be detained under the Mental Health Act, and this information was conveyed to Mark's Probation Officer. A full psychiatric assessment was planned to take place on Monday the 16th of December 2013 and Mark was placed under enhanced observations.

Despite Mark's secure detention and psychiatric needs, the Probation Service issued recall papers, apparently without making clear that a recall should only be activated were he to leave hospital. Recall papers were passed to the police, who attended Brockton Ward without warning of the reasons for their visit on the morning of Saturday the 14th of December 2013. The on call consultant psychiatrist was telephoned but no response was received as the individual was on sick leave and a locum had not been identified for that day. Ward staff formed the view, without a medical assessment of Mark's fitness to be discharged being made, that they had no choice but to allow him to be removed by police.

Whilst in Dovegate Prison, Mark was made subject to an ACCT (Assessment, Care in Custody and Teamwork) and had meetings with both primary and secondary mental health care staff, though by the time of his death had not been assessed by a psychiatrist. On the 22nd of December 2013 he inflicted deep lacerations to his hand and foot telling staff that he wanted to die. Whilst he later claimed that the injuries were accidental, on the 25th of December 2013 he admitted that both his overdose on the 7th of December 2013 and the self-inflicted lacerations on the 22nd of December 2013 had indeed been attempts at suicide. By this time Mark was situated in the hospital wing at Dovegate and on constant observations.

A security officer was allocated the task of observing Mark on the morning of the 27th of December 2013. She had no ACCT training or experience in such supervision. Her observations of him shortly before he died were through a hatch in a locked cell door. She observed that he appeared agitated in contrast to his behaviour earlier that morning. He then climbed onto his bed and jumped off head first, fracturing his skull. The main concern of the family is why Mark was ever removed from Brockton Ward in the first place where he could be closely observed at arm's length and where there was every opportunity to treat him with psychotropic medication, if necessary against his wishes. Medication and arm's length observation would in combination have been far more likely to reduce the risk of further suicide attempts than was possible in a prison environment.

Deborah Coles, co-director of INQUEST said: "The obvious question in this inquest is regarding the absurdity of the decision to remove someone from a secure mental health unit within days of him taking an overdose and placing him in the care of the prison service which is by definition less able to cope with serious mental illness and risk of suicide." INQUEST has been working with the family Mark Groombridge since July 2014. The family is represented by INQUEST lawyers Group member Ruth Bundey from Harrison Bundey Solicitors.

Hostages: Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Romero Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, 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, Carl Kenute Gowe, Eddie Hampton, Tony Hyland,

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David Dunbar Conviction Quashed on Appeal

[1] On 20 February 2014 the appellant was convicted and sentenced to two years, along with a co-accused, Wayne Ernest Johnston, of a charge of being concerned in the supplying of the controlled drug diamorphine, contrary to section 4(3)(b) of the Misuse of Drugs Act 1971. The co-accused was also convicted of a charge of being concerned in the supplying, at the same loci and within the same period of time, of the controlled drug cocaine. The jury acquitted the appellant of that charge.

[2] The prosecution was brought following the receipt in HM Prison Saughton of a postal box which, having aroused some suspicion on the part of the prison authorities, was examined by police officers. The officers found the box to contain a plastic carrier bag within which were five books. Within the spine of each of those books was a sealed brown paper envelope. Four of those envelopes contained powder which on subsequent analysis was found to include diamorphine. The fifth envelope also contained a quantity of powder which, in the case of that envelope, contained cocaine.

[3] The postal markings on the package indicated that the packet had been posted at a post office in Leith. CCTV footage from the post office in question was recovered. The footage showed the co-accused, Wayne Johnston, entering the post office with another man, Thomas Seath. Mr Seath was also charged, with the same charges, on the same indictment but his plea of not guilty was accepted by the prosecutor prior to the commencement of the trial of the appellant and Mr Wayne Johnston. The CCTV footage showed Mr Seath purchasing the postal box, placing within it the carrier bag containing the books, and thereafter closing, addressing and posting the box - all in the presence of the co-accused Mr Johnston.

[4] As respects the appellant, however, the only evidence tendered by the prosecutor was the evidence of one of two forensic scientists[1] who had examined a mouth swab taken from the appellant by police officers and portions of the paper envelopes, including the seal area, which had been found in the spines of the books within the carrier bag in the postal box. It is an important feature of this case that no other admissible evidence was offered which referred to the appellant or might link the appellant to the supply of the powders containing diamorphine or cocaine to the addressee of the postal box.

[5] At the close of the Crown case the solicitor acting for the appellant advanced a submission that there was no case to answer. The submission was to the broad effect that such evidence as had been presented by the prosecutor was insufficient to implicate the appellant in the supply. The presiding sheriff rejected that submission and the essential issue in this appeal is whether the evidence offered by the Crown was sufficient to enable conviction of the appellant.

[6] As we have already narrated, the Crown case against the appellant was confined to the "DNA evidence" given by the forensic scientist. The scientist gave evidence that she and a colleague had examined the portions of the envelopes submitted to them with a view to ascertaining whether there was on them any organic material from which, by appropriate scientific analysis, a DNA profile might be obtained. This, of course, was with a view to comparing such profile as might be obtained from any material on the envelopes with a profile more readily obtainable from the cellular material in the saliva in the mouth swab provided by the appellant to the police. Organic material, and evidence of DNA profiling derived from it, was found

on a number of the envelopes and was invoked by the prosecution in its the case against the co-accused, Mr Johnston. But only one of the envelopes disclosed the presence of some organic material said to be relevant to the appellant.

[7] In relation to the evidence of the scientist respecting the outcome of the comparison made between the material on that envelope and the reference sample provided by the appellant, the sheriff sets out the relevant part of the scientists' report: "DNA was extracted from any cellular material present on the above item and the incomplete DNA profile obtained, which was male in origin, matched the respective parts of the DNA profile of the mouth swab taken from [the appellant]. The probability of finding such matching DNA profiles if a male other than [the appellant] is the source of this DNA is approximately one in four million. The above statistic has been derived from a database of Caucasians and assumes that any other possible source of this DNA is not related to [the appellant]".

The scientist was unable to say whether the cellular material detected on the portion of the envelope was contained in saliva or any other bodily fluid. She accepted that the presence of the material could readily result from direct contact in other ways than the depositing of saliva or bodily fluid; and the material could equally arrive on the envelope by secondary transfer. It was not possible to express any view as to the time at which the material might have been deposited or transferred. The forensic scientist also acknowledged that the database from which her estimate of probabilities was derived excluded any male related to the appellant.

[8] Both before the sheriff and before us it was pointed out on behalf of the appellant that – obviously – an envelope is a very movable item. One was therefore not in the situation of cellular material deposited on an immovable object or structure at a crime scene. There was no evidence as to when or in what circumstances the material came to be deposited. In particular there was no evidence that the material was contained in saliva or any body fluid. By analogy with cases such as Slater v Vannett 1997 JC 226 and Campbell v HM Advocate [2008] HCJAC 50; 2008 SCCR 847, both of which involved reliance solely on the detection of an accused's fingerprint on a similar movable article, namely a plastic bag, counsel submitted that the DNA evidence tendered against the appellant was likewise, on that account alone, insufficient to found a conviction.

[9] In allowing the case to go to the jury, the sheriff accepted the prosecutor's contention that, since the area of the envelopes submitted for examination contained the seal, not only did the envelope bear the "accused's DNA" but also that it was to be inferred that "the accused's DNA" appeared on the envelope because he had licked and sealed the envelope. Since the appellant had thus licked and sealed the envelope he must by virtue of that action have knowledge of its contents.

[10] While at the trial much of the argument may have been focussed on the movable nature of an envelope there is – as counsel submitted- another important aspect to the question whether the evidence tendered by the Crown was sufficient to allow the appellant to be convicted. Evidence of the extent of a match between DNA profiles from material on a crime scene sample and a reference sample is not to be assimilated in all respects to the absolutist nature of fingerprint evidence with which practitioners and the courts have traditionally been familiar. That traditional absolutist conception of the nature of fingerprint evidence has become in very recent years a matter of debate and is largely no longer accepted in current forensic science, but at least following Hamilton v H M Advocate 1934 JC 1 it was generally accepted by fingerprint scientists, practitioners and consequently the courts in Scotland that if 16 points of identity in the minutiae were found between the crime scene fingerprint and the known fingerprint of the suspect the former could be taken to be an imprint in fact made by the suspect. The fingerprint is in such circumstances conceived as being unique. In the case of finger-

and if anyone in the gang steps out of line then every member will face consequences'.

Mission creep? The institutionalisation of gang data also extends beyond the police to impact on the practices of other criminal justice agencies. Allegations of gang membership or association are frequently used by the Crown Prosecution Service (CPS) as part of its prosecutions in court, especially in cases of 'joint enterprise' taken against groups of individuals. As with the gang databases, research has shown that prosecutions and convictions under the doctrine of joint enterprise are disproportionately skewed toward members of the BAME communities. Yet, it is open to question how far the CPS – let alone the courts themselves – interrogate such data, passed onto them by the police, in terms of its accuracy and substance. As one of the criminologists involved in such research told the House of Commons Justice Committee:

BME men may be over-represented in the kinds of communities where young men hang around in groups that are labelled by outsiders as gangs … [and] an association may exist unconsciously in the minds of the police, prosecutors and juries between being young ethnic male and being in a gang, and therefore being involved in forms of urban violence. Indeed, the data showing the exceeding high BAME representation on police gang databases would indicate that such bias can hardly be described as 'unconscious'.

The key question to be raised about gang databases is therefore whether they constitute 'reliable information or intelligence' (to borrow a phrase from the stop and search Code of Practice) on which to base policing policies and practices, as well as those of other criminal justice agencies. Certainly, in light of the fact that such databases are overwhelmingly skewed toward members of the BAME communities, it is incumbent on all those making use of such databases, including those who are intended to hold the police and other criminal just agencies accountable, to explain why this is the case. We need to know exactly what definition of a 'gang' and criteria of membership or association with it are being used in compiling such databases, as well as whether these are being applied consistently by the various 'partner agencies' involved in the process. Equally, is the policy of having gang databases being applied consistently, if at all, over the whole of the policing areas involved, or only to those areas with high concentrations of BAME populations? For example, what is the distribution of gang members, as currently identified through the Metropolitan Police's Gangs Matrix, across the different London boroughs? And what proportion of those on this database have records of serious and recent criminal convictions?

Without answers to these questions, the presumption that gangs databases and the policing policies and practices that utilise them represent a clear example of institutional racism will remain. Indeed, there is a strong case for suspending their use as the basis of such policies as 'targeted' stops and searches, let alone for special operations such as Operation Shield. which so clearly involve collective and potentially indiscriminate punishment.

Inquest Into Death of Mark Groombridge at HMP Dovegate Opened

Mark Groombridge died from head injuries on 27 December 2013, after he jumped off his bed at HMP Dovegate – a privately run prison operated by Serco. Mark had been released from prison on licence in January 2013 but his wife, Jackie became concerned about his mental health and signs of paranoia and informed the probation service about this. Mark took a life threatening overdose and after remaining in hospital for several days in a coma, was admitted as a voluntary patient to Brockton Acute Admission Locked Ward in St George's Hospital in Stratford. It was made clear to Mark that should he attempt to leave, he would

Asian and minority ethnic (BAME), found that 21 per cent of those included had not been recorded as being convicted of any offence within the previous three years, and that a further 21 per cent had 'no antecedents … on either the Police National Computer (PNC) or any other CJ [criminal justice] case recording/ monitoring database'. The study concluded that the 'only credible explanation' for this latter group was that 'these people have never been convicted of a criminal offence'. As for the Met, it has been disclosed that only just over a third of those included on its Gangs Matrix 'are currently subject to judicial restrictions such as gang injunctions, ASBOs [anti-social behaviour orders], electronically (sic) tagging and managed under license [whilst on probation following release from prison]'. This suggests that, as found in Manchester, the database contains significant number of people who have not previously or recently been convicted of any serious criminal offence.

Institutional racism: The ethnic composition of the Gangs Matrix and similar databases is not simply an issue of bias in the way such instruments are compiled. As the police themselves turn increasingly to so-called 'intelligence-led' operations, at a time of reduced manpower and resources, these databases feed directly into the ways in which policing policies and priorities are being targeted on particular groups. In other words, the racial bias in the databases becomes institutionalised in police practice. For example, while overall levels of stop and search have been reduced in the last few years, it is now being particularly focused (for example, under the Met's Total Policing strategy) on those alleged to be members of gangs.

This is supported by the Code of Practice governing the use of stop and search, a new version of which has only recently been published. The Code of Practice states that the fact that a person is known to have a previous conviction 'cannot be used, alone or in combination with each other, or in combination with any other factor, as a reason for stopping and searching any individual, including any vehicle which they are driving or being carried in'. (emphasis in original) Yet, the Code goes on to allow that: Where there is reliable information or intelligence that members of a group or gang habitually carry knives unlawfully or weapons or controlled drugs, and wear a distinctive item of clothing or other means of identification in order to identify themselves as members of that group or gang, that distinctive item of clothing or other means of identification may provide reasonable grounds to stop and search any person believed to be a member of that group or gang.

A further note states that '[o]ther means of identification might include jewellery, insignias, tattoos or other features which are known to identify members of the particular gang or group'. The implication of this is that it allows the police to stop any persons who wear the clothing style or regalia allegedly associated with a particular gang, but which may be more widely adopted by young people within an area, even though many such persons will not have recent or serious criminal convictions or be associated in any meaningful way with the 'gang' in question.

For its part, the Met has recently launched Operation Shield in three London boroughs – Haringey, Lambeth and Westminster – all with relatively high BAME populations. Under Operation Shield, a form of collective punishment will be introduced, under which when one member of a 'gang' commits a violent offence, action will be taken to punish all alleged members of the gang (no doubt as identified on the 'Gangs Matrix'[) through a series of criminal and civil sanctions, including recalling to prison any on probation and subject to license, applying for 'gang injunctions' to restrict their movements to certain areas, and even evicting them (and members of their families) from social housing. As the Mayor of London, Boris Johnson, states, 'It is time we gave gang members a clear ultimatium – the police know who you are

print evidence, it has thus been possible traditionally to speak of the fingerprint on the crime scene sample as being "that of the accused".

[11] However, evidence of the extent of the matching of DNA profiles may be different in important respects. First, whereas a fingerprint requires the person in question actually to have touched the article upon which the impression is found, the cellular material on the crime scene sample which is subject to DNA examination does not necessarily arise from digital contact. The material may have arrived on the article by a wide variety of means, including a secondary transfer. Secondly, but importantly in the present case, evidence of the extent of a match between the examined sample and the reference sample is commonly expressed in terms of the probability of finding a similar match from another individual. The basis for expressing such a probability derives from a database of donated samples from individuals, usually grouped in the database by ethnic origin. In many cases, the estimated probabilities derived from the selected probability model are such that it may be materially inaccurate to speak of "the accused's DNA" being found on the crime scene sample; there is thus not the unique identification traditionally associated with fingerprint evidence, which in practice has been led only when the 16 points of coincidence have been detected by the expert examiner.

[12] In the present case the evidence from the forensic scientist was that the probability of finding such a matching DNA profile if a male other than the appellant, and unrelated to the appellant, were the source of the crime scene DNA was approximately one in four million. That estimation of probability is very far from attributing, or even approaching, the uniqueness of identity traditionally attaching to fingerprint evidence with sixteen points of coincidence. It means that in a population of the size of that of the United Kingdom, in addition to the appellant, cellular material from seven or eight males unrelated to the appellant will give a DNA profile matching that derived from the cellular material on the envelope in question. Put another way, in statistical terms the probability that the source of the material on the envelope was from an unrelated male in the UK other than the appellant is of the order of 7/8, or 0.87(87%). The location of those other, unrelated males at any time within that population group cannot of course be known. Additionally it may be added that the database from which the probability estimate was derived excluded related males; and, of course, there was no evidence that the envelope in question had not had a wider circulation than within the UK. At the outset, therefore, the extent of the match, and the statistical probabilities spoken to by the scientist, do not in themselves provide a sufficient link to the appellant. They simply indicate a possibility that he, among an indeterminate plurality others, may be a possible source of the crime scene cellular material.

[13] In addition to that important flaw in the prosecution case, as was pointed out by counsel for the appellant in his criticism of the sheriff's decision to accede to the prosecutor's contention that the "accused's DNA" appeared on the envelope because the accused had licked the seal, there was no evidence that the organic material on the envelope derived from saliva. The scientific evidence accepted that the material could equally have been deposited by other means (such as digital contact) or have been transferred by a secondary process. A police officer had given evidence that the area of the seal was an area which might be licked in sealing the envelope, but that was not in any way evidence that the cellular material detected by the scientists was contained in saliva. Assuming the envelope were one requiring the application of moisture, that was – as the sheriff remarks - simply self evident; but, it may be added, that there was seemingly no evidence that the seal on the envelope in question employed an adhesive which required the application of moisture.

[14] In my view there is much force in this criticism of this aspect of the sheriff's decision.

The boundary between speculation and the drawing of an inference may sometimes be difficult to define with precision. But in this case, in which there was no evidence that the cellular material came from saliva, or was even likely to have come from saliva, I consider that inviting the jury to reach the important conclusion – crucial to the prosecution case - that the material was deposited by the licking of the seal of the envelope does indeed fall on the side of speculation. There was no other evidence to which the jury might have resort by way of supplement to the scientist's evidence in order to found any inference going beyond her report of the scientific findings. But they were invited in effect to make a finding going well beyond the scientific evidence, but on no additional or other evidential material, that the cellular material from which the partial profile was extracted was indeed deposited in saliva.

[15] As I have already stressed, there was no other evidence whatever before the jury capable of incriminating the appellant. Had there been such other evidence, the scientific evidence regarding the matching of the DNA profile might have had some possible supportive probative value. But, in my view, on its own, the particular DNA evidence led in this case was plainly insufficient to permit the conviction of the appellant.

[16] In these circumstances, I consider that the appeal succeeds and that the conviction should be quashed.

Prison Staff Cuts Increase Threat From Radicalised Inmates

Staff cuts in jails are making it increasingly difficult for prison officers to tackle the problem of Islamic radicalisation among inmates, the former head of the National Counter Terrorism Security Office warned. Chris Phillips said there were not enough prison officers to properly monitor extremists in jail, meaning they were able to intimidate and recruit other inmates. "What we have actually is a prison population that's growing," Philips told the BBC. "We have less officers generally in prisons than ever before and we also have less police officers to deal with them, so what we have is a growing haystack of extremists where we still have to find the single needle that's going to go off and do something really nasty. But of course we've got less people to go and look for them as well so it's a really difficult thing for the police service and prison service to deal with."

In March, a report by the Justice Select Committee criticised the government for cutting staffing levels in prisons, and said 12,530 prison officers, or 30% of its total, had been cut between 2010 and 2014. The UK now has a Muslim prison population of more than 12,000, with 100 jailed for terror offences. Justice Secretary Chris Grayling said there was "no evidence" to support Phillips' claims. "Prison overcrowding is at virtually its lowest level for a decade, and we have increased spending on measures to prevent radicalisation," he said. "We will never be complacent about the issue."

In 2014, sources from the prison officers union told the Daily Mirror that Islamic radicals in prisons including HMP Whitemoor in Cambridgeshire, where several high-profile terrorists are locked up, were violently intimidating inmates to force them to convert. "Whitemoor is now effectively run by Muslims, many of whom are jihadis," said one source. Michael Spurr, the chief executive of the National Offender Management Service of England and Wales, warned there was a risk of a prisoner radicalised behind bars carrying out a terror offence. He said: "There is a significant risk, given the fact that we manage some very dangerous people. Our job is to minimise that risk becoming a reality – that somebody in prison becomes radicalised and commits a terrorist offence." Dame Anne Owers, in a 2010 report, wrote that while Muslim inmates may be more susceptible to extremism, unfair suspicion of Muslim prisoners is unfair and can drive them into the arms of extremists. *Tom Porter, International Business Times*

three potential scenarios in which claimant lawyers may be refused payment through no fault of their own: (1) where permission is refused or not considered because the defendant withdraws its decision beforehand; (2) where the application for permission is adjourned to an oral hearing and then refused; and (3) where the application is dealt with at a 'rolled-up hearing', in which the court considers both permission and the substantive case together.

The government responded to the quashing of the regulations just three days later by introducing new regulations to reinstate the 'no permission, no payment' rule, but with additional exceptions to address the scenarios above which the court found had 'no rational or proportionate connection' to the stated purpose of the legislation. *Oliver Carter, Justice Gap*

The Met Gangs Matrix – Institutional Racism In Action *Lee Bridges, IRR News*

In October 2014, the Met police disclosed information on the ethnic composition of its 'Gangs Matrix' or database, showing that no fewer than 78.2 per cent of 3,422 persons then included were classified as black and a further 8.7 per cent from other minority ethnic communities. The full ethnic breakdown was as follows: White - Northern European 360/10.5%: White - Southern European 79/2.3%: Black 2,683/78.2%: Asian 223/6.5%: Others less than 4.2%: It is interesting to note how ethnicity is defined. While four of the six categories are geographically based, with 'whites' being divided between Northern and Southern European origins, no such differentiation is made for either 'black' or 'Asian' people on the database, both being taken as blanket categories based purely on race or ethnicity.

But what is even more remarkable is that the Met could claim that there are only 439 white people in the whole of London who are engaged on an organised basis in 'violence, criminal offending and gang membership', which is the purported basis for inclusion on the database. Once account is taken of such organised criminal activities as drug-dealing; sex and people trafficking; multi-handed robbery: fraud: theft (including auto theft) and extortion; football hooliganism; and racist violence, these figures are simply not credible.

More recent data, released in March 2015 in conjunction with the announcement of a Met anti-gangs initiative, Operation Shield (see below), show that the numbers on the gang database had increased to 3,600, spread across 186 'recognised gangs'. This means that the average number of members of each 'gang' was less than twenty. In other words, many of the so-called gangs do not consist of wide networks of members but of relatively small groups of individuals involved in criminal activity. Once again, this is a description that would apply to many groups in the wider population engaged in criminal activity but apparently not included on the gangs database.

All of this raises serious questions about how the Gangs Matrix has been compiled in the first place. Here the Met say that the database 'is informed by Police and wider statutory partner intelligence, based on violence, criminal offending and gang membership. Individuals are added to the matrix from Police and partner agencies so the matrix is not just informed by Police and is a wider partnership document.' The identity of the so-called 'partner agencies' has not been disclosed, nor is it clear what proportion of those on the gangs database have been included on the initiative of these agencies

Equally, the term 'gang' remains undefined, even though mere 'membership' of or association with a 'gang' appears itself to be sufficient for inclusion on the database, even without the individual concerned having been convicted of any serious violent or other criminal offences. Research conducted in Manchester, where the gang database was 89 per cent black,

intended to filter out unmeritorious claims which are deemed by the court not to present an 'arguable' case that a public authority has acted unlawfully. In addition to preventing legal aid being paid to lawyers acting for claimants where permission to proceed to a final hearing is refused by the court, where permission is neither granted nor refused (for example because the claim is settled or withdrawn before the permission decision), the regulations mean that payment of legal costs incurred in making the application would be at the discretion of the Legal Aid Agency.

The introduction of conditional payment for applications for judicial review funded by legal aid inevitably creates a degree of uncertainty for lawyers acting in such cases. Many legal aid lawyers considered that this uncertainty would have a 'chilling effect' on access to the court because practitioners would become reluctant to take on meritorious but risky cases for which they may not be paid. Although the threshold for permission which requires simply that a case be 'arguable' to proceed to a final hearing appears low, in practice it can be very difficult to accurately determine the merits of a case before submitting an application for judicial review.

For example, a case that I worked on at Irwin Mitchell concerning a decision by a local authority to terminate the licence of a soup kitchen to use a council-owned car park was initially refused permission by a judge considering the case on the papers alone. The local authority's decision could have resulted in the closure of the soup kitchen. After reviewing the merits of our case – which we continued to believe were strong – we applied for an oral hearing before a judge to reconsider whether permission should be granted. The judge granted permission for the case to proceed to a final hearing and ultimately it was successful: the court held that the council's decision was unlawful and quashed it. As a result, the soup kitchen is continuing to provide its vital service to vulnerable and homeless people. This case provides an illustration of the inherent difficulty in assessing the merits of judicial review claims and how restricting payment for cases which are not granted permission could have a chilling effect to prevent lawyers bringing applications which, while meritorious, are not straightforward.

A judicial review of JR regulations - A number of law firms (and the charity Shelter) decided to challenge the 'no permission, no payment' regulations for judicial review by way of JR. The case was coordinated by the Public Law Project and had the support of a number of charities and claimant law firms, including Irwin Mitchell. The claimants argued first that the Lord Chancellor had no power to make payment for legal aid lawyers dependent on the outcome of the case, second that the regulations were inconsistent with the statutory purpose of the primary legislation, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), and third that the regulations are likely to have a 'chilling effect' on access to the court. Defending the claim, it was argued on behalf of the Lord Chancellor that LASPO entitles him to impose the risk of non-payment of costs on legal aid lawyers in order to incentivise them to focus on properly assessing the merits of cases. In relation to the purported 'chilling effect' of the Regulations, the Lord Chancellor contended that this allegation was premature and unsupported by evidence as the 'no permission, no payment' scheme had only been in place for nine months at the time.

The Administrative Court rejected the first and third grounds advanced by the claimants, but accepted that the regulations – or at least specific aspects of them – were inconsistent with the statutory purpose of LASPO and were therefore quashed (judgment here). In rejecting the third ground of challenge, the court agreed with the Lord Chancellor that the evidence of a 'chilling effect' was (at present) very limited and that the claimants had 'exaggerated the difficulties of predicting whether permission will be granted or refused'. The court's analysis of the second, successful, ground of challenge made it clear that it was particularly concerned by

'Memory, Like Liberty, is Fragile' *Barbara Hewson, Justice Gap*

On Wednesday 25 March, Goldsmith's College hosted an important lecture by a leading expert on the science of memory, Professor Elizabeth Loftus of the University of California, Irvine. Loftus is today one of the world's pre-eminent experts in this field, having been involved in many significant research studies of memory since the 1970s. She has given expert witness testimony in several court cases. Her efforts have not always been welcomed. She has been accused of unethical conduct in her research, and has even received death threats.

In 1990, she testified in support of a man who had been convicted of the murder of his daughter's friend, solely on the basis of his daughter's claim to have recovered a memory of that event. Loftus checked out the scientific literature and could find nothing to support a theory of 'recovered memory'. This led to a bitter ideological battle between research psychologists and therapists, the latter fervently believing in the notion of recovered memory. Loftus was accused of damaging the feminist cause, but she has been awarded the American Psychological Foundation's Gold Medal for Lifetime Achievement, which is an indication of her standing with professional colleagues. Her research includes the famous 'Lost in the Mall' survey in which people were interviewed about their childhood experiences. The interview included a question about a fictitious event. A quarter of the interviewees claimed to recall this fictitious experience. What this line of research, which has been reflected in a range of similar experiments, demonstrates is that human memory is malleable and suggestible.

Loftus' presentation began with a very recent scandal involving the American war journalist, Brian Williams. He has recently been pilloried for claiming that, whilst in Iraq in 2003, he rode in a helicopter that was grounded by anti-air missiles. Hillary Clinton had made a not dissimilar boast that she disembarked a helicopter in Bosnia under sniper fire during the civil war there. Except neither Williams' nor Clinton's claims were true. Williams was not riding in the helicopter that was shot down. Clinton, far from racing from speeding bullets, had arrived with her daughter Chelsea, to be greeted by an official reception committee. A small schoolgirl presented Clinton with a bouquet. So what were Williams' and Clinton's excuses? Williams, who was obviously embarrassed, claimed he just screwed something up in his mind. Clinton said that she was a human being, who had made a mistake. Williams' ratings have tumbled. But Clinton is a serious contender to be the next President of the United States.

Some of Loftus' more entertaining studies involve implanting false memories about food. Thus, her research teams have persuaded people that they hate hard-boiled eggs, as a result of misinformation. This research could even have the potential to affect people's dietary habits! Unfortunately, many people, including journalists and members of the public, do not appreciate just how imperfect human recollections can be. Consider the unreliability of eyewitness testimony. The Innocence Project in New York has helped overturn the convictions of 300 people, who were wrongly convicted of serious crimes. Of these cases, three-quarters involved inaccurate eyewitness testimony.

Loftus gave another famous example: the rape of Jennifer Thompson. In 1984, while a student, Thompson was raped in her apartment by a black man. She later wrongly identified a man named Ronald Cotton, who was innocent. The rapist was a man called Billy Poole. But Cotton was convicted on her testimony, and served 10 years in jail, before DNA evidence led to his release. When Cotton was finally exonerated, Thompson was dismayed that her mistake had resulted in his loss of liberty. They later met. In 2009, they co-wrote a book about the injustice that had ensued, called Picking Cotton. So the inherent fragility of memory has serious implications for the administration of justice, and the rule of law. The key message from

Loftus' lecture is that new information can contaminate and distort memory. So false (i.e. inaccurate) memories can be generated as a result of many factors: exposure to media coverage of a dramatic event; an active imagination; being exposed to other people's memories; doctored photographs, and other strong suggestive methods.

A person who has developed a false memory has had their sense of reality altered. They may testify in an extremely convincing manner, replete with detail and emotion. To date, researchers have not been able to come up with any convincing way of distinguishing between memories that are accurate, and those that are not. This is a serious forensic problem. The only solution, Loftus argues, is to insist on independent corroboration. She concluded: 'Memory – like liberty – is fragile.' The Commercial Court in England has woken up to the importance of memory science. In an important decision called Gestmin v Credit Suisse [2013] EWHC 3560 (Comm), Leggatt J. said: 'I do not believe that the legal system has sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony. One of the most important lessons of such research is that in everyday life we are not aware of the extent to which our own and other people's memories are unreliable and believe our memories to be more faithful than they are.'

After summarising the lessons of recent research, he concluded (here): 'The best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts.' Unfortunately, the criminal courts seem less keen to learn the lessons of modern research on memory. This is a fault, as unless juries are properly informed about the pitfalls of eyewitness testimony, and the unreliability of human memory, the risks of wrongful convictions are very real.

Black Woman's 'Lynching' Charge: an Unsettling Tactic to Punish Activism?

Anita Chabria, Independent: California law was passed in 1933 to prevent mobs from taking people from police custody but case of Maile Hampton and others suggest harsher attitudes toward those who speak up in the wake of Occupy and police brutality protests. Maile Hampton, the African American activist who was arrested for "lynching" after trying to pull a fellow protester away from police during a January rally against law enforcement brutality in Sacramento, has a large black butterfly tattooed across her neck. Below it, scrawling script reads: "Have faith in me." It means: "Have faith that I am here to change the world," said the 20-year-old with a youthful mix of passion and innocence. She got it about a year ago, around the same time she began to be politically active, she said. That optimism will be tested when Hampton heads into court on 9 April, facing a charge that carries the possibility of four years in prison and a lifetime of being labeled a felon.

Video of the rally shows police tussling with a protester in the street while activists on the sidewalk yell: "Who do you protect? Who do you serve?" A woman who appears to be Hampton enters the street, carrying a bullhorn. She grabs the handle of a sign held by the protester being detained by police and attempts to pull it away from an officer who is also holding it. She is then pushed away by other officers. Hampton's arrest – and sensational-sounding charge – made headlines. California's lynching law was put on the books in 1933, to prevent mobs from forcibly taking people from police custody for vigilante justice.

But the statute has long been used against protesters as well, by police if not prosecutors. In 1999, anti-fur protesters in San Francisco who blocked access to a Neiman Marcus store in Union Square were charged under the lynching law. Prosecutors declined to take the

in 1983, now works in a CRC in the north of England. He believes the government has created a two-tier workforce. Contracts require CRCs to have appropriately trained staff, but there is no definition for this and no requirement for qualifications. Workloads have also increased. Probation officers are assigned less time to deal with lower-risk offenders, meaning that newly transferred CRC staff, with no high-risk offenders on their caseload, must supervise a greater number of people than they are used to. But most of all, Andrew is fed up with the uncertainty of reform. "We're a long way away from knowing what the system will look like," he says.

Probation officers working in the courts service say it has also suffered. Michael, who works for an NPS courts team in England, complains of a lack of training, technology and staff following reforms. "We split into the NPS and CRC groups in June last year. My workload doubled overnight," he says. The workload is set to increase with the supervision of offenders serving less than 12 months in prison – those that breach the rules will end up back in the courts system, putting more pressure on officers like Michael.

Inadequate training: Michael says court reports are wanted at increasingly short notice, there is inadequate training to prepare staff for new processes and systems and he is being asked to deal with matters above his pay grade, without sufficient information about offenders' backgrounds, history or previous convictions. "More and more we are being asked to help with the sentencing of people without really doing any background checks," he says. "Either we're going to collapse under the weight of it all, or there's going to be a big mistake made somewhere in the court when someone is sentenced – like a domestic violence case where someone gets out instead of being in prison and they manage to murder their partner. Someone's going to get hurt. That's the big fear."

Sodexo, which runs six CRCs in England and Wales, recently announced plans to replace staff with machines – ATM-style electronic kiosks to which offenders will report in, and which Ian Lawrence, Napo general secretary, has said are "downright dangerous and will put the public at risk". Sodexo's probation staff have been told to expect job cuts of more than 30% in the next year. It is changes like these, alongside a less generous pension scheme and fewer career advancement opportunities in CRCs, that make Andrew – and many others working in probation – fearful for the future. "It is simply a massive and dangerous social experiment that will not, and cannot, work," he says. "It will be future victims that pay the price and future governments that will have to do something about it."

No Permission, No Payment': Judicially Reviewing JR Regulations

After the High Court last week quashed regulations restricting legal aid for lawyers bringing judicial review cases against public authorities, the government responded within three days by bringing in yet more regulations to restore the substance of the law struck down by the court. Governments tend not to like judicial review, which allows individuals, charities and companies to challenge the lawfulness of public authority decisions in the Administrative Court. The Lord Chancellor, Chris Grayling, expressed his view that JR had become 'a promotional tool for countless left-wing campaigners' seeking to hold back government reforms. Unsurprisingly, therefore, Grayling's Ministry of Justice has sought to restrict the use of judicial review, both through Part 4 of the Criminal Justice and Courts Act 2015 and through regulations which deny payment to legal aid lawyers acting for claimants in judicial review applications where the court does not grant permission for the case to proceed to a final hearing.

'No permission, no payment' - The Civil Legal Aid (Remuneration) (Amendment) (No 3) Regulations 2014 introduced this 'no permission, no payment' regime for judicial review applications funded by legal aid. The permission stage of judicial review applications is an initial hurdle,

screens put up in some offices. “There is this idea that because we’re separate organisations now we can’t allow the other organisation to see our work because it’s confidential, which is absolute nonsense because six months ago we were all working together,” says John. “There’s no flow of information, no knowledge sharing. It’s this huge demarcation that’s being created.” ohn is also worried about proposals to turn workspaces – which in many places CRC and NPS staff share – into open-plan offices. “When you’re talking about some of the people we work with in the NPS, people who commit murder and rape and armed robbery ... it’s going to be a recipe for disaster.”

Napo, the probation officers’ trade union, opposes privatisation, arguing that the probation service had been doing a very good job. It won an excellence award in 2011, a first for a public sector organisation. In 2013, the Ministry of Justice rated all 35 probation trusts in England and Wales as good or excellent. According to Napo, at least 500 probation officers have left since the start of the reform programme. Su McConnell is one. A manager in what was then Devon and Cornwall probation trust, McConnell officially resigned in December 2014, but had been off work with stress since April. “I had worked for the probation service since 1986, and I’m incandescent about what’s being done to the institution,” she says. “I was trying to manage a team and that team was just being split up, and I could see it; careers were being wrecked. Some staff who had invested a decade of training to do the thing they wanted to do were suddenly staring into the abyss.” McConnell’s team was divided just before Christmas 2013. Most applied for roles in the NPS, seeking better terms and conditions as well as clearer career progression and job security. A long period of uncertainty had left the staff anxious, with many too afraid to take time off sick in case it counted against them in the selection process, says McConnell.

Splitting up specialist services: One of the consequences of the split is that the bulk of the supervision of domestic violence offenders has been outsourced while sex offenders, deemed higher risk, are managed by the NPS. Prior to the division, McConnell managed a specialist team trained to deliver programmes for both types of offenders. “The modus operandi of these offenders is not dissimilar – they’re manipulative and complicated to work with,” she says. “A lot of the theory and the practice of how you treat them is not dissimilar.” Having always had a professional interest in domestic violence probation work, she was horrified by the changes, perceiving that corners were already starting to be cut in terms of budgets and staffing levels, not least because the majority of specialists would end up in the NPS. McConnell escalated her concerns as far as justice secretary Chris Grayling, to no avail. CRCs supervise 200,000 low- to medium-risk offenders, while the NPS supervises the remaining 31,000 high-risk offenders. Under the Offender Rehabilitation Act, which came into force in February 2015, an extra 45,000 offenders a year who are released from prison sentences of less than 12 months will be supervised for the first time. This group has the highest rate of reoffending, with almost 60% reoffending within a year.

Overloaded IT: Clare, who works for a CRC in the Midlands, does not feel equipped to deal with the extra work that will be coming her way. “The IT is just not fit for purpose. It’s no good: you lose your work, things don’t work properly, it crashes, reports just disappear,” she says. Many probation staff complain of an increase in bureaucracy, monitoring and tick-box exercises since the split. New risk assessments have been bolted on to existing systems, duplicating the workload and placing greater strain on already ancient IT. The private companies that have taken on CRC contracts are not allowed to access NPS records, due to security and privacy concerns. Not only does this make Clare’s job more difficult, but she feels it has been deprofessionalised. “You can feel like the role has been dumbed down,” she says. “I don’t see myself staying in it anymore, and this is a job I thought I would spend the rest of my life in.” Andrew, whose probation career began

case to court. In 2011, police in Oakland used it against members of the Occupy movement, arresting at least two activists, Tiffany Tran and Alex Brown, on the count during a sweep of a public plaza. The charges were dropped. In 2012, police in Los Angeles also used the lynching law against Occupy, when an activist named Sergio Ballesteros was accused of intervening in an arrest during an Art Walk – according to published reports, the charge was later dropped. Last year, in the conservative Southern California enclave of Murrieta, it was used on at least one activist, Janet Mathieson, who was arrested while protesting in support of migrant detainees. She is scheduled for sentencing on 10 April, in a plea bargain that involves dropping the felony charge and pleading guilty to a misdemeanor charge of obstructing or resisting, according to Riverside County district attorney spokesman John Hall.

Shortly after Hampton’s arrest, Sacramento Mayor Kevin Johnson asked state legislators to take the term out of the penal code, saying via Twitter on 25 February that the “word ‘lynching’ has a long and painful history in our nation. It’s time to remove its use in CA Law”. Perhaps that is why the use of the lynching law against a black woman struck many as notable. But some activists say the felony count itself is indicative of a change in attitude of police in the California state capital. “I have no doubt whatsoever that the Sacramento police department’s response has changed as the police brutality protests began late last year,” said Cres Vellucci of the Sacramento chapter of the National Lawyers Guild (NLG), an organization whose members attend rallies as independent observers, to monitor police response. It’s very apparent, at least to NLG observers like me, that officers want the protests to stop, and if people have to be abused, or arrested or otherwise mistreated, that will happen.”

Hampton, sitting in her lawyer’s office in mid-March with her half-brother, Jamier Sale, for an exclusive interview with the Guardian, said she believed she and Sale were being targeted by police because they were “very active in the Black Lives Matter movement”. Her arrest took place during a counter-protest that was marching towards to a pro-law enforcement rally. “It’s clear [law enforcement] are trying to target two of the most powerful Answer activists,” she said, referring to the Act Now To Stop War and Racism Coalition, a group that has grown in prominence nationally as an organizing body for the Black Lives Matter movement and other issues. “Based on how law enforcement has interacted with us and tried to get information, we know that they know that we are very intersectional in our activism and we are two young educated people of color,” said Hampton, who also has joined rallies for pro-Palestine causes, raising the minimum wage (she works a low-wage job as a car detailer), organizing fast food workers and a recent event for Cesar Chavez day, among others. And they see that as a threat,” added Sale, who has a habit of finishing his sister’s thoughts. Sale recently concluded his own run-in with the law, after being cited for jaywalking at a Black Lives Matter protest in November. That case made it to court in March, resulting in a $240 fine and a friend starting the hashtag #leavethisfamilyalone in support of Hampton and Sale.

Sacramento police spokesperson Traci Trapani said she “didn’t think” lynching was a common charge in a city where rallies happen on an almost weekly basis, but she was unable to provide numbers. She added that most protests were a “peaceful process” in which officers were “accommodating” of protesters. While video of the 18 January protest that led to Hampton’s arrest makes it clear that she did have an individual interaction with law enforcement officers, there are questions about how the resulting arrest and charges are moving through the courts. “Certainly there did not appear to be any conduct that rose to a felony level,” said Hampton’s pro bono lawyer, Linda Parisi, who has advised her client not to speak about the events sur-

rounding the arrest itself. “It makes you say: ‘Really, you’ve charged this young woman with a felony charge of lynching? Is that right? Is that the message we want to send?’”

Other arrests but different outcomes: Parisi said two other protesters were arrested for lynching that day, with a different outcome from Hampton’s. Emily Cinder, a 19-year-old Caucasian woman, and her fiancé, Strong Walls, a 21-year-old mixed-race man who says he was booked into jail as Caucasian, faced the same charge. Video shows multiple officers arresting Walls in the street while protesters, including Hampton, shout from the sidewalk, where police had ordered them to stay. Other video later shows Hampton in the street with officers. Walls said he was in jail for three days – a claim confirmed by his lawyer – and was eventually released, along with Cinder, on his own recognizance. The Sacramento district attorney has not filed charges against either, although it has the ability to do so until April 2016, according to spokeswoman Shelly Orio.

Orio declined to comment specifically on any of the three activists, saying the DA did not comment on ongoing cases. She was also unable to give any statistics on the number of people prosecuted for lynching in Sacramento. Walls said he had “no idea” why he and Cinder were released while Hampton’s charges remained. The police did not detain Hampton and she said no officer recorded her personal information. She did not know a warrant had been issued for over a month, until officers came to her mother’s house to arrest her. “The cops said to me you’re not charged with anything, the judge just wants to talk you,” she said. But she was booked into jail on multiple charges, including the felony count of lynching.

Maile Hampton, Jamier Sale It seemed very hypocritical and outrageous that … four uniformed white men came into my home, an African American woman, took me out of my home, put me in jail for standing up for black people – on lynching,” said Hampton, who has developed a public presence not just at rallies, but also through speaking at city council meetings and other venues. Under the circumstances of that day, it was apparent to me it was an intimidation tactic.”

An activist is born: Hampton attended her first protest in the summer of 2014 – a pro-Palestine event where she quickly found herself on the bullhorn, which is now a common practice for her at rallies, where she often leads chants. But it wasn’t until her brother went to Ferguson, Missouri that fall, after the Michael Brown verdict and as part of an Answer coalition, that she began to be active in the Black Lives Matter movement. “A lot of the passion I have is also fear for my loved ones and for my own life and for people around me,” she said. “When [Sale] was in Ferguson, one of the members of Answer sent out like an alert, like: ‘Our comrades in Ferguson are being attacked by the police right now.’ So seeing that, not only is he a comrade but he’s my brother. You know, it’s like he could have been Mike Brown. So that fear really motivated me to really get the most involved that I could be.” Parisi said she was “optimistic that we will arrive at a resolution” to Hampton’s case that involves removing the felony charge, though no negotiations with the district attorney had yet taken place, she added. Hampton remains committed to her activism. When she was released from jail, she came out to find more than two dozen supporters waiting to greet her. “That feeling was – it was really unexplainable,” she said. “It really just brought me to tears. Seeing that really made being an activist and being an organizer ... it all makes sense of why I am out here doing what I do.”

Drone Mounted Pepper Spray Used to Control Crowds

Crowd control technology has reached new height in India as one police force has reported a successful trial of a Pepper Spray mounted drone, capable of carrying two kilogrammes of the non-lethal irratant. India has daily protests, mostly peaceful but some turn very nasty.

But even the most promising prisons come up against the blunt incentives demonstrated by the classic 1971 Stanford prison experiment, where volunteers drawn from among Stanford’s elite undergraduate men were randomly assigned to be prisoners or guards. The experiment had to be halted after only six days because the participants on both sides degenerated into dehumanizing and degrading treatment of the others. Remarkably, incarceration remains the primary mode of punishment almost everywhere, despite its dismal record.

In addition to joining this global failing, there are distinctive evils that American states have pursued in the era of mass incarceration. Most American states have engaged in an unprecedented expansion of prisons and prisoners beginning in the late 1970s through the first decade of this century. Georgia went from having 200 prisoners per 100,000 free citizens in the 1970s to close to 600 in the early 2000s. It has dropped only modestly since (despite participating in significant crime decline that the whole nation enjoyed starting in the mid-1990s).

My home state of California swung even more dramatically, from under a 100 prisoners per 100,000 citizens, to almost 500 in 2006. California, which once prided itself on evidence based rehabilitative treatment, embraced penal segregation and warehousing prisoners in stacked bunks before dropping the number of prisoners under court pressure. In April 2011 the Supreme Court, moved by the suffering in California’s hyper-overcrowded prisons that it likened to torture, ordered a massive decrease in that state’s prison population.

California is just one example of recent signs of change in the US. Few now argue that building more prisons is a cost effective way to prevent crime. In other states, political leaders are acting ahead of the courts to pursue sentencing reforms. But nationally, incarceration rates are only down marginally, despite historically low crime rates. Unless some more dramatic steps are taken to implement sweeping sentencing reforms, American prisons are likely to remain a source of images of cruelty, degrading treatment and torture for decades to come. And when they emerge, we cannot pretend to be shocked. *Jonathan Simon, Guardian*

Probation Service Split: ‘Staff are Staring Into the Abyss’

Private companies have taken over 70% of probation services, creating more work and artificial divisions, demoralised officers tell Tamsin Rutter, Guardian Friday 9th April 2015. - “I’ve been in this job for 25 years and I’ve never known morale so bad and so low … You just don’t want to go to work on Monday mornings. We’ve just had enough.” John, a National Probation Service (NPS) probation officer in the south of England, has seen many of his colleagues resign since the service was split in June 2014. Some 70% of probation work has been outsourced to private companies and charities, while the rest – supervision of the most dangerous offenders – remains within the public sector, under the remit of a new NPS.

The 35 probation trusts in England and Wales have been replaced by 21 community rehabilitation companies (CRCs), run by private companies with payment-by-results contracts that kicked in from February 2015. Existing staff have been split between CRCs and the NPS, with many teams now operating alongside each other. There have been serious consequences. Employees on both sides, many of whom went on strike in April 2014 to protest against the changes, complain of tension, division and a hierarchical work structure. There are more processes, more paperwork, a more intense workload – and absurdities. “It’s getting stupider by the minute,” says John. “I sat in an office yesterday with four managers … and discussion was around whose coffee and tea was put into whose cupboards.”

Divided teams: More seriously, physical and virtual divisions have been created, with

Satanic Verses, they had little to offer by way of redeeming artistic merit. They were provocative for the sake of it, and the violence that ensued was predictable, if not, perhaps, in its scale. The violence is to be condemned, but so are the irresponsibility and the unjustifiable hurt to others. They were aimed at offending a subordinated minority, in the name of defending a right to criticise Islam that had never been called into question in places where the right was so demonstratively asserted. In 2006, when Charlie Hebdo took up the anti-Islam 'free expression' cudgels, the magazine's work was derivative and without much humour. They kept it up, recklessly poking a stick in a wasps' nest, tormenting innocent and often vulnerable people simply because they could, and asserting their right to do so.

The 2011 fire-bombing of their headquarters was criminal, the murders in January 2015 atrocious. But that does not mean that in order to uphold free speech and the rule of law, we are obliged to identify with the purveyors of anti-Muslim racism. As Reporters Without Borders (RWB) pointed out, the march in Paris on 11 January to commemorate the victims in the Charlie Hebdo massacre, and to valorise the press freedom which they were taken to represent, was attended by the Turkish Prime Minister and the foreign ministers of Egypt, Russia, and the United Arab Emirates, representatives of countries that are hardly bastions of free speech. Their countries are ranked 154th, 159th and 148th respectively out of the 180 countries on RWB's press freedom index[2]. Al Jazeera journalists Peter Greste, Mohammed Fahmy and Baher Mohammed were in an Egyptian jail on trumped-up charges at the time.

A way forward: In the late twentieth century, theorists like Stuart Hall argued that cultural texts have a life of their own; that artists (journalists, filmmakers, playwrights, performers etc.) cannot completely control the way readers/audiences will interpret their work. This implies that we need to move beyond the creative laissez-faire of the counter-culture, whatever its anarchic and iconoclastic appeal, and to recognise that the social landscape on which we practice our freedoms is now highly volatile. Anyone lucky enough to have a wide public audience/readership for their work should be obliged to consider the spiritual and communal values of poor and powerless minorities in the West. To do otherwise is immoral – and can be reckless.

Prison Is Punishment Enough but US Inmates also Face Violence & Humiliation

Does degradation enhance the social value of punishment? Reflection and research reject both ideas, yet conventional wisdom often assumes they do. Punishments that come from fellow prisoners, private resentments of guards or deliberate indifference to mental and physical illness have no place in the criminal justice system – not least because research shows they significantly reduce the motivation to obey the law in the future. So why do we allow we allow such conditions to persist in US prisons? On 3 April, a disturbing photo surfaced of a young, bruised Georgia prisoner who had a dog leash tied to his neck and was surrounded by a menacing prison gang. Like the Abu Ghraib photo, it speaks to us of more than just violence and suffering; it captures cruelty and the loss of humanity in places of unaccountable power.

Ironically, prisons were promoted more than 200 years ago as humane alternatives to the often raucous and violent scaffold mutilations and executions that were the major punitive responses to serious crimes until the 19th century. But the taint of inhumanity has returned again and again in the history of the prison as one generation discovers degradation and torture in the prisons of the last. The few inspiring prison examples that exist – mostly in Nordic countries subject to European Community human rights standards – reflect enormous investments of money and attention to dignity enhancing-practices.

'Where was our Independence?' Persistent Questions of IPCC Mark Duggan Investigation

Written by Betsy Barkas, IRR: Last week the Independent Police Complaints Commission (IPCC) report into the death of Mark Duggan exonerated the officers involved – and was immediately condemned by the family as a 'whitewash'. IRR News analyses previously unreleased internal documents that shed new light on the IPCC's investigation in the immediate aftermath of the shooting. Documents released under the Freedom of Information Act (FOI)[1] reveal the IPCC chose to withhold ballistics information from the public for several days following the shooting. This withheld information was of vital public concern as it proved that a bullet lodged in a police officer's radio was from a police firearm. It therefore suggested that, contrary to what was circulating in the media at the time, there had been no shots fired by Mark Duggan. The documents also reveal how some of this misinformation actually originated from the IPCC. Overall, the documents raise further questions about the independence and authority of the IPCC – and the extremely close relationship between its press office and the Metropolitan police.

On the evening of 4 August 2011, Mark Duggan got out of a taxi on Ferry Lane in Tottenham and was shot twice by 'V53', a firearms officer of the Metropolitan police. A police officer was also hit by one of these bullets, which lodged in his radio, and he was taken to hospital but released that evening, unhurt. Mark died from his injuries at the scene. Widespread references to a 'shootout', and statements that shots had been fired at police by Mark Duggan featured in dozens of early news reports about the incident. At least some of this misinformation apparently came from the IPCC. The Telegraph, Evening Standard, Mirror and Independent all repeated the line that the suspect had 'opened fire' or 'fired first', and quoted the IPCC as the source. It wasn't until several days later, on 8 August, that the truth began to seep out, when media outlets reported that ballistics examinations had proved that the bullet lodged in the officer's radio was police issue. The IPCC refused at first to comment on these reports, then the next day, 9 August, issued a statement confirming the bullet had been police issue. The inquest jury three years later concluded that Mark Duggan did not have a gun in his hand when he was shot, contradicting the evidence given by V53, who had claimed he had shot in self defence. (Read an IRR News story: Framing the death of Mark Duggan.) Following pressure from the Guardian, the IPCC apologised several days after the shooting for 'inadvertently' giving 'misleading' information.

Misinformation: The FOI documents reveal the source of this misinformation: on the evening of the shooting an IPCC press statement was drafted that included the following line: 'We do not know in the order the shots were fired (sic). We understand the officer was shot first before the male was shot' (p23 FOI). This line was taken out after concerns were raised by investigators, but was apparently used for just over two hours, which explains how it was picked up by some media outlets. On the day after the shooting, 5 August, IPCC Commissioner Rachel Cerfontyne (since August 2013 the deputy chair of the IPCC) also circulated a draft press release that contained the line: 'A non-police issue handgun was recovered at the scene. An officer's radio which appears to have a bullet lodged in it has also been recovered and at this stage indications are that the bullet has come from the handgun.' The last phrase was also taken out after concerns were raised by investigators.

Later that same day (5 August), senior staff including the Commissioner were made aware that the bullet was police issue. However the IPCC chose to withhold the information for several days, and eventually released it on 9 August. Several emails discuss the potential release of the information. A personal email from the Met's Acting Deputy Commissioner Bernard Hogan-Howe (since August 2011 the Met Commissioner) on the evening of 8 August specifically requested that the IPCC continued to withhold the information, stating: 'it is our professional assessment that it has a

potential to negatively impact on public perception of the MPS in certain communities, and that this has the potential to spark disorder.' The IPCC Commissioner recorded in the information logs that the reason for withholding the information was that she wanted the police officers to be able to write their statements without knowing it, and also citing concerns about 'the immediate priority of the Met to deal with the violent disorder' (p. 19 FOI). However, IPCC staff were only too aware there could be an embarrassing leak, and drafted a press release to prepare for that eventuality. The Commissioner is also recorded as having said she was 'relieved we didn't say anything about the bullet Friday as we have [sic] then been blamed for the riot' (p. 31 of FOI).

'Where was our independence?' In its public statements, the IPCC continually stresses its full, independent and robust investigations. Yet the correspondence reveals a relationship between the press office and the police that some would consider too cosy. On a number of occasions over the few days following the shooting, the IPCC's press releases were sent to the Met for comments before being released. The emails record that at the Met's specific request, the first press release by the IPCC on the evening of the shooting included a line that a firearm had been recovered from the scene (p. 4 FOI). In general, the IPCC does not appear to have had a problem with disseminating the police's account of this fact, before it had had a chance to conduct its own investigation. But at least one member of staff was concerned. Nicholas Long commented, on 7 August (p. 57 of the FOI disclosure): 'If I were a family member or member of the public critical of the IPPC, I would be asking where was our independence (if we accept the word of the police without question)?'

The IPCC's lead investigator Colin Sparrow also appears to have briefed colleagues on the basis of police accounts – which were later found to be untrue by the inquest jury. The information logs record that on the morning of 5 August, Sparrow briefed colleagues that the 'Deceased produced a handgun' (p. 27 FOI). This was apparently based on information provided by the police, but was disbelieved by the inquest jury, which found that Mark had thrown a gun away from the minicab. Sparrow also briefed colleagues that morning that the bullet in the police radio was 'likely' to have come from the handgun recovered from the scene (p. 27 FOI, see also p. 23). When it came to the difficult matter of releasing the ballistics information, the IPCC appears to have been pressured to continue to withhold it by police. Other emails between IPCC staff observe that 'the MPS was clearly working on the IPCC at different levels last night' (see p. 55 FOI) before listing four IPCC staff who were apparently pressured with regard to media engagement. Several other references are made to 'high-level MPS pressure', and to the 'MPS Commander' putting 'pressure' on IPCC Commissioner Rachel Cerfontyne in these few days.

'A mistake': At the pre-inquest hearing in December 2011 the IPCC's Colin Sparrow apologised for the misinformation, saying it had been 'a mistake'. The IPCC's reports into the incident have been critical of the way in which information was shared with the police, and recommendations were made to improve communications. But there has been no public acknowledgement of the more insidious factor that underlies the mistakes. These documents suggest the IPCC was far more concerned about protecting the police from criticism, than holding them to account. A spokesperson for the IPCC told IRR News: 'It is on public record that a mistake was made in the early hours of the shooting which lead to some misleading information being provided to journalists regarding an exchange of shots. Any reference to an exchange of shots was not correct and did not feature in any of our formal statements. The IPCC has publically (sic) clarified this point through a statement on its website; at an appearance before the Home Affairs Select Committee; in media interviews; and at the inquest into the death of Mark Duggan. The IPCC apologised to Mark Duggan's family and has tightened internal procedures as a result of lessons learned.'

Putting the Ethics Back Into Freedom of Expression *S. Poynting & G. Morgan IRR News*

The social landscape in which we practise our freedoms is highly volatile. Can we afford to be reckless? After the massacres in 2011 by the racist terrorist Anders Behring Breivik, 'we' were all, briefly, Norwegian. It was a gesture of sympathy for the blameless casualties and solidarity for those suffering their loss. As with many acts of terrorism, any one of us could have been a victim. Breivik selected his victims on the streets of Oslo, by nothing more than their proximity to government buildings, as had the white supremacist Timothy McVeigh in the 1995 Oklahoma bombing. Oslo BreivikBreivik targeted his sixty-nine young victims on the island of Utøya, however, because they were attending a summer camp of the youth wing of the Labor Party: an organisation, in Breivik's view, that was abetting the 'Islamisation' of Europe. At the time, many saw Breivik's Islamophobic paranoia as a sign of individual pathology. But as we argued in 2012 in our introduction to Global Islamophobia: Muslims and Moral Panic in the West (a collection of essays on Australia, Europe and the US), this misses the importance of Islamophobia's globalisation throughout the 'west'. Especially since 9/11, we have witnessed a wave of moral panics about the Muslim folk devil that are cyclical and transnational. They reinforce and amplify its ideological elements as they circulate and popularise them.

The media's partial approach to freedom - This transnational folk demonry didn't start in 2001, of course. In 1979 the Iranian revolution raised a new spectre. Ayatollah Khomeini's bearded and beturbaned visage haunted the screens of hundreds of cable TV stations across the United States, while the hostages were held for fourteen months from November 1979 in the captured US Embassy in Tehran. The 'Iran hostage crisis' is called, by the Iranians, 'the capture of the US spy den', but most of what is now quaintly called the 'international community' call it by the former name. Freedoms are never freedoms-in-general, but are exercised on a given terrain. The yellow ribbons, displayed by thousands of Americans in support of the hostages, were not seen in parts of this 'international community' outside the US. No-one suggested, in solidarity with the hostages, that we were all spooks. Those spooks in recent years have not shown themselves to be friends of free speech – witness Chelsea Manning, Julian Assange, Edward Snowden – but then neither did the regime of the Shah, which the CIA helped to install and sustain from that very embassy. We are not all agents of imposed western interests, and we need not all be Charlies.

In 1989 the publication of Salman Rushdie's Satanic Verses, brought out angry crowds from Bombay to Bradford; Western media provided no context for the anger, representing the protestors, and their support for the fatwah against the author, only as irrational and violent, as if the anger had sprung from nowhere and as if violence and irrationality characterised all Muslims. When books were burned, free speech was affronted. Global IslamophobiaThe subsequent growth of the internet accelerated the global circulation of images of an 'incomprehensible and morally repugnant' Other: violent, barbaric, brutal, backward, uncivilised, hyperpatriarchal, degenerate, sexually predatory, authoritarian and inimical to enlightened western values, particularly liberal pluralism. The authors in our essay collection Global Islamophobia: Muslims and Moral Panic in the West offer case studies of how these tropes are deployed today, in transnational demonisation of the Muslim Other: from Stockholm to Sydney, Bradford to Berlin. For the most part, as Edward Said has eloquently shown, these express the wellworn ideology of colonialism, projecting the violence and barbarism of colonialism and its legacy onto the 'other', in the name of universal civilisation and enlightenment.

The right to offend - Should humourists enjoy a universal right to offend gratuitously? The Jyllands-Posten cartoons of 2005 were irresponsible and needlessly hurtful. Unlike The