with the trial earlier. This did not happen and my legal team ignored me for 22 weeks despite many attempts to contact them, so it was back to Derby in Dec with the same Judge.

Although the IP and her son had both named the man who they believed carried out the attack neither of them were questioned about this in court, the comment was made “are you aware that you named someone during the 999 call” to which the reply was no I wasn’t, then the comment well you did, was made and my barrister never went any further.

I had legal representation but not really a defence, my team were poor. On leaving the court my mum and sister were approached by the IPs father and sister who expressed how sorry they were, said they hadn’t believed that I had done it and hugged them both.

When it came to sentencing I was more than a little surprised when my barrister told me that the judge wanted to give me “life”, they were expecting around 9 years, due to the fact that the IP was never close to death, in a coma or on life support. Had I received 9 years I’d only have 18 months left to serve.

I did have a conviction for common assault dating back to 1998 but no other violence, then in 2005 I admitted to criminal damage after I broke a side window on a car whist trying to reach my asthma inhaler and mobile. I was made to pay court cost and pay for the window, and received suspended sentence of 12 months, during this period there were no problems. Prior to this there were a couple of offences as a juvenile, theft but no violence.

My barrister attempted to dispute what the judge said and argued that the sentence was excessive but he refused to listen and claimed that the comparison case she was using was not relevant. She told me that she would appeal, and was quite wound up by the Judges decision, stating that he had calculated the sentence using the incorrect category. She said I was at a level 3 or possibly 2, I was sentenced at a level 1. So rather than 7-15 years custody for what they said was a planned attack, leaving little or no physical and psychological harm I received an 11 year minimum tariff, discretionary life sentence.

About one month later I received a letter saying she would not be appealing and it was purely at the Judges discretion that I had received this sentence, I am now surrounded by lifers, some of whom have killed and received lesser sentences than mine.

I am appealing but the legal team I am now using only deal with people serving over 10 years in custody and have no interest in appealing my sentence only my conviction and don’t appear to be in any kind of hurry. I have written to the MOJ about my sentence but have received no reply as yet.

Thank you for taking the time to read this and I hope that I have given you all the relevant information. If you have any queries or I have not fully explained anything please feel free to contact me and I will provide any further details requested.

David Kent, A1843AJ, HMP Gartree, Gallow Field Road, Market Harborough, LE16

**Hostages:** Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Sam Hallam, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Romero Coleman, 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, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan, Ihsan Ulhaque, Richard Roy Allan, Sam Cole, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Ray Gilbert, Ishtiaq Ahmed.

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

# MOJUK: Newsletter ‘Inside Out’ No 355 (22/01/2012)

**European court upholds, 'Death by Incarceration' of Jeremy Bamber**

"Both the trial judge and the Lord Chief Justice set my minimum tariff as 25 years. Quite why the Home Secretary felt that I should die in jail when the judges felt otherwise is a mystery. To then be told by the European Court that it was reasonable and fair for the Home Secretary to re-sentence me to die in jail is quite extraordinary. This ruling does not really surprise me; it is no different to the injustice of my conviction. The evidence upon which the Crown have built their case is no longer credible, yet my imprisonment must continue until I’m dead, as evidence of my innocence cannot be disclosed because the Criminal Cases Review Commission have refused to request it from Essex Police.

I will continue to campaign to prove my innocence and I am hoping that this will happen before my death sentence is carried out. If the State wishes to have a Death Penalty, then they should be honest and re-introduce hanging. Instead, this political decision that I must die in jail is the Death Penalty using old age or infirmity as the method. It is a method whereby I’m locked in a cell until I’m dead – no matter if it should take 70 or 80 years to happen – I shall be dead the next time I leave jail. This despite that the trial judge said 25 years was punishment enough for a crime I did not commit." Jeremy Bamber, HMP Full Sutton 17/01/12

In ECtHR Chamber judgment 9Handed down 17/01/12) in the case Vinter and Others v. the United Kingdom (application nos. 66069/09, 130/10 and 3896/10), which is not flnal", the European Court of Human Rights held, unanimously, that there had been:

No violation of Article 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights in respect of any of the three applicants.

The case concerned the applicants' complaint that their imprisonment for life amounted to inhuman and degrading treatment as they had no hope of release.

Principal facts:The applicants, Douglas Gary Vinter, Jeremy Neville Bamber and Peter Howard Moore, are British nationals who were born in 1969, 1961 and 1946 respectively. All three men are currently serving mandatory sentences of life imprisonment for murder.

Mr Vinter was convicted of stabbing his wife in February 2008. While still on parole for a first murder offence (he killed a work colleague), he followed his wife - from whom he was estranged - to a public house, forced her into his car and drove off. When the police telephoned her, Mr Vinter forced her to tell them that she was fine. He also later called the police to tell them that she was alive and well. However, some hours later he gave himself up and confessed that he had killed her. The post-mortem revealed that his wife had a broken nose, strangulation marks around her neck and four stab wounds.

Mr Bamber was convicted of shooting and killing his adoptive sister and her two young children in August 1985. It was alleged that he had committed the murders for financial gain and had tried to make it look as if his adoptive sister had carried out the crime, then killed herself.

Mr Moore was convicted of stabbing four men with a large combat knife between September and December 1995. The four victims were all homosexuals and Mr Moore allegedly killed them for his own sexual gratification.

When convicted the applicants were given whole life orders, meaning they cannot be released other than at the discretion of the Secretary of State on compassionate grounds (for example, if they are terminally ill or seriously incapacitated). The power of the Secretary of State to release a prisoner is provided for in section 30(1) of the Crime (Sentences) Act 1997. Under this Act it was practice for the mandatory life sentence to be passed by the trial judge, who - along with the Lord Chief of Justice - then gave recommendations to the Secretary of State to decide the minimum term of imprisonment (the "tariff" part of the sentence) which the prisoner would have to serve to satisfy the requirements of retribution and deterrence and be eligible for early release on licence. In general, the Secretary of State reviewed a whole life tariff after 25 years' imprisonment. With the entry into force of the Criminal Justice Act 2003, all prisoners whose tariffs were set by the Secretary of State are now able to apply to the High Court for review of that tariff.

Mr Vinter's whole life order was made by the trial judge under the current practice. His appeal against his conviction was dismissed in June 2009. The Court of Appeal found that there was no reason to depart from the normal principle under schedule 21 to the 2003 Act that, where a murder was committed by someone who was already a convicted murderer, a whole life order was appropriate for punishment and deterrence.

Mr Bamber and Mr Moore, convicted and sentenced prior to the entry into force of the 2003 Act, both applied to the High Court for review of their whole life tariffs.

In the case of Mr Bamber, the High Court concluded that, given the number of murders involved, the presence of premeditation, the submissions by the victims' next-of-kin as well as reports on the behaviour and progress he had made in prison, there was no reason to depart from the view held in 1988 by the Lord Chief of Justice and the Secretary of State that he should never be released.

In the case of Mr Moore, the High Court found that the case involved the murder of two or more people, sexual or sadistic conduct and a substantial degree of premeditation and that there were no mitigating circumstances.

The High Court therefore considered that whole life orders were justified in respect of both men. The applicants' appeals were dismissed in 2009 and, shortly after, their applications to certify whether their cases ought to be considered by the House of Lords were also refused.

Decision of the Court: The Court held that in each case the High Court had decided that an all-life tariff was required, relatively recently and following a fair and detailed consideration. All three applicants had committed particularly brutal and callous murders. To date, Mr Vinter had only served three years of imprisonment, Mr Bamber 26 years and Mr Moore 16 years. The Court did not consider that these sentences were grossly disproportionate or amounted to inhuman or degrading treatment.

There had therefore been no violation of Article 3 in the case of any of the applicants.

**New Kids on the Block - 'Centre for Criminal Appeals'**

The Centre for Criminal Appeals (CCA) is a new “access to justice” initiative, currently in its start-up phase. Once operational, CCA’s mission will be to:

- work to overturn unsafe convictions by providing investigation and legal advocacy on criminal appeal cases in England and Wales on a not-for-profit basis

- share lessons learned from casework with criminal justice policy makers, the legal profession and the public, with a view to systemic reform

A proposed not-for-profit solution to the shortage of legal representation on appeal



the named man. I only found out months after conviction about the officer being the head of the domestic violence unit.

The IPs son was never shown either of the items claimed to have been used in the attack. The police had bought a crow bar for paint comparison tests etc, but they couldn’t get a match this was what they claimed was used in the attack but no weapon has ever been found. The IPs son claimed to have seen a metal bar but never mentioned a curved edge or colour until overhearing police officers talking.

The officer first on scene was an inexperienced new constable he had never dealt with an incident like this one and was left on his own in charge until the next morning. He admitted in court that he had failed to secure the crime scene properly. The IPs 6 children and 2 large dogs were left in the address and numerous people that she or her son had contacted were all able to enter and leave the scene before any evidence was gathered as scene of crime did not arrive until the following morning. Someone inside the house had also started to clean the scene before the children got up the next morning and were able to see it, and some evidence had to be retrieved from the bin, one item being the glasses worn by the IP which was stated were found in the front room, even though the attack took place in the hall. No explanation was given for this. No senior officer visited the scene until the following day, suggesting they did not believe this to be an extremely serious attack. During trial the officer in charge admitted that serious errors had been made, it had been a “botched” investigation and vital evidence could have been destroyed with so many people entering and leaving the scene and things had been handled poorly.

Photographs taken by the forensic officers showed 2 coffee cups on the dining table, but no answers were offered when we asked about these being tested, there was also a large thick tread patterned print photographed on the wooden floor of the IPs living room, this print was in blood and again no answers were given when we enquired about forensic tests, or if they matched other footprints found at the scene. They did not come from any of the footwear taken from myself.

Evidence wasn’t handed over on time and dates laid out by the courts were ignored several times. Even though I was given bail for the 3 weeks between my release and re-arrest no applications for bail were made after being charged.

I have also never been given a copy of the Judges closing speech or sentencing comments the Judge clearly led the jury with his definition of “circumstantial evidence” and when explaining the different indictments made it perfectly clear that in his opinion the only choice for a guilty verdict was the one of attempted murder as there was clearly intent.

Although the incident happened close to the borders of Derbyshire and Staffordshire the case was to be dealt with by Nottinghamshire Crown Court, this is always the case with any serious violent offence, however, for reasons I do not know my case was transferred from Nottingham to Derby Crown court in order to follow the Judge. Other cases were dealt with in Nottingham for similar violent offences at the same remand prison.

I attempted to change my legal representation when I realized that things weren’t right, but my application was turned down by the Judge and I was stuck, my time in custody had also been extended. The trial was due to take place in early 09 but was adjourned in order to gather more evidence against the named man this was the phone records of both him and his girlfriend and statements from her 2 children proving where he was when the attack took place, only his mobile records turned up.

No dates were available nearby so one was arranged for early Dec 09 and it was agreed that another date would be sought at a different venue, either Nottingham or Stoke in order to deal

right sternomastoid muscle. There are superimposed red healing abrasions over the area of bruising up to 5mm in maximum length. 16. Fractures of the bony protuberances of the 4th, 5th, 6th and 7th cervical vertebrae, (bones on the side of the neck). No evidence was ever produced to confirm injuries in item 16.

There were other injuries to the hands which ranged from scratches to a crushed finger (unstable fracture). The Dr claimed in his summary that the IP had been subjected to a sustained potentially life threatening and debilitating assault to life threatening areas, namely the head, upper face and neck. My legal team asked for a 2nd opinion from another forensic pathologist who did not agree with some of the other Drs findings, he claims that the injuries in item 16 are difficult to interpret and the 1st Dr does not give his opinion as to the causation, he states "I have seen no documentary evidence of the fractures in the "bony protuberance" of the 4th to 7th cervical vertebrae and does not know whether this refers to the cervical spines or the transverse processes. He also states that, it is not possible from the injuries to say whether this was a murderous attack or not, but one of the points against this is the fact that although the IP sustained several blows to the head, none of these were of sufficient force to fracture the skull. Within a couple of days after being released from hospital, around 06/12/08, the neck brace and the plaster cast allegedly present during medical examinations had vanished and the IP was carrying out a normal daily routine including taking children to school and shopping and on Christmas Eve was seen out at a nightclub.

My legal team were very poor and failed to provide me with all of the relevant paperwork or answer all of my questions.

We know that the IP sent emails and texts before the ambulance arrived and the police seized her laptop and mobile but no results were ever passed onto us so we do not know what these show, nor do we know the result of the scrapings from underneath the IPs fingernails but we do know they were taken. We also know that police pocket books which contained details of the attacker were seen as being of no use and were placed in the unused material section.

Forensic evidence at the scene did not match what the witness told police, the son claimed that he saw what happened and later said that the light in the hallway was not switched on which meant it was dark, too dark to see anything, he also states that the door was open and the attacker was standing in the doorway. There was no blood on the outside of the door only on the inside and blood splatter pattern on the door frame matched blood on the door, meaning that the door was more likely shut and that the IP was standing between the door and the attacker, however the blood splatter expert my legal team were going to contact was never contacted and no experts have viewed theses patterns, another forensic photo shows a blood smear on the door and a corresponding stain on the carpet below, again seeming to mean that the door was closed during the attack.

We know that the named man had said he would go and see the IP later that night and she claimed in a statement that she thought he had arrived and opened the door to let him in, she was then attacked by someone. She sent emails and texts and also made phone calls before the ambulance arrived but did not attempt to call her boyfriend and despite arranging to visit that night he never turned up following the attack, nor did he attempt to contact her the following couple of days, even though they had exchanged numerous texts and calls on the night of the attack.

The officer in charge was involved in the domestic violence unit so clearly the police believed it was a domestic incident between partners.

I had been friendly with the IP and we had been out a few times, but this lasted a couple of weeks but was obviously not going anywhere. She approached me on several occasions but I didn't wish to get involved and then found out that at the same time she had started seeing



Whether you are a legal professional, a prisoner, a prisoner's family member, a policy maker, a grant-maker or other participant in the criminal justice system, we would very much like to hear your thoughts on what we are proposing. There are sure to be aspects of the situation that we have not sufficiently considered, and we hope you can help us rectify this by giving us your views.

Who is working on this? CCA is being developed by its three Trustees, Vera Baird, Glyn Maddocks and Emily Bolton. The Trustees in turn have the assistance of an Advisory Group, consisting of practitioners, prisoners and other stakeholders. The Board will direct the organization during its start-up phase, until the Director and caseworker positions have been funded and filled. The Board itself will be expanded and diversified once the start-up phase is complete. If you are interested in serving on the Advisory Group or Board in the future, please use the contact form, or write to CCA's postal address.

Vera Baird is a Practising Queen's Counsel specialising in criminal work. She was MP for Redcar between 2001 and 2010 and became a Minister in the Labour Government in 2006. In 2007, she became Solicitor General. In that post she conducted a number of criminal appeals and unduly lenient sentence cases and advised extensively on a wide range of legal issues. Her areas of legal work included all aspects of criminal law, equality and discrimination, public law, public international law, EU law, devolution issues, charity law and a range of others.

Glyn Maddocks is a UK solicitor who has worked on wrongful conviction cases for over 20 years. Through his work on appeal cases Glyn has developed a deep understanding and knowledge of the processes and procedures of the Criminal Cases Review Commission and the Court of Appeal and in obtaining compensation for victims of miscarriage of justice from the Ministry of Justice. In 2005, in recognition of his work over a twelve-year period representing Paul Blackburn, who had his conviction quashed after serving nearly 25 years, Glyn was named Welsh Lawyer of the Year.

Emily Bolton was awarded an Equal Justice Fellowship and later a Soros Advocacy Fellowship to establish Innocence Project New Orleans (IPNO), a non-profit law office providing legal representation to the wrongfully convicted in the United States. IPNO grew from a staff of one to thirteen during her tenure, and has so far exonerated or freed 20 innocent prisoners. Returning to the UK in 2004, she helped develop the UK legal action charity Reprieve. In 2007, working as a UK solicitor, Emily brought a wrongful conviction case to the Court of Appeal via the Criminal Cases Review Commission, as a test of the proposed CCA methodology. The Court quashed the conviction in 2010. Emily is acting as Project Manager during the start-up phase of CCA.

What is the problem we are trying to solve?

A person who has been subjected to an unsafe conviction typically needs a lawyer to achieve access to justice. That lawyer will need to re-investigate the case, seek new evidence, find out what went wrong at the trial, and present the case the Court of Appeal and /or to the Criminal Cases Review Commission (CCRC).

Only rarely can a prisoner afford to pay for such legal representation. The public funding situation for appeals work means that private law firms do very little of it and then not as well as they would like. Prisoners approach law firms all over the country seeking help, but only rarely can they find it.

This situation is well-known to legal practitioners but has recently been substantiated in a quantitative study. In 2009, researchers at the University of Warwick prepared a report to the Legal Services Commission examining the extent and impact of legal representation on applications to the CCRC and the ensuing outcomes in the Court of Appeal.

The study found that only a third of applicants to the CCRC are legally represented, but that applications involving lawyers were almost twice as likely to contain successful submissions. It also acknowledged that an unrepresented applicant is significantly disadvantaged when challenging a CCRC decision not to refer a case to the Court of Appeal. The study concluded that "there can be little doubt that such high quality legal representation merits the public funding which is provided."

The Centre for Criminal Appeals (CCA) aims to tackle the shortage of quality representation in this area via a non-profit, specialized law practice. The proposed solution

The creation of a non-profit, specialized law practice, the Centre for Criminal Appeals (CCA), is a cost effective solution to the drastic shortage of quality legal representation for applications to the CCRC and the Court of Appeal.

Objectives - Providing high quality legal representation in cases of unsafe conviction in England and Wales - Developing precedent and providing input for policy development and legislation, where successful appeals suggest avenues for improving the criminal justice system - Sharing lessons learned with the legal profession

Strategy - Deployment of a highly refined and rigorous case review management system to guide case investigation and advocacy - Building capacity and ensuring sustainability via the development of both public and private revenue streams - Working in partnership with other stakeholders in the system, including non governmental organizations, legal professionals and the relevant public institutions.

A focus on seeking new evidence rather than just sifting the old

Systematic and thoroughly documented case screening and review system

Development of diverse revenue streams Working in partnership with stakeholders

Structure CCA is a charitable company limited by guarantee. Once operational, CCA will consist of a team of investigators and lawyers dedicated solely to criminal appeals. The CCA team will develop highly specialized expertise in the area of case screening and appeals investigation and litigation.

- CCA will work with partners around the country, including its prisoner beneficiaries, their families, and the other organizations working in this area.

- CCA has received start-up funding from Unltd*, and is in the process of making funding applications to a range of UK grant-makers. CCA will use private funding to underwrite a pilot period of casework, which, if successful, will then be used as evidence for a bid for public funding

CCA will announce when it will start to accept, clients, in the meantime CCA want to hear from prisoners their views as to what CCA should be considering as best practice.

Contact Centre for Criminal Appeals, PO Box 7574 Bridport, Dorset DT6 9DT

**High court issues damning judgment on 'widespread unlawful use of restraint' in child prisons run by G4S and Serco**

The children and young persons sent to [secure training centres] were sent there because they had acted unlawfully and to learn to obey the law, yet many of them were subject to unlawful actions during their detention. I need, I think, say no more – Judge Mr Justice Foskett

Children's Rights Alliance, 11/01/12

In a judgment handed down Wednesday 11th January, a High Court Judge says it is highly likely that large numbers of children were unlawfully restrained in secure training centres (STCs) for at least a decade (1998-2008). Furthermore, none of the statutory agencies charged with monitoring children's care took action to stop the unlawful treatment.



**EDM 2595: Community Sentences** Sponsor: Elfyn Llwyd, date tabled: 12/01/2012

That this House recognises the contribution community sentences make to reducing reoffending rates and keeping communities safer as a result; notes that community sentences cost on average a tenth of what it costs to send a person to prison for a year; further notes that community sentences offer a proportionate response to relatively minor offences in comparison to short-term prison sentences which often result in loss of employment, family breakdown and homelessness; further notes that community sentences can challenge and change people for the better compared to short-term prison sentences during which prisoners are left idle in their cells for most of the day; further notes that in 2009 57 per cent. of people who served a short-term prison sentence reoffended within one year of release compared to a significantly lower reoffending rate for community sentences; supports the Howard League for Penal Reform's Community sentences cut crime campaign; and believes that in order for reoffending ratesin England and Wales to fall there needs to begreater use of community sentencing rather than ineffective and expensive short-term prison sentences.

**Justice for David Kent** Part 2: Everything in this case was circumstantial and the evidence was so weak that my legal team applied for a dismissal hearing, but this was dropped a couple of days before without explanation.

A speech expert was used to prove that the "did I hurt his shoulder" comment that the police believe the IP said during the 99 call, was not what was said at all, the CPS asked my legal team if the prosecution should get a 2nd opinion, to which we replied yes, they didn't and then attempted to prove the expert wrong in court, but they had no expert opinion themselves and were unable to do this.

The injuries received by the IP were not the injuries that the police claimed had been inflicted on my 1st arrest. They also visited my mother and claimed that the IP was in intensive care with life threatening injuries and they were not able to say if she was going to survive. Although the IP had been released from hospital before my re-arrest the charge was elevated from a Section 18 to the attempted murder I was charged with, a 2nd indictment of the section 18 and a 3rd of a Section 20.

The actual injuries claimed by the Dr were as follow: 1. A penetrating injury most likely a laceration 1 x 0.5cm, closed using surgical clips on the right side of the head. 2. A Y shaped linear penetrating injury closed with surgical clips over the crown of the head with the stem of the Y pointing to the rear of the head, measuring 8cm X 5cm long. 3. An area of scab formation 3 x 2 cm over the back/side of the head with adherent matted hair possibly one or more healing lacerations. 4. A midline occipital linear healing scabbing injury 1.5cm long across the rear (side to side) of the head. 5. A linear healing penetrating injury 1cm long over the left pametal region running downwards towards the left ear, positioned 3 cm in front of the 6cm above the top of the left ear. Items 3, 4 & 5 did not need treatment/stitching 6. A sutured linear slightly curved injury most likely a laceration 4cm long over the right lower frontal region and involving the outer half of the right eyebrow. 7. A sutured penetrating linear injury either an incased wound or laceration over the right lower eyelid 2.5cm in length possibly caused by a piece of glass from the IPs glasses. 8. A black eye 9. A linear red bruise 1.5cm long running underneath the black eye. 10. Yellow discolouration of the sclera (white) of the right eye most likely due to the healing of the black eye. 11.Extensive damage to the right eye including perforation and disruption of the right eyeball and herniation of the iris requiring ocular surgery.12. A few mm long laceration involving the conjunction (inner lining around the eye). 13. Fracturing of the right eye socket and displacement of the muscle into the bony space of the cheekbone, requiring surgery. 14. Bruising to the left lower eyelid. Items 12 + 13 were not seen on the photographs taken by forensic officers and the IP did not lose the sight in their eye as the police claimed on 21/11/08. 15. An area of yellow ill-defined bruising down the entire right side of the neck down to the posterior triangle including the

rock legends The Clash, who sang the hit I Fought The Law And The Law Won - damages totalling £17,000 - including £5,000 in aggravated damage. He also awarded Mr Lorenzo 100 per cent of his costs estimated in the region of £50,000 against the Chief Constable of the West Midlands. Mr Jack also pointed out that Mr Lorenzo's 'extreme distress' was 'excacerbated by the racial abuse received on arrest'.

After the award his solicitor Nick Turner said: 'I've dealt with some cases of assault by police in my time, but this is tinged with terrible racism and leaves an awful taste in the mouth. 'An innocent father was dealt with in a deplorable way and that was partly to do with the colour of his skin.'The case against the police was black and white and the jury rightly found in Mr Lorenzo's favour.'

**Othman (Abu Qatada) v. the United Kingdom**

Diplomatic assurances will protect Abu Qatada from torture but he cannot be deported to Jordan while there remains a real risk that evidence obtained by torture will be used against him. ECtHR Chamber judgment in the case Othman (Abu Qatada) v. the United Kingdom (application no. 8139/09), which is not final, concerned whether Omar Othman (also known as Abu Qatada) would be at real risk of ill-treatment or a grossly unfair trial if deported to Jordan, where he is wanted on terrorism charges.

The ECtHR held, unanimously, that, if Mr Othman were deported to Jordan: There would be no violation of Article 3 (prohibition of torture or inhuman or degrading treatment) of the ECtHR; There would be no violation of Article 5 (right to liberty and security) of the Convention; *but that There would be a violation of Article 6 (right to a fair trial), given the real risk of the admission of evidence obtained by torture at his retrial.* The Court also held, unanimously, that there had been no violation of Article 13 (right to an effective remedy). This is the first time that the Court has found that an expulsion would be in violation of Article 6, which reflects the international consensus that the use of evidence obtained through torture makes a fair trial impossible.

**Extraditing two men, risking life imprisonment for murder, to the United States would not breach their human rights**

In ECtHR Chamber judgment in the case Harkins and Edwards v. United Kingdom the ECtHR held, unanimously, that there had been: No violation of Article 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights. The case concerned the complaint of two men that, if the United Kingdom were to extradite them to the United States, they risked the death penalty or sentences of life imprisonment without parole.

Principal fact:The applicants, Phillip Harkins and Joshua Daniel Edwards, are respectively a British and a United States (US) national, born in 1978 and 1987. They were indicted in the United States, in 2000 and in 2006 respectively, for murder, among other offences. Mr Harkins was accused of having killed a man during an armed robbery attempt together with an accomplice. Mr Edwards was accused of having intentionally shot two people, killing one of them and injuring the other, who had allegedly made fun of his small stature and feminine appearance. Both applicants were arrested in the United Kingdom (UK), in 2003 and 2007 respectively. They complained unsuccessfully before the British courts that, if extradited, they risked a sentence of life imprisonment without parole. The British Secretary of State ordered Mr Harkins' and Mr Edwards' extradition.

The US Government requested their extradition providing assurances that the death penalty would not be applied in their case and that the maximum sentence which they risked was life imprisonment.



The Youth Justice Board is particularly criticised, with Mr Justice Foskett noting the organisation's 'apparent active promotion' of unlawful restraint – due to its 'confused thinking' which was evident until 2007. It was not until the inquest held that year into the death of 14 year-old Adam Rickwood at Hassockfield STC that YJB officials acknowledged their understanding of the law had been wrong. It was this child's death, alongside the death following restraint of 15 year-old Gareth Myatt at Rainsbrook STC, also in 2004, which led to information coming into the 'semi-public domain' about unlawful restraint.

Mr Justice Foskett says the 'fullest explanation' has not yet emerged as to why the widespread abuse of children's rights went unchecked for so long and why there were apparently so few complaints from child victims of unlawful restraint. He says the Children's Rights Alliance for England (CRAE), which brought this legal action to try and force the Ministry of Justice to make contact with past victims, 'has served well the interests of those for whom it is concerned by shining a light into a corner that might otherwise have remained in the dark' and characterises the decade-long abuse of children in custody as 'to say the least, a sorry tale'.

Despite this overall scathing assessment, Mr Justice Foskett rejected arguments made by lawyers acting for CRAE that the Government is under a legal obligation to identify potential victims and notify them of their right to seek compensation. CRAE argued there are two groups of potential victims – those children who were restrained for "good order and discipline" in breach of the legal rules governing restraint; and those children who were subject to the "distraction techniques" other than in extremely grave situations.

These approved techniques, which have subsequently attracted strong criticism from the United Nations, the European Torture Committee and parliamentarians on the Joint Committee on Human Rights, involved staff inflicting a sharp blow to the child's nose or ribs or yanking back their thumb. Adam Rickwood was subject to the "nose distraction" hours before he killed himself leaving a note in his room asking what gave staff the right to hit a child in the nose. It took former Labour Ministers more than three years after Adam's death to suspend this barbaric method of controlling children.

The High Court Judge was not prepared to develop common law by building on the long-established rights of victims to access justice by requiring the state to proactively assist them (albeit in a relatively limited way). CRAE argued the unique facts in this case supported such a development: the extreme vulnerability of incarcerated children; the oppressive culture of unlawful restraint; and the omissions and commissions of the authorities leading to an unlawful regime going unchecked for at least a decade. Mr Justice Foskett himself observed that children subject to unlawful restraint 'would simply have accepted it as part and parcel of the routine' and noted a channel for complaints is important 'but if, in reality, it leads nowhere, then there is no effective access to what is at the end of the channel'. But he feared ordering the Ministry of Justice to take the action urged by CRAE could have a 'springboard' effect resulting in similar future claims on behalf of children in local authority care or hospitals or even on behalf of vulnerable adults.

The Judge concluded: 'If any such change of culture is to take place it would, as it seems to me, be something that should emerge in a more considered way than by way of a piecemeal development of the common law designed to meet what may seem to be a strong case on the merits'. Whilst not ordering Ministers to take action, Mr Justice Foskett recommends they, at least, consider 'whether something ought to be done' to remedy past wrongs:

Merely because the action of disseminating the relevant information is not required by the law does not mean that there is no obligation to consider whether some action is necessary if only as a matter of good and fair administration. The fact that those potentially affected

were vulnerable children and young persons would, in my judgment, at least dictate the need for the Defendant to consider whether something ought to be done.

The Judge suggests justice could be achieved through victims of unlawful restraint coming forward, noting: 'It probably requires just one former detainee, looking back at his or her experience in an STC and having conducted the necessary preliminary inquiries, to pursue a well-publicised claim and others will be alerted to the potential of pursuing matters'.

Carolyne Willow, CRAE's National co-ordinator, says: "We are, of course, deeply disappointed that the judge did not order the Government to inform potential victims of unlawful restraint of their right to seek compensation. But the plain truth is that this is the only civilised course of action now open to Ministers and the YJB in the face of such a devastating judgment. It would simply be scandalous for them to continue to deny the extent or gravity of rights violations and the failure of the state to protect children when they were at their most vulnerable – locked up and away from their families."

CRAE is considering whether to appeal to the Court of Appeal.

Mark Scott, Partner at Bhatt Murphy Solicitors and solicitor for CRAE, says: "It was only following the inquests into the deaths of Gareth Myatt and Adam Rickwood – two children who died in custody – that the shameful and unlawful practices in privately run STCs were exposed. In bringing this case CRAE has, in the words of the judge, shone "a light into a corner which might otherwise have remained in the dark" by highlighting the full extent of the illegality and the large numbers of children who were unlawfully restrained. It is distressing that vulnerable children in the custody of the state can be treated in this manner. I hope that this judgment will encourage children who were subject to unlawful restraints by STC staff to come forward and seek redress."

Anyone concerned about an unlawful restraint in an STC prior to August 2010 can contact CRAE at restraint@crae.org.uk or Bhatt Murphy at mail@bhattmurphy.co.uk

Extracts from judgment - 'A sorry tale'

Leaving aside any conclusion that may be drawn in due course about what the court could or should do about all this, it is, to say the least, a sorry tale. The children and young persons sent to STCs were sent there because they had acted unlawfully and to learn to obey the law, yet many of them were subject to unlawful actions during their detention. I need, I think, say no more. [Para 78]

Extent of unlawful restraint … there can be little doubt that from the outset the policy and the rules consequent upon that policy prevented physical restraint from being used to maintain GOAD[1], whether or not a distraction technique was applied in the restraint process.

Although it did not emerge publicly for some years, it seems clear that this policy and the rules reflecting it were not observed universally throughout the STC system. The first manifestation of evidence in written form about this, albeit evidence not put into the public domain until 2007, was the report in October 2004 of Mr David Waplington, the former Head of the Juvenile Panel of the Prison Service. Following the deaths of Adam Rickwood and Gareth Myatt … he produced a report to the YJB in which he reviewed behaviour management in STCs. [Paras 43 and 44]

I do not think that there is any true or realistic alternative to the conclusion (a) that probably up until July 2008 (and possibly, though unlikely, for another two years thereafter) there was widespread unlawful use of restraint within the STC system and many children and young persons were subjected to such restraint and (b) that very few, if any, of those who were subject to such unlawful restraint appreciated at the time that it was unlawful. [Para 91] … during a fairly prolonged period … restraint techniques were used in these STCs for unlawful purposes. [Para 6] … I do not think



**JENGbA calls for review of Joint Enterprise law**

The Stephen Lawrence murder trial convicted two men out of a wider group of suspects. Their prosecution was brought under the little-understood law of Joint Enterprise. In such cases, those peripherally associated can be found guilty while the actual perpetrators may go free. Joint Enterprise is a means by which slim evidence and "possible foresight" to a crime occurring can be used to convince a jury of more than one persons' guilt when they may have played a lesser or even no part in what occurred.

While this antiquated legal principle may be convenient, its use to convict all regardless of their actual involvement in a crime effectively turns the well-established cornerstone of British justice called *Blackstone's Ratio on its head so it is "better that ten innocent persons suffer than one guilty escape". JENGbA (Joint Enterprise Not Guilty by Association) knows of over 270 cases of prisoners convicted under Joint Enterprise who protest they are innocent of the index offence.

The Lawrence case in no way represents a success story for Joint Enterprise law. It shows the failures of Joint Enterprise, and this is because the Lawrence family and the public alike still do not know who actually murdered Stephen Lawrence over 18 years ago, or whether that person is still walking free. The Joint Enterprise doctrine encourages a "wall of silence" amongst those suspected of involvement or knowledge of a crime. This case has highlighted the use of the old law, and its flaws, showing that new guidance is urgently needed to avoid more innocent people languishing in prison while guilty people walk free.

Campaigners at JENGbA hope the current House of Commons Justice Select Committee Inquiry into Joint Enterprise will endorse the need for reform, and will acknowledge the past wrongs done in its name. "It is time for Joint Enterprise law to be seriously revised so that innocent people are no longer serving life sentences for other peoples crimes. Our prisons are already overcrowded, and we need to be imprisoning those who are a danger to the public, not bystanders to other people's crimes", added Gloria Morrison, campaign spokesman.

Contact JENGbA at jointenterpriseinfo@gmail.com or 07709 115 793)

* William Blackstone, English jurist, judge and Tory politician of the eighteenth century; Blackstone's Ratio, better that ten guilty persons escape than that one innocent suffer, was repeatedly cited by Ben Franklin and other Founding Fathers as an argument for the American principles of justice, such as "innocent until proven guilty".

**Clash roadie wins damages over racist beating by 19 Birmingahm policemen in 23-hour ordeal - "I fought the law and I won"** By Charles Walford, MailOline, 13/01/12

Don Lorenzo has been awarded damages for the physical and racial abuse he suffered at the hands of police. A former roadie for The Clash was called a 'f****** n***er' as he was viciously assaulted by a group of Birmingham policemen has won more than a year's wages in damages. Don Lorenzo was beaten after police were called to his house by his daughter. The judge said he made the award to Don Lorenzo, a Rastafarian, to show 'the courts and society's disapproval of the racial slurs'.

Mr Lorenzo , 58, suffered cuts and bruises to his entire body in a 23-hour ordeal that happened outside his home and even in a police station after he was arrested for a crime he didn't commit. The incident in 2007, in which up to 19 officers were involved, left him with carpel tunnel syndrome in his wrists which ended his career as an African drummer. Now in his case against West Midlands police a jury found in his favour following a six-day trial at Birmingham County Court.

The judge, Recorder Adrian Jack, awarded the former freelance drummer - a roadie for

the 18th birthday of a former detainee sentenced to a total of three months or over or after one year from the date of discharge or the last action on file (whichever is the latest) in respect of any other young person received into custody (either on remand or after conviction).

The YJB may wish to bear in mind when formulating its new policy that the continued availability of the records of trainees detained in each STC until July 2010 at the latest … may be as important to defending an unwarranted allegation of unlawful restraint as it is to establishing that an alleged incident took place. [Para 229]

'A shining A light' The Claimant has served well the interests of those for whom it is concerned by shining a light into a corner that might otherwise have remained in the dark. [Para 228]

Legal Bar on Crae Bringing a case like this through the Human Rights Act

Given the serious nature of the issues raised concerning young and vulnerable individuals, it would seem strange that a reputable charity such as the Claimant should not be entitled to come to court and raise the kind of issues raised.

Equally, had one "victim" been found who had sought to bring his or her own claim, the Claimant would undoubtedly have been entitled to be joined as an interested party and make the kind of submissions made on its behalf to me. Indeed Mr Hermer[3] made the forceful point that it would be absurd to suggest that the Claimant is prevented from challenging the rationality and lawfulness of the Defendant's refusal to act because it is not a 'victim' when the whole point of the application is that the individual victims do not know that their rights have been violated. [Para 213]

[1] Good order and discipline. [2] Physical Control in Care – the authorised system of restraint in STCs. [3] Richard Hermer QC Alex Gask and Stephen Broach from Doughty Street Chambers and Mark Scott of Bhatt Murphy represented CRAE in the High Court.

**Gary Dobson and David Norris Conviction an abuse of 'Due Process'**

'MOJUK is not concerned with the 'innocence or guilt' of those in jail. We are concerned only that they have been brought to trial and convicted through 'due process of law'. This since its' foundation has been the corner stone of MOJUK's 'Raison d'être:

MOJUK are completely opposed to the jailing of Gary Dobson and David Norris, for the way they have been convicted is a blatant abuse of due process. The Crown Prosecution Service 16 years ago, fouled this case up in every possible way, leading to the acquittal of Dobson. New Labour had to legislate to change the law, so that they could quash the original verdict against Dobson and then charge him all over again.

The real culprits of the murder of Stephen Lawrence are the Metropolitan Police, there is no dispute about their racism at the time of Stephen's murder 1993 (and many think it still persists) and that racism was their motive for doing sweet nothing to apprehend the killers 18 years ago. The Metropolitan Police that were involved at the time should be tried for culpable manslaughter.

'Double Jeopardy' a corner stone of justice in the UK that a person cannot be tried for the same offence twice, for hundreds of years, is no longer and the real victim of the decision to convict Dobson and Norris.

The forensic evidence that convicted Dobson was extremely weak, comparable with the gunpowder evidence in the Barry George trial. In general the trial could be described as the Crown Prosecution Service (CPS) throwing as much shit as they could at the defendants in the hope that some of it would stick and it did.

I am sure Dobson and Norris, will appeal, if they do, and for no other reason than that their conviction was an abuse of due process, MOJUK hopes they succeed.



that there is any sensible conclusion other than that it is highly likely that a large number [of children] were indeed the subject of unlawful force at times during their detention, probably from the beginning of the STC regime until at least July 2008. [Para 76] … the position concerning the legality of using restraint on detainees was established clearly from the outset: it was dealt with in the rules to which each STC was subject and provided for expressly in the contracts by which each of the Interested Parties [G4S and Serco] in this application were bound to run the STCs for which each was responsible. It is, however, clear from the evidence … that the practice "on the ground" for a good number of years was that restraint techniques were used to maintain GOAD in each of the STCs. [Para 33]

Given the evidence put before the Carlile Inquiry…, it would seem that even at a time when Oakhill [STC] was not at full capacity, the number of PCC[2] interventions across the four STCs during that period was running at about 350 per month. Even if only 20-25% (which may be conservative) of such interventions were to enforce GOAD, there can be little doubt that a large number of detainees were treated unlawfully at various times during this period. There is no reason to suppose that the situation was materially different at any other time in the history of the STCs at least until July 2008.

There is other evidence in the material before me … that distraction techniques … were also used as a regular part of the repertoire of force used in STCs… If used as part of a restraint for GOAD, a painful (and often injury-producing) technique would have been used for an unlawful purpose. [Para 77]

… Figures relating to Hassockfield STC for the period January-December 2004 and January-December 2005 have been provided, breaking down the reasons for the use of restraint as between "non-compliance" and "other" reasons. The figures were presented in the form of a bar chart and the precise numbers are a little difficult to discern. However, for present purposes total accuracy is unnecessary. Broadly speaking, looking at, for example, the six-month period from March to August 2004, of the approximately 570 reported instances of restraint at Hassockfield, about 185 were recorded as having been for "non-compliance". In the same period for the following year, of the approximately 470 instances of restraint, in the region of 200 were attributed to non-compliance. [Para 69]

Still unresolved … it would equally be difficult to say that the fullest explanation has yet emerged for the way matters turned out as they did and why such little complaint seems to have been made about what does appear to have been the widespread use of unlawful force over a prolonged period. [Para 181]

If any such change of culture is to take place [in relation to notifying victims of violations of their rights] it would, as it seems to me, be something that should emerge in a more considered way than by way of a piecemeal development of the common law designed to meet what may seem to be a strong case on the merits. [Para 119]

… there would seem to be little doubt that the vast majority of restraint techniques that were employed [in Hassockfield STC] during this period for GOAD were not made the subject of a complaint. That pattern was presumably mirrored in the other STCs. [Para 87]

Merely because the action of disseminating the relevant information is not required by the law does not mean that there is no obligation to consider whether some action is necessary if only as a matter of good and fair administration. The fact that those potentially affected were vulnerable children and young persons would, in my judgment, at least dictate the need for the Defendant to consider whether something ought to be done. [Para 199]

It remains to be seen whether … some of those who were the subject of unlawful restraint emerge to challenge and pursue what took place when they were detained. [Para 228]

Hidden Nature Of Abuse … there is little doubt that until the two tragic deaths in 2004 nothing concerning the use of unlawful restraint emerged even into the semi-public domain of those who inhabited STCs, either as members of staff or as detainees. The families of the two boys concerned will have wanted answers and it is right to say that it was not for several years that the full, coronial process concerning both boys was completed. [Para 125]

Failure of state to protect children

It is also a legitimate comment that until the deaths of Gareth Myatt and Adam Rickwood, and the investigations and inquiries that resulted from those deaths, none of the agencies in place to monitor what took place within an STC had identified and/or acted to stop the unlawful nature of what was happening. [Para 79] … there is no escaping from the conclusion that the "monitoring" of the STCs by the YJB appointed monitors during the period certainly up to mid-2004 failed to identify and/or act in relation to the unlawful use of force in the way subsequently revealed to have taken place. Given the "confused thinking" … and, as part of that, the apparent active promotion by the YJB of the proposition that restraint for GOAD was legitimate, it is, perhaps, not surprising that this should have been so if, of course, the existence of the unlawful practices had been noted at all. [Para 81] I do not think there can be any doubt that the systems in operation did not identify the widespread unlawful use of restraint that occurred… [Para 117] … the existence of the [YJB's] confused thinking reinforces the proposition that had any detainee complained about his or her rights concerning the use of restraint, the answer given may well have been that the staff were perfectly entitled to use it for the purposes of enforcing GOAD [Para 56]

Powerlessness of children - There is no issue that the children and young persons who may have been affected by the matters that arise in this case were potentially very vulnerable. [Para 5]

Whatever legal foundation there may be for the argument in favour of the relief sought, no court would wish to – or would wish to be seen to – reach a conclusion in a case relating to vulnerable children and young people that in any way prevented the revelation to them of actions taken in respect of them by the State which either were or may have been unlawful. [Para 112]

… I do not think that there can be any doubt that in the vast majority of cases the detainees made the subject of a restraint technique would simply have accepted it as part and parcel of the routine in an STC. Furthermore, at least during the period with which this case is concerned, it is likely that if a complaint had been made, the substantive answer to it would have been that the officers who used the restraint techniques were justified in using the force considered necessary at the time. [Para 88]

The existence of a channel [for complaints] is, of course, important but if, in reality, it leads nowhere, then there is no effective access to what is at the end of the channel. [Para 85]

There is, of course, also the inevitable reluctance that there would have been on the part of a young detainee to "rock the boat" by making a complaint. That reluctance is evidenced by the unchallenged statement put before me in these proceedings from Sir William Utting whose distinguished career involved, amongst other things, service as the Chief Social Work Officer with the DHSS from 1976 to 1985 and then as Chief Inspector of the Social Services Inspectorate for the DHSS (subsequently the Department of Health) from 1985 to 1991. In his statement he said this:

"Another practical problem for the potential complainant (as it may be for staff in moments of crisis that require immediate action) is being able to distinguish between what the regulations permit



and what they do not. Many have uncomplainingly submitted to ill-usage in the past because 'that is what goes on in these places' and they believe that what members of staff do is always authorised. The difficulties are even greater in institutions in which a culture of illicit violence such as bullying exists, when ill-treatment by staff appears insignificant in comparison. Self-reporting is not a reliable source of evidence about the incidence of violence in institutions. One returns inevitably to the need for clear and simple guidelines, proper recording and reporting, aggregated information, and responsible managerial and external scrutiny."

A statement from Ms Camila Batmanghelidjh, the founder of two children's charities, the 'The Place2Be' and 'Kids Company', also contributed another insight into how the complaints procedures would be viewed by young detainees when she said this:

"7. Children in custody rely for their daily wellbeing on prison staff. As young people have developmental affiliative needs, they are more likely to be in a situation where they have a parental transference, seeing prison staff as parental figures on whom [they are] reliant. In view of the immense power discrepancies between the jailed child and the prison staff, it is likely that children will develop a compliant and fearful attitude towards these adults, often not daring to challenge them because they believe them to be all powerful. In this context children can experience prison staff as not following complaints procedures because they are 'powerful enough' not to. Children may also perceive complaints procedures being followed through but in the end they are not ruled in favour of the children.

8. In this way, the reputation for the uselessness of the complaints procedure spreads amongst the kids. Whilst at one end of the spectrum the complaints procedure is considered futile, at the other end children fear revenge, believing that if they make complaints their 'lives will be made hell' in custody." [Paras 89 and 90]

Future claims - It probably requires just one former detainee, looking back at his or her experience in an STC and having conducted the necessary preliminary inquiries, to pursue a well-publicised claim and others will be alerted to the potential of pursuing matters. I have not been told of any difficulties that an individual former detainee would face in making a [Freedom of Information Act] request about whether he or she is recorded as having been the subject of restraint for GOAD. (The records still exist at the moment because part of the Defendant's response to this claim is the disproportionate amount of time it would take to trawl the records to identify those who may have been affected.) Any affirmative answer to such a request might (not, I emphasise, necessarily would) open the door to making a claim for redress. [Para 139]

… on the basis that the most likely cause of action for any detainee who was restrained unlawfully would be a claim for personal injuries (including psychological damage) based upon an assault or series of assaults, the 3-year primary limitation period will not start running until he or she is aged 18 and then there is scope and extension of that period, either by virtue of section 14 or section 33 of the Limitation Act 1980, if the circumstances permit. [Para 121]

The kind of issues that might arise have already been considered by the courts in cases involving the long-term effects of child abuse… [Para 122]

Risk of YJB destroying records … given the circumstances in which a court may (not necessarily will) extend the time for making a claim for personal injuries … beyond the normal 3-year time limit after the event or events in question (or 3 years after the age of 18 if the event or events took place before the age of 18), the YJB (which Ms Dyson says in her witness statement is currently drafting a new data retention policy) may wish to consider that policy carefully. As presently drafted, it could involve the destruction of certain records six years after