5. ASSESSMENT OF THE SYSTEM OF FIXED RECESSES

To date, there has **never** been a **proper assessment** of the High Court recess system[1] in South Africa, and whether it properly meets the competing needs of our criminal case backlogs and our judges' necessary judgment-writing time.

Elsewhere, however, the issue of **fixed long recesses** has received such attention.

As a result, three key solutions have been adopted, in other prominent Commonwealth jurisdictions, namely:

- having a **hybrid** bench, with two tiers of judge occupying the same Bench,
- the concept of **staggering the judicial vacations**, and
- having a **separate criminal** Bench.

5.1 Hybrid Bench

The Royal Commission on Assizes and Quarter Sessions, 1966 – 1969, chaired by Lord Beeching, was the Parliamentary body which first mooted the idea of the **restructuring** of the **court system** to improve **productivity**.

The Commission devised an innovative scheme whereby recesses (and consequent delays) could be effectively reduced **without interfering** in any way with **existing rights and privileges** of the High Court judges.

5.1.1 Circuit and High Court judges in one Crown court

As a result of the Beeching report, the previous criminal system of Assizes and Quarter Sessions were **abolished**, and the new **Crown**

[1] In 1982, it was briefly touched upon by the Hoexter Commission and, in 1989, the recess system became a negotiation point when the judiciary received a vastly improved salary.

Courts created by the Courts Act of 1971, which provided that:

> "*The places at which the Crown Court sits and the days and times at which the Crown Court sits at any place shall be determined in accordance with directions given by or on behalf of the Lord Chancellor."*[2]

The Crown Courts[3] hear all the serious **criminal** trials in the United Kingdom and sit throughout the year. They are manned by both **Circuit judges** and, from time to time, **High Court Judges**.

The **Circuit Court** Judges, who do the majority of the work, are required to sit for a minimum of **210 days** of the year, and their leave period is **staggered**[4].

Where circumstances demand it,[5] High Court Judges also sit in Crown Courts. These (High Court) Judges have a commitment of only **189 days** per year, and are entitled to certain formal vacations[6].

In other words, the vacation period attaches to the Judge, not the Court.

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[2] This provision is now repealed; however, s.78(3) of the Supreme Court Act, 1981 preserves it, in exactly the same terms. Neither Act makes reference to vacation times.

[3] The creation of the Crown Court was first mooted by the Royal Commission on Assizes and Quarter Sessions, 1966 – 1969, chaired by Lord Beeching as a result of the difficulties created, *inter alia,* by the system of Assizes and the limited time the judges were available to hear cases.

[4] See page 72 *infra*

[5] For purposes of trial in the Crown Court, offences are divided into four classes of seriousness, according to directions given by the Lord Chief Justice, with the concurrence of the Lord Chancellor: ***Class 1*** offences are the most serious offences and are **generally** to be tried by a High Court judge, unless a particular case is released on the authority of a Presiding judge to a circuit judge. These offences include treason and murder. ***Class 2*** offences are **generally** also to be tried by a High Court judge unless a particular a case is released on the authority of a Presiding judge to a circuit judge or other judge. These offences include manslaughter and rape. ***Class 3*** offences **may** be listed for trial by a High Court judge, but may be tried by a circuit judge or recorder if the listing officer, acting under the directions of a judge, so decides. Class 3 offences include all offences triable only on indictment other than those specifically assigned to classes 1, 2 and 4, for example, aggravated burglary, kidnapping and causing death by dangerous driving. ***Class 4*** offences are normally tried by a circuit judge, recorder or assistant recorder, although they may be tried by a High Court judge. They include grievous bodily harm, robbery and conspiracy, and all 'either way' offences – those which may be tried whether on indictment at the Crown Court or summarily, i.e. at magistrates' courts. The offences include treason and murder.

[6] Prior to the Courts Act, 1971, the (now abolished) Assizes Courts were presided over by High Court Judges only and, consequently, the traditional High Court vacation times applied to the Assizes Courts. These High Court vacations are: 3 weeks at Christmas, 2 weeks at Easter, 1 week at Whitsun and the two summer months of July and August.

By creating a new **'hybrid' criminal court**, comprised of both High Court Judges, with their traditional High Court vacation time, and Circuit Court Judges with no such traditional vacation time (and staggered vacations), Parliament attempted to ensure the **continuous session** of the Crown Court.

The High Court vacation times still technically apply to High Court Judges when sitting in the Crown Court, although it is widely noted that even this appears to be coming to an end, with even the High Court Judges now **sitting through the summer** where required in serious criminal cases.

5.1.2 'Ticketing'

In addition, the so-called 'ticketing' system was introduced.

'Ticketing' is an **authorization** to hear more serious cases, and is given by the Presiding judge to **Circuit judges** whom he feels have the aptitude and experience necessary to deal with these cases, which were hitherto the prerogative of High Court judges only[7].

5.2 'Staggering' the judicial vacations

5.2.1 New South Wales, AUSTRALIA

When, in the mid to late 1990's, **delays** in the criminal justice system became of particular concern to the NSW Government, one of the proposed possible solutions was the **elimination** of the **long summer vacation**.

[7] Lord Justice Auld, in his Review of the Criminal Courts of England and Wales, September 2001, remarked that "at present, authorizations are given primarily, not as a badge of recognition or advancement, but to relieve High Court judges from having to try certain cases of a particular class or category, where there are too many for them to try." (Chapter 6, para 23) He recommended that "most of the rigidities of the present 'ticketing' system should be removed and replaced by the conferment on the Resident Judges wide responsibility, subject to general oversight of the Presiding Judges, for allocation of judicial work at their court centres, but coupled with, (firstly,) regular and systematic appraisal enabling Resident Judges and Presiding Judges to determine the experience and interests of the judges; and (secondly), the undertaking by judges of such training by the JSB as may be required as a pre-condition for the trial of particular categories of work." (Chapter 6, para 25)

The problem was summed up by the Director of the New South Wales Bureau of Crime Statistics and Research, who stated (in 1998) that the delays in criminal matters had far-reaching **social effects** which had to be addressed quickly:

> "*Firstly, many innocent people who are not guilty are being kept in prison for more than a year and, plainly, that is neither fair nor desirable*.
>
> *Secondly, the length of time before the matter comes to trial when somebody is guilty means they have a greater chance of getting off because it is harder for people to remember what they saw and evidence becomes less reliable."*

Mindful of the fact that 'comparisons are odious', and that different Australian States have widely differing complexity of cases, workload and resources, it was nonetheless regarded as significant that New South Wales had been found to have the **longest finalization time, nationally**[8], for processing matters before both the **Supreme** Court and the **District** court in the **criminal** jurisdiction[9], for the period 1997/1998[10].

As a result, a number of **steps** were taken to deal with the **backlogs** that

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[8] Comparative tables showing the rate of finalisation of criminal matters in the different States are to be found in Appendix 'G'.

[9] Statistics released by the Australian Bureau of Statistics [ABS] show that, in 1996, the mean time for matters going to trial before the New South Wales [NSW] district Court stood at 62,7 weeks for a guilty verdict and 55,8 weeks for an acquittal. Guilty verdicts in Victoria took 55,2 weeks, in Western Australia [WA] 42,4 weeks, in Queensland 38,3 weeks and in Tasmania 18,5 weeks. The 29,7 weeks median duration it took until NSW defences and prosecutions prepared their cases, and courts listed, and heard, the cases, was also the longest in the country, the ABS figures showed. Victoria came next with 23,2 weeks; Tasmania and WA had the shortest median duration of just over 12 weeks. The ABS figures show NSW took longer to put cases through the District Court in 1996, even though the number of defendants dropped by 14 percent to 3,835 from 4,458 the previous year.
NSW also failed to register much of an impact in reducing the waiting time for defended cases. At the start of 1996, NSW defendants were waiting 24,4 weeks for a verdict after their case had been initiated, but by the end of that year the pending time had blown out to 28,9 weeks.
Sydney Morning Herald, 28 August '98
50% of the awaiting trial prisoners in the NSW district court have been waiting for 6 months in custody and close to 30% spend between 6 and 12 months in custody.
The NSW Bureau of Crime Statistics and Research, *Higher Quarts Quarterly Report Series*, December Quarter, 1998

[10] 1999 Report by the Council of Australian Governments, covering the 1997/1998 financial year.

had accumulated in the **higher courts**. **Two** of these, above all others, were considered to be **crucial** to the success of the exercise –

- *firstly*, there was an extensive program of appointing **acting judges**[11], run in conjunction with -
- *secondly*, the **abandoning** of **fixed judicial terms**, and **staggering the judicial vacations**, thereby allowing the court to sit for **more weeks** of the year[12].

The **rostered sittings** of both the District and Supreme Courts were increased[13] and, in addition, certain **legislative changes** (in **jurisdiction**) were made, by which many Supreme Court Common Law Division cases became appropriate for hearing in the **District Court** (which was given increased jurisdiction), where the **waiting times** were generally **shorter**[14].

Today, the **Courts of New South Wales**, and their Judges, operate according to the following schedule:

The **local courts** deal with the more petty criminal and civil matters and sit continuously from around 15 January to 15 December each year; the **District Court**[15] has a variable timetable for both **civil and criminal**

[11] In the Supreme Court, several acting judges were appointed for varying periods to assist in the hearing of the backlog of cases. In the District court, the Government provided special funding for the implementation of an Acting Judge Scheme.
[12] In 1996/97, the District court's judicial sitting capacity was increased by 310 weeks and, in 1997/1998, by about 490 weeks. This was equivalent to the workload of around 12 extra judges.
[13]The Supreme Court, in 1998/1999, increased its rostered sittings in the Criminal jurisdiction by about 64%, to 315 sitting weeks, while the District Court increased its rostered sittings in the criminal jurisdiction by 12%, most markedly in country areas where an additional 61 weeks were scheduled (being an increase of 22% over 1997).
[14] The entire Supreme Court Common Law Division caseload was screened for suitability for transfer to the District Court and a total of 3 199 cases were transferred to the District Court. This reduced estimated waiting times, from completing case management to hearing, by 6 – 13 months for remaining Common Law Division cases.
[15] The District Court hears appeals from the local court and deals with all indictable criminal offences in practice except murder, treason and piracy in its criminal jurisdiction. It also enjoys civil jurisdiction. Country and region courts have different sittings, according to the local needs.

courts, which all sit from 30 June to 25 June each year. Vacations are thus **staggered**.

The judges of the **Supreme Court**[16] have an entitlement to **10 weeks** of leave per year as set out in Part 1A, Rule 2(2) of the Supreme Court Rules, which stipulates as follows:

> *"**2** **Vacations***
> *(1) There shall be a **fixed** vacation and a **variable** vacation in each year.*
> *(2) The **fixed** vacation shall be a period of **six weeks** from the beginning of the Monday before the 24th of December.*
> *(3) The **variable** vacation shall be a period not exceeding **four weeks** regulated by the Chief Justice.*
> (4) *A hearing or trial shall not be held in the fixed vacation, unless the Court otherwise orders."*[17]

If a judge is rostered to sit during the fixed vacation as either a Vacation Judge or a Bail Judge, or for some other reason, the time so 'lost' from the fixed vacation is given as **compensatory leave** later in the year.

The balance of **4 weeks' variable vacation** is taken **outside** the fixed vacation period.

Judicial officers also have an entitlement to **extended leave**[18]. If part or all of the fixed vacation falls during a period of extended leave, this time will not be 'reimbursed' at a later time but will be counted as part of that period of extended leave. Public holidays that fall within a period of extended leave are similarly not 'reimbursed'.

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[16] The Supreme Court has appellate jurisdiction in criminal and civil matters and is a court of first instance in regard to criminal trials of the most serious nature. It enjoys unlimited jurisdiction in civil disputes.

[17] A fuller explanation of how the vacation works is set out in Appendix 'G'.

[18] Six months of extended leave is available to judges after 5 years of service. Thereafter, extended leave accrues at a rate of 1 month and 6 days for every completed year of service. For the purpose of calculating leave, periods of leave already taken are regarded as periods of service.

One of the advantages of the New South Wales Supreme Court system is its **flexibility**, which makes it beneficial for Judges, practitioners and the public alike.[19]

5.2.2 The United Kingdom

The **Beeching Commission** also considered the annual **two month summer vacations** enjoyed by High Court judges and found that the vacations [caused] -

> "*i an inevitable increase in the **delay time** of some cases by two months – two months of real time to those who are not lawyers; and*
> *ii the **peak** in **court loading** which is bound to follow a shut down of two months' duration, with consequent disturbances to listing for months thereafter, and a recurrent danger that each peak in turn may cause a permanent extension of average delay time*."[20]

A joint Committee of the Bar Council and the Council of Law Society presented an impassioned argument by for **retaining** the **long vacation**. After hearing them, Lord Beeching made the wry comment that "*proposals for any reduction in the length of vacations are understandably likely to arouse strong feelings, and arguments for leaving the holiday period undisturbed, therefore, need to be examined dispassionately*."[21]

The argument propounded by the Bar Council and Law Society, was that the general public might find their **holidays interfered** with, and that most of the other courts in the country did not close for such a lengthy period. In response, the Commission stated that the second argument

[19] During September 1999, the Chief Justice of the NSW Supreme Court announced that 3 weeks of the variable vacation for the year 2000 were to be fixed for the period commencing Monday 11 September 2000 and concluding on Friday 29 September 2000. This vacation was fixed pursuant to Part 1A Rule 2(3) of the Supreme Court Rules 1970 in order to coincide with the Olympic Games. The arrangement also took into account the availability of police for court work during the period, the impact of transport congestion on prisoner transport, court personnel, witnesses, jurors, the legal profession and court reporters and accommodation difficulties for witnesses and litigants. During the vacation, duty judges and registrars were available to deal with urgent applications and registry services were maintained. Arrangements were made to ensure that there was no reduction in the courts' sitting time.

[20] *Loc cit*, para 422 – 425, p. 133*ff*.

[21] See footnote 131.

rather tends to defeat the first – that is, presumably, if all of the other courts in the country are closed for a shorter period of time, they must interfere with the holidays of a larger number of persons.

The Commission then motivated the idea of the **staggering of judicial vacations**, making the following observations:

> *"We recognize …. that national **habits are changing**. Holidays abroad are becoming relatively cheap and common, so that climatic restriction of holiday months is diminishing.*
>
> ***Staggering of holidays is being fostered**, and in many places the 'Wakes week' approach to industrial holidays has disappeared. It will, therefore, become progressively more difficult to sustain the argument that closure for 'the holiday period' will eliminate most of the problems arising from holiday absence. Therefore, although we think it justifiable for the courts to close for **a month**, we recommend that the closure of the High Court for a summer vacation should be **made progressively shorter and less complete** than it is at present.*
>
> *By **staggering** this, we are not proposing that High Court judges should have their total vacation period cut, and certainly not without recompense, but, moved by the same influences as others, many judges may **welcome** a **wider choice** in the timing of holidays, and staggering of their leave should be quite possible.*
>
> *It is also relevant that, with the reduced reliance on part-time judges which we are proposing, it will no longer be necessary for members of the Bar to sit judicially in the Long Vacation to avoid interference with their practices.*
>
> *We firmly believe that, if the Long Vacation is reduced, most of the difficulties foreseen by the legal profession will prove to be unreal, and certainly no more difficult than those which other professional men take in their stride."*[22]

Consequently, Lord Beeching recommended that:

[22] *Loc. cit.* para 424, p.134.

- consideration be given to **reducing** the formal legal vacation periods for High Court Judges sitting in the Crown Court; in particular, to confining that summer vacation to the **month** of August, and,
- that this should be achieved by **greater staggering** of the existing sitting commitments of the High Court Bench, not by increasing them.

Beeching that was of the view that, if implemented, his recommendations regarding the staggering of judicial vacations would be **beneficial** to **judges** and not make any real difference to the lives of the legal practitioners.

Lord Justice Auld recommended that the Beeching Commission's recommendation in respect of the '**staggering**' of the respective Judges' vacations be revisited as, **in practice**, almost all the High Court judges were in fact **working throughout** the formal vacations. In fact, in August, the Crown Courts dealt with about **70%** of its usual monthly workload.

Lord Justice Auld based his recommendation partly on the reasoning that a shorter summer vacation would be –

"*a **useful discipline** in maintaining the **momentum** of case preparation and management. It would be more in line with the **working patterns** of most public and private sector organizations. And, it would help to correct a popular **misconception** about the present **work pattern** and **load** of the **higher judiciary**.*"[23]

Ultimately, as a result of the combined effects of

- the restructuring of the criminal court system[24],
- the creation of a new rank of judge without the traditional

[23] *Op. cit.* Chapter 6, para 39.
[24] See notes on the creation of the Crown Courts and the hybrid bench at Appendix 'E'.

disruptive summer vacation, and staggered vacations throughout the year,

- pressure placed on the courts by the sheer number of cases before it, and
- the commitment of the judiciary to efficient and speedy justice,
- the long summer vacation within the Crown Court has, effectively, been abandoned.

5.2.3 Queensland, AUSTRALIA

In the jurisdiction of Queensland, the court calendar of terms and recesses has also undergone change in recent years.

The original scheme of the court calendar was that Supreme and District Court judges sat throughout the year, except for recesses of **six weeks** from before Christmas to the end of January and **two weeks** at mid-year[25], with **four weeks** scattered across the year for judgment writing.

Except for about a **fortnight** at Christmas/New Year, most **District Court** judges now sit **throughout the year**, taking their annual leave at times that suit both them personally and the Court calendar.

The **Supreme Court** is moving in the same direction. There is **always** at least one judge sitting in civil and one judge in crime in Brisbane during the January vacation. For some reason (probably **flexibility** in holiday-taking time), there is no difficulty in finding Supreme Court judges to sit during what were formerly the vacation times.

The Hon Mr Justice B H McPherson CBE[26] says:

[25] Supreme Court Trial Division Roster: July 2003 – January 2004
Winter break 30 June 2003 – 11 July 2003
Summer break 22 December 2003 – 30 January 2004
[26] Court of Appeal, Supreme Court Brisbane, Australia

*"The secret of success lies in calendaring. The system aims at having **a minimum number of judges sitting at all times** in criminal, civil, chambers, circuits and on appeals, as well as allowing for judgment writing and vacations at **staggered times** throughout the year. The old practice by which all judges sat in fixed term times, and none sat in vacations has now almost disappeared except for the **month** of **January**. The legal profession has shown some resistance to having that month off and, in that respect, can always get their way by applying a form of passive resistance to working when they do not want to.*

*The ultimate limiting factor on sitting constantly through the year is the **annual summer holiday period**. All schools, universities and many businesses (including the building industry) close during January when most people go away to other places. In consequence, it is impracticable to try to assemble witnesses, parties, members of the legal profession and jurors for trials in that month of the year.*

*I can see no reason why courts in South Africa should not sit continuously and **make use of court facilities during the whole year**, provided there are sufficient numbers of judges and court staff, as well as prosecutors and defence counsel, to serve the system at all times.*

*In terms of use of facilities, … Singapore… has a reputation for making the most of its buildings, etc.. For example, school children there attend school either in the morning or in the afternoon session, so that schools are **used twice over** in the same day."*

5.2.4 New Jersey, USA

Chief Justice, Robert N Wilentz through a directive # 1/82 dated 22 October 1982 [amended by Directive #1/98] stated:

"It is the policy of the Supreme Court that the trial courts of New Jersey shall operate on a yearly schedule that affords the greatest possible efficiency of operation and provides the public with maximum access to the courts.

A study of the schedule of judicial work conducted in 1982 has led to the conclusion that greater court efficiency and accessibility to the public could be attained through maintaining court operations throughout the year to the fullest extent practicable. Therefore, to implement the policy of the Supreme

Court, the Judiciary will undertake a court schedule by which trial judges will hold court each business day of the year except for official national and state holidays and the period between Christmas and New Year's Day when only emergency judges will be on duty."[27]

5.2.5 Federal Republic of Germany

Court holidays did exist within the court system of the Federal Republic of Germany and ran each year from the 15th July to 15th September.[28] The court holidays were **abolished** with effect from 1 January 1997.[29] From the year 1997/98, it was intended that formal court holidays would **no longer occur** in the Federal Republic of Germany.

German law does not otherwise prescribe sitting days for courts[30]. In principle, German Courts can sit on any working day of the week. In practice, each ruling body sets aside time for oral hearings. The number of sitting days depends on a variety of factors, including the pressure of business.

Criminal cases are heard on a **continuous** basis.

Professor Dr Reinhard Bork describes how, when Roman Law was adapted in Germany, the concept of court holidays was taken into German Law. During the 19th and 20th centuries there was ongoing debate on the issue of court holidays before the abolition of such holidays.

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[27] See Appendix 'O' for a fuller description of the New Jersey judicial calendar system.
[28] Section 199, Court Constitution Act {GVG] as in force until 31 December 1996.
[29] Bundesgesetzblatt [BGB], 28 October 1996, Federal Law Gazette 1, p 1546.
[30] The courts of the Federal Republic of Germany fall into 5 categories: (contd. on p. 77)
(1) The 'ordinary courts', which are responsible for criminal matters and may be divided into four levels: the Local Court [Amtsgericht], Regional Court [Landgericht], Higher Regional Court [Oblerlandesgericht] and Federal Court of Justice [Bundesgerichtshof]; (2) the Labour Courts [local, higher and federal]; (3) the Administrative Courts [local, higher and federal]; (4) the Social Courts [local, higher and federal]; and (5) the Finance Courts [State and Federal]. Separate from the aforementioned five types of courts is the Federal Constitutional Court, which acts as a Supreme Court and a Constitutional Court.

Professor Bork states[31]:

> *"The court holidays rule applicable to the ordinary courts, and then only to a limited extent, is systematically inconsistent, incoherent and complicated. It fails to fulfil its stated purpose of providing relief for judges and lawyers and enabling them holiday with their families. … It causes considerable additional burdens for courts and lawyers before and after the end of the court holidays and threatens the quality of decisions reached. It inherently involves a risk for parties to disputes of a protracted deferral of cases, and also of a loss of justice as a result of missing deadlines. For lawyers, it involved dangers of liability. On the other hand, its abolition will not create any serious disadvantages for the courts. Lawyers can continue to go on holidays, though will also have to continue to appoint temporary replacements, for whom relief could be provided by conventional means. The risk that parties to disputes could be exposed to particular dangers from missing deadlines and sitting dates is relatively small. All arguments thus favour the* ***complete abolition*** *of court holidays … ."*

5. 3 A separate criminal bench

As early as 1961, the **Streatfeild Commission**[32] was concerned that the **continuously sitting courts** (namely the Central Criminal Court in London and the Crown Courts at Liverpool and Manchester) were able to try almost all their cases **within 8 weeks** of committal, whereas the **other courts**, namely the Quarter Session and the Assize Courts were **not** achieving this goal.

Evidence was led before the Committee that the solution for this problem would be to **set up more Crown Courts**.

Essentially, a **Crown Court** (at that stage) was a continuously sitting criminal court which dealt with the whole of the Quarter session's work and the criminal Assize work of a densely populated area outside London.

[31] 'Do we need court holidays?' Prof Dr Reinhard Bork, Judge of the Hanseatic superior Regional Court of Hamburg, Juristenzeitung, Vol 48, 1993, pp 53 – 108.
[32] Report of the Interdepartmental Committee on the Business of the Criminal Courts, 1961, Command 1289.

An **Assize Court** was presided over by a High Court Judge and dealt with both criminal and civil work, while a **Quarter Sessions Court** dealt with only criminal work and was presided over by a judge of less than High Court status.

Streatfeild considered that the creation of more Crown Courts would lead to the establishment of a **permanent separate criminal bench** (as was eventually established in terms of the Courts Act 1971) and made the following observations:

Advantages:

5.1 Such a bench could **contribute** to the **criminal expertise** of the judiciary. A specialist judge could be expected to interest himself more deeply in current criminological developments and, by reason of his experience, to make his own contribution. Knowledge of the results of **penological research** could be effectively combined with day-to-day decisions on individual cases.

5.2 Such a bench could get to **know the area** served by the court and bring local knowledge and experience to their work on the bench. They could study local habits and attitudes, local shifts of population and local trends in crime.

Disadvantages:

5.3 On the other hand, it was held that such a system had **defects**, as concentration of criminal work tended to cause **staleness** leading to decreased efficiency. They suggested that:

5.3.1 It was a fundamental feature of our system that, as far as possible, the judges of our superior courts dealt with both criminal and civil work and as a result were **refreshed** by the

frequent changes from one to the other.

5.3.2 Similarly, most recorders were saved from excessive concentration on criminal work by their general practice at the Bar. The full-time criminal judge was in danger of becoming **stale**, and even prosecution-minded, as a result of taking nothing but criminal work.

5.3.3 The risk of staleness was increased where the full-time criminal judge sat each day in the same court. The same practitioners, police officers and probation officers were repeatedly concerned in the cases before him, and there was even a similarity in the circumstances of otherwise separate offences. There was a danger that likes and dislikes might develop and produce an atmosphere which might tend to impair the proper relationship between the judge and those appearing or giving evidence before him.

Final observation:

5.4 The Committee conceded that the growing complexity of sentencing would require developments in the equipment and training of sentencers. 'An increased amount of information is becoming available and, as this aspect of criminal work develops, a specialist criminal judge might be in a better position to devote the necessary time to studying new techniques and information. The **time may well come** when these considerations **diminish or outweigh any risk of staleness** being caused by the monotonous course of criminal trials.'[33]

[33] *Loc. cit.,* Chapter 5, paragraph 134.