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Training the magistrate for his/her interaction with the parties:

**How to train the judge and the prosecutor
to behave appropriately with the defendant?**

“Judgecraft and the judicial process”

Rapporteur : Mr Victor HALL, Judge, Director of Studies, Judicial Studies Board, London (United Kingdom)



JUDICIAL STUDIES
BOARD

JUDGECRAFT AND THE JUDICIAL PROCESS

1. Introduction

I was a judge for over four decades uninterruptedly and, while climbing the successive rungs of the ladder of courts of law, I learned to know and love more and more that ‘occupation’ (is it really an occupation?) which requires enthusiasm, modesty, patience and pride from those who take it up.

I learned that judging means caring to listen, trying to understand and being willing to decide.

I learned that judging does not mean judging ‘as usual’, in the monotonous and mechanical routine of a stream of cases that must be managed and, one day, are disposed of.

I learned that in the act of judging we should always leave room for doubt and never leave room for ‘rumour’, ‘prejudice’ or ‘suspicion’.

I learned that we should always be considerate to a person who suffers, in his or her freedom, his or her reputation, his or her family and emotional life.

I learned that when appearing before an independent, free judge, a man or a woman should not feel humiliated prior to judgment.

I learned that a judge should only worry about the confidence and respect he must receive. Such confidence and respect are our sole title of legitimacy.

I wish that the law of this country will always get the ‘dignified’ and ‘loyal’ judges it deserves.

Pierre Draï, Emeritus Chief Justice of the Cour de Cassation, France

A judge must bear in mind that when he tries a case, he himself is on trial

Philo, *Special Laws* 1st Century CE

2. The need for judgecraft

Of all the qualities that unite us the world over, the elusive personal element that we call “judgecraft” is the quintessential attribute which serves, or should serve, as a badge of office and which marks us out as a member of the judiciary. As such it should be more than just be a way of behaving when we are in court.

Rather, it should be something that pervades our actions and be as second nature to our conduct in and about our actions both in court and out of it.

The United Kingdom is unlike the rest of Europe whose judicial systems are predominantly based upon Roman Law and who have for the most part a career judiciary. In England and Wales judges are chosen from the ranks of experienced lawyers (both barristers and solicitors) who frequently have 25 years or more experience of appearing in courts and presenting cases on behalf of clients. Notwithstanding this enormous pool of experience, it is still necessary for the Judicial Studies Board to include in its Induction Courses fairly extensive training in elements of judgecraft and to follow this up in Continuation Seminars throughout the rest of the judge's professional life. At the risk of stating the obvious, judgecraft is a skill that really can only be acquired by acting in a judicial capacity. However experienced the professional lawyer might be through acting in that role (s)he has usually not had to turn to consider the subject of how a judge acts and behaves when running a court.

At the risk of saying something that we all know, most people find an appearance before courts or tribunals to be a daunting experience. Not all who come before us are equipped to do themselves justice in the preparation or advancement of their case. Simply to list the wide diversity of disadvantaged human beings that daily pass through the doors of our courts is perhaps to diminish the huge problems that many face for not all are able to afford lawyers to represent them or are articulate.

Those at a particular disadvantage may include:

- people from minority ethnic communities;
- those from minority faith communities;
- individuals with disabilities (physical or mental);
- women;
- children;
- those whose sexual orientation is not heterosexual; and/or
- those who through poverty or any other reason are socially or economically excluded.

Just because someone remains silent does not mean that they necessarily understand, or that they feel they have been adequately understood. They may simply feel too intimidated, too inadequate or too inarticulate to speak up. Ensuring fairness and equality of opportunity may mean providing special or different treatment.

A large proportion of socially excluded people come into contact with the justice system; indeed there is evidence that a disproportionate number of persons drawn into the justice system are from what may be described as socially excluded backgrounds. At the same time, those who operate the courts – judges and lawyers – are rarely from such backgrounds, and are by definition removed from the contemporary situation of socially excluded people. It is necessary therefore to attempt to bridge any knowledge and understanding gaps between judges and those in their court. Into this arena comes judgecraft - that ability to deal with all types of case and all types of litigant with fairness, humanity and courtesy in such a way that they leave court feeling that they have received justice.

People who have difficulty coping with the language, procedures or facilities of courts or tribunals are equally entitled to fairness and justice and it is our task to facilitate them in achieving that.

Effective communication is the bedrock of the legal process – everyone involved in proceedings must understand and be understood or the process of law will be seriously impeded. Judicial office-holders must reduce the impact of misunderstandings in communication. Unless all parties to proceedings accurately understand the material put before them, and the meaning of the questions asked and answers given during the course of the proceedings, the process of law is at best seriously impeded and at worst thrown seriously off course.

The appearance of justice

How do the courts appear to those who use these services?

Research in England and Wales has thrown up the following points:

They appear 'unfriendly and inaccessible' (Money Advice Trust).

They 'engender fear and anxiety' (The Institute of Consumer Affairs)

In a survey of the reactions of litigants it was found that:

With or without a lawyer, few lay people say that they feel at ease in this setting. Many litigants described in interviews how they were taken aback by their first sight of the courtroom and its formality. The interviews were peppered with words like 'intimidating', 'daunting', 'frightening', 'terrifying', 'forbidding' and 'formidable'.

Less than half of the unrepresented litigants ... said that they coped well in this setting and even those who were represented by counsel frequently said that they found the court appearance a daunting experience. A few described how they had gone to pieces when they realised what was expected of them.

Professor John Baldwin, "Monitoring the Rise of the Small Claims Limit"

Whilst some degree of structure and formality is required at all hearings, as judicial office-holders we should repeatedly ask ourselves whether the needs of the court or tribunal are taking priority over the needs of the people who appear before us. Is it fair and just that they always have to cope with our court or tribunal rather than us with them?

Disadvantages of individuals

Professor Baldwin's research looked at litigants as a whole. The above quote shows how courts appear to the typical litigant. Inevitably, it will be that much worse for those who start from a position of disadvantage whatever the reason. Much of that disadvantage may

result from the prejudices of others. Disadvantage must not be allowed to become an obstacle to the attainment of justice.

Achieving justice

A person who cannot cope with the language, procedures or facilities of the court or tribunal is as entitled to justice as those who know how to use the legal system to their advantage. Any disadvantage that people face in society should not be reinforced by the legal system. It is the strongest case that should win, not the strongest litigant.

District Judge Gordon Ashton

Identifying situations in which an individual may be at a disadvantage because of some personal attribute of no direct relevance to the proceedings and taking the appropriate steps to ensure that there is no consequent obstacle to achieving justice is an important skill. This is all part of the art of judgecraft that may be performed during case management. Part of that skill lies in identifying situations of disadvantage at an early stage, and discreetly dealing with them without prejudicing other parties. They can arise at any time and in any type of case.

The ability to communicate effectively is not restricted to the parties in the case. As judicial office-holders we need to develop an awareness of ‘where people are coming from’. Being aware of background, culture, special needs and concerns, and the potential impact of those things on a party or a witness’ evidence or perceptions, will enable more effective communication. This applies to all who appear before courts or tribunals; including witnesses, advocates, the court or tribunal staff and even members of the public who may inappropriately seek to intervene in the process of justice.

Sensitive appraisal of the situation and effective communication by the judicial office - holder is as important as the imposition of discipline backed by the force of the law. It may be best to give people the benefit of the doubt if their intervention is well intentioned.

To ensure a fair hearing the proceedings should be managed so as to identify any likely difficulties and importantly to find ways around them. This is a continuous task throughout the course of the proceedings because needs can and often do change as the result of, for example, tiredness or distress .

Perceptions of justice

It is a fundamental concept that ‘justice must not only be done but be seen to be done’. This imposes positive obligations on judicial office-holders. It is no longer a question of what lawyers or those administering justice perceive – if a hearing is seen as having been unfair by those involved, directly or indirectly, or the public at large, then it has not been satisfactory.

Judges wield huge power over the rest of society. We therefore have a special

responsibility to ensure that there can be no possible reasons to think us prejudiced and this entails a positive responsibility to demonstrate our fairness.

Lord Irvine of Lairg, Lord Chancellor of England and Wales,
September 1999

We must not in our conduct of hearings give rise to perceptions of unfair treatment :

A racist incident is any incident which is perceived to be racist by the victim or any other person.

Report on the Stephen Lawrence Inquiry, February 1999

The quality of judicial decision making is crucial. Neutral application of legal rules is fundamental to high-quality judicial decision making. Decisions based on erroneous perceptions, interpretation or understanding may lead to faulty decisions and thus to substantive unfairness. Inappropriate language and behaviour is likely to give offence and result in a perception of unfairness, even if there is no substantive unfairness. This leads to a loss of authority and, importantly, loss of confidence in the judicial system. Perceptions are important .

The judge is manager of the hearing and should ensure that everyone who appears before the court (or is entitled to appear but does not) has a fair hearing. This involves identifying the difficulties experienced by any party, whether due to lack of representation, ethnic origin, disability, gender, sexual orientation or any other cause, and finding ways to facilitate their passage through the court process .

Discrimination

Discrimination, actual or perceived, may be the result of prejudice, ignorance, thoughtlessness or stereotyping and may be institutionalised.

Direct discrimination

occurs where, for example, a person is treated less favourably for some unjustifiable reason than others would be in similar circumstances. It could be on grounds of race, colour, religious belief, gender, ethnic or national origin, employment status, age or disability.

Indirect discrimination

Occurs where a requirement is applied equally to all groups, but has a disproportionate effect on the members of one group because a considerably smaller proportion of members of that group can comply with it.

Prejudices of the court or tribunal

We all have prejudices and it is best that these are identified and acknowledged. They should not be allowed to influence our judicial decisions. Unwitting (or unconscious)

prejudice – demonstrating prejudice without realising it – is more difficult to tackle and may be the result of mere ignorance or lack of awareness.

A significant cause of perceived unfairness to ethnic minorities in the courts is a lack of judicial awareness of the mores of all those who come before them. Each of us comes from our particular section of the community, and has grown up with its customs, assumptions and traditions. A few have had the privilege of gaining insights into other cultures, whether through family or friendship. But it is unlikely that anyone would affect real familiarity with each and every culture which together make up our society.

Ignorance

Of the cultures, beliefs and disadvantages of others encourages prejudice. It is best dispelled by greater awareness. To achieve justice, judicial office-holders must be informed and aware. They should at the very least make necessary enquiries.

Thoughtlessness

The thoughtless comment, throw away remark, unwise joke, use of inappropriate terminology or even a facial expression may confirm or create an impression of prejudice, whether justified or not. It may also create or reinforce stereotypes or encourage discrimination by influencing the way people act or respond to others. It is important for us to be mindful about how our comments, actions or reactions might be interpreted by others. Parties may be very anxious and the issues being determined may be of the utmost importance to them. They are likely to be very sensitised in these circumstances.

Stereotyping

Stereotypes can be positive, negative or neutral. They can act as a form of mental ‘shortcut’. However, it is important:

- to avoid making assumptions that because people meet particular criteria (e.g. they are of South Asian origin or wheelchair users) they will behave in a particular way or have specific limitations;
- to beware of attaching labels to people (e.g. learning disabled or youths) and then using them to take away people’s rights (e.g. assuming that they are incapable of giving evidence, or that they will lie or be disrespectful) ;
- not to use these mental shortcuts to fill evidential or knowledge gaps.

Equality of opportunity

Special needs

Some people, for a variety of reasons, find it difficult or impossible to:

- attend at a court;
- function in a court room;
- understand what is going on; or

- be understood by others.

As judicial office-holders we should demonstrate an awareness of the feelings and difficulties experienced by those appearing before us. Every effort should be made to help in an effective way whilst maintaining a balance between assisting and adjudicating to enable people to participate fully in the proceedings.

This aspect is of special relevance to people with disabilities, but may apply equally to others such as those who do not speak or understand the language of the court and need an interpreter, or those who cannot read or have difficulty understanding documents and need to have written material explained or presented in a different way. Failing to address these needs will lead to a sense of unfairness and is likely to affect the quality of decision making.

Fair treatment

It is not sufficient to treat everyone in the same way – equal treatment may itself amount to discrimination:

... the applicant is different from other people to the extent that treating her like others is not only discrimination but brings about a violation of Article 3.

Judge Greve in Price v UK, ECHR (2001) 10 July (No.33394/96)

Fair treatment means affording equal opportunity for the parties to achieve justice.

This is emphasised in the judicial oath taken by every judge and magistrate when being sworn in in England and Wales:

... I will do right to all manner of people after the laws and usages of this realm without fear or favour, affection or ill-will.

3. Elements of judgecraft

a. The judge as facilitator

It is part of our role as judge, with effective support from the staff, to ensure that everyone involved in the process – prosecutor and defendant, witnesses, jurors, advocates and judge – can fully play their part. The following may be elements to be considered in fulfilling that role:

Nerves

It should be borne in mind that the court process and atmosphere can be very unnerving for parties and witnesses. Thus they may appear belligerent, hostile and sometimes rude, or confused and emotional. It follows that they may not give a good account of the case to be tried and should be helped to feel more relaxed. If they find it difficult to speak coherently or marshal the facts in an orderly fashion, they should be advised to speak

slowly and take their time. The more information and advice that can be available before the hearing, the more prepared and relaxed the party or witness will be.

Forms of address

Many participants in a hearing are concerned about how to address the judge. Others worry about where they should sit and when they should sit or stand. Concerns of this nature add to their confusion and anxiety but can readily be dispelled by a helpful introduction and tactful explanation.

Communication

It goes without saying that it is as important for the individuals before a court to understand what is being said to them as it is for them to be understood.

Jargon

Lay persons may not understand court jargon or technical terms. In an effort to overcome these difficulties, and to counteract the widely-held public perception that judges fail to appreciate the difficulty that ordinary people have in understanding the language of lawyers, it is advisable to keep language as simple as possible and to give clear explanations when required .

Misunderstanding

Sometimes one or both parties may be aware that they have not understood or been understood (or may be oblivious to the fact). It is possible to test understanding by asking a supplementary question, by reiterating or explaining what you understand the position to be, and checking to see if the party or witness agrees. Bear in mind, however, that unrepresented parties may not have the courage to test the understanding of others at the hearing or to admit that they do not fully understand a point. Communication failures can have far-reaching consequences, especially in situations of social inequality.

Avoiding stereotypes

Evaluating behaviour with an awareness of the cultural context within which it was generated is rendered entirely counter-productive if one relies on simplistic short-cuts. Not only are stereotypical generalisations grossly inaccurate but the perceptions they generate are invariably as unhelpful as they are misleading.

Unrepresented parties

Most unrepresented parties are stressed and worried, operating in an alien environment in what for them is a foreign language. They are trying to grasp concepts of law and procedure about which they may be totally ignorant. They may well be experiencing feelings of fear, ignorance, frustration, bewilderment and disadvantage, especially if appearing against a represented party. The outcome of the case may have a profound effect and long-term consequences upon their life. They may have agonised over whether the case was worth the risk to their health and finances, and therefore feel passionately about their situation.

Judges must be aware of the feelings and difficulties experienced by unrepresented parties and be ready and able to help them, especially if a represented party is being oppressive or aggressive.

Maintaining patience and an even-handed approach is also important where the unrepresented party is being oppressive or aggressive towards another party or its representative or towards the court. The judge should, however, remain understanding so far as possible as to what might lie behind their behaviour.

Maintaining a balance between assisting and understanding what the unrepresented party requires, while protecting their represented opponent against the problems that can be caused by the unrepresented party's lack of legal and procedural knowledge, is the key. Equally difficult is maintaining the dignity of the court in the face of a rude or aggressive unrepresented party without overstepping the proper judicial line.

On the whole those who exercise their right to represent themselves find that they are operating in an alien environment. The courts have not traditionally been receptive to their needs.

Particular areas of difficulty

Those who are involved in legal proceedings without legal representation may face a daunting range of problems of both knowledge and understanding.

Intellectual range

Unrepresented parties come from a variety of social and educational backgrounds. Some may have difficulty with reading, writing and spelling. Judges should:

- be sensitive to literacy problems and prepared where possible to offer short adjournments to allow a litigant more time to read or to ask anyone accompanying the litigant to help them to read and understand documents;
- exercise and be seen to exercise considerable patience when unrepresented parties demonstrate their scant knowledge of law and procedure;
- not interrupt, engage in dialogue, indicate a preliminary view or cut short an argument in the same way that they might with a qualified lawyer.

The hearing

The judge is a facilitator of justice and may need to assist the unrepresented party in ways that are not appropriate for a party who has employed skilled legal advisers and an experienced advocate. This may include:

- attempting to elicit the extent of the understanding of that party at the outset and giving explanations in everyday language;
- making clear in advance the difference between justice and a just trial on the evidence (i.e. that the case will be decided on the basis of the evidence presented and the truthfulness and accuracy of the witnesses called);
- Explanations by the judge;

- Basic conventions and rules need to be stated at the start of a hearing;
- The judge's name and the correct mode of address should be clarified;
- Individuals present need to be introduced and their roles explained;
- Mobile phones must be switched off, or at least in silent mode;
- An unrepresented party who does not understand something or has a problem with any aspect of the case should be told to inform the judge immediately so that the problem can be addressed;
- The purpose of the hearing and the particular matter or issue on which a decision is to be made must be clearly stated;
- If the unrepresented party needs a short break for personal reasons, they should only have to ask.

.....and the judge?

It can be hard to strike a balance in assisting an unrepresented party in an adversarial System (cp.the Continental inquisitorial system). An unrepresented party may easily get the impression that the judge does not pay sufficient attention to them or their case, especially if the other side is represented and the judge asks the advocate on the other side to summarise the issues between the parties:

- Explain the judge's role during the hearing;
- If you are doing something which might be perceived to be unfair or controversial in the mind of the unrepresented party, explain precisely what you are doing and why;
- Adopt to the extent necessary an inquisitorial role to enable the unrepresented party fully to present their case (but not in such a way as to appear to give the unrepresented party an undue advantage).
- At the start of any hearing it is vital to identify and if possible establish agreement as to the issues to be tried so that all parties proceed on this basis. Time spent in this way can shorten the length of proceedings considerably.

Cross-examination

Throughout a trial a judge must be ready to assist a defendant in the conduct of their case. This is particularly so when the defendant is examining or cross - examining witnesses and giving evidence:

- always ask the defendant whether they wish to call any witnesses;
- be ready to restrain unnecessary, intimidating or humiliating cross - examination ;

b. Acting judicially

Independence

It goes without saying that, in addition to keeping abreast of current legal and social developments, the judge will strive to apply the law in a way that is entirely free from pressures from any other source in society for it is only in that way that the rule of law and not the rule of individual elements of society can be upheld. The concept of the rule of law is one which extends across the world and, although its application varies widely,

the basic norm of a single body of rules encompassing the whole of society is one to which most countries subscribe.

The matters which are discussed earlier in this paper are of fundamental importance in this context for it is not until all those elements are embraced and incorporated into the individual judge's way of thinking and application in the court setting that the rule of law can properly be said to be applied uniformly across society. This extends across the whole body of the law of any given country irrespective of where that law is to be found (eg in national codes, statutes or case law).

Impartiality

Further, it is only by applying the national law in an impartial and unbiased way across the whole of society that the judiciary gains widespread acceptance and its authority enhanced.

This concept applies without exception in no matter what jurisdiction the judge sits. As an investigating judge in criminal proceedings the need is to act impartially and to assess the evidence dispassionately only allowing those cases to go forward where there is sufficient evidence to merit that course of action.

As a trial judge in a criminal case the same high standards of impartiality and fairness apply and the proper distance kept between the judge and the state. In all that the judge does, openness, integrity and fairness should be the watchwords that apply to judicial behaviour.

Responsibility for others

As members of the judiciary we rely upon many other people to prepare our workplace and to run it effectively. As such we have a leadership role both to those within the immediate surroundings in which we work but also other public servants who are affected by what we do and the judgements that we make. It does no harm at all for a judge to form a reasonable working relationship with the staff at the court where (s)he works and to make reasonably regular visits to the office to show an interest in what the staff are doing. Experience in England and Wales shows that courts where the judges act in this way are much happier workplaces with improved staff morale.

Sensitivity

For many who appear before the courts they are there not as a result of something that they have done but rather something that has been inflicted upon them. Into this category fall victims of rape and other violent crime. The interests of others who might fall into the category of "vulnerable witnesses" (such as children, disabled persons and foreigners) deserve no less consideration.

With all such groups, great sensitivity is required in ensuring that their experience at court is as least traumatic as possible. For the court system to be abusive is to compound a personal tragedy for them. The judiciary have an important part in ensuring that this does not happen. Those with responsibility for the management of judicial business in

the courts should ensure that there are adequate facilities for them to be kept separate from defendants before the case begins and during the trial so that there is no chance of those who allege that they have been victims at the hands of others cannot come into contact with them while at court.

Asking questions

There may be numerous occasions during the course of a hearing when it is necessary for the judge to enter the arena and ask a question or questions to elucidate a point that has been made by a witness or which has been overlooked by an advocate on a topic that the judge wishes to hear. There are a few basic ground rules:

- Keep such interventions to a minimum. It can be distracting for the advocates train of thought or be unhelpfully premature and anticipate a carefully constructed examination of the witness;
- Never intervene in a gruff or hostile manner. That is not the function of the judge and can be counter-productive;
- Avoid over-technical language;
- Never speak down to the witness.

Developing listening skills

The ability to listen to evidence is of no less importance than the ability to ask questions properly. The task of the judge to take a contemporaneous record (absent mechanical recording devices) should not interfere with the witness seeing that the judge is listening and is taking in what is being said.

For many this will be a one-off life experience and the least that they deserve is to know that they have been listened to. That point can be emphasised in giving the judgement of the court when matters of evidence can be carefully weighed against the other and a reasoned conclusion arrived at.

Making eye contact with the witness and asking questions by way of clarification are other ways to show that the witness is being listened to.

c. Diversity

- The judicial process must be seen to be fair and must inspire the confidence of all who enter into it;
- Fairness is demonstrated by effective communication;
- All of us view the world from our own perspective, which is culturally conditioned;
- People with personal impairments or who are otherwise disadvantaged in society are entitled to a fair hearing;
- Our outlook is based on our own knowledge and understanding: there is a fine line between relying on this and resorting to stereotypes which can lead to injustice;

Cultural diversity – not stereotypes

Divergences in attitudes are acceptable and the gaps are wider across different cultures. Attitudes to authority vary and our responses to them must take account of differences. For example:

- looking down and lowering one's voice can be a sign of respect, but not every African-Caribbean or Chinese young male will conform to this stereotype;
- 'establishing your credentials' (by, for example, explaining one's reputation and standing) before answering a question may be a way of manifesting credibility in some cultures;
- Important though it is, be wary of making judgements on the basis of body language or tone of voice. Body language varies significantly and this is more apparent in the tense atmosphere of the courtroom. The ability to "read" body language is a skill that takes many years to hone.
- In some cultures gender norms are so pronounced that physical affection even between married couples or towards children will never take place in public. No surprise should be felt on seeing a Kurdish / Persian / Turkish/Arab man kiss the cheeks of his male colleague and yet only shake his wife's hand in public.
- Raised voices are not a sign of anger in every culture, nor are tears amongst men so unusual in others.

We should never underestimate the influence which our cultural background may have on our judgements and perceptions, no matter how open-minded we may consider ourselves to be. We should be well-informed about the differing realities of life for all peoples of diverse backgrounds. Some actions can never be condoned (such as sexual or physical abuse) but our general knowledge must not lead us to false conclusions: there is diversity within all minority groupings .

Language

- Careful use of language and current terms increases confidence in the judicial process;
- Those who are disadvantaged may be more sensitive to the insensitive use of terms;
- Owing to increasing sensitivity in our diverse society we cannot underestimate the importance of using the correct terms;
- Just as the legal process utilises a technical language, users of the court system are entitled to benefit from the enlightened use of terms which generates confidence in the judicial process;
- Our choice of language is an indication of our attitude: the importance of correct etiquette has never diminished, but an appropriate sensitivity to the outward form always commands respect, particularly from those who may hitherto have been excluded or neglected;

People from minority ethnic communities or with disabilities should always be described as people: Black, disabled, etc. are adjectives and should always be used as such, as in 'Black person', 'disabled person', etc.

Families and diversity

- The family unit is the cornerstone of most communities: for many minority communities the family is a key source of personal identity which allows for differentiation from the majority;
- Differences in outlook amongst all families will exist in a diverse society: assumptions about the make up of the family unit have to be put aside;
- No major religion condones abuse and the voices against any such abusive cultural practices from within the communities should be acknowledged and supported;
- Our cultural outlook is based on our own knowledge and understanding: there is a fine line between relying on this and resorting to stereotypes which can lead to injustice.

Interpreters and communication

- An interpreter may be necessary even if the witness is able to communicate in the national language to some degree: the language employed in judicial proceedings is so specialised in comparison to communicating in a manner which enables the witness to get by on a daily basis;
- Common words may have different meanings according to the understanding of the speaker;
- Always establish that the interpreter speaks not only the language but the dialect of the witness;
- The same interpreter may no longer be appropriate for opposing parties;
- There are serious dangers in allowing an advocate, friend or family member to act as an interpreter and whenever possible the interpreter must be professionally engaged and ideally from an officially approved list;
- It should not be assumed that an interpreter can continue without regular breaks: it is a very demanding process if done correctly, so allow an opportunity to indicate when a break is needed;
- A party may need the assistance of an interpreter throughout the proceedings, beforehand when giving instructions and afterwards when receiving an explanation as to what has transpired. An interpreter or translation of documents may be required to understand the documentation in proceedings. Failure to ensure this could amount to a denial of justice;
- To the extent that it is difficult for those with learning difficulties or inadequate language skills to understand the language employed in the court room, all efforts should be made to communicate in a manner comprehensible to the parties before you.

Names and forms of address

We are all sensitive about our names and titles or forms of address.

- In order to show respect be prepared to ask any person participating in the process how they would like to be addressed – do not make assumptions;
- Getting it right increases every one's confidence in the judicial process.

Do:

- ask for the individual's full name and how it is spelt and pronounced – and how they wish to be addressed;
- appreciate that naming systems may be used in different ways by people according to their traditional conventions or by processes of adaptation to living in the UK;

But do not:

- abbreviate names, unless the person prefers to be addressed by their abbreviated name;
- assume – ask !

From childhood we are all aware of the importance of the correct pronunciation of our names and we expect an understanding of our titles. Members of all communities should benefit from the fulfilment of this simple expectation in our diverse society. In court and throughout the judicial process getting the forms of address right with regard to the judiciary, the lawyers, all the personnel and the public is vital in increasing confidence.

4. Conclusion

The task of sitting in judgement on one's fellow citizen is one that is given to few and as such is a role that must be approached with a degree of due humility recognising the privileged position to which society has elevated the judicial post-holder.

While computer skills and modern technology have immeasurably improved the way in which the judicial role is carried out in many parts of the world, at the core of the work that the judge undertakes one human being sitting in judgement on the actions of another human being - and that is so however high up the judicial system one aspires.

At its core, judgecraft is essentially humanity in action. It is a way of acting so as to validate the respect that should be given to one's fellow human being while at the same time recognising that humanity is imperfect and can slip. Such a task, so easy to state, is yet so difficult to apply consistently. Perhaps we can take comfort in the saying "practice makes (nearly) perfect"!

*Judge Victor Hall
Director of Studies
Judicial Studies Board of England and Wales
September 2006*