Surrendering Bail: Evans [2011] EWCA Crim 2842

The defendant arrived at the crown court and presented himself to his advocate. Later in the morning he left the court building, and was subsequently found guilty of failing to surrender to bail. The short point here is whether or not, by entering the court building, and making his presence known via the usher, he had surrendered to bail.

In the absence of special arrangements either particular to the court or particular to the individual case, surrender to the Crown Court is accomplished when the defendant presents himself to the custody officers by entering the dock or where a hearing before the judge commences at which he is formally identified as present. Secondly, if there has been no previous surrender, as ordinarily there will have been, it is also accomplished by arraignment. Thirdly, the position in the Magistrates' Court may be the same, but may easily differ as explained in DPP v Richards (where there was a notice directing defendants to book in at a desk – in such instances the defendant will have surrendered at that point).

Met Police ' contributed' to teenager's death crash (and then destroyed evidence)

Metropolitan Police officers refused to hand over potential photographic evidence to Surrey officers investigating a fatal high-speed police chase, it has been claimed. Official documents reveal an extraordinary stand-off between the two forces over the mobile phone picture, which was later destroyed. The Independent Police Complaints Commission has been asked to investigate after complaints from the Mitcham family of Liam Albert, who died in the smash. Documents submitted to the inquest reveal that after the crash several Surrey Police officers tried to retrieve PC Rogers' mobile phone to see pictures he had taken of the crash but were refused by PC Rogers and Met Detective Inspector Mandy Chamberlain, it has been claimed. Met officers left the scene after refusing to hand over the phone and were pursued to Esher police station by Surrey officers to try again to seize the phone, it was said.

In a statement seen by the Surrey Comet, Detective Sergeant Deborah Crouch said: "I explained that the deletion of the photos from the phone could potentially be viewed as attempting to pervert the course of justice, and that it was important any investigation was seen to be thorough, fair, open and transparent, as well as actually being so. The jury decided police methods on pursuits were inadequate, communication between the police car and the command incident room were insufficient, and the risk assessment of the pursuit had been ineffective.

In his statement, PC Rogers, said he took four photographs of the two cars before being breathalysed.He said: "It was shortly after this that I was asked to hand over my phones to Surrey Police officers and consequently these photographs were deleted from my phone."

Surry Comet, Friday 9th December 2011

Hostages: Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Sam Hallam, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, Talha Ahsan, George Romero Coleman, Gary Critchley, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Jordan Towers, Peter Hakala, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Simon Hall, Paul Higginson, Thomas Petch, Vincent and Sean Bradish, John Allen, Frank Wilkinson, Stephen A Young, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan, Ihsan Ulhaque, Richard Roy Allan, Sam Cole, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Ray Gilbert, Ishtiaq Ahmed.

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MOJUK: Newsletter 'Inside Out' No 350 (18/12/2011)

Do Judicial Procedures Obstruct Miscarriages of Justice From Being Overturned?

This briefng written by Jeremy Bamber, Susan May and Eddie Gilfoyle; attempts to outline justifications for a review of current judicial procedures regarding the criminal justice system and purported miscarriages of justice. It attempts to illustrate how a department and its procedures impact upon the actions of another. One of the key issues addressed is that of the rules of disclosure. In specific instances where it is purported there has been a miscarriage of justice this process has not been addressed adequately, thus causing the search for the truth in an adversarial system such as ours to obscure the real issue of innocence, in addition to other issues such as police misconduct. This briefng does not request the Committee to address the guilt or innocence of a particular person or to intervene in the judicial process, but to review the following procedures undertaken by specific government departments:

1. Review the methods by which evidence that is not protected under the public interest (PII) can be adduced from the police or forensic science service, including an evaluation of the laws surrounding this for example, The Freedom of Information Act 2000 and The Data Protection Act 1998 in addition to organisations such as the Information Commission Office.

2. Address the underfunding of the Criminal Cases Review Commission (CCRe) with a critique of the handling of their case load, complaints procedure and those instances where the CCRC refuses to act according to its powers conferred by the Criminal Appeal Act 1995.

3. Review the effectiveness of MIRSHAPjHOLMES quality metric.

4. Scrutinise the procedure whereby a constabulary investigates another force or indeed their own.

5.Address the inadequacy of the IPCC in overseeing and obtaining satisfactory results, where the Director of Public Prosecutions (DPP) deems them to be meritorious in securing a conviction.

6.Understand how the use of PII has in certain instances been abused by the DPP and the Police causing documents being deprived from the Defence at trial and in subsequent appeals.

7.Establish how the use of PII in such a manner may cause the public to lose confidence in the criminal justice system where it can be seen that its instigation has simply been to prevent corruption from being brought into the public arena at the cost of an innocent person's liberty, often allowing the real perpetrator to go free to commit further crimes.

8.Assess the current laws that allow a defendant to be named publicly prior to trial, with a view to debating whether such laws affect a right to a fair trial and establish the value in disclosing the name of a defendant prior to conviction. This needs to be addressed owing to a person who is charged with a serious offence being tried in their locality as Jeremy Bamber, Ms May and Eddie Gilfoyle were, aiding the safety of those individuals where the charges are dropped and finally, reducing the temptation for prosecution witnesses to be induced by press offers of money for their stories upon a successful conviction.

The brief overview in this document illustrates that when observing the facts of the handling of just three example cases, those of Eddie Gilfoyle, Ms May and Jeremy Bamber, there are striking similarities as to the flaws in the procedures that are part of the criminal justice system. This is especially so in the complaints procedure, indeed the similarities extend to other cases but these three miscarriages of justice illustrate a remarkable resemblance of

flaws owing to the length of time the convictions have been sustained.

Eddie Gilfoyle: In 1993 Eddie Gilfoyle was found guilty of murdering his wife Paula who was eight and a half months pregnant. He was sentenced to life imprisonment, yet maintained his innocence for nineteen years, he is currently on licence.

Subsequent to complaints made by Mr Gilfoyle's family in 1993, the Police Complaints Authority (PCA) instructed Lancashire Constabulary to investigate over a hundred complaints of police misconduct by the original investigating force, Merseyside Police. In 1994, the 'Gooch' report was made by the supervising officer. It was a damning report revealing evidence illustrating Mr Gilfoyle's innocence while alleging police malpractice and tampering with evidence. As a result of the enquiry, disciplinary action was recommended against thirteen officers in the Merseyside Force. Most of these thirteen were simply given advice, while three of the officers, a Detective Superintendent, a Detective Chief Inspector and a Detective Constable were charged with three disciplinary offences of 'Neglect of Duty.' The PCA refused to disclose details of the particular charges brought. Eventually when the findings were brought to the attention of the DPP in 1994, it was decided there was no case to answer owing to insufficient evidence to gain convictions against the three officers. The case was then returned to Merseyside Police by the PCA, where the officers simply faced disciplinary hearings. Subsequently to this, four years later the Chief Constable of Merseyside held a disciplinary hearing where all charges were dismissed against two of the officers, while the third, the Detective Superintendent was charged, but escaped any consequences owing to his being allowed to retire prior to the hearing. In any event all charges were eventually dropped.

The ramifications of the 'Gooch' enquiry evidentially would have had a material effect upon Mr Gilfoyle's first appeal. Although the 'Gooch' enquiry was supervised by the PCA the 'Gooch Report' which details the finding of the Gooch enquiry, was the property of the Chief Constable of Merseyside and he refused to disclose it to the Defence. This was because Public Interest Immunity was attached to it. Mr Gilfoyle was not allowed to be privy to the evidence obtained in that report in that instance. It was not until Mr Gilfoyle obtained a High Court Order to allow him access to the evidence in the report that the Merseyside Police made disclosure, yet upon scrutiny the bulk of the evidence in the report had been edited with whole pages and paragraphs blanked out. Thus Mr Gilfoyle's first appeal was lost in October 1995, without any disclosure as to the evidence obtained owing to the 'Gooch' report. Even now the full report, remains conspicuously under PII.

In 1996, a second complaint was made by Mr Gilfoyle's family about the Detective Chief Inspector (a senior police officer) and again the PCA supervised the complaint, it was investigated by Cheshire Police, while the officer in question was promoted during the period under which he was being investigated. The PCA in turn passed their findings to the Chief Constable of Merseyside Police who then was to decide whether the officer had committed a criminal offence. No charges were brought, as the PCA stated that while there was partially substantiated evidence, there was none of perverting the course of justice during the initial investigation. It was recommended that the officer receive advice from the Assistant Chief Constable. Once again Mr Gilfoyle's appeal was lost in 2000, owing to the Appeal Court refusing to adduce evidence from both the Lancashire and Cheshire Constabularies.

In 2009, The Times newspaper attempted to obtain handwritten documents from Merseyside Police under The Freedom of Information Act 2000, while in 1994 the PCA had reported that there were no such documents in existence as to the interviewing of relevant officers. Handwritten interview documents formed part of an internal Merseyside Police enquiry conducted in 1992 into the

Another excellent local initiative, which we hope will be taken up more widely, has been used recently in a Crown Court. They followed the magistrates' court model by not having any transcript of the interviews in a multi-handed case – and greatly improved it by having no summaries either. This saved both costs and time for an overburdened CPS. The defence barristers were only too delighted to get up at dawn to get to court by eight to listen to the tapes themselves before a contested trial.

And we hear that more good news may be on the way: a significant reduction in defence barristers. Voluntary redundancy, without of course redundancy payments, would solve the budget crisis at a stroke. Like a red deer cull, the demoralised exhausted old ones would go first, leaving the sprightly young bucks and hinds to be shot next year. - *Happy Christmas one and all!*

Human Rights [Douglas Vinter, Jeremy Bamber and Peter Moore]

Lloyd of Berwick to ask Her Majesty's Government whether they have replied to the eight questions set out by the European Court of Human Rights in a Statement of Facts issued in February 2011 in the case of Douglas Vinter, Jeremy Bamber and Peter Moore, reported at 2011 European Court of Human Rights 324; and, if so, what was their response.

The Minister of State, Ministry of Justice (Lord McNally): The Government have submitted their observations in respect of the applications made by the three applicants. In brief, we argue that the imposition of a discretionary whole life order for the purposes of punishment and deterrence does not in itself amount to a violation of Article 3 of the European Convention on Human Rights at the point of sentence.

Also, a whole life order, when taken with the Secretary of State's discretion under Section 30 of the Crime (Sentences) Act 1997, is not an irreducible life sentence and, in practice, reducibility does not require the possibility of conditional release. In addition, once an appropriate sentence for the purpose of punishment and deterrence has been lawfully determined and imposed by the court-whether that sentence is determinate or a whole life order-it is unnecessary for the sentence to be subjected to continual review. Further, there has been no violation of Article 7 in respect of Bamber and Moore as neither applicant received a penalty which was (a) heavier than that which was applicable at the time they committed their offences or (b) heavier than that which was in fact imposed prior to the High Court's review. I will write to the noble and learned Lord with further details. House of Lords / 9 Dec 2011 : Column WA203

Let us show terror detainee's face on BBC, lawyers plead

Lawyers for a prisoner who has been detained for more than seven years without trial have made a plea in the High Court for BBC television to be allowed to show the world his "prematurely aged" face. Babar Ahmad, a 38-year-old British Muslim, is being held under controversial extradition laws while fighting American attempts to remove him to the US where he is accused of terrorist-related offences. He strongly denies any involvement with terrorism. Yesterday (Friday 9th December) the BBC challenged Justice Secretary Ken Clarke's refusal to allow Mr Ahmad to be interviewed face-to-face for a television broadcast.

Lawyers for Mr Ahmad argued the immediacy of a filmed interview was the only way to communicate the psychological and physical impact of his arrest and detention. After a day-long hearing, two judges reserved judgment and will give their ruling in January. Mr Ahmad is being held in Long Lartin prison, Worcestershire, waiting for the European Court of Human Rights to rule on whether or not he should be extradited. He stands accused in the US in 2004 of soliciting and raising funds over the internet for terrorism "in Afghanistan, Chechnya and other places".

Behind Bars - 'Tis the season to be jolly By Jeannie Mackie

Jeannie [cringes at] looks forward to more changes to the criminal justice system

Away with doom and gloom! As the Christmas season approaches, and the goose, while not getting fat precisely in these recessive times, at least is still keeping body and soul together, let us celebrate all that is good. This column does have, I admit it, a tendency to be somewhat surly and unappreciative. No longer: bright-eyed and bushy-tailed we will greet the end of the year and the beginning of another with shining-eyed expectation. Because the news is good, even on the jobs front: 88,000 people are now employed in prisons! Thousands more posts have been created! This is more than ever before – a record in fact; 88,000 people are now [gainfully employed, employed, occupied] resident in prisons! 88,000 people are being [cared for] fed, watered, [educated] kept by the public sector, which is [expanding staying the same reducing] working harder than before with less wasteful expansion!

And there is even better news on the criminal justice front: coincidentally, statistics prove this month there will be 88,000 fewer crimes committed as the criminals who would commit those crimes are otherwise engaged. Our streets are safer by the power of 88 x 1,000 [x whatever else we can suggest here!] Even better news is that legal aid costs have been slashed – the costs to the public purse have been reduced massively by simple, clear and responsible accounting practices. Just don't pay the bills! It is amazing how long it took to discover how simple good fiscal housekeeping can be. Put the bill from the money-grabbing lawyer down the back of the sofa, with the parking tickets and old biscuit crumbs, and keep the money. What can they do about it anyway? Go on strike? Sorted!

More good news comes from the CPS with a splendid new initiative to improve the (preparation) conduct of cases in the magistrates' courts. The police will insist on interviewing suspects, on the basis that this often produces evidence either for or against their lines of inquiry. These interviews have to be transcribed so that everyone knows what was said. What a waste of time and money! The new system will be much easier, simpler, and cheaper: the CPS will prepare only a summary of interview. What could be fairer than that? It has worked traditionally for theatre and film reviews after all: a balanced précis of what a review really meant goes up in lights on the front of the theatre: of all the [tedious illwritten derivative and worthless] plays I have seen this year this one is the best [example of pointless rubbish].

For interviews, the defence will of course have the absolute right to alter and amend the summary. Of course they can! They can listen to them on the day of the trial, on a pocket tape recorder – didn't they have Walkmans back in the day? – and scribble out some necessary amendments there and then. And, if they don't do it, or don't have the Walkman/the time/the funding? Well, the trial will certainly be shorter thus saving much time and effort.

Good news for the courts

And there is more good news from the Crown Court. The number of ushers is being cut. This is a really good initiative: these people traditionally have earned far too much, fat cats one and all. Who needs £12 grand for a full week's work anyway? Without an usher for each court things will go much more smoothly. Barristers are hardly overworked, and surely they can go and fish their own witnesses out of the canteen? While they are away doing this, the judge and remaining barrister can get on with the case without them. Judges can call their own lists, find their own exhibits, keep their own records – and members of the public, press, family members, defendants and witnesses can easily get all the information they need about a case from the tannoy system, always notably comprehensible.

handling of the alleged crime scene by Merseyside Police Officers. The enquiry ran alongside the murder investigation and was conducted by a senior officer from Merseyside Police. His report is now known as the Humphreys Report and the enquiry and report was completed in August 1992. This was prior to Mr Gilfoyle being charged with the murder. The report was highly critical of the police handling of the alleged crime scene. Prior to the trial the Merseyside Police took steps to withhold this report from the Defence and the CPS and consequently it did not feature at the trial. The handwritten documents were in fact discovered to exist in 1995, while the journalist who made the application in 2009 was informed otherwise. Through his contacts the journalist obtained a bundle of missing documents, among them were the handwritten notes that Merseyside Police had purported never existed, while on the face of it, in 1994, the PCA had simply accepted the explanation of Merseyside Police that they did not exist. The notes that were denied to have existed contained material evidence as to the details of Paula's death. The accounts included details of the time of her death, which prima facie would have given Mr Gilfoyle an alibi at trial. Originally at trial the Defence were advised that there was no recording of the time of death of Paula, (similarly, there was no time of death recorded for any of the deceased in the Jeremy Bamber trial. The Crown Prosecution Service (CPS), refused to deal with this new evidence, insisting that Paula's time of death had been dealt with properly at trial. Thus The Times eventually published the documents, in June 2010. The Attorney General, Dominic Grieve and the CPS apologised after it became known that the government had been given the wrong information about when the CPS first became aware of the Humphreys Report. It was clear that the police had taken steps to withhold the Humphreys report from both the prosecution and the defence during trial. This was a report that outlined the police blunders while at the crime scene, (this is similar to the circumstances surrounding the Dickinson report and its evidence was withheld from the Bamber trial and two subsequent appeals).

Eddie Gilfoyle was released on licence with his conviction still intact after eighteen years in December 2010. The parole board illegally implemented a gagging order as part of his release conditions, this was subsequently lifted after media exposure.

Susan May: Susan May was convicted of the murder of her Aunt in May 1993. She has always maintained innocence and after serving twelve years in prison Ms May was freed on parole having lost two appeals, the CCRC have now closed their files on Susan May's case.

The investigation into Susan May's case has been regarded with a view to the Byford Reforms and the common law rules of disclosure in criminal cases. From this it is deemed not to have met the relevant legislation or recommendations. Ms May has been trying to obtain documentation from the police for many years, but to no avail. This is in breach of the Attorney Generals' Guidelines, S.7 (a) of the Criminal Procedure and Investigations Act 1996, and the Human Rights Act 1998.

Both the CCRC and the PCA have found as fact that Susan May's police statements were improperly taken and in breach of the Police and Criminal Evidence Act 1984 (PACE) regulations, thus rendering them tainted and inadmissible at trial or in appeal. While these regulatory bodies that are an integral part of the criminal justice system, they make material evidential judgements as to the investigation of a case, it appears that their findings are not deemed relevant where the accused's guilt or innocence is in issue. Notwithstanding their findings, their recommendations appear to have been ignored.

While findings by Susan May's legal and forensic teams show that the credibility of both the police and forensic scientists has been impugned. Susan May's case document 'Reasons to Doubt' catalogues a trail of misconduct by forensic teams and police, resulting in proof of evidence being tainted by officers. There are also relevant unresolved enquiries which have

not been pursued, including nine fingerprints from the crime scene which remain unidentified, (as in the Jeremy Bamber case there also remain lines of enquiry un-pursued regarding the integrity of the continuity of evidence provided by the photographs).

Jeremy Bamber: In October 1986 Jeremy Bamber was found guilty by a majority verdict, 10 - 2 of murdering five members of his family. He was sentenced to life with a minimum of twenty-five years, later upgraded to a whole life tariff. Jeremy Bamber has always maintained his innocence, while obtaining and fighting for original handwritten material at the time of the incident has been essential in his fight to clear his name.

An internal enquiry was carried out into the original investigation of the case by DCI Dickinson in 1986. The majority of documents, including the full report remained undisclosed to the Defence until after the CCRC put the case to appeal in 2002. Furthermore, contents from this enquiry have illustrated serious contradictions impugning the credibility of statements and confirmation of key witnesses committing perjury in court. Interviews reflect worrying inconsistencies relating to the crime scene. These were denied to Jeremy Bamber at trial and both appeals.

The City of London Police (COLP) launched an investigation on behalf of the PCA in 1991, after Jeremy Bamber, without the aid of a lawyer, made thirteen serious allegations of criminality against Essex Police officers. Charges were brought by COLP against five Essex Police Officers and it is only recently that some of the documents from the enquiry were mistakenly disclosed. Many of these papers show that police misconduct was simply explained as 'administrative error.' Other documents leaked show that Essex Police refused to disclose a number of original statements to the defence, as it was felt that non-disclosure would 'obviate the risk of Bamber making further complaints.' Jeremy Bamber now has a number of helpful documents illustrating that the chain of evidence relating directly to the provenance of the sound moderator that was material to the prosecution's case was in fact tampered with, evidence includes witness statements made to COLP by members of the Forensic Science Service detailing that their statements had been altered without their knowledge.

COLP in conjunction with the PCA and the DPP found that there was no case to answer as to the allegations made by Jeremy Bamber and all charges were dropped. Thus the then Home Secretary was misled and ruled that the case could not be returned to the Appeal Court. Just as in Eddie Gilfoyle's case the final report disclosed to Jeremy Bamber pre his 2002 appeal had whole pages and paragraphs blanked out, much like the 'Gooch' report. However, in 2004 a second report was 'leaked' which is a different version with many of the missing paragraphs appearing, providing valuable evidence for Jeremy Bamber's appeal currently lodged with the CCRC.

In 1996, Essex Police Special Branch illegally destroyed all DNA exhibits (apart from the sound moderator) despite a judicial review ruling in favour of Bamber which ordered the Home Office to disclose the materials. No one has ever been called to account for this. Other police reports show that many pieces of evidence supposedly destroyed still existed after the date of their 'destruction.'

Jeremy Bamber has been trying to obtain vital documents since he was first convicted twenty six years ago. Documents show many requests to Essex Police for disclosure of various evidence, all refused by Essex Police for a variety of reasons. Their current justification for non-disclosure is owing to the exemptions under the Freedom of Information Act 2000, Ss. 40(1) and (2), and under S. 30 (investigations and proceedings). Jeremy Bamber has also applied for evidence under the Data Protection Act, but again was refused as the preceding sections of the Freedom of Information Act counteract disclosure under this Act, while the Information Commissioners Office also responds to complaints, they state they too are

dant's criminality by reference to what he actually did and the circumstances in which he did it (e) The passing of the years may demonstrate aggravating features if, for example, the defendant has continued to commit sexual crime or he represents a continuing risk to the public. On the other hand, mitigation may be found in an unblemished life over the years since the offences were committed, particularly if accompanied by evidence of positive good character.

(g) Early admissions and a guilty plea are of particular importance in historic cases. Just because they relate to facts which are long passed, the defendant will inevitably be tempted to lie his way out of the allegations. It is greatly to his credit if he makes early admissions. Even more powerful mitigation is available to the offender who out of a sense of guilt and remorse reports himself to the authorities. Considerations like these provide the victim with vindication, often a feature of great importance to them.

As the Court made clear, this is simply guidance and certainly not definitive. The facts of every case are of paramount importance. But this decision does give some structure and clarity to an area of human rights law and criminal justice that is particularly difficult and complicated.

Justice: Sentencing House of Lords / 7 Dec 2011 : Column WA176

Lord Ouseley to ask Her Majesty's Government what action they propose to prevent sentencing disproportionately adversely impacting on black and Asian offenders; and what are the implications for community cohesion and social justice of such impacts.

The Minister of State, Ministry of Justice (Lord McNally): Sentencing is entirely a matter for the courts, taking account of all the circumstances of each case. There are many factors underlying sentencing outcomes, including the seriousness mix of the offences that come before the courts and the impact of guilty pleas that result in a reduction of sentence. The overall sentencing figures can mask these complexities, which emerge only through more detailed analysis of individual offences.

The courts are responsive to and dependent on other agencies, including the prosecution when making representations on bail and probation/youth offending teams when proposing recommendations through pre-sentence reports. As such, it is necessary to look beyond decisions taken by the court, and to consider, if there is an apparent disparity, whether this is due to factors within the court, or whether there are external influencing factors.

For example, socioeconomic factors may make people from black and Asian communities more vulnerable to both perpetrating crime and becoming victims of crime. Evidence suggests that factors such as poor housing, education, healthcare, family breakdown and poor employment prospects can and do impact adversely on black and Asian peoples' lives, making them more vulnerable to becoming involved in the CJS.

The MoJ is working closely with colleagues across government, local authorities and the voluntary and community sectors to ensure we provide joined up and practical programmes to prevent particularly black and Asian people becoming involved with the CJS in the first place and, if they do to support them either as victims or to stop their offending behaviour. We are making a deliberate shift away from interventions delivered specifically on the basis of race or ethnicity and towards increasing the impact of core and mainstream policies and programmes for disadvantaged communities, in disadvantaged areas.

We have for example, launched a social mobility strategy, which makes a commitment to develop tailored responses to remove particular barriers faced by different people. The strategy identifies socioeconomic inequality as the main driver of low social mobility and sets out a series of significant measures to address socioeconomic disadvantage.

the commission of the crimes and the sentencing decision were relevant.

As the Court of Appeal explained, the sentencing courts' task was made all the more difficult by the fact that there have been numerous statutory changes over the years in relation to sentencing and the definitions of sexual offences. The Lord Chief Justice, Royce and Macur JJ wearily noted that:

We shall not anxiously parade an inclusive list of all the relevant statutory provisions. It would be unbearably long. We simply remind ourselves, with now customary trepidation, that yet further proposed legislation relating to sentencing regimes and prisoner release is currently in contemplation. What is the judge to do? We must return to first principles…

Those first principles are set out in s.142 of the Criminal Justice Act 2003, namely that the purposes of sentencing are first punishment, then reduction of crime, rehabilitation, the protection of the public and the making of reparation to victims. The Court of Appeal then applied those principles to the problem of sentencing in historic cases.

Some guidance provided: The Court of Appeal noted that Article 7 prohibits the imposition of a heavier penalty that was 'applicable' at the time the offence was committed, and considered the House of Lords ruling in Uttley v. SSHD [2004] UKHL 38 which made it clear that this means provided sentences do not exceed the maximum sentence which could have been imposed at the date the offence was committed, Article 7 is not contravened.

The Court then considered a large body of previous case law. Although concluding that "it is impossible to reconcile them all" and "reference to earlier decisions is unlikely to be helpful and…is to be discouraged" in sentencing decisions, the following guidance was given (paragraph [47])

(a) Sentence will be imposed at the date of the sentencing hearing, on the basis of the legislative provisions then current, and by measured reference to any definitive sentencing guidelines relevant to the situation revealed by the established facts.

(b) Although sentence must be limited to the maximum sentence at the date when the offence was committed, it is wholly unrealistic to attempt an assessment of sentence by seeking to identify in 2011 what the sentence for the individual offence was likely to have been if the offence had come to light at or shortly after the date when it was committed. Similarly, if maximum sentences have been reduced, as in some instances, for example theft, they have, the more severe attitude to the offence in earlier years, even if it could be established, should not apply.

(c) As always, the particular circumstances in which the offence was committed and its seriousness must be the main focus. Due allowance for the passage of time may be appropriate. The date may have a considerable bearing on the offender's culpability. If, for example, the offender was very young and immature at the time when the case was committed, that remains a continuing feature of the sentencing decision.

Similarly if the allegations had come to light many years earlier, and when confronted with them, the defendant had admitted them, but for whatever reason, the complaint had not been drawn to the attention of, or investigated by, the police, or had been investigated and not then pursued to trial, these too would be relevant features.

(d) In some cases it may be safe to assume that the fact that, notwithstanding the passage of years, the victim has chosen spontaneously to report what happened to him or her in his or her childhood or younger years would be an indication of continuing inner turmoil. However the circumstances in which the facts come to light varies, and careful judgment of the harm done to the victim is always a critical feature of the sentencing decision.

Simultaneously, equal care needs to be taken to assess the true extent of the defen-

powerless to act for the same reasons. Eddie Gilfoyle is still trying to obtain documents generated over twenty years ago in his case.

CCRC and Jeremy Bamber's case: The CCRC have consistently refused to invoke their powers under S. 17 of the Criminal Appeals Act 1995 to obtain relevant documents despite there being meritorious reasons for wanting to scrutinise original documents and photographic evidence.

In July 2010, Jeremy Bamber sought a six month period to undertake vital forensic work offered to him pro bono. The CCRC refused this period, closing the submissions deadline and then took another six months before coming to a provisional refusal in February 2011. The CCRC have consistently refused to investigate evidence relating to issues they state have already been addressed by COLP, but Jeremy Bamber now has evidence to show that the COLP investigation was heavily flawed. The CCRC have handled Jeremy Bamber's complaint since 2004, and it is only this year after publicity and public consensus that they have agreed to full disclosure of the photographs they hold. Thus for the first time in twenty-six years Jeremy Bamber's defence team has now seen a selection of the 175 additional photographs. For almost eight years the CCRC denied Jeremy Bamber's forensic team access to the photographs at their laboratories and instead insisted they be viewed at their offices. In contrast the CCRC's own expert witness had access to negatives which were delivered to his laboratories. The CCRC also accept that full disclosure of photographs has now been made by Essex Police, notwithstanding that there are some ninety-seven missing negatives, including whole negative strips and some cut away from the disclosed strips. The IPCC and Essex Police have dismissed all complaints by Jeremy Bamber about the original investigation.

Jeremy Bamber and his campaigners have made continuous complaints to both the CCRC Customer Services Department and to Mrs Kneller the Director of Case Work about the handling of his case, letters and e mails all met with no response. The CCRC recently denied photographic material to the Defence lawyer's which was actually paid for by the Defence without any justification.

Media Influence: The influence of the media in all three cases has been startlingly powerful, both prior to trial and afterwards. In the Jeremy Bamber case a chief prosecution witness Julie Mugford was paid 2Sk by the NOTW for her story upon Jeremy Bamber's conviction which the Press Council ruled in breach of their "Declaration of Principle on cheque book journalism" regarding media interviews of people associated with criminal trials. Jeremy Bamber maintains Mugford signed a contract with the NOTW before the trial had ended which would put her in contempt of court. Yet, there has been no investigation by the courts, police or CPS to obtain the actual contract which was still in existence in 2002, where she refers to the small print in her statement to the police, while stating she cannot recall the date when she signed it, the CPS accepted that the contract was lost. Clearly press interference in the criminal justice system is rife with the recent NOTW scandal and frequent examples of a suspect's name being given to the press. The conduct of relevant justice departments has forced Jeremy Bamber to turn to the media to expose and publicise his case and apply pressure on the CCRC to facilitate disclosure.

Is the IPCC any more effective than the PCA?

In 2009, after further complaints by Jeremy Bamber to Essex Police they still refused to act. They will however, where instructed to do so by the CCRC, the CCRC readily accepts any explanation given to them by the police without scrutinising the facts of the case. After the CCRC gave Jeremy Bamber a provisional refusal to refer the case to the Appeal Court on n"

February 2011, the complaints to the police were ignored yet again. In fact between

January 2011 and May 2011, Jeremy Bamber lodged fifty-six complaints about police misconduct directly to Essex Police, while the IPCC, mindful of the CCRC's refusal to refer the case back to the Court of Appeal, granted a dispensation applied for by Essex Police. Much of Jeremy Bamber's complaints included the fabrication of evidence by officers, and that the evidence presented to the CCRC by the police was not a true account of what actually happened at the crime scene. Without obtaining full disclosure it is not possible for Jeremy Bamber to present a meritorious case to the CCRC. While the IPCC's advice to him is to challenge their decision not to investigate, 'in law.' Further complaints have been made regarding police conduct and decency when four photographs surfaced showing police playing pranks at the crime scene.

Conclusion: This document has briefly outlined failings by various departments of the criminal justice system in facilitating a system that is fair and impartial. Mainly it has been shown that non¬disclosure of relevant evidence has been used by various Forces throughout the country to maintain wrongful convictions in order to ensure that the public has faith in the police while doing their job. The terrible cost is when the accused is innocent and is proven to be so despite internal barriers within the system attempting to strangle their hopes of freedom. When it is proven that there has been a dreadful miscarriage of justice the public then question the very essence of the notion of democracy.

Similarly, there is not only a moral cost, there is the cost to the tax payer of maintaining that person in a prison. The DPP has not prosecuted certain officers for their misconduct and instead has subjected documents to PII. Even documents not under PII are still not disclosed, while the Information Commissioner's Office is unable to assist the defence. The IPCC is unwilling and unhelpful in obtaining successful investigation and prosecution of the police. The CCRC is the ultimate gate keeper of such issues, but for various reasons mainly owing to underfunding and a seemingly political agenda is unwilling to obtain vital documents and undertake forensic work, the result being that an appellant is trapped within the system for many, many years.

Often cases are closed after the unwillingness of the CCRC to act. In the case of Susan May, a police officer was asked to investigate his own work, not unsurprisingly he found that he had not mishandled the investigation. While the CCRC have accepted that there are many flaws in the handling of her case by the police, they have closed their file on Ms May. The CCRC is not funded adequately and lacks the motivation to operate accordingly. Where the CCRC refuses to act where does the appellant then go if there is a case of misconduct? MP's are reluctant to become involved owing to their belief that the CCRC is undertaking its constitutional duties accordingly. In 2005, Andrew Hunter MP raised the issue of non¬disclosure by Essex Police in the Commons and was simply informed that the CCRC had the powers to obtain relevant document but in 2011, Jeremy Bamber is still awaiting full disclosure of relevant documents. Prisoners have little resource for legal, forensic and campaign costs, they simply rely on the charity of others. In Jeremy Bamber's case non¬disclosure and dead line pressures implemented by the CCRC have hindered forensic work considerably. Clearly the procedures within the criminal justice system are failing to protect the human rights of those maintaining their innocence. Jeremy Bamber's case is still with the CCRC in their appeals process. The IPCC have recently lodged a complaint by Jeremy Bamber about COLP's conduct back in 1991 after new evidence has been adduced.

Supporting documents are available should you wish to see evidence for the claims made in this briefing.

defendant's acts or omissions in doing or being a party to the killing (new).

What to do with 'cold cases' when they eventually heat up

Alasdair Henderson, UK Human Rights Blog, 8th December 2011

R v. H & others [2011] EWCA Crim 2753

One of the most popular ideas in crime fiction is the 'cold case'; the apparently unsolved crime which, through various twists and turns, is brought to justice many years after it was committed. Indeed, at least two recent long-running TV dramas (the American show 'Cold Case' and the more imaginatively and morbidly named British show 'Waking the Dead') have been entirely based on this concept.

But what happens when such cases do turn up in real life, get to trial and the perpetrator is found guilty? In particular, how does a judge approach sentencing for a crime which might be decades-old, in the light of Article 7 ECHR? The Court of Appeal recently provided some answers to those questions.

What is Article 7 about and why is it important?

Article 7 is one of the lesser-known and least-litigated parts of the ECHR, but it protects a fundamental and essential right. It provides as follows:

(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

(2) This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised norms.

The core of Article 7 is the right not to be retrospectively held guilty of a crime for doing something that wasn't criminal when you did it. It is an absolute right, although the wording is careful to exclude actions which are criminal in international law (even if not in domestic law) and Article 7(2) sets out an exception which was designed to catch the post-WWII Nuremberg trials and other historic war crimes tribunals.

The part of Article 7 the Court of Appeal was concerned with in the H & others case was the second part of Article 7(1), namely the right not to have a heavier sentence imposed than was applicable at the time the offence was committed.

Background: The eight conjoined cases in this appeal all involved sexual crime, in particular sexual assault or rape of children. The facts are set out at paragraphs 48-129 of the judgment, and some details are very unpleasant and disturbing so they will not be repeated here. However, the key thing all the cases had in common was that the crimes were all committed many years ago and were not discovered until recently; they spanned a range from 1966-1996 and did not come to light until 2005-2010.

All the appellants eventually plead guilty or were convicted at trial, but then challenged their sentences as being excessive. The appeals were joined together and guidance sought from the Court of Appeal, as well as specific decisions in each individual appeal. In particular, guidance was sought about:

1. The extent to which the court passing sentence should reflect the levels of sentence which would have been likely to have been imposed if the defendant had been convicted at trial shortly after the offences were committed; and

2. The extent to which events during the long period which in fact elapsed between

Finally, the abnormality of mental functioning has to 'provide an explanation' for the killing. It does not have to provide the sole explanation just an explanation. Parliament obviously intended that there should be a clear causal link between the abnormality and the behaviour leading to the killing. There may be scope for expert medical witnesses to differ here.

*Making the link:*The question becomes acute when considering the effects of alcohol and intoxication. Following Lord Hutton's judgment in the case of R v Dietschmann [2003] UKHL 10, it was apparent that even if D would not have killed if he had not taken drink, the defence might apply. Adapting Dietschmann to the new law, the correct approach will be for the jury to ignore D's intoxication and to ask: was there an abnormality of mental functioning? If yes, did it arise from a recognised medical condition? If yes, did it substantially impair D's ability to do one or more of the three things in subsection 1A? If so, was the abnormality a cause of D's conduct by which he killed the victim? If yes, DR has been proved. Turning the situation around, if the evidence indicates that an intoxicated D would have killed even if he did not have an abnormality of mental functioning, the defence will not be available because the causal link will be absent.

Each stage of the new law is capable of being answered 'yes' or 'no' by an expert witness. It is inevitable that experts will go on to answer the ultimate question for the jury: is DR made out? The opportunity for experts to influence the outcome of a trial is therefore greater and there will be some pressure on defendants to plead guilty. Where there is a trial, there is less room for the jury to convict of murder in a genuine case of DR simply because of sympathy for the victim or horror at the nature and manner of the killing and conversely no room for an old-fashioned sympathy verdict if there is technically no defence. DR is therefore a more scientific route to an alternative verdict for those who have a qualifying abnormality of mental functioning but not a complete defence to a killing.

A question of definition: The new law therefore continues to provide a partial defence to murder in appropriate circumstances. If a defendant has a genuine psychiatric or medical condition and is genuinely unable to exercise proper self-control, etc then his culpability is significantly reduced. To have a different label for the crime, i.e. manslaughter, carries a greater distinction than a variant of the same label, i.e. second degree murder. It would also carry less of a stigma for the defendant, and for the bereaved family; second degree murder is probably more palatable than manslaughter.

Is 'diminished responsibility' therefore a way of bringing in second degree murder by the back door as has been suggested? The short answer is that it depends how you define second degree murder. One could argue for several categories of murder, for example: (i) murder with an intent to kill; (ii) murder with an intent to cause GBH; (iii) murder as a secondary party. If one widens the debate to include homicide generally then the list would continue: (iv) manslaughter by reason of loss of control; (v) manslaughter by reason of DR; and (vi) manslaughter by lack of intent/involuntary manslaughter.

On that basis, it is inappropriate to view 'diminished responsibility' as second degree murder. It could though be seen as fouth or fifth degree homicide. Whatever the degree, as these new cases progress through the courts, it remains to be seen if the outcome will be as scientific as was intended.

From murder to manslaughter - Murder will be reduced to manslaughter if the following conditions are fulfilled: * the defendant was suffering from an 'abnormality of mental functioning'; * which arose from a 'recognised medical condition';

* and substantially impaired the defendant's ability to do at least one of the things mentioned in the new subsection 1A (a) to understand the nature of his conduct;(b) to form a rational judgment; or (c) to exercise self-control; * and provides an explanation for the

Murder by degrees

By William Harbage QC, Felicity GerrySolicitors Journal, 5 December 2011

Is the new definition of diminished responsibility a way of bringing in second degree murder? The Coroners and Justice Act 2009 (CAJA) has replaced the definition of the partial defence of diminished responsibility with a modernised one based on 'an abnormality of mental functioning' arising from a 'recognised medical condition', which must have impaired the defendant's ability to understand the nature of his or her conduct, to form a rational judgement or to exercise self-control.

The new law sets out that, for the partial defence to apply, the abnormality of mental functioning must provide an explanation for the defendant's involvement in the killing where the abnormality was at least a significant contributory factor in causing the defendant to carry out the conduct. This requires a scientific base for a verdict that can be explained rather than the unpublished reasoning of a jury with a view to achieving more agreement between experts and therefore more acceptable guilty pleas. That the deciding factor is scientific evidence has caused some to speculate that the new DR is second degree murder by another name.

Coexisting concepts: Section 52(1) CAJA 2009 amends section 2 of the Homicide Act 1957 so the partial defence to murder of DR still exists as a concept. The burden of proof remains on the defendant but DR is defined in a slightly different way.

The amended section 2(1) provides that what the prosecution has otherwise proved would be murder is reduced to manslaughter if, at the time of the killing, a number of conditions in respect of the defendant's mental state are fulfilled (see box).

A new subsection 1B states that "an abnormality of mental functioning provides an explanation for the defendant's conduct if it causes, or is a significant contributory factor in causing, the defendant to carry out that conduct". The new phrase is more in tune with what psychiatrists describe in their reports, that is, how a defendant's mind is functioning. Similarly, the phrase 'recognised medical condition' is designed to be simpler for both psychiatrists and juries. It encourages the use of the 10th revision of the World Health Organisation's International Classification of Mental & Behavioural Diseases (ICD-10) or the US equivalent, the Diagnostic and Statistical Manual of Mental Disorders (DSM-1V).

However, it is notable that the phrase is 'recognised medical condition', so it is not limited to 'mental' conditions. Thus, a diabetic defendant acting under the influence of severe hypoglycaemia could conceivably come within the statutory definition. Also likely to be within the definition is a defendant suffering from diagnosed depression because of prolonged abuse or domestic violence or because of prolonged exposure to a partner suffering from a terminal illness who is begging to be put out of their misery. The adjective 'recognised' will exclude the opinion of 'quack medics' who are not regarded as specialists.

There is a clear overlap in the new 'substantial impairement' test between the first two abilities and the question of insanity. In theory, this might lead to more defendants asserting insanity at the time. In practice, this is unlikely. Experience shows that defendants over the years have shied away – almost at any price – from being declared insane.

The third ability – 'to exercise self-control' – is capable of wider interpretation. This is the area that is likely to give rise to greater argument between psychiatrists and to give the opportunity for juries to decide between competing opinions.There will no doubt still be arguments over whether or not a relevant ability has been substantially impaired. This will still be a matter for the jury, although it may be more difficult for the jury to depart from the opinion of an expert who specifically addresses the issue.

(Continued on page 10)

Moneys Short
and Times are Hard
So here's your Fucking
Christmas Card

Seasons Bleatings
Happy Horseshit & Merry Bollocks
From John O

A legal establishment of facts regarding Christmas

Whereas, on or about the night prior to Christmas, there did occur at a certain improved piece of real property (hereinafter "the House") a general lack of stirring by all creatures therein, including, but not limited to a mouse.

A variety of foot apparel, e.g., stocking, socks, etc., had been affixed by and around the chimney in said House in the hope and/or belief that St. Nick a/k/a/ St. Nicholas a/k/a/ Santa Claus (hereinafter "Claus") would arrive at sometime thereafter. The minor residents, i.e. the children, of the aforementioned House were located in their individual beds and were engaged in nocturnal hallucinations, i.e. dreams, wherein vision of confectionery treats, including, but not limited to, candies, nuts and/or sugar plums, did dance, cavort and otherwise appear in said dreams.

Whereupon the party of the first part (sometimes hereinafter referred to as ("I"), being the joint-owner in fee simple of the House with the party of the second part (hereinafter "Mamma"), and said Mamma had retired for a sustained period of sleep. At such time, the parties were clad in various forms of headgear, e.g., kerchief and cap.

Suddenly, and without prior notice or warning, there did occur upon the unimproved real property adjacent and appurtenant to said House, i.e., the lawn, a certain disruption of unknown nature, cause and/or circumstance. The party of the first part did immediately rush to a window in the House to investigate the cause of such disturbance.

At that time, the party of the first part did observe, with some degree of wonder and/or disbelief, a miniature sleigh (hereinafter "the Vehicle") being pulled and/or drawn very rapidly through the air by approximately eight (8) reindeer. The driver of the Vehicle appeared to be and in fact was, the previously referenced Claus.

Said Claus was providing specific direction, instruction and guidance to the approximately eight (8) reindeer and specifically identified the animal co-conspirators by name: Dasher, Dancer, Prancer, Vixen, Comet, Cupid, Donner and Blitzen (hereinafter "the Deer"). (Upon information and belief, it is further asserted that an additional co- conspirator named "Rudolph" may have been involved.)

The party of the first part witnessed Claus, the Vehicle and the Deer intentionally and willfully trespass upon the roofs of several residences located adjacent to and in the vicinity of the House, and noted that the Vehicle was heavily laden with packages, toys and other items of unknown origin or nature. Suddenly, without prior invitation or permission, either express or implied, the Vehicle arrived at the House, and Claus entered said House via the chimney.

Said Claus was clad in a red fur suit, which was partially covered with residue from the chimney, and he carried a large sack containing a portion of the aforementioned packages, toys, and other unknown items. He was smoking what appeared to be tobacco in a small pipe in blatant violation of local ordinances and health regulations.

Claus did not speak, but immediately began to fill the stocking of the minor children, which hung adjacent to the chimney, with toys and other small gifts. (Said items did not, however, constitute "gifts" to said minor pursuant to the applicable provisions of vat.)

Upon completion of such task, Claus touched the side of his nose and flew, rose and/or ascended up the chimney of the House to the roof where the Vehicle and Deer waited and/or served as "lookouts." Claus immediately departed for an unknown destination.

However, prior to the departure of the Vehicle, Deer and Claus from said House, the party of the first part did hear Claus state and/or exclaim: "Merry Christmas to all and to all a good night!" Or words to that effect.