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Online Hearings Take Edge Off Cross-Examination

Law Gazette: Aggressive cross-examination is not as effective over video link, while a lack of in-person preparation can damage the performance of legal teams, a study has found. Research by international consultancy Berkley Research Group (BRG) says that virtual hearings have been 'largely positive' and have often exceeded the expectations of those involved. However, expert witnesses have reported that traditional cross-examination techniques are 'significantly less effective' in a remote setting than in a traditional courtroom. 'Ultimately, you're looking at a picture on a screen, so a lawyer could be as aggressive as they wanted during cross examination and it's easier for me to stick with my answer,' said Henry Miller, an expert witness and managing director at BRG.

Counsel and judges are also affected by the layout of faces on screen, the global study found. 'If proceedings are conducted with multiple people sharing the same camera, such as cases involving a bench, or if the expert witness is sitting back from the lens, this can negatively impact proceedings. This hinders the ability of the opposing counsel and decision makers to judge the reaction of expert witnesses to questioning and form a sense of the room.' Allen & Overy partner Anna Masser warned against too may faces on screen at one time. 'If you're not certain whom you have to convince, how do you engage properly?' she said. A lack of in-person preparation before entering proceedings was also cited as a major drawback of remote hearings.

On the whole, however, virtual hearing were well received by the lawyers and expert witnesses interviewed, and the outcomes of proceedings were widely thought to have been the same as if they had taken place in person under normal circumstances. In contrast, hybrid hearings – in which some participants are physically present and others dial-in – have proved unpopular. The report was based on the views of six of BRG's international expert witnesses, together with an arbitrator based in Hong Kong, a Russian lawyer specialising in the psychology of dispute resolution and Massey, head of A&O's international arbitration practice in Germany. In May, professional bodies across the British Isles claimed that remote hearings deliver a 'markedly inferior experience' and degrade human interaction. In a joint statement, the Bar Councils of England and Wales, Northern Ireland, and Ireland, together with Scotland's Faculty of Advocates, said that virtual hearings have 'multiple and multi-faceted disadvantages' compared with in-person proceedings, including less satisfactory interaction with judges.

Police Investigation Reveals Legal Aid Struggles For Women

Law Gazett: A rape complainant was unable to obtain legal aid for a family law case because the accused had not been arrested and put on bail, a report on police use of protective measures in cases involving violence against women and girls has revealed. The investigation by HM Inspectorate of Constabulary and Fire & Rescue Services, College of Policing and Independent Office of Police Conduct was prompted by a super-complaint submitted by the Centre for Women's Justice. The group raised concerns that the police were failing to use protective measures such as pre-charge bail, which enables police officers to continue investigations without suspects being detained. Bail reforms introduced in 2017 introduced a presumption against using pre-charge bail and a 28-day time limit. However, this led to more people being released under investigation, which has no time limit or conditions.

Today's report, 24th August, said the super-complaint had been helpful in setting out women's experiences. In one example highlighted, the super-complaint described how a woman was advised by several family solicitors that she would not be able to obtain legal aid for a family law case because the suspect had not been arrested and put on bail. The Home Office told the inspection that measures under the Police, Crime, Sentencing and Courts Bill will end the presumption against pre-charge bail. Today's report states future inspections will be considered to review the impact of the changes. The creation of a bespoke offence of breaching pre-charge bail is also recommended.The report also reveals a lack of police awareness on the struggles faced by domestic abuse complainants to obtain non-molestation orders.

A Women's Aid support worker said in the super-complaint: 'It seems that police officers have little understanding of what is required to obtain an NMO. This is quite a demanding process for a woman to go through. Firstly, she may have to apply for legal aid which means providing bank statements, mortgage details and other financial documents. Some women obtain legal aid but then have to pay a contribution, which can be quite large depending on their income. Those who cannot obtain legal aid either have to prepare the court application themselves or pay a solicitor. Many women represent themselves without solicitors. 'A detailed written statement must be prepared along with a court application form and these must be lodged with the court urgently. In many cases where an order is granted ex parte at the first hearing the perpetrator may challenge the order and the woman has to attend a second hearing where she must confront him in court. In some cases, such as those involving repeat e-mails and text messages it is unlikely that an order will be granted ex parte and she will have to face the perpetrator at a hearing.' The investigation did not find evidence that police were advising complainants to obtain non-molestation orders in cases where it would be inappropriate to do so. However, chief constables are advised to ensure officers are aware of all protective measures and referral pathways to third-party support organisations.

Government Accidentally Released 46 Prisoners Last Year

The highest figure in recent years was in 2017, when 72 prisoners were accidentally released. 46 inmates were accidentally released from prisons in England and Wales in the year to March 2021, according to figures from Her Majesty's Prison and Probation Services — a decrease of 8% on the year to March 2020, when 50 inmates were released. HMPPS said there were five escapes from custody in the past year, with one of those still at large 30 days after their escape. The previous year saw 16 inmates escape, with eight of those recaptured within 30 days of going missing. There has also been a decrease in the number of prisoners absconding – an escape from places like open prisons – from 143 in the previous 12 months to 101 in the latest period. Out of those, 34% remained at large after 30 days, down from the 42% in the previous year. There were 87 Release on Temporary Licence (ROTL) failures – where a prisoner fails to stick to the conditions of their temporary release – in the year to March 2021, a decrease of 87% from the year up to March 2020. HMPPS said that the majority of escapees are quickly re-captured before being charged and prosecuted. Prisoners are usually re-categorised on their return to prison and may be moved to a higher security establishment. The figures come after the early prison release scheme that was put in place last year to help jails deal with COVID was paused after six inmates were freed by mistake. The government early release scheme was designed to avoid thousands of often cell-sharing inmates becoming infected with COVID. Coronavirus cases were confirmed in half of the prisons in England and Wales at the beginning of the pandemic, though the true figure is likely to be far higher due to limited testing. Stronger processes were put in place by the Prison Service after the prisoners were let out of two open prisons in Gloucestershire and Derbyshire, and a young offenders institution in south-east London. The men later "returned compliantly to prison when asked

to do so", officials said. The Prison Service said the releases were down to "human error".

Black People More Likely to be Tasered for Longer, Police Watchdog Finds

Vikram Dodd, Guardian: Police deploy Taser stun guns too often, with black people more likely to face prolonged use lasting over five seconds, an official report has found. The study by the Independent Office for Police Conduct (IOPC) warned of a loss of legitimacy after a review of 101 Taser cases from 2015-20. They represent the most serious cases it investigated, and a fraction of more than 94,000 uses over that period – leading police to attack the findings as selective and out of date. Previous data have shown that black people, who make up less than 4% of the UK population, face greater Taser use, leading to claims of racial bias. The IOPC said that, of the cases it reviewed, 60% of black people who were subject to Taser discharges endured them for more than five seconds, compared with 29% of white people. It added that mental health played a key role, saying: "In the majority of cases involving either allegations of discrimination or common stereotypes and assumptions, there was evidence that the individual concerned had mental health concerns or a learning disability. In one case cited, a black 17-year-old male who was an inpatient at a mental health centre was shot with the electrical weapon three times, struck with a baton more than 20 times and subjected to incapacitant spray and restraint.

The IOPC said that in almost a third of cases studied, chances may have been missed to de-escalate the situation. In a quarter of cases, Tasers were used for compliance despite official guidance to officers that they should not be used in this way. Some 26 investigations out of 101 led to a finding that an officer should face a disciplinary case or be considered for criminal prosecution. In the last five years, four inquests have found that Taser use contributed to or was one of a combination of factors that led to a person's death. In June PC Benjamin Monk was convicted of the manslaughter of the former Premier League footballer Dalian Atkinson in Telford, Shropshire. Monk used a Taser for 33 seconds and kicked Atkinson twice in the head. The victim had underlying health issues, and on the night he clashed with police was facing a mental health crisis that led him to make threats. The IOPC said: "In incidents where mental health was a factor, people were more likely to be subjected to multiple and prolonged discharges than the overall sample." It added: "We found examples of good practice where officers recognised signs that an individual may have been experiencing acute behavioural disturbance and responded in line with policy and guidance." The watchdog also said in a third of cases it reviewed officers made offensive comments when using Taser but accepted this could happen during stressful situations, saying: "This included officers swearing at, and making derogatory comments to, the individuals, and making unprofessional remarks to them and their families."

The IOPC director general, Michael Lockwood, demanded reforms, saying: "Ultimately, policing has to change and be more responsive to community concern or risk losing legitimacy in the eyes of the public. "In particular, people from black, Asian and minority ethnic backgrounds deserve a clear and transparent answer from police on why such disproportionality still exists – failure to address this risks undermining the legitimacy of policing." Responding for police chiefs, Lucy D'Orsi, the chief constable of British Transport Police, accused the report of ignoring the realities of policing. "Unfortunately, this report by the IOPC is vague, lacks detail, does not have a substantive evidence base and regrettably ignores extensive pieces of work that are already well under way and, indeed, other areas where improvement could be made," she said. "Only 101 Taser uses over a five-year period were reviewed and these were all ones that had been investigated by the IOPC. It is concerning that this only represents 0.1% of all Taser uses in the same period, which totals 94,045." Lockwood said the police chiefs' response to the report was "extremely disappointing". More officers are being

issued with Tasers, which are more often pointed but not fired, nearly doubling to about 32,000 incidents in the year 2019-20 compared with two years earlier. British police are largely unarmed and officers see Taser as vital to protect them against a rising tide of injuries and what they say are increasing threats from violent criminals and terrorism. Amnesty International said: "We need concrete steps to eradicate racist police use of Tasers and to prevent their misuse against vulnerable groups such as children or those with mental health issues."This supports findings by others that the intersectionality of race and mental health can increase the risk of higher levels of use of force."

Bar Warns of Reliance on Informal Police Sanctions

Jemma Slingo, Law Society Gazette: New government data reveals growing use of out of court measures to deal with criminal offences, prompting concerns that they are being deployed to relieve pressure on the justice system. Lates published figures show that 164,000 out of court disposals were issued between March 2020 to March 2021, 9% more than the previous year. This increase was driven by a 16% increase in community resolution orders, 132,000 of which were issued. These orders are intended to deal with low level crimes where the offender admits wrongdoing and do not lead to a criminal record. In contrast, the number of defendants prosecuted at all courts fell by 32% between March 2020 to March 2021, and the number of offenders who were convicted fell by 34% compared with the previous year,

Bar Council chair Derek Sweeting QC said that, given the current backlog in the criminal courts, 'there is a risk that out of court measures will be seen as a way to relieve pressure on the system. But public confidence will only be maintained by long-term investment, including more court staff and enough courts to hear cases'. 'Greater reliance on community resolutions for more serious offences can send the wrong message to the public and victims of crime – that this is a "get out of jail free card",' he said. 'Whilst out of court disposals can be effective in reducing reoffending for minor offences, they must not be seen simply as an alternative to court, especially for sex offences or other serious crimes. Criminals must be dealt with in a manner that reflects the seriousness of their offending, otherwise, the public will lose confidence in the criminal justice system.

The Criminal Bar Association raised similar concerns last year, claiming that community resolutions are 'increasingly being used to dispose of more serious crimes'. A Ministry of Justice spokesperson said: 'Community resolutions should only be used by police for low-level or first-time offending, and are made with the explicit agreement of victims. These figures show that – despite the challenges of the pandemic – serious offenders continue to be pursued rigorously through the courts where they are more likely to be sent to prison.'

Leeds Prison Punished Inmates by Restricting Showers

Maya Wolfe-Robinson, Guardian: Prisoners were unlawfully prevented from showering daily as punishment for poor behaviour, with shielding and self-isolating inmates also unable to do so, according to a damning report. The Independent Monitoring Board (IMB) at HMP Leeds also expressed "great concern" that an incident of a prison officer using undue force with a prisoner situated on the ground was not reported to the police. The officer was later dismissed after an investigation. The annual report on the category B prison reveals that incidents of self-harm increased during periods of lockdown, and five prisoners killed themselves this year. Board members expressed concern of the "indignity of sharing a small cell" in which prisoners were forced to eat and use the toilet.

Inspectors in June 2020 observed staff members punishing inmates by withdrawing access

to a shower, sometimes for more than a day. The report from Her Majesty's Inspectorate of Prisons said this practice would "always be unacceptable" but was "especially inappropriate" because of the hot weather at the time. The IMB report notes it stopped after the inspectors' visit, but that not all prisoners were able to shower every day if they were isolating or shielding. The prison in Armley, built for 600 men in 1847, now has a capacity for 1,110 people. During 2020, the inmates were confined to their cells for 23 hours a day – with 30 allotted minutes for exercise and 15-20 minutes for a shower – from March to December. The members said that while the cost of single-cell accommodation would be prohibitive, the board "cannot consider that it is acceptable that the consumption of food occurs in the same space as integral toilet facilities".

The report says that "curtailed, strict regime with confinement" meant that "levels of violence reduced dramatically", although each time the regime was relaxed, incidences of bullying and violence would increase. There were 265 instances of violence recorded last year, 170 of which were prisoner-on-prisoner assaults or fights and 95 of which were assaults on staff. A total of 675 incidents of self-harm were recorded – a drop from the previous year, when Ministry of Justice data recorded 1,062 self-harm incidents at the prison, the highest figure since comparable records began in 2004. The report said the chair of the IMB, made up of unpaid members of the public appointed to monitor the day-to-day life in their local prison, attended a "use of force scrutiny" meeting where video footage was shown of a "prison officer acting in such a forceful way with a prisoner on the ground that he was suspended pending investigation and subsequently dismissed from the service". "It is of great concern that the board later found out that this matter had not been reported to the police," it continues.

A separate report published into a prisoner's suicide in 2018 found that an officer had been sacked afterwards for not checking on him hourly and faking records. There have been 15 self-inflicted deaths of prisoners housed in HMP Leeds since January 2015. During a visit to HMP Leeds in 2019, Boris Johnson said he did not want "to see prisons just be factories to turn bad people worse". A Prison Service spokesperson said: "The inspection found prisoners were treated fairly and humanely."We took swift action to ensure all prisoners had access to showers daily, while every use-of-force incident is reviewed and investigated when necessary.

Destruction of Evidence and the Preservation of all Digital Records

It is a well trodden story that it can take many years to overturn a wrongful conviction and when such convictions are linked to notoriaty or politics the task can be even greater . It took the Shrewsbury 24 just 49 years to get their conviction put right and this was only achieved through a significant fight and campaign. The Court of Appeal in quashing the convictions concluded that the destruction of original witness evidence at the time denied all of the applicants a fair trial and accordingly quashed the convictions .

Further matters emerge from the Appeal: Firstly a reminder of how the Court should approach old convictions. The test to be applied in assessing the case - in historic cases of this kind the court reminded itself was to apply the relevant statutory provisions as in force at the time of the original events, but the common law is to be applied as understood at the time of the Court of Appeal Review . Lord Bingham C.J. put the matter succinctly in R v Bentley [2001] 1 Cr. App. R. 21: "5.Where, between conviction and appeal, there have been significant changes in the common law (as opposed to changes effected by statute) or in standards of fairness, the approach indicated requires the Court to apply legal rules and procedural criteria which were not and could not reasonably have been applied at the time. [...]"

See for example - PR[2019] EWCA Crim1225, [2019] 2 Cr App R 22 (227) where the Court recognised the need to stay a case on the basis of lost evidence was a matter of exceptional relief but one which should still be deployed in appropriate cases referencing the case which we brought before the Court R v Anver Sheikh [2006] . Where records missing would answer a specific allegation and the trial process cannot find another way to realistically cure the problem then the case on those allegations should not proceed and no conviction can be safe .

The second matter that is worth mentioning is the Courts comments over the interrogation of old historic cases by the Court and the challenges in brings . It is worth repeating what the Court said in full: "This trial took place nearly 50 years ago, in the pre-digital era, when the court records (self-evidently in paper form only) were retained for a set period following the convictions and any subsequent appeals, and thereafter destroyed. Serendipity governed what, if anything, survived beyond that date, perhaps in the chambers of counsel, the offices of solicitors, with the relevant investigating police force,at the National Archive,with the accused or with others with an interest in the proceedings.

This case provides the clearest example as to why injustice might result when a routine date is set for the deletion and destruction of the papers that founded criminal proceedings (the statements, exhibits, transcripts, grounds of appeal etc.), particularly if they resulted in a conviction. At the point when the record is extinguished by way of destruction of the paper file (as hitherto) or digital deletion (as now), there is no way of predicting whether something may later emerge that casts material doubt over the result of the case.

Given most, if not all, of the materials in criminal cases are now presented in digital format, with the ability to store them in a compressed format, we suggest that there should be consideration as to whether the present regimen for retaining and deleting digital files is appropriate, given that the absence of relevant court records can make the task of this court markedly difficult when assessing–which is not an uncommon event –whether an historical conviction is safe. This is a really important intervention from the Court and one which should be heeded seriously if future injustice is to be avoided . There is simply no reason why in the future a full digital record cannot be preserved of the whole trial , the winner can only be justice .

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Facial Recognition Tech Rolled Out by Police without Parliament's Oversight'

News Chant:The Home Office and police have been accused of bypassing Parliamentary debate on the rollout of facial recognition by quietly sanctioning its widespread use in new steering. In an open letter, shared completely with The Telegraph, 31 organisations say the brand new steering permitting police, native councils and enforcement companies to deploy face recognition cameras throughout England and Wales ignores courtroom rulings towards "invasive" filming. A former government-appointed watchdog chargeable for policing CCTV cameras has additionally warned that the steering fails to spell out safeguards to guard the general public from intrusive surveillance by police. Facial recognition expertise maps faces in crowds based mostly on the coordinates of options like a nostril, eyes and mouth and compares them to photographs of individuals on a watchlist of suspects, lacking folks, and different individuals of curiosity to the police. If there's a match, officers are robotically alerted. The new steering was quietly revealed final week by the College of Policing in the course of the Parliamentary recess and without any announcement by it or the Government.

30 organisations together with Liberty, Privacy International and Amnesty stated: "In a democratic society, it's crucial that intrusive applied sciences are topic to efficient scrutiny. "Police

and the Home Office have, thus far, utterly bypassed Parliament on the matter of stay facial recognition expertise (LFRT). We are not aware of any intention to subject LFRT plans to parliamentary consideration, despite the intrusiveness of this technology, its highly controversial use over a number of years, and the dangers associated with its use." They stated it additionally flies within the face of a name by the all-party science and expertise committee for the usage of the cameras to be suspended till a authorized framework is about out and agreed. The 30 teams have known as for the usage of the facial recognition cameras to be halted.

Depictions of Wales Red Dragon - Must Show an Erect Penis

A petition demanding that all depictions of Wales' national animal, the Red Dragon, include an erect penis will be considered by Welsh legislators. The bizarre online petition has gathered enough signatures to be considered by the Welsh Parliament's petitions committee, Nation.Cymru reports. As of time of publication, the petition has gathered 324 signatures – enough to be considered by the committee but well short of the 10,000 required for a parliamentary debate. The petition states: "Within symbology, an erect penis depicts fertility and strength, when applied to a royal insignia, it's even more important because in order to show a leader's capability in sustaining a kingdom, this has to be conveyed via simple imagery, thus... when the dragon is erect, it portrays dominance and leadership, but when the penis is missing, this portrays the creature (the nation) as dominated, weak and fragile. "When the Royal Mint depict our dragon, they recognise that he has a penis, but for some reason, our government does not, and although some may find the topic amusing, this imagery is important if we are to carry on flying it for centuries to come."

Joint Enterprise and the Real Impact of Jogee

Tom Edwards Barrister, Carmelite Chambers: The issue of criminal liability for accessories has long been problematic for all involved with the Criminal Justice system. The case of Jogee [2016] UKSC 8 marked a dramatic departure from the old law. Liability is now only imposed in cases where a jury are sure of a participant's knowledge of the principal's crime. Prior to this, mere foresight of a possible outcome was sufficient to lead to criminal liability. Yet despite the change, almost no appeals have resulted in success and, some five years down the line, a review of appellate authorities might lead one to think that, despite the proclaimed sea-change, very little has in fact altered. But whilst the appellate decisions may not seem to give much cause for optimism, the practical effect of Jogee should mean that there are fewer convictions at first instance. Therefore, there is clear cause for optimism for those representing defendants previously caught by the doctrine of joint enterprise.

The old law - "Joint enterprise" and "parasitic accessorial liability" are seen by many as synonymous with injustice. Often invoked in cases involving gang-related violence, the doctrine was seen as having a disproportionate effect on youths and defendants from a BME background. The doctrine originated in the case of Chang Wing-Siu [1985] AC 168. Justified in part in the name of public policy considerations, the effect of Chang Wing-Siu was to dilute the mens rea for secondary parties. So much so that it led to the perverse situation that, whilst the principal needed to have formed mens rea for the offence (for murder, either an intent to kill or cause grievous bodily harm), an accessory needed only to have foreseen the possibility that the principal would commit the act with the requisite mens rea. Intellectually, this was difficult to justify and practically difficult to rationalise. Anyone who watched the BBC documentary

"Guilty by Association" will recall the murder of Nicholas Pearton, a victim of a stabbing in an incident between rival factions from Sydenham and Grove Park. Nine youths were tried when only one was the stabber. The stabbing took place in a shop on a high street. One youth, J, was at the other end of a nearby park, approaching 120 metres away from the murder when it happened. He was nonetheless convicted of murder based on the presence of his DNA on two knives found within the park. On the other hand, a boy three metres from the offence was convicted only of manslaughter. Whatever way one looks at the above facts, it is difficult to rationalise in either logic or common sense. The case shows how the jury's task of examining a defendant's mind or foresight was always going to be a difficult one. Especially so when dealing with adolescent boys. It is no wonder that there were anomalies, inconsistencies, and cases which had the bitter aftertaste of injustice.

The Change in Jogee - Jogee was therefore a long overdue, welcome and refreshing change of tack from the Supreme Court. It was always going to take a bold decision to change the law in this area and describing Chang Wing-Siu as a "wrong turn" was certainly that. Now an accused must be proven to have "knowledge of the essential matters constituting the offence" before an accessory can be found guilty. Foresight is now relegated to evidence of the intention but not its equivalent. Post-Jogee authorities though have shown that the case has not had the impact that practitioners thought it would. Also in 2016 was the case of Anwar [2016] EWCA Crim 551. This case showed that, whilst there may have been a change of approach, this was not a complete judicial about-turn. Here, the Court of Appeal said that in the event of an agreed common purpose, where there must have been foresight of another offence being committed, it will be a "question of fact for the jury in all the circumstances". In other words, forget any hope of succeeding on a submission of no case to answer.

The other significant part of the judgment in Anwar was to note that the accessory's lack of knowledge might not exonerate him completely. Although each case would be fact-dependent, the more likely outcome would be a conviction for a lesser offence such as manslaughter. One can readily envisage how, if tried under the new law, J (above) might well have escaped a conviction for murder but still been convicted of manslaughter.

Jogee though also addressed the concept of an "overwhelming supervening act". Superficially this sounds like an attractive, defence-friendly concept. Surely simply being unaware of the weapon would mean more defendants would be found not guilty? Again though, this was not the going to be a get-out clause for defence teams. In Tas [2018] EWCA Crim 2603, a fight in a student halls of residence lead to the fatal stabbing of the complainant. Mr Tas claimed he had no knowledge of the knife but had attended knowing that there would (at the least) be a fist fight. He had left the scene of the murder (committed by his co-defendant) prior to the fatal wound being delivered or a knife produced. Tas' conviction for manslaughter was upheld by the Court of Appeal. The Court agreed with the trial judge that, as manslaughter involved unlawful killing without the intent to kill or cause grievous bodily harm, knowledge of the knife was an issue of evidence going to intention, rather than being a legal matter which took his actions completely outwith the scope of the common purpose. The fact that weapons were used (and used to kill), would be treated no differently to a case where someone was kicked or punched to death. In order for an act to be an "overwhelming supervening act", it must be of such a character that it relegates other actions to history. In Tas, the Court of Appeal said that the use of the knife was an "escalation", rather than something so wholly out of step with the events of that evening such that it would be an overwhelming supervening act.

A New Dawn? Jogee was (and still is) a significant change in the law. The change though

didn't have the initial impact that some anticipated. Certainly, not so much so that a raft of convictions would be overturned. As of 2021, only one conviction has been overturned despite numerous attempts by numerous appellants. Mr Jogee himself was retried at Nottingham Crown Court and was convicted of manslaughter as opposed to murder. The test for a successful appeal out of time has proved too onerous a hurdle other applicants thus far.

The one case where the conviction was quashed was McCrilly [2018] EWCA Crim 168. Mr McCrilly was a burgler whose involvement in the burglary was limited to the search of a bedroom. When his co-burgler assaulted one of the elderly residents of the address he shouted at him to stop, helped when the victim had been punched and waited outside for ten minutes. It is rare that many of us are blessed with clients who behave in such exemplary fashion in such difficult circumstances. It is also worth remembering that this was, at its heart a burglary, rather than an offence of violence. It is a case where the injustice is blatant and there for all to see. It is therefore easy to rationalise in light of the new law and difficult to see how in logic, reason or common sense, Mr McCrilly was to be regarded as a murderer.

Cause for Optimism - A reading of the above may lead some to think that, despite being lauded as the new dawn, the practical effect of Jogee was minimal. This particularly given the lack of successful appeals in an area which had received widespread professional, academic and popular criticism. If the only hope anyone ever had for a successful appeal was the case of McCrilly, then you may as well tear up your Grounds of Appeal now!

What is clear though is that every case is fact dependent. This has been emphasized by the Court of Appeal across the authorities. Mr McCrilly was, factually behaving in a manner well outside the range of actions normally encountered in people caught up in joint-enterprise violence. As Tas shows, only in the clearest of cases will an overwhelming supervening act be found to have overwritten any existing culpability that a defendant may have. It is worth bearing in mind that group responsibility is still a divisive and controversial issue. Jogee never was and never could, change the law quite so fundamentally as was hoped by some that it would.

For all that though, practitioners can be optimistic. For the Prosecution, the new test of knowledge is far less controversial and brings the added benefits of clarity and certainty. For the defence, it is simply a higher hurdle for the Crown to overcome.

HMP Send - Closed Womens Prison - Unannounced Inspection

The restrictions on social visits hit women hard, particularly those with young children, many had chosen not to see their families at all because the ban on hugging during visits had been too painful for both mother and child

HMP Send, in Surrey, is a closed training prison for women which has a complex population of up to 202, many presenting a high risk of harm to others. The prison contains the only democratic therapeutic community for women in the country with 24 places, as well as a psychologically informed planned environment (PIPE) unit with 35 places. After a year spent with lockdown restrictions in place, a serious outbreak of COVID-19 in January 2021, in which a staff member died, and the forced closure of two wings at short notice due to fire safety concerns, Send was coping remarkably well. Women, many of whom had complex needs and were serving long sentences, felt generally well cared for and supported by staff. The excellent relationships between women and staff were evident throughout the prison, where we witnessed many friendly interactions conducted on first-name terms.

Regular meetings considered the needs of the most vulnerable, making sure that suitable support was in place for women who were distressed, self-harming or particularly vulnerable. Staff knew the women well and were able to respond quickly when difficulties arose. Women told us they felt supported by their peers, either informally or through the Listener scheme. The restrictions on social visits had hit women hard, particularly those with young children, and many had chosen not to see their families at all because the ban on hugging during visits had been too painful for both mother and child. This meant there had been fewer visits in the last year than there usually were in a month. In-cell telephones and extra credit meant that connections had at least been maintained, but it was no substitute for physical contact. One woman movingly told me how she could feel her son beginning to drift away from her.

Women were getting out of their cells for at least three hours a day, more than we have seen in most of the men's estate, but the loss of time to socialise, and get access to peer support, education and training, meant women had suffered. Staff members had noted that self-harm tended to increase when the lifting of restrictions in the community was not mirrored in the prison. The closure of the two enhanced wings meant that some women were living in more closed conditions than they had been used to and, though an external door was kept open all day, women's time outside was unnecessarily limited and cell doors were now locked at night. The prison grounds were unkempt in places and needed more looking after.

Restrictions meant that the democratic therapeutic community was unable to operate in its usual form, but despite this, women said they were still receiving good support from officers and therapists. Similarly, activity in the specialist PIPE unit had also been constrained, but in contrast to the rest of the prison, one-to-one interventions had continued for these women. The key work session I was invited to observe showed a high level of skilled and knowledgeable support from the officer involved.The governor had a very positive vision for the prison and a clear set of priorities that included restoring education, release on temporary licence (ROTL), visits and the therapeutic interventions. Inspectors agreed with her analysis that sentence progression, particularly for women on longer sentences, was not as good as it should be, although the outstanding chaplaincy had developed a mentoring support scheme for those who were due for release.There was a strong, deep culture of respect and support that had been established in the prison, maintained by the visible and accessible leadership team and a dedicated staff. This perhaps explains why some women who had achieved category D status decided to stay at Send rather than transfer to open conditions. This culture had sustained the prison through the last, challenging year and inspectors were confident that as restrictions are lifted, the prison will continue to make good progress.

Charlie Taylor, HM Chief Inspector of Prisons, 26th August 2021

Cressida Dick Referred to Police Watchdog Over 'Defence of Officer Facing Criminal Trial'

Liam James, Independent: Dame Cressida Dick has been referred to the police watchdog after publicly supporting a senior officer who faces a criminal trial in relation to a bullying probe. The Commissioner of the Metropolitan Police defended Matt Horne, Deputy Assistant Commissioner of the Force in evidence to MPs earlier this year. Mr Horne was found guilty of three counts of misconduct while deputy chief constable of Essex Police before taking his role at the Met in 2019. The London Mayor's Office for Policing and Crime (Mopac) said it had referred a complaint about comments made by Dame Cressida to the Independent Office for Police Conduct. The Telegraph reported the complaint was made over her public comments about Mr Horne. In evidence to the Home Affairs Select Committee at a hearing in May, Dame Cressida said she made the decision to appoint Mr Horne as head of professional standards

with her “eyes absolutely open.” “I stand by it and I stand by him,” she added.

The Met police chief has been embroiled in several high-profile controversies this year and is currently awaiting a decision from Priti Patel, the home secretary, on whether or not to extend her contract, which expires in April. She faced calls to resign in March after the Met's response to a vigil held over the killing of Sarah Everard, which was seen as heavy-handed by many. In June, the force was labelled “institutionally corrupt” after a probe into the unsolved murder of private detective Daniel Morgan. Dame Cressida was accused of delaying the probe and the force was said to have prioritised protecting itself and its officers when faced with corruption claims.

Ivor Bell - Court Delivers Reasons For Quashing Conviction

The Northern Ireland Court of Appeal The Court of Appeal on Wednesday 25th August, delivered its reasons for quashing Ivor Bell’s conviction dating from 1975 for assisting Gerry Adams in his attempt to escape from HMP Maze. It was on the basis of the Supreme Court’s decision in 2020 that Mr Adams was not lawfully detained at the time. Ivor Bell (“the appellant”) was convicted on 18 April 1975 on a single count that on 26 July 1974 he assisted Gerard Adams in attempting to escape from HMP Maze. He was sentenced to two years imprisonment. Mr Adams was also convicted for the offences of attempting to escape from lawful custody on 24 December 1973 and 27 July 1974 and was sentenced to three years imprisonment.

The scheme for detention by internment established by the Northern Ireland (Emergency Provisions) Act 1973 (“the 1973 Act”) operated by the making of an interim custody order (“ICO”) in cases where the Secretary of State considered that an individual was involved in terrorism. On foot of the ICO that person was taken into custody. The person detained had to be released within 28 days unless the Chief Constable referred the matter to a commissioner. The detention continued while the commissioner considered the matter. If satisfied that the person was involved in terrorism, the commissioner would make a detention order in accordance with Schedule 1, paragraphs 12 and 24 to the 1973 Act. If not so satisfied, the release of the person detained would be ordered.

On 13 May 2020, the Supreme Court gave judgment in R v Adams [2020] UKSC 19 in which Mr Adams’ convictions for attempting to escape lawful custody were quashed because the ICO under which he had been interned was invalid. The Supreme Court held that, as a result, he was not lawfully detained at the time of the offences. The appellant contended that given that Mr Adams was not lawfully detained at the time of his attempted escape his conviction for assisting Mr Adams’ attempt to escape was unsafe and should be quashed. The respondent submitted that the making of the detention order cured the invalidity of an earlier ICO and that the decision of the Supreme Court in Adams was of no application. The court rejected this submission which, it said, ignored the basic requirement of the 1973 Act for a valid ICO to exist in order for a subsequent detention order to be valid: “The making of a detention order did not have the effect of converting an otherwise unlawful detention in to a lawful detention. If that had been the effect the Supreme Court would not have quashed Mr Adams’ conviction for the attempted escape in July 1974. Mr Adams was not detained on a valid ICO, therefore any referral to or determination of his detention by a commissioner thereafter was unlawful and not in accordance with paragraphs 12 or 24 of the 1973 Act. Any detention order made by a commissioner was, in consequence, also unlawful.

In R v Adams, the Supreme Court dealt with the question as to whether the making of an ICO required the personal consideration by the Secretary of State or whether a Minister of the State could be permitted to make the order under the Carltona principle (which provides that, normally, the duties and powers given to Ministers may be exercised by other responsible officials of the relevant Government department). The Supreme Court held that it was not necessary in R v Adams to reach a final view on whether there was such a presumption as the statutory language was unmistakeably clear and had the effect of displacing it. Article 4 of the Detention of Terrorists (NI) Order 1972 provided that “the Secretary of State may make an order for the temporary detention of a person suspected of having been concerned in the commission or attempted commission of any act of terrorism or in the direction, organisation or training of persons for the purpose of terrorism”. The Supreme Court said the language was clear and precise and its apparent effect was unambiguous. It held that it was the Secretary of State who must consider whether the person concerned is suspected of being involved in terrorism etc. The court said that Parliament’s intention was that such a crucial decision should be made by the Secretary of State as this was, after all, a power to detain without trial and potentially for a limitless period. The Supreme Court concluded that as the ICO made in respect of Mr Adams was not made by the Secretary of State it was invalid with the consequence that he was not lawfully detained and should not, therefore, have been convicted of attempting to escape from lawful custody.

Impact of R v Adams on the appellant’s conviction: The appellant’s conviction was for assisting Mr Adams in his attempt to escape from HMP Maze on 27 July 1974. It was argued on his behalf that if Mr Adams was not lawfully detained under a detention order then the appellant’s conviction for an offence of assisting him in attempting to escape was wrong in law. The respondent submitted that the words “detained under an interim custody order” in Schedule 1, paragraph 38 to the 1973 Act need not mean that the person who was subject to the order was “lawfully” or “validly” detained under an ICO. The court rejected this saying that such a construction was plainly inconsistent with the decision and orders made by the Supreme Court in R v Adams. It agreed that the making of a valid ICO was a condition precedent to the referral of the matter to the commissioner and to the determination of the commissioner as to the making of a detention order: “The gravity of the consequences for a person subjected to internment must inform how strictly the provisions of that legislation should be construed. Against that background and having regard to the clarity of the Supreme Court’s decision in Adams we reject the respondent’s contention that the legislation for internment in Northern Ireland permits an interpretation that orders made within that scheme of detention include invalid or unlawful orders.” The court concluded that the conviction of the appellant was wrong in law given that he could not commit the offence where the person who was the subject of the attempt to escape was not lawfully detained under an ICO or detention order as required. It quashed the conviction.

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