
Article:
Cammiss, S. and Stride, C. orcid.org/0000-0001-9960-2869 (2008) Modelling mode of trial. The British Journal of Criminology, 48 (4). pp. 482-501. ISSN 0007-0955

https://doi.org/10.1093/bjc/azn029

Modelling Mode of Trial

Steven Cammiss, Lecturer in Law, University of Leicester, and

Chris Stride, Institute of Work Psychology, University of Sheffield.

Introduction

Most criminal justice practitioners view mode of trial as largely mundane. When completing the fieldwork for the study reported here, it was not uncommon for the researcher to be asked whether there was something much more interesting that he'd rather observe. In fact, the mundane reality of most mode of trial decisions confirmed this view (Cammiss, 2006a; Herbert, 2003 and 2004), and there were many times when the researcher would have preferred to have been elsewhere. Nevertheless, mode of trial has exercised the mind of politicians and policy makers over the decades. More recently, the Criminal Justice Act 2003, had mode of trial within its sights in various ways (Cammiss, 2006a; Taylor, Wasik, and Leng, 2004), the aim simply being to reduce the number of triable either way cases that reach the Crown Court. This legislative initiative was, in several respects, the result of a process that began much earlier. Many of the initiatives within the 2003 Act can be traced to the two failed Mode of Trial Bills of 1999 and 2000, and the findings of the Auld Report (2001). Similarly, the Narey Report (Home Office, 1997), the Royal Commission on Criminal Justice (1993) and the Report of the James Committee (Home Office and Lord Chancellor's Office, 1975) all recommended reform of the procedure. These reports have been supplemented by legislative and administrative activity, such as official guidance on mode of trial decision making, for example, the soon to be

defunct Mode of Trial Guidelines[1], and the introduction of plea before venue.[2] For over 30 years, since the publication of the Report of the James Committee, policy makers have been attempting to persuade magistrates to take more cases and convince defendants to consent to summary trial.

Why has such a simple procedure caused so much political and legislative activity? On the face of it, there appears to be little reason for this. Mode of Trial hearings concern the middle ranking category of criminal cases. Summary offences have to remain in the magistrates' court while indictable-only offences are sent to the Crown Court. For triable either way offences, to simplify somewhat, magistrates decide whether or not to accept jurisdiction with the defendant retaining a right to elect Crown Court trial. Over 95 per cent of all criminal cases remain in the magistrates' court (Home Office, 2006) and indictable-only offences constitute a substantial minority of the Crown Court's workload; 40 per cent (Crown Prosecution Service, 2006). However, the mode of trial process is situated at a crossroads where the rights of defendants and the cost of justice intersect. While the evidence is somewhat dated, it does suggest that defendants value the ability to elect Crown Court trial (Bottoms and Mclean, 1976; Gregory, 1976; Riley and Vennard, 1988; Hedderman and Moxon, 1992), although it must be noted that elections have dwindled as a proportion of all either way cases that are sent to the Crown Court (Home Office, 2006). Linked to this is the important question of whether minority ethnic defendants prefer Crown Court trial (Fitzgerald, 1993). Additionally, evidence hints at a better chance of acquittal in

[1] The Guidelines were initially advertised in a practice note in 1990 ([1990] 3 All ER 979-981) but the updated version can now be found in *Blackstone's Criminal Practice* (Murphy and Stockdale 2006). The sentencing guidelines council have published draft National Allocation Guidelines that can be accessed at www.sentencing-guidelines.gov.uk and these will supersede the Mode of Trial Guidelines.
[2] Criminal Procedure and Investigations Act 1996.

the Crown Court.[3] The ability to elect Crown Court trial is regarded by many as an important point of principle. Previous legislative reforms have attempted to remove the defendant's right to elect Crown Court trial and these faced vociferous opposition. For instance, in the House of Lords debates on the Mode of Trial Bills, peers described the right to elect as an ancient right that originated from Magna Carta.[4]

The impetus for these reforms can be largely explained on grounds of economy. Crown Court trial is regarded as expensive and a host of additional costs are incurred. For instance, Hedderman and Moxon (1992) suggest that defendants in the Crown Court receive comparatively heavier sentences (although the evidence presented by the Halliday Report suggests that this conclusion may no longer be valid (Home Office, 2001)) and that electing Crown Court trial will both impact upon defendants and the system through increased costs associated with higher rates of imprisonment. They also note higher costs resulting from remanding defendants to custody for a Crown Court hearing and the delays that impact on the workings of the Crown Court as a result of an increased caseload.

Despite this political interest, there has been a relative dearth of research on mode of trial. The James Committee commissioned research by Gregory (1976) and Bottoms and McClean (1976) looked at the preferences of defendants. More recently, two Home Office research studies have examined the mode of trial process (Riley and

[3] At the time the Criminal Law 1976 progressed through parliament, doubt was cast on whether a defendant did have greater prospect of acquittal in the magistrates' court (HL Deb vol 379 cols 601-602 26 January). These figures were shown to be unreliable (Vennard, 1981) while later evidence supports the initial view. Studies by Vennard, when controlling for evidential case features, suggest that venue has a bearing on conviction with a greater chance of acquittal in the Crown Court (Vennard, 1982 and 1985). Hedderman and Moxon (1992) also report greater conviction rates in the magistrates' court.

[4] For instance, for the Committee stage of the Criminal Justice (Mode of Trial) Bill, see 20 January 2000, HL Debs, Vol 608, Cols 1246-1298.

Vennard, 1988; Hedderman and Moxon, 1992) and within the last decade only two researchers have examined the mechanics of the mode of trial process (Cammiss, 2006a, 2006b and 2007; Herbert 2003 and 2004). It appears that as politicians have attempted to reduce the workload of the Crown Court, academics have had less and less to say on the process. It could, therefore, be argued that the proposed and enacted reforms have taken place within a knowledge vacuum and, to some extent, have missed the mark. Nevertheless, we do know a little about the mode of trial process.

The mode of trial hearing

The mode of trial hearing is a relatively straightforward procedure. While this has been amended by the Criminal Justice Act 2003, this paper will describe the elements of these hearings as conducted during the research.[5]

A mode of trial hearing only takes place if the defendant either pleads not guilty or declines to indicate a plea. A guilty plea leads to a sentencing hearing. If the case proceeds to mode of trial, initially the prosecutor makes an observation to the court, largely in the form of a narrative of the events that are alleged to have happened and which form the basis of the charge (Cammiss, 2006c). This will nearly always be accompanied by a recommendation as to where the case should be tried. The defence solicitor is then given an opportunity to address the court, although on most occasions they remain silent; magistrates are to make their decision on the basis that the prosecution can prove their case and this, therefore, leaves little room for argument. Additionally, if a defendant wishes to elect Crown Court trial, they can do so

[5] The reforms in the Criminal Justice Act 2003 are examined in Cammiss (2006a).

regardless of the decision of the magistrates. After the defence representations, the bench come to a decision. If they decline jurisdiction, the case is sent to the Crown Court. If they accept jurisdiction, the defendant is given the opportunity of consenting to summary trial. If he consents, the case remains in the magistrates' court. If not, the case is sent to the Crown Court.

Research evidence on mode of trial

Previous research studies have been explored in detail elsewhere (Cammiss, 2007), so this paper will largely present an overview of these findings, mostly to provide some context to this study.

By and large, most commentators have agreed that mode of trial hearings are regarded as largely mundane and straightforward. As explained above, when completing the fieldwork for this research, the researcher was frequently asked if he would not want to address something much more interesting. Herbert (2003) reports how magistrates view mode of trial as unimportant and how the vast majority of hearings were completed within five minutes, and Cammiss (2006a) describes how mode of trial is largely viewed as a straightforward procedure that operates on the basis of common assumptions and shared knowledge. Finally, Hedderman and Moxon report that courtroom professionals view most decisions as clear-cut.

The consequence of this view is that it is difficult to persuade interview respondents to articulate the important variables in mode of trial decisions. When completing the fieldwork for this study, the researcher observed the induction of a new Dedicated

Case Worker. On mode of trial, the caseworker was told that the decision was largely intuitive, and they would eventually 'get the hang of it'. As a result, studies such as Hedderman and Moxon (1992), where non case specific interviews were held with prosecutors, provide largely unremarkable data and little more than broad generalisations and truisms that guide the courtroom professionals. Little effort is made to evaluate how these operate in situ. Concrete findings are restricted to areas such as the high degree of agreement between the bench and prosecutors. Riley and Vennard (1988), for instance, note that the bench accepted the prosecution's recommendation in 93 per cent of cases; Cammiss (2007) reports a figure of 96 per cent. The reports all speculate on the basis for this agreement. Cammiss (2006a) suggests that prosecutors are able to manage the hearing through the provision of effective information whereas Hedderman and Moxon (1992) point towards the existence of a local court culture. Herbert (2004) suggests that both reasons are simplistic and the reality is probably best understood as a construct of both explanations combining in a complex courtroom process that is influenced by local culture, but one where prosecutors are valued as impartial professional experts.

Courtroom culture has also been raised more generally as an explanatory aid in understanding mode of trial decisions. Herbert (2004), in particular, notes how local magistrates' courts feel the need to respond to local problems and value the concept of local justice. Hedderman and Moxon (1992) report large differentials between different court areas as do Riley and Vennard (1988), who additionally point to the importance of local guidance (Riley and Vennard reported before the delivery of the National Mode of Trial Guidelines, when local Crown Court judges would instead provide guidance on mode of trial). This focus upon local cultures is not unique to

mode of trial. Indeed, local courtroom cultures have been utilised to explain differentials in sentencing and the granting of bail (Rumgay, 1995; Hucklesby, 1997).

One final area needs to be explored. The evidence here is very sparse, but there is reason to suspect that race is an important variable within the mode of trial decision making process. Two studies point to the possibility that magistrates' are more likely to decline jurisdiction in cases with minority ethnic defendants (Brown and Hullin, 1992; Jefferson and Walker, 1992). Brown and Hullin conceded that they had insufficient information to test whether this differential was the result of legally relevant variables or pointed instead towards discrimination, and suggested further research on this point.

In order to build upon these findings, this paper will offer a quantitative analysis of data collected on mode of trial hearings in an attempt to identify which variables are related to the bench's decision. Before this analysis is presented, the statistical methods implemented will be explained.

Methodology

Data collection

In many respects this study represents a small scale exploratory project that aims to build an initial picture of the mode of trial decision; therefore, upon entry to the field, we did not wish to predetermine the variables that would be collected. With this in mind we aimed to develop an understanding of the process in situ; initially cases were

simply observed with a rudimentary attempt at data collection. The purpose of this preliminary stage was to build a picture of what information was available, and also to gain a grasp of what seemed important. Shadowing of prosecutors, informal conversations and file inspection were the first methods chosen to build upon the understanding gained from the literature review, which had given some idea as to the variables worthy of study.

After this pilot phase, a data capture form was produced that focused upon a number of different variables. Due to previous research findings, the study was designed with court cultures in mind, so two court venues with differing characteristics were chosen. The research was based in one CPS area covering an urban (City) and small town (County) court, with the fieldwork beginning in March 2001 and completed in nine months. The researcher gained access to the CPS for the research; 12 prosecutors were shadowed in the City Court and nine in the County magistrates' court.[6] The majority of the fieldwork was spent within the City court, with 70 mode of trial hearings observed there, and a further 30 in the County court, giving a final sample comprising 100 hearings in total.

For each hearing an accurate record was made of our outcome variable of interest (i.e. whether or not the bench accepted jurisdiction), the circumstances of the hearing (e.g. court location, number of defendants), and the nature of the offence in question. Furthermore, access to the CPS allowed for detailed notes to be taken from prosecution files, enabling the collection of information on demographic background and past offences for each defendant. Additionally, a research diary was produced in

[6] We are grateful to the CPS for providing access and all the prosecutors, caseworkers and administrative staff who generously donated their time. Unfortunately, it is not possible to name any one person individually as one of the conditions of access was the granting of anonymity.

order to record general observations on the mode of trial hearing and the general workings of the magistrates' courts observed.

Given the importance of demographic features generally in research of this nature, a number were collected as a matter of course such as the age of defendants, their employment status, ethnic origin and gender. Additional variables recorded included previous convictions; previous studies have questioned whether previous convictions impact upon the mode of trial decision (Hedderman and Moxon, 1992). The remand status of the defendant was also monitored because past studies have identified this as an important variable in understanding decision making within the courtroom (Bottomley, 1970; King, 1971). The busy City court heavily relied upon the work of District Judges and previous research has questioned whether they are more severe in their decision making (Seago et. al., 1995); this was definitely believed to be the case by the local criminal justice professionals. As a result, it was noted whether a lay bench or District Judge presided over the case. Given that the information was readily available, data was also collected on whether the defendant was legally represented.

By far the most obvious factors to consider were those related to the substance of the allegations in the case in question. Information was collected on the details of the charge and the nature of the case against the defendant. This was provided in the case files and presented within the mode of trial hearing. As part of the narrative of the allegations, prosecutors would explain the details of the case against the defendant, highlighting those features which were regarded as aggravating, allowing for a relatively unambiguous view of the case features that were regarded as important to

the court. Additionally, some magistrates, especially District Judges, would explain in their decision the case features that they regarded as most important. Finally, initial qualitative analysis suggested that cases of domestic violence were treated differently within the mode of trial hearing (Cammiss, 2006b). This feature was therefore identified as an important variable to collect for the subsequent analysis.

Measures

The outcome variable of this study is the decision of the magistrates in the mode of trial hearing (coded 0 = Crown Court vs 1 = Summary Trial).

For each hearing we had a number of background measures relating to the setting and the defendant. These were in turn: court location (0 = County vs 1 = City), whether or not the defendant(s) had been remanded in custody; whether they had legal representation (1 = Yes vs 0 = No); whether the hearing was dealt with by a lay bench or District Judge, and measures of the demographic profile of the defendant(s): age; gender (coded 0 = Female vs 1 = Male); ethnic origin (0 = Non-white vs 1 = White); and employment status (0 = Unemployed vs 1 = Employed). We also had a record of whether the defendant(s) in those cases retained for summary trial elected instead for Crown Court trial, and in cases with more than one defendant, the nature of any relationship between them.

For each defendant we had detailed records of their previous convictions and cautions. This information was consolidated into variables representing the numbers of each for nine different offence types: Theft; Public Disorder; Offences related to

Police/Courts/Prisons; Offences Against Person; Offences Against Property; Sex Offences; Drugs; Firearms/Offensive Weapons; and Other/miscellaneous Offences. From these we calculated two further variables; the total number of previous cautions and convictions respectively over all offences.

We recorded the nature of the offence(s) of which the defendant(s) were accused. Each case consisted of one or more charges up to 32 different offence types; this information was combined to form a smaller number of variables each describing whether the defendant(s) were charged with one of eight basic types of offence, specifically: Offence Against Person; Driving offences; Theft and related offences; Public disorder; Possession (of weapon, etc); Drugs offences; Damage; Sex offences; and for Miscellaneous offences. The number of charges over this set of offences was also summed to give a Total number of charges variable.

In addition, for each case we had further information regarding the specifics of the offence, such as the extent of any assault carried out, injuries caused, the use of threats, the amount of drugs found, the level of damage caused, the extent of any threatening behaviour, the volume of property stolen, and any aggravating features. From this we produced nine more 'levels of offence' variables; three indicators of whether there was any threatening behaviour, aggravating features and/or any further legal issues (all coded 0 = Yes vs 1 = No), and six measures of level of: assault; injuries sustained by the victim; threats made; damage committed; property taken; drug offence (all coded 0 = None vs 1 = Non-serious vs 2 = Serious; for entry into our regression analyses each was represented by a pair of dichotomous dummy variables, with None as the reference category). Finally we had an indicator variable for whether

the charge against the defendants contained allegations of domestic violence (0 = Yes vs 1 = No).

The 'defendant level' nature of some of the observed measures presented a potential problem since our outcome variable, decision on mode of trial hearing, was at the 'case level' Therefore, for the few cases where there was more than one defendant, those variables which varied by defendant (e.g. number of past offences, ethnic origin) were aggregated to from an appropriate summary measure (e.g. total number of past offences across defendants, any non-white defendants).

Statistical Methods

The first stage of the analysis was an exploration of the basic sample properties, followed by an assessment of the correlations between our outcome and predictor variables.

We then attempted to construct a regression model for the prediction of mode of trial hearing decision. This outcome variable is dichotomous in form, hence we used a series of logistic regression analyses to assess the effect of our predictors together. With our relatively small sample size and large number of measures, entering all of the potential predictors concurrently was not possible; rather we used a hierarchical strategy. Initially we considered just the 'background and demographics' set of predictors, examining which of these variables were significantly related to the mode of trial decision. Retaining the significant predictors from this set in the model, we then entered the measures of 'previous convictions', again keeping only those that

were significant. This process was repeated for the 'type of offence charged' and finally the 'level of offence' variables. As a final check, each of the variables that had been excluded after the first, second and third steps were considered for re-entry (i.e. entered individually and removed unless they significantly improved the model).

In all our analyses we applied the $p < 0.05$ level of statistical significance. Given the exploratory nature of this study we used two-tailed tests throughout.

Results

Of the 100 mode of trial hearings in our sample, magistrates retained jurisdiction in 43 per cent of cases (and in a further nine cases the defendant elected Crown Court trial after the bench accepted jurisdiction). Seventy percent were dealt with in the City Court, with 53 per cent of these overseen by District Judges. The vast majority (91 per cent) featured just one defendant, in 23 per cent at least one defendant had been remanded in custody, and all but two cases saw the defendant(s) using legal representation. In 94 per cent of cases the defendant(s) were (all) male, 30 per cent featured at least one non-white defendant, and 72 per cent involved at least one non-employed defendant. The age of defendants ranged between 18 and 54 years, with an average of 29 years. The average and spread of the previous and charged offence variables are given in table 1.

The correlations between our study variables (see table 1) indicated medium-sized associations between the mode of trial hearing recommendation and assault level, injury level and gender, though the latter variable was of minimal interest given the

lack of female defendants. They also reflected strong associations between court location and both ethnic origin of defendants and use of lay bench or District Judges; and a strong positive relationship between defendants being remanded in custody and previous convictions for different offences.

The first step our model building process indicated that of our set of demographic and background variables, only court location was significantly related to retention for summary trial, with those cases in the City Court less likely to be retained, though custody was also approaching significance at the $p < 0.05$ level and was retained for the next step (cases where defendant(s) were remanded in custody were less likely to be retained for summary trial). Together court location and custody significantly improve the model fit (Δ Chi-square = 7.5 on 2 df, $P < 0.05$). None of the measures of previous convictions were found to be significant predictors.

Next the set of measures of the offence being charged were examined; of these being charged with drugs offences was significantly negatively associated with retention for summary trial; conversely cases featuring allegations of domestic violence were significantly positively associated with the decision to retain for summary trial. Together these two variables significantly improved the model fit (Δ Chi-square = 9.4 on 2 df, $P < 0.05$).

The set of variables measuring level of offence was then entered; cases involving serious levels of assault, serious injuries inflicted or serious property offences were all found to be significantly less likely to be retained for summary trial. These were kept

in the model; together they further improved the fit of the model (Δ Chi-square = 30.8 on 6 df, $P < 0.05$).

Lastly the demographic, previous convictions and offence type variables that were previously found to be non-significant were each checked to confirm they did not significantly improve to the model. Of these, only the addition of ethnic origin improved the model significantly (Δ Chi-square = 5.7 on 1 df, $P < 0.05$), with the odds of a cases involving all white defendant(s) being retained for summary trial estimated as 6 times those of a case involving non-white defendants (Exp(B) = 6.0). As a result of this, the effect of court location was no longer significant at the $p < 0.05$ level; this was due to a strong relationship between ethnicity of defendant and court location resulting in much of the predictive effect of the latter being subsumed by that of the former.

The full details of our final model are given in table 2.

Discussion

The first variables that emerge as important in the data are those related to the specific offence. So, serious assaults are more likely to be deemed not suitable for summary trial, in accordance with the mode of trial guidelines, as are serious property offences. Similarly, assaults that resulted in serious injuries would also be statistically more likely to be sent to the Crown Court. These trends disguise differences in individual cases and these are further explored elsewhere (Cammiss, 2007). Finally, drug offences were also more likely to sent to the Crown Court. A possible reason for this

relates to investigative practices. Most of the drug offences that proceeded to mode of trial were relatively serious; it could well be the case that relatively trivial offences of mere possession of non class A drugs were either diverted from the criminal justice process or resulted in a caution. If this was the case, only the most serious drug offences were prosecuted and these were more likely to be regarded as not suitable for summary trial by both prosecutor and bench. Putting aside this minor anomaly, we would expect that offence seriousness would impact upon the mode of trial decision. The mode of trial guidelines, in force at the time of the fieldwork, point towards likely sentence and specific aggravating features as an important consideration in the determination of venue. These findings are, in that context, unsurprising and non-problematic. However, in addition to these findings, others raise different questions.

Some of these additional findings build upon the earlier research studies and provide some interesting data. The correlation between court venue and our outcome suggests that it is an important predictor for the mode of trial decision, in common with Herbert (2004) and Hedderman and Moxon (1992); however, when the confounding variable of ethnicity is introduced into our model its effect was reduced. Again, the underlying finding is, to some extent, expected, given the importance attached to courtroom culture by other researchers in this field. An important caveat, however, needs to be made here concerning the numbers in the sample. Only 30 cases were analysed from the smaller court with 70 from the busy urban court. This was, in part, a reflection of the aims of the study, and partly a pragmatic decision. However, given that the findings replicate previous studies, we can assume that some weight can be attached to these. This particular conclusion can also shed some light onto the discussion above as to whether the high degree of concordance between prosecutor's

recommendation and the bench's decision results from local cultures or prosecutorial control of the mode of trial process. The two courts researched were within one CPS area. We could hypothesise that if the prosecution did effectively manage and control the mode of trial hearing, we would expect both courts to make similar decisions as there would be little reason to expect prosecutors to differ to a great extent in the same branch. However, we cannot make this conclusion with any degree of certainty. While it is true to say that the prosecutors for both courts were part of the same branch, and were indeed within the same office, it would not be true to say that they worked closely together. There was a City and a County team within the office, and this separation was reinforced geographically with both teams on different floors. They each conducted their own team meetings where they discussed the issues important to their work, and observation concluded that they each had very different priorities. While individuals would cover for their colleagues in different teams, such 'cross fertilisation' was rare and there were no obvious institutional mechanisms to share knowledge and experience. The separation between the teams was so pronounced that there could be said to be a degree of rivalry between the sections. The City branch, in particular, were disparaging of their County colleagues. Upon finishing the fieldwork phase with the City team, the researcher was left in little doubt that the City prosecutors thought he was about to enter a 'legal backwater' whereupon nothing much would happen and everything would be very slow. To some extent, this view represented a degree of truth. This schism between the courts was also reinforced by the rarity of defence solicitors appearing in both courts. All in all, while the two courts were less than 20 miles apart, they were, metaphorically speaking, worlds apart. Given the working practices of the CPS and the distinct split within the branch, we are no further forward in identifying the dominant party in the maintenance of the

local court cultures observed, although a qualitative analysis elsewhere places great emphasis upon the ability of the CPS to manage the information that is placed before the court (Cammiss, 2006a).

Other findings are also worthy of comment, although care needs to be taken in how much emphasis can be placed upon them. The importance of custody is a case in point. The model developed above suggests that being remanded in custody increases the chances of the bench declining jurisdiction after accounting for important case variables. Again, this is to some extent unsurprising; previous studies have reported that a custodial remand increases the probability of a custodial sentence being imposed upon conviction (Bottomley, 1970; King, 1971). A defendant who is remanded in custody is placed at a structural disadvantage in that they appear with a security officer, behind screens – thereby giving the impression of being a dangerous individual – and are often shabbily dressed and presented. If these findings are valid, this could well be another example of how initial decisions within the criminal justice process impact upon later decisions and act in concert together. If Hedderman and Moxon (1992) are correct, that being sent to the Crown Court increases the chance of a custodial sentence and the length of any sentence, then being remanded in custody may impact twice on the eventual sentence in that it both leads directly to an increased likelihood of a custodial sentence on conviction, and increases the likelihood of being sent to the Crown Court which in turn raises the probability of a custodial sentence and the length of that sentence.

Within the sample, a number of cases concerned allegations of domestic violence. This cases have been subjected to a qualitative evaluation elsewhere (Cammiss,

2006b) but it is interesting to note that those conclusions are supported here. In short, it appears that allegations of domestic violence are more likely to remain within the magistrates' court, thereby minimising the impact of these allegations. As explained elsewhere, this is largely achieved through the management of information that is placed before the court. It has also been hypothesised that the reasons for this approach lie within considerations of cost and managing workloads. Within the CPS branch researched, there existed a belief that, by and large, domestic violence cases would fail before reaching trial, largely because the complainant withdrew from the process upon reconciliation between the parties.

A tentative note can be added regarding previous convictions. The relationship between previous convictions and any eventual decision was mentioned by Hedderman and Moxon (1992), who noted that while magistrates are not given this information, prosecutors are aware of previous convictions and could, therefore, take them into account. Indeed, one prosecutor did indicate to the researcher that previous convictions would be important in 'borderline cases' and could tip the balance towards a representation that the case be regarded as not suitable for summary trial. Our study failed to find a significant relationship between the mode of trial decision and the existence of previous convictions; nevertheless, it is a variable worthy of note given the findings of previous studies and the speculation that prosecutor's do take previous convictions into account when making their recommendations.

Lastly, as noted above, race appears to be an independently relevant variable in the final model yet, due to the number of variables incorporated in the final model and the limited number of cases incorporated into the study, any conclusions must be, at best,

tentative. As explained in the introduction, two previous studies have noted a differential in the rate at which minority ethnic defendants are committed to the Crown Court but could not determine whether this variable remained after accounting for legally relevant case features (Brown and Hullin, 1992; Jefferson and Walker, 1992). This study takes us one step closer to addressing the issue, and a tentative conclusion could be made that race does impact upon the mode of trial decision, independent of other case features. However, it must be said that this is an extremely tentative conclusion and, following Brown and Hullin (1992), further research is necessary in this area.

Conclusion

Mode of trial appears to be a somewhat straightforward decision in many respects. Practitioners regard it as mundane and non-problematic. Decisions are made quickly and prosecutors, defence solicitors and magistrates all regard it as a simple stepping stone which must be encountered for a case to progress through the court process. However, politicians and policy makers view mode of trial as more important than this, since the result of a mode of trial hearing impacts upon other parts of the criminal justice process, in particular, the workload of the Crown Court. With this in mind, politicians have attempted to limit the number of either way cases that reach the Crown Court, yet this has been attempted with little understanding of the process. Academics appear to share the view of practitioners; mode of trial is generally regarded as unimportant. Indeed, in the latest edition of Ashworth's The Criminal Process, readers interested in mode of trial are pointed towards a previous edition for an in-depth discussion of the issues (Ashworth and Redmayne, 2005). This, to some

extent, reflects the paucity of research in this area (recently addressed by Herbert) but is still surprising given that it has remained on the policy agenda throughout the last decade. Within this context, this study provides some useful information on the mode of trial decision making process. By and large, decisions appear to be made on the seriousness of the allegations. Serious drug offences, serious assaults, assaults that cause serious injury and serious property offences are all likely to be sent to the Crown Court. Yet a number of other variables appear, to differing extents, to be influential. Court venue and culture, allegations of domestic violence, custodial remands and race all play a part in the model resulting from our analyses. It is clear that this study cannot make definitive conclusions on this matter, but further research is needed to better understand the mode of trial process, and research that attempts to examine the decision making process in situ.

References

Ashworth, A and Redmayne, M. (2005) The Criminal Process (3rd ed.) Oxford: OUP.

Auld, L.J. (2001) Review of the Criminal Courts of England and Wales. London: HMSO.

Bottomley, A. K. (1970) Prison Before Trial. Occasional Paper in Social Administration No. 39. London: Bell and Son.

Bottoms, A. and McClean, J. (1976) Defendants in the Criminal Process. London: Routledge and Kegan Paul.

Brown, I. and Hullin, R. (1992) 'A Study of Sentencing in the Leeds Magistrates' Courts: The Treatment of Ethnic Minority and White Offenders', British Journal of Criminology, 32: 41-53.

Cammiss, S. (2006a) '"I will in a Moment Give You the Full History": Mode of Trial, Prosecutorial Control and Partial Accounts', Criminal Law Review, 38-51.

Cammiss, S. (2006b) 'The Management of Domestic Violence Cases in the Mode of Trial Hearing: Prosecutorial Control and Marginalising Victims', The British Journal of Criminology, 46(4) 704-718.

Cammiss, S. (2006c) '"He Goes Off and I Think He Took the Child": Narrative (Re)Production in the Courtroom', Kings College Law Journal, 17(1) 71-95.

Cammiss, S. (2007) 'Deciding Upon Mode of Trial', Howard Journal of Criminal Justice, 46(4) 372-384.

Crown Prosecution Service (2006) Annual Report and Resource Accounts 2005-06. London: The Stationary Office.

Fitzgerald, M. (1993) Ethnic Minorities and the Criminal Justice System. Royal Commission on Criminal Justice Research Study No. 20. London: HMSO.

Gregory, J. (1976) *Crown Court or Magistrates' Court*. London: HMSO.

Hedderman, C. and Moxon, D. (1992) *Magistrates' Court or Crown Court: Mode of* Trial Decisions and Sentencing. Home Office Research Study No. 125. London: HMSO.

Herbert, A (2003) 'Mode of Trial and Magistrates' Sentencing Powers: Will increased powers inevitably lead to a reduction in the committal rate?' Criminal Law Review, 314-325.

Herbert, A (2004) 'Mode of Trial and the Influence of Local Justice', The Howard Journal, 43(1) 65-78.

Home Office (1997) Review of Delay in the Criminal Justice System: A Report. (The Narey Report.) London: Home Office.

Home Office (2001) Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales. (The Halliday Report.) London: Home Office.

Home Office (2006) Criminal Statistics 2005. London: Office for Criminal Justice Reform.

Home Office and Lord Chancellors Office, Chaired by James, L.J. (1975) The *Distribution of Criminal Business between the Crown Court and Magistrates' Courts,* Report of the Interdepartmental Committee. Cmnd. 6323. London: HMSO.

Hucklesby, A. (1997) 'Court Culture: An Explanation of Variations in the Use of Bail by Magistrates' Courts', Howard Journal of Criminal Justice, 36: 129-145.

Jefferson, T. and Walker, M. A. (1992) 'Ethnic Minorities in the Criminal Justice System', Criminal Law Review, 83-95.

King, M. (1971) Bail or Custody. London: Cobden Trust.

Murphy, P. and Stockdale, E. (eds.) (2006) *Blackstone's Criminal Practice.* Oxford: Oxford University Press.

Riley, D. and Vennard, J. (1998) Triable-Either-Way Cases: Crown Court or *Magistrates' Court?* Home Office Research Study No. 98. London: HMSO.

Royal Commission on Criminal Justice, Chaired by Viscount Runciman of Doxford (1993) Report, Cmnd. 2263. London: HMSO.

Rumgay, J. (1995) 'Custodial Decision Making in Magistrates' Courts: Court Culture and Intermediate Situational Factors', British Journal of Criminology, 35: 210-217.

Seago, P. J., Walker, C. and Wall, D. (1995) The Role and Appointment of Stipendiary Magistrates. Leeds: The Centre for Criminal Justice Studies, University of Leeds.

Taylor, R., Wasik, M. and Leng, R. (2004) *Blackstone's Guide* to The Criminal Justice Act 2003. Oxford: OUP.

Vennard, J. (1981) *Acquittal Rates in Magistrates' Courts*, Research Bulletin No. 11. London: Home Office.

Vennard, J. (1982) *Contested Trials in Magistrates' Courts*, HORS No. 71. London: HMSO.

Vennard, J. (1985) 'The Outcome of Contested Trials', in D. Moxon (ed.) Managing Criminal Justice: A Collection of Papers, London: HMSO.

Table 1. Descriptive statistics for and correlations between selected study variables

	Variable	Mean	Std. Dev.	1	2	3	4	5	6	7	8	9
1.	Decision: (1 = Suitable for summary trial, 0 = Not)	0.44	0.50									
2.	Number of defendants in this case	1.17	0.60	-0.12								
3.	Gender of defendant(s): (1 = Male, 0 = Female)	0.94	0.24	-0.29	0.07							
4.	Ethnic Origin of Defendant(s): (1 = White, 0 = At least one non-white)	0.71	0.46	0.10	0.00	-0.05						
5.	Employment status of defendant(s): (1 = Employed, 0 = Other)	0.28	0.45	0.08	-0.18	0.16	0.05					
6.	Court Location: (1 = City, 0 = County)	0.70	0.46	-0.21	0.04	0.20	-0.29	-0.03				
7.	Lay bench or District Judge: (1 = Lay bench, 0 = District Judge)	0.53	0.50	0.03	0.00	-0.15	0.19	-0.22	-0.53			
8.	Defendant(s) have legal representation: (1 = Yes, 0 = No)	0.98	0.14	0.13	0.04	-0.04	0.07	0.09	-0.09	0.01		
9.	Defendant(s) remanded in custody? (1 = Yes, 0 = None)	0.23	0.42	-0.15	0.08	0.04	0.20	-0.18	-0.06	0.23	0.08	
10.	Previous convictions - any? (1 = Yes, 0 = No)	0.72	0.45	-0.12	0.18	0.12	0.26	-0.21	0.08	0.22	0.07	0.34
11.	Previous convictions - total? (if multiple defendants, total over all)	14.16	18.91	-0.08	0.12	0.12	0.31	-0.17	0.03	0.08	0.02	0.64
12.	Previous cautions - total? (if multiple defendants, total over all)	0.49	1.00	0.11	0.41	-0.04	0.22	-0.17	-0.14	0.08	0.00	0.07
13.	Does case include any charges for Offence Against Person? (1 = Yes, 0 = No)	0.39	0.49	-0.01	-0.16	0.12	0.04	0.14	0.21	-0.07	-0.18	-0.10
14.	Does case include any charges for Driving offences? (1 = Yes, 0 = No)	0.04	0.20	0.02	0.11	0.05	-0.02	-0.13	-0.09	-0.01	0.03	0.01
15.	Does case include any charges for Theft and related? (1 = Yes, 0 = No)	0.31	0.47	-0.03	0.06	-0.10	0.01	0.02	-0.17	0.07	0.10	0.10
16.	Does case include any charges for Public disorder? (1 = Yes, 0 = No)	0.18	0.39	0.11	0.13	-0.10	0.08	0.06	-0.03	-0.13	0.07	0.05
17.	Does case include any charges for Possession (e.g. weapon)? (1 = Yes, 0 = No)	0.08	0.27	-0.04	-0.08	0.07	0.03	0.06	0.03	-0.02	0.04	0.10
18.	Does case include any charges for Drugs offences? (1 = Yes, 0 = No)	0.10	0.30	-0.23	0.02	0.08	0.00	-0.13	0.07	0.05	0.05	-0.02
19.	Does case include any charges for Sex offences? (1 = Yes, 0 = No)	0.04	0.20	0.02	-0.06	0.05	0.02	0.10	-0.20	0.09	0.03	-0.11
20.	Total number of charges in this case	2.03	1.68	-0.21	0.45	0.13	-0.06	0.00	0.00	-0.05	0.09	0.15
21.	Does case feature allegations of Domestic Violence? (1 = Yes, 0 = No)	0.17	0.38	0.24	-0.13	0.11	-0.02	0.07	0.06	-0.11	-0.13	-0.12
22.	Case circumstances: Any threatening behaviour? (1 = Yes, 0 = No)	0.05	0.22	-0.11	0.39	-0.14	-0.05	-0.14	0.05	0.03	0.03	0.20
23.	Case circumstances: Any special circumstances? (1 = Yes, 0 = No)	0.25	0.44	0.05	0.07	-0.05	0.07	0.05	0.03	0.08	0.08	0.12
24.	Case circumstances: Any further legal issues? (1 = Yes, 0 = No)	0.06	0.24	0.03	0.07	-0.11	0.07	0.12	-0.29	0.15	0.04	0.06
25.	Assault level in this case (dummy var: 1 = Non-serious vs 0 = none)	0.34	0.48	0.34	-0.20	0.00	-0.06	0.12	0.01	0.00	0.10	0.06
26.	Assault level in this case (dummy var: 1 = Serious vs 0 = none)	0.24	0.43	-0.26	0.07	0.04	0.10	-0.04	0.11	-0.08	-0.25	-0.14
27.	Victim's injury in this case (dummy var: 1 = Non-serious vs 0 = none)	0.09	0.29	0.07	0.03	0.08	-0.14	0.19	0.21	0.02	-0.20	-0.17
28.	Victim's injury in this case (dummy var: 1 = Serious vs 0 = none)	0.21	0.41	-0.26	0.02	0.03	0.11	0.01	0.18	-0.06	-0.10	-0.11
29.	Property Offence level in this case (dummy var: 1 = Non-serious vs 0 = none)	0.06	0.24	0.20	0.21	-0.11	-0.02	-0.16	-0.11	0.15	0.04	-0.04
30.	Property Offence level in this case (dummy var: 1 = Serious vs 0 = none)	0.13	0.34	-0.16	0.04	-0.03	-0.03	0.09	-0.07	-0.11	0.06	-0.07

Table 1. Continued

	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29.
11.	0.49																			
12.	0.23	0.19																		
13.	0.00	-0.06	-0.02																	
14.	0.01	0.12	0.05	-0.16																
15.	-0.06	0.15	0.06	-0.49	-0.03															
16.	0.12	-0.02	-0.11	0.00	-0.10	-0.31														
17.	0.10	0.14	-0.02	-0.08	-0.06	-0.12	0.05													
18.	0.13	0.00	0.04	-0.27	-0.07	-0.15	-0.16	0.02												
19.	-0.21	-0.15	-0.10	-0.16	-0.04	-0.14	-0.10	-0.06	-0.07											
20.	0.24	0.23	0.22	-0.26	0.03	0.32	0.01	0.06	0.25	0.00										
21.	-0.19	-0.11	-0.12	0.46	-0.09	-0.30	0.00	-0.13	-0.15	-0.09	-0.25									
22.	0.14	-0.03	0.00	-0.09	-0.05	-0.15	0.49	0.10	-0.08	-0.05	0.11	-0.10								
23.	0.05	0.06	-0.02	0.30	-0.12	-0.39	0.33	0.09	-0.19	0.24	-0.02	-0.02	0.19							
24.	0.16	0.20	0.13	0.14	-0.05	0.01	0.10	0.08	-0.08	-0.05	0.10	0.00	0.14	0.24						
25.	0.02	-0.02	-0.24	0.21	-0.15	-0.44	0.32	0.26	-0.17	0.07	-0.24	0.18	0.13	0.17	0.09					
26.	-0.01	-0.13	0.04	0.46	-0.11	-0.38	0.10	0.01	-0.19	0.12	-0.12	0.24	0.09	0.32	-0.04	-0.40				
27.	-0.04	-0.02	-0.12	0.32	-0.06	-0.21	0.13	0.16	-0.10	-0.06	-0.07	0.23	0.09	0.22	0.07	0.07	0.23			
28.	0.10	-0.15	0.08	0.59	-0.11	-0.35	0.01	-0.15	-0.17	-0.11	-0.19	0.09	-0.01	0.16	-0.03	-0.06	0.57	-0.16		
29.	-0.03	-0.08	0.21	-0.20	-0.05	0.38	-0.12	-0.07	-0.08	-0.05	0.12	-0.11	-0.06	-0.15	-0.06	-0.18	-0.14	-0.08	-0.13	
30.	-0.16	0.00	0.00	-0.25	-0.08	0.58	-0.18	-0.11	-0.13	-0.08	0.24	-0.17	-0.09	-0.22	0.15	-0.28	-0.22	-0.12	-0.20	-0.10

95 < N < 100. Means, Standard Deviations and Pearson correlation coefficients are rounded to the second decimal place.

Table 2. Logistic regression model for predicting recommendation for mode of trial

Outcome:
Decision (1 = Recommended as suitable for summary trial, 0 = Not suitable for summary trial)

Predictors:	B	Std Err	Wald, df	Exp (B)
Court Location	-0.76	0.69	1.24, 1	0.47
(1 = City, 0 = County)				
Defendant(s) remanded in custody?	-2.32	0.85	7.43*, 1	0.10
(1 = Remanded, 0 = Not)				
Ethnic Origin of Defendant(s)	1.80	-0.76	0.69*, 1	6.03
(1 = White, 0 = At least one non-white)				
Does case include any charges for Drugs Offences?	-3.50	1.36	6.63*, 1	0.03
(1 = Yes, 0 = No)				
Does case feature allegations of Domestic Violence?	2.63	1.12	5.50*, 1	13.88
(1 = Yes, 0 = No)				
Level of Assault in this case			9.36*, 2	
Level of Assault	0.72	0.81	0.79, 1	2.06
(dummy variable: 1 = Non-serious vs 0 = None)				
Level of Assault	-2.47	1.22	4.08*, 1	0.09
(dummy variable: 1 = Serious vs 0 = None)				
Level of Injury sustained by victim(s) in this case			5.45*, 2	
Level of Injury sustained by victim	-0.50	1.30	0.15, 1	0.60
(dummy variable: 1 = Non-serious vs 0 = None)				
Level of Injury sustained by victim	-2.29	1.03	5.00*, 1	0.10
(dummy variable: 1 = Serious vs 0 = None)				
Level of Property Offence in this case			8.38*, 2	
Level of Property Offence	1.11	1.35	0.68, 1	3.04
(dummy variable: 1 = Non-serious vs 0 = None)				
Level of Property Offence	-2.83	1.18	5.77*, 1	0.06
(dummy variable: 1 = Serious vs 0 = None)				

Model Fit: -2LL = 76.4; Δ Chi-square from null model = 53.5 on 11df;

Nagelkerke Pseudo R^2 = 57.8%; Percentage of cases correctly classified = 82%.

N = 100, * = $p < 0.05$ (2-tailed test).

Coefficients and p-values are rounded to the second decimal place.