attributable to the lawyer's myth as David Starkey would have it, which surrounds this piece of vellum, its almost religious symbolism, as the foundation or origin of the rule of law, and, indirectly, of parliamentary democracy. Clauses 39 and 40 do carry a very fundamental message to modern readers, however much Antonin Scalia-like originalist analysis suggests that they may have been understood 800 years ago. After all, if ever there was a living instrument, it is Magna Carta. Like Doctor Who, it may have changed its character from time to time over the centuries, but that is the privilege accorded to legends – and, unlike the story of Doctor Who, the Magna Carta story is directly grafted onto hard fact. Even Justice Scalia apparently has the lawyer's view, as he is quoted as having said that "an understanding of the meaning and history of the U.S. Constitution starts with Magna Carta"44; there is also at least one example of a US court striking down a statute as incompatible with Magna Carta.

26. There can be little doubt that the "lawyer's view" of Magna Carta is partly mythical. Of course, there is nothing wrong with myth. As the late Tom Bingham put it: "The significance of Magna Carta lay not only in what it actually said but, perhaps to an even greater extent, in what later generations claimed and believed it had said. Sometimes the myth is more important that the actuality."

27. Whether they are relied on to explain where we are, to justify where we are going, or simply to entertain or educate, myths are and always have been as much part of the human perception of history as the facts they replace or supplement. A good example in the present context is in Isherwood's Goodbye to Berlin, where the German Landauer says to the narrator "You, Christopher, … with your centuries of Anglo-Saxon freedom behind you, with your Magna Charta engraved on your heart, cannot understand that we poor barbarians need the stiffness of a uniform to keep us standing upright."47 An English image of the German view of the English character. There must be a reason why, unlike every other European country, the UK has had no tyranny, no violent revolution since the mid-17th century, and the notion of a continuum from the dramatic moment in Runnymede, does the job very nicely - particularly as the Magna Carta myth was created shortly before that final mid-seventeenth century revolution.

28. I do not see much point in arguing whether myths are a good or a bad thing: there is a human need for myth. Myth simplifies, it personalises, it fills in gaps, it justifies and it engages. We all like stories – as young children we are brought up on them, and most educated adults read fiction. Myth gives a coherence and justification for rules and events which otherwise appear random and unfair – to an atheist or agnostic, myth has much in common with religion. We don't like to be ignorant, and, in relation to the more distant past, including the 12th century, myth fills in the gaps. And myth often has a patriotic, or at least a national, resonance – consider Homer, consider Virgil, consider Shakespeare. And, of course, at least for most people, myth is more fun, more engaging, than dry facts. The lawyers' view of Magna Carta ticks all these boxes.

29. And, even for those who do not approve of myths, for all the hype there is no doubt that

**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, Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Thomas Petch, 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, Ray Gilbert, Ishtiaq Ahmed.

**Miscarriages of JusticeUK (MOJUK)**
**22 Berners St, Birmingham B19 2DR**
**Tele: 0121- 507 0844 Email: mojuk@mojuk.org.uk Web: www.mojuk.org.uk**

## MOJUK: Newsletter 'Inside Out' No 531 (28/05/2015) - Cost £1

**Wootton v McConville - Supreme Court Refuses Appeal**

The Supreme Court today Tuesday 19th May 2015, has refused an application to hear an appeal relating to the sentencing of John Paul Wootton and Brendan McConville who were convicted of murdering Constable Stephen Carroll, a member of the Police Service of Northern Ireland, on 9 March 2009. The Appellants were convicted on 30 March 2012 of the murder of Constable Stephen Carroll and for possession of firearms and ammunition with intent to endanger life or cause serious damage. The First Defendant was also convicted of attempting to make a record of information likely to be useful to a terrorist.

The issue in this case is whether, where the prosecution evidence is insufficient to establish a specified role in a crime and there is no direct evidence of agreement to commit the crime, the court can draw adverse inferences by reason of a failure to give evidence, so as to contribute to a conclusion that the totality of evidence of the was beyond reasonable doubt. Secondly whether, in setting the tariff for a child convicted of murder as a secondary party, bearing in mind the overarching principle of rehabilitation, the court should not increase the sentence by reason of aggravating factors to a level appropriate for an adult. The Supreme Court has declined to hear the appeal and the judgment [2014 NICA 69] of the Court of Appeal of Northern Ireland therefore stands.

The substantive text of the Supreme Court's Order reads: "Permission to appeal was refused because the application does not raise an arguable point of law of general public importance which ought to be considered by the Supreme Court at this time bearing in mind that the case has already been the subject of judicial decision and reviewed on appeal."

[The legal teams for Brendan and John Paul received the decision via email minutes before it was carried by the news media, both Brendan and John Paul learned of the decision via the BBC lunchtime bulletin, the Supreme Court has not explained how it came to its decision which came as a shock to everyone. The Craigavon Two group will continue to lobby and campaign to overturn this obvious miscarriage of justice. A cloak and dagger approach created this injustice, decisions made behind closed doors in ivory towers that raise more questions than answers will simply not be accepted. We call for justice to be done and be seen to be done, 'we call on everyone to support the call for 'Justice for the Craigavon Two.]

**Imran Rashid Takes Appeal to European Court of Justice** *Derby Telegraph*

A convicted murderer, jailed for 22 years for killing a man in Derby, is taking his appeal to the European Court of Justice. Imran Rashid was one of five men found guilty of the murder of Serioza Lawskowski in Normanton four years ago today. Their trial was told that the 29-year-old, a Polish national living in Derby, was surrounded by a masked gang who then beat him to death. But 33-year-old father-of-five Rashid has always denied the charge and now his family in Derby are spearheading a campaign to try and get him cleared. They have already had their appeals twice thrown out by the Court of Appeal in London.

Now they are taking it as high as they can to the European Court of Justice in Luxembourg – and are confident they will be successful. Imran Rashid's brother, Ali, 36, said: "Imran has said all along that he did not commit this crime and we are of the firm belief that much of

the evidence that convicted him was circumstantial. And it is not just us that believe this because a number of people in the community are supporting us and getting behind us. We have a website which highlights our thoughts and beliefs on the conviction and almost 1,000 people are supporting our 'Free Imran Rashid' Facebook page. There is a groundswell of support for the campaign and the court in Europe has already looked at some of the papers and asked us to supply more, which we think is a good sign."

Mr Lawskoski was struck with a hammer and his head was stamped on after he came out of a friend's home, in Cummings Street, Normanton. The trial, at Nottingham Crown Court, heard that his attackers surrounded him and one said: "Who are you looking at?", before he was hit. But it was told there were "no known links" between Mr Lawskoski and the men convicted of his murder – Imran Rashid, of Madeley Street, Normanton; Rizwan Ahmed, 27, of Northumberland Street, Normanton; Raja Jeelani, 30, of Depot Street, Normanton; Robual Islam, 30, of Loudon Street; and Usman Ahmed, 24, of Northumberland Street. Rashid and Jeelani were told they would serve a minimum of 22 years.

Ali Rashid said: "The police's case was based around the death being a joint enterprise because it is not known who delivered the blows that brought around Mr Lawkowski's death. We believe we have information, which we have passed on to the court in Europe, that makes it impossible for Rashid to be at the scene at the time of the attack. We have been told it will be somewhere between eight and 12 months before we know whether or not the appeal is going to be heard, but even though it might be that long it still gives us hope the judges will look at the case thoroughly and professionally." Mr Rashid said his brother has five children, three daughters aged 11, 10, and nine, plus two sons aged eight and four. He said: "There are still people who have information on what happened that day and, for whatever reason, may not have spoken to the police. Their information could help our case and we would love to hear from them." Derbyshire police said it could not comment on appeals.

**G4S Prison Guards - Drugged up, Racist, Criminal Behaviour** *Alan Travis, Guardian*

At least six members of staff have been dismissed at a privately run young offenders facility after a series of incidents of gross misconduct, including by some in leadership positions. An Ofsted report on the G4S-run Rainsbrook secure training centre, near Rugby, says some staff were on drugs while on duty, colluded with detainees and behaved “extremely inappropriately” with young people, causing distress and humiliation. It says poor staff behaviour led to some young people being subjected to degrading treatment and racist comments. The inspectors reveal that one child who suffered a fracture, potentially as a result of being restrained, did not receive treatment for 15 hours because senior staff overruled clear clinical advice that he needed medical treatment. The disclosures are the second scandal to hit Rainsbrook. In 2004, 15-year old Gareth Myatt died at the centre after being restrained using techniques that were subsequently banned.The inspectors said the discovery of contraband DVDs at the centre was likely to be the result of smuggling by staff and raised concerns that “some staff may have colluded with young people to elicit compliance by wholly inappropriate means. Senior managers were not able to reassure inspectors this was not the case.”

It is understood that G4S’s contract to run Rainsbrook was extended in March 2014 for a further 18 months, until November 2016. Rainsbrook is one of four privately run secure training centres, which hold children aged 12-17. There were 77 young people in Rainsbrook at the time of the inspection. Four years ago Ofsted rated the centre as outstanding.



seemed content to be passengers on the same bandwagon. Macaulay identified the Charter as “commenc[ing] the history of the English nation”37, and Bishop Stubbs observed that “[t]he whole of the constitutional history of England is little more than a commentary on Magna Carta”38 – but that may have been intended to show that we have no constitution. However, the more sober Maitland, ironically a lawyer as much as an historian, took a more cautious view, famously describing Magna Carta as caught between “theoretical sanctity and practical insecurity”.

21. And of course Magna Carta has featured far more in the US jurisprudence than it ever has done in ours. An internet search suggests that it has been cited only ten times in House of Lords judgments in the past 120 years40. And the US has done a great job exporting Magna Carta values, or, if you prefer, the Magna Carta myth, across the globe. To take but one example, when launching the Universal Declaration of Human Rights at the UN on 1 January 1949, Eleanor Roosevelt said in her short and pithy speech that the declaration “may well become the international Magna Carta for all men everywhere”41. (The words “all men” are an indication how things change).

22. And in the past 150 years, Magna Carta has also been the basis for some pretty weird notions. Thus, it famously guarantees rights to freemen, and there is some sort of association of “freemen on the land”, who regard gaining this mythical status as a kind of legal get out of jail free card - literally. At least according to a communication recently sent to the Advisory Council on Historical Manuscripts, “freemen” regard themselves as “bound only by common law” and having “no obligation … to abide by the action of legislative orders coherent only with fictitious, governing, corporate bodies” on the basis that “Magna Carta entitles any free person to elect whether or not to be bound by legislation”. This echoes the reference by Edward Jenks in his 1904 magisterial essay to the mystical “freeman” status, which he terms the “great secret of the false glamour which invests Magna Carta”, and he added that “[u]nhappily for this pleasing theory, the wording of the Charter itself renders it quite untenable.”

23. The different perceptions of Magna Carta over time and the different perceptions of modern writers and speech-givers, whether historians, lawyers or conspiracy theorists, serve to reflect the Humpty Dumpty view of life: Magna Carta means what just what I choose it to mean; this is both the beauty and the danger of historical “facts” which become part of spurious national myth. But, however dubious one may be about its importance, standing before a contemporary 1215 version of the Great Charter, as we can all now do at the splendid British Library exhibition, is a memorable and emotional moment for anyone with even the slightest feeling for English history or the slightest interest in the rule of law. And that is true even though it is illegible except to those historians or other medievalists who are trained to read 13th century script.

24. One feels a shiver of excitement when looking at the original vellum; there is an instinct to lower ones voice as when standing before a great masterpiece or walking into a place of worship. That is partly because of its dramatic historical context, the famously bad King, the reputedly over-mighty barons, the oppressed populace, the shadowy Archbishop Langton, the riverside setting, the imminent civil war and French invasion, and the not-too-distant royal death. And it is because the document contains some goodand sensible laws; they may seem a bit quaint or worse now, but many of them were significant and sensible then: the requirement in clause 33 for removal of fish weirs in rivers, for instance, seems a bit arcane, but they were seriously impeding river commerce, and the requirement was repeated in subsequent legislation.

25. But above all, our feeling of reverence when standing before the original Charter is

tured the public imagination, and which only has symbolic importance due to the subsequent accidents of history. This view was characterised as "the historian's view" by my colleague Jonathan Sumption in his excellent talk to the Friends of the British Library a couple of months ago31. The other view is the more romantic view, although given that Lord Sumption calls it "the lawyer's view", there is every reason to wonder whether it really can be romantic. This view of the Great Charter was encapsulated by Igor Judge in a stirring speech, in Middle Temple, when he called it "the banner, the symbol, of our liberties". In truth, rather than two extreme views, there is, as usual, more of a spectrum of views, with a stark difference between the ultra-violet David Starkey historian's view that Magna Carta was a dramatic but ultimately insignificant flash in the pan; and the infra-red, Helena Kennedy lawyer's view that it was the foundation of modern constitutional values.

17. The so-called lawyers' view is that the 1215 Magna Carta was the first time since the Norman Conquest that a deal was struck between the King and any of his subjects, and that it was the first step on the long road from a dictatorial monarch and arbitrary laws to the rule of law and parliamentary democracy. The Great Charter's contemporary importance was self-evident from the many copies which were contemporaneously circulated across England, and its frequent re-issue and confirmation by successive Kings – over thirty times - during the ensuing two centuries, the last time being on behalf of the 7-year old Henry VI in 1429, the year Joan of Arc helped Charles VII of France to capture Orleans.

18. The sceptical historians, on the other hand, point out that in 1215, it was not even called Magna Carta: the name was conferred a couple of years later by the scribes simply in order to distinguish it from the Charter of the Forests, because it was longer, not because it was more important. The sceptics also say that Magna Carta contained nothing of general significance which had not been in the coronation charters of Henry I and Henry II in the previous century, which in turn merely reflected what was believed to be "common custom" anyway. It was, they say, no more than a feudal law code. Even, it is said, the famous clause 39 and 40 were merely aimed at requiring the King, when dispensing justice, to behave like one of his judges. Anyway, the 1215 Charter itself was a complete failure, given that it was repudiated by both sides and annulled by the Pope within two months of its execution. True it is that it was resurrected from time to time over the next two centuries, mostly before 1300, but it is not a great exaggeration to say that that was merely to help the King pacify and tax his subjects, or to provide the Barons with an excuse for rebelling against the King. After 1450, it was largely forgotten and did not even feature in Shakespeare's King John at the end of the 16th century.

19. Well, whichever view is right, in the first half of the 17th century, Edward Coke, as unsound an historian as he was a brilliant, if ruthless, lawyer and propagandist, resurrected Magna Carta. He did so to undermine the Stuart monarchy's notion of the divine right of Kings. In particular, he did so to justify his view that no proceedings could be enforced by the state against anyone without complying with the common law requirement of what we would now call due process. He regarded the Great Charter as the "root" from which the nine "branches" of "the tree of liberty" had grown, and he wrote that clauses 39 and 40 were "pure gold"36. After that, the Civil War in the 17th century and the enlightenment in the 18th century encouraged a hyper-Edward Coke view of Magna Carta as the origin of English liberty, the rule of law and even of parliamentary government. And the American colonists bought this version enthusiastically, or maybe just lazily, enshrining it in most state constitutions, and purporting to draw on it for their federal constitution.

20. In the 19th century, many UK historians (Lord Sumption and David Starkey please note)



The latest inspection report published on Wednesday 20th may 2015, says management of behaviour at the centre has deteriorated over the past 12 months. The inspectors said they were concerned that data provided by the centre on the number of fights, assaults and injuries were inaccurate. Significantly, more young people than in other STCs reported feeling threatened or bullied or had experienced insulting remarks. The report says full details of a number of serious incidents have not been included to protect young people's confidentiality. It says that in two out of eight cases of serious staff misconduct reviewed by inspectors, there was delay in taking appropriate action. In two cases, Rainsbrook staff including the director failed to follow clinical advice that the young people involved needed hospital assessment, and in one case they failed to get prompt treatment.

G4S director of children's services, Paul Cook, said: "This is an extremely disappointing report for everyone connected with Rainsbrook and it's the first time in 16 years that the centre has been found by any inspecting body to be less than good or outstanding. We recognise that the incidents highlighted by inspectors were completely unacceptable and took swift action at the time, in discussion with the Youth Justice Board. The YJB has expressed confidence in our action plan to address all the concerns raised and I am keen for inspectors to revisit the centre at their earliest opportunity to check on our progress." - Lin Hinnigan, chief executive of the Youth Justice Board, said: "Earlier this year, Ofsted informed the YJB of serious concerns in performance at Rainsbrook STC. As the safety and wellbeing of young people in custody is of paramount importance, and the YJB sets high standards to ensure it is maintained, we immediately required G4S to address the issues swiftly and effectively. Rainsbrook has new leadership in place and an action plan to improve recruitment and training is being implemented. We are confident that Rainsbrook will return to the high levels of performance and care it previously delivered."

**CIA Torture Flights - Used Scottish Airports** *Reprieve*

Aircraft which were used to transfer prisoners to secret sites around the world in order for them to be subjected to torture are known to have stopped over at Scottish airports – including Edinburgh, Glasgow, Prestwick and Aberdeen. In 2013, the Lord Advocate – Scotland's chief prosecutor – asked Police Scotland to investigate the use of airports by CIA rendition flights. Following the release of a major report on the issue by the US Senate Select Committee on Intelligence (SSCI) last year, he also instructed them to request an unredacted copy of the document as part of their investigation. This could provide significant new evidence to the police, as the version of the report made public by the SSCI in December 2014 was heavily-redacted, and amounted to only around one tenth of the full document. In a letter to human rights organisation Reprieve received earlier this month, the Lord Advocate's department confirmed for the first time that the request for the un-redacted document has now been made to the US – although "nothing has been received at this time."

Reprieve – which represents a number of victims of the CIA's rendition and torture programme – is calling for the Scottish and UK Governments to give their support to the police's request. Reprieve's Donald Campbell said: "A full, un-redacted version of the Senate's report is a crucial piece of evidence for the investigation into the use of Scottish airports by CIA torture flights. It is therefore encouraging that this request has been made. However, with the response not yet clear, it is vital that the US is left in no doubt of how serious Scotland is about getting to the bottom of this. Ministers from both the Scottish and the UK Governments must do everything they can to back up this request, if they are serious about showing that this country does not tolerate torture."

**Judges to Hear Inquests Into Troubles-Related killings** *BBC News*

Northern Ireland's justice minister has assigned judges to hear inquests into some of the most controversial Troubles-related killings. David Ford told MLAs that he hoped the move would result in matters proceeding speedily, and more efficiently. He said: "This will benefit those who have been seeking a full, proper inquest, as they would see it, for some time." At present, there are 53 legacy inquests relating to 86 deaths. They include the IRA murder of 10 Protestant workmen at Kingsmill, County Armagh, in 1976. Legacy inquests also include the killing of 10 people in Ballymurphy in 1971, the abduction and murder of GAA official Sean Brown 18 years ago, and the 1997 loyalist shooting of doorman Seamus Dillon. An inquest into the 1994 murder of pensioner Roseann Mallon has already been assigned, but has stalled for legal reasons.

The current County Court complement of judges is to be increased and Lord Chief Justice Sir Declan Morgan will assume the role of president of the Coroners Court. David Ford told MLAs the move, part of the Stormont House, Agreement, would relieve pressure on the system. The agreement, signed by the five main parties, proposed to address the legacy of the 40-year conflict through the creation of a number of new agencies. The new Historical Investigations Unit, which will re-examine unsolved Troubles killings, is expected to be operational by next summer and a new chief is due to take up post by December, MLAs were told.

**Paul Kelly Appeal - Judges Agree There was Non-Disclosure but Shaft him Anyway**

A Huddersfield man who was jailed for life for the brutal murder of a former drug addict did receive a 'fair trial', top judges have said. Paul Mark Kelly, 36, of Abbey Road, Fartown, was jailed in 2011 after he was convicted of stabbing 52-year-old Kim Driver to death. Mr Driver was found dead in the ground floor flat where he lived alone in Crawthorne Crescent, Deighton, in July 2010. Kelly appealed against his conviction, but had his case thrown out by three judges. And today, delivering his reasons for dismissing the appeal, Lord Justice Pitchford rejected claims that Kelly's trial was 'unfair'. Kelly was accused of murdering Mr Driver in a fit of rage after the victim falsely boasted of a relationship with one of Kelly's ex-girlfriends. Part of the case against him was based on evidence from a witness who said Kelly had confessed to her that he had killed the victim.

In his appeal, Kelly's legal team argued that vital information about the witness was not disclosed to the defence by the prosecution before the trial. At the time she gave her statement to police, she was facing a fraud investigation, barrister Kaly Kaul QC said. Although investigations resulted in no action being taken against her, it had given her a motive to lie in her statement, said the QC. Miss Kaul said the evidence appeared as a 'two-line reference' in a probation report on Kelly himself, but should have been disclosed before the trial.

In their ruling, Lord Justice Pitchford accepted that the fact of the investigation should have been disclosed. But it had no effect on the fairness of the trial or the safety of Kelly's conviction. "That the witness may have been guilty of fraud upon her employers' clients was neither here nor there in the judgment of her credibility as a witness against Kelly," he said. By the time of the trial, it had been established that there was no basis on which she could have been charged. We conclude that there should have been disclosure of the fraud investigation. However, the absence of proper disclosure, in the result, created no unfairness to Kelly and had no impact on the safety of the verdict." *Huddersfield Examiner*

Another case of judges making a decision for a jury, who if the jury had been given the facts at trial, my not have returned a verdict of guilty: Full transcript of the appeal

http://www.bailii.org/ew/cases/EWCA/Crim/2015/817.html



thought and immersion in the culture before we can begin to understand what the Barons and the King thought that they were doing when they met at Runnymede. None of the painfully few 13th century records we have about what King John or the Barons said, did or thought at Runnymede comes from an eyewitness – and none is even contemporaneous or first hand. There were no baronial equivalent of Samuel Pepys or Tony Benn who kept diaries to publish; the 8-year old Prince of Wales was too young to write any letters to the Barons; there were no 13th century equivalents of Maynard Keynes and Harold Nicholson who were at Versailles in 1919 and wrote about it afterwards. But, when it comes to the 1215 Magna Carta, while there are a few factual straws in the wind, who wrote and said what and why, whether anyone thought it important and why, and whether it was expected to last or not, are all matters of conjecture. Like a court interpreting a contract24, historians can refer to a few surrounding circumstances, but they do not know about the intentions or wishes of the parties or about their earlier negotiations.

13. So we search for the truth of what it meant at the time. If you read all the splendid books which have been published this year about the Great Charter, you will find very little about its actual negotiation, drafting or sealing, and nothing at all about what happened at Runnymede. We know quite a bit about the surrounding circumstances, but apart from the date and place (and the place is not in fact precisely known), as one of the prime historians on the topic delicately puts it, "the precise circumstances of the drafting elude us".

14. So it is inevitable that there are different views about what the great Charter meant at the time. One view was parodically embodied by the authors of 1066 and All That, who had this to say on the topic: "Magna Charter was the first of the famous Chartas and Gartas of the Realm and was invented by the Barons on a desert island and in the Thames called Ganymede. By congregating there, armed to the teeth, the Barons compelled John to sign the Magna Charter, which said: a. That no one was to be put to death, save for some reason (except the Common People) b. That everyone should be free (except the Common People) c. That the Courts should be stationary, instead of following a very tiresome medieval official known as the King's Person all over the country d. That the Barons should be tried except by a special jury of other Barons who would understand Magna Charter was therefore the chief cause of Democracy in England, and thus a Good Thing for everyone (except the Common People)." In its skittish way, that represents the traditional view of Magna Carta, which, to quote another childhood favourite, "any fule kno". But, at least from today's perspective, it is not so much what Magna Carta meant at the time but what it started, what it represents.

15. And as to that, there is a sharp difference of opinion, which is well illustrated by a recent discussion, if that is not too kind a word, on the Radio 4 Today Programme on, somehow it seems appropriate, Saint George's Day. Helena Kennedy, a "leading barrister"28 (as is accurately recorded on her website) expressed the view that Magna Carta was the basis of jury trial. David Starkey, describing himself as a "great historian", responded to her, or more accurately hectored her, saying "This is myth. This is lawyer myth. This is lawyer myth. This is myth", adding "1215 doesn't matter"29. The apparently equally peppery Professor Max Radin took the opposite view in 1947 decrying the idea that: "Magna Carta is an ancient fetish, a sort of medicine bag, pulled out of the dust of the record-room by Coke and made into the symbol of the struggle against arbitrary power; and that the true effect of the Charter, if any, had been merely the hardening of the privileges of some hundred petty kings.

16. These views represent two schools of thought albeit almost in caricature. One school sees what happened at Runnymede as little more than a dramatic moment of history which has cap-

civilised and democratic society and should be nurtured and treasured, we should not fool ourselves into thinking that they are timeless, let alone absolute. If we can look back with disbelief, or at least with surprise or disapproval, at accepted norms and laws 200 years ago, or even 50 years ago, then, particularly in a world that is changing ever more quickly, we may expect the same reaction from right-thinking people in the 22nd and 23rd centuries looking back to our laws and norms. I leave it to you to speculate as to which of our currently accepted views and norms will be viewed as barbaric. The notion that we have reached some sort of Nirvanic state of perfection, a sort of Whig interpretation of history on stilts, is no more valid than the eschatological obsessions of those who thought, and in some cases apparently still think, that the end of the world is about to occur.

9. So our perceptions of the fundamental requirements of a civilised society are very different from those which were shared by the people who gathered in Runnymede almost exactly 800 years ago. Most of what we rightly regard as fundamental constitutional principles would have seemed very strange to them. They would, as mentioned, have had grave difficulties understanding our notion of human rights, which we now believe to be an important ingredient of one of the principal pillars on which a civilised society rests, namely the rule of law. But the Barons would have appreciated the need for the rule of law itself. However much it may be said that the famous clauses 39 and 40, promising no punishment without trial and no delay or sale of justice, have to be read in their 13th century context, they are concerned with justice. And justice is a basic human concept, which even very young children appreciate, when they say, as they do so often, “It isn’t fair”. I suppose it might be said that, in clause 20, the 1215 Magna Carta also recognised a nascent version of the doctrine of proportionality, a concept which modern UK lawyers think we have only recently adopted. Clause 20 stated that no freeman should be fined for an offence save “in accordance with its gravity, saving his livelihood”, a merchant “saving his merchandise”, and even a villein “saving his wainage”

10. The Barons would have been undoubtedly bemused by the equally important second pillar supporting a modern civilised society, namely democratic government. While some version of the rule of law would have been supported by the Barons, democracy was simply not on their agenda: its tiny seed was only first planted in this country almost exactly fifty years later with Simon de Montfort’s 1265 Parliament, which took over 600 years to develop into a parliamentary system which in modern terms could even arguably be characterised as democratic. Indeed, the importance of universal suffrage, whose importance was recently emphasised by Supreme Court in the Moohan case, was not recognised for (slightly more than) half of the population until the early twentieth century.

11. On the other hand, I think that the third pillar of a modern successful society, economic prosperity, would have been understood by the Barons, not least as they had been groaning under taxes raised to assist John in his misconceived attempts to recapture his French lands. More specifically, the preservation of the “ancient liberties and free customs” of the City of London in clause 13 of the 1215 Magna Carta strikes a very strong chord today. Both “UK” and “PLC” may be somewhat anachronistic acronyms to attribute to the authors of Magna Carta, but clause 13 carries that sort of message. The Barons would most certainly have also recognised the right to property, and it is a curious thing to a lawyer in this country that such a long established right was not included in the European Convention, and had to be added through a Protocol.

12. Not only the constitutional principles, but the practicalities, religious beliefs, the state of technology, and social and cultural mores governing the lives of people in 1215 England were very different from those which govern our lives today. So it requires a great leap of imaginative



**Winston Churchill Rea Application for Judicial Review Refused**

The Supreme Court (Lords Kerr, Wilson and Hughes presiding) today Tuesday 19th May 2015, has refused an application to hear an appeal relating to the disclosure of interview tapes from a former paramilitary about his experiences during the ‘Troubles’ in Northern Ireland.

The Appellant, a former paramilitary, gave recorded, confidential interviews about his experiences during the ‘Troubles’ in Northern Ireland. These were transferred to the Burns Library in the USA, to be held securely by them and on the condition the materials would not be disclosed during the Appellant’s life without his permission. The Respondent requested assistance from the United States Central Authority for disclosure of the Interview Materials under the Crime (International Co-operation) Act 2003. The Appellant applied to the High Court to quash the Respondent’s request, to compel the Respondent to produce any requests for assistance under the Act in relation to the Interview Materials and for declarations that the Respondent’s request was unlawful.

The issue in this case is whether the Respondent’s issuing of an the international letter of request for assistance under s. 7(5) of the Crime (International Cooperation) Act 2003 in relation to the interview materials, was in excess of his powers and in breach of the Appellant’s ECHR rights. The Supreme Court has declined to hear the appeal and the judgment of the Court of Appeal of Northern Ireland [2015 NICA 8] therefore stands.

The substantive text of the Supreme Court's Order reads: "Permission to appeal was refused because the application does not raise an arguable point of law of general public importance which ought to be considered by the Supreme Court at this time bearing in mind that the case has already been the subject of judicial decision and reviewed on appeal.”

**Jordan Cunliffe Fails in Bid to Cut Jail Term** *Guardian*

The high court has rejected an application for a reduction in the 12-year minimum jail term for one of the killers of Garry Newlove, who was kicked to death outside his home after confronting vandals. Newlove, a 47-year-old salesman who had overcome stomach cancer, was attacked outside his home in Warrington, Cheshire, in 2007. He sustained massive head injuries in the assault, which was witnessed by his three daughters. He died two days later in hospital. Jordan Cunliffe was one of three teenagers found guilty of murder in January 2008. He was 16 at the time of conviction and is now in his early 20s. His lawyers applied for a review of his minimum term because they argued there had been exceptional and unforeseen progress while in custody. On Tuesday, Mr Justice Mitting said he did not recommend a reduction in the tariff.

Giving the background to the case, Mitting described Newlove as a “brave and upright man”. He said Cunliffe had maintained he was not guilty of the offence and denied being at the scene of the attack. Cunliffe had been sentenced on the basis that he did not start the violence but, according to a witness, “kicked him, unshod, during the attack”. The judge said: “Nothing in any subsequently produced material casts doubt on that conclusion. He was convicted and sentenced on the basis that he did participate in the fatal attack, even though he personally did not deliver the lethal kick. Given his attitude to the offence, it is unsurprising that the applicant has never expressed remorse for his part in it. This does not, of course, mean that he must be detained until he does, but it is a factor of high significance when assessing whether or not the progress which he has made in custody has been exceptional and unforeseen.”

Mitting said exceptional and unforeseen progress was a high threshold. He concluded: “The reports demonstrate that the applicant has made good progress in custody, which could not have been foreseen with certainty at the time when he was sentenced, but it would be a

misuse of language to describe that progress as exceptional, either by reference to the standard of conduct to be expected of prisoners generally or to what might have been expected of him when sentenced. “Accordingly, I do not recommend that the minimum term … be reduced.” Earlier, Mitting read a five-page statement from Newlove’s widow, Helen, which he said “describes the impact which her husband’s murder has had upon her family, with particular emphasis on the impact on her three daughters”. The judge continued: “She has asked that this statement is not made public or disclosed to the applicant, for particular reasons, which have been notified to me by the Ministry of Justice. I accede to that request. What it does is to demonstrate, graphically, how deep and lasting the affect of the dreadful crime committed by the applicant and his associates has been; and, inevitably, how unwelcome to his widow and daughters has been the need to prepare themselves for the outcome of my decision on this application.”

**Angry Response from Jengba - Decision to Knock Back Jordan Cunliffe**

Campaign group JENGbA responded angrily to the decision made by Justice Mittings to refuse Jordan's application to reduce his tariff. The decision was partly based on a 5 page victim impact statement made by Baroness Newlove; which was not read out in court, only the judge had sight of the statement, neither Jordan or his legal team had sight of the document. Janet Cunliffe, Jordan's mother, said: "Jordan did not lay a finger on Garry Newlove and for his widow to continue to allege my son took part in the attack and was in any way responsible for her husband's death is both immoral and sinister. My son has been imprisoned for something he didn't do - and Baroness Newlove has not got the decency to allow him to see her reasons for why he should remain incarcerated. This surely is his basic human right, what has Helen Newlove got to hide? Our whole family has been destroyed by her lies. My mother has written to her many times but never received the courtesy of a reply".

JENGbA believe the decision to make Jordan serve his full sentence is a political one. Helen Newlove was made Victims' Commissioner after her peerage and the campaign group believe she is being protected by the Government so as not to lose face over the false allegations she made, and continues to make, against Jordan Cunliffe. Gloria Morrison, Campaign Co-ordinator, stated: "We believe this is a cover up by the highest level of our so-called Justice system to prevent the truth from coming out – the truth that Jordan Cunliffe could not watch Mr Newlove being attacked because he suffered such severe eye damage that he should have been registered blind. The truth also that Mr Newlove’s head was NOT kicked like a football as the pathologist report stated he died from one significant blow. Judges and the justice system have made mistakes in the past, numerous miscarriages of justice have been exposed and Jordan Cunliffe is another case which we will expose for its lies and cover ups." The campaign group intend raising their concerns against the decision to the Prime Minister and Michael Gove.

Justice 4 Jordan Cunliffe - Just Another Wrongly Accused Person
http://justice4jordancunliffe.wronglyaccusedperson.org.uk/

**Charles Bronson prison Attack Guard Awarded £32k Damages** *BBC News*

A prison officer left with post-traumatic stress disorder after he was attacked by inmate Charles Bronson has been awarded £32,500 in damages. Michael Turner, 47, suffered head wounds, concussion, and neck and shoulder injuries in the assault at HMP Woodhill in Milton Keynes. Bronson, 61, whose history of violence earned him public notoriety, is serving a life sentence for robbery and kidnap. He attacked Mr Turner, a dog handler, outside the prison's gym in April 2010. Bronson used gym equipment to smash through the door and started



Runnymede in 1215, we would have to accept that the great majority of English people had virtually none of these freedoms in any recognisable form.

3. People were being executed for heresy in the 16th century, and freedom of expression and of religion only really started to raise their heads in the 17th century; indeed, it was well into the 19th century before Roman Catholics and Jews began to have the same civil rights as Anglicans. The right to liberty as we conceive it can also be traced back to the 17th century with the habeas corpus legislation4, which abolished the rule that a royal fiat was a satisfactory justification for detention. As to slavery, the Domesday Book suggests around 10% of the population of England were slaves in the 11th century. Slavery was alive and well in the 18th century, when the Attorney General and Solicitor General in the so-called “Yorke-Talbot opinion” expressed the view that slavery was lawful in England. Fifty years later, this opinion was described by Lord Mansfield as probably having been given after dinner at Lincoln’s Inn,6 but it represented conventional legal thinking for many decades after it was given in 1729.

4. Freedom of association would have been a joke to the most people in the 13th century, and it only finally arrived in the UK in 1871 with the recognition of trades unions And torture was a standard judicial tool throughout most of medieval Europe - in some cases (Portugal and parts of Switzerland for instance) until well into the 19th century, and it was part of the Inquisition’s investigative armoury in relation to heresy until 18169. England had a slightly better record: judicial torture was unlawful, but the executive could use it until about 1640, with a royal warrant, and apparently about eighty warrants were issued in the 100 years up to 164010, including in respect of Guy Fawkes. However, peine forte et dure was part of the English common law system till 1772: that meant that defendants who refused to plead could have increasingly heavy stones placed on them till they either entered a plea or died.

5. And when it comes to discrimination, one does not have to go back very far to see how things can change. It is scarcely 150 years since gay sex between men in England was punishable by death13, and less than 50 years ago it was still a crime for which men were regularly prosecuted and imprisoned.14 And now of course, gay men and women in England can marry in the same way as straight people.

6. Similarly, overt, and to all right thinking people in this century today, disgraceful racism was not merely current and lawful, but quite acceptable to many otherwise liberal-minded people in the 1960s16. We have all seen the photographs of signs in the window along the lines of “Room to Let – no dogs, no Irish, no Blacks”. Maybe many of the photographs are of modern copies, but they undoubtedly did exist, and in significant numbers. A century ago, no woman could vote in Parliamentary elections. In the 1930s, many employers required their female employees to give up work when they go married as they would otherwise be keeping a man out of a job.

7. And standards change with place as well as with time. The death penalty is thought by most people in the UK today to be wrong today18, but it was only abolished in 196519. No doubt, in the 18th century, it was thought by most people to be somewhat eccentric to oppose the death penalty. And, even today, the death penalty is still part of the law and practice of over twenty countries, including China, India, the USA, Indonesia, Egypt, Pakistan, and Japan. Indeed, the death penalty still exists in many of the states and territories, such as Jamaica, whose final appellate court is the Judicial Committee of the Privy Council, over which I preside. And even part of the United Kingdom, Northern Ireland, has a significantly different legal position in respect of important social issues such as women’s reproductive rights, blasphemy and gay marriage.

8. So, while the human rights we talk and litigate about so much are fundamental to a modern

If the consensus develops that despite the current collapse in the legal aid spend further cuts are required then it is up to politicians to ensure the public are not abandoned when they seek justice. Parliament should examine the evidence through a Royal commission and make an informed decision not one based on propaganda and newspaper hyperbole. Those who prefer the testing the truth of the evidence by the adversarial system over a more inquisitorial method can make their case to the Royal Commission as can those who oppose.

The Commission can obtain up to date expert evidence as to cost comparison. In the meantime the Government can engage with the profession to improve the system we have. There is much to be done. Let's get on with it without wasting more time on unworkable top down reforms currently being imposed on the profession until examined by an independent pay review body. Both these measures will detoxify legal aid and take it out of politics and into the realm of reasoned examination.

**Magna Carta - 'Much Ado About Nothing** - *Lord Neuberger, Lincoln's Inn, 12 May 2015*

There is has and always will be much debate, 99.9% of it total bollocks about the 'Magna Carta' and the widely believed 'Truism', that 'Magna Carta' 800 years ago 1215, gave legal rights to the commoners of England. It did not, read through the Neuberger's speech below, which gives a fairly accurate description of what the 'Magna Cart'a, never did for the commoners of England neither giving them religious or economic freedom or 'Human Rights'. The only people who benefited from 'Magna Carta' were the barons, the bishops of the Anglican church and 'freemen' who were few and far between. To be blunt the 'European Convention on Human Rights' 1950 - 735 years after 'Magna Carta', has given all who reside in the UK, more rights in 65 years than all the queens/kings/parliaments have since 1215.

1.*Lord Neuberge:* We all know that words and concepts are slippery things, and especially so if we are lawyers. A phrase, an idea, even a fact, can have a very different meaning or significance to different people, even a very different meaning or significance to the same person in different contexts. When Lewis Carroll's Humpty Dumpty famously said "'When I use a word … it means just what I choose it to mean", he was reflecting the reality of our experience of ourselves and of others. The notion that there is very often no single right answer to an issue, whether it is an issue of interpretation, of causation, or even of principle, is difficult for some people to accept, whether in everyday life, politics, academia, commerce or law. Indeed, the possibility that there is more than one defensible view is regarded by almost everyone at least in some circumstances as evil or morally wrong.

2. If there is room for different perceptions and opinions between different people in the 21st century United Kingdom, it is perhaps not surprising that virtually every fundamental belief which most mainstream, moderate people would take for granted today would have been rejected by most mainstream moderate people in the not-so-distant past. Consider the fundamental freedoms accorded by international instruments and treaties such as the UN's International Bill of Human Rights2 and the European Convention on Human Rights, as well as the constitutions of many countries; rights to life, to liberty, and to a fair trial, freedoms from torture, forced labour, and discrimination, and freedoms of religion, expression, and association. The great majority of educated, so-called right-thinking people today would take all these freedoms for granted. But you don't have to go back very far in the history of this country to find a time when every one of these freedoms, utterly basic as they seem today, simply did not exist or, in a few cases, could be said to exist but in an almost unrecognisably restrictive form. Indeed, if we were to go back eight hundred years to



attacking Mr Turner and his German Shepherd dog who were stationed outside.

High Court judge John Mitchell said Bronson was "was smashing up equipment within the prison gym" and had been locked in by staff who were trying to contain the situation. He punched Mr Turner around his head with his fists, causing him to fall to the ground. The prisoner then continued to hit him and jumped on him - pushing Mr Turner, and his dog who was under him, on to the floor with his full body weight."

Prison officers managed to pull Bronson away from Mr Turner, who later sued the Ministry of Justice for failing to provide support when dealing with the notorious inmate. The ministry admitted liability, and was ordered to pay the legal costs of the case alongside the damages. Bronson received a two-year sentence in September last year for holding a prison governor in a headlock. Now known as Charles Salvador, he was first convicted in 1974 and used his time behind bars to establish himself as a marketable artist as well as publishing a book about his unique fitness regime.

**Rubel Ahmed Inquest - Jury Returns Critical Narrative** *'INQUEST'*

Monday 18th May 2015 a jury found "inadequate" communication between multi-disciplinary teams was one of the factors that contributed to Rubel's death following the service of removal directions on him. Rubel was discovered hanging in his cell on 5 September 2014, a few days after being informed of the decision to remove him to Bangladesh. He was detained in Morton Hall Immigration Removal Centre, a former category B prison which still bears many of the hallmarks of its former function. An All Party Parliamentary inquiry panel and HM Inspectorate of Prisons have already expressed concerns about immigration detainees being held in prison-like conditions. A recommendation by the Inspectorate to stop locking Morton Hall detainees in their rooms in the evening and overnight remains unimplemented over 2 years after it was made in March 2013. Morton Hall's Centre Manager accepted in her evidence that locking detainees in their rooms was a risk factor for them and that there were lessons to be learned from Rubel's death.

The jury returned an open conclusion alongside its critical narrative after hearing from Rubel's cousin, Aktarun Miah, who told the jury that she was left with the impression that Rubel had been regarded as "irrelevant" by those detaining him. She described Rubel as a gentle natured, caring and respectful person who should not have been locked up, and explained the impact on the family of what the Coroner described as a "very significant" delay in confirming Rubel's death to them.

Staff at Morton Hall knew that detainees under their care were vulnerable, but there was no system or protocol in place for checking on Rubel's mental state after he had been told he would be removed to Bangladesh. Morton Hall's Centre Manager said that staff were expected to assess his risk by noting changes in behaviour and persona, but those responsible for his welfare on the night of his death did not even know who he was. An off-duty member of staff had to be called in to identify Rubel after he had died.

Experienced staff told the jury that they had not been trained in resuscitation techniques for several years and could not remember being trained in emergency responses to someone having been found hanging. They were unable to remember much of their training on working with immigration detainees as opposed to prisoners. The Coroner confirmed he would be writing a prevention of future deaths reports to the Home Office.

Mr Ajmal Ali, Rubel's cousin, said on behalf of the family: "As a family, Rubel's loss has opened up a deep void in our hearts. The time we knew him was an honour and privilege as he always shone as a humble, shy, gentle and caring young man. Despite a thorough investigation by the police and PPO, we feel Rubel's death has flagged up some serious

issues around the application of prison protocols across immigration detention. In particular, locking Rubel up in his room early in the evening prevented him from being able to talk to his fellow detainees in the hours before his death leaving him alone with his own thoughts and worries. We believe that being unlocked would have made a difference to him that night."

Clare Richardson, the family's solicitor, said: "The jury heard that two of those responsible for Rubel's welfare on 5 September 2014 had not received training in resuscitation techniques for over 10 years, and none of them could remember much of what they had been taught about working with immigration detainees. This reflected a wider malaise in the training regime at Morton Hall which needs to be addressed urgently by the Ministry of Justice".

Deborah Coles, co-director of INQUEST said: "This inquest has again highlighted concerns about the quality of care and treatment afforded to this highly vulnerable group. Despite repeated criticisms people continue to be locked up in a system that is known to exacerbate mental and physical ill health. This tragic death of a vulnerable young man points to a failing system unable to safeguard those in its care".

INQUEST has been working with the family of Rubel Ahmed since September 2014. The family is represented by INQUEST lawyers Group members Clare Richardson of Bhatt Murphy Solicitors and barrister Una Morris of Garden Court Chambers.

**The Innocent Test: A Question of Language** *Mark Newby, Justice Gap*

When parliament was seeking to amend the test for compensating victims of miscarriages of justice, it was pointed out that requiring a person to prove that they are innocent might in itself, strangely enough, offend the presumption of innocence. Accordingly some bright spark resolved that if the amended test required the person instead to prove that they did not commit the offence, the problem would be solved.

And so, the question of whether 'innocent' and 'did not commit the offence' meant something different, was a central question for the Divisional Court (Burnett LJ and Thirwall J ) in a two-day hearing on 12 and 13 May in the cases of Victor Nealon and Sam Hallam v the Secretary of State for Justice. Judgment has been reserved, and those concerned with the wrongfully convicted being compensated will have to wait a little longer – and maybe even longer (given the likelihood of an appeal by whoever is unsuccessful) – before a final decision is made. The central issue in the case is whether the new Section 133(1ZA) of the Criminal Justice Act 1988, which requires a claimant to demonstrate beyond reasonable doubt that as a result of a newly discovered fact he did not commit the offence, offends the presumption of innocence guaranteed by Article 6(2) of the European Convention on Human Rights.

The Secretary of State boldly asserted this was not an innocence test at all, and that a person is not required to prove his innocence, but rather to show that the new fact shows he did not commit the offence. However this seems more than a little dubious, firstly due to the fact that the Government wanted to introduce an innocence test during the passage of the bill, but in the end changed the wording in a parliamentary fudge. Secondly, there would appear to be no difference of substance between the two and a person is required, in any event, to show that he is innocent.

If the evidence shows he did not commit the offence, then he is innocent. It is the same. In the European case of Allen v United Kingdom, dealing with the old scheme and wording, it was concluded that Section 133 did not infringe Article 6 (2), because it did not call into question innocence. At that time what is known as a 'category 2' case could be eligible for compensation, i.e. where any reasonably directed jury could not properly convict as a result of the



**'There's No Point in Rights if You Can't Enforce Them'** *Robin Murray, Justice Gap*

What I write about here is the preservation of access to justice. It is not about preserving legal aid lawyers' diminishing incomes. There have been many platitudes spoken about Manga Carta. There will be bucket loads of clichés and noble sentiments spoken about human rights during debates and in the media over the Government proposals to replace the Human Rights Act with a 'British Bill of Rights'. But the truth is that, denied an effective voice in the courts, having 'rights' is a meaningless concept. What is the point of a 'right' if it is not exercisable when infringed or suppressed by powerful opponents with access to specialist legal help denied to the ordinary citizen?

Legal aid practitioners have highly specialist skills (no less than doctors) that require enormous knowledge of law, procedure and good judgement often learned through experience. All of that collective knowledge base is now collapsing. Legal aid is not there for the benefit of lawyers. It is there for the benefit of the public and it is in danger of becoming 'not fit for purpose' due to a 'dumbing down' in terms of quality and efficiency. The prospect of further cuts will accelerate that process and talent will both haemorrhage from and not be attracted to legal aid work.

A sense of vocation and public service does not pay the bills or make housing affordable. So what does this mean for justice and the public? It means that quality legal representation which is an absolute necessity in an adversarial system will not be available. It is a fundamental dishonesty for those who wish to cut legal aid to imagine that our adversarial system will any longer function for most people. In 1949 legal aid was brought in for a reason. It was introduced as a right not a benefit and to reflect the increasing complexity of legal problems imposed upon ordinary people partly by the development of modern society but also Parliament itself.

*Now I come to the heart of my argument:* It is fundamentally immoral, unjust and ultimately self-defeating for this generation of politicians to spout endless high sounding blather about Magna Carta and human rights whilst shamelessly presiding over the destruction of the adversarial system without putting something in its place. This replacement is obviously an inquisitorial system (characteristic of the Continental European jurisdictions based on Roman law rather than the English Common Law) whereby 'legal champions' are replaced by the creation of a cadre of specialist judges and legally trained civil servants to assist. (In France they have a juge d'instruction – part examining magistrate, part district attorney). It is not clear if this will save any money. The National Audit Office has reported that, like for like, UK expenditure was average compared to other jurisdictions.

*Meltdown:* It is clear that the criminal courts are going the same way as the civil courts. There are litigants in person wandering around the courts not only in emotional meltdown but causing delay and great expense to all the other agencies and deep frustration to an overwhelmed Judiciary. Those judges will also be hard to replace due to the absence of suitable recruits as lawyers leave this work Further cuts to legal aid are in effect leveraging a move away from an adversarial system to an inquisitorial model. If it is to be done it should not by stealth cuts but by proper structural reform. No such reform can legitimately be conducted without in depth research and investigation as it is a matter of constitutional importance.

As a former Prime Minister, Margaret Thatcher said: "The legal system we have and the rule of law are far more responsible for our traditional liberties than any system of one man one vote. Any country or Government which wants to proceed towards tyranny starts to undermine legal rights and undermine the law." The possibility of departing from an adversarial system was last considered by a Royal Commission in 1993 nearly 23 years ago. It is surely beyond doubt that an adversarial system needs adequately remunerated professional specialist firms and advocates. (The legal aid budget is so small that it would fund the NHS for only two weeks).

cases of arguably relevant fresh evidence it will be impossible to be 100% sure that it might not possibly have had some impact on the jury's deliberations, since ex hypothesi the jury has not seen the fresh material. The question which matters is whether the fresh material causes this court to doubt the safety of the verdict of guilty. We have had the advantage of seeing the analysis of Pendleton [2001] UKHL 66; [2002] 1 Cr. App. R. 34 and Dial [2005] UKPC 4; [2005] 1 WLR 1660 made recently by this court in Burridge [2010] EWCA Crim 2847 (see paragraphs 99 – 101) and we entirely agree with it. Where fresh evidence is under consideration the primary question "is for the court itself and is not what effect the fresh evidence would have had on the mind of the jury." (Dial). Both in Stafford v DPP [1974] AC 878 at 906 and in Pendleton the House of Lords rejected the proposition that the jury impact test was determinative, explaining that it was only a mechanism in a difficult case for the Court of Appeal to "test its view" as to the safety of a conviction. Lord Bingham, who gave the leading speech in Pendleton, was a party to Dial. For the reasons set out above, we do not doubt the safety of the convictions and in the result, these verdicts are safe. *http://www.bailii.org/ew/cases/EWCA/Crim/2015/905.html*

**Iraqi Civilians v Ministry of Defence** [2015] EWHC 1254 (QB) (18 May 2015)

1) Among the many hundreds of claims brought by Iraqi civilians against the Ministry of Defence which are currently pending in the High Court, there is a group of claims brought by individuals who were detained by British forces in Iraq and then transferred into the custody of the armed forces of the United States. The claimants in these "handover" cases allege that, while in the custody of US forces, they were tortured or suffered other serious ill-treatment. They contend that the UK government is liable for such ill-treatment and for their allegedly unlawful detention by US armed forces after they were handed over. Like all the claims in this litigation, these claims are advanced on two legal bases. One is the Human Rights Act 1998. The other is the law of tort. It is common ground that, pursuant to Part III of the Private International Law (Miscellaneous Provisions) Act 1995, the law applicable to the tort claims is the law of Iraq.

2) This judgment follows the trial of a preliminary issue to determine whether the claims in tort made in these handover cases have a valid legal basis under Iraqi law. The issue is raised on the alleged facts of three test cases in which the claimants are referred to anonymously as XYZ, HTF and ZMS. The preliminary issue is as follows: "Whether, in respect of the claims in tort of XYZ, HTF and ZMS based on their transfer to and subsequent detention and alleged ill-treatment by the armed forces of the United States of America, the law of Iraq provides for joint liability and/or vicarious liability of the defendant for acts alleged to have been done by members of the US forces."

52) Conclusion: Applying these findings to the present cases, I conclude that, if the claimants are able to prove that after being handed over by UK forces to the armed forces of the United States they were subjected to serious and deliberate ill-treatment by US soldiers, then, to establish that the defendant is jointly liable for their injuries under Iraqi law, it will not be sufficient to show that the defendant owed a duty to take care not to expose them to a risk of ill-treatment at the hands of US forces and was negligent in exposing them to that risk. In order to establish joint liability for their injuries, it will be necessary for a claimant to prove that the British soldiers or officials responsible for the decision to transfer him to the custody of the US forces had one of the three mental states identified by Mr Dawood in his expert's report. Thus, it will be necessary for the claimant to prove: (a) an intention to facilitate the claimant's ill-treatment; or (b) actual foresight that the claimant might suffer such ill-treatment, coupled with failure to act in accordance with a legal duty to protect the claimant; or (c) contemplation and acceptance of the risk that transferring the claimant would facilitate his ill-treatment.



newly discovered fact. It was during the current hearing recognised by all, apart from the Secretary of State, that if Europe was called to consider the new test it was likely to hold that the presumption of innocence had been breached, in view of observations it made in Allen.

The Secretary of State suggested that the court was bound by the Supreme Court's conclusions in Adams on the question of Article 6(2). Even though, in that case, the point was argued in a different way and it was suggested that the presumption was not breached because, in any event, all that the Secretary of State was doing was pointing to factors that indicated the test was not met (and this was not the same as assessing innocence). Reliance was also placed on a glib final paragraph included in all decision letters, asserting that nothing in the decision impugned the innocence of the applicant: the letter effectively saying 'you can't show that you didn't commit the offence, but we are not saying that you are not innocent'. Much was made of the differing speeches in Adams and whether 'a minority of the majority or majority of the minority' (depending on your view), reached any conclusion over the applicability of Article 6( 2 ), such that the Divisional Court was bound to follow what an arithmetic majority had concluded in Adams, i.e. that Article 6(2) did not apply.

*The inescapable truth:* Strong arguments were advanced by the claimant to indicate that this was not what was said and that, on any reasonable view, the presumption of innocence was offended. It was submitted, in terms, that it would be an affront to common sense to conclude otherwise. The inescapable truth is that no assessment of the newly discovered fact could flow unless it was an assessment of the person's guilt or innocence, and that is exactly the exercise that the Secretary of State was undertaking. Although the Hallam team did not bring a challenge on the facts, the Nealon team did, and it exposes why the Secretary of State is adopting an innocence test in everything but name.

In refusing Mr Nealon compensation, the Secretary of State asserted that the Court had before it alternative explanations for the presence of DNA, including innocent transfer, relying on scientific possibilities identified by the prosecution's forensic expert. 'The expert of course said these were only possibilities requiring further examination in his first report and made the point that possibility did not mean probable. It was possible he might win the National Lottery but not very probable.' Nonetheless the Secretary of State ignored these reservations and relied on these broad-brush ideas to decline compensation, asserting that therefore it could not be proved beyond reasonable doubt that Mr Nealon did not commit the offence. This was, of course, nonsense. The prosecution expert had been asked to consider alternative explanations in his first report for the Commission, and highlighted possible scenarios which should then be subject to further work, as did Mr Nealon's expert.

The CCRC conducted those enquiries and, to all intents and purposes, all possible innocent explanations for the presence of the DNA were excluded. In fact, as counsel for Nealon, Matt Stanbury pointed out, in a careful decision the CCRC considered every possible argument, and discounted it by their elimination enquiries. This allowed the Court of Appeal to conclude that 'every sensible enquiry' that could be made had been made. As counsel noted, the last throw of the dice came when the CPS tried to argue the contamination could have occurred in the shop where the victim bought the clothing.

As Thirwall J noted in argument, it was not likely that the victim would have been served by a man whilst shopping for a brassiere, and the implausibility continued as there was not one shred of evidence to support any of this theory. It was nothing more than pure speculation. As a result it was clear that all of the evidence sensibly pointed to a crime-related explanation,

and that the unknown male was the attacker. 'Reliance was placed on the fact that the prosecution expert said he had a low expectation of finding DNA at the outset. But as counsel for Mr Nealon, Matt Stanbury, pointed out: 'If you go looking for a needle in a haystack, you may have a low expectation of finding one. But if that is what you find, you need to ask yourself why, and where it has come from.'

The problem for the Secretary of State is that in a poor decision letter they latched onto the Crown's arguments in the appeal, but failed to assess the evidence in detail. Had they done so, they would surely have drawn the inevitable conclusion that the evidence showed that Victor Nealon did not commit the offence for which he was convicted. The Court is now to grapple with what are very complex issues, and it is to be hoped in finding a way forward they will apply a good dose of common sense. The contrary view would be to further consign this case into a legal mess, which will take a considerable amount of time to sort out. In the meantime people like Sam Hallam and Victor Nealon will see the tragedy they live with on a daily basis continue.

**Stacey Hyde Cleared of Murder in Retrial** *Sandra Laville, Guardian*

A young woman who faced a retrial for the murder of man with a history of domestic violence has been acquitted after a jury heard how she acted in self-defence. Stacey Hyde, 22, was ordered to face a second trial by the director of public prosecutions, Alison Saunders, after the court of appeal quashed her original murder conviction last year. The appeal court said the conviction was unsafe after new medical evidence showed Hyde had a mental disorder when she killed Vincent Francis. Lawyers for Hyde, from Wells, Somerset, offered a guilty plea to manslaughter, but Saunders refused and ordered the 22-year-old to be retried for murder. A jury acquitted Hyde on Thursday at Winchester crown court following a three-week trial.

Justice for Women, which took up Hyde's case following her conviction, questioned the public interest of putting her through a second trial. Due to Hyde's mental state, an intermediary was appointed by the court to sit in the dock to explain the proceedings to her. Julia Hilliard, of Justice for Women, said: "This cannot possibly have been in the public interest: to put an already traumatised and mentally ill young woman through the experience of a second trial, and to spend a large amount of public money on this when the court of appeal quashed her conviction, she has already served five and a half years of a nine-year sentence, and has offered a guilty plea to manslaughter." Outside the court, Hyde said on Thursday: "I would like to say thank you to Justice for Women, my legal team, friends and family for believing in me and giving me hope and strength to never give up. I will be for ever grateful and blessed to have been given my life back."

Francis, 33, also from Wells, had a history of violence towards women. It was acknowledged by the prosecution that there had been 27 separate incidents of domestic violence between him and his girlfriend, Holly Banwell, and that he had also been violent towards his previous girlfriend. On the night he died, Francis had attacked Banwell at their flat, while Hyde – who had been drinking – was sleeping. When Banwell screamed for her friend's help, Hyde came to her aid and jumped on Francis's back. In the violent struggle that followed, Francis grabbed Hyde around the throat and threw her around by her hair, smashing her into a wall at one point. Hyde told the latest trial she believed she had acted in self-defence.

"She was screaming for me to help her. I came in running and jumped on his back to pull him off her," Hyde told the jury. "Next thing I remember is he is on top of me and he is strangling me – I remember him holding my neck down and the light fading. I was screaming – I know he was going to kill me, he is not stopping – no one was coming to help." When the police arrived, Hyde was



erence by the Criminal Cases Review Commission under section 9 Criminal Appeal Act 1995. The central issue that arises as a result of the reference is whether material uncovered by the Criminal Cases Review Commission casts doubt as to the credibility of the sole complainant in the case (HF) such as to render the verdicts unsafe.

John Butterfield, O'Meally's QC, said the commission found O'Meally's accuser had lied on oath during an earlier case. But O'Meally's defence lawyers were not told about that during his trial, the court heard. "In a trial where credibility of the complainant was front and centre stage, the defence were told nothing about the fact that, just four months earlier, allegations she made against another man were demonstrated to have involved fabrication and the witness lying on oath so that the trial was stopped. It is not easy to think of a more clear-cut example of a non-disclosure which renders a conviction unsafe. She had admitted lying to two separate juries. This is a case that was not marginal, this is a plainly unsafe conviction and the court should be persuaded of that."

Judgement The Case against the Appellant Judges Fulford, Spencer, Holgate:

Although in one sense the case concerned the credibility of HF, the appellant gave evidence during the trial with the result that his credibility also became a central issue for the jury to assess. He denied that anal intercourse took place, and it follows from the verdicts that the jury disbelieved him on that issue. Furthermore, in many respects this was a strong case against the appellant which was dependent on a number of different strands. First, his previous convictions provided powerful evidence as to his propensity to commit offences of this kind and the circumstances of the appellant's previous convictions and the present trial contained strong similarities as regards the nature of the conduct alleged against the appellant. Second, the evidence HF gave about a black handled mug which she testified the appellant used in order to make her drink his semen (which he brought in his jacket pocket when they met) was potentially of high significance. In interview the appellant denied owning a black and white mug. His evidence was that HF had never been to his room and that he had never carried a mug in her presence. When his room was searched, two mugs were found, one of which was black and white. Although in one of his letters to HF the appellant referred to his wish to "piss" and "cum" in a cup, HF would only have known about the cup or mug's black and white colouring if she had seen it with the appellant. Third, he sent a large number of letters to HF in which he referred in graphic terms to his wish to have anal sex with her. In evidence, he said that this was simply the expression of a fantasy which he committed to paper at the request of HF. Given his previous convictions, this purported explanation must have weighed significantly against the appellant. The jury returned unanimous verdicts of guilty after deliberating for little more than two hours.

Conclusion: It follows from the conclusions set out that notwithstanding the failure by the prosecution to comply with its disclosure obligations, taking all the circumstances of the trial into account – including the strength of the case against the appellant – there is no realistic possibility that a court would have arrived at different verdicts had the necessary disclosure been made. The key task for the judges on an appeal of this kind is to decide whether the fresh material (viz. the undisclosed evidence) renders the verdicts unsafe. In this regard, the correct approach was helpfully summarised by Hughes LJVP in Mushtaq Ahmed (2010) EWCA Crim 2899 at paragraph 24: The responsibility for deciding whether fresh material renders a conviction unsafe is laid inescapably on this court, which must make up its own mind. Of course it must consider the nature of the issue before the jury and such information as it can gather as to the reasoning process through which the jury will have been passing. It is likely to ask itself by way of check what impact the fresh material might have had on the jury. But in most

be compatible with the right to a fair trial. Referring to the Court's famous Horncastle judgment, she said, 'I hope it's not a conclusion of any dialogue; the whole point of ECHR is to have an ongoing dialogue. Such a dialogue needs to continue, as I suspect that the national court's interpretation might not be right.' Eric Allison, the Guardian's prison correspondent and an ex-prisoner, said there had been some improvements to the penal system brought about through judgments of the EctHR and the domestic courts. 'Prisoners tend to view law solely as an instrument of punishment,' he said. '[If prisoners] find the law, however occasionally, to be on [their] side, that could lead somewhere positive.'

Dirk van Zyl Smit, a comparative law professor at Nottingham University, focused on cases dealing with prison overcrowding in Hungary, Italy and Poland to show that the ECtHR is adequate and even improving the lives of prisoners. 'Because this overcrowding is coupled with other countries, and because it is structural, the Court will order the nation to change the system itself,' he said. 'Italy was ordered to make major changes in response to overcrowding, and serious modifications have followed.'Professor van Zyl Smit also discussed the system in place in many European countries whereby prison governors never take on additional prisoners if their prison is too full. 'They deal with it in the same way as a hospital: if a murderer is convicted then space will of course be found. But with less serious offenders, people are sent away, and told they will come back to serve their sentence when there is space,' he explained. 'The downside is that there are about 200,000 people in Poland who could be called to serve a sentence at any time, and have that hanging over them,' he said.

Pete Weatherby QC of Garden Court North warned of a 'tsunami' of anti-Europe and specifically anti-Convention cases in the UK. He pointed out that the UK stands in complete defiance of four ECtHR judgments finding the blanket ban on prisoner voting to be an arbitrary breach of prisoners' human rights. Christoper McDonald, a former IPP prisoner , provided the audience with insight into the reality of life on the inside, far away from the court room. 'For about two years I stayed in a cell that was no longer than my arm span, with two to three other people in a cell,' he explained. 'Later on in my sentence I was represented by Lubia [Begum-Rob, joint managing solicitor at PAS], who told me I do have rights, and we could start to challenge some of the decisions. More needs to be done to inform prisoners of what they are entitled to,' he said. McDonald also stated that the prison service was not doing enough to facilitate contact between prisoners and their families. He explained how the prospect of a few minutes telephone contact with loved ones was often all that kept him from despair while he was serving his sentence. 'As an IPP prisoner I was told that I had to do numerous courses; if the course was only available in another location, I had no choice but to be relocated to Manchester. Without my family you can feel hopelessness, you feel demoralised, you think what's the point.'

**Benjamin O'Meally - Serious Non-Disclosure, Judges Agree but Uphold Decision**

On 29 September 2009 the appellant was convicted at the Crown Court at Wolverhampton of nine counts of rape. On the same day Her Honour Judge Watson sentenced the appellant to imprisonment for life and specified the period of eight years and nine months as the minimum term to be served under section 82 A Powers of Criminal Courts (Sentencing) Act 2000. The appellant appealed against his conviction on the nine counts of rape, but on 11 February 2010 the single judge refused leave to appeal and the application was not renewed to the full court.

In the present proceedings the appellant appealed against his conviction following a ref-



extremely distressed and sobbing. She told officers: "He tried to kill me. I was so scared. I had to help Holly. He was going to kill her. I thought he would kill me. I stabbed him." In a recording of a 999 call, Banwell can be heard saying: "My boyfriend is beating my friend. I need the police ASAP. They are fighting." Then she is heard screaming, "Stacey has a knife and has stabbed him."

Stephen Kamlish QC, defending, told the jury that Hyde had acted as a result of provocation, in self-defence, and provided what he said was compelling new evidence that Hyde was suffering from an abnormality of the mind that substantially diminished her responsibility for the killing. In a letter to the DPP before the retrial, lawyers for Hyde said she should be given the opportunity to plead guilty to manslaughter as there was no public interest in retrying her for murder. "Ms Hyde was 17 at the time of the offence and is now recognised to be a very vulnerable young woman who has served over five years' custody for the offence for which she was given a nine-year tariff. She continues to suffer from mental illness and is at risk of suicide and self-harm," said Harriet Wistrich, of Birnberg Peirce.

She said there was no evidence to suggest that the killing was premeditated. "It was clearly a spontaneous response to an act of violence by the victim and it occurred at a time when the defendant was undergoing a mental health crisis." The DPP did not accept the plea. A family friend, who has offered to house Hyde when she is released, said: "Yes, she did it – she doesn't deny that she killed him – but she has served her time. She didn't go out with the intention of killing someone. It was a frenzied attack, she was terrified – you can hear it on the 999 tape. "No one knows what they will do if they are being attacked. He was a big man who went to the gym every day. It's not as if she emerged unscathed. She had marks around her neck, she had cuts to her body, he pulled out her hair."

Hyde was convicted of murder at her first trial in 2010. She was sentenced to life with the recommendation that she serve a minimum of nine years in prison. The judge took into account the violence initiated against her when he sentenced her. A CPS spokesperson said: "Following a successful appeal by the defence against Stacey Hyde's original conviction for murder, the court of appeal were invited, by the defence, to substitute the conviction for one of manslaughter. They declined to do so, stating that a life had been taken, and ordered a retrial for murder. The evidence was reconsidered by CPS South West and a decision was made that under the code for crown prosecutors, a prosecution for murder was still appropriate. The matter was once more tried before a jury, which has acquitted Ms Hyde of the offence. We respect the jury's decision in this case."

**Rape Victim Falsely Accused of Lying by Police Wins £20,000 Payout**

*Sandra Laville, Guardian*: A rape victim falsely accused of lying by detectives has won £20,000 in damages after suing police under the Human Rights Act. The woman, who cannot be named, was 17 when a man raped her in Winchester in April 2012 after a night out with friends. Her mother reported the attack hours later and the victim told officers her T-shirt may contain her attacker's DNA. But the garment was never sent for forensic testing and weeks later the girl, who has mental health problems, was accused of lying about the rape and arrested for perverting the course of justice. During the arrest, one detective told her: "This is what happens when you lie."

Documents seen by the Guardian reveal that detectives from Hampshire police decided within two days of the rape report that the girl was lying. A detective inspector, who was supervising the inquiry, told a junior colleague: "Fucking nick her." But six months later – after a complaint by the girl's mother about her treatment – a new team of officers reviewed the investigation and informed the mother and her daughter that they believed her. The T-shirt was sent for testing, and the suspect, Liam Foard, was tried and found guilty.

Hampshire police have apologised to the family and admitted liability for false imprisonment and assault. The force accepted there was a breach of its duties under the Human Rights Act to properly investigate the rape. The victim's mother said: "I'm glad that they had admitted they were wrong, but how many time does it have to happen? If it can happen to my daughter, how many more can it happen to?" She said her daughter had yet to receive an apology in person. Four officers faced disciplinary action after an internal investigation by the Hampshire force's professional standards department. Three avoided any sanction after they retired or resigned, and the fourth was given a written warning.

Debaleena Dasgupta, the young woman's lawyer, said: "Many people wrongly assume the police have a legal obligation to investigate crimes. However, the only way victims of crime can seek justice for these sorts of issues is using the Human Rights Act, which imposes a duty on the police to properly investigate very serious offences." In the days after the rape, the girl was attacked twice in the local area and called a "pathetic rape victim". The police investigated both incidents but no further action was taken. Eight weeks after her rape complaint, on June 22 2012, the girl was asked to come to a police station, where she was told she was under arrest for perverting the course of justice. "I just thought, 'What the hell is going on?'" her mother said. "I knew what perverting the course of justice meant, so I knew they were arresting her for lying about the rape. So at that time my daughter had just turned 18 and I insisted because of mental health problems that I sit in on the interview. She [my daughter] tried to run away – she just couldn't believe it. And she did put up a fight in the police station."

After her arrest, the girl was on police bail for months while Hampshire police consulted the Crown Prosecution Service about whether to charge her. "It was horrible, because it was like she might have gone to prison. And what would she do, how would she cope, how would I cope, how would the family cope?" her mother said. She added that her daughter's mental health deteriorated as they waited for the charging decision, and that she began self-harming and attempted suicide twice. She was upset because she couldn't believe that they couldn't believe that it could happen to her," the mother said. "We didn't find out until a later date that they hadn't done the forensics on the clothes. And that was partly the decision to arrest her, for perverting the course of justice." In October, on the day the teenager was due to answer bail, two officers visited mother and daughter at their home. "They told me that my daughter didn't need to go to the police station to answer bail and that they now believed her story and they would now be taking over the investigation," said her mother. "I remember standing in the living room saying, 'They believe you, they believe you.' She didn't believe it. She had lost all faith in them by then."

Documents from Hampshire police confirm that when forensic tests were finally carried out on the T-shirt, seminal fluid and DNA from the suspect were detected. The police documents state: "This was particularly significant as when interviewed for rape, Liam Foard denied any sexual contact with her." Foard was convicted of rape in September 2013 at Winchester crown court and jailed for six years. An internal investigation by the force's professional standards department highlighted the impact of her arrest on the young woman. It said: "Given that she had been raped, reported the matter to the police and now found herself under arrest and being accused of lying, this must have been a particularly traumatic experience. Clearly, had the rape investigation been completed to the required standard, she would never have been arrested and interviewed." Chief Superintendent David Powell, head of Prevention and Neighbourhoods at Hampshire police, said: "We accept the way we initially treated this victim fell well below the standard we would expect. We deeply regret this and we took action at



the time by referring this case to our professional standards department. We have changed our internal processes and any decision by an investigating officer to discontinue a rape investigation or release a suspect with no further action has to be agreed by an independent panel chaired by an assistant chief constable. I would like to reassure all victims of sexual assault that we do take you seriously. We do believe you, we appreciate how hard it is to come forward to report these offences, we do not judge you and we are committed to ensuring a professional and supportive response. We are doing everything to ensure we never have an initial response like this again."

**Kevan Thakrar Trial - Manchester Friday 22nd May - A Farce**

No Trial, Kevan not in court but on video link. Reasons 1) CPS had not served to the defence all the papers relating to the first charge 2) No papers had been served on anyone (Either the CPS barrister, defence barrister and the judge) on the second charge: what exactly the second charge consists of is still a mystery, but not surprising as no papers available! 3) Kevan's barrister told the court that all Kevan's legal papers had been seized by the prison service and would not hand them back. Barrister asked judge if he would give an order requiring them to so, judge said he had no powers to do so. But commented Rule 39 is supreme and wants no more interference of Kevan's legal mail.4) New dates set: Legal arguments late August, defence still intends to try and have the charge the first one anyway, dismissed and told the judge he had several 'Authorities', judge requested copies of same to him pre trial 5) Trial date set for Monday 30th November, listed for 4/5 days 6) Kevan had to sit silent through all this, at end judge spoke to him, summing up what had gone on before, Kevan tried to complain about not being produced in court, judge ignored him and shut him up. 7) Judge declared hearing over; gallery in which were seated, Kevan's parents, Janet Cunliff, members of FRFI and MOJUK,started a solidarity clap and cheer, video link cut, judge accused gallery of sullying the dignity of the court.

**Foreign National Offenders Deported -** The Home Office removes foreign national offenders using enforcement powers or via deportation. In the year ending March 2015, provisional data show that 5,051 foreign national offenders (FNOs) were removed, a similar level as in the . previous year (5,080).Immigration detainees in prisons: As at 30 March 2015 there were 374 detainees held in prison establishments in England and Wales solely under immigration powers as set out in the Immigration Act 1971 or UK Borders Act 2007.

**Prisoners Tend to View Law Solely as an Instrument of Punishment'**

*Franck Magennis, Justice Gap:* The Prison Service claim that they're about preserving family ties – but it's totally the opposite; they take your stamps away, they move you hundreds of miles away from your family,' former prisoner, Christopher McDonald told the audience at the Prisoners' Advice Service (PAS) at an annual panel discussion. McDonald (a PAS client) and four other panelists addressed the question of whether the European Convention on Human Rights (ECHR) was providing adequate human rights protection to UK prisoners, in a debate chair by former PAS director Matt Evans.

Nicola Padfield, a senior lecturer in criminal and penal justice at Cambridge University, pointed out that European Governments had, in some cases, gone as far as to release detainees in response to judgments of the European Court of Human Rights (ECtHR). She made clear her position that it was better to have the Convention than not. Padfield also raised concerns that the ECtHR had made the wrong decision in finding Britain's hearsay laws to