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Graduate Trainee or Career Criminal? These Days, That's A No-Brainer

Nick Cohen, Observer: As the first term of the university year begins, the young will be wondering what direction their lives should take. Anyone with their best interests at heart should tell them to forget about academic honours and seek a career in Britain's booming crime sector instead. Job security, a decent income, the chance to be your own gang boss… all the things an ambitious young person could want are there for the taking – quite literally in many cases. I can see a future when the criminal will be seen as Britain's new model citizen: our freshly minted Homo brexiticus. Criminals are natural Tories, after all. They are nothing if not entrepreneurial, and they hate the overbearing rules and regulations of faceless bureaucracies. Unlike in other careers, it doesn't necessarily pay to be t oo ambitious. Murder someone and even our hacked-back police service may take notice. It's better to get your head down and learn your craft from the bottom up. If you practise burgling or dealing, the chances are the nanny state will not interfere with your business.

The proportion of suspects who are caught and punished for all crimes has more than halved over the past five years to 9%. Get to minor crimes and even that clear-up rate looks good. Only 3% of burglaries and 4% of robberies were solved last year. Because criminals follow the tax-efficient policy, much admired in the City, of telling the Inland Revenue as little as possible, it's hard to give the aspiring trainee an idea of pay and benefits packages on offer. Surrey University reported that the top cyber criminals could make £1.4m a year. Regrettably, graduates with an arts degree will lack the necessary background in computing – online fraudsters who have completed dissertations on female transgression in the 19th-century novel are scandalously underrepresented on the dark web. They could, however, use their communication skills in dealing. A conservative estimate from 2103 put the basic income of a street seller at the bottom of a crime gang at £450 a week. (At £23,450 per annum it's not a fortune, but considerably more than the £19,000 starting rate in the HR racket.)

A suggestion that higher rewards were on offer came in 2014 when the Office for National Statistics estimated that Britain's economy would be £65bn larger if it incorporated the proceeds from drug dealing and prostitution into its figures. It's worth careers advisers mentioning that criminals who forgo academia have no student debt to repay and can expect tax bills so small even Amazon would pay them. The more forward-thinking among them might tell their students that smuggling across the Channel and Irish Sea will be a sunrise industry once we leave the single market and the greatest rewards will go to early adopters.

Even if they are caught, the punishment can turn out to be no punishment at all. Austerity has destroyed the Conservatives' claim to be the party of law and order. George Osborne's cuts to the police service saw numbers fall by 19,921 between 2010 and 2017. The cuts to legal aid and the Crown Prosecution Service all but guarantee the innocent will suffer while the guilty go free. Meanwhile, the neglect of the jails is such that, far from restraining criminals, the government has allowed gangsters to take over much of the prison system and bribe hundreds of officers to bring them drugs and phones.

The jails can't rehabilitate existing prisoners and can barely handle new ones. Scrambling to stop a crisis that is not of his making, the prisons minister, Rory Stewart, has told the judiciary that prison sentences of less than a year should be scrapped. This sounds a liberal solution to a dangerously overcrowded and understaffed system. Indeed, prison reform charities have been calling for it for years. But consider the consequences. The probation service, already reduced to a shabby affair by austerity and a botched privatisation, needs to be able to threaten offenders who break the terms of their orders with incarceration.

Now they cannot and documents leaked to the Mail on Sunday showed that not just petty criminals who reoffended while serving community sentences but serious criminals, up to and including murderers, who broke the rules when they were out on licence, were being spared custody. Probation officers are told to ask if they hold "conscious or unconscious bias" against criminals that makes them want to see them behind bars and to consider if the offender is merely "struggling to adapt to freedom". Everything possible is done to avoid custody whatever the consequences for the victims of crime. Or as Merseyside police put it: "This is a clear example of legislation being introduced to reduce one problem (prison population) but causes an increase on demand on other areas and may place the community and victims at serious risk of harm."

Any party that was serious about law and order would reverse the disastrous consequences of Osborne's term as chancellor. (Consequences that Osborne neurotically avoids mentioning in his London Evening Standard.) It would build prisons that could rehabilitate inmates rather than leave them under the rule of gangsters. It would not just recruit more police officers but more social workers who might divert the young from crime. Until change comes, crime is far more of a risk-free career than the complacent imagine.

"If only 3% of burglars are punished, only the stupidest burglars are in danger," the victims' rights campaigner Harry Fletcher told me. "Even if they are convicted, the probation service cannot threaten sanctions to encourage them to go straight."

Many people bemoan the intergenerational unfairness that has left the young without homes of their own, secure jobs and decent pensions. The best way to rectify it would be to urge the young to turn to crime. Given the glittering prizes that await, it would be criminal not to.

Case Taken up by Scottish CCRC Referred to High Court for a Second Time

A woman convicted of assault and then admonished and whose case was taken up by the Scottish Criminal Cases Review Commission and referred to the High Court of Justiciary, which refused the appeal, has, in an exceptional occurrence, had her case referred for a second time. The Scottish Criminal Cases Review Commission referred the case of Carol Olwyn Kirk to the High Court of Justiciary. On 11 May 2015, after a trial at Stirling Justice of the Peace Court, the applicant was found guilty of assault. On 13 November 2015, following a six-month deferment, the court admonished her. The case arises from a dispute between the applicant and her neighbour, both of whom own dogs. The complainer's dog and the applicant's had an altercation in an area behind their houses. The applicant struck the complainer's dog with a lead to try to separate the animals. The Crown alleged that the applicant struck the complainer repeatedly in the melee, causing injury to her hand. The Justice of the Peace considered that, although the first strike on the complainer may not have been intentional, later ones were. Accordingly, the JP convicted the applicant of assault.

In March 2017, the commission referred the applicant's case to the High Court. It did so on the basis that the JP's account of her reasons for convicting the applicant made reference to a recording of the incident, which, she said, featured repeated cries from the complainer. The commission obtained what it took to be the same recording. This did not include any screaming

from the complainer. Standing the fact that the presence of screaming appeared to have been decisive to the justice's decision to convict, the commission considered that there may have been a miscarriage of justice. The court heard the appeal in August 2017. The pleadings in the case had not framed the issue around the discrepancy between the recording and the JP's account of it. There was, furthermore, no agreement between the parties regarding the provenance of the version that the commission had obtained during the review. Accordingly, the court refused the appeal. The commission has decided, exceptionally, to refer the case to the court for a second time. The Commission considers that the provenance of the copy of the recording available to the Commission may be established with reference to other available evidence. With this in mind, the Commission believes that the reasons for the first referral remain sound.

IRA Man Joe McCann's Family to Take Legal Action Against Ministry of Defence

Relatives of an Official IRA man allegedly shot dead by soldiers in 1972 are to take legal action against the Ministry of Defence (MoD). Joe McCann died in disputed circumstances near his home in the Markets area of Belfast His family is issuing a civil writ against the MoD and the attorney general. They allege unreasonable delays in conducting an effective investigation into his death. Two former paratroopers are to stand trial in unrelated court proceedings. Mr McCann was one of the Official IRA's best-known activists at the start of the Troubles.

A statement from Belfast-based law firm KRW Law said: "There has to date been no human rights compliant investigation into the death of Joe McCann which would discharge the obligations on the British government following a breach or violation of the right to life as prohibited by Article 2 of the European Convention on Human Rights. The civil action which is being issued by way of a writ against the MoD and the attorney general addresses this failure in the absence of an action to effectively investigate the death of Joe McCann, despite the decision to prosecute made by the Public Prosecution Service." A police investigation at the time of his death failed to result in a prosecution. In 2013 a report by detectives from the Historical Enquiries Team found the killing was unjustified.

Conviction Quashed - Appelant Was Not Afforded A Fair Opportunity to Give Evidence

1. There was a time when a person accused of a crime in this country was not allowed to give evidence at his trial – in accordance with a principle that no one could be a witness who had an interest in the outcome of the case. But conceptions of criminal justice have changed. The bar to a defendant giving evidence was abolished in 1898 and since 1994 an adverse inference may generally be drawn if a defendant does not give evidence. The right of a defendant to give evidence in his own defence is now recognised to be an essential aspect of a fair trial. The main issue raised on this appeal is whether the appellant, who did not give evidence at his trial, was afforded a fair opportunity to do so in the particular circumstances of this case.

2. The appellant was tried in the Crown Court at Norwich over five days between 12 and 16 February 2018. He was charged with two offences: wounding with intent and causing serious injury by dangerous driving. Both charges related to an incident which occurred on 20 September 2016 in Great Yarmouth, when a Range Rover car which the appellant was driving hit the complainant, James Smith, pinning his leg against a wall and causing him a serious injury. At the trial the appellant was acquitted of wounding with intent but convicted of the offence of causing serious injury by dangerous driving. This is his appeal against that conviction brought with leave of the single judge.

3. The background to the incident was a dispute between the appellant and James Smith

who had known each other socially for some months – originally, it appears, through the connection that the appellant was James Smith's hairdresser. The dispute arose from what the appellant believed to be James Smith's role in causing the appellant's partner, Racquel, to break off their relationship. Racquel was a good friend of James Smith's partner, Claire. On the afternoon of 20 September 2018 the appellant turned up at Claire's house demanding to see Racquel, who was present in the house, but Claire refused to let him in. Claire then called James Smith and told him what had happened. James Smith in turn called the appellant and they had an altercation on the phone. Following that phone call, at 6:36pm, the appellant made a 999 call to the police in which he claimed that James Smith had threatened to shoot him and had told him to meet at 7:30pm at a place called Barnard Bridge – presumably for a fight.

4. It so happened that James Smith was asked to go and collect Racquel's son, Luca, from a friend's house at 7pm. He went with two friends on foot. They collected Luca and were walking back when they saw the appellant, who was also on foot. This seems to have been a chance encounter, but the appellant went and fetched his car which was parked nearby and approached James Smith and the others in his car. An argument took place between the appellant, who was in his car, and James Smith, who was on the pavement. There were issues at the trial about what was said and about how James Smith then came to be injured. The prosecution case was that the appellant was telling James Smith to get into the car, where the appellant had a cut throat razor, and that, when James Smith refused to do so, the appellant drove deliberately at him and pinned his leg against the wall. The defence case was that the appellant was asking James Smith to let Luca get into the car, which he refused to do. According to the defence, James Smith then walked menacingly towards the car, and in a state of panic the appellant tried to put the car, which had automatic gears, into reverse but accidentally moved the gear stick into the drive position, causing it to lurch forward and collide with the complainant.

5. The trial was originally due to take place in July 2017, but in June the appellant was involved in a road traffic accident in which he sustained very significant injuries which caused the trial to be adjourned. The appellant also suffers from seizures. The trial began on Monday, 12 February 2018. At lunch time on the first day a letter from a hospital consultant was provided to the court which described the appellant's medical condition. On the basis of this letter, defence counsel, Mr Volz, applied for an adjournment to enable the defence to obtain a full medical report. The suggestion at this stage was that such evidence could potentially support the appellant's case by giving a possible explanation of how he could (as he alleged) accidentally have engaged the wrong gear. The judge, HHJ Shaw, refused the application, noting that the appellant was not himself claiming that he had had a fit at the time and that it had never been suggested that the case involved anything other than a factual dispute.

6. At the end of the first day, however, just after the jury had left court, the appellant suffered a fit in court. The fit lasted around 4 or 5 minutes. Paramedics were called, who oversaw the appellant's recovery and administered first aid.

7. On the afternoon of the second day of the trial, when the appellant's partner, Racquel, was giving evidence, he fitted again. This fit was witnessed by the jury. It lasted about 4 minutes and was managed by the dock officers until the paramedics arrived. He then had another fit, slighter shorter in duration. He was taken to hospital by ambulance, where various tests were carried out, all of which were apparently inconclusive. He was not discharged until 2:30am, returning home at 3.30am.

8. On the morning of the third day counsel for the defence applied to discharge the jury. The application was supported by counsel for the prosecution. It was submitted that medical evidence was

needed to provide advice on the causation and management of the appellant's seizures, and also to the enable the court to determine what, if any, special measures could be taken to enable the appellant to participate effectively in the trial and, if possible, to give evidence without a serious risk of further fitting. It was envisaged that because of the time that it was likely to take to obtain such evidence it was preferable to have a new trial before a fresh jury rather than allow the trial to continue.

9. The judge refused the application and made it clear that he proposed to proceed with the trial. He said that the appellant need not remain in court that day and could take the time to rest but that he proposed to carry on and hear the rest of the prosecution evidence. The judge granted a short adjournment to enable Mr Volz to speak to the appellant about what he had said. When the court reconvened, Mr Volz renewed his application for the jury to be discharged. The judge maintained his decision that the trial could fairly proceed without the appellant being present in court. The judge indicated that if the next day, when the time came for the defence to present their case, the appellant felt well enough to give some evidence, the court would seek to manage it. If not, the judge said that he would direct the jury that the appellant's failure to give evidence must not be held against him.

10. The trial then continued, explaining to the jury why the appellant was not present in court.

11. On the fourth day, the Thursday, when the prosecution case was closed, Mr Volz informed the court that it had, throughout the trial, been the firm intention of the defence to call the appellant to give evidence. He said that he had, however, now taken the decision himself that it would be irresponsible to do so knowing that the appellant was likely to fit when giving evidence. Not only would this put an intolerable stress on the appellant, but it could also expose him to physical danger. Accordingly, the appellant did not testify. The trial continued with the appellant not present in court but watching the proceedings over a video link from a room in the court building.

12. On the fifth and final day of the trial the judge summed up the case to the jury. In his summing-up, the judge outlined the fits which the appellant had experienced during the trial and directed the jury, as he had said he would, that the fact that the appellant had not given evidence in court must not be held against him.

13. The jury returned their verdicts early in the afternoon. As mentioned earlier, they acquitted the appellant of the offence of wounding with intent, but convicted him of causing serious injury by dangerous driving.

14. The main ground of appeal is that the judge was wrong to reject the applications made by the defence to discharge the jury in circumstances where the appellant's ability to participate in the trial was severely compromised and he was not in a fit condition to give evidence as he had intended to do. Mr Volz submits that the result of the judge's decision that the trial should continue was that the process was rendered unfair and the appellant's conviction unsafe.

15. On behalf of the Crown, Ms Ascherson has argued that the appellant was able to and did participate effectively in his trial until its conclusion. She emphasises that his fits did not affect his ability to give instructions to his counsel and that he was able to view the proceedings via the video link. Ms Ascherson also draws attention to the fact that no medical evidence has been provided to establish that, if there were another trial, the appellant would be able to give evidence without suffering stress-related fits. She submits that there is therefore no evidence to show that discharging the jury would have made any difference to the process ultimately followed. She also relies on the judge's direction to the jury not to hold the appellant's failure to give evidence against him and on the fact that the judge summarised in his summing-up the appellant's account of events given when he was interviewed by the police. She submits that in these circumstances the trial was fair.

16. We agree that this is not a case where a trial has taken place in the absence of the

defendant or without his participation. Apart from his absence for part of the third day – which was encouraged by the judge and cannot be said to have prejudiced the appellant – he was throughout the trial either present in court or observing the proceedings over a video link and was able to give instructions to his counsel. The fact remains, however, that the judge required the trial to continue even if that meant that the appellant would not give evidence without properly investigating whether steps could be taken that might enable him to do so.

17. It must be emphasised that this is not a case where, as sometimes happens, a judge takes the view that a defendant is feigning or exaggerating illness or using illness as a pretext to seek to frustrate the trial process. It was and is not in doubt that the appellant had suffered several seizures in court, that they were genuine fits apparently induced by stress, and that there was perceived by both counsel and the judge to be a high risk that he would have further fits if he gave evidence in court. The judge's acceptance of the latter point is implicit in his direction to the jury that they must not hold the appellant's failure to give evidence against him. Under s.35 of the Criminal Justice and Public Order Act 1994 a judge will ordinarily direct the jury that, in determining whether the defendant is guilty of the offence charged, they may draw such inferences as appear proper from the defendant's failure to give evidence. There is an exception, however, if "it appears to the court that the physical or mental condition of the accused makes it undesirable for him to give evidence." As discussed in Blackstone's Criminal Practice (2018) at F20.46, that is a high test, but the judge evidently considered that it was satisfied in the present case.

18. The second point which requires emphasis is that the right of a defendant who wishes to do so to give evidence in his own defence is – as we have indicated – an important element of the right to a fair trial. If this right is to be real and not illusory, a defendant who wishes to give evidence must be given a full and fair opportunity to do so. A decision to proceed in circumstances where such a defendant is understood not to be in a fit state to give evidence should be taken, if at all, only after the most full and careful consideration. Again, there is no doubt that in this case the appellant intended and wanted to give evidence. We are satisfied that this is not a case of a defendant who was happy to avoid having his story exposed to cross-examination without adverse comment. There were significant differences between his account of events and that of the complainant, James Smith, and the credibility of their respective accounts went to the heart of the case. We do not doubt that the defendant wanted to testify and that his counsel considered it essential to his defence that he should do so.

19. It is regrettable that no medical evidence has been obtained by the defence at any stage addressing the appellant's medical condition and whether there were measures which could reasonably have been taken to enable him to give evidence without undue risk to his physical or mental health. There is force in the point made by Ms Ascherson that there is no evidence to show that there were any measures reasonably available which would have enabled the appellant to give evidence by some means if the trial had been adjourned for a day or so and then resumed or if the jury had been discharged and a new trial had later taken place. We consider, however, that a proper opportunity ought to have been afforded to the defence to explore that question by obtaining medical evidence when problems occurred during the trial, that it is unfair to blame the defence for failing to adduce such evidence when that opportunity was denied and that it would be wrong to speculate about what such evidence would have shown.

20. The judge was entirely justified in our view in refusing the application for an adjournment made on the first day of the trial. There was no evidential basis for suggesting that the appellant had had a fit at the time of the incident and it was not at that stage anticipated that his

seizures were likely to interfere with his participation in the trial. Circumstances changed, however, when the appellant suffered several fits in court. We accept that the judge sought to manage the situation as he thought best and that an appeal court should be slow to review case management decisions. Nevertheless, we consider that, in the particular circumstances of this case, the judge's decision made on the third day of the trial to require the trial to proceed without intermission, even if this meant that the appellant did not give evidence, was a clear error.

21. We do not in fact think that the judge need necessarily have discharged the jury at that stage – although he was invited to do so by the prosecution as well as by the defence. It might, at least in the first instance, have been sufficient to adjourn the trial. But the judge should in our view have allowed time for medical evidence to be obtained addressing the significance of the appellant's fits and any means of controlling them. Such evidence was required to find out whether any measures could be taken – for example, allowing the appellant a day or two of rest and/or through the use of any medication – which might enable him to give evidence. To insist that the trial must proceed without exploring that possibility and without establishing through medical evidence that there was no realistic means of enabling the appellant to give evidence was unfair.

22. We would add that, even if there had been a sufficient basis for concluding that no measures could reasonably be taken which would enable the appellant to give evidence and that the trial should nevertheless proceed, we do not consider that the direction given to the jury about his failure to do so was adequate. It is fair to record that, in accordance with best practice, the direction was provided in written form to counsel in draft and was agreed by them. But insufficient attention was in our view given to its content. On more than one occasion in the summing up the jury was told that the appellant had the judge's "permission" not to give evidence. That was an inapt expression, as the decision whether or not to give evidence is that of the defendant and his legal representative. It is not a matter in gift of the judge. Simply then to tell the jury that they must not hold against the appellant the fact that he did not give evidence was cursory to say the least. In our view the direction should have spelt out the consequences of the fact that the appellant had been unable to give evidence – in particular, that the jury had not had been able to hear at first hand his account of events – including where it conflicted with that of other witnesses – and assess its credibility. Consideration should also have been given to whether specific points of significance had been raised by the prosecution evidence which were not covered in the appellant's police interview and which he had therefore never had an opportunity to address.

23. We conclude that in the circumstances the trial process was unfair and that the appellant's conviction is unsafe.

24. In view of this conclusion, it is unnecessary to deal in any detail with the second ground of appeal. It was argued that the judge's summing up was unfair in that he emphasised and urged the jury to consider carefully various points in relation to the evidence that were favourable to the prosecution but, in contrast, made no mention at all of points on which the defence relied. It was submitted that, in consequence, the summing up was entirely unbalanced.

25. We think there is force in the criticisms made of some of the judge's comments which were clearly favourable to the prosecution. It is not the function of the judge in summing up the evidence to tell the jury that particular pieces of evidence are "significant" or "important", as the judge did in a number of places. It is, however, a misconception to suggest that a summing up must be "balanced" in the sense that observations favourable to the prosecution must be offset by points relied on by the defence. The essential task is to remind the jury of the most relevant evidence and to do so in a way that relates the evidence to the factual issues

which the jury need to consider. The summing up in this case fulfilled that function. In particular, the judge reminded the jury of the defence case and of the main evidence relied on in support of that case, including what the appellant had said in interview. The points favourable to the defence which it is suggested that the judge should have made were mostly matters of argument and are points which no doubt were made in argument on behalf of the defence. Notwithstanding our reservations about some of the comments made, we do not consider that the judge exhibited a bias in favour of the prosecution of a kind which made the trial unfair.

26. For the reasons already given, however, we have concluded that the appellant's conviction is unsafe because the decision to proceed with the trial was made without proper regard to the principle that an accused is entitled to a fair trial, which includes a fair opportunity to give evidence in his own defence.

27. Accordingly, the appeal is allowed and the conviction will be quashed.

Justice for Luke Mitchell – Fresh Appeal

[A fresh appeal is being launched to prove that notorious teenage killer Luke Mitchell is innocent and should be freed from jail. The campaign is being led by a Scots criminologist who has dedicated her life to fighting injustice and defending those she believes have been wrongfully convicted. It will be the third appeal on behalf of Mitchell, who was 14 when he murdered his girlfriend Jodi Jones, also 14. Found guilty in February 2005 and sentenced to a minimum of 20 years, he has always maintained his innocence but failed to overturn his conviction in 2008. Dr Sandra Lean is working with a legal team, compiling a fresh appeal. She has dedicated her career to the case, which happened in her hometown of Dalkeith in Midlothian 15 years ago. The mother-of-two will also publish a book later this year which she claims will uncover failings in the original police investigation. She said: "This would be the biggest embarrassment possibly ever for the Scottish police. "It was such a big case, the longest trial of a single accused in Scottish history. He was 14 years old when they first targeted him. I find this in all of the cases claiming wrongful conviction. The evidence before the jury is not all the evidence and never has been, never will be. It's the evidence that supports the prosecution narrative. Now people find that really difficult to accept. Unless it can be tied specifically to something that the prosecution is alleging, it will not go before the jury."]

On 30 June 2003, 14-year-old Jones was murdered near her home at Easthouses, Scotland. Her naked body was found six hours later hidden behind a high wall in a wooded area bordering Roan's Dyke footpath, a well-known local short cut running between Easthouses and Newbattle. She had been subjected to what prosecutors would later describe in court as a "savage knife attack." Early in the investigation the police suggested that the killer would be a man local to the area because of the location of where the murder took place. It was claimed that Jones had set out earlier to visit Mitchell. Her mutilated body was later found by Mitchell, who had joined a search party that also included Jones' 67-year-old grandmother, Alice Walker, 17-year-old sister Janine, and Janine's boyfriend, Stephen Kelly (19). The fact that Mitchell and his dog discovered the body very quickly despite a search at night, in poor weather, later played a major part in the criminal investigation.

Mitchell was initially questioned as a witness but was eventually arrested and charged with the crime some 10 months later following months of media speculation, including the repeated claim that the then 15-year-old was the "only" or "prime" suspect. At his trial at the High Court of Justiciary in Edinburgh he pleaded not guilty and lodged a special defence of alibi, claiming that he was at home cooking dinner at the time of the murder. During the 42-day trial which followed the jury heard evidence from both Mitchell's mother and his brother Shane, as well as visiting the crime scene.

The evidence of Shane Mitchell was crucial to the conviction; he stated that at the time of the murder, he had been at the family home, viewing internet pornography. He agreed that this was not an activity he would have engaged in if he thought anyone else was in the house and confirmed that he had not seen his brother that afternoon. In doing so he failed to corroborate Mitchell's alibi. The trial is the longest of a single accused, and the costliest at £452,687, in Scottish legal history.

On 21 January 2005, the jury found him guilty after five hours of deliberation. Mitchell, aged sixteen at the time of his conviction, was condemned as being "truly wicked" by Judge Lord Nimmo Smith. He was also found guilty of a separate charge of supplying cannabis. Mitchell's sentencing took place on 11 February 2005. Nimmo Smith told Mitchell that he would spend a minimum of 20 years in prison before being considered for parole.

Finding the body: The main plank of the prosecution case was "guilty knowledge"; in finding the body quickly despite poor conditions, Mitchell demonstrated that he already knew where it was. In his defence, Mitchell claimed that he went through a distinctive "V"-shaped hole in one part of the wall to find the body, because a family dog had alerted him to something suspicious. The prosecution stated that only the killer could have known the exact location of Jodi's body. To allow the jury to explore the plausibility of these claims, a mock-up wall was erected in the Laigh Hall, below Parliament Hall within Parliament House, across the road from the High Court of Justiciary building in Edinburgh's Old Town, where the trial was being heard. A visit by the entire jury to the actual murder scene was also arranged.

Broken Alibi: A second part of the prosecution case was to discredit Mitchell's alibi that he had been at home at the time of the murder. Under cross-examination, his brother Shane revealed that he had been viewing internet porn in the house at that time. He agreed that he would only have done this if he thought the house to be otherwise empty. He confirmed in evidence that he had not seen his brother in the family home at the time of the murder.

Suggestion of Burned Evidence: It was stated during the trial that Mitchell's clothes may have been destroyed in a garden incinerator and neighbours noted a strange smell coming from the garden. No forensic evidence was recovered from the incinerator, which was an 11" diameter log burner, and one neighbour, in evidence, described the smell as "wood smoke."

Unusual behaviour: Mitchell was known to be a fan of Marilyn Manson. The prosecution claimed that he had taken a keen interest in The Black Dahlia case of 1947, an unsolved homicide whereby an aspiring young actress was found murdered and mutilated in Los Angeles. Manson painted a picture of Elizabeth Short's injuries. The Crown suggested that there was a similarity between Jodi and Elizabeth's injuries.

A knife pouch was also found in Mitchell's possession on which he had marked "JJ 1989 - 2003" and "The finest day I ever had was when tomorrow never came". This was also considered evidence on the basis that it would be unlikely for anyone but the killer to remember someone killed with a knife in this way. Mitchell described himself as a Goth and scribbled Satanic symbols and statements on his schoolbooks. Some of these 'satanic references', it would emerge later, were lines from the popular computer game "Max Payne." As well as dealing in cannabis he was reportedly a heavy user of the drug.

Appeal: In March 2006, Mitchell was granted leave to appeal against his conviction (and his length of sentence) at the High Court of Justiciary sitting as the Court of Criminal Appeal in Edinburgh, on the grounds of the trial judge's refusal to hear the original case outside of the city. In November 2006, Mitchell won the right to appeal against his conviction for murder. Mitchell's legal team had wanted a number of grounds for appeal to be heard but the judges said only one would be allowed.

Scotland's senior judge, the Lord Justice General, Lord Hamilton said they would allow a ground of appeal claiming that the trial judge erred in refusing to move Mitchell's case out of Edinburgh following publicity ahead of the proceedings. Lord Hamilton, who was sitting with Lord Kingarth and Lord MacLean, said: "We have come, with some hesitation, to the view that this ground is arguable." "There is an argument that the trial judge failed adequately to take into account the circumstances that the publicity might have had an impact of particular strength not only in the immediate locality of the crime but in a somewhat wider area embracing the city of Edinburgh and other towns in the Lothians," he said. There was a huge media fanfare surrounding the trial and this may have affected the final outcome. The fact that the jury were not put into a hotel for the night of the decision has also been cited as a factor. The Court of Criminal Appeal in Edinburgh heard Mitchell's appeal in February 2008, and in May 2008 his original conviction was upheld.

Appeal decision: On 16 May 2008, the judges' verdict was given. Sitting over the appeal were Lord Osborne, Lord Kingarth and Lord Hamilton, who delivered the decision. They ruled that there was sufficient evidence in law that Mitchell could be convicted on and rejected his other grounds of appeal, yet stated that police questioning of Mitchell on 14 August 2003 had been "outrageous" and was "to be deplored."

Appeal against sentence refused: On 2 February 2011, Mitchell's appeal against sentence was refused by a two to one majority. Lord Justice Clerk, Lord Gill, sitting with Lord Hardie and Lady Cosgrove stated that he had the utmost sympathy for the family of the victim and that he understood entirely why this murder should have caused such public revulsion. Nevertheless, he was of the opinion that the sentencing judge should not have imposed a punishment part of such severity on such a young offender. He stated that justice would be done in this case if the punishment part of the sentence were fixed at 15 years. He did not consider that they were precluded from that disposal by anything said in the guidance given in HM Adv v Boyle and Ors (supra). He regretted, therefore, that he had to differ from his Lordship and her Ladyship.

Cadder appeal refused: On 15 April 2011, Mitchell's bid to challenge his conviction for murder following a human right ruling by the Supreme Court in the Cadder case was rejected. His lawyer told the Appeal Court in Edinburgh that his trial was unfair because he had no access to a lawyer during an interview. Lord Osborne sitting with Lord Hamilton (Lord Justice General) and Lord Kingarth told Mitchell that the application for leave to lodge the additional ground was refused. The appellant's appeal against sentence was finally disposed of on 2 February 2011 and in such circumstances, there did not exist a live appeal in respect of which leave could be granted.

Stop and Search Makes Crime More Likely

Ben Quinn, Guardian: The police tactic of stop and search is increasing the likelihood of crime rather than preventing it, finds a report that paints a bleak picture of young men and boys snapping under the pressure of relentless checks sometimes multiple times a day. Based on in-depth interviews with young Londoners named on the Metropolitan police's controversial list of gang suspects – the gangs matrix –raises concerns about how the police's "gang nominal" assessment has an impact on the lives of those listed. The report for the charity StopWatch, a coalition of legal experts, civil liberties campaigners and others, heavily criticises the multi-agency approach in which information about those on the matrix is shared across public services, including education and housing providers. Concerns were raised about a lack of transparency and the sharing of information without the consent of the young people in question. StopWatch's report, Being Matrixed, draws on the testimonies of 15 Londoners aged between 17 and 32 who are on the matrix – which gives sus-

pected gang members a score assessing how dangerous they are believed to be.

Anger at the frequency of searches was typified by the comments of one individual, who told researchers he had been stopped and searched hundreds of times. “I’ve got a conviction because I was stopped and searched three times in one day,” he said. “Now, if you’re stopped and searched three times in one day how are you going to feel? I flipped, I got done for public disorder and I was thinking I haven’t actually done nothing, you have stopped me three times in one day.” Another claimed that being registered had hindered his employment prospects. He told the researchers: “I’ve applied for so many jobs within the youth sector, and they’ve told me that when they do like a CRB check, they told me that I’m on a ‘watch’. But they don’t say exactly what it is.”

Katrina Ffrench, the chief executive of StopWatch, said the findings added weight to evidence suggesting the matrix was not fit for purpose and should be reviewed by the mayor of London with a view to scrapping it. She said: “To be on the matrix is to be literally blacklisted. It means that the young people on it are marked out for harassment and humiliation. It’s a highly racialised stigma that follows someone through every aspect of their life. Not only is the matrix completely ineffective at combating the crime it claims to want to tackle, our research suggests it makes crime more likely.” A report this year by Amnesty International alleged the matrix violated the human rights of the predominantly black youngsters on it. Amnesty found that of those on the list, 78% were black and 9% were from other ethnic minorities.

The Met said it constantly reviewed and updated the processes involved in maintaining the matrix, as well as the individuals listed. It said the threshold for inclusion was high and inclusion happened only where the force had at least two corroborated pieces of tested intelligence. While the number of people listed had remained at about 3,500 since 2012, more than 4,000 people had been removed from the list. Scotland Yard said it had altered the stop and search tactic, making it more intelligence-led, and that the arrest rate had risen from 8.4% to 18.5%. The force said an individual would not be stopped and searched purely and only through being on the matrix.

Families of Aston New Year Killers Seek Help to Clear Sons

Peter Wilson BBC West Midlands: The families of two of the men serving life sentences for the murders of Charlene Ellis and Letisha Shakespeare are asking for information to try and clear their sons' names. They claim the men, Marcus Ellis and Rodrigo Simms, are the victims of a miscarriage of justice and allege an anonymous witness who gave evidence against them lied in court. Charlene Ellis, 18, and her friend Letisha Shakespeare, 17, died in a hail of machine gun bullets as they stood outside a new year party in Aston, Birmingham, on 2 January 2003. Charlene's twin sister Sophie, their cousin Cheryl Shaw, and friend Leon Harris were injured. The original trial heard the shootings had been a botched gangland reprisal for a previous shooting. Ellis and Simms, convicted in 2005, challenged their convictions at the European Court of Human Rights in April this year, but their application was ruled inadmissible.

During the trial the court was told Marcus Ellis, 24, was the man who fired the machine gun. He was convicted and ordered to serve at least 35 years. His mother Sheila Barnaby said: "We can't go to the House of Lords. We can't go to the appeal and he would like to appeal to anybody out there who knows the truth to come forward." Ellis was said to have the street name 'E Man' and some people claimed he was a "shooter" for one of Birmingham's street gangs. But his mother said this was unfair. "A great tragedy has happened, two innocent girls have lost their lives and whoever committed it needs to go to jail. But surely not an innocent person. My son is innocent so are you happy for someone to serve time for a crime that they didn't commit?" said Ms Barnaby. 'Evidence tainted': Rodrigo Simms, 20, who was ordered to serve 27 years, was said to have acted as a spotter, guiding the gun car to its target - a rival gang member attending the party. His mother Jacqueline Simms said the evidence against her son was tainted by an anonymous witness who was granted police protection. "We just can't understand how he can live with himself knowing that he's got someone who is innocent caught up in this case and it's been a very widely publicised and now he's been labelled as a murderer and he never was," she said. The party organiser, Rodrigo Simms' cousin, Selina Simms, also believes he is innocent. She said: "We were very close like brother and sister, practically lived together. My cousin would never do that to me." The solicitor representing the men, Errol Robinson, said they did not receive a fair trial because a key witness was anonymous. He said: "The witness repeatedly lied inventing material. "Without that anonymous witness there would have been no case against Marcus Ellis and Rodrigo Simms, and in those circumstances it is right that the family continue the fight for justice."

In a statement, West Midlands Police defended the use of anonymous witnesses. It said: "The police and the CPS took great care to protect those who needed it to give evidence. "This included anonymity as witnesses were in fear for their lives. "The evidence was only part of a package of evidence that convicted the four men. "This evidence was tested in court and... in the Court of Appeal. Both times the evidence stood strong." Also sentenced were Michael Gregory, 22, and Nathan Martin, 26, both ordered to serve at least 35 years.

Prison, Riots and Rehabilitation

There is an alternative perspective regarding the prison officers’ industrial action and their concern for health and safety. Eight prison staff have been murdered since 1850, suggesting that prisons are not filled with dangerous psychopaths. In contrast, the charity Inquest notes that 4,640 prisoners have died in prison since 1990 – 2,075 of these deaths were self-inflicted. According to the Ministry of Justice (MoJ), up to March 2018, there were 467 incidents of self-harm per 1,000 male prisoners, a rise of 14% over the year. In women’s prisons, the rate was 2,244 per 1,000 prisoners, a rise of 24%. So whose safety counts in prison? The MoJ has noted there was a change in April 2017 that simplified how incidents involving staff were recorded. It also noted, “it is possible this has increased the recording of incidents”. Staff have been taking action on this issue since at least 1972. What is needed is a serious analysis of violence and health and safety for staff and prisoners, and for the media and politicians to stop uncritically parroting the Prison Officers Association’s line, which is not helping to defuse the prison crisis. In fact, it is making it worse.

Hostages: Sally Challen, 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, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, John Twomey, 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 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.