

Lay Magistrates

In the English Legal System, most of the criminal cases are tried in magistrates' courts and they are usually attended by about 30,000 of unpaid part-time judges which called the lay magistrates. In this essay, I set out the nature of the part-time magistrates and evaluate the effectiveness of them.

The lay magistrates are also called the Justices of the Peace. According to the Justices of the Peace Act 1979, they are appointed by the Lord Chancellor on the recommendation of local committees. They must live in or within 15 miles of the commission area. The word "lay" means that they are not legal professionals and have no formal legal training or education. But they are an important element in the legal system because they hear 97% of the criminal cases and decide who is guilty or innocent to a criminal offence. According to the Criminal Justice Act 1991, they can impose fine to the offender up to £5,000 and sentence imprisonment to six months. So that their importance can not be underestimated.

Since the lay magistrates are recommend by advisory committees, the committees themselves are also appointed by the Lord Chancellor on the advice of the chairman of the committee. It is argued that their appointments are lacking democratic legitimacy. It is because the selection process is not open to the public.

As Darbyshire wrote: "Lay magistrates are too white, middle class, Conservative and, I would add, old". As far as the concern of the public, this issue should be evaluated critically. In the report of the Royal Commission 1946-48 and the recent research both indicated that lay magistrates were dominated by the professional, managerial classes and retired person. Since lay magistrates are required to work on average 41.4 half days per year, the time commitment is therefore a significant factor. It is quite difficult for the middle to lower working class to commit in magistracy duties compared to the managerial class. In order to encourage wider participation in the magistrates' courts, the Employment Protection (Consolidation) Act 1978 provided that employers would be obliged to release their employees for such time as is reasonable, to permit them to serve as magistrates. Besides, they are entitled to claim allowance for the loss of earnings in the exercise of their office.

The political imbalance also causes concern. For a long period of time, the lay magistrates are dominated by conservative supporters. A study by Bond & Lemon in 1979 showed that the political beliefs did affect the behaviour in relation to sentencing. In the Lord Chancellor Department Consultation Paper in 1998, the Lord Chancellor attempt to achieve a political balance on the bench in order to make the bench more representative to the community.

The balance of social ethnic group and gender are important issues also. In the recent research, female are represent about 48 percent of lay magistrates. The percentage of black magistrates is also considerably improved. These are also covered in the 1988 consultation paper. It can be said that the Lord Chancellor is

trying to improve the selection of lay magistrates with an attempt to improve its democratic legitimacy.

Since the lay magistrates are not legally qualified, it is argued that their decisions are unjust, arbitrary and inconsistent. To evaluate the effectiveness of lay magistrates, the training of them must be examined. There was a brief induction course which are designed to give them an understanding of the functions and powers of the bench generally. Subsequence trainings are required in the following years. A new system of training has also been adopted since 1998. New magistrates are assigned experienced magistrates as mentors. An appraisal system is also adopted. These measure are all designed to improve the works of lay magistrates and help them to make sound judgement.

Lay magistrates are assisted and advised by a legally qualified justices' clerk. The main function of the clerk is to advise the practises, procedures and the question of law to the lay magistrates. The matters of facts will be decides by the justices of the peace. The advantages of this allowing the lay magistrates to adopt an ordinary views in the legal matters and give a fair judgment to the offenders. The lay magistrates have the final decision in the judgment. As far as the clerks provide clear direction to the magistrates, the decision is generally fair and consistent.

It is also claimed that local knowledge is an advantage of lay magistrates because of their commitment to the local community. In the case of *Paul v DPP* 1989, the magistrates took account of their own knowledge of the area in charging an offender with kerb-crawling. Lord Woolf said that the soft of case was particularly appropriate for trial by magistrates with local knowledge. This is an evidence that a lay magistrate can also make a good judgment.

The lay magistrates also enjoy the same immunity as to the professional judges under the Justices of the Peace Act 1997. It is to ensure the magistrates acting fairly and impartially in trial.

Although it is argued that the magistracy lacks democratic legitimacy, Lord Irvine has an attempt to improve its selection process in order to enhance its legitimacy. Occasionally, it might have some unfair judgments from the magistracy, the works of them are generally effective. This system should not be abolished because it provides an inexpensive, efficient and fair legal services to the public.