Pathfinder International and CHANGE). Nevertheless, due to a (real or claimed) lack of knowledge and pressure from abolitionist women's organisations that define all sex work as inherently exploitative, many philanthropic actors have chosen to follow the US government's lead and refuse to support sex workers' rights and sex worker-led organisations as well.

Enter Red Umbrella Fund: A member of the Sex Work Donor Collaborative, was created to blaze a different trail. It was born following the first international exploration of funding for sex workers' rights and health issues by Open Society Foundations's Sexual Health and Rights Project in 2006. Two years later, a dialogue on sex work and trafficking took place between donors, researchers, and activists in collaboration with the Global Network of Sex Work Projects and the Indian feminist human rights organisation CREA. These dialogues were intended to help donors make the distinction between sex work and trafficking, and to figure out more effective ways to support anti-trafficking efforts that affirm sex worker and migrant rights. In other words: to develop a sex worker rights-based approach to anti-trafficking. In April 2012, Red Umbrella Fund was launched as a new, innovative global grant-making mechanism for, and by, sex workers.

Red Umbrella Fund released its 2020-2025 Strategic Plan on 14 September 2020, to coincide with International Sex Worker Pride Day. This plan reaffirms our vision to live in a world where sex workers are respected as human beings and as workers, so that all sex workers can live lives free from criminalisation, stigma and violence. For this vision to become reality, a more nuanced discourse among funders on the human rights approach to sex work and the harms of conflating sex work with trafficking is needed. Significant progress has been made over the past 20 years. Recently the members of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, for example, voted to support the decriminalisation of sex work. Their statement made clear that they were joining "a growing number of human rights, health and anti-trafficking organisations demanding governments recognise sex work as work, and protect sex workers' labour and human rights."

But despite these advances the conflation between sex work and trafficking remains as alive as ever. And as long as it is there it will hinder progress in both the sex workers' rights movement and the anti-trafficking movement. One practical example of the obstacles it creates can be found in the simple bureaucratic act of registering an organisation. As sex work continues to be criminalised in most of the world, sex worker-led organisations and networks face enormous challenges with registering their organisations with their governments. This, along with the criminalisation itself, prevents them from accessing funding even from donors interested in supporting their work

Funders can and must play a crucial role in turning the tide. With their help we can ensure the compatibility of anti-trafficking efforts with sex workers' rights. In order to achieve impact, we encourage funders to: Support the decriminalisation of sex work, Educate themselves on the difference between sex work and trafficking, Meaningfully involve sex workers in their grant-making relating to sex workers' rights, Fund sex worker-led organisations and networks in

Serving Prisoners Supported by MOJUK: Derek Patterson, Walib Habid, Giovanni Di Stefano, Naweed Ali, Khobaib Hussain, Mohibur Rahman, Tahir Aziz, Roger Khan, Wang Yam, Andrew Malkinson, Michael Ross, Mark Alexander, Anis Sardar, 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, Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan & Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Robert Knapp, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Peter Hannigan.

Miscarriages of JusticeUK (MOJUK)
22 Berners St, Birmingham B19 2DR
Tele: 0121- 507 0844 Email: mojuk@mojuk.org.uk Web: www.mojuk.org.uk

MOJUK: Newsletter 'Inside Out' No 836 (03/03/2021) - Cost £1

1,338 People Serving an IPP Sentence in Custody Following Recall.

As at 31 December 2020, there were 1,338 people serving an IPP sentence in custody following recall. This is approximately 28% of all offenders who have been released on an IPP licence. On 31 December 2020, 812 recalled IPP offenders were known to be still in custody more than a year after their recall.These figures have been drawn from the Public Protection Unit Database held by Her Majesty's Prison and Probation Service. As with any large-scale recordingsystems, the figures are subject to possible errors with data migration and processing.The power to recall is a vital public protection measure andall individuals on licensed supervision in the community are liable to recall to prison if they fail to comply with the conditions of their licence in such a way as to indicate that their risk may no longer be effectively managed in the community. Letter below from one ot those recalls.

Kevin Lane: Surviving Recall - Will, I Ever Get/Stay out of Here?

'Recall' a license condition that agencies of the criminal justice system often abuse. The ever-growing numbers in prison are a result of being recalled. So indeed, this must act as a catalyst for home office review. I have found myself a victim of this abuse, with legal aid reduced to a skeleton budget, challenging a recall by way of a judicial review is almost non-existent these days. The police, in my case, received four separate requests for information relevant to my recall via the parole board and such without success over the last year.

Recall timelines are almost a figure of one's imagination; executive release means very little. I have witnessed my fellow interns languished helplessly, marooned in prison until the wheels of justice turn to their hopeful release. I am treading water aimlessly, staring at four concrete walls twenty-three hours a day, during this lengthy COVID-19 lockdown.

For some, this sends them stir crazy; prison assaults and nickings have risen. For others like myself, I experience years of 'bang up' and cope better than most, in that I refrain from having a television and utilise my time reading and studying. None the less were all made different, and each of us will handle being locked up in their own way befitting to them.

A significant factor in relation to recall rests with your probation officer. If you are fortunate enough to find a probation officer, whereby you form a working relationship, hopefully, you will be managed accordingly without recall, unless it is inevitable. However, if you have a probation officer, whom you are gridlocked with, you are doomed, as your fate is in their hands. I appreciate it is human nature that, in some instances, you can clash with people. If that person you clash with happens to be your parole officer, then misfeasance in a public office often occurs. License conditions are often abused with no recourse.

For example, my work takes me away a lot, the length and breadth of England. I needed to drive to Newcastle for a business meeting. I was told I had used up all my quota for overnighters with work. It was expected that I left for Newcastle at midnight to arrive on-site for my 7 am meeting, conduct a full day's site visit, and spend the rest of the day driving home in time for midnight. As a company owner, if I instructed one of my staff to do a day visit in the same draconian measures in which I was told, I would be sued and liable for a health and safety case against me.

Nevertheless, why was my probation officer allowed to give me this ultimatum? BBC News recently highlighted how probation officers abuse their authority concerning recalling people on a license, and I strongly feel this needs to be examined in much more detail.

A lifer has the hangman's noose wrapped around their neck, and we navigate the everlasting threat of having it tightened daily. If a person/s are, for example, screaming in your face in a road rage, we must think, this is a 'red flag' situation, and I must use the tools that I have learnt to defuse this volatile situation. Regrettably, sometimes in life, no words or gestures of calmness will make absolutely no difference to a person/s if they have passed the moment of self-control. So, if this person or persons invade your comfort zone, you must decide what to do in that split second. Inevitably if you strike in self-defence, you have used instrumental violence, and the consequences of your actions will be deemed very badly for you. As a result, 99% of the time, you will be recalled to prison.

Real-life problems do not always marry up with offender behaviour courses, in many instances and not when you are threatened and in a fight to flight mode. I have been recalled for 'common assault', and as my Queens Counsel expressed in court, it is a non-custodial offence. However, because I am a lifer serving a 99-year sentence, I have been recalled; my recall facts are simple; the victim was drunk, and I was sober. The victim kicked, punched, and ran a car key up and down the side of my brand-new vehicle that I had recently purchased, causing £2000 worth of damage. I exited the vehicle and during the course of events threw the victim, this demonstrated a lack of control of my emotions, thus showing I did not use the tools I had learnt on the courses completed on the prison offender behaviour courses.

Recall for prisoners is incomprehensible to their imagination as I would never picture myself back here, after five years of a clean record. I challenged my frustrations of being back in prison through publishing my book "Fitted Up and Fighting Back", this has been featured within my parole representations, highlighting the fact that I have used my time in recall constructively. For those of you who are on recall, look for the peg to hang your coat on to get you through your time, whether it be reading, studying, exercising, or playing an instrument by way of example.

Kevin Lane, A5636AE, HMP Highdown, High Down Lane, Sutton, SM2 5PJ

Anonymous Witness Evidence and the Right to a Fair Trial

Silas Lee, Carmelite Chambers: Anonymous witness orders are most commonly sought by the prosecution in cases involving undercover police officers. There are outliers however, cases of complexity that call for closer attention, particularly those involving allegations or fears of witness intimidation. There is however always the potential for the use of anonymous witness evidence to infringe on a defendant's right to a fair trial. Despite this, the relevant legislation, (originally passed under the Criminal Evidence (Witness Anonymity) Act 2008 and subsequently enacted in the Coroners and Justice Act 2009 ("CJA")), received the bare minimum of legislative scrutiny in both Houses. In this article I review the relevant law and highlight some of the key areas of contention that may arise when responding to such an application for witness anonymity.

a) The History - The decision in R v Davis [2008] UKHL 36, led to the introduction of the statutory regime for witness anonymity orders. In that case, the Crown relied on the identification evidence of three witnesses, without which they could not proceed. All three witnesses indicated that they felt intimidated to such an extent that, without their identities being protected, they would not give evidence at trial. These concerns were investigated and considered to be legitimate. The trial judge ordered that, in the interests of justice, their identities would be concealed from the defendants. This decision was upheld in the Court of Appeal. The House of Lords,

lessen the impact. "The government has failed to listen to Labour's calls for a rapid extension in Nightingale courts, reduced war-time juries while pandemic restrictions are in place and the immediate rollout of testing in courts that would have allowed more justice to be done." Data from the last three months of the period suggested courts were recovering to an extent as restrictions eased in the summer and autumn, though not enough to keep pace with previous years.

An MoJ spokesman said: "Criminal courts have made further good progress since the period these figures cover – magistrates' backlogs have fallen by 50,000 since last summer, cases dealt with in crown courts reached pre-Covid levels in December, and more rooms are now open for jury trials than before the pandemic. "This week, we announced even more Nightingale courts as part of plans to drive this recovery further, which also include boosting the rollout of technology and hiring 1,600 extra staff."

Now is the Time to Support Sex Workers' Rights

Open Democracy: The COVID-19 pandemic and the measures put in place to mitigate it have exacerbated existing inequalities by forcing millions of workers around the world to lose work and income. Sex workers have been particularly hard hit. The long-standing conflation of sex work and trafficking have effectively led to their exclusion from not only government relief and protective measures but also from most private and philanthropic support. Yet the explicitness of the damage being done also presents us with an opportunity to turn the conversation around. Coronavirus has opened a door for funders to increase their support for sex worker-led organisations and to advocate for an end to this harmful conflation once and for all. Now they must walk through it. The Sex Work Donor Collaborative will be waiting on the other side to help them get their bearings. Founded in 2008, the collaborative was first convened to fundamentally change the structures of funding that defined anti-trafficking efforts. In particular, the donor collaborative hoped to "increase the amount and quality of funding and non-financial support for sex worker rights and sex worker organizing". Members of the collaborative oppose exploitation of and violence against sex workers, regardless of the form they take, and recognise the distinction between sex work and human trafficking.

A Dangerous Conflation: Links between trafficking and sex work are often based on assumptions rooted in the stigma against sex work. The denial of sex workers' agency, reinforced by the conflation of trafficking and sex work, has led many funders to prefer supporting organisations that claim to 'save' or 'rescue' sex workers over organisations that are run by them. In turn, this perpetuates the exclusion of sex workers' voices from philanthropic circles and makes funding sex worker-led organisations and networks incredibly difficult. The damage caused by equating the two ideas together is plain to see. Anti-trafficking legislation and initiatives based in the conflation of sex work and trafficking have led to increased criminalisation of sex workers' clients and third parties, forced 'rescue and rehabilitation', exclusion of sex workers from services, discriminatory immigration laws and restrictions, and increased violence against sex workers.

The "anti-prostitution loyalty oath" (APLO) provision passed into US law in 2003 and embedded in the 2003 President's Emergency Plan for AIDS Relief (PEPFAR) is a particularly egregious example of this in practice. This provision requires non-governmental organisations based outside the US to have "a policy explicitly opposing prostitution" in order to receive PEPFAR funding. The oath further prohibits recipient organisations from using the funds "to promote or advocate the legalization or practice of prostitution or sex trafficking" and specifies that no funds "may be used to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking". The negative impact of this oath have been extensively documented (see, for instance, the factsheets produced by

also been reported that the programme has been used to "spy" on innocent people not suspected of any involvement in terrorism. The scheme's remit was broadened to cover all forms of extremism in 2011. Extremism is defined as: "vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs". Under the scheme there is now a statutory duty for all public sector workers – such as teachers and doctors – to have "due regard to the need to prevent people from being drawn into terrorism". Human rights groups have called for this duty to be scrapped – citing concerns around discrimination and freedom of speech in classrooms. Several cases of schools calling the police on children as young as seven have added to the scheme's controversy.

Data Lays Bare Strain on Criminal Justice System in England and Wales

Kevin Rawlinson, Guardian: Official figures show number of cases dealt with fell by 22% in the 12 months to September. The pressure put on the criminal justice system during the Covid-19 pandemic has been laid bare by official statistics that show the number of people dealt with in England and Wales fell by nearly a quarter amid evidence that the bottleneck has forced staff to carefully select which cases can be heard. Data released by the Ministry of Justice (MoJ) showed the number of people being prosecuted or handed out-of-court disposals fell by 22% in the 12 months to September 2020, compared with the same period a year earlier. The figures also showed a 25% drop in the number of offenders convicted and a similar decrease in the number of people sentenced. While the government highlighted the unprecedented difficulties posed by the public health crisis, Labour blamed ministers. "The collapse in cases dealt with by the criminal justice system in the past year is a result of the government's slow and incompetent response to the pandemic," the shadow justice secretary, David Lammy, said. "A decade of failed Conservative ideology has wrecked the justice system, leaving it vulnerable even before the pandemic began. We now need to rebuild the justice system so that the UK can become the fairest country in the world."

Custody rates and average sentence lengths both increased overall, according to the MoJ document, which added: "For custody rates, this is likely to partially reflect the prioritisation in courts of more serious offences since April 2020 – meaning a greater concentration of court time for offences more likely to get a prison sentence. The increase in average sentence lengths continues the trend of the last 10 years, and it is less clear from the monthly data what impact, if any, the pandemic may have had." The latest figures come amid concern about the effects of extending the time an unconvicted defendant can be held in custody awaiting trial as the courts try to work through a huge backlog of cases. In September, it emerged that official advice handed to ministers had warned the practice would disproportionately affect black, Asian and minority ethnic people.

Griff Ferris, the legal and policy officer at the campaign group Fair Trials said: "The pandemic has exacerbated pre-existing failings in the criminal justice system. With remand rates at their highest in five years, alongside delays caused by a backlog of more than 50,000 crown court cases, even more people are being held in prison awaiting trial for unacceptably long periods of time. Delayed justice denies justice to both victims and defendants. "The government must invest properly in the criminal justice system to ensure efficient and fair justice, and release low-risk remand prisoners until case delays have been addressed."

The MoJ document said the data highlighted the "impact on criminal court prosecutions and convictions of the Covid-19 pandemic". It said: "Latest short-term trends are mostly reflective of the impact of the pandemic on court processes and prioritisation rather than a continuation of the longer-term series." But Lammy outlined steps he believed ministers should have taken to

overturning that decision, found that, in the words of Lord Bingham, "By a series of small steps the courts have arrived at a position which is irreconcilable with long-standing principle". Prior to this decision, developments in the common law regarding the anonymity of witnesses in criminal trials had been complex and inconsistent. Lord Bingham found that the well-established general principle is that, para 5, "Subject to certain exceptions and statutory qualifications, the defendant in a criminal trial should be confronted by his accusers in order that he may cross-examine them and challenge their evidence". Unanimously, the Lords found that any further changes in the law in this respect should be decided upon by Parliament. Their decision was handed down on 18 June 2008.

Just over a month later, the Criminal Evidence (Witness Anonymity) Act 2008 received Royal Assent after quickly passing through both Houses with the express purpose of securing those trials that had been thrown into question by the ruling in Davis. The Act represented an urgent change to the rules and procedure on witness anonymity. At the same time a review by the CPS, cited by Jack Straw (then Secretary of State for Justice and Lord Chancellor) in the House of Commons found that there were approximately 580 live cases involving witness anonymity. Half of these were prior to conviction and they broke down as follows: 290 involving undercover police officers completing test purchases of drugs. 40 involving undercover officers in other cases. 50 involving members of the public as witnesses Despite the measures in the 2008 Act ostensibly being temporary and having been subject to minimal parliamentary scrutiny, they were adopted almost unchanged in the CJA 2009 which came into force on 1 January 2010.

b) The Current Law - Relevant sources of law and guidance:. Coroners and Justice Act 2009

The Attorney-General's Guidelines: The Prosecutor's Role in Applications for Witness Anonymity Orders. The Director of Public Prosecution's Guidelines: Witness Anonymity. The Criminal Procedure Rules 18.18 – 18.22. 86(2) CJA 2009 sets out the measures which can be ordered by a court: The withholding and redaction of the witnesses' name and identifying details. The use of a pseudonym. Restrictions on the asking of questions that might lead to identification. The use of a screen while giving evidence. The use of voice modulation software. None of these measures can be allowed to interfere with the judge and jury seeing and hearing the witness (s. 86(4)). As Lord Judge CJ stated in Mayers [2008] EWCA Crim 2989, "an anonymity order should be regarded as the special measure of last practicable resort". Whether all, or only some of the measures listed above are truly required in any given case will rest on its particular facts. Careful consideration should be given to each in turn and only those that are necessary ought to be ordered. 88 CJA 2009 sets out the three conditions, A-C that must be satisfied for the court to make an order. Mayersconfirmed that this is not a matter of probability: the court must be satisfied to the criminal standard that the conditions are met (para 37). The conditions are as follows: Condition A: that the order is necessary to protect the safety of a witness, serious damage to property or real harm to the public interest. Condition B: that the order must be consistent with the defendant's right to a fair trial. Condition C: the importance of the witness's testimony is such that in the interests of justice the witness ought to testify and in addition, the witness would not testify if the proposed order were not made or there would be real harm to the public interest if the witness were to testify without the proposed order being made.

"Necessity" is defined in the statute and can refer only to measures necessary to protect the safety of a witness or another person, to prevent serious damage to property (s. 88(3)(a)) or to prevent "real harm to the public interest, affecting any activities or safety of persons involved in them" (s. 88(3)(b)). The court must have particular regard to any reasonable fear on the part of the witness as to the above (s. 88(6)). Naturally then, it is for the Court to determine, on considering the evidence, whether such a fear is reasonable in all the circumstances. Mere reluctance to give evidence is not sufficient. In cases involving an undercover officer "the court would nor-

mally be entitled to follow the unequivocal assertion by an undercover police officer that without an anonymity order he would not be prepared testify" (Mayers, para 30). Such cases tend not to be controversial. The use of protective measures was commonplace long before the introduction of the relevant legislation and the new law did not interfere with this.

c) Challenging an Application for Anonymity - The Court cannot make a witness anonymity order unless each party has had an opportunity to make representations (CPR r18.18 (2)). 89 CJA 2009 sets out a number of considerations to which the court must have regard when deciding whether the above conditions (A-C) are met. In summary, these are: The general right to know the identity of a witness. The extent to which the witnesses' credibility is in issue .Whether the witnesses' evidence might be the sole or decisive evidence implicating the defendant. Whether the witness could be properly tested without their identity being disclosed. Whether there is any reason to believe the witness has a tendency to be dishonest or has any motive to be dishonest in the circumstances, with reference to any previous convictions and associations. Whether it would be reasonably practicable to protect the witness by any other means. The above factors highlight the importance of having a detailed understanding of the defence case prior to contesting any application by the Crown for witness anonymity. Understanding what questions the Defence anticipates asking the witness at trial and an explanation as to how an anonymity order would prevent them from doing so is likely to be persuasive in this context. Where anonymous evidence is the sole or decisive evidence against a defendant, s. 89 only requires the Court to have regard to this as a factor amongst a host of others.

In Davis, which preceded the legislation, conflicting views were offered on whether anonymous evidence should be allowed where it is the sole or decisive evidence against a defendant. The extent to which the admission of such evidence might infringe a Defendant's Article 6 rights has been considered extensively, for example in Al-Khawaja and Tahery v UK (2012) 54 EHRR 23 (807) and Ellis v UK (2012) 55 EHRR SE3 (8). Where such evidence is poorly corroborated or its reliability cannot properly be examined, a challenge to an application for anonymity may be successful. The Court of Appeal has ruled inadmissible anonymous hearsay evidence (see Ford [2010] EWCA Crim 2250 and Fox [2010] EWCA Crim 1280), following the decision in Mayers.

d) Procedure - The duties of the applicant and/or prosecutor are stringent. They must provide written representations describing, inter alia, their reasons for the applying for the order, how it fits within the statutory regime and why other special measures will not suffice (see CPR r18.19 and the Attorney General's Guidelines). Defence counsel will not know the identity of the witness on whose behalf the Crown have applied for anonymity, nor will their identity be revealed to them in any such hearing. Generally, the Crown will make its application in the presence of the Defence, omitting identifying details, to which the Defence can respond. Then, once both parties have made submissions, the Crown can make further, representations identifying the witness in the absence of the Defence (CPR r18.19). Representations should be served on the court and the parties no more than 14 days after service of the application and should indicate if a hearing is requested CPR r18.21).

In multi-handed trials, there can arise a situation in which one defendant knows or suspects the identity of a witness for whom anonymity is sought (or the defendant themselves may be applying for anonymity for a Defence witness) and wishes to make representations. They cannot identify the witness in representations that are served on the other defendants or make submissions that would do so in the presence of the other defendants. Redactions should be made to written representations with appropriate explanation (CPR r18.21). As per

17 Human Rights Groups are Boycotting the Government's Prevent Review

Each Other: Leading human rights groups including Liberty, Amnesty International and the Runnymede Trust have announced a boycott into a pending review of the Government's Prevent Strategy. The controversial counter-extremism programme, which was introduced in the wake of the 2005 London bombings, has frequently been criticised as discriminatory to Muslim communities. Under the scheme there is a statutory duty for all public sector workers – such as teachers and doctors – to have "due regard to the need to prevent people from being drawn into terrorism". In practice, this has led to cases of schools calling the police on children as young as four, for having toy guns or talking about video games. There have also been concerns that teachers have received confusing guidance on the strategy, while others said it spreads "fear and distrust". Several groups have called for the policy to be scrapped, adding that it was now a "toxic brand". The Government said the purpose was to "safeguard and support vulnerable people and to stop them becoming terrorists or supporting terrorism", adding that it played an "essential role" in doing this, and had "safeguarding at its heart". They added that the current review, which was announced in January 2019, "is important […] so this vital programme continues to improve".

Why Has The Boycott Happened? Seventeen groups, also including Big Brother Watch and Netpol, have announced they will no longer engage with the review following the appointment of William Shawcross to lead it. Previously, Lord Carlile, a vocal supporter of the policy, had been announced as the reviewer. However, he was dropped after a legal bid argued his appointment was unlawful because he could not be considered independent. Shawcross, who previously headed up the Charity Commission, was appointed by a "full and open recruitment process", according to a Government statement. They added that he "possessed the right range of skills and experience to conduct this important review".

However, his appointment has come under fire after previous comments he made about Islam. For example, in 2012 he said: "Europe and Islam is one of the greatest, most terrifying problems of our future. I think all European countries have vastly, very quickly growing Islamic populations." Shawcross also came under fire during his tenure at the Charity Commission, after it was revealed that more than a quarter of all statutory investigations into charities at the time focused on Muslim charities.

In a statement, Liberty said: "When people see injustice at the heart of public services, the least they can expect the Government to do is undertake a serious independent investigation. But this review has shown the Government is determined to ignore the damage Prevent causes, particularly to Muslims and people of colour. This review has shown the Government is determined to ignore the damage prevent causes – particularly to Muslims and people of colour."Liberty

They continued: "The appointment of a Prevent reviewer who has a track record of Islamophobic comments shows the Government is set on using the review to rubber stamp this divisive strategy. This review could have been a chance to properly scrutinise the premise and impacts of Prevent. We need interventions that respect the rights of the people directly affected and bring communities together." In a joint statement, the 17 groups said they would go onto conduct a "parallel review that properly considers the harms of Prevent, including documenting discrimination and rights violations caused by it". It's not the first time the policy has come under fire. In January 2020 more than 100 academics and campaigners called for Prevent to be abolished, saying it was a "failed policy".

What Is Prevent? Prevent is one strand of the goverment's "Contest" counter-terrorism strategy. Its purpose is to "safeguard and support vulnerable people to stop them from becoming terrorists or supporting terrorism". Introduced following the 2005 London bombings, it was aimed primarily at Muslim communities. This has given rise to ongoing complaints that it is discriminatory. It has

ment to notify the police of relevant information concerning motor-vehicles:- "of which the person is the registered keeper of, or acquires a right to use (whether routinely or on specific occasions or for specific purposes) on the date on which notification is made"

The Appellant failed to declare his use of these vehicles and was charged with nine counts of failure to comply with notification requirements in relation to the use of refuse vehicles during his employment contrary to section 54(1) and (4) of the 2008 Act. At a preparatory hearing the Appellant argued that the notification requirement in respect of motor vehicles did not apply in relation to the vehicles he drove as part of his work; alternatively, that the application of the legislation to his case was not in accordance with the law or violated the principle of 'legality' in that it interfered with his lawful right to obtain work.

The judge declined to make that ruling and the Appellant appealed to the Court of Appeal. The Court of Appeal dismissed the Appellant's arguments. They pointed out that the purpose of the provisions was to strengthen the powers for managing terrorist offenders following their release from custody and to strengthen the powers of the police to prevent terrorism and investigate terrorist offences. The Court went on to say that words used in the Statute were clear and unambiguous. In the circumstances of regulating the activities of convicted terrorists, there was no public policy reason to depart from the ordinary principles of statutory construction, which required the court to adopt the plain meaning rule, in the absence of any ambiguity in the relevant statutory terms.

The phrase "a right to use" was the trigger for the notification requirements, and not the other way around. The Court held that it was no answer that by reference to scenarios that might undermine a person's ability to work as an agency driver, the clear intent, and the clear and unambiguous words used in the statutory text, were to be ignored. The words "a right to use" denoted the control, management, or operation of the vehicle in question. In the circumstances of the present case the Appellant's ability to meet the notification requirements was not rendered impossible before the defendant commenced to use a vehicle. The timing of the acquisition of "a right to use" a motor vehicle, which determined the appropriate notification period, was a question of fact which had to be established by the prosecution as a relevant ingredient of the offence, and it would fix the time frame for compliance, subject to "reasonable excuse" and would be within the person's knowledge.

In any event, any inherent difficulties of the necessary notification procedure as might become obvious upon analysis of evidence in the present case, did not render the clear words of the statute "absurd" as the Court of Appeal accepted the proposition that a person might, depending on the particular circumstances of the case, be able to establish a reasonable excuse for failure to comply with notification requirements. The proposition that, while the statutory words were not general and ambiguous, their operation was so demonstrably impractical or misunderstood in application, that parliament could not have foreseen the consequences that would ensue, and it should therefore be presumed that it "passed unnoticed in the democratic process" was to be rejected.

The relevant notification requirements which were imposed upon a registered terrorist offender were predicated upon previous conviction(s) of specified terrorist offences and the interference by a public authority with the exercise of an individual's right to respect for family or private life was justified as "in accordance with the law and … necessary in a democratic society in the interests of national security, public safety…the prevention of disorder or crime, or for the protection of the rights and freedoms of others" (Schedule 1, article 8(2) of the Human Rights Act 1998). In conclusion the Court of Appeal held that even if the notification requirements prevented a person from pursuing a line of employment of their choice, the inability of a registered terrorist offender to drive HGVs without prior notification to the relevant authorities was a proportionate aim in the interests of national security.

Mayers, a Prosecutor's duties of disclosure in cases involving anonymous witnesses "go much further than the ordinary duties of disclosure". The Defence must rely on this heightened duty of disclosure when considering whether and how to resist an application for witness anonymity. Any evidence that goes to the witness' credibility or the reliability of their evidence is especially sensitive in such cases.

e) Final Thoughts - The key question when considering the use of anonymous evidence is whether the defendant receives a fair trial. The Court may apply the statutory regime correctly and may determine that granting the application is in the interests of justice but this does not preclude an Article 6 issue from arising (see Al-Khawaja v United Kingdom [2009] 1 WLUK 266). It is entirely possible that, while an issue did not arise at the application stage, it nevertheless arises in the course of the trial. The application for an anonymous witness order rests on a complex set of interrelating conditions and a host of matters that outlined above. If evidence relied upon by the applicant is not ultimately adduced at trial or is adduced in such a way as not to corroborate the anonymous evidence in the way that was anticipated in the application, a subsequent challenge may be warranted. What may have appeared fair at an early stage may no longer be so as the trial progresses.

Anonymous witness evidence can therefore present as an issue at almost any stage of proceedings. The statutory regime principally governs the making of the order itself but it is paramount that practitioners are alive to fluctuations and changes at trial and to keep under review the need for variation of the order if the landscape changes. Doing so may have a significant impact on the trial or any subsequent appeal.

Lawyers Seek Justice for Women Jailed for Killing Abusive Partners

Hannah Summers, Guardian: It was a specific moment in which she thought she might die that drove Stella to the brink. "He had strangled me at the bottom of the stairs and that frightened me because you can get punched in the face or your hand broken, but I had never lost my breath before," she recalled. For Nicole, she was "pushed over the edge" when violence by her partner triggered a post-traumatic response to historic abuse by other men. "I was getting flashbacks of abuse ... everything came to a head and I just lost it." For others, like Cathy, it was the stark belief they were beyond the protection of the law and could see no other way out. Put bluntly, it was a matter of survival. The cases of these female prisoners are among those examined in a report that analyses how the justice system treated women who killed their male abusers. It concludes that both the law and the way it is applied in England and Wales means women are being unfairly convicted. Failures to explore properly the abuse suffered by women who kill mean they could be convicted of murder instead of manslaughter, or the appropriate defences may not be put forward, the study found.

Now, lawyers who believe dozens of women could be serving time in prison for unsafe murder convictions are assessing at least 20 cases where there may be grounds for appeal. This comes after Farieissia Martin, convicted of killing Kyle Farrell in 2015, had her murder conviction quashed in December following support from Justice for Women, co-authors of the report. She is now facing a re-trial. Harriet Wistrich, the founder of the Centre for Women's Justice, said: "Our research investigates why, despite an apparent increase in the understanding of domestic abuse, we still see so many miscarriages of justice with women who are themselves victims, serving life imprisonment for choosing to survive." New data shows that between April 2008 and March 2018, 108 men were killed by women they had been in a relationship with

– either at the time of the killing or some time previously. In comparison, nearly eight times as many women (840) were killed by partners or ex-partners during the same period.

Researchers looked at 92 cases where women had killed men over the same decade and found that in 77% of them the woman had experienced violence or abuse from the deceased. "This is likely to be an underestimate as some women will never disclose abuse," explained Wistrich, who has represented more than 10 women in their appeals against murder convictions. She said: "While hundreds of women subjected to violence and coercive control were killed by their partners, most of the small number of women who killed men were driven to do so after suffering abuse. Many were imprisoned for long periods at great cost to them and their families." Of the 92 cases, 43% of the women were convicted of murder and 46% of manslaughter – just six were acquitted. Of those convicted of murder, 33% were sentenced to 20 years or more in prison and 35% to 15 years or more. In 71% of cases the defendants had stabbed the deceased. Women are more likely to use a weapon than men who kill their female partners – because they tend to be physically smaller – but use of a weapon results in longer prison sentences.

Researchers interviewed 20 women between the ages of 23 and 65 from a variety of backgrounds who were convicted for killing abusive men. They also spoke to 14 lawyers who had represented or prosecuted women in these cases and examined 23 domestic homicide reviews and 17 case files involving women defendants who had applied to the Criminal Cases Review Commission. Women who kill their partner or ex-partner often do so as a last resort, researchers found. They noted a failure to address men's violence throughout the justice system, from policing and legal representation to the courts and prison service. The women in 19 of the 23 domestic homicide review cases had experienced historic abuse from a man other than the one they killed.

Nicole said her ex-husband had abused her children and revealed she had also been abused as a child. "He admitted it and got a caution...It had a really big impact on me because I never wanted what happened to me as a child happening to my sonsand it did. Justice wasn't done." In Cathy's case, non-molestation orders had been issued against her ex-partner and she had moved house to evade him. Police had been called to 54 separate incidents involving the couple but on six occasions charges were dropped against her ex. On the night she fatally stabbed him, he had broken into her home and told her to remove her clothes. She later disclosed she thought he was going to rape her. After initially being charged with murder, she was convicted of manslaughter on the grounds of diminished responsibility – one of the partial defences. But legal experts say too often a lack of expertise or mistakes made early in a woman's case mean the proper defences are not advanced.

After Stella was arrested for killing her partner, police recorded that she was "shell shocked". She said: "They told me he was gone. I couldn't take it in and said, 'I have got to be with him.' I couldn't imagine living with that… I was very suicidal [but] they thought I was fit for interview straight away." Dr Catherine Durkin, a forensic psychiatrist for the NHS, says women who have suffered long-term abuse will often be in a state of severe shock when they enter the criminal justice system. "The stress of retelling the circumstances of their arrest in prolonged interviews and at trial can be so triggering of their underlying trauma that they experience dissociative or amnesic states. This can impair their ability to recall information about the offence, but also to disclose the often highly distressing circumstances of past abuse," explained Durkin, who carries out assessments on female prisoners.

Women may struggle to engage with police and solicitors in the immediate aftermath of the killing but the details they share at that point can have important consequences for their

who are used to that approach, however, it is no less alarming to contemplate protracted jury selection and arguments over the make up of a jury. We may be better off with the mystery of a randomly selected panel. There will always be room for doubt as to how fair and free of bias any jury could possibly be, but that doubt will remain in any system. As lawyers, perhaps we should accept the random jury we are presented with, and appeal to the fairness of those 12 individuals. We may not know their prejudices, but we can still encourage them to be discarded.

High Court Certifies Point of Law for the Supreme Court

Section 21A(1)(b) of the 2003 Act provides that the courts must refuse to accede to an extradition request where extradition would be "disproportionate". In making that assessment, the courts must consider three specified matters, which are (i) the seriousness of the offence, (ii) the likely penalty, and (iii) the possibility of using less coercive measures. Latvia seeks Mr Bojarinovs' extradition for an allegation of street dealing 6 wraps containing 0.0427 grams of heroin from October 2012. In Latvia, this offence attracts a minimum of three years' imprisonment and a maximum of ten years' imprisonment. In England and Wales, street dealing class A drugs attracts a starting point of 3 years' imprisonment. At first instance, District Judge Blake concluded that this offence would receive a likely penalty of 3 to 10 years' imprisonment in Latvia. The Judge stated that he could not come to a "definitive conclusion" on the likely penalty Mr Bojarinovs would receive in England & Wales. The Judge concluded that extradition would not be disproportionate. On appeal, Johnson J. stated that the Judge could come to a conclusion as to the likely penalty and that, on the facts of the case, a hybrid assessment of the sentencing regimes in Latvia and in England & Wales demonstrated that a likely penalty of no more than three years' imprisonment would be imposed. Johnson J. concluded that extradition would not be disproportionate.

At the time of the appeal hearing, Mr Bojarinovs had been remanded into custody for 19 months. He had therefore served more than half of the likely penalty of three years. It was submitted that, applying the early release scheme operating in England & Wales, Mr Bojarinovs had served the likely penalty and it would no longer be proportionate to extradite him. Johnson J. has certified two questions of law of public importance arising from this submission: (i) In assessing the "likely penalty" for the purpose of section 21A(3)(b) Extradition Act 2003 is it necessary to have regard not only to the penalty that is likely to be imposed by the Court but also the practical effect of that penalty having regard to any early release provisions? (ii) If so, and if there is no information about early release provisions, must the Court apply domestic early release provisions when carrying out the assessment?

Requirements Imposed Upon Defendants Post Conviction For Terrorism Offences

Stephen Wood QC, Broadway House Chamber: considers this important recent case concerning the notification requirements imposed upon Defendants, following conviction for terrorism offences. Following his conviction of two offences under the Terrorism Act 2000, the Appellant was, subject to notification requirements for a period of 15 years after his release from custody as a 'registered terrorist'. After that release, the Appellant registered himself onto the books of an employment agency to work as an HGV driver and in due course, he accepted work with a company involving the driving of refuse lorries for a local authority. The system was that he was allocated the vehicle or vehicles he was to drive at the beginning of each shift and he was entitled to drive only the allocated vehicle(s) during working hours and for the purposes of his work. There were more than 20 vehicles in the company's fleet. The notification requirements in force at the time under the Counter Terrorism Act 2008 included a require-

In our multi-racial and multi-cultural society juries have, time and again, shown themselves well capable, whatever their racial composition and whatever the race of the accused, of acting responsibly and discharging their duty of determining whether an accused is guilty or not guilty in accordance with the evidence. Jurors are not permitted to discuss what occurs in the deliberation room, so there is little empirical data on the extent to which juries do in fact act responsibly in discharging their duty. Professor Cheryl Thomas QC (Hon) has provided some valuable insight in her studies 'Diversity and Fairness in the Jury System' (2007) and 'Are juries fair?' (2010). In addition to an analysis of the available data on the backgrounds of jurors and defendants in the Crown Court, she carried out case simulations in which the ethnicities of the jury, the defendant and the complainant were alternated. The results suggested that – on the whole and subject to some caveats – jury pools were representative of the catchment area, and juries did not discriminate on the basis of race. Still, there is no way of knowing whether a particular jury has successfully discarded any bias it may or may not have had. Any assessment of the fairness of this non-intervention principle will depend on the confidence someone has in the impartiality of a random selection of 12 members of the UK public.

The American Way: Perhaps the courts would have taken a different approach if peremptory challenges for defendants had persisted, and the prosecution's use of stand-by had remained relatively untrammelled. A natural comparison can be drawn with the US system, where peremptory challenges still exist for both defendants and the prosecution, with the number of challenges allowed differing according to the jurisdiction and the type of case. In some cases, jury selection can be a lengthy and very involved process, as both sides will ask jurors a long list of questions in "jury questionnaires", before attempting to have unsuitable jurors struck "for cause" (for example, saying that a juror has some prejudice against the defendant). If the Judge does not accept the cause, the parties will selectively deploy their peremptory challenges on members of the panel, in an attempt to arrive at the most favourable 12 people possible. In the trial of OJ Simpson, for example, jury selection alone took two months, and the parties knew a huge amount of information about each person in the jury pool.

Given that many jurisdictions in the US still have the death penalty, following Lord Denning's logic it could be argued that this is an important safeguard for capital defendants. Yet the prosecution's reciprocal power could also be used against them. The fairness of the exercise of that power depends substantially on the fairness of the (often elected) District Attorney. Unfortunately, there have been examples of prosecutors in the US seriously misusing their powers. The deliberate use of peremptory challenges against black jurors led the United States Supreme Court to intervene in Batson v Kentucky, 476 US 79 (1986), concluding that the State could not deny someone participation in a jury on account of their race. It has been necessary to refine this principle further, for example in Miller-El v Dretke, 545 US 231 (2005), adding that if it appears a prosecutor is purposefully striking black jurors from the jury, and their alternative reasons for the challenges do not stand up to scrutiny (e.g. the same reasons could apply to white unchallenged jurors), then this could lead to a conviction and death sentence being overturned.

The peremptory challenge in the US is therefore a double-edged sword. On the one hand, defendants can use it to remove jurors that may have prejudices against them. On the other, if the prosecution have the same power then there is always a risk they will misuse it – and it would be scant consolation that you might find out about it and be able to get your conviction overturned many years later. Undoubtedly US criminal lawyers will be alarmed by the UK system, in which – for the most part – we do not know anything about our jurors. For those of us here

trial. Defence lawyers interviewed said even when abuse was disclosed early there were cases where they believed a murder prosecution had been pursued inappropriately. One explained: "I have acted in several cases where there is significant evidence of history of abuse on the defendant which impacted her mental health and supported a partial defence to murder, where the CPS [Crown Prosecution Servce] could have charged with manslaughter and/or accepted a plea but have chosen to fight it." Pleading guilty to manslaughter can avoid a murder conviction but entering a plea in this way can deny a woman access to the full defence of self-defence and the chance of being acquitted.

Stacey Hyde, a troubled teenager who had suffered neglect and abuse as a child, was wrongly convicted of murdering Vincent Francis in 2010. She stabbed him after he attacked her friend, who the prosecution acknowledged had been subjected to violence by Francis on 27 previous occasions. Hyde appealed on the basis of fresh psychiatric evidence and offered a plea of manslaughter, which the evidence supported, according to her lawyers. "However the CPS was determined to pursue murder at retrial and opposed bail," explained Wistrich. The jury later acquitted Hyde on the grounds of self-defence and she walked free having served six years imprisonment from age 17. Wistrich added: "In my experience the Crown will pursue murder convictions even following a successful appeal and regardless of compelling evidence of mitigation."

Just six women out of 92 were acquitted on the basis of self-defence while 14 had tried to run self-defence as part of their trial for murder and were convicted. The defence is "risky" according to some lawyers, and campaigners are calling for an amendment to this law to be added to the Domestic Abuse bill currently going through the House of Lords. But legislative reforms are limited without specialist understanding of domestic abuse across the justice system.The report, Women Who Kill: how the state criminalises women we might otherwise be burying, recommends mandatory training for police, lawyers and judges, especially around coercive control.

Sally Challen was the first woman to have her murder conviction quashed in the wake of new coercive control laws which came into force in England and Wales in 2015. She killed her husband Richard in 2010 after four decades of being controlled and bullied by him. She was jailed for life with a minimum term of 22 years, later reduced to 18. But in a groundbreaking appeal judges heard new psychiatric evidence framing her case in the context of her husband's controlling behaviour. Sally, who pleaded guilty to manslaughter, walked free after nine years due to time already served. She said: "Many women who are in prison today serving life sentences for murder have not had the domestic abuse they experienced properly explored during trial."

Louisa Rolfe, assistant commissioner of the National Police Chiefs' Council lead for domestic abuse, said officers receive training on coercive control, adding: "We have a responsibility to investigate every violent death, and consider all the evidence, including previous history, before we seek a decision from the CPS on whether a person should be charged and with what offence. Our understanding of the devastating impact of living within an abusive relationship is developing all the time and we always seek to learn from any previous incidents, and we always seek to learn from any previous incidents" she said.

A CPS spokesperson said: "We recognise the devastating impact of domestic abuse on victims, and prosecutors take all relevant factors into account when deciding the appropriate charge. Medical evidence, including on mental health, forms a key part of our considerations in these kinds of cases. Every prosecution is kept under continuous review and, where there is consensus that a partial defence is available, we are unlikely to proceed with murder charges. However, experts will often disagree on this point and these matters may then be set before a jury to decide."

Police Constable Charged With Inflicting Grievous Bodily Harm

A Nottinghamshire Police officer is due to appear in court charged with inflicting grievous bodily harm (GBH) upon a man who was being arrested following an incident in Nottingham city centre. Police Constable Edward Gordon is accused of Section 20 GBH in connection with the arrest of a man in Foreman Street, Nottingham, in the early hours of 3 November 2019. The man was subsequently taken to hospital with injuries to his face. Following a referral from the force, and a subsequent complaint, we investigated whether the officer's use of force during the arrest was appropriate in the circumstances. Our investigation was completed in July last year (2020) and the Crown Prosecution Service authorised the charge in September.

The Mangrove Nine and the History of English Juries

Alex Du Sautoy, Lexology: Criminal lawyers watching Steve McQueen's Mangrove on the BBC last year may have raised an eyebrow or two during the scenes at the Old Bailey. Lawyers are used to seeing their TV counterparts do things they would never see in their practice, yet in this case it was not an inaccuracy that stood out, but the wholly accurate portrayal of a process that is now extinct in England and Wales. In 1970, when the trial of the Mangrove Nine took place, the defence had a right to remove up to seven jurors per defendant without giving any reason for doing so (a "peremptory challenge"). Each defendant exercised that right to the full extent, striking a total of 63 jurors from the panel in an attempt to ensure that as many of the jurors as possible were black (ultimately there were two black jurors out of 12).

Peremptory Challenges – a History: The starting point for jury selection is that jurors are selected entirely at random. There are some limited circumstances in which parties can intervene in that selection process. The prosecution or defence can challenge a juror "for cause" after their name has been drawn by ballot and before they are sworn (see section 12 of the Juries Act 1974). The challenging party must then prove the reason for their challenge and the trial Judge decides whether the juror is unsuitable to try the case, for example because they are related to a party or have expressed hostility to one side or the other. In addition the Judge can exercise a discretionary power to remove a juror without either party challenging, and the prosecution still has a right to ask a juror to stand by (see below).

For a long time, defendants also had the right to make peremptory challenges. The number of challenges available was once unlimited, before being reduced to 20 and then to seven challenges per defendant. In 1977, it was reduced further to three, before being abolished entirely by the Criminal Justice Act 1988 (the '1988 Act'). When debating the Criminal Justice Bill in 1987, the House of Lords considered the historical background to this right. Lord Denning suggested that the right had been necessary when this jurisdiction still had the death penalty: In Blackstone's time peremptory challenges were allowed only in felonies, not in misdemeanours. In felonies, the punishment was capital. The number of challenges was not limited at all and the accused man could not give evidence himself. He could not be represented by counsel. Of course, in favour of life, peremptory challenges could be and were exercised by the man who was threatened with capital punishment. He went on to suggest that peremptory challenges were rare when jurors were all male, middle-aged and middle class, but that they came back into use when women began to sit on juries and advocates attempted to get all-male or all-female juries. That, he said, is what motivated the reduction of the number of available challenges to seven.

Lord Roskill, on the other hand, claimed that the right had been historically necessary, as: The Stuart Kings and their law officers used to pack juries… In the last century there was the notorious Peter the Packer in Ireland, who left no stone unturned to see that juries would convict. The apparent rationale behind the challenges, therefore, was that it was an important

safeguard where a defendant's life was on the line, or where there was a practice of state actors influencing the selection of a jury. Such a right was not necessary, the argument went, if there were sufficient confidence in the fairness and the randomness of jury selection. It appears that in 1988 Parliament had such confidence.

Right of Stand-By: Those watching Mangrove carefully might also have remarked on the prosecution barrister's objection to the selection of a juror. While it is not clear whether the prosecution did in fact object to the selection of a black juror in that trial, this power was certainly available to the prosecution. In fact, it still is. It survived the 1988 Act largely on the basis that the use of stand-by would in practice be limited to very specific cases. There was at least some anecdotal evidence (for example, from Lord Wigoder in the 1987 House of Lords debate) that prosecutors would on occasion ask jurors to stand by for spurious reasons, although others said there was good reason for keeping the right and those reasons were reflected in the guidelines that were drafted in conjunction with the Bill. They limited stand-by to two cases: (1) those involving terrorism or national security; and (2) where a juror is manifestly unsuited for jury service.

The current version of the Attorney General's guidance limits the exercise of the right further, to cases "(a) in which national security is involved and part of the evidence is likely to be heard in camera, and (b) security and terrorist cases in which a juror's extreme beliefs could prevent a fair trial." The Attorney General must give personal authority for there to be a limited investigation into the jury panel, and the Director of Prosecutions will then write to the Presiding Judge to advise him that the authorised check is being conducted. Before any prosecution counsel can exercise the right of stand-by on the basis of information found, the Attorney General must again give personal authority. Evidently the Guidelines restrict the use of stand-by to extremely limited circumstances, and require a Presiding Judge to be notified. It is somewhat odd, however, that when the position was changed in 1988 the legislation did not provide for a more formal process, involving real judicial oversight. It is now commonplace for an individual's interests to be represented where secret information is being canvassed, through the use of special advocates and closed hearings. However it has not been suggested that such procedures be employed where the Attorney General had authorised the use of stand-by. Instead, there remains some reliance on the honesty of the prosecuting authorities.

The Racial Composition of Juries: Might there have been other benefits to peremptory challenges for defendants, beyond those suggested in the House of Lords? In the Mangrove Nine trial, before the jury were empanelled, Ian MacDonald argued that there should be an all-black jury. In the dramatisation, this argument was dismissed within seconds, but in reality the application took two days. The argument was that defendants should be tried before a jury of their peers, with references made to old cases allowing Welsh defendants to have a Welsh jury, and Italian merchants to be tried by half-Italian jurors. The application was unsuccessful, hence the defendants' use of peremptory challenges to try to achieve the same result.

On the whole, UK courts have been reluctant to intervene with regard to the racial make-up of juries. After several cases in the 1980s, it was settled in Ford [1989] QB 868 that the racial composition of a jury could not of itself found a challenge to the panel. There is no principle that a jury should be racially balanced and a judge is not permitted to use discretionary powers over the composition of the jury in order to obtain such a balance. In Smith [2003] EWCA Crim 283, this position was re-considered and confirmed in the light of the Human Rights Act 1998 and Article 6 of the European Convention on Human Rights. It was re-affirmed more recently in R v Bridge [2019] EWCA Crim 220, in which Sweeney J said at [43]: