ing (such as IQ, but also suggestibility, impulsivity, memory or decision- making), and are quite different in different regions of the brain.

The prefrontal cortex (which is especially important in relation to judgement, decision-making and impulse control) is the slowest to mature27. By contrast, the amygdala, an area of the brain responsible for reward and emotional processing, develops during early adolescence.

All the talk of mind-reading and predetermination of criminal behaviour sounds like science fiction, but brain science is now sufficiently advanced – and advancing rapidly – that the legal system must do more to incorporate the lessons it offers. This is more likely to lead to evolution not revolution, with lawyers and judges understandably suspicious of science which seeks to explain away human behaviour, and reduce the role of human agency and free will, principles upon which the system of law is founded.

But the report does not recommend large-scale changes to the legal system, but rather that formal and regular interactions are set up between neuroscientists and lawyers through:

* an international forum, * a better system for identifying quality expertise,* the incorporation of an introduction to neuroscience and behavioural genetics into law degrees, * training being made available for lawyers and probation officers * further research in various key areas.

This all sounds very sensible. Neuroscience may not revolutionise the law, which is likely to retain the basic understanding of human agency and free will that has existed for centuries. But it may help us refine that understanding. If that means revising the age of criminal responsibility or improving the way the criminal justice system does risk assessment, then it may just make our legal system a bit cleverer.

Young Offenders: Average prices, paid by Youth Justice Board per child/young person placed in a Public young offender institution £55,000, Secure children's home £211,000, Secure training centre £203,000

This is the last issue of 'Inside Out' for 2011 the next issue will be published on Sunday 1st January 2012. As usual the year has been disappointing, appeals turned down, dispite overwhelming evidence that the convictions were wrong, more and more people entering the prison system, convicted of joint enterprise, number of prisoners over tariff continues to climb and only a handufl of people made it to the gate.
My hope for y'all inside for the next 12 months, that your appeals suceed and those of you over tarriff are released, utopian thinking I know but fuck it, what else is there!

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 351 (25/12/2011)

Justice for Michael Stone

Killer Stone loses appeal bid Little Hampton Gazette, Monday 12 December 2011

Michael Stone, who killed a mother and daughter in Kent, has lost a new bid to get his case referred back to the Court of Appeal. Stone, 50, was convicted of bludgeoning mother and daughter Lin and Megan Russell to death with a hammer and attempting to murder Megan's sister Josie, now 24.

On Thursday 8th December his lawyers asked two High Court judges for permission to challenge a refusal of the Criminal Cases Review Commission (CCRC) to back a fresh appeal. Stone's counsel Mark McDonald argued that the CCRC had wrongly failed to investigate fresh evidence that undermined a confession

Stone was alleged to have made in his cell to another prison inmate. Mr McDonald argued on behalf of Stone that the CCRC's decision was flawed because it had failed to interview Allan King, an acquaintance of Daley who said he heard Daley admit he had lied about Stone confessing.

Rejecting the submission, Lord Justice Hooper ruled the CCRC was entitled to conclude that the appeal court would have found King's statement "incapable of belief", especially given the "enormous delay" before King made it. King said he had tried to speak to somebody involved in Stone's defence, but nobody seemed interested

- "so I gave up and let the courts get on with it". He only contacted the solicitors in 2008 because he saw a note in the prisoners' newspaper Inside Time in 2008 from Stone's sister Barbara, appealing for information.

Dismissing the application, Lord Justice Hooper, sitting with Mr Justice Singh, ruled that members of the Commission had come to a decision they were entitled to reach.

The judge said that King on his own account knew about Daley's alleged retraction in 1999 but never informed anyone in authority for seven years. It was not until 2008 that King sent a letter to Stone's solicitor saying he was concerned about the evidence given by Daley at the re-trial seven years earlier in 2001.

A second ground of challenge considered by the court was that the CCRC failed to consider a possible "abuse of process" because a shoelace connected with the case had gone missing. It was argued that the lace might have contained DNA evidence which could have been recovered through modern forensic methods, and thrown doubt on Stone's conviction.

The judges ruled the shoelace point had not been fully raised before the CCRC and Stone's lawyers could now ask its members to consider it.

Stone received three life sentences and has been told he must serve at least 25 years. The Russell family was attacked in Chillenden, Kent, in July 1996. Stone was first convicted in 1998, but the convictions were overturned when witness Barrie Thompson admitted making up a story about Stone confessing in prison.

Stone was then found guilty at a second trial in 2001 on two counts of murder and one of attempted murder. The re-trial relied on evidence of a cell confession from another prisoner witness, Damien Daley, who said he had spoken to Stone through a gap between a heating pipe and their cell wall

Joint Criminal Liability - Joint Enterprise by any other name!

Armel Gnango did not kill Magda Pniewska, there is no dispute about this, she was killed by a male called 'Banana man', with whom Armel was exchanging gun shots.

The original trial found Armel guilty; CPS lawyer Jane Scholefield at the conclusion of the trial said: "Even though the defendant did not fire the fatal round, and even though Magda Pniewska was not the intended target of either gunman, the defendant bears a joint criminal liability for her death. "Each fired their guns with intent to kill at a time when there were bystanders present between them."

Armel appealed the conviction and it was overturned the CPS appealed to the Supreme Court. Seven Supreme Court judges deliberated the case and though all seven were clear that Mr. Gnango did not kill or intended to kill Magda Pniewska , six of the judges overturned the appeal and restored the conviction of murder.

Lord Kerr, did not agree with the other judges and would have dismissed the appeal, it is important for everyone involved in 'Joint Enerprise' cases to read Lord Kerr's dissenting opinion, which is at pages 38 to 47 of judgement.

R v Gnango [2011] UKSC 59 - On appeal from [2010] EWCA Crim 1691

Justices: Lord Phillips (President); Lord Brown; Lord Judge;Lord Clarke; Lord Dyson; Lord Wilson; Lord Kerr;

Background to the Appeals: The facts of this case were extraordinary and tragic. On 2 October 2007, a 26 year old Polish care worker, Magda Pniewska, was walking home from a nursing home through a car park in New Cross, South London. She was on the telephone to her sister when she was shot in the head and killed. The shot was fired in an exchange of fire in the car park between two gunmen, 'B' and Mr Gnango, neither of whom had been aiming at Magda. They had been shooting at each other. Scientific evidence showed that the single bullet to Magda's head had come from B's and not Mr Gnango's gun. B was clearly guilty of murder under the doctrine of 'transferred malice'. B however was never caught.

Mr Gnango was charged with and convicted of murder following trial aged 17. On his appeal, the Court of Appeal overturned his conviction. The Court held that 'joint enterprise' liability for murder, the basis on which the Court considered his conviction to rest, could not arise on the facts.

In considering the appeal by the Crown, the Supreme Court was asked to address the following question: "If D1 and D2 voluntarily engage in fighting each other, each intending to kill or cause grievous bodily harm to the other and each foreseeing that the other has the reciprocal intention, and if D1 mistakenly kills V in the course of the fight, in what circumstances, if any, is D2 guilty of the offence of murdering V?"

Judgment: The Supreme Court allows the appeal by a 6-1 majority (Lord Kerr dissenting) and restores Mr Gnango's conviction for murder.

Reasons for the Judgment: Lord Phillips and Lord Judge together give the leading judgment of the Court, with which Lord Wilson agrees. The trial judge had directed the jury that, in order to convict, they had to be satisfied that there was a plan or an agreement to have a 'shoot-out', whether made beforehand or on the spur of the moment when Mr Gnango and B saw and fired at each other in the car park [23, 57]. This was an unequivocal direction that the jury could convict only if they were satisfied that Mr Gnango and B had formed a mutual plan or agreement to have a gunfight, i.e. to shoot at each other and be shot at, in which each would attempt to kill or seriously injure the other. The jury's verdict indicates that they were so satisfied. Accordingly, this is a proper basis for finding that Mr Gnango aided and abetted the murder of the deceased by aiding and abetting B to shoot at him (i.e. Mr Gnango) [55-60].

anced and intelligent way. There had been improvements in the way vulnerable prisoners were looked after, as well as how aspects of the disciplinary process were carried out.

Perhaps the most significant advance since our previous inspection had been the closure of the entirely unsuitable Wren unit, which meant that all prisoners were now able to live in decent accommodation. With a further new unit opening shortly, more prisoners would be able to benefit from good standards of accommodation. Relationships between staff and prisoners continued to be healthy and, in contrast to 2008, we found no evidence that prisoners' basic needs were not being met. The quality of health care provision had improved considerably and some progress had been made in relation to diversity, but race relations needed to be promoted more positively.

Most prisoners at Erlestoke continued to benefit from good quality education and training. The range and quality of work placements was now better, unemployment was low and nearly all men were gainfully occupied. Apart from the small number of men who were unemployed or in the segregation unit, all prisoners received adequate time unlocked each day.

Relationships between prison-based staff and community-based offender managers had been strengthened and prisoners generally received sufficient support to help prepare them for release. Working practices in relation to indeterminate prisoners were now more effective. There continued to be a lack of specialist input for prisoners who had difficulties obtaining suitable accommodation. Visitors centre provided welcome additional support for prisoners' families and friends.

Erlestoke continues to effectively fulfil its specific function as a training prison. The work carried out to improve the residential accommodation has helped to make it a better place for prisoners to live and staff to work. Importantly, relationships between staff and prisoners remain largely consensual. We share the governor's serious concern about the continuing presence of illicit drugs and the high level of bullying. However, we found the prison to be a more stable environment than during our last inspection. Managers and staff are clear about the issues and their roles and we support their efforts to build on existing strengths and address the outstanding problems in a coherent way.

Will neuroscience revolutionise the law? *Adam Wagner, UK Human Rights Blog*

You don't need to be a brain scientist to see that lawyers would benefit from a more sophisticated understanding of the human brain. Neuroscientists seek to determine how brain function affects human behaviour, and the system of law regulates how those humans interact with each other. According to a new Royal Society report, lawyers and neuroscientists should work together more.

The report, Neuroscience and the law, argues that neuroscience has a lot to offer the law, for example: might neuroscience fundamentally change concepts of legal responsibility? Or could aspects of a convicted person's brain help to determine whether they are at an increased risk of reoffending? Will it ever be possible to use brain scans to 'read minds', for instance with the aim of determining whether they are telling the truth, or whether their memories are false?

One aspect of the report which has been widely reported is the questions it raises about the age of criminal responsibility, which is currently age 10 in the UK. This is important to get right; children should not be blamed for actions if they are not intellectually capable of understanding or controlling them. Some argue that the age of responsibility, which is low compared to many other jurisdictions including Scotland. should be raised. The report offers a fascinating insight into the issue:

Neuroscience is providing new insights into brain development, revealing that changes in important neural circuits underpinning behaviour continue until at least 20 years of age. The curves for brain development are associated with comparable changes in mental function-

Introduction from the report: HMP Kennet on Merseyside is a public sector category C training prison holding up to 342 adult male prisoners. At the time of this inspection it held 339 prisoners. Built on the site that formally held female patients from the adjoining Ashworth high security hospital, Kennet opened in 2007.

Kennet remained a safe prison. The number of recorded fights and assaults was relatively low and the monitoring of both perpetrators and victims was meaningful. Quality assurance of adjudications was good, and recorded incidents of the use of force were low. Although the integrated drug treatment system was now well managed and arrangements to support prisoner Listeners were good, it was disappointing that prisoner movements around the prison grounds remained restricted. With the prison now well established and with other indicators and procedures for safety in place, such constraints appeared disproportionate, especially as 80% of the prisoner population were enhanced status and approximately 20% were category D.

The quality of accommodation continued to be variable and many showers remained in a poor state. Although some dining-out facilities were now available, too many prisoners still had to eat meals in their cells with unscreened toilets. Disappointingly, progress in respect of the various diversity strands had been slow. The most significant progress achieved by the prison had been in the area of purposeful activity. The number of prisoners locked in their cells during the core day had fallen by over half, and 75% of the population were now engaged in full-time purposeful activity. Such an achievement in such a relatively short space of time is to be commended. Resettlement was generally better integrated than at our last inspection and provision against all of the resettlement pathways were appropriate. The development of a resettlement unit was a positive initiative and ensured better pre-release planning, although the longer term role of this facility needed to more clearly defined. Overall, this was a good inspection and we are pleased to be able to report the progress the prison has made. We have identified some key areas that require further work but the governor and staff at HMP Kennet are to be commended for the progress they have made.

Report on an unannounced short follow up inspection of HMP Erlestoke, 23–25 August 2011 by HMCIP. Report compiled October 2011, published Tuesday 13th December

Concerns: - there were continued procedural weaknesses around the searching of prisoners and the sharing of information about newly admitted prisoners;

- despite efforts to address the problem of illicit drugs, they were still available in the prison;
- bullying remained a major concern, was being approached in a balanced and intelligent way.
- race relations needed to be promoted more positively

Introduction from the report: In our previous inspection in 2008 the prevalence of illicit drugs was a significant problem and we were concerned to find deteriorating levels of safety and, associated with this, high levels of bullying. Some of the residential accommodation was poor and prisoners' basic needs, such as the provision of clean laundry, were not always met. However, we commended the quality of the purposeful activity provided and highlighted the sound overall approach towards resettlement.

On this short follow-up inspection we found that serious attempts were being made to carry out improvements in all of the key areas in which we had identified shortcomings.

Significant improvements in the standard of first night accommodation now helped staff to admit new prisoners more safely. There were continued procedural weaknesses around the searching of prisoners and the sharing of information about newly admitted prisoners. Efforts had been made to address the problem of illicit drugs but they were still available in the prison. Bullying also remained a major concern. This insidious problem was taken seriously and was being approached in a bal-

The trial judge's direction had properly been given on application of the principle of 'transferred malice': where a defendant intends to kill or cause serious injury to one victim, V1, but accidentally kills another, V2, he will be guilty of the murder of V2 [16, 60]. The application of this principle in the circumstances accords with the demands of justice: Mr Gnango and B had chosen to indulge in a gunfight in a public place, each intending to kill or cause serious injury to the other, in circumstances where there was a foreseeable risk that this result would be suffered by an innocent bystander. It was a matter of fortuity which of the two fired what proved to be the fatal shot [61].

There is no applicable statutory or common law bar that precludes conviction of Mr Gnango on the basis that he aided and abetted B's attempt to kill him (i.e. Mr Gnango) or cause him serious injury [51-52]. Further, the Court can see no reason why it should extend the common law to protect from conviction any defendant who is, or is intended to be, harmed by the crime that he commits or attempts to commit [53].

Finally, whether Mr Gnango is correctly described as a principal or an accessory to the murder of the deceased is irrelevant to his guilt [62]. This is not such a case where it is important to distinguish between the principal and the accessory: the offence is the same offence and the defendant is guilty of it [63].

Lord Brown gives a concurring judgment. He holds that the all-important consideration here is that both Mr Gnango and B were intentionally engaged in a potentially lethal unlawful gunfight. The general public would be astonished and appalled if in those circumstances the law attached liability for the death only to the gunman who actually fired the fatal shot (which it would not always be possible to determine) [68]. Lord Brown characterises Mr Gnango's liability for murder as that not of an accessory but a principal: a direct participant engaged by agreement in unlawful violence specifically designed to cause and in fact causing death [71].

Lord Clarke gives a concurring judgment. He agrees with Lord Brown that Mr Gnango is guilty of murder not as an accessory but as a principal to an agreement to engage in unlawful violence specifically designed to cause death or serious injury, where death occurs as a result [81].

Lord Dyson gives a concurring judgment. He holds that the jury must have been satisfied that there was an agreement between Mr Gnango and B to shoot at each other and be shot at [103], and that Mr Gnango aided and abetted the murder of the deceased by encouraging B to shoot at him in the course of the planned shoot-out [104].

Dissenting judgment: Lord Kerr gives the sole dissenting judgment of the Court. He holds that the jury was not invited at any time during the trial judge's summing-up to address the question of whether the shared common purpose between Mr Gnango and B included the important element of the avowed aiding and abetting: the agreement to be shot at [115]. The exchange of fire between the gunmen was at least as likely to be the result of a sudden, simultaneously reached, coincident intention by them to fire at each other as it was to be the result of an agreement to shoot and be shot at [121]. If the jury did not conclude that there was an agreement to shoot and be shot at, there is no sound basis of accessory liability on which to uphold their verdict [126]. In any event, an agreement to shoot and be shot at does not necessarily amount to an intention to assist or encourage the other to shoot. The jury would have needed to receive specific directions – which they did not – about this vital component of aiding and abetting [123].

Further, Lord Kerr considers that there is no sound basis for holding that Mr Gnango is liable for murder as a principal, since he had not by his own act caused or contributed to the commission of the offence with the necessary mens rea [127, 130]. Accordingly, Lord Kerr would dismiss the appeal.

Fresh Evidence? Not in this Court! JENGBA, 10th December 2011

Sheffield men denied retrial despite having evidence that could clear them

Nigel Junior Ramsey, Denzil Ramsey, Levan Menzies and Michael Chattoo were convicted on 7 August 2009 of the murder of Tarek Chaiboub, who was killed when a sawn off shotgun was discharged at him in broad daylight on Spital Hill, Sheffield, on 11 July 2008. Although Nigel Ramsey was in prison at the time, he was said to have ordered the killing using a mobile phone that had been smuggled in to him. There was no evidence to prove that any of the four had pulled the trigger, so all were linked to the killing through use of the joint enterprise law.

The four were said to be members of an 'S3 postcode' gang. They were alleged to be also responsible for a previous assault on Chaiboub carried out on 6 July, to which another defendant, Javan Galloway, pleaded guilty. The four charged with murder were put on trial first, and two other individuals, Daud Ahmed and Abdi Rahman Ali, who were alleged to have assisted Denzil Ramsey with disposing of the weapon, were charged with perverting the course of justice and tried separately after the four were convicted.

A shotgun found hidden nearby in Osgathorpe Park was claimed by the police to be the weapon used in the murder, who linked it to all the defendants in both trials. The police commissioned Dr Robinson, a firearms expert, to examine the gun, and on the basis of his report, the prosecution were able to claim that this was the murder weapon. The four charged with murder commissioned their own firearms expert, Mr Dyson, to examine the evidence, but his findings gave their lawyers no grounds to challenge the prosecution evidence concerning the gun. The only other evidence was that of mobile phone calls made between the defendants (although there is no record of what was said in any of the calls).

At the second trial, the other defendants commissioned a different firearms expert, Geoffrey Arnold, who said that the experts in the first trial had not done their work properly. As a result, they had missed opportunities that could have proved whether the gun was or was not the weapon used to kill the victim. In addition, Mr Arnold found evidence sufficient to enable him to conclude that it was unlikely that it was the murder weapon. It had almost certainly not been discharged since the barrel had been sawn off, before the murder. Following his evidence at the second trial, the jury found the defendants Daud Ahmed and Abdi Rahman Ali not guilty.

The mother of two of the defendants in the murder trial attended the second trial. Hearing that a key item of prosecution evidence had been discredited, she informed her sons' lawyers. They commissioned a further report from the defence expert used in the second trial, and lodged an appeal with the Court of Appeal. This appeal was heard on 8-9 December 2011 by judges Aiken, King and Stephens.

The appeal was entirely concerned with argument about whether the evidence of the defence expert from the second trial would count as fresh evidence. 'Fresh evidence', for the purposes of a criminal appeal, is evidence that was not available to the defence at the trial. Appeal court judges do not want their court to waste its time with hearing expert evidence that defence lawyers could have obtained, but failed to obtain at trials. They asked: was the evidence offered by the second expert genuinely fresh, or merely an opinion which differed from that of the first defence expert?

The judges did not call Mr Arnold so as to hear direct from him whether or not his evidence was fresh. They simply decided that the evidence was not 'fresh', and so the appeals were dismissed. They will give their reasons at a later date.

The families of Nigel and Denzil Ramsey, Levan Menzies and Michael Chattoo were

1.13 Young people who had not previously experienced violence were witnessing it first hand in custody and some had become more vulnerable as a result. Although there had been no actual self-harming, the number of open ACCTs had increased by 200% due to staff concerns for new young people.

1.14 Staff told us that they had very little time (usually between two and 24 hours) to make decisions and move young people. Many young people were unable to tell their families that they were moving. Although many were unhappy with being transferred, no one refused to move.

1.15 Many solicitors needed to see their clients, and there was therefore a great deal of pressure on the availability of legal visits.

1.16 By the time of our visit on 12 September, some transferred young people were beginning to return to Feltham.

Purposeful activity: 1.17 Initially the education department was unable to manage the number of new arrivals and there was a waiting list to receive education. By the time of our visit on 12 September, this problem had been resolved.

Resettlement: 1.18 There was now a constant turnover of young people and work with some individual young people had been interrupted because they had moved. This had affected the work of the behaviour management group who had been successfully engaging with the most troublesome young people at the time of the inspection. Many had been transferred out before their programme had been completed, thereby moving the problem to another establishment.

1.19 The number of enquiries from parents and families wanting to find out information about individual prisoners and the prison had increased significantly.

1.20 Conversely some young people had been ostracised by their families due to their involvement in the riots. Some families had told officers that they were thinking of moving home due to their community's animosity towards those who had family members involved in the riots.

Main challenges: 1.21 In relation to the care of young people in custody, the main challenges identified during this visit to Feltham on 12 September were:

- the lack of information about new arrivals, which made it difficult to carry out initial assessments to keep them safe
- the huge increase of movement across the whole of the young people under 18 estate and the resulting lack of continuity, which impacted on new receptions as well as the settled population
- the introduction of some young people to gangs and a violent culture in prison, which they had not previously experienced
- the distance young people who had been moved to the north of England were held from home, and the lack of contact with their families and youth offending teams.

Inspector: Ian Thomson, on behalf of HMCIP

Report on an unannounced short follow up inspection of HMP Kennet 1–3 August 2011, by HMCIP. Report compiled September 2011, published Tuesday 13th December 2011

Concerns: - some constraints on prisoner movements around the prison grounds appeared disproportionate, given the indicators and procedures for safety in place;

- although facilities for dining together were available, too many prisoners still had to eat meals in their cells with unscreened toilets; and
- progress on diversity had been slow, and there remained a need to ensure that minority groups did not experience disadvantage in their treatment.

1.2 Feltham's task was to move significant numbers of the existing population to other establishments (usually to the north of England, with the majority going to HMYOI Hindley) to make way for new receptions of young people involved in the riots.

1.3 During the period of disturbances in the community, Feltham experienced a 'copycat riot' in the Feltham B (young adults) gym. Feltham had concerns that this behaviour would be repeated in Feltham A (young people 18) side but this did not materialise.

1.4 The prison did not keep a running total of the number of young people involved in the riots it received, but staff were able to give some snapshot figures. During and immediately after the riots, Feltham received in a week the number of new arrivals it would normally expect in a month: approximately 60 young people. Two weeks prior to the Inspectorate's visit on 12 September, 49 young people involved in the riots were in custody at Feltham; this had reduced to 34 at the time of our visit.

1.5 Staff did not know how many young people had been transferred out, but they continued to get overcrowding drafts. They had been asked to move 70 young people out of Feltham A and B during the week of our second visit, and 21 spaces were being held in Feltham A for new arrivals. The prison expected to continue to hold a significant number of spaces in anticipation of further arrests.

1.6 Staff said that there was a lack of helpful advice from the Youth Justice Board (Y JB) and the Young People's Team in the National Offender Management Service (NOMS). They were not aware of a central strategy to manage the unprecedented numbers of new arrivals and transfers, including those they were expecting as further arrests were made. They said there had been good communication between the young people's establishments, but that there was a need for a NOMS/y JB strategy to help address the broader issues.

1.7 A significant number of young people arrived at reception after midnight, having spent a whole day in courts (and presumably in police cells before that, after being removed from the streets). The majority had never been in the criminal justice system before.

1.8 Risk assessments on new arrivals were completed by reception staff and all were seen by an officer from the behaviour management group to assess the risk from others or to others, including gang affiliations. Staff relied solely on what young people told them, which was a risk. Youth Offending Teams were unable to respond and get into the prison quickly to conduct risk assessments and bail applications.

1.9 Young people remained on the induction unit for only two days, rather than the usual five, and this resulted in young people, many of whom were in custody for the first time, arriving on residential units without sufficient knowledge of prison rules and routines.

1.10 Young people already in the prison had negative perceptions of those involved in the riots as they felt that they were responsible for the transfer of their friends to other prisons. They had seen their home areas attacked on television and were worried about family and friends there.

1.11 Those involved in the riots were dispersed across the units and existing prisoners were moved to avoid possible altercations. However, there had been attacks on those involved in the riots and this was now the primary cause of fights. Restraint had risen slightly, but it was no longer mainly to prevent group fights (as it had been at the time of the inspection), but to separate individuals.

1.12 Young people on different units had formed themselves into gangs and there had been fights between units. This included those who had not been involved in gangs in the community before and who had become part of the unit gang to protect themselves. This was a change to the situation identified during the inspection, when the task had been to keep known gangs (and particularly those from different postcodes) apart.

outraged at what seems to be a gross injustice. At the later trial, exactly the same prosecution evidence that had been used to convict the four of murder had been discredited by a competent expert so that a jury could not find the defendants guilty. Surely they would be entitled to have this same evidence put before a new jury in a retrial of their case?

They had not had the chance at their own trial to use evidence that the prosecution expert had not followed established scientific procedures and as a result deprived them of the chance to prove that the gun shown to the jury could not have been the murder weapon.

Further, the jury that tried them had not had the chance to hear evidence showing the gun was unlikely to have been the murder weapon, nor did they have the guidance of a competent expert who could explain clearly why even the evidence produced by the prosecution showed that the gun was not the murder weapon.

For example: when a shotgun is fired, plastic wadding is discharged along with metal shot. Usually marks (striations) are made on the wadding which are characteristic of the particular gun that fires them. The wadding found on the victim showed no striations. But the wadding from a whole series of test firings by the prosecution expert showed consistent striations. This gun always left these particular marks. So it is highly unlikely that the wadding found on the victim was discharged by the gun exhibited at the murder trial.

Lord Justice Sir Richard John Pearson Aikens told us that the Court had decided not to admit this evidence on grounds of “expediency and justice”. “Expediency” is clear enough: their lordships do not want their valuable time taken up with appeals based on expert evidence. But “justice”? We are unable to see where anything we could recognise as justice comes into their considerations.

And if the four lads from Burngreave jailed with minimum terms of 20 – 35 years conclude that justice has been denied them and maybe put forever beyond their reach, we could not contradict them.

ECtHR and Hearsay Evidence, Tahery wins, Al-Khawaja loses!

Article 6 § 3(d) enshrines the principle that, before an accused can be convicted, all evidence against him must normally be produced in his presence at a public hearing with a view to adversarial argument. Exceptions to this principle are possible but must not infringe the rights of the defence, which, as a rule, require that the accused should be given an adequate and proper opportunity to challenge and question a witness against him, either when that witness makes his statement or at a later stage of proceedings.

European Court finds that use of hearsay evidence does not automatically prevent a fair trial. The cases concerned the applicants' complaint that their convictions had been based on statements from witnesses who could not be cross examined in court and that they had therefore been denied a fair trial.

The Court agreed with the domestic courts and found that a conviction based solely or decisively on the statement of an absent witness would not automatically result in a breach of Article 6 § 1. However, counterbalancing factors had to be in place, including strong procedural safeguards, to compensate for the difficulties caused to the defence.

Grand Chamber judgment in the case Al-Khawaja and Tahery v. the United Kingdom (application nos. 26766/05 and 22228/06), which is final', the European Court of Human Rights held that there had been:

In respect of Mr Al-Khawaja No violation of Article 6 § 1 read in conjunction with Article 6

§ 3 (d) (right to obtain attendance and examination of witnesses) of the European Convention on Human Rights, [Mr. Al-Khawaja basically lost as there were there were other witnesses.]

In respect of Mr Tahery A violation of Article 6 § 1 read in conjunction with Article 6 § 3 (d) of the Convention. [Please be clear though ECtHR has found Mr. Tahery's trial was unfair the conviction will not be quashed]

Ali Tahery is an Iranian national who was born in Tehran in 1975 and lives in London. On 19 May 2004 during a gang fight he allegedly stabbed another Iranian, S., three times in the back and was subsequently charged with wounding with intent and attempting to pervert the course of justice by telling the police that he had seen two black men carry out the stabbing. When witnesses were questioned at the scene, no-one claimed to have seen the applicant stab S. Two days later however one of the witnesses, T., made a statement to the police that he had seen Mr Tahery stab S.

Mr Tahery was tried before Blackfriars Crown Court in April 2005. During the trial, the prosecution applied for leave to read T's statement on the ground that he was too frightened to appear in court. The trial judge, who heard evidence from both T and a police officer, found that T was afraid of giving evidence although his fear was not caused by Mr Tahery. The judge also found that special measures, such as testifying behind a screen, would not allay his fears and allowed his written statement to be admitted as evidence.

T's witness statement was then read to the jury in his absence. Mr Tahery also gave evidence. The judge, in his summing up, warned the jury about the danger of relying on T's evidence, as it had not been tested under cross-examination. On 29 April 2005, the applicant was convicted by a majority verdict, principally of wounding with intent to cause grievous bodily harm, and later sentenced to 10 years and three months imprisonment.

Mr Tahery appealed, arguing that his right to a fair trial had been infringed because he was not able to have T cross-examined. The Court of Appeal acknowledged that the prospect of a conviction would have receded - and that of an acquittal advanced - had T's evidence not been admitted. It found nevertheless that any unfairness had been prevented by the cross-examination of other prosecution witnesses, the evidence from Mr Tahery himself and the possibility he had of calling bystanders. Furthermore, the trial judge had given the jury explicit directions on how to treat the statement in question. Further leave to appeal was refused.

Decision of the Court

The Court held that Article 6 mainly requires it to assess the overall fairness of criminal proceedings. The right to examine a witness contained in Article 6 § 3(d) is based on the principle that, before an accused can be convicted, all the evidence must normally be produced in his/her presence at a public hearing so that it can be challenged. Two requirements follow from that principle. First, there has to be a good reason for non¬attendance of a witness. Second, a conviction based solely or decisively on the statement of an absent witness is generally considered to be incompatible with the requirements of fairness under Article 6 ("the sole or decisive rule").

For the second requirement the Court took the same same view as the British courts", and found that the sole or decisive rule should not be applied in an inflexible way, ignoring the specificities of the particular legal system concerned. To do so would transform the rule into a blunt and indiscriminate instrument that ran counter to the Court's traditional approach to the overall fairness of proceedings, namely to weigh in the balance the competing interests of the defence, the victim, and witnesses, and the public interest in the effective administration of justice.

Therefore, the Court found that if a conviction is based solely or decisively on the statement

Afterwards McKie said she was "shocked and pleasantly surprised by the apology and the fact it took place publicly". She added: "The system has kidded itself on in Scotland for years that it's been effective, but it hasn't and there's been a culture of arrogance and invincibility and I hope that finishes."

Professor Allan Jamieson of the Forensic Institute in Scotland said: "For the proper functioning of an adversarial system of justice, it is essential that the defence have the opportunity to prepare for trial. Scotland is the only jurisdiction in the UK where all forensic science laboratories are owned and operated by the police. It also has the most restrictive practice in the UK regarding access to scientific results and files."

Young rioters remanded to prison during the riots were put in 'Harms Way'

This is part one of two reports on Feltham, this one specifically deals with young people remanded/sentenced in the summer riots. After reading the report it is clear to MOJUK that the knee-jerk reaction of the government/police put these young people, especially those who had never ben in prisons before, in Harms Way'.

What is clear from the report

- Lack of information about new arrivals @ HMP Feltham, made it difficult to carry out initial assessments to keep them safe
- Young people who had never been to prison were introduced to prison gangs and a violent prison culture, which many had not previously experienced
- Organizational mayhem, neither the Youth Justice Board (Y JB) and the Young People's Team in the National Offender Management Service (NOMS), had the slightest idea what to do and completely hapless when asked by prison staff for advice
- Youth Offending Teams were unable to respond and get into the prison quickly to conduct risk assessments and bail applications (one of the main tasks of Youth Offending Teams is to prevent incarceration)
- Lack of proper induction led to young people, arriving on residential units without sufficient knowledge of prison rules and routines
- Young people who had not previously experienced violence were witnessing it first hand in custody
- Some were subjected to attacks from sentenced youth because of the sentenced youths perception of the riots
- There was a 200% increase in number of youths put on Self-harm watch (again due to lack of proper induction)
- Many young people were unable to tell their families that they were moving to other prisons
- Many of the resident youth who were working successfully to resettlement, were moved out to other prisons, setting back all the good work they had achieved
- some youths had been moved unacceptable distances away from their home towns

Complete extract from: Update to the report of the unannounced full follow-up inspection in July 2011 of HMYOI Feltham (young people under 18) by HMCIP.

Background: 1.1 HM Inspectorate of Prisons carried out an unannounced full follow-up inspection of HMYOI Feltham in July 2011. Following the disturbances in English cities at the end of August 2011, the Inspectorate visited the prison again on 12 September to establish whether there had been an increase in admissions and whether this had had any significant impact on the findings from the original report. The visit focused on a small number of areas likely to be most affected by any change to the population.

Fingerprint evidence 'based on opinion rather than fact'

Public inquiry into case of a former police officer accused of leaving her print at crime scene concludes she was innocent Eamonn O'Neill, guardian.co.uk, Wednesday 14 December 2011

A public inquiry into a fingerprint scandal in Scotland centring on a former police officer accused of leaving her print at a crime scene concluded that she was the innocent victim of "human error". The inquiry also issued a set of key recommendations including fingerprint experts acknowledging their findings were opinion rather than fact and that new procedures should be established for complex cases. The inquiry's findings could have implications for cases elsewhere in the UK and internationally where fingerprint evidence has been central. Following the publication of the findings Tom Nelson, the director of the forensic services at the Scottish police services authority (SPSA) issued a personal apology in public over the handling of the matter to Iain McKie, father of the former policewoman at the centre of the scandal.

The case of Shirley McKie has haunted the Scottish criminal system for more than a decade. She was a police constable in January 1997 when she was accused of leaving a fingerprint on a door frame at the Ayrshire murder scene of victim Marion Ross, a claim she consistently denied. This led to her arrest the following March and a charge of perjury on the basis of evidence she had given in the case against the accused murderer David Asbury. In May 1999 she was unanimously cleared of all charges at the high court in Glasgow.

An earlier inquiry in 2000 by HM chief inspector of constabulary supported McKie and went on to recommend reorganising procedures at the then Scottish criminal records office (SCRO). The justice minister at the time, Jim Wallace issued an apology to her and confirmed the print was not hers. Asbury, the builder convicted of the Marion Ross murder saw his conviction overturned by the appeal court in August 2002. In 2006, following a legal battle which saw McKie launch a damages case against the Scottish executive, she received a settlement of £750,000.

Among the inquiry's findings on Wednesday was the conclusion that there was "no impropriety on the part of the SCRO fingerprint examiners" who had misidentified the fingerprint alleged to have belonged to McKie and that these "were opinions genuinely held by them". It added that there was "no conspiracy against McKie in Strathclyde police". The report also said the misidentification of that print and another known as "Q12" which allegedly belonged to the victim Marion Ross, did "expose weaknesses in the methodology of fingerprint comparison and in particular where it involves complex marks".

The report also contained 86 recommendations, including a key proposal that from now on "fingerprint evidence should be recognised as opinion evidence, not fact", and thus should be treated by courts "on its merits". Other recommendations suggested that print evidence cannot be treated with "100% certainty or on any other basis suggesting that fingerprint evidence is infallible". The report recommended new training for experts to emphasise their findings were based on "personal opinion". It recommended that any features in a print should be "demonstrable to a lay person with normal eyesight" and that explanations "for any differences between a mark and a print require to be cogent if a finding of identification is to be made".

The report concluded that the body which now deals with fingerprint evidence in Scotland, the SPSA should develop new procedures to ensure complex marks such as those featured in the McKie case, are "treated differently" and should include three qualified examiners who make detailed notes from start to finish to explain their independent conclusions.

Experts were also encouraged to not only work on "learning and practising the methodology" of their work but also to engage "with members of the academic community working in the field".

of an absent witness, counterbalancing factors must be in place, including strong procedural safeguards. However, the conviction would not automatically result in a breach of Article 6 § 1.

The Court considered three issues: first, whether it had been necessary to admit the witness statements of T; second, whether the untested evidence had been the sole or decisive basis for the applicant's conviction; and third, whether there had been sufficient counterbalancing factors including strong procedural safeguards to ensure that the trial had been fair.

Tahery: T had been the only person who claimed to have seen the stabbing and his uncorroborated eyewitness statement had been, if not the sole, at least the decisive evidence against Mr Tahery. Without it, the chances of a conviction had been slim.

The Court found that neither the fact that Mr Tahery could challenge T's statement himself nor the trial judge's warning to the jury in his summing up sufficiently counterbalanced the difficulties caused to the defence by the admission of the untested evidence. Mr Tahery could not have T, the only witness willing to say what he had seen, cross-examined about the details of his statement or his motives for making it. Although the judge's warning was clearly and forcibly expressed, it was not sufficient to counterbalance the unfairness caused by allowing the untested statement of the only prosecution witness with the only direct evidence against Mr Tahery be read out in court.

The Court considers that appropriate enquiries were made to determine whether there were objective grounds for T's fear. The trial judge heard evidence from both T and a police officer as to that fear. The trial judge was also satisfied that special measures, such as testifying behind a screen, would not allay T's fears. Even though T's identity as the maker of the incriminating statement was publicly disclosed, the conclusion of the trial judge that T had a genuine fear of giving oral evidence and was not prepared to do so even if special measures were introduced in the trial proceedings, provides a sufficient justification for admitting T's statement.

The Court notes that when those present at the scene of the stabbing were originally interviewed, no-one claimed to have seen the applicant stab S, and S himself had not seen who had stabbed him, although initially he presumed it was the second applicant. T had made his statement implicating the applicant two days after the event. He was the only witness who had claimed to see the stabbing. His uncorroborated eyewitness statement was, if not the sole, at least the decisive evidence against the applicant for that reason. It was obviously evidence of great weight and without it the chances of a conviction would have significantly receded. Even though the testimony may have been coherent and convincing on its face it cannot be said to belong to the category of evidence that can be described as "demonstrably reliable" such as a dying declaration or other examples given by the Court of Appeal and Supreme Court in their Horncastle and others judgments (see paragraphs 53 and 60 above).

161. Such untested evidence weighs heavily in the balance and requires sufficient counterbalancing factors to compensate for the consequential difficulties caused to the defence by its admission. Reliance is placed by the Government on two main counterbalancing factors: the fact that the trial judge concluded that no unfairness would be caused by the admission of T's statement since the applicant was in a position to challenge or rebut the statement by giving evidence himself or calling other witnesses who were present, one of whom was his uncle; and the warning given by the trial judge to the jury that it was necessary to approach the evidence given by the absent witness with care.

However, the Court considers that neither of these factors, whether taken alone or in combination, could be a sufficient counterbalance to the handicap under which the defence laboured. Even if he gave evidence denying the charge, the applicant was, of course, unable to test the truth-

fulness and reliability of T's evidence by means of cross-examination. The fact is that T was the sole witness who was apparently willing or able to say what he had seen. The defence was not able to call any other witness to contradict the testimony provided in the hearsay statement.

The other evidence was that given by the victim S who did not know who had stabbed him, although initially he presumed it was the applicant. His evidence was circumstantial in nature and largely uncontested by the applicant. He gave evidence of the fight and the applicant's actions after the stabbing (see paragraph 32 above). While this evidence corroborated some of the details of T's testimony, it could only provide at best indirect support for the claim by T that it was the applicant who had stabbed S.

It is true that the direction in the judge's summing up to the jury was both full and carefully phrased, drawing attention to the dangers of relying on untested evidence. However the Court does not consider that such a warning, however clearly or forcibly expressed, could be a sufficient counterbalance where an untested statement of the only prosecution eyewitness was the only direct evidence against the applicant.

The Court therefore considers that the decisive nature of T's statement in the absence of any strong corroborative evidence in the case meant the jury in this case were unable to conduct a fair and proper assessment of the reliability of T's evidence.

Examining the fairness of the proceedings as a whole, the Court concludes that there were not sufficient counterbalancing factors to compensate for the difficulties to the defence which resulted from the admission of T's statement. It therefore finds that there has been a violation of Article 6 § 1 read in conjunction with Article 6 § 3 (d) of the Convention in respect of Mr Tahery.

The Court therefore concluded that there had not been sufficient counterbalancing factors to compensate for the difficulties caused to the defence by the admission of hearsay evidence and held unanimously that there had been a violation of Article 6 § 1 in conjunction with Article 6 § 3 (d).

Article 41 (just satisfaction):The Court held that the United Kingdom was to pay Mr Tahery 6,000 euros (EUR) in respect of non-pecuniary damage, and EUR 12,000 for costs and expenses.

Police Officer's Presence on Jury Made Trial Unfair

Hanif and Khan v. the United Kingdom

In today's (20th Decembver 2011) European Court of Human Rights Chamber judgment in the case Hanif and Khan v. the United Kingdom (application nos. 52999/08 and 61779/08), which is not final, the Court unanimously decided that there had been a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights in respect of both applicants.

The case concerned the applicants' complaint that the presence of a police officer on the jury, which convicted them of drugs offences, violated their right to a fair hearing.

Principal facts: The applicants, Ilyas Hanif and Bakish Allah Khan, are British nationals who were born in 1967 and 1978 respectively. At the time of lodging his application, Mr Hanif was serving an eight-year prison sentence; Mr Khan is currently serving a 15-year sentence. They were both convicted in January 2007 of conspiracy to supply heroin.

During the trial, in which they were co-defendants, Mr Hanif's defence was that a third man had left the drugs in his car. The court heard evidence from police officers, who said that they had not seen anyone else in the car. One of the jurors, AT, indicated to the judge that he was a serving police officer and that he knew one of the police officers giving evidence, MB. AT stated that he had known MB for about ten years and that on three occasions they had worked on the same incident,

although not in the same team. They had never worked at the same station and did not know each other socially. The defence made an application to discharge AT but the judge rejected the application. AT subsequently became the jury foreman.

The applicants appealed their conviction arguing that the jury which convicted them was not impartial, because of the presence of the police officer. In March 2008, the Court of Appeal upheld the applicants' conviction. It referred to a recent change introduced by the Criminal Justice Act 2003 which had permitted persons in certain occupations which were previously ineligible for jury duty, including police officers, to sit on juries.

It therefore considered that police officers could not be considered solely by reason of their occupation to be biased in favour of the prosecution. As the police officer sitting as juror in the applicants' case had not had any connection with the prosecution of the case, no violation of Article 6 arose.

The applicants were refused leave to appeal to the House of Lords in June 2008.

Decision of the Court of Human Ritghts

The Court referred to its consistent case-law to the effect that it is of fundamental importance in a democratic society that the courts inspire confidence in the public and the accused and emphasised the need to ensure that juries are free from bias and the appearance of bias.

It noted that the the Criminal Justice Act 2003, which for the first time allowed police officers to serve in juries in England and Wales, was also a departure from the rule followed in a number of other jurisdictions which have trial by jury. Of the jurisdictions surveyed by the Court.? only two permitted police officers to serve on juries> and in both, it was possible to challenge the inclusion of jurors without providing any reasons for the challenge. Recent public consultations in a number of jurisdictions+ had shown support for the continued exclusion of police officers from jury service. The Court therefore considered that the effect of the amendment in the circumstances of the case required particularly careful scrutiny.

Mr Hanif's defence had depended to a significant extent upon his challenge to the evidence given by the police officers, including MB. There was therefore a clear dispute between the defence and the prosecution regarding the credibility of the evidence of the police officers. The Court considered that where there was an important conflict regarding police evidence, and a police officer who was personally acquainted with the police officer giving the relevant evidence was a member of the jury, that juror might, favour the evidence of the police.

In the present case, although the juror and the witness were not from the same police station, AT had known MB for ten years and had worked with him on three occasions. The Court accordingly found that Mr Hanif had not been tried by an impartial tribunal, in violation of Article 6 § 1.

The applicants had been co-defendants in one set of criminal proceedings and had been convicted by the same jury. The Court therefore considered that, having found in its examination of Mr Hanif's complaint that the jury could not be considered to constitute an "impartial tribunal" for the purpose of Article 6 § 1 in light of AT's presence, it would be artificial to reach a different conclusion regarding the "tribunal" which had tried Mr Khan. Thus the Court considered that there had also been a violation of Article 6 § 1 in respect of Mr Khan.

Under Article 41 (just satisfaction) of the Convention, the Court decided that the finding of a violation of Article 6 constituted sufficient just satisfaction and rejected the applicants' claims in respect of non-pecuniary damage. However it held that the United Kingdom was to pay Mr Hanif 4,500 euros (EUR) and Mr Khan EUR 2,000 in respect of costs and expenses.