STYLES OF JUDGING

How magistrates deal with applications for intervention orders

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The legal system is less a system than it is an inconsistent collection of varying styles and approaches to law.[1]

The Victorian Law Reform Commission is currently reviewing the *Crimes (Family Violence) Act 1987* (Vic).[2] This legislation is implemented via high volume proceedings in Magistrates Courts. Arguably, when reviewing such legislation, it is just as important to look at the way the law operates in practice in the courts as it is to look at issues such as the terms of the legislation, access and enforcement. Yet in Australian jurisdictions to date, what happens in court has rarely been subjected to systematic analysis. At the same time, the notion that *how* judges judge is at least as important for litigants as the ultimate outcome of their case is now widely acknowledged, in theoretical and practitioner literature,[3] as well as in the content of judicial performance evaluation schemes.[4] In the words of two West Australian magistrates, 'magistrates and judges can make a difference not only in the nature of the judgment that they deliver but in the procedures they use leading up to the final resolution of the case'.[5]

This article discusses North American and Australian research evidence on varying judicial styles in first level courts. The two North American studies on which it focuses are Conley and O'Barr's analysis of proceedings in small claims courts,[6] and Ptacek's account of civil restraining order hearings.[7] These studies provide a framework for analysis of data from a research project on intervention order proceedings in Magistrates Courts in Melbourne. The article first discusses the typology of judicial styles put forward in the two North American studies, and considers their application in the Australian context. It then introduces the more controversial question of whether some styles can be said to be preferable to, or better than, others.

Conley and O'Barr: the ethnography of legal discourse

Conley and O'Barr undertook an observational study of small claims courts in six cities in the United States. Their decision to focus on small claims courts arose from their particular interest in informal justice, and the way in which individual litigants use, understand and experience law in settings where legal representation is rare. As the researchers point out, these settings also provide a greater opportunity to observe judicial approaches, since there is likely to be much more interaction between judges and litigants in informal courts than in more formal litigation, with the judge usually playing a more active role, being 'simultaneously master of ceremonies, inquisitor, and referee'.[8]

Based on their observations, Conley and O'Barr identified five different judicial styles, which they labeled:

- the Strict Adherent to the Law
- the Law Maker
- the Authoritative Decision Maker
- the Mediator
- the Proceduralist.

Strict Adherents tend to disclaim responsibility for their judgments by explaining to litigants that this is what the law requires. They give the impression that the role of the judge is to select the relevant principle, apply it to the facts, and announce the result. Thus they present the legal process as dispassionate and value neutral. Strict Adherents may also give advice about enforcement and appeal rights, but the content of this advice tends to be perfunctory, and to have little practical value for the litigant.[9] Law Makers, on the other hand, are more active in their use of the law. They tend to make judgments consistent with their own sense of fairness and justice, and then to mould or manipulate the law to fit the desired outcome. Law Makers may stress their responsibility for determining the facts of the case, but their decisions will be cloaked in legality, of sometimes questionable value.[10] At times, the Law Maker's determination of what is fair may represent an enforced compromise between the parties.[11] Authoritative Decision Makers, on the other hand, emphasise their personal responsibility for decisions rather than attributing them to legal rules. They represent themselves as the source of authority in the courtroom, and often express gratuitous, critical opinions on the behaviour of the parties both in and out of court. In this sense, they are authoritarian as well as authoritative.[12] This style appears to be a good description of that icon of American courtroom TV, Judge Judy. Authoritarian Decision Makers also use their personal authority to emphasise the finality of their decisions and to suppress dissent. They are not interested in compromise,[13] unlike Mediators, who tend to avoid judgments, preferring instead to identify and recommend settlement strategies to the parties, strive for workable solutions, and broker agreements.[14] Finally, Proceduralists place the highest priority on the maintenance of procedural regularity. They spend considerable time explaining procedure to litigants, but pay less attention to the substantive legal issues.

REFERENCES

1. John M Conley and William M O'Barr, *Rules Versus Relationships: The Ethnography of Legal Discourse* (1990), 111.

2. See Victorian Law Reform Commission, *Review of Family Violence Laws: Consultation Paper* (2004).

3. Some classic and more recent examples include: Tom R Tyler, 'The Role of Perceived Injustice in Defendants' Evaluations of their Courtroom Experience' (1984) 21 *Law and Society Review* 51; Roger Douglas, 'Does the Magistrate Matter? Sentencers and Sentence in the Victorian Magistrates Courts' (1989) 22 *Australian and New Zealand Journal of Criminology* 40, 51; Stewart Dalzell, 'Faces in the Courtroom' (1998) *University of Pennsylvania Law Review* 961; Garry Hiskey SM, 'Mutual Observation, Reflection and Discussion and Professional Development for Magistrates' (2002) 12(1) *Journal of Judicial Administration* 39.

4. See, eg, A John Pelander, 'Judicial Performance Review in Arizona: Goals, Practical Effects and Concerns' (1998) 30 *Arizona State Law Journal* 643; Stephen Colbran, 'Temperament as a Criterion for Judicial Performance Evaluation' (2002) 21 *Tasmania Law Review* 62.

5. Michael King and Stephen Wilson, 'Magistrates as Innovators' (2002) 29(11) *Brief* 7, 8.

6. Conley and O'Barr, above n.1.

7. James Ptacek, *Battered Women in the Courtroom: The Power of Judicial Responses* (1999).

8. Conley and O'Barr, above n 1, 82.

9. Ibid, 85–6.

10. Ibid, 87–9.

11. Ibid, 106.

12. Ibid, 96.

13. Ibid, 101.

14. Ibid, 90–1.

They are not activist, for example, in taking over the questioning to assist parties who are floundering. Their judgments are more formulaic, and they give the impression of being impersonal and distanced from the parties before them.[15]

Conley and O'Barr's study included a total of only 14 judges, so they were unable to draw any definitive conclusions as to the sources of the different styles. They tentatively suggested, however, that relevant factors may include sex, legal training, and degree of experience. Not all of the judges adjudicating in the small claims courts were legally trained, but the researchers did observe that all of the Proceduralists appearing in the study were male lawyers. By contrast, all of the Mediators were women. Finally, Strict Adherents tended to be non-legally trained and relatively inexperienced. Their insistence on legal inevitability thus tended to mask a lack of confidence in their own judgments and authority, which the Law Makers and Authoritative Decision Makers clearly did not suffer.[16]

Ptacek: battered women in the courtroom

James Ptacek observed 147 civil restraining order hearings (the equivalent of what are variously known in Australian jurisdictions as 'intervention orders', 'apprehended domestic violence orders', or 'protection orders') in two different courts in the state of Massachusetts over a nine month period.[17] Ptacek's overall objective was to analyse the judicial treatment of battered women, and the court observations provided one of the bases on which his assessment was made.

In categorising the 18 judges he observed, Ptacek made use of a typology of judicial demeanours developed in an earlier study by Maureen Mileski.[18] This typology included four styles:

- Good Natured
- Bureaucratic
- Firm/Formal, and
- Harsh.

To these, Ptacek added a fifth of his own:

- Condescending/Patronising.

Good Natured judges are affable, courteous and respectful, appearing sometimes like a concerned, helpful social worker.[19] In the domestic violence context they are concerned to put women applicants at their ease and to ensure that they understand the proceedings, make clear that the applicant's request for protection is taken seriously, express concern for the applicant's safety, explain the possibility of criminal proceedings in respect of the violence if the description in the applicant's affidavit warrants it, and refer applicants to other support services for battered women.[20] Bureaucratic judges, on the other hand, remain passive and detached, are emotionally flat, display little empathy for the applicant, and tend to focus more on the documents than on the woman before them. They deal with matters in a routine, businesslike and impersonal manner, ask fewer questions, do not explain things, and their hearings are often very brief.[21] Firm/Formal judges are more active, but this tends to be in accentuating their own power and demanding deference.[22] In the tone, force and content of their words and demeanour they convey their moral and legal authority over the parties before them.[23] In the domestic violence context they can be unsupportive of either party. For example, Firm/Formal judges might give defendants a lecture about their behaviour, or deliver a stern warning about not breaching the orders made.[24] Condescending/Patronising judges are both unsupportive and somewhat critical of applicants for restraining orders. If the defendant is present, these judges tend to be more supportive of him than of the applicant.[25] Finally, Harsh judges display a nasty, abrasive style. They go beyond firmness to personal vindictiveness (eg 'Don't give me that disgusting look'), often in response to some disrespectful or argumentative behaviour on the part of a litigant.[26] In his study, Ptacek encountered only one instance of Harshness, in which the judge was very unsympathetic to the applicant for a restraining order, while displaying considerable sympathy for the defendant.[27]

When Ptacek's typology is lined up alongside that of Conley and O'Barr, it becomes clear that they do not readily match. Conley and O'Barr's Authoritative Decision Maker aligns quite closely with Ptacek's Firm/Formal judge, but this is the closest they get. While Ptacek's Bureaucratic judge bears some resemblance to Conley and O'Barr's Proceduralist, the resemblance turns out to be superficial. There is no equivalent in Ptacek's scheme of Conley and O'Barr's Mediator; and there is no equivalent in Conley and O'Barr's scheme of Ptacek's Good Natured judge. The most obvious reason for the discrepancy between the two typologies is that they are in fact describing different things. Conley and O'Barr's typology concerns judicial

15. Ibid, 101–6.
16. Ibid, 110–11.
17. Ptacek, above n 7, 97, 187.
18. Maureen Mileski, 'Courtroom Encounters: An Observational Study of a Lower Criminal Court' (1971) 5 *Law & Society Review* 527; Ptacek, ibid, 98.
19. Mileski, ibid, 523, 526.
20. Ptacek, above n 7, 99–100.
21. Ibid, 101.
22. Ibid, 102.
23. Mileski, above n 18, 524.
24. Ptacek, above n 7, 107.
25. Ibid, 103–4.
26. Mileski, above n 18, 524, 527.
27. Ptacek, above n 7, 104.

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attitudes to decision-making and the legal process, while Ptacek's typology concerns judicial attitudes to or manner towards litigants. Thus, the two typologies may co-exist on different planes.

Another possible reason for the discrepancy, however, may be that the two studies were derived from different kinds of proceedings — small claims proceedings on the one hand, and summary crime and restraining order proceedings on the other. This introduces the possibility that judicial styles are not a singular attribute of each individual judge, but may vary according to the matter being adjudicated. Mileski and Ptacek in fact raised a similar point when they observed that judges could be categorised in different ways at different times.[28] Further, in Ptacek's study, judges adopted different styles in relation to the different parties, such as Good Natured to the applicant but Firm/Formal to the defendant; or Condescending/Patronising to the applicant but Good Natured to the defendant. Nevertheless, Bureaucratic judges tended to be uniformly bureaucratic with all parties alike.[29]

To speculate further, while we might expect judicial styles in relation to litigants to vary with different litigants (whether they *should* vary in this way is another question), we might expect judges to maintain a more consistent style in relation to decision-making.

Intervention order proceedings in the Victorian Magistrates Court

In 1996–97 I conducted observations of intervention order proceedings in a number of suburban Magistrates Courts in Melbourne, as part of a larger research project on women's experiences in court. I observed a total of 100 cases involving family violence (as opposed to stalking), heard by 17 different magistrates. The majority of hearings (73%) were for final orders, with relatively small proportions of applications for interim orders (17%) or for revocation or variation of an intervention order (10%). Among other things, I recorded the magistrate's demeanour and language, and produced a 'script' for each case setting out a summary or actual quotation of what each party had said. I then analysed this material in terms of Conley and O'Barr's and Ptacek's judicial typologies.

It was sometimes difficult to apply the two typologies to the cases I observed. In some cases, my notes suggested that the magistrate had adopted two or more different styles in the course of a case. Also, while it was possible to determine the magistrate's attitude to the litigants in almost all cases, it was not always possible to determine the magistrate's decision-making style. In particular, cases that were decided *ex parte* or were very brief and straightforward did not provide sufficient information to enable a determination of decision-making style. This included all of the interim order, revocation and variation applications, and around half of the final order applications. Overall, I obtained enough information to be able to allocate a decision-making style in just over one third of the cases observed.

The prevalence of the different judicial styles in my cases is shown in the following tables:

Table 1: Magistrates' decision-making styles

Decision-making style	Number	%
Authoritative Decision Maker	17	47.2
Law Maker	13	36.1
Mediator	3	8.3
Proceduralist	2	5.6
Strict Adherent	1	2.8
Total	36	100.0

It can be seen that Authoritative Decision Maker and Law Maker were the two most common decision-making styles, while the other three styles were relatively rare.

Table 2: Magistrates' attitudes to litigants

Attitude to litigants	Number	%
Bureaucratic	82	62.6
Firm/Formal	21	16.0
Good Natured	18	13.7
Condescending/Patronising	7	5.3
Harsh	3	2.3
Total	131	100.0

Table 2 combines attitudes to applicants and to defendants (where the defendant was present), which, as discussed below, sometimes differed. Consequently, the total number of observations is greater than 100. In Mileski's original study of a first level criminal court, she found the Bureaucratic manner was most common (78%), while both Harsh and Good Natured manners were rare (5% and 3% respectively).[30] In my study, the Bureaucratic attitude was also most common, although

28. Mileski, above n 18, 523–7; Ptacek, ibid, 102.

29. Ptacek, ibid, 105–9.

30. Mileski, above n 18, 524–5.

the Good Natured attitude was not as rare, and the Firm/Formal attitude occurred about as often.

The fact that almost two thirds of litigants were dealt with in a Bureaucratic manner is an indicator of the time pressures operating on magistrates, leading them to adopt a routinised approach to the long lists of intervention order applications coming before them. This is reinforced by the fact that the median hearing time for all of the cases I observed was only three minutes. These findings are consistent with the results of a recent national survey of magistrates, in which three quarters of magistrates agreed or strongly agreed that 'the volume of cases [they deal with] is unrelenting', while half agreed that 'making quick decisions is very stressful'.[31] Nevertheless, in several of the cases observed, the magistrate did manage to engage with one or both of the parties, to a much greater extent than did the judges in Mileski's summary crime study.

One interesting observation was that, contrary to expectations, individual magistrates' styles varied between cases, not only in their attitude to litigants, but also in their attitude to decision-making. That is, they did not display a consistent decision-making approach from case to case, but adopted different decision-making styles at different times. This certainly tends to suggest that neither kind of judicial style is innate or inherent in the individual. So what factors may determine the style adopted in a particular case?

The magistrate's sex

Contrary to Conley and O'Barr's suggestion, there was no association between female magistrates and the style of Mediator — in fact, the opposite was the case, with the two magistrates acting as Mediators both being male. In their attitudes to litigants, however, none of the female magistrates was Harsh. This style were rarely evident, but was displayed only by male magistrates.

The applicant's representation

Magistrates appeared to adopt different decision-making styles and attitudes towards applicants when the applicant had legal representation, than they did when the applicant appeared in person.[32] Although, as explained above, the number of observations in each group was quite small, Table 3 suggests that magistrates were somewhat more likely to act as a Law Maker when applicants were represented, and more likely to act as an Authoritative Decision Maker when applicants were unrepresented.

Table 3: Decision-making style by applicant's representation

Decision-making style	Legally represented		Self representing	
	No.	%	No.	%
Law Maker	8	53.3	3	15.8
Mediator	3	20.0	0	0.0
Authoritative Decision Maker	4	26.7	13	68.4
Proceduralist	0	0.0	2	10.5
Strict Adherent	0	0.0	1	5.3
Total	15	100.0	19	100.0

Magistrates were also somewhat more likely to be Good Natured when the applicant was represented, but more likely to be Bureaucratic when applicants appeared in person, as indicated in Table 4. Within the represented group, magistrates tended to be more Good Natured towards applicants represented by court support program lawyers than they were towards those represented by private lawyers.

Table 4: Attitude to applicant by applicant's representation

Attitude to applicant	Legally represented		Self representing	
	No.	%	No.	%
Bureaucratic	12	50.0	45	78.9
Good Natured	6	25.0	5	8.8
Firm/Formal	2	8.3	4	7.0
Condescending/ Patronising	3	12.5	2	3.5
Harsh	1	4.2	1	1.8
Total	24	100.0	57	100.0

These tables suggest, therefore, that legal representation impacted on magistrates' styles, often to the benefit of their clients. When lawyers were present, magistrates were somewhat less likely to act in an authoritarian manner, and more likely to at least pay lip service to legal rules. And although the Bureaucratic, detached style predominated in attitudes to the applicant, magistrates also tended to show somewhat more respect and concern for represented applicants, particularly those represented by a court support program lawyer, who was likely to be a 'repeat player'

31. Kathy Mack and Sharyn Roach Anleu, 'Job Satisfaction v Stress: How Magistrates Rate Their Job' (2004) 78(10) *Law Institute Journal* 32, 34. The exact proportions agreeing or strongly agreeing with the propositions were 72.5% and 51.9% respectively.

32. Note that in only two of the cases observed was the applicant accompanied by a police officer, thus cases in which the police acted as applicant were virtually absent from the study. There have been some changes in this regard in Victoria since the study was undertaken (see Victorian Law Reform Commission, above n 2, 69, 142–3), and the situation is different in other states (see Renata Alexander, *Domestic Violence in Australia: The Legal Response* (2002)).

... the study underlines the importance of legal representation for intervention order applicants.

in the system and therefore to be a familiar figure in the Magistrates Court.

Type of Proceeding

As noted above, the cases observed included a range of proceedings. In particular, both interim and final orders might be made *ex parte* (in the case of final orders, this was because the defendant had been served with the complaint but failed to appear in court on the return date), or final orders might be made by consent, or following a contested hearing. As Table 5 shows, the type of proceeding did appear to impact upon the magistrate's attitude to the applicant.

Some of the patterns in this table are unsurprising. For example, magistrates were far more likely to deal with the case in a routine, bureaucratic way when there was no appearance by the defendant, but never did so when the matter was contested. Other patterns were more interesting, however. For example, magistrates were rarely Firm/Formal when dealing only with the applicant, but appeared more likely to be Firm/Formal if the matter was contested. By contrast, magistrates were also most often Good Natured towards applicants when the matter was contested, but were never Good Natured towards applicants for final orders in the absence of the defendant. The very small number of contested cases makes it impossible to draw any definitive conclusions in this regard, but the patterns identified do suggest certain tendencies of approach towards applicants in different types of proceedings.

To summarise, magistrates appeared most likely to act as:

- Authoritative Decision Makers when applicants were unrepresented;
- Law Makers when applicants were represented.

Magistrates appeared most likely to be:

- Bureaucratic when applicants were unrepresented, though never in contested matters;
- Good Natured when applicants were represented, particularly by court support program lawyers, though never in final order applications in the absence of the defendant;
- Firm/Formal in contested matters, but never towards applicants for interim orders.

Are some styles better than others?

Conley and O'Barr's interest in decision-making styles stemmed from their observation in an earlier study of criminal cases that most parties came away from their 'day in court' feeling frustrated by their inability to get their story across in the way they wanted to. In seeking to explain the source of this frustration, they developed the theory of 'rules versus relationships'. This theory holds that ordinary lay people tend to be primarily concerned with relationships, and so attempt to bring the stories of their relationships into the courtroom. By contrast, lawyers, judges and business people are oriented towards rules, and engage in court in a deductive search for entitlement or blame. Those with a relational orientation emphasise the impact of disputes on their own lives, and apply common sense notions of fairness and social justice rather than legal theories of responsibility.[33] Relational litigants focus on status and social relationships, and consequently talk about details of their social lives in court, which the courts treat as irrelevant and inappropriate. On the other hand, rule oriented litigants focus on general rules and principles and relevant issues, to the exclusion of motivations, feelings, excuses and context, hence their accounts fit better with the logic of law.[34]

Conley and O'Barr go on to identify the Mediator style as relationship oriented, while the Strict Adherent, Authoritative Decision Maker and Proceduralist styles are rule oriented. The Law Maker style is a blend of the two, involving relationships disguised as rules.[35] They argue that relational litigants will have a better experience of the justice system if they encounter a relational Decision Maker than if they encounter a rule-oriented Decision Maker. Strict Adherent and Proceduralist judges are incomprehensible to relational litigants (and vice versa), while for litigants appearing before Authoritarian Decision Makers, the law appears both powerful and arbitrary.[36] By contrast, relationally oriented judges may arrive at the same outcome as a rule oriented judge, but by a different route, with the litigant being given time to tell their (irrelevant) story.

33. Conley and O'Barr, above n 1, 47.
34. Ibid, 58–9.
35. Ibid, 107–9.
36 Ibid, 101.

Table 5: Attitude to applicant by type of proceeding

Attitude to applicant	Interim		Final ex parte		Consent		Contest	
	No.	%	No.	%	No.	%	No.	%
Bureaucratic	13	81.3	26	81.3	21	75.0	0	0.00
Firm/Formal	0	0.0	2	6.3	2	7.1	2	28.6
Good Natured	2	12.5	0	0.0	3	10.7	4	57.1
Condescending	1	6.3	3	9.4	1	3.6	1	14.3
Total	16		32		28		7	

In this scenario, 'the law has a different face. Although it cannot provide a concrete solution...it is presented as an institution that is attentive to human needs'.[37]

Conley and O'Barr argue that providing litigants with the opportunity to introduce their relational concerns may take up minimal court time and resources, but can have a significant impact on litigant satisfaction.[38] At the same time, they acknowledge that a relational approach can be taken too far. For example, acting as a Mediator and trying to get parties to compromise and prolong their relationship may be entirely inappropriate when the parties have got beyond that point and want no more to do with each other.[39] It is arguable that trying to act as a Mediator in domestic violence proceedings is inappropriate for this reason. On the other hand, giving applicants more time to tell their stories and acting more as a Law Maker even when applicants are unrepresented would seem to be important in intervention order applications. Certainly, several of the women I interviewed as part of the study were disappointed and upset that they had not been given the chance to explain their case to the magistrate, or were pleased when they had been given the opportunity to do so.[40]

Ptacek's argument about the merits of different attitudes towards litigants is less theoretical. Simply put, he is concerned that judges should express their support and empathy for the victims of domestic violence, while impressing upon perpetrators the unacceptability of violence, and the seriousness of breaching the orders being made. Thus, ideally, judges in these cases should be Good Natured towards the applicant and Firm/Formal towards the defendant. They should not be Condescending/Patronising or Harsh to the applicant, or Good Natured to the defendant. Neither should they be Bureaucratic to either party, because this style fails to send any message either of support or sanction, and also tends to leave parties confused and uncertain as to what has been decided.[41]

Table 6 shows the data in Table 2 disaggregated by type of litigant. Since defendants did not appear in a majority of cases, the number of observations for defendants is smaller than the number for applicants.

It can be seen that, contrary to Ptacek's prescriptions, Victorian magistrates were most often Bureaucratic towards both parties, although more so towards applicants than towards defendants. They were Good Natured to applicants far too infrequently, and to defendants far too frequently. And they were more or less equally likely to be Firm/Formal towards applicants as towards defendants.

Table 6: Magistrates' attitudes to applicants and defendants

Attitude	Applicant		Defendant	
	No.	%	No.	%
Bureaucratic	65	72.2	17	41.5
Good Natured	6	6.7	15	36.6
Firm/Formal	11	12.2	7	17.1
Condescending/ Patronising	6	6.7	1	2.4
Harsh	2	2.2	1	2.4
Total	90	100.0	41	100.0

Thus, it appears that applicants would have felt particularly unsupported in the intervention order proceedings observed, as magistrates neither engaged with them, nor sent clear messages about the unacceptability of violence to defendants. When both applicant and defendant were present (n=38 cases), the magistrate was Good Natured towards the applicant and Firm/Formal towards the defendant in only three cases. Magistrates most commonly treated both parties exactly the same (n=27),[42] thereby failing to differentiate between perpetrator and victim.

Conclusion

'Client-centred' initiatives in various courts in Australia have tended to focus on accessibility, information, services and facilities, and the performance of court staff,[43] rather than on what judicial officers do. Judicial roles in this respect have tended to revolve around case management and meeting time standards for the disposition of cases, initiatives which owe at least as much to bureaucratisation as they do to the demands of court users. The qualitative aspect of judging has been largely ignored.

My study of intervention order applications suggests two conclusions. First, the majority of intervention order applicants encounter a magistrate who is abstracted, distant and emotionally disengaged. Abstraction enables a judicial officer to 'avoid being affected by the unique details of each situation', and

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37. Ibid, 120.

38. Ibid, 131.

39. Ibid, 141.

40. Susan, interviewed 19 December 1997; Carolyn, interviewed 19 December 1997; Noor, interviewed 23 December 1997 (names are fictitious to preserve anonymity).

41. Ptacek, above n 7, 106–9.

42. Bureaucratic to both = 16, Good Natured to both = 5, Firm/Formal to both = 4, Condescending/Patronising to both = 1, Harsh to both = 1.

43. See, eg, Peter Sallman, 'Towards a More Consumer-oriented Court System' (1993) 3 *Journal of Judicial Administrataion* 47.