gest half of men in UK jails and nearly three-quarters of female prisoners have no qualifications at all, while about half have literacy skills below that of most eleven-year-olds.

High Court Rules On Investigation Of Deaths In Psychiatric Detention

R (Antoniou) v CNWL NHS Trust; Secretary of State for Health; & NHS

The High Court has handed down judgment on whether the UK should create a system for independently investigating the deaths of detained psychiatric patients. Lord Justice Aiken and Mr Justice Mitting found that such a system was not required under the current law but raised the possibility that the UK may wish to create such a system on grounds of public policy.

The judgment rejected Dr Michael Antoniou's judicial review of the failure to conduct an independent investigation into his wife's death in psychiatric detention. Mrs Jane Antoniou, a well known mental health campaigner, was found dead in her room at Northwick Park hospital in Harrow, London on 23 October 2010. She was detained at the time under section. An investigation was launched by the same NHS Trust that had responsibility for Mrs Antoniou's care in detention (the Central and North West London NHS Trust).

The internal investigation conducted by the Trust found few failures. However at her inquest almost two years later, the jury was highly critical of aspects of her care prior to her death. Had these been identified by an earlier, independent investigation, operational changes could have been implemented sooner to help minimise the risk to life of others.

More psychiatric patients die every year in detention than any other type of detainee, yet they are the only detainees in England and Wales whose deaths are not investigated by an independent body pre-inquest. NHS England is currently undertaking a review of how these deaths should be investigated and it is hoped that this will lead to an end of the health service investigating itself prior to the inquest hearings into these deaths. Dr Antoniou has until 21 October 2013 to lodge an application for permission to appeal from the High Court.

Deborah Coles, Co-Director of INQUEST said: "It is timely that today, World Mental Health Day, the battle for independent investigation into the deaths of detained psychiatric patients continues. As politicians celebrate the positive steps that have already been made towards ending mental health discrimination, we call on them to pledge their support to end this unfair and discriminatory practice. We are continuing to see serious and systematic failures of Trusts to properly investigate deaths of psychiatric patients in their care.

Only rigorous, transparent and fully independent investigations, with the effective participation of the family, will ensure lessons are learnt from deaths in mental health detention, so that further deaths can be prevented."

INQUEST has been working with the family of Jane Antoniou since her death in 2010.

Hostages: Jamie Green, Dan Payne, Zoran Dresic ,Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Sam Hallam, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Romero Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Miran Thakrar,Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Simon Hall, Paul Higginson, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan, Ihsan Ulhaque, Richard Roy Allan, Sam Cole, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Ray Gilbert, Ishtiaq Ahmed.

Miscarriages of JusticeUK (MOJUK)
22 Berners St, Birmingham B19 2DR
Tele: 0121- 507 0844 Fax: 087 2023 1623

MOJUK: Newsletter 'Inside Out' No 447 (17/10/2013)

Osborn, Booth and Reilly, Defeat Parole Board

Osborn (FC) & Booth (FC) (Appellants) v The Parole Board (Respondent) on appeal from the Court of Appeal (Civil Division) (England and Wales) James Clyde Reilly for Judicial Review (Northern Ireland) on appeal from the Court of Appeal (Civil Division) (Northern Ireland)

The appeals regard the circumstances in which an offender is entitled to an oral hearing at a review of the Parole Board.

The Supreme Court unanimously allows the appeals and declares that the Board breached its common law duty of procedural fairness to the appellants, and article 5(4) of the European Convention, by failing to offer them oral hearings.

Background to the appeals: Three prisoners brought appeals concerning the circumstances in which the Parole Board is required to hold an oral hearing.

Osborn was convicted in 2006 following an incident in which he was said to have brandished an imitation firearm at the home of his estranged wife. He was given a six-year prison sentence and was released on licence in February 2009, the halfway point. He was recalled to prison later that day for breach of his licence conditions [18-29]. Booth and Reilly are indeterminate sentence prisoners who have served their minimum terms. In 1981, Booth [30-42] received a discretionary life sentence for attempted murder, with a minimum term of six and a half years. Reilly [43-53] was convicted in 2002 of robbery, attempted robbery and possession of an imitation firearm. He received an automatic life sentence with a minimum term of six years and eight months, which expired in September 2009. Both remain in custody.

Each case was considered on paper by the board's single-member panel. It decided not to direct the prisoners' release or recommend their transfer to open prison conditions. Their solicitors made written representations to the board, disputing its findings and requesting an oral hearing in each case, but those requests were refused.

All three sought judicial reviews of the decisions not to offer oral hearings. Only Reilly succeeded in the High Court, which found that the board had breached its common law duty of fairness, and had acted incompatibly with the appellant's rights under article 5(4) of the European Convention on Human Rights by failing to offer him an oral hearing. This was overturned by the Northern Ireland Court of Appeal.

Reasons For The Judgment: The judgment, delivered by Lord Reed, emphasises that human rights protection is not a distinct area of the law based on the case law of the European Court, but permeates our legal system. Compliance with article 5(4) requires compliance with the relevant rules of domestic law [54-56]. The legal analysis of the problem does not begin and end with the Strasbourg case law [63].

Lord Reed sets out guidance (summarised at [2]) on complying with common law standards in this context. The board should hold an oral hearing whenever fairness to the prisoner requires one in the light of the facts of the case and the importance of what is at stake [81]. By doing so, it will act compatibly with article 5(4) [103].

It is impossible to define exhaustively the circumstances in which an oral hearing will be necessary, but these will often include: (a) where important facts are in dispute, or where a

significant explanation or mitigation is advanced which needs to be heard orally in order fairly to determine its credibility [73-78; 85]; (b) where the board cannot otherwise properly or fairly make an independent assessment of risk, or of how it should be managed and addressed [79; 81; 86]; (c) where it is tenably maintained that a face to face encounter, or questioning of those who have dealt with the prisoner, is necessary to enable his case to be put effectively or to test the views of those who have dealt with him [82]; and (d) where, in the light of the prisoner's representations, it would be unfair for a "paper" decision taken by a single-member panel to become final without an oral hearing [96].

The purpose of the oral hearing is not only to assist in the board's decision-making, but also to reflect the prisoner's legitimate interest in being able to participate in a procedure with important implications for him, where he has something useful to contribute [82]. The likelihood of release or transfer is separate from the question of whether fairness requires an oral hearing [88-89]. When dealing with recalled prisoners' cases, the board should bear in mind that they have been deprived of their freedom [83]. For indeterminate sentence prisoners, increased scrutiny should be afforded by the board in assessing whether the risk they present is unacceptable the longer they have spent in prison post-tariff [83]. The board must be, and appear to be, independent and impartial [90-91] and guard against any temptation to refuse an oral hearing to save time, trouble and expense [91].

Lord Reed stresses that "paper" decisions are provisional; the right to request an oral hearing is not an "appeal", and the prisoner need only persuade the board that an oral hearing is appropriate [94-95]. The common law duty to act fairly is influenced by the requirements of article 5(4); compliance with the former should ensure compliance with the latter [101-113]. Breach of article 5(4) will not normally result in an award of damages under the Human Rights Act unless the breach has resulted in the prisoner suffering a deprivation of liberty [114-115].

An oral hearing ought to have been offered to the appellants. Osborn and Reilly had advanced various explanations and mitigations [98] and their requests for an oral hearing were mistakenly characterised as appeals [99-100]. In Booth's case, input from his psychiatrist at an oral hearing would have been helpful and it was relevant that he had spent so long in custody post-tariff [99]. Reilly's claim for damages failed - it had not been argued that he had suffered any deprivation of liberty as a result of the article 5(4) breach [115].

Kevan Thakrar v Secretary of State for Justice

Judgment of District Judge Hickman, 26th September 2013: This is a claim by Kevan Thakrar, currently detained at HMP Strangeways, Manchester, and formerly an inmate of HMP Frankland and HMP Woodhill. In 2010 he was transferred from Frankland to Woodhill spending a short period en route at HMP Wakefield. Mr Thakrar complains that a number of items of his property were lost, stolen or damaged in the course of his removal from Frankland.

I proposed dealing with the matter on written representations. Very sensibly and with a view to dealing with the matter in a proportionate fashion both parties agreed to this. I should perhaps record that I have dealt with a previous claim by Mr Thakrar in somewhat similar circumstances, arising from his transfer in 2009 from HMP Whitemoor to HMP Frankland. Certain observations contained in the written decision which I issued in that case on 6th May 2011 find their way into Mr Thakrar's statement of case.

One other matter which I should record is that while I am aware in general terms that Mr Thakrar is serving a sentence of imprisonment for a serious offence, I have consciously avoided inquiring

activities of anyone they judge to be a risk but have not charged with an offence. This can include limiting internet use, stopping the person from being alone with a child under 16 and preventing travel abroad. Anyone breaching the so-called Sexual Risk Order, which lasts for at least two years, could be jailed for up to five years.

The proposals, in the Antisocial Behaviour, Crime and Policing Bill, also include a new Sexual Harm Prevention Order that can be applied to anyone convicted or cautioned for a sexual or violent offence, including those committed overseas. This lasts a minimum of five years and has no maximum duration. It also includes a requirement for the individual to place themselves on the sex offenders' register. The two new orders will replace current powers that can be imposed on sex offenders who have been convicted, cautioned, warned or reprimanded for an offence. Richard Atkinson of the Law Society said: "A great deal of stigma is attached to anyone who has such an order made and if the process of obtaining these is less than that needed for a conviction, that's a very worrying departure from our normal standards."

The Home Office claimed the changes would "enable greater flexibility" to allow the police and the National Crime Agency to "exercise their professional discretion to protect children and adults from sexual harm". Damian Green, the minister for policing and criminal justice, said the UK already had some of the toughest powers in the world to deal with sex offenders but needed to go further. "By giving police and National Crime Agency officers the power to place greater restrictions on any person they judge to be a risk we will tighten the law on sex offenders and make it easier for police to monitor them," he said. *Oliver Wright, Indpendent, 09/10/13*

HMP Birmingham Prison Officer Julie Turton on Drug Charges

A prison officer and her son have been charged after investigation into allegations of drug dealing and theft at HMP Birmingham. Julie Turton, 53, has been charged with conspiracy to convey cannabis into a prison and supplying cannabis. Her son Sam Turton, 27, is charged with theft. Ms Turton, from Hamstead in Birmingham, is also accused of misconduct in a public office. Arteef Hussein, 25, and his wife Shelah Arif, from Kitts Green, Birmingham, have also been charged with conspiracy to convey cannabis into a prison. The couple are both charged with possession with intent to supply, West Midlands Police said.

All four were arrested as part of an investigation into allegations of drug dealing and theft at the privately-run prison between May 2011 and May 2013, They are due to appear before Birmingham Magistrates' Court on Monday 28 October.

Ofsted Attacks Teaching Standards in Prisons

Inspectors have strongly criticised standards of education and training in England's prisons. The watchdog says it is unacceptable that not one prison has been rated "outstanding" for education in the past four years and only one in three is rated "good". Levels of education among prisoners are generally much lower than in the population as a whole. At Wormwood Scrubs jail in London, Ofsted chiefs said if the figures related to schools there would be a "national outcry". Matthew Coffey, national director of further education and skills at Ofsted, said the aim of training and education in jail should be to make people less likely to go back to crime when they got out. "This year's annual lecture aims to focus on how we can reduce the high re-offending rates that are nearly 50% for adult prisoners and 72% for juveniles," he said. "The aim is to reduce the number of re-offenders by focusing on rehabilitation in prisons through better employer engagement and better teaching and training." Some studies sug-

The best feature of Oakwood was its impressive environment and accommodation, which were important for the prisoner experience, as most other aspects of daily living were characterised by frustration. Prisoners were unable to access basic facilities, such as cleaning materials and kit, and the applications system barely worked. Staff-prisoner relationships were not respectful and very worrying. Prisoners had little confidence in the staff to act consistently or get things done. Many staff were passive and compliant, almost to the point of collusion, in an attempt to avoid confrontation, and there was clear evidence of staff failing to tackle delinquency or abusive behaviour. The promotion of diversity was poor, with systems and structures to address issues again not functioning effectively. Most minorities had worse perceptions, and perhaps most obviously troubling, was the failure to meet the care needs of some prisoners with disabilities.

The provision of health care at Oakwood was very poor - there was no assessment of need; systems did not work; care needs were not met; and the administration of medication was in chaos. The health provider has, as a consequence of our inspection, received a regulatory enforcement notice from the Care Quality Commission.

Some prisoners experienced reasonable amounts of time out of cell, but for the majority who were not fully employed, access was considerably more limited. Well over a third of prisoners were locked up during the working day and only just over half were in activity at anyone time. Much of what was on offer was judged to be inadequate. Leadership in learning and skills was poor. There were not enough activity places, and those that were available was not fully used. Vocational learning was generally better than education, much of which was poor, but there was not enough of it. Too much work was menial. Punctuality, attendance and behaviour in learning and skills all required significant improvement.

The delivery of resettlement and offender management was uncoordinated, with offender management work very poor. Many prisoners had no sentence plan or effective offender supervision. Offender supervisors were not sufficiently trained and often redeployed to fill vacancies elsewhere in the prison. Some work in support of the resettlement pathways was better, although the prison urgently need to make strategic decisions about how it was going to start to address the offending behaviour risks of its near 300 sex offenders.

There is a lot to do before Oakwood is operating any where near effectively. Positively, the prison is an excellent facility. We found a management and staff team that were working hard and seemed keen to do the right thing. A new director had recently been appointed and, in our view, had analysed what needed to be done accurately. But the prison urgently needed a plan to retrieve the situation and there were real risks if matters were allowed to drift. Prisoner frustration needed to be addressed. Systems that delivered basic services had to be made to work. Work to build the competence and confidence of staff was required. Health care had to be delivered effectively. The quality of management information had to improve and the prison needed to engage and communicate more effectively with prisoners. Finally, the prison needed to create structures that will ensure progress is monitored, that changes are coordinated and that improvement is sustained and embedded. [There was a roof top protest at the prison Friday 11th October, three inmates got out of general location and were at liberty for 5 Hours.]

Police Given Sweeping Powers to Curb 'Suspected' Sex Offenders

Police are to get the power to restrict the freedom of anyone they suspect of being a sex offender, even if the person has never been convicted of a crime. Under new rules announced by the Home Office, police will be able to apply to the courts for a new order to restrict the

into the circumstances in which he came to be imprisoned. Those circumstances are not relevant to his claim. The correct approach for the court must be that of Lord Justice Scrutton, one of the toughest characters ever to sit on the Bench, who in a case in 1923 said that: "'The law of this country has been very jealous of any infringement of personal liberty.' This care is not to be exercised less vigilantly, because the subject whose liberty is in question may not be particularly meritorious. It is indeed one test of belief in principles if you apply them to cases with which you have no sympathy at all ... It is quite possible, even probable, that the subject in this case is guilty of high treason; he is still entitled only to be deprived of his liberty by due process of law ... "

It is Mr Thakrar's property, hot his liberty, with which I have to deal; but he is entitled not to be deprived of his property save by due process of law, and that is not affected by the fact that he may himself not be a particularly attractive individual. Similarly, it is not affected in principle by the fact that, as suggested in the report of the Prison and Probation Ombudsman at para 2, he was transferred following a serious incident which resulted in criminal charges.

Mr Thakrar says that certain items of his property which he values at just under £455, were lost or damaged. He says that certain further items are impossible to value in money terms but that he is entitled to be compensated for their loss. And he seeks compensation for being deprived of his property. Mr Thakrar arrived at Woodhill on 26th March 2010. By 20th May 2010, items of his property had still not been received. He pursued a complaint through the Prisons and Probation Ombudsman. That resulted in a report in August 2011 confirming the loss of his property but going on to say that "It is difficult to be certain exactly how much property Mr Thakrar is missing"

Mr Thakrar issued his claim on 14th February 2013. As I have noted, he has some experience of actions against the Ministry of Justice and, perhaps unusually for a litigant in person, he caused the proceedings to be properly served at the outset. No defence was forthcoming from the Defendant, and having satisfied myself as the Rules require that the proceedings had been properly served, on 29th April 2013 I entered judgment in default against the Ministry. The present exercise is accordingly for the assessment of damages.

A letter was received by the court in May from the Treasury Solicitor asking that the judgment be set aside and the claim struck out on the basis that: the payment of £10 as recommended by the Ombudsman meant that Mr Thakrar had been compensated in full and that the claim was an abuse of process; "the claim is being treated as a money claim although it includes a request for unspecified damages" - as to this, I respectfully invite the Treasury Solicitor's department to consider the definition of a "designated money claim" in Part 2.3(1) of the Civil Procedure Rules; despite valuing his total loss at £70 to £100 to the Ombudsman, Mr Thakrar issued the claim for £454.98 plus unspecified damages; Mr Thakrar had not provided any medical evidence to support his claim that he was stressed by the loss of and damage to his property. There is a judgment against the Secretary of State. There has been no application to set it aside. I am not going to do so, and neither am I going to strike the proceedings out. Indeed, as will appear, I am quite clear that the claim is well-founded.

In a subsequent letter of 16th July, the Treasury Solicitor indicates that the Ombudsman's Report dated August 2011 and a letter from the Ombudsman dated 30th August 2011 are relied upon together with evidence that the £10 payment recommended by the Ombudsman in August 2011 was paid on 5th September 2012. The Ombudsman has made enquiries and inspected a number of documents, and has spoken with Mr Thakrar and with prison staff.

The proportionate approach must be for me to base my view of the case on those detailed investigations, which go far beyond anything which it would be appropriate for the county court to under-

take in relation to a small claim. However, it does not lie in the Ministry's mouth to assert that the Ombudsman's recommendation affords the Ministry a complete answer to Mr Thakrar's complaints. Granted, the payment of £10 proposed by the Ombudsman was made, some 13 months late, but the apology recommended by the Ombudsman has certainly not been forthcoming (paragraph 18 of Mr Thakrar's statement of case specifically refers) and the outrageous delay in making payment has all the appearance of a calculated gesture on the part of the Ministry.

Moreover, certain of the Ombudsman's conclusions appear untenable on their face. Mr Thakrar's claim falls under four heads: He seeks £186.94 in respect of the loss of his property "excluding priceless items" - items such as photographs, personal letters and certain legal documents; He seeks a total of £224.97 in respect of three items of his property which arrived damaged, namely an alarm clock, a stereo and a set of nasal clippers; He seeks compensation for the loss of his "priceless items", and submits "a high 3 or 4 figure sum to be suitable compensation for these items"; He seeks £43.07 in respect of missing perishable food items.

I shall deal with these in turn. The loss of some of Mr Thakrar's property. I can take this together with the perishable food items. I find the Ombudsman's analysis of this aspect of the matter less than convincing. In particular, paragraph 39: "As the other items [beside the lanyard] have turned up, I am of the view that despite not being recorded on the Woodhill property cards, there is insufficient evidence to demonstrate that this item has been lost due to the negligence of prison staff'

This analysis is incomprehensible. If property is lost or damaged in the possession of a bailee, it is for the bailee to demonstrate that he has taken reasonable care of it. That rule of law applies even if the bailee is the prison service (for whose actions the Secretary of State is answerable) and the (involuntary) bailor a serving prisoner.

The Ombudsman appears to reverse the burden of proof. What I do get from the Ombudsman's report, however, is that in speaking at the time with the Ombudsman's representative, Mr Thakrar placed his total loss, including perishable items such as foodstuffs, in the region of £70-£100. I suspect that that is a more reliable estimate than the £230.01 he arrived at after (understandably) having over two and a half years to brood on the matter.

The Ombudsman at paragraph 11 brusquely indicates that the loss of the perishable items would not be considered - "staff will not generally pack items that can leak or deteriorate in transit". But I am told in terms that, for example, a carton of cranberry juice was bagged up (paragraph 17), and I fail to understand either the basis on which a prisoner being moved for administrative reasons should in law involve the loss of items of that prisoner's property, or how items such as "protein powder and toiletries" can be regarded as perishable anyway.

I consider that while Mr Thakrar must give credit for the £10 he has received, on the balance of probabilities he has sustained a loss of his property of not less than £100 under these two heads and I propose to award him £90 accordingly.

The damaged items: With respect, I also find the Ombudsman's analysis concerning these items to be incomprehensible. I am told at paragraph 27 that although the Orientex alarm clock had evidently been received by Mr Thakrar (because he had complained about it being damaged) it was not listed on the Woodhill property cards. I am told at paragraph 40 that "There is nothing to indicate that Mr Thakrar's nasal clippers and Orientex alarm clock were damaged either during the cell clearance or on arrival at Woodhill. I note that subsequently staff did not issue Mr Thakrar with a stereo that arrived damaged and that it is probably that had there been concerns about the condition of either item they would not have been issued to him".

I can only concur with the observation at paragraph 47 that Mr Thakrar's property does not

sion of prescribed medication;

- prisoners were unable to access basic facilities, such as cleaning materials and kit;
- staff-prisoner relationships were not respectful and prisoners had little confidence in staff to act consistently or to get things done;
- many staff were passive and compliant, almost to the point of collusion,
- there was clear evidence of staff failing to tackle delinquency or abusive behaviour;
- promotion of diversity was poor and care needs of prisoners with disabilities were not met;
- the provision of health care was very poor and as a consequence,
- health provider has received a regulatory enforcement notice from Care Quality Commission;
- well over a third of prisoners were locked up during the working day and only just over half were in activity at any one time;
- leadership in learning and skills was poor, there were not enough activity places and those that were available were not fully used;
- the delivery of resettlement and offender management was uncoordinated with very poor offender management work; and
- prison urgently needed to decide how it was going to address the offending behaviour risks of its near 300 sex offenders.
- Inspectors made 99 recommendations

Introduction from the report: Oakwood is a new training prison that opened in April 2012 under the management of G4S. Located near Wolverhampton in the West Midlands, it is a huge and structurally impressive facility capable of holding more than 1,600 category C prisoners. Fourteen months since it opened, this report records the prison's first independent inspection.

This is unquestionably a concerning report. The prison had many advantages in terms of the quality of its design and facilities, but there was a palpable level of frustration among prisoners at their inability to get even basic issues addressed. The inexperience of the staff was everywhere evident, and systems to support routine services were creaky, if they existed at all. The quality of the environment and accommodation mitigated some of the frustrations and without this risks could have been much greater. Against all four of our healthy prison tests, safety, respect, activity and resettlement, the outcomes we observed were either insufficient or poor.

Newly arrived prisoners were admitted through a well-designed reception area and housed in a welcoming first night centre. However, the focus of this important facility was diverted by its need to also provide an additional sanctuary for the vulnerable. Induction arrangements were weak. Too many prisoners felt unsafe and indicators of levels of violence were high, although we had no confidence in the quality of recorded data or in the structures and arrangements to reduce violence. Even the designated units meant to protect those declared vulnerable were not working effectively and too many prisoners on these units also felt unsafe. Levels of self-harm, some linked to day-to-day frustrations as well as perceived victimisation, were high but again processes to support those in crisis were not good enough.

Security arrangements facilitated a category C regime and were generally proportionate but there was clear evidence of illicit drug and alcohol use, as well as the improper diversion of prescribed medication. Mandatory drug testing results were high but potentially even worse when the large number of test refusals were taken into account. Segregation was managed reasonably and not used excessively, although there was a significant use of force in the prison. The supervision of use of force was improving but many of the recorded inadequacies in its application were evidence of staff uncertainty and inexperience.

[129].

Furthermore, the use of the particular method used to identify the tissue as C.N.S. is controversial both in criminal trials generally, because it is relatively untested in that context, and in the particular circumstances of this case, where there is, at least, reason to doubt the accuracy of the testing, given the state of the samples [92]. One of the experts whom the Crown had consulted had expressed the view that the use of this type of testing in criminal trials was novel [134]. Another had said that it was impossible to identify the tissue as CNS tissue [130 and 131]. The Crown had failed to disclose to the appellant's legal advisers in advance of trial, the reports in which these opinions had been expressed.

Mr Lundy provided evidence from two experts to the effect that a virus called KAK, found on the computer, could have caused the disarray in the registry files which the prosecution expert had said showed the computer had been tampered with. One of the appellant's computer experts advised that, in any case, the only way to achieve the same effect manually and without leaving further traces would be so sophisticated that even many computer experts were unaware of it [141]. The possibility that Mrs Lundy was still alive and using the computer at 10.52 p.m. was completely at odds with the Crown's case [142].

Having concluded that the convictions should be quashed, the Board considers that the best course is to remit the case to the High Court rather than to the Court of Appeal because 'the divisions between the experts are so profound, they range over so many areas and they relate to matters which are so central to the guilt or innocence of the appellant, that … they may only properly be resolved by the triers of fact in a trial where a suitable and searching inquiry into all these areas of dispute may take place.' [164] This summary is provided to assist in understanding the Committee's decision. It does not form part of the reasons for that decision.

G4S Not Fit for Purpose - Report on an Unannounced Inspection of HMP Oakwood

Inspection by HMCIP, 10–21 June 2013, report compiled July 2013, published 08/10/13

HMP Oakwood urgently needed to improve and there were real risks if matters were allowed to drift, said Nick Hardwick, Chief Inspector of Prisons, publishing the report of an unannounced inspection of the training prison near Wolverhampton. Oakwood is a new training prison that opened in April 2012 under the management of G4S. It can hold more than 1,600 prisoners. This report records the prison's first independent inspection and it is a concerning report. The prison had many advantages in terms of its design and facilities but there was a palpable level of frustration among prisoners at their inability to get even basic issues addressed. The inexperience of staff was everywhere evident and systems to support routine services were creaky, if they existed at all. The quality of the environment and accommodation mitigated against some of the frustrations and without this risks could have been much greater. Against all four healthy prison tests: safety, respect, activity and resettlement, the outcomes inspectors observed were either insufficient or poor.

Inspectors were concerned to find that:

- too many prisoners felt unsafe and indicators of levels of violence were high,
- inspectors had no confidence in the quality of recorded data or the structures and arrangements to reduce violence;
- induction arrangements were weak; - first night centre was diverted by its need to provide additional sanctuary for vulnerable prisoners;
- levels of self-harm were high and processes to support those in crisis were not good enough;
- there was clear evidence of illicit drug and alcohol use as well as the improper diver-

appear to have been dealt with well by Woodhill, and I note the observation at paragraph 43 that "It does not appear that Mr Thakrar's cell clearance was dealt with in accordance with the best practices of the Prison Service. It was dealt with over two days, separated by a period of 11 days. It also seems that there were two further bags cleared. I presume that the contents of those bags were recorded and that the cell clearance paperwork for those bags has since been lost". On the basis of the Ombudsman's own observations, Mr Thakrar's claim in respect of the stereo appears to be unanswerable. It is accepted that it was damaged and it plainly didn't damage itself.

The analysis regarding the nasal clippers and the alarm clock, with respect, also makes no sense. The Ombudsman does not conclude that Mr Thakrar is lying about these items. That the admittedly badly completed and unreliable paperwork does not say in terms "These items have been damaged in the course of the cell clearance and/or transit to HMP Woodhill" is a completely unsustainable basis for asserting that the items therefore were not damaged.

In my view Mr Thakrar's claim in respect of these items has not been analysed in a sustainable manner by the Ombudsman, it is incumbent upon me to consider the situation afresh, and I consider that his claim in respect of them is entitled to succeed. He recovers £224.97 under this head.

Loss of "priceless property". The Ombudsman finds in terms, and I accept, that a number of items of Mr Thakrar's property on which it is difficult to place a monetary value, notably photographs and certain legal papers, have been lost. It does not in the least follow from the fact that the items may have minimal monetary value that no award at all of damages is appropriate for their loss. At the very least their loss must entitle Mr Thakrar to nominal damages; but in truth it seems to me that on the whole of this matter I am bound to go beyond that. There are two categories of damages which the court can award which go beyond strict monetary compensation. In some cases courts award what are referred to as aggravated damages. In a few cases courts award what are referred to as punitive or exemplary damages.

I have given serious consideration to whether this is a case where exemplary damages are appropriate. In Rookes v Barnard in 1964, Lord Devlin, with whom the other members of the House of Lords agreed on this point, said that there were only two categories of case in which exemplary or punitive damages could he awarded. The first of his two categories was "oppressive, arbitrary or unconstitutional action by the servants of the govermnent - the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service".

What has happened in this case comes close to the "oppressive, arbitrary" conduct of which Lord Devlin speaks, but it seems to me that it is better characterised as a somewhat cavalier disregard for Mr Thakrar's rights and for his property. And it seems to me that to award exemplary damages would be wrong. I must not take out of context the sentence in Lord Devlin's speech when he says that "Exemplary damages can properly be awarded whenever it is necessary to teach a wrongdoer that tort does not pay".

However it is clearly established that aggravated, as opposed to exemplary or punitive, damages can properly be awarded in an appropriate case in respect of trespass to a person's goods - see cases such as Interoven Stove Co v Hibbard (1936) and Owen & Smith v Reo Motors (1934) which remain good law.

Had the defendants said promptly and sincerely to Mr Thakrar that they deeply regretted the loss of his personal items and understood his distress, the loss of them would not have been aggravated in the way that it has been. So far from doing that, the Ministry has steadfastly failed even to tender the grudging and belated apology which was recommended by the

Ombudsman, and the Treasury Solicitor suggests that in the absence of a medical report I should not even infer that the loss of such items caused stress.

I do not think I can properly take into account any difficulties which the loss or withholding of legal papers may have caused to Mr Thakrar's appeal. That would be an exercise in pure speculation. But looking at the loss of the photographs and other personal items the least sum I can properly award under this head is £500.

There will accordingly be judgment for Mr Thakrar for £814.97. For the avoidance of doubt (I bear in mind that it took the Ministry 13 months to pay the minimal sum proposed by the Ombudsman), this sum is payable within 14 days. Mr Thakrar was, of course, exempt from paying court fees, otherwise the Ministry would have had to pay those in addition.

[Kevan Thakrar: A4907AE, HMP Manchester, 1 Southall Street, Manchester, M60 9AH]

Justice for the Craigavon Two - Appeal Opens

The first day of Brendan McConville and John Paul Wootton's appeal against their life sentence convictions for the killing of PSNI Constable Stephen Carroll got underway at the Appeal Court in Belfast Tuesday 8th October 2013.

Barry McDonald QC for Brendan McConville spoke at length for most of the day. Mr McDonald decimated the perceptions built at the original trial as he completely destroyed any credibility Witness M may have possessed, showing the many contradictions in M's testimony and how he was susceptible to being lead during his initial interviews with the PSNI, constantly changing his story to suit the PSNI narrative of events and how M was found to be continuously lying under oath. Barry McDonald described how Justice Girvan the trial judge had wrongly directed himself when he drew negative inference regarding Brendan McConville not taking the stand. McDonald went on to show that a coat used to link Brendan McConville to the killing was not the coat 'eyewitness' M had described and forensic residue found on the jacket actually refuted the possibility that it was wore by the person who fired the fatal shots, The residue was 400 plus particles far in excess of the amount two shots would secrete, it was pointed out the particles were not necessarily from the firing of a weapon but placed in some other fashion, it was also pointed out the particles lacked mercury a component in all AK47 ammunition.

Todays appeal was attended by a large number of family, friends and supporters of both men who packed into the appeal court. A number of human rights organisations were in attendance as was Eamon O'Cuiv, Clare Daly, Maureen O'Sullivan and Mick Wallace four TDs from the Irish Dail (Parliament). Also in attendance was Gerry Conlon of the Guildford Four who has campaigned for the Craigavon Two and human rights priest Monsignor Raymond Murray.

Gaelforce Art set the backdrop for today's event with a fantastic JFTC2 logo on Belfast's black mountain which could be seen for miles. We the Justice for the Craigavon Two group thank them and everyone who continue to campaign against this miscarriage of Justice.

Day Two of Appeal - Brendans QC Barry McDonald outline how the details of the then governor of Maghaberry Steve Rodford were uncovered during a search of Brendan's cell the PSNI tried to have Brendan convicted for the find but it later transpired that prison officers had planted the governors details in Brendans cell. The incident was investigated by the then prisoners ombudsman Pauline McCabe, her report exonerated Brendan and laid the blame squarely with the prison officers on duty. Worryingly while the PSNI were quick to try and charge Brendan over the find they failed to pursue charges against the prison officers responsible both of whom still work in Maghaberry.

to be right, Mr Lundy would have had to complete the round trip from Petone to Palmerston North and back and to have carried out the murders in the space of two hours and fifty-eight minutes. (The mobile telephone evidence was to the effect that the location of the telephone receiving the call was established at the start of the call, not when it ended.)

Since there were no eye-witnesses, the trial depended largely on the evidence of scientific experts. There were three main strands to the Crown's case that were crucial to the trial. Each of these was challenged by new evidence which, according to submissions made on Mr Lundy's behalf to the Board, showed that there had been a miscarriage of justice.

First, the Crown had relied on evidence of the contents of Mrs Lundy and Amber's stomachs to show that they must have died at around 7 p.m. Secondly, their experts identified biological tissue on Mr Lundy's shirt as being central nervous system (C.N.S.) tissue from Mrs Lundy, and Mr Lundy's lawyer had conceded that this was the case. Thirdly, although the Lundys' computer showed it had been switched off at 10.52 p.m. that night, their experts claimed that the disordered state of some of its registry files suggested that the settings had been tampered with in order to disguise when it had in fact been shut down.

Advice: The Board unanimously advises Her Majesty (i) that Mr Lundy's appeal should be allowed; (ii) that the convictions should be quashed; (iii) that the Mr Lundy should stand trial again on the charges of murder as soon as possible; and (iv) until then, and subject to any decision of the High Court of New Zealand on the question of bail, Mr Lundy should remain in custody.

Reasons for the advice: The Board had to decide two principal issues:

1. Was Mr Lundy entitled to introduce the new evidence? 2. If so, what was its significance in the appeal? The Board did not have to decide (nor did it purport to do so) whether the new evidence that Mr Lundy wanted to introduce was better or more accurate than the prosecution's evidence [127].

Introducing the new evidence: The Board holds, first of all, that new evidence can be admitted only if it is credible. It would also usually have to be 'fresh' evidence: evidence that the defendant or his lawyers could not have obtained for the trial if they had been reasonably diligent. If both those conditions are met, the evidence will be admitted unless it would not affect the safety of the conviction. But if it were credible evidence that was not 'fresh' it could still be admitted if there was a risk of a miscarriage of justice[120]. Where a case against an accused rests exclusively or principally on scientific evidence, when on an appeal, application is made to have admitted new scientific material which presents a significant challenge to that evidence, the court should not be astute to exclude the new material solely because it might have been obtained before the trial [121–122]. The new evidence in this case clearly is credible: the experts who provided it are distinguished in their fields, and it is certainly capable of being believed [127]. Although the evidence is not 'fresh' in the technical sense defined above, the Board admits it because it 'presents a direct and plausible challenge to a central element of the prosecution case' [128] and there is therefore a risk of a miscarriage of justice.

The significance for the case: The Board then has to decide whether Mr Lundy's conviction was safe, given the evidence emerging after trial. The test in New Zealand, as in the United Kingdom, as to whether a conviction was safe in these circumstances is whether the new evidence might reasonably have led to an acquittal [150]. On that basis, the Board holds that, in light of the new evidence, Mr Lundy's conviction could not be considered safe [151].

Since the trial, a 'welter of evidence' from reputable consultants has cast doubt on the methods the Crown had relied on to establish the time of death based on the contents of the victims' stomachs

no scientific evidence to back up the blood claim and, when you are innocent, it is horrendous to keep being told something you know is incorrect. Now, at last, an expert has looked closely at this and not been influenced by prior misconceptions," she said. She said she was grateful to Zeelenberg, "who has put in so many hours working on this for me".

May added: "I sincerely hope now the CCRC will see fit to refer my case back to the court of appeal. The report undermines the whole prosecution case and can end my nightmare." May's claim to be innocent has been rejected twice by the appeal court. Last year, the CCRC invited her to submit another claim.

A spokesman for the CCRC said it was considering Zeelenberg's report and had instructed another forensic expert to evaluate the Dutch expert witness's findings. He said: "This is normal practice and is not aimed at finding fault with Zeelenberg's analysis. "We continue to work as quickly as we can and we are making good progress with the investigation."

Conviction Quashed Trial Reordered - Expert Witnesses, Witless!

'The divisions between the experts are so profound, they range over so many areas and they relate to matters which are so central to the guilt or innocence of the appellant, that … they may only properly be resolved by the triers of fact in a trial where a suitable and searching inquiry into all these areas of dispute may take place.'

Mark Lundy (appellant) v The Queen (respondent)

Members of the Board of the Judicial Committee of the Privy Council: Lord Hope, Dame Sian Elias, Lord Kerr, Lord Reed, Lord Hughes

Background To The Appeal: Until 1 January 2004 the JCPC had jurisdiction to hear appeals from the New Zealand Court of Appeal. Appeals from decisions of that court after January 2004 lie to the New Zealand Supreme Court This appeal comes before the JCPC because the decision appealed against was given on 13 August 2002.

Mr Lundy was charged with murdering his wife, Christine, and seven-year-old daughter, Amber, in 2000. He was tried before a judge and jury at Palmerston North High Court in 2002. He was convicted of both murders and sentenced to life imprisonment with a minimum term of 17 years. The Court of Appeal dismissed his appeal against conviction and allowed the Crown's appeal against sentence, increasing the minimum term to 20 years.

Mrs Lundy and Amber had been found hacked to death in their home on the morning of 30th August 2000. Mrs Lundy was lying on her back, on her usual side of the marital bed. Amber's body was found in the doorway of her parents' bedroom. She was wearing a night dress, and lying face down at an angle suggesting she had been leaving the room when she was killed.

Mr and Mrs Lundy had a home business selling kitchenware. Mr Lundy sometimes had to be away on sales trips. On Tuesday 29th August 2000, during such a trip to Wellington, he stayed in the Foreshore Motor Lodge in Petone, about 145 km south of Palmerston North.

Telephone records produced at the trial established that while he was in Petone he had received a call from Mrs Lundy's telephone at 5.30 p.m.. After that call Mrs Lundy and Amber went to a local restaurant and bought a takeaway meal at 5.43 p.m.. At 6.56 p.m. Mrs Lundy received a call from a friend, whom she told that Mr Lundy was out. At 8.28 p.m. Mr Lundy made a call on his mobile telephone from the Petone area.

The Crown case at the trial, based on a post mortem examination of the bodies of the deceased, was that he had murdered his wife and child some time around 7 p.m. that evening. Since he had been in the Petone area at 5.30 p.m. and was there again at 8.28 p.m., for the Crown's case

It emerged however that the PSNI approached Steve Rodford at a hotel and informed him that the case against Brendan McConville was "delicate" and would he add another "line" to a statement he had given to the PSNI regarding the matter. Brendans QC asked for former governor Rodford and former ombudsman Pauline McCabe to attend court next week to be questioned about the matter.

Following Barry McDonald Arthur Harvey QC for John Paul Wootton spoke at length. Harvey QC strongly insisted that no role in the shooting was ever attributed to Wootton. He said that the trial judge gave non evidence an elevated position when making his decisions leading to the conviction. "There was not simply a dearth, but a total absence of evidence to connect the defendant to any specific act relevant to the murder of Constable Carroll.

The quality of work from the forensic scientists representing the prosecution in this case was lamentable they failed to conform to even the most fundamental basic requirements and was predicated upon, as one can ultimately see a conclusion which was to be propelled by an already predetermined destination, namely those particles on that jacket came from the firearm event that evening." The jacket that prosecution claim was worn in the attack can not be forensically linked to the event, indeed lack of mercury rules out its involvement.

The British Army tracking device which is said to have tracked John Paul's car mysteriously disappeared and returned with a large section of its data deliberately deleted, the remaining data which was relied upon in court showed the car parked in the adjacent housing estate 15 minutes after the fatal shooting, when the car finally moved off it did so in a normal fashion, the claims that John Paul had dropped Brendan off could not be proven.

Harvey went on to describe how the resulting factor, that was to convict John Paul Wootton, was based on the 'prisoners fallacy,' if he smiled he was guilty, if he frowned he was guilty, if had shown no emission he was guilty, if he was emotional he was guilty. In other words the original trial judge had a pre-determined mind-set that John Paul Wootton was guilty. The question remains why? For seasoned human rights campaigner Gerry Conlon, it must have sounded all too familiar as he listened intently in the public gallery. Again throughout Wootton's defence presentation, Mr Harvey QC demonstrated how Justice Girvan in the original trial had continually misguided himself during trial's judgement.

Day Three of Appeal: The prosecution began to set out how they believed the convictions to be safe and were quickly stopped and scrutinised by the three appeal court judges, the prosecution were asked about the breaking of the window that lured police to the scene, it was quickly ascertained astonishingly that their were no crime scene photos or papers, which asks was the breaking of the window even investigated?.

Witness defended: Prosecution counsel Ciaran Murphy QC defended an account given by a key prosecution witness at the trial. Defence lawyers attacked his credibility, branding him a compulsive liar and a Walter Mitty-type character whose allegations of what he saw on the night of the shooting were "farcical". The man, known only as Witness M, has since left Northern Ireland to live under a protection programme. But Mr Murphy argued that he had reliably recalled seeing McConville near the scene, describing him as someone he knew by nickname and being able to remember exchanging words. Witness M claimed he was later approached by another man and warned to "keep your mouth shut". The defence pointed out how he only phoned police to make his claims 11 months later, making the call after drinking into the early hours of the morning. However, Mr Murphy said: "He was aware in his own mind of the consequences. The fact he was drinking at the time has little bearing other than to

explain how he may personally have felt and to get up the courage to do what he did because he was nervous and said he had seen someone watching his house on different occasions."

Connection: The judges asked the prosecution about how Justice Girvan came to make decisions regarding drawing negative inference and bad character when it was put to the prosecution that he had misdirected himself by drawing inference and bad character before viewing the evidence rather than drawing inference and bad character from the evidence, the prosecution did not respond.

Prosecutors contended that John Paul's car was near the scene of the attack and driven off within minutes of the killing. However, his legal team insist absolutely no evidence exists to link him to any role in the shooting and the evidence regarding the car comes from the tracking device which was tampered with.

Residue found on a coat with a slight forensic link to McConville was later recovered from the vehicle. On day three of the two men's joint appeal judges examined whether it could have come from a separate incident. Some of the residue could have come from another source, the Court of Appeal heard. Questioned on whether it could be proven that the coat was at the firing point on the night of the killing, prosecution counsel Ciaran Murphy QC said he could prove a connection with the relevant particles. Lord Chief Justice Sir Declan Morgan then asked: "Are you proving beyond reasonable doubt that the weapon was transported in Mr Wootton's car?" The barrister replied: "No." Sir Declan continued: "Are you proving beyond reasonable doubt that Mr McConville was transported in Mr Wootton's car." Again the response was: "No."

Mr Murphy contended that scientific evidence connected the murder weapon - an AK47 rifle which was later recovered - to the jacket. After it was pointed out to him that some of the discharge could have come from a different incident, he stressed the rarity of the particles. During exchanges Sir Declan said: "The Crown accept there's at least a possibility there was some other source which was responsible for some of the gunshot residue. "How then do you get from knowing there's another source as well as the gun that was recovered to concluding that other source was not responsible for the entirety of the gunshot residue?".

Going on the above exchange it is now obvious how unsustainable this conviction remains, there is no physical evidence and the the circumstantial evidence produced is either discredited or highly contradictory. Justice Girvan continuously misdirecting himself creating fact from inference where no inference can be drawn.

Day Four: Began with the closing of the Prosecution argument, astonishingly they conceded their is no evidence directly linking either John Paul or Brendan to the fatal shooting of Stephen Carroll but rather "when you take a global view of the evidence and then draw inference on that evidence" the men must be found guilty!.

In reality the prosecution has forwarded a set of circumstances with guess work and unsubstantiated theory not able to prove beyond reasonable doubt any of this theory and the original trial judge misdirecting himself drew inference and bad character and promoted this as fact to fill in the holes and secure the original conviction.

The three appeal judges constantly put it to the prosecution that they could not beyond reasonable doubt prove any of their claims, the prosecutions answer was vague saying that taken altogether these unproven strands somehow proved guilt.

Following the closure of the prosecution's argument the new evidence regarding the affidavit of Witness M's close relative who had been arrested by the PSNI prior to the original appeal date in April was discussed. Both the Defense and Prosecution put forward brief argu-

ness was infact questioned by police in interviews about aspects of his witness statement.

Queens Counsel made the assertion that this was subverting the course of justice to DCI Harkness who said the questioning was related to comments made by witness Ms father prior to interview which he felt the police could further enquire into.

What ever evidence the police claim to have to corroborate that witness Ms father was indeed abducted and threatened remains secret leaving the court and the judge the options of accepting the police officers word that this is true or the family all of whom in questioning denied any such event took place. [And there we have to leave it, till next week]

Can New Evidence Clear Susan May Convicted of Murder 21 Years Ago

Eric Allison, The Guardian, Sunday 13 October 2013

New forensic evidence to be presented by one of Europe's leading fingerprint experts may clear a woman convicted of the murder of her aunt 21 years ago. Susan May was found guilty in 1993 of murdering her 87-year-old aunt, Hilda Marchbank. Marchbank was found dead in her bed at home, in Royton, Lancashire. She had been beaten and then suffocated with her pillow.

The police initially believed the death was the result of a robbery gone wrong. But May was charged with the killing after police said they found her fingerprints in bloodstains on the walls of Marchbank's bedroom. An expert at May's trial told the jury that the stains included the victim's blood and their presence on the wall meant the murderer had "felt his, or her, way along the wall" suggesting the crime had been committed in the dark. May, 68, was sentenced to life imprisonment, with a recommendation she serve a minimum of 12 years. She was released in 2005, becoming one of the first life sentence prisoners who deny their crime to do so.

But now a report by the former head of the national fingerprint service of the Netherlands, Arie Zeelenberg, has concluded there was no evidence that the finger marks, attributed to Susan May, were placed in blood. He said: "There is overwhelming evidence that they were not comprised of blood but of sweat and a minor residue of another unknown substance." He also maintained that the marks on the wall were made before Marchbank's murder.

The report came after Zeelenberg studied high-resolution negatives of photographs of the crime scene supplied to him by the Criminal Cases Review Commission (CCRC). Zeelenberg said the technique used by the expert the prosecution relied on at trial to demonstrate the marks were made in blood was faulty. He said the "mistakes led them to the wrong conclusions".

In 2009, the former head of Hampshire CID, Des Thomas, produced a report criticising the tactics used by police to investigate May. Thomas said a "disinterested observer may conclude that some evidence had been manipulated to construct a case against Susan May". He added that a "number of police witnesses may have adjusted their evidence to fit a desired rather than valid outcome".

Last year, the Guardian traced a witness who said police tried to persuade him to lie in order to "eliminate" a red Ford Fiesta car, seen at the murder scene the night Hilda Marchbank was killed. Police failed to disclose this evidence to the defence team and hid the fact they considered a local man a "good suspect" for the murder, after the car's sighting and an anonymous phone call naming him as the killer. The man, Michael Rawlinson, a heroin addict, had access to a red Fiesta and was known to police as a robber who targeted elderly people. Rawlinson was murdered in a drugs dispute in 2001. The original investigation records state, wrongly, that the car was never traced.

May says the the word "blood" has haunted her case. "Judges have referred to it, the prosecution's experts did, as have journalists and the CCRC. We have always known there was

This was immediately challenged by Mr Barry MacDonald QC for the defense who produced a document sent by Detective Constable Brannigan ? to the PPS that quite clearly showed he recommended that the Public Prosecution Service should prosecute Brendan McConville for having details relating to the Govenors car registration in his cell. The thrust of the defense argument was that the police team investigating the Carroll murder for which Brendan McConville was facing trial was also the team to investigate the note found in Maghabeery containing the govenors car details and that they were only concerned with building another case against and a damaging profile against Mr McConville. When Lisburn CID made enquiries about the same case under a separate investigation not only did it follow up on Mr McConvilles claims the evidence was planted but they searched the homes of two serving members of the Prison Service and they were both questioned under charges of trying to pervert the course of justice and abuse of position!

It is unclear why DCI Harkness and team were charged with investigating the note incident in the jail but Steve Rodford said under oath yesterday that although he could not prove it he felt the note was planted by prison staff opposed to the disbandment of the Standy Search Team based at the jail and the Police ombudsman Mrs McCabe had to contact several high ranking PSNI officers to raise her concerns over the psni investigation and indeed was concerned that the findings of her own investigators was not being passed onto the PPS .Her finding stated on the basis of probability the note was planted in Mr McConvilles cell by members of the prison service. DCI Harkness was taken off the prison enquiry investigation and replaced. He claimed today to be unaware he had been removed and another officer had replaced him,

The next point in the appeal concerned the sworn affidavit lodged with the court by witness Ms father and the police response to this new development in the case. This new witness evidence helped build a platform for the appeal case being heard. It is the defense claim that because the new evidence was submitted the police took strenous steps to try to make the witness retract his evidence and had tried to interfere with due legal process. It is the police contention that the sworm affidavit given by witness Ms father was given under duress intimidation and by threat of violence against him his family and his son Witness M himself who had left the jurisdiction.

It became clear as the afternoon wore on that the police were claiming to rely on secret evidence not available to the court or the defense but had been seen by the PPS senior prosecuting counsel and senior psni personnel. The claim was witness Ms father was held at gunpoint and threatened and that this is why he signed his sworn affidavit and because of this the police began to use covert surveillance audio bugging devices in the home in which witness Ms father was living on witness Ms father and family which led them conclude witness M had been intimidated. These claims of intimidation were rejected in subsequent interviews with the police by witness Ms father witness Ms sister and separately by another family member.

The court rose for a short time after the defense barrister had asked the appeal judges to request the prosecution to disclose if surveillance of witness Ms father had proved witness Ms father had been abducted and threatened by armed men or indeed if surveillance was in place before witness Ms father signed his affidavit? This request for disclosure will be responded to tomorrow by the PPS and others through the prosecution barrister.

The defense team also raised the spectre that the arrest and questioning of witness Ms father for nearly 36 hours over ten interviews under the charge of with holding information presumably related to the armed gun man threat which all members of the family had denied was a ruse to question witness Ms father about the testimony put in his sworn affidavit. The wit-

ments regarding the admissibility of the new witnesses affidavit, following a recess for lunch the court decided the new Witness would need to attend and be questioned on the matter and a subpoena was issued for his attendance on Monday.

A subpoena was also issued for former Maghaberry Governor Steve Rodford and former prisoner ombudsman Pauline McCabe. They have been called to give evidence about the circumstances regarding the finding of Steve Rodfords personal details in Brendan McConvilles cell in a planned search.

A report by Pauline McCabe at the time had exonerated Brendan McConville and pointed the blame at the prison officers. The prosecution attempted to use the find as bad character against Brendan in the trial and the PSNI sought to have him convicted for the find. It emerged during the appeal that the PSNI had approached Governor Rodford and asked him to "add a line" to a statement he had made as the "case against McConville was delicate". The appeal was adjourned until 9.30am on Monday when those who have been subpoenaed will give testimony.

Day Five: Central to the prosecution case was the evidence of a man identified only as Witness M who claimed to have seen McConville in the area around the time of the killing. With this man's father having made a statement branding his son a liar, defence lawyers allege he was arrested earlier this year and held by police in a bid to sabotage their case. He was ordered to attend the Court of Appeal to be questioned about his assessment of his son and about a covert surveillance operation said to have been carried out at his home. He told a panel of judges that his home, phone and car were all bugged. The man claimed that while in custody police tried to get him to retract everything in his affidavit.

No-one should be jailed on the word of a key witness against one of the two men convicted of a police murder, his own father has told a court. The man claimed he was "99% sure" his son gave a wrong account of his movements on the night Constable Stephen Carroll was shot dead. He described how his son was known in the family as a Water Mitty-type character and said: "He actually believes his own lies". Asked by Barry Macdonald QC, for McConville, if he was prepared to do that he replied: "No, it was the truth. I didn't want to see anybody in prison on the word of my son because I know what he's like." He told the court he had not been coerced, threatened or forced into signing his statement.

Under cross-examination by Ciaran Murphy QC, for the prosecution, he said it was not possible for his son to have made the journey he described on the night of the shooting. Pressed further on that point, he added: "I'm 99 percent sure." The man told how he binned one mobile phone after discovering it was bugged during a call which felt "like an explosion". Another device discovered in the boot of his car was thrown down the toilet, he said. He reiterated that he did not feel pressure to give evidence, but agreed that one meeting had been "hot and heavy". The court heard of an incident at his home which led to him relocating. Detailing further alleged consequences of his son's testimony, he said: "If I was up the town they would shout there's the tout's da. "Once in the bar this fella put his hand up like this, as if he had a gun." He added: "My nerves are shattered." At one stage Mr Murphy asked if he made things up when it suited him. "No," the man replied. But he agreed when it was put to him: "Would you accept you have some difficulty remembering specific events." This section from BBC News

Day Six: Yesterdays witness the father of Witness M was recalled and Queens Counsel for the Prosecution Mr Ciaran Murphy continued his cross examination of the witness concentrating on wether or not the witness had been intimidated or coerced into signing his witness affidavit which totally exposed witness Ms testimony to be unreliable and possibly fabricated.

This witness was the subject of police and covert intelligence surveillance for over two years. A man who had committed no crime nor had he ever been arrested nor was evidence produced that this man was a threat to the state yet his house was bugged as was his phone and car he was also secretly recorded on camera as he went about his lawful business.

The witness spent a long time yesterday and a part of this morning being questioned and it must have been a very tiring and traumatic experience i feel very strongly this witness is a forgotten victim in this whole saga. His son (witness m) is in the witness protection programe with whom he has no contact .He has been intimidated at his home he claims by both the police and the hoods and i feel he has paid a very large price for something that has not been of his making . His court appearance while in the interests of justice is just another example of being caught up in events larger than himself. For man of his age I think he coped remarkably well

Next on the witness stand called by Queens Counsel for the defense Mr Barry MacDonald, was the Former Prison Ombudsman Mrs Pauline McCabe who was the Prison Ombudsman for 5 years ending in May 2013. It was the Prisons Ombudsman Office and investigators who compiled a report which concluded that a note found in Mr McConvilles Cell upon which details of the Prison Governors car registration were found did not originate from Mr Mconville but were in all probability planted by a member of the Prison Staff a line of inquiry which was not actively persued by the Police during their investigation and indeed possibly deliberately ignored as the Police focused their resources solely on Mr McConville at a time when he was remanded in custody charged in connection with the murder of Constable Stephen Carroll.

Mrs McCabe contacted the police including senior officers to convey her concerns that the police were not investigating Mr McConvilles very justified claims that the note had been planted in his cell by prison staff. The police inquiries were being carried out by the very officers who were involved in the Stephen Carroll Murder case of which Mr McConville was one of the accused! The note in question was found in a cell at Maghaberry Prison where Steve Rodford was then Govenor.

Mr Rodford when giving evidence today stated under oath he felt that although he had no proof a member of the SST Standby Search Team at the prison had placed his details in Mr McConvilles cell in order to frighten or intimidate him as he was in the process of disbanding the SST at the prison as part of the Prison Reforms he was introducing at that time. He said a cynical person could infer a link between the proposed disbandment of the Standby Search Team and the finding of his car registration details in Mr McConvilles cell. He recalled that when a member of the SST had informed him of the find he had added how he hoped neither Mr Rodford nor his wife would feel endangered by this discovery. Mr Rodford felt these comments to be insincere and indeed were delivered in a very smug manner.

Mr Rodford who claimed to have extensive experience within the prison service claimed he believed many members of the prison staff resented the proposed disbandment of the Standby Search Team and indeed in his opinion many of the staff thought they were running the prison an attitude he had encountered before in other facilities. Mr Rodford stayed in a hotel for 3 to 4 weeks and during this time he was interviewed by the police.

During this interview the police expressed the opinion that the case against was Mr McConville (in the Stephen Carroll case?) was DELICATE and that these allegations against McConville could help build a case? There are suggestions from notes taken by the Prison Ombudsman about this interview that Mr Rodford was asked to add something to his statement to the police which he refused to do. In court today Mr Rodford said he no recollection of being asked to add anything to his statement but insisted that the police include in his statement his concerns that the evidence (in Mr

McConvilles cell) was planted by a member of prison staff.

Next on the witness stand was a police officer who had interviewed witness Ms father when he was under arrest. During questioning by Mr MacDonald it was related to the court that sometime after witness Ms father had given a statement to the defense team he was approached by police and interviewed at a relatives home.

The witness was then arrested on suspicion of with holding information. He was taken to a police station but was kept in a police car for 30 minutes (presumably questioned) before being taken into custody. The witness who is an older man was then interviewed on ten occasions over the next 24 to 30 hours but very few of the questions if any according to the defense QC were related to the with holding or of any evidence related to events connected to May 3 to 5 2013. The defense QC seemed to think the police were more interested in what the witness had said in his statements and if he had been coerced into making his affidavit. The Constable agreed that it was the first time he had ever arrested a witness in an appeal case prior to the case being heard it was suggested the arrest was staged partly to prevent the witness from attending court? [This section by Fra Hughes a columnist with the North Belfast News]

Appeal Day Seven - (Fra Hughes October 16, 2013): It was a long and sometimes confusing day at the Appeal Court Hearing sitting at Belfast High Court today Wednesday October 16 2013 in the continuing Appeals of Brendan McConville and John Paul Wootton against their convictions in the murder of Constable Stephen Carroll March 9 2009.

In the witness box for the entirety of todays evidence was DCI Detective Chief Inspector James Richard Harkness attached to the Serious Crime Branch He was the senior investigating officer in the Constable Stephen Carroll murder case. Mr Harkness was making enquiries into the murder of the first PSNI Police Service Northern Ireland officer to be killed since the Royal Ulster Constabulary was renamed on the 4 November 2001. Constable Carroll worked for the same police division as Mr Harkness E District although they were unknown to each other.

Testimony had previously been supplied by both the former Prison Ombudsman Mrs Pauline McCabe and the former Govenor of Maghaberry Prison Steve Rodford into the investigations carried out to ascertain who was responsible for a note containing the details Steve Rodfords car registration number which was found secreted in Brendan McConvilles cell at Row House Maghaberry Prison. It appears that police procedures in place which would have tasked the local police command area that is CID at Lisburn to investigate were not followed and that DCI Harkness and his team who were investigating the murder of Constable Carroll where put in charge of this line of enquiry too?

When questioned under oath by Mr Barry MacDonald How did you come to be appointed to investigate this crime Mr Harkness replied he had no recollection of why he was chosen. The note found on 17 September 2009 became the subject of an active police investigation on September 18 when DCI Harkness and his team were chosen to lead the enquiry. Under examination DCI Harkness agreed that he wanted to ascertain if the find had any bearing on the Stephen Carroll case and that the note afforded the police the opportunity to delve for more intelligence held within the prison which may throw light on the other (Stephen Carroll) case? Harkness devolved responsibility for the Maghaberry note enquiry onto one of his team.

At no time did DCI Harkness team investigate the complaints by Brendan McConville that the evidence had been planted in his cell or the possibility that this might have occurred even though it had been brought to their attention in an interview between Brendan McConville and Constable Brannigan. The court was told by Harkness that on completion of the investigation a file was sent to the Public Prosecution Service with no recommendation on how the PPS should proceed.