order into the Millennium. In M. Maguire, R. Morgan and R. Reiner (eds), *The Oxford Handbook of Criminology* (4th edition), Oxford University Press, London, 201– 40.

Farrington, D. P. (1977). The effects of public labelling. *British Journal of Criminology*, 17, 112.

Gatwiri, K., and Mapedzahama, V. (2022). Pedagogy or “trauma porn”? Racial literacy as a prerequisite for teaching racially dignifying content in the Australian social work context. *Journal for Multicultural Education*, 16(3), 272-282. DOI 10.1108/JME-11-2021-0205

Halbertam, J. (1998). *Female Masculinity*. Duke University Press. DOI: 10.1515/9780822378112

Jewkes, Y. (2015). *Media and Crime: Key approaches to criminology*. 3rd Ed. Sage publications: UK.

Martino, W. (1999). 'Cool Boys', 'Party Animals', 'Squids' and 'Poofers': Interrogating the dynamics and politics of

adolescent masculinities in school. *British Journal of Sociology of Education*, 20(2), 239-263. DOI: 10.1080/01425699995434

Mooney, J, and Young, J. (2006). The decline in crime and the rise of anti-social behaviour. *Probation Journal: The Journal of Community and Criminal Justice* , 53(4), 397–407.

Reyns, B. W. and Henson, B. (2010). Superhero justice: The depiction of crime and justice in modern-age comic books and graphic novels. *Sociology of Crime, Law and Deviance*, 14, 45-66.

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Diane Kahn is a teacher and a social justice advocate. She teaches men inside San Quentin to attain their high school diploma

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Exploring the impact of youth engagement in social media: Shifting the boundaries of harms and criminality in the digital world?

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Introduction

Social media, and the broader digital world, have increasingly become an integral part of day-to-day life for many people. This has come alongside the advancement of smartphones and other portable, digital devices that make communication and networking through the virtual space even more accessible. This paper focuses on understanding the way young people engage with social media. It does this by drawing on earlier findings from my PhD research, which is concerned with the lived experience of disordered eating and body-image-related anxieties among 18 to 30 year olds; retrospectively reflecting on the ways that social media may have influenced their relationship with their self, body, and food.

When exploring the construct of harm in this context, the application of zemiological values to the understanding of youth engagement in social media is paramount. Zemiology provides a space for criminologists to explore implications of behaviours that



do not fall into the binary of 'crime'; allowing the opportunity to investigate the harm and impact of behaviours that are not constructed under criminal law. For this article, zemiology provides a space to explore the boundaries between harm and criminality on social media for young people, drawing on concepts such as online hate and trolling. This article hopes to provide a springboard for the need for more research into criminological futures and prospective harms posed by the digital world to all its users. By constructing a zemiological framework around the early stages of analysis in this study, it is evident that ongoing changes to UK legislation around vulnerability caused and perpetuated by the digital space remain an area of concern. Specifically, who should hold responsibility for the regulation of hatred on social media platforms such as Facebook, Instagram, TikTok and Twitter. A key area of concern for participants in this study was the potential harm posed to young people in the offline world because of engaging with 'online diet culture' and the use of filtered

imagery online. The article will conclude that further research is required into these areas, followed by the development of evidence-based education to support the safety of young people online.

Growth in social media

The growth in social media engagement is evidenced through various statistical analyses of online access and media use reports. Ofcom (2022) reported 99 per cent of children in their study, aged 3-17 years old, had access to an online device of some form. When narrowing this age range down to 8-17 year olds, this figured adjusted to 62 per cent reporting the use of at least one social media platform. This demonstrated a rise of just over half of their sample population from a survey analysed in April 2021 (Ofcom, 2022). Just 42 per cent of parents in the sample were able to correctly state the minimum legal age of signing up for social media (13 years old). If we are to consider periods of time, across 24 hours, where a young person can access social media, potentially unsupervised, having access to a mobile phone was a factor considered by Ofcom during their investigation. The findings of Ofcom's survey suggested 97 per cent of 12–15-year old's having access to a mobile phone. Therefore, they were able to access social media at any time of day. Girlguiding (2022) published the *Girls Attitude Survey* based on a sample of 2,000 young girls and women aged 7-21 years

old, with elements of the survey deliberating online harm and experiences of image-based social media platforms, such as Instagram. The findings from their survey suggested that female satisfaction with their self-image decreased as they moved through their teens, with 10 per cent of young women aged 17-21 years old being happy with their appearance compared to 42 per cent of girls aged 7-10 years old. The quantitative data produced by surveys such as those from Ofcom (2022) and Girlguiding (2022) demonstrate a clear need for further understanding of potential harms in the online space. A clearer insight into the regulation of social media is needed due to the potential impact social media content may have on a young person's self-esteem.

Alongside rising rates of social media use, there has been a rise in using social media to generate business opportunities and income by posting content on social media platforms, through building vast followings online. Where the role of the celebrity and people of 'influence' in mass media may have been reflected through the status of a sports person, television presenter, politician, or a model – for example – social media has seen a shift whereby influence comes from 'content creators'. 'Content creators' also known as 'influencers' are individuals who have specific followings on their social media platform(s), and who build "trusting relationships with

audiences and create[s] both commercial and non-commercial social media content across topics and genres” (Department for Digital, Media, Culture and Sport, 2022a: 4). The rise of ‘influencer culture’ in social media is a new political discussion, in terms of being able to understand this shift in influential power from offline to online, and how this can be regulated through new technology. Government investigations into ‘influencer culture’ and filtered imagery online have started to consider the role of young people online, as ‘influencers’, as content consumers and as individuals who may be susceptible to being misled by misinformation and disingenuous content (Women and Equalities Committee, 2021; Department for Digital Media, Culture and Sport 2022a; 2022b; 2022c; 2022d).

Methodology

As alluded to earlier, the findings discussed in this article frame the early stages of analyses of the researcher’s current PhD project. This study adopted a two-step methodological approach to collating a depth of qualitative data surrounding areas such as ‘social media use’, ‘influencer culture’, ‘diet culture’, and people’s experience of this. Firstly, a digital ethnography was conducted over a six month period, observing discussions held on two selected chat forums: Tattle.Life and Reddit. Underberg and Zorn (2013: 10) define digital

ethnography to be a process of “representing real-life cultures through combining characteristic features of digital media with the elements of story”. The types of behaviours and reactions that are usually analysed through digital ethnography tend to be forms of text, images, online spaces, and videos. Tattle.Life advertises itself to be a gossip forum that is designed to provide a space for users to ‘gossip’ about individuals who publicly post their day-to-day life on social media (Tattle.Life, no date). Threads of conversation are formed on Tattle.Life based on specific individuals. They can consist of screenshots of posts their chosen ‘influencer’ has created on social media or more generic discussions about the ‘influencer’ or public figure themselves. This provided a baseline understanding of certain influencers that may be discussed online, ahead of hosting interviews with participants. Discussion pages on Reddit, however, are categorized by topic as opposed to being person specific. For this research, ‘subreddits’ i.e., discussion pages on Reddit, under the category of ‘health and fitness’ were explored. This was used to determine discussions around ‘online diet culture’ within a broader ‘health and fitness’ context online. The data provided by digital ethnography has been an informative process for moving into data analysis comparing online discussions of ‘influencer culture’, the ‘ideal body’ and

engagement with 'diet culture' with offline interpretations.

The second stage of the fieldwork consisted of 22 semi-structured interviews that focused on retrospective self-analysis of social media use throughout a participant's lifetime. A snowball sampling approach was used to recruit participants for this research, via social media, with participatory criteria being experience in engaging with social media, and being aged 18 to 30 years old. Interviews involved discussions around participant's experiences of different social media platforms that they had used previously and/or use now – the most popular being Facebook, Instagram, YouTube and TikTok. This was considered alongside the types of content that they choose to follow as well as the content they find is 'suggested for them' via their social media search functions. Throughout this process, participants were able to provide their own interpretation of this experience, and if/how this had ever shaped their behaviour towards themselves, food, or nutrition, offline.

Is the digital space harmful? online filtering applications and image-based networks

Although interviews were not framed to assume negative experiences (in adolescent years) of social media, a concept that was highlighted by a significant number of participants (21 – 95 per cent), was the rise of 'online diet culture'. Diet culture is a highly

contested term, with a variety of defining statements, depending on the theoretical perspective it is being researched from. In this study, 'diet culture' was considered to have a variety of key areas that participants believed should be considered when researching the area, and when proposing recommendations to support young people in navigating their way around 'online diet culture' and potential misinformation in the online space. This was specifically related to their own experiences of low self-esteem, minimal self-fulfillment and bearing witness to various levels of 'hate' on social media. Examples of online hate provided by participants were based on comments they could see being made towards other people's content, or on their own. The hateful language they described included comments about a person's body weight, their fashion sense, or on the way that they posed in a photo, for example. With such 'hate' being geared towards characteristics such as idealistic beauty standards, lifestyle routine, and wealth standards set through 'influencer culture' on social media, 20 participants (90.1 per cent) considered 'hate' within these areas to be a 'normal' part of engaging with social media. This was not specific to the experience of one social media platform, but that of an array of platforms that encouraged the sharing of images, and visual materials, across their user engagement: Facebook, Instagram, TikTok,

YouTube, and Twitch were among those named.

The normalisation of online hate became a recurring discussion point throughout the interview process with participants across this study. Participants made it clear that although they did not agree with posting negative comments on a person's post – and it was not something that they did themselves – it was something they had witnessed on a number of occasions. *Lizzie*, a participant, highlighted that negativity on social media is not just an 'accepted' part of social media but is something that people with large followings are just 'expected to receive'.² This was supported by a finding from the Tattle.Life ethnographic dataset. On registering your details to create an account on Tattle.Life, a statement of terms and conditions must be signed: one rule being that this forum does not allow commentary about an individual who does not 'put themselves in the public eye' (Tattle.Life, 2022). These findings suggest an attempt to create a digital justification for victim-blaming behaviour, as opposed to holding the perpetrator accountable - if you live your life openly online, on a publicly accessible account, you are open to scrutiny. This demonstrates a potential regression back to victim-blaming tendencies, but in the online space, when categorising who is likely to

become a victim of online hate, and who is not.

The term 'self-sabotage' was constructed by participants in this study to conceptualise the way that they would continue to use social media, for up to ten hours per day, despite recognising the negative impact it was having on their self-esteem. One participant, *Alice*, referred to a 'vicious cycle' of wanting to demonstrate her productivity and 'healthy' routine online to her social media followers while being able to recognise that if she was not able to keep up this level of online activity [for example, due to a busy day at work], she would ruminate over whether her followers would think badly of her, or label her as lazy. Another participant, *Grace*, talked about how this was not just a 'vicious cycle' of wanting her online following to think of her as productive and successful, but that scrolling through her social media feed, particularly Instagram, would lead her to inquire about appearance altering procedures, including liposuction, face fillers and breast augmentation. Within these discussions, clear links were made between 'attractiveness', 'desiring validation over appearance', and the urge to change the way participants look – whether this be through appearance-altering procedures [physical], or image filtering applications [virtual] such as FaceTune, FaceApp or Airbrush.

² Pseudonyms are used when referring to research participants.

It is important that we consider the accessibility of appearance alteration, be it physical or virtual, and the harm that this has the potential to cause. Participants in this research reported how viewing filtered images influenced their decision to undergo cosmetic surgery. *Grace* reflected on her experience of undergoing cosmetic procedures and the physical health implications she suffered as a result – likening terms such as ‘harm’, ‘regret’ and wishing she had been more informed of potential implications before undergoing such permanent changes to her body. She believed her decision to be directly influenced by idealistic beauty standards set through mass media, not just image-based social media platforms. Young women’s urges to alter their appearances are reflected in broader datasets collated from across the UK. Patient Claim Line produced *Cosmetic Surgery Statistics UK* after conducting a nationwide survey; 45 per cent of 2000 respondents between the ages of 18 and 24 reported ‘influencers’ to have inspired their desire for cosmetic surgery (Buscoe, 2022). An equal percentage stated that this desire to undergo plastic surgery came from discussions with peers, and 41 per cent agreed that filtered images on their social media applications, such as Snapchat, had influenced their decision to undergo surgery (Buscoe, 2022). When constructing a notion of ‘harm’ in the online space, it is essential that the

rise in accessing appearance-altering surgeries and its connection to prolonged social media use are carefully considered. Studies such as Sharp and Gerrard (2022) emphasise the need for further research into the complexities of constructing knowledge around the impact of social media over self-perception of body image. Such research would also benefit from the voice of those with lived experience, which could aid the understanding as to how the reality of these experiences of low self-esteem and self-hatred, or online hate, could have been prevented or better supported.

Future directions of criminality and harm

The portrayal of the ‘ideal’ body type existed prior to the growth of social media, through newspapers, magazines, and television advertisements (Quittkat et al., 2019). The ‘ideal’ body type has transformed across different decades depending on social trends at specific times (Quittkat et al., 2019). Trends ranged from promoting UK size zero body types in the late 1990s through to early 2000s, to the enhanced hourglass figures of many reality TV stars of the 2010s. A trend shift is currently occurring, with the publication of a New York Post article in November 2022 stating: “*Bye-Bye Booty: Heroin Chic is Back*” (Diaz, 2022). As demonstrated through responses by *Alice* and *Grace* earlier in the article, online hate experienced and witnessed by

participants in this research was based on personal aesthetic – weight, body shape, lifestyle, and ‘what I eat in a day’ trends online. If we attempt to contextualise this in a framing of hate incidents, and hate crime, none of the examples provided here are incidents of hate geared towards a categorised protected characteristic, currently residing under the Equality Act 2010. If online hate and incidents of trolling take place, and are not geared towards a recognised protected characteristic, can we support a person in pursuing a case of online hate, through the justice system, resulting in a successful conviction? Despite this, is a criminal conviction justified if actions have a detrimental impact on an individual’s feeling of personal safety and mental wellbeing?

When considering potential legislative shifts around the management of social media, it is not as simple as regulating social media platforms through appropriate regulatory bodies and updating legislation such as the Malicious Communications Act 1988 or the Communications Act 2003. At the time of writing this article, the UK Online Safety Bill sits within a ‘reporting stage’ with the House of Commons and has since July 2022; with 101 submissions of written evidence from academics, commissioners, online companies, and organisations concerned with the need to regulate the digital world.

Submissions were concerned with different elements of this: safeguarding online; understanding mental health implications of using social media; online hate, online advertising of products; ‘influencer culture’; and the use of filtering applications. These issues construct the harms reflected in this research –not feeling good enough, wanting to undergo cosmetic surgery, not wanting to eat, wanting to engage in fad diets, and being aware of the ‘vicious cycle’ of feeling some of these emotions and still engaging with social media anyway. Although participants stated how this had changed over time, as they had built up knowledge of how social media can present dishonest content, 20 (90.1%) participants could recognise how their younger selves had adjusted their behaviour according to the social media content they engaged with. Retrospectively, all participants concluded that education was a key source to addressing concerns around online safety, online hate, and low self-esteem in young people. This is not just about educating young people, but educating parents, politicians, academics, healthcare professionals and other categories of caregivers in the advancing nature of social media – the positive ways that it can promote interpersonal connection, wider communication and the sharing of business opportunities [, but also the misinformation and potentially harmful content that young people can be susceptible to viewing when

going down the ‘rabbit hole of social media’.

Conclusion

This article aims to leave you with an appreciation of the intricate nature of attempting to construct a unified understanding of online safety and harms in the digital world, specifically social media, and its impact on young people. Despite the extensive period of evidence collection and the construction of an effective Online Safety Bill, this will remain a complex task while we await the outcome of ongoing government investigations into the responsibility of appropriate regulatory bodies, social media platforms, and policymakers in safeguarding social media users. Specific to the regulation of ‘online diet culture’, defining diet culture and understanding its role in the digital world is yet to be determined in the discipline of zemiology, or in government policy. Diet culture is not new – although it is highly topical and demonised when placed in an online context. Discussions of body image and the ‘ideal’ body have been around for many years; through televised advertisements, gossip magazines, newspaper gossip columns etc. The difference is that now we can engage with it more easily than ever before. As emphasised earlier, Ofcom statistics (2022) show that almost every young person has access to a smart device by the age of 17. Here, without parental locks, they can access the internet at all hours of the day. Young people no longer

need to actively seek out potentially harmful content, and it is not disposable. This has the potential to be a constant in our life – therefore, it has the potential to make us feel far more vulnerable to internal and external scrutiny. If such scrutiny leads to hate online, policymakers must consider where the line is drawn between hate incidents and hate crimes for ‘trolling’ behaviours that are not driven by aggravating factors, such as those categorised as protected characteristics under the Equality Act 2010.

As suggested in earlier stages of this article, it is essential that future legislation puts pragmatic strategies in place to safeguard young people in their engagement with social media, and how this may influence their behaviour and wellbeing in the offline world. A concluding recommendation from the early findings of this study is the need for the development of education to be provided to young people about social media – both the good and the bad, the best ways to manage the use of time, and how to communicate safely online. Education is key, and there remains a need to enhance young people’s understanding of the level of disinformation and filtered imagery that they may face online.

References

- Buscoe, G. (2022). Cosmetic Surgery Statistics UK. Cosmetic Surgery Data Hub. Online Article: Patient Claim Line [online]. Available at: <https://www.patientclaimline.com/news/cosmetic-surgery-key-statistics/> [Accessed on 17th October, 2022].
- Chae, J. (2018). Explaining Females' Envy Toward Social Media Influencers. *Media Psychology*, 21, 246–262. Department for Digital, Culture, Media and Sport. (2022a). Influencer Culture: Lights, Camera, Inaction? Twelfth Report of Session 2021-22. House of Commons. [online] Available at: <https://committees.parliament.uk/publications/22107/documents/164150/default/> [Accessed on 13th May 2022].
- Department for Digital, Culture, Media and Sport. (2022b). Influencer Culture: Lights, Camera, Inaction?: ASA System and CMA Responses to the Committee's Twelfth Report of Session 2021-22. House of Commons. [online] Available at: <https://committees.parliament.uk/publications/23200/documents/169665/default/> [Accessed 1st August 2022].
- Department for Digital, Culture, Media and Sport. (2022c). Influencer Culture: Lights, Camera, Inaction?: ASA System and CMA Responses to the Committee's Twelfth Report of Session 2021-22. Second Special Report of Session 2022-23. House of Commons. [online] Available at: <https://committees.parliament.uk/publications/23200/documents/169665/default/> [Accessed 1st August 2022].
- Department for Digital, Culture, Media and Sport. (2022d). Online Safety Bill: Government Bill. Originated in the House of Commons, Sessions 2021-22, 2022-23. Available at: <https://publications.parliament.uk/a/bills/cbill/58-03/0121/220121.pdf> [Accessed on 18th August 2022].
- Diaz, A. (2022). Bye-Bye Booty: Heroin Chic is Back. New York Post [online]. Available at: <https://nypost.com/2022/11/02/heroin-chic-is-back-and-curvy-bodies-big-butts-are-out/> [accessed 5th November 2022]
- Girlguiding. (2022). Girls' Attitudes Survey. [online]. Available at: https://girlguiding.foleon.com/girls-attitudes-survey/2022-report/?_gl=1*iy7gdh*_ga*MjAzMTEyOTk0NC4xNjcwOTU0NDAw*_ga_65DJ53B2C2*MTY3MDk1NDQwMCMC4xLjAuMTY3MDk1NDQwMCMC4wLjAuMA [accessed 8th November 2022].
- Ofcom. (2022). Children and Parents: Media Use and Attitudes Report 2022 [online]. Available at: <https://www.ofcom.org.uk/research-and-data/media-literacy-research/childrens/children-and-parents-media-use-and-attitudes-report-2022> [accessed 6th November 2022]
- Quittkat, H. L., Hartmann, A. S., Düsing, R., Buhlmann, U., & Vocks, S. (2019). Body Dissatisfaction, Importance of Appearance, and Body Appreciation in Men and Women Over the Lifespan. *Frontiers in Psychiatry*, 10(864), 1-12.
- Sharp, G., & Gerrard, Y. (2022). The Body Image "Problem" on Social Media: Novel Directions for the Field. *Body Image*, 41, 267–271.
- Tattle.Life (no date). Tattle.Life [online] Available on

<https://tattle.life/> [Accessed on 19th June 2022].

Underberg, N. M., & Zorn, E. (2013). *Digital Ethnography: Anthropology, Narrative and New Media*. University of Texas Press: Austin.

Women & Equalities Committee. (2021). *Changing the Picture Perfect: An Inquiry into Body Image*. Sixth Report of Session 2019-21: Report, Together with Formal Minutes Relating to the Report. House of Commons, Government Equalities Office.

Statutes

Communications Act, 2003. C. 21, <https://www.legislation.gov.uk/ukpga/2003/21/contents>

Equality Act, 2010. C. 15, <https://www.legislation.gov.uk/ukpga/2010/15/part/2/chapter/1>

Malicious Communications Act, 1988. C. 27, <https://www.legislation.gov.uk/ukpga/1988/27/section/1>

About the author

Lauren Doyle is a Lecturer in Social Studies and a PhD researcher, in the Faculty of Education and Society at the University of Sunderland. Her PhD research aims to critically explore the impact of social media on youth mental health and self-image, and criminalising online behaviours by applying critical realist and zemiological thinking. She is interested in researching within the areas of hate crime, harms of the digital world, self-esteem related harm, online diet culture, influencer culture, mental health in criminal justice and applying disability studies within a criminological framework. Lauren's research reflects a combination of practice background in justice and community disability support in the roles of advocacy and wellbeing coaching, as well as lived experience of attempts to access local mental health support services.

Faster, fairer justice: Four proposals for cost-effective improvement in our criminal courts



Janet Carter

The backlog of cases in the criminal justice system, partly due to court closures during the Covid-19 pandemic, is widely known (see for example: The Guardian, 2022). This a long outstanding issue with an increasingly serious impact on defendants, victims, and the safety of the community at large.

The need to improve court structure and management was recognised in the Review of Criminal Courts as far back as 2001 (Auld, 2001). More recently, the 2019 Conservative manifesto set out plans for a Royal Commission on the criminal justice system in the first year of government (though this did not occur). This paper identifies the problems and provides four practical proposals to bring faster and fairer justice at a reduced cost building on the resources already available.

Court delay statistics

Currently, there is a median wait of over a year in the Crown Court from offence to case completion. This problem existed even before the impact of Covid-19, with a wait of over eight months (Ministry of Justice, 2022a).

	Magistrates' Court	Crown Court
Q.2.2022	189 days	378 days
Q.4 2019	175 days	250 days

Figure 1: waiting times from offence to case completion

The delays are driven predominantly by 'Not Guilty' pleas which necessitate adjournment for evidence to be given at trial. Trials can be lengthy, and there are limited resources in terms of physical court capacity and availability of the judiciary.

In the second quarter of 2022, there were 59,687 cases outstanding in the Crown Court.

Problems created by court delays

For the defendant who is innocent - They may legally be kept in prison to await trial for up to six months (182 days to be exact) (S.I. 1987/299: s.4 and s.5).

Applications may be made to extend this period if the trial cannot proceed. The greater the backlog – the more applications are necessary. This results in the unacceptable human cost of being incarcerated for an inordinate

period before justice can be done, and the unnecessary financial cost (£24,204 in 2020/1) of keeping an individual in prison for six months (Ministry of Justice, 2022: Table 2a.)

For the victim – If the defendant is granted bail, there is no time limit and the victim may have to literally face the defendant (or even live with them) for well over a year until they give evidence at the trial. Understandably, the delay can reduce the resolve and commitment to give evidence in a far distant trial. If victims do stay the course, there is the issue of memory fading, particularly in the face of cross-examination.

This may lead to withdrawals and acquittals which should have been convictions. Additionally, a defendant who is guilty may remain in the community for a year or more - a danger to the public, and without the benefit of any rehabilitative sentence.

For the court – There is a shortage of judges and magistrates, enhanced by the fact that much of the workload is unnecessarily protracted. Morale and motivation are low because consistently less than 40 per cent of trials go ahead on the day (30.2 percent in Q.2 2022) (Ministry of Justice, 2022b).

Proposals:

1. To designate one courtroom in each Magistrates' Court as a Crown Court, to avoid the adjournment of cases from the Magistrates' Court to another hearing in the Crown Court. This will avoid the inevitable delay and duplication of cost and resource.
2. To recognise that the defendant should have an alternative option of trial at the Crown Court by 'judge only'. This enables those who feel that justice may not be done by a random, untrained, and often unwilling jury, to opt instead for a quicker hearing by a qualified judge and the advantage of a fully reasoned decision.
3. To improve diversity within the magistracy, particularly of young people, by recruiting a 'Trials only' panel. This would avoid the lengthy recruitment scrutiny, training, and high level of court sitting commitment which presents a serious deterrent to diverse recruitment to the magistracy.
4. To use the legal expertise of qualified judges to deal with case management and improve trial effectiveness.

PROPOSAL 1 - To designate one courtroom in each Magistrates' Court as a Crown Court, to avoid the adjournment of cases from the Magistrates' Court to another hearing in the Crown Court. This will avoid the inevitable delay and duplication of cost and resource.

Whilst unification of the Magistrates' Court and the Crown Court is unnecessary, there is an urgent need for

more effective liaison and sharing of resources. This proposal involves around 20,000 cases per quarter. They wend their way through the Magistrates’ Court only to be adjourned into another administrative and judicial process in the Crown Court to deal with the next stage of the case, usually a month later. This unnecessary delay is required by outdated procedure, which simply requires legislative amendment.

The following type of offences pass from court to court:

- *‘Indictable only’* offences, e.g., robbery. *‘Indictable only’* offences start in the Magistrates’ Court, for the purpose of determining bail. They must then be sent to the Crown Court for trial and sentence.
- *‘Either-way’* offences, e.g., burglary. *‘Either-way’* offences also start in the Magistrates’ Court, but some will then be allocated to the Crown Court for jury trial, or for sentence (if more than 12 months custody is considered appropriate).

	Magistrates Court	Crown Court
Q.2. 2022	59,715	22,821
Q.2 2019 (pre-Covid comparator)	75,296	23,943

Figure 2: ‘Indictable only’ and ‘either-way’ offence receipts (Ministry of Justice, 2022b).

Therefore, based on a relatively consistent range of receipts into both courts, between 30 and 40 per cent of all indictable and either-way offences will be delayed by their journey, at some stage, from the Magistrates’ Court to the Crown Court.

By designating one of the Magistrates’ Court rooms into a Crown Court room, these cases can either be listed or transferred to the Crown Court on day one, so that the defendant is sentenced, or at least there is meaningful progress towards trial arrangements.



Q. Is this an economic deployment of a Crown Court judge and the advocates to physically move to the Magistrates’ Court?

A. Yes. There are various potential scenarios which local workload, resources and geography will determine. There is already an appetite and legal provision to ease judicial deployment across both courts. District Judges (Magistrates’ Courts) may deal with Crown Court cases, and Crown Court Judges may deal with Magistrates’ Court cases. One judge, perhaps on a rota basis therefore has the potential to deal with a mixed list of Crown and Magistrates’ Court cases, so there will be full business for the day. Similarly, there are 4,405 solicitors with rights of audience in the Crown Court (as of October 2022),

who could spend an effective session, dealing with all types of case in the one building.

In terms of financial savings, there will be less court hearings, less administration, and the period of remand in custody will reduce.

PROPOSAL 2 - To recognise that the defendant should have an alternative option of trial at the Crown Court by 'judge only'.

This enables those who feel that justice may not be done by a random, untrained, and often unwilling jury, to opt instead for a quicker hearing by a qualified judge and the advantage of a fully reasoned decision.

This proposal emphasises at the outset, the retention of the right to trial by peers, with a jury of 12 people. This is the bedrock of our judicial system and would unequivocally remain. The additional feature is the proposal to add the option for trial by 'judge only', with the consent of the court. This is known as 'bench trial' or 'jury-waiver' and exists in parts of the USA, Canada, New Zealand and Australia. It was explored and recommended in the Auld Report (Auld Report, 2001, Ch.5: paras.109-118). Significantly, it had support from the Law Society provided that the defendant's decision was 'informed and taken after legal advice'.

There is precedent for the proposal. Trial by a single judge

of some of the 'either-way' offences already takes place every day by District Judges (Magistrates' Court), and there is already limited provision for trial by a single judge in the Crown Court. There is no choice for the defendant in these cases, as distinct from this proposal which places the choice on the defendant.

Advantages of trial by a single judge:

For the defendant:

- It allows defendants who are cynical about their liberty being determined in secret by a random, conscripted, untrained jury, to opt instead for a single professional adjudicator.
- A judge would give a transparent and reasoned judgment, and appeal can be properly considered on this basis. A jury simply gives a verdict.
- A hearing with a single judge can be listed for a quicker trial, as there is no jury to assemble, no explanations to give, and no lengthy retirement.
- In a legally or technically complex case, there may be more confidence in a single judge being able to ask necessary questions to clarify the issues and ensure understanding of the issue in dispute.
- Where the offence has attracted adverse public opinion by its very nature, or by publicity relating to the individual, there may be a

belief in greater objectivity by a single judge than by a jury.

For the administration of justice:

- Quicker trials create more court capacity and earlier availability of trial dates.
- There will be economic savings on the considerable administrative tasks required to service a jury:
 - Summoning jurors, e.g., 75 new jurors per week are required at Leeds Crown Court.
 - Dealing with applications to avoid and defer jury service.
 - Registration and allocation of jurors each day.
 - Expenses and loss of earnings claims.
- It avoids the inevitable 'down-time costs' of a juror who is typically summonsed for a 10 day period. Jury workload obviously fluctuates.



Q. What would happen if there are co-defendants and one defendant

seeks trial by a single judge and another defendant seeks trial by jury?

A. The Auld Report recommends the New Zealand approach which is for the jury trial to take precedence. All co-defendants would be dealt with a jury.

PROPOSAL 3: To improve diversity within the magistracy, particularly of young people, by recruiting a 'Trials only' panel.

This would avoid the lengthy recruitment scrutiny, training, and high level of court sitting commitment which presents a serious deterrent to diverse recruitment to the magistracy.

The magistracy has existed since 1361 and there is currently a specialist family panel and youth panel. The proposal is to create a third specialist panel which would deal only with trials, rather than the full criminal jurisdiction of trials, bail, and sentencing. There are two reasons for this. Firstly, it is the trials jurisdiction where the delays exist and there is sufficient workload to specialise in this one area. Secondly, it would address the current shortage of magistrates and the lack of age diversity on the bench, by enabling swifter recruitment, reduced training, and greater flexibility of sittings, as their powers will be restricted to the issue of verdict only.

Profile of the current magistracy

1 April 2022 - 12,506 magistrates
(Ministry of Justice, 2022, s.4.3)

- 57% female
- 14% people from minority ethnic communities
- 1.4% are under 30 (186 magistrates out of total 12,506)
- 79% are 50 or over
- 44% are 60 or over (5,492 magistrates out of a total 12,506)
- (This age group will increase by November 2022 when some retired magistrates in the 70-75 year old age group re-join the active bench to meet shortfall)

Suitable volunteers are coming forward to reflect the gender mix and ethnic diversity of the population as a whole. The age profile of the magistracy is the worrying aspect, given the age profile of defendants who appear before the court, particularly in the youth court. Young people have their own unique lifestyle, culture, and language, and this needs to be readily understood for a fair hearing. 'Contemporary life experience' must be visible on the bench for justice to be seen to be done by peers and not by grandparents.

There are two major obstacles to encouraging a younger profile and a wider socio-intellectual background - (i) the complexity of the appointment process, and (ii) the level of

commitment required (Gov.UK, 2022).

Appointment process and commitment – current magistracy

The complex appointment process is dictated by the current powers of the magistracy. Not only do they listen to trials and reach verdict as a jury does, but they also have the power to refuse bail, authorise search warrants, and impose sentence, including custody. It is therefore, quite rightly, a lengthy and careful process as individual freedoms are at stake. The process, including application, family scrutiny checks, and interview currently takes around 8 months. The application form is lengthy and includes writing up to 300 words to personally identify the five key attributes of being a magistrate. This may serve as a barrier, particularly to those with narrow work experience to draw upon.

The time commitment is another obstacle. The required assurance of at least five years' service, with a minimum of 13 sitting days per annum, five days of training in the first two years and continuation training throughout. This is absolutely necessary to ensure the increasingly wide-range of knowledge and skills are learnt and also kept up to date by regular sitting experience. Recruitment to the magistracy therefore favours those in the higher socio-economic group and those with a lot of spare time.

To gain a wider and more representative field of applicant, recruitment to the bench needs to offer the option of a far simpler process, with a more realistic commitment for the wider public to become involved.

Appointment process and commitment – ‘Trials only’ panel

The creation of a ‘Trials only’ panel would vastly reduce the application criteria and scrutiny as the role would not include sentencing or depriving individuals of their liberty. Initial scrutiny would therefore be akin to that of the jury criteria instead - residence, and some exclusion for certain types of conviction and medical condition. Then, a carefully structured application form to measure commitment and motivation.

The knowledge and skills would be limited to the trial process – eight hours of essential online training would be sufficient. Significantly, this is a longer training period on this important topic than that received by the current magistrates. The necessities for regular experience to retain competence, and the long-term commitment to justify an economic return for the training both disappear. The commitment requirement becomes far more flexible to suit the individual and the court, e.g., a ‘one-off’ four full weeks over the summer for a student when the courts struggle for magistrates.

This specialisation and reduction in commitment will inevitably create a far more attractive and realistic voluntary role for a greater section of the community and create an opportunity to demystify the judicial process. There would be several positives for the individual - the satisfaction of performing a public role, playing an active part in the judicial system, and building personal development. Possible progression, after further scrutiny and training to full magistrates’ powers would be possible. Consideration could also be given to the benefits of using trial panel members to train as jury foremen to provide leadership, structure and expedition to jury decision-making.



Q. Would a member of the ‘Trials panel’ carry the designation of being a ‘Justice of the Peace’, given that their powers are limited?

A. There are two possibilities in relation to designation:

- They are sworn in as Justices of the Peace, with full designation, albeit with strictly limited powers, in the same way as the ‘family panel’ have limited powers.
- They are recruited and designated instead as ‘lay members of the bench’ and they take the oath on appointment, or on their first day of sitting in the same

way as a jury member. There is a major difference from a jury member. They have volunteered, they are committed and trained for their role, and they will gather experience in this specialist area, over their period of their sittings.

PROPOSAL 4 – To use the legal expertise of qualified judges to deal with case management and improve trial effectiveness.

Case management comes into play after a 'Not Guilty' plea is entered. Arrangements are then made for the trial to proceed effectively. The reality is that, consistently, less than 40 per cent of trials are effective on the day. Court time is wasted, witnesses are disillusioned, and justice is delayed for those involved with the case, and those waiting in the queue.

Magistrates' Court - Trial effectiveness (Ministry of Justice, 2022b)

Q.2 2022:

- Effective trials = 32 per cent
- Ineffective trials - adjourned to another day = 18 per cent
- Cracked trials – late guilty plea or no evidence is offered = 31 per cent
- Vacated trials – removed from list before trial day = 19 per cent

Q.1 2020 (pre-Covid comparator):

- Effective trials = 34 per cent
- Ineffective trials - adjourned to another day = 13 per cent
- Cracked trials – late guilty plea or no evidence is offered = 28 per cent
- Vacated trials – removed from list before trial day = 25 per cent

Improvement will only occur if there is robust case management. This requires careful exploration of alternative charges, and identification of what evidence is required, and how it will be given. Much training time has been spent with magistrates over the years to improve the quality and outcome of the case management hearings. However, the statistics have remained obstinately stuck below 40 per cent. The reality is that it is unreasonable to expect lay magistrates to apply intricate legal enquiry with only occasional exposure to this type of case in their limited court sittings.

Judges have the benefit of legal knowledge, annual training, and daily experience of adopting an inquisitorial approach with advocates. The proposal is therefore to list all anticipated 'Not Guilty' pleas before judges so that case management can be conducted effectively, with the added importance of monitoring by the senior judiciary for the purpose of training and sharing expertise.

There is a shortage of judges. So far as the Magistrates' Court jurisdiction is concerned, we already have a qualified and experienced field of contenders for the role of part-time, fee paid, Deputy District Judge. These are the qualified lawyers who advise every bench of lay magistrates. Whilst they would properly be in open competition with other lawyers, the cost implication of appointing any Crown employee for this role is

cost-neutral for up to 30 days per year.

The creation of a number of Deputy District Judge vacancies, specifically to include case management within their workload, makes sound economic sense. It does not carry the long-term burden of salary and pension for a full-time role. This sector of the judiciary provides flexibility to meet demand and creates the opportunity to measure impact on trial completions before determining future resourcing.

The prospect of this motivating and legitimate line of progression has the added benefit of serving as an incentive to attract and retain lawyers in the civil service at a time when recruitment and retention is a major issue.

The proposals above are commended for policy consultation.

Summary:

- 1. Crown Court room within the Magistrates' Court**
- 2. Option of trial by a single judge**
- 3. 'Trials only panel' in the Magistrates' Court**
- 4. Trial management by judges**

'Faster, fairer justice'

References

Auld, Lord Justice (2001). Review of the Criminal Courts of England and Wales: Report, by the Right Honourable Lord Justice Auld. London: Stationery Office.

Available here:

<https://www.criminal-courts-review.org.uk/ccr-00.htm>

[Accessed 14 November 2022]

The Guardian (2022). 'Almost 75,000 defendants awaiting crown court trial, says head of CPS'.

Available here:

<https://www.theguardian.com/law/2022/nov/01/almost-75000-crown-court-cases-backlog-cps-max-hill>

[Accessed 4 January 2023]

Gov.UK (2022). Become a magistrate. Available here:

<https://www.gov.uk/become-magistrate/can-you-be-a-magistrate>

[Accessed 14 November 2022]

Ministry of Justice (2022).

Diversity of the judiciary: Legal professions, new appointments and current post-holders - 2022 Statistics [Published 14 July 2022].

Available here:

<https://www.gov.uk/government/statistics/diversity-of-the-judiciary-2022-statistics/diversity-of-the-judiciary-legal-professions-new-appointments-and-current-post-holders-2022-statistics>

[Accessed 14 November 2022]

Ministry of Justice (2022a).

Criminal Court Statistics Quarterly, England and Wales, April to June 2022 [Published 29 September 2022]. Available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1108689/ccsq_bulletin_apr_jun_2022.pdf

[Accessed 14 November 2022]

Ministry of Justice (2022b).

Criminal Court Statistics Quarterly, England and Wales, April to June

2022 [Published 29 September 2022]. MS Excel Spreadsheet: Trial effectiveness at the criminal courts tool. Available here: <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-april-to-june-2022>. [Accessed 14 November 2022] NB Select "Pivot_table" tab at bottom of spreadsheet to access "Pivot Table Analytical Tool for England and Wales: Trial effectiveness in the courts: Time Period: Q1 (Jan-Mar) 2014 to Q2 (Apr-June) 2022."

Ministry of Justice (2022c). Criminal Court Statistics Quarterly, England and Wales, April to June 2022 [Published 29 September 2022]. MS Excel Spreadsheet: Magistrates' courts cases received, disposed and outstanding tool. Available here: <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-april-to-june-2022>. [Accessed 14 November 2022] NB Select "Pivot_table" tab at bottom of spreadsheet to access "Pivot Table Analytical Tool for England and Wales: Receipts, disposals and outstanding cases for trial in the Magistrates' Courts: Time Period: Q1 (Jan-Mar) 2016 to Q2 (Apr-June) 2022."

Ministry of Justice (2022d). Criminal Court Statistics Quarterly, England and Wales, April to June 2022 [Published 29 September 2022]. MS Excel Spreadsheet: Crown Court cases received, disposed and outstanding tool. Available here: <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-april-to-june-2022>. [Accessed 14 November 2022] NB Select "Pivot_table" tab at bottom of spreadsheet to access "Pivot Table Analytical Tool for England and Wales: Receipts, disposals and outstanding cases for trial in the Crown Court: Time

Period: Q1 (Jan-Mar) 2014 to Q2 (Apr-June) 2022."

HMPPS (2022). Costs per place and costs per prisoner by individual prison. HM Prison & Probation Service Annual Report and Accounts 2020-21. Management Information Addendum. Available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1050046/costs-per-place-costs-per-prisoner-2020-2021.pdf [Accessed 14 November 2022]

Statutory Instrument (1987). Prosecution of Offences (Custody Time Limits) Regulations. Statutory Instrument, No. 299. Legislation.gov.uk. Available here: <https://www.legislation.gov.uk/uksi/1987/299/made?view=plain> [Accessed 14 November 2022]

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I am a barrister and enthusiastic supporter of the Magistrates' Court, having spent over 40 years principally involved in the training of magistrates and legal advisers. I recently retired as a Ministry of Justice civil servant and now have the time, experience, and motivation to help the progression towards faster and fairer justice. Janet is the author of *Magistrates' Companion to the Competences (Lawtexts)* (4 editions).

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