

## MOJUK: Newsletter 'Inside Out' No 334 (28/08/2011)

used by the accused shortly after they attacked Simon....Information from the witnesses shows that a short time after the attack on Simon, the group responsible were directly referring to him as a 'Chinky'. There are a large number of references to the term "Chinky" being used by the group, several relating to the accused. During his interview....he denied that he would use this word and states that he knows it to be racist. This is significant and the link between this, and the language used by him and others, does not appear to have been made." The Inquiry confirms-" Following the interview and arrest of the accused, the investigation team continued to interview witnesses and all statements and resultant inquiries were submitted to the Crown Office and Procurator Fiscal Service. This included the statements of the significant witnesses who had heard language used where Simon was referred to as a 'Chinky.'" In the end "the Inquiry concluded that there had been significant failings in the police inquiry into incidents previously reported by Shirley San and the investigation into the death of Simon San"

Unfortunately the findings do not offer any comfort to the family.

There were significant failures at the heart of this investigation and prosecution and the family strongly believe that they received such treatment because of their Chinese origin. The murder was racially motivated, yet the family still wonders why the Police would deny this when the evidence was available to them? There was worse to come- when Simon's killer was brought to court a High Court Judge was told by the Advocate Depute that Mr San's family were strongly of the view that the attack was racially motivated, but that the police investigation did not find any evidence to support that. It is clear from the Inquiry that all material including the evidence of racial motivation was in fact provided to the Crown Office.

The family welcome that Lothian & Borders Police have accepted responsibility for their significant failings and they will take steps to prevent similar failures occurring in future. However, like most families, they wish this tragic incident has never happened in the first place. The San family will never forgive the officers who were responsible for the unnecessary pain they have caused the family. I pay tribute to the courage and perseverance of Simon San's family.

Like others who have gone before him, Ahmed Sheikh, Surjit Chhokar, Kriss Donald, Imran Khan, Singh Bola - Simon San was not a famous man, just a young family man with a future. He did not have high powered contacts, just a couple of stubborn parents that refused to be pushed aside. I hope that Simon San will not be forgotten, we have unfortunately been here before and yet again another family has been forced to take these steps, when all they ever wanted was for the criminal justice system to its job.

The authorities should not mistake the silence of the Chinese community as a weakness, Simon's family are part of Scotland's community and feel betrayed by those who should have given them justice. The Police Inquiry may be over, but we now expect the Lord Advocate to order an immediate inquiry into their prosecution of this case.

**Hostages:** Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Sam Hallam, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, Talha Ahsan, George Romero Coleman, Gary Critchley, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Jordan Towers, Peter Hakala, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Simon Hall, Paul Higginson, Thomas Petch, Vincent and Sean Bradish, John Allen, Frank Wilkinson, Stephen A Young, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Atwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake & Keith Mawhinney, Peter Hannigan, Ihsan Ulhaque, Richard Roy Allan, Sam Cole, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Timothy Caines, Ray Gilbert, Ishtiaq Ahmed.

### Is William Beck a victim of mistaken eyewitness identification?

William Beck was 20 when he was arrested for an armed robbery of a post van in Livingston, Scotland on 16 December 1981. Nearly three decades later, after serving six years of imprisonment for a conviction based exclusively on eyewitness identification, he continues to maintain his innocence. *University of Bristol Innocence Project (UoBIP), Press release 9 August 2011*

The University of Bristol Innocence Project (UoBIP) has taken on Mr Beck's case and has today submitted a response on his behalf following two rejections by the Scottish Criminal Case Review Commission — the independent public body set up to review alleged miscarriages of justice. Although Mr Beck claims that he was in Glasgow the entire day at the time of the robbery, some 40 miles away from where the crime occurred, he was convicted on the evidence of five eyewitnesses, only two of whom identified Mr Beck in an identity parade. The other three witnesses picked out a volunteer.

Eyewitness misidentification has been accepted worldwide as a leading cause of wrongful convictions. Around 75 per cent of post-conviction DNA exonerations in the United States are attributed to eyewitness misidentification. In addition, a report by eyewitness identification expert Professor Tim Valentine highlighted various problems with the identification parade procedure and concluded that the evidence against Mr Beck had 'low probative value'.

The UoBIP took on Mr Beck's case earlier this year when the Scottish Criminal Cases Review Commission issued a provisional Statement of Reasons stating that they were not minded to refer his conviction to the High Court of Justiciary. Mr Beck's case was assigned to postgraduate law students Mark Allum and Ryan Jendoubi at the University's Law School, who produced the response to the Scottish Criminal Cases Review Commission on behalf of Mr Beck.

Under the guidance of Dr Michael Naughton, founder of the UoBIP, the students had seven months to get to grips with the facts of the case and issue a response to the provisional decision of the Scottish Criminal Cases Review Commission. Their twenty-page response argues that the Scottish Criminal Cases Review Commission has applied an unduly high standard in rejecting Mr Beck's case. They contend that when his conviction is assessed as a whole, it is not possible to conclude beyond reasonable doubt that a miscarriage of justice has not occurred.

Mark Allum said: "Mr Beck's conviction was based primarily upon identification evidence part of which the trial judge referred to as unreliable and part of which he suggested the jury should treat with great care. Recently the courts have become increasingly reluctant to base convictions solely upon eyewitness testimony especially since studies have exposed the fallibility of such testimony. Were this case to come before the courts today it is highly likely that the trial judge would dismiss it.

Ryan Jendoubi said: "Mr Beck's case underlines important problems in the way the justice system currently approaches cases of alleged wrongful conviction."

Dr Michael Naughton added: "Ironically, Mr Beck shares the same surname and was arrested on the same day and month as the notorious miscarriage of justice victim Adolf Beck (16 December) who was twice wrongly convicted on mistaken eyewitness identification evidence in 1896 and again in 1901. The case of Adolf Beck led to the establishment of the Court of Criminal Appeal and the introduction of compensation for victims of miscarriage of justice. Over a century later, it seems history may be repeating itself and eyewitness identification evidence is again in the dock." [ End ]

### **Hundreds of police officers caught illegally accessing criminal records computer**

More than 200 police officers and support staff in Britain's biggest force have been caught accessing the highly sensitive Police National Computer for their own ends. The PNC national computer system enables the search of the names database to identify suspects including physical descriptions and personal features *By Jason Lewis, The Telegraph, 20 Aug 2011*

Half of the offences uncovered, including some accused of passing information to criminals, took place in the last three years - suggesting the abuse of the system is on the increase.

The figures show 84 police officers have been disciplined for illegal use of the database, which contains information on millions of people, their property and the movements of vehicles across the country in the last 36 months. A further 22 staff have also been caught wrongly accessing information in the same period.

The revelation comes after a police officer was arrested in relation to leaks during the Scotland Yard phone-hacking investigation. The 51-year-old detective constable was arrested at work on Thursday. He has been suspended.

The Metropolitan Police has disclosed that 142 police officers and 66 staff have been disciplined for misusing the national computer system, known as the PNC, in the last 10 years. Of these 29 have been sacked and 16 prosecuted over their actions.

### **Freemasons in the police leading the attack on David Cameron's riot response**

Leading police officers have set up a national Masonic lodge where they can meet in secret in defiance of fears about the influence of the secret society on the criminal justice system. *By Jason Lewis, Investigations Editor, the Telegraph, 20 Aug 2011*

The founding members include senior officials from the Police Federation, the police staff association, which is currently fighting the Government over its plans to cut budgets.

The new Masonic lodge is led by John Tully, a Metropolitan Police officer, who has given numerous interviews in recent days accusing the Prime Minister of "fighting violence, arson and looting on our city streets with sound-bites". Other founder members include officers from the Metropolitan Police, Essex Police, Thames Valley Police and from other forces including Northumbria, Dyfed Powys, South Wales, South Yorkshire and even a high ranking officer from the Royal Gibraltar Police.

The "Sine Favore" Lodge was opened despite the conclusions of a Parliamentary inquiry which warned of public fears that "Freemasonry can have an unhealthy influence on the criminal justice system". The inquiry followed questions about masonic involvement in the abandonment of an investigation into a shoot-to-kill policy in Northern Ireland and with the West Midlands Serious Crime Squad, which was disbanded after evidence of police malpractice.

Membership is open to all serving and retired officers across Britain and others working alongside the police, including lawyers, criminologists and even the financial advisers who manage officers' retirement plans. The idea for the new police Masonic lodge grew out of a series unofficial get-togethers in hotel bars during Police Federation annual conferences.

Masonic rules require members to do all they can to support each other, to look after each other and to keep each others' lawful secrets. New members of the so-called Brotherhood are blindfolded, a hangman's noose placed around their necks and they are warned their throat will be slit and their tongue torn out if they break their oath. Critics argue this could put them at odds with discharging their duty to serve the public.

The inquiry by the Home Affairs Select Committee in 1998 called for a public register of

only called Simon as the accused and asked me to bring my son to court for an appearance at a hearing. I, along with my family, am very angry with the treatment we received from Lothian and Borders Police."

"The findings do not offer me any peace; they merely confirm that we were right that we have not been treated appropriately by the officers. This is the darkest moment of my life knowing that I am going to be left alone in this house soon. My wife's health was improving after an operation two years ago. Since Simon's death, her health has been deteriorating.

The enquiry also demonstrated that the racist incidents before my son's death were not addressed appropriately. "I feel there was a lack of respect in the importance of my son's death by appointing an untrained officer to lead the investigation. The officer who spoke to the press should not have expressed his personal views about my son's murder. We feel deeply insulted by his comments. My family and I have totally lost our faith and trust in police because of the actions of these officers. We feel very let down and if we had not complained about our treatment, we would have never found out about the mistakes made by the officers.

"The officers may well be disciplined but for us they have played a role in lack of justice which we should have been entitled to as a grieving family. The officers did not help us to get the justice we deserved. My son lost his life and I am convinced that the accused received a lesser sentence because the officers failed to investigate the racial motivation of this case. The racial motivation was completely denied by the officers despite there being evidence." That was a statement by Mr San senior and I wish to continue to state the following on behalf of the family:

Simon's death was brought about by a group of white males who were described by the Judge Lord Matthews of acting like "pack animals". The investigation from the beginning was flawed. A Senior Officer described the incident as 'minor attack' and said Simon was in 'the wrong place at the wrong time'. He described Simon as 'Vietnamese' when his ethnic origin was Chinese. The Police denied any racial motivation just hours after Simon's death, despite the evidence being present. Over the last 12 months the family have had little opportunity to grieve having had to seek answers from the authorities as to why Simon was killed and launched a formal complaint with a total of 39 allegations. The family welcome the findings of the police's internal enquiry into their complaints and wish to thank the Inquiry team for their robustness, honesty and integrity in handling their complaint.

A number of points stand out from the Inquiry:

The inquiry concludes "that Lothian and Borders Police failed to recognise that the attack on Simon was racist." Whilst following Simon's killing, there seemed to be a concern of an impact on the wider community, the inquiry states the Police failed to understand the family and Chinese community's needs. The Complaint Inquiry states that "the fact that a Chinese person had been assaulted by a group of white males and subsequently succumbed to the injuries is, in itself, unusual and significant" but Senior Officers failed to "identify Simon's attack as a 'critical incident'". The Police failed to even consider that Simon and his family had been subjected to race hate and violence in the past in that area. "critically in the summary of the analysis for one of the accused, it is recorded that he is racially prejudiced and has been influenced by xx. The same accused has been reported for a racist offence. Two of the other accused had previously been charged together for an incident where the victim was a Chinese shopkeeper" But this was not considered important by senior detectives.

The Inquiry states "that the appointment of an untrained officer to a significant investigators post left both the officer and the organisation exposed and at risk. This impacted on the investigation throughout. The investigation team "placed little emphasis on racist language

Lothian and Borders police have confirmed they will issue a statement on the case and its implications at a press conference this afternoon. Deputy Chief Constable Steve Allen will discuss the findings of the inquiry and a statement will be read out by Foysol Choudhury, chairman of Edinburgh and Lothians Regional Equality Council.

"The investigation from the beginning was flawed," said the San family solicitor, Aamer Anwar. The Police denied any racial motivation just hours after Simon's death, despite the evidence being present. Over the last 12 months the family have had little opportunity to grieve having had to seek answers from the authorities as to why Simon was killed and launched a formal complaint with a total of 39 allegations. There were significant failures at the heart of this investigation and prosecution and the family strongly believe that they received such treatment because of their Chinese origin. The murder was racially motivated, yet the family still wonders why the Police would deny this when the evidence was available to them? There was worse to come- when Simon's killer was brought to court a High Court Judge was told by the Advocate Depute that Mr San's family were strongly of the view that the attack was racially motivated, but that the police investigation did not find any evidence to support that. It is clear from the Inquiry that all material including the evidence of racial motivation was in fact provided to the Crown Office. "

The Crown Office have so far not yet commented on the findings of the police investigation. The family have asked the Lord Advocate to order an inquiry into the prosecution.

Earlier this year, X MP Mohammed Sarwar accused the Crown Office of institutional racism.

*Racism inquiry - Family Statement*

Firm Magazine, 23rd August 2011

This is the text of a statement issued on behalf of the Simon San family at Fettes HQ, Edinburgh this afternoon, by the family solicitor Aamer Anwar.

I will start by reading the words of Trieu Seng San- father of Simon San

"Our family is of Chinese origin, and fled Vietnam in the 1970s to seek refuge in Scotland, for more than 30 years we have led a quiet and content life in Edinburgh. Simon San was the youngest of my six children. He had been the main carer of my wife and me since he left school. Simon was a good son and a good brother. He was always eager to help his family no matter what the circumstances were. Whenever someone needed help, Simon was the first one to offer. Simon did not have the word 'no' in his vocabulary. Simon's murder destroyed the whole family. Since his death, my wife has been ill and bed bound. It is difficult for me as I now need to face the fact that my wife will be leaving me soon shortly after losing my youngest son. When the family liaison officer told me my son had died after the assault, I could not express myself because there was no interpreter present.

"I found out about the media report of my son's death through my children because I do not read English. My children told me that the senior officer said Simon was in the 'wrong place at the wrong time,' and described it as a 'minor attack'. This caused me great distress. I felt the police were implying that my son deserved to die. My son was at his place of work conducting his normal work duties. I received no satisfactory response from the Police.

"When I was taken to identify my son's body, there was no interpreter. It was almost a week later when an interpreter was present. She did not interpret what I wanted to say therefore I felt I was not able to speak up for myself and express my feelings.

"I believed my son's attack was racially motivated. I insisted that it was on several occasions but was not listened to. When the Crown Office and Procurator Fiscal Services made contact with us via the language line, the quality of the interpreter was so poor that he mistak-

police officers who joined the Freemasons, although in the end the then Labour government proposed that officers could make voluntary disclosures about their membership. Few did.

The new "Sine Favore" lodge, is named after the Latin motto of the Police Federation, "Without Fear, Without Favour". The founders include Police Federation Treasurer Martyn Mordecai, John Giblin, chairman of the Federation's Sergeants Central Committee, and Steve Williams, general secretary of the Federation's Inspectors Central Committee. Earlier this year Mr Giblin told the Federation's annual conference that government ministers "hate the police service" and wanted to "destroy" it.

Other founding members include solicitor Tristan Hallam, a personal injury lawyer who specialises, according to his firm Russell Jones and Walker, in "road traffic accidents and public liability cases for both private clients and associations including the Police Federation". Mr Hallam said: "Membership of any organisation is a personal choice. Russell Jones & Walker are aware of my membership."

Stewart Imbimbo, an ex-Thames Valley police officer and now a senior official at Milton Keynes council, Robert Taylor, a financial adviser, Eric Misselke, director of a police credit union which provides cheap loans, savings accounts and insurance, and the Metropolitan Police's resident criminologist Dr Attilio Grandani. Dr Grandani sits on the Metropolitan Police Authority's equality and diversity sub-committee and is behind the Met's new controversial statistical-led policing model, which aims to combat areas of high crime as opposed to more thinly spread bobbies-on-the-beat territorial policing.

Lodge number 9856 was officially opened by a senior Masonic official, Russell Race. He is the Metropolitan Grand Master, head of the Grand Lodge of London, a corporate financier and chairman of a construction firm behind the huge Westfield shopping centre in west London and The Pinnacle office development, which, when complete, will be the tallest building in the City of London. The lodge is based at 10 Duke Street in central London, which is also the headquarters of the Supreme Council of the 33rd Degree, one of the most important and mysterious bodies in international Masonic circles, which has an elite membership of only 75 people. The building, known as Grand East by Masons, contains the "Black Room", the "Red Room" and a "Chamber of Death", used for Masonic rituals.

The Police Federation last night refused to discuss whether any of its officials had disclosed their involvement with Freemasonry. A spokesman said: "Being a member of any organisation is a matter for the individual, so long as membership of that organisation does not compromise their duties and responsibilities as a police officer." Lodge Secretary Mr Tully, vice chairman of the Metropolitan Police Federation refused to comment.

### **The recent disorder: bail and sentencing**

*Blog of Obiter J, Saturday 20th August 2011*

Much controversy has been raised by the sentencing meted out to some of those charged with offences committed during the recent disorder. Many cases have already been sentenced either in the Magistrates' Court. A lesser number of cases have been dealt with by the Crown Court. (Given the short time between committal to Crown Court and sentence, the latter would be guilty pleas).

In the Magistrates' Courts, the majority of the cases have been dealt with by professional District Judges (Magistrates' Courts). The use of "lay benches" has been very much the exception. The reason for that is not entirely clear at this time.

The District Judges have taken a "tough line" both by way of refusal of bail and by sen-

tences of imprisonment which are seen, in some quarters, as disproportionate to the seriousness of the actual offending - see BBC 17th August - "Some England riot sentences too severe." The stance taken by the courts reflects views expressed by David Cameron that offenders should feel the "full force of the law."

In one instance where a lay bench was used - (at Camberwell Green Magistrates' Court) - it was reported that the Bench Chair stated that the court had been issued with a "...government directive..." to jail all riot offenders. Such a directive would be unlawful and unconstitutional since it is the judiciary which has the responsibility for sentencing. Subsequently, the Judicial Office issued a statement which said: - "The senior judiciary has given no directive in relation to sentencing for offences committed during the recent widespread public disorder."

Refusal of bail: Bail appears to have been refused in a high proportion of the cases. The Bail Act 1976 begins with the proposition that the defendant has a right to unconditional bail. This right may be lost when one or more stipulations set out in Schedule 1 of the Act apply. For example, bail may be refused if there are substantial grounds to believe that, if granted bail, the defendant would commit further offences. Where bail is refused the reasons are to be stated in open court.

The fact that a particular offence (e.g. theft) took place during a period of disorder is NOT, in itself, a ground on which to base refusal of bail. Refusal of bail has to be based on all the known information including the criminal record (if any) of the defendant. How the individual responded to any previous grants of bail is always highly relevant.

Sentencing - some basic principles laid down by Parliament:

1. For offenders aged 18 and over, the purposes of sentencing are punishment, reduction of crime (including reduction by deterrence), reform and rehabilitation, protection of the public, the making of reparation by offenders. The court must have regard to these purposes - see Criminal Justice Act 2003 s.142. Which of the purposes prevails will depend very much on the particular case. In relation to offending during a time of serious disorder, it is likely that punishment and crime reduction will be uppermost in the sentencer's mind.

2. The seriousness of an offence involves consideration of the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused. Previous offences may be considered as aggravating factors. Criminal Justice Act 2003 s.143. It should be noted here that a strong mitigating factor exists where the offender has no previous convictions.

3. The court must take account of a guilty plea - Criminal Justice Act 2003 s.144. Sentencing guidance addresses how this is to be done - see Reduction for Guilty Plea. A guilty plea at the first opportunity normally attracts a discount of one-third and there is a presumption that this will be given unless there are good reasons for a lower discount.

4. For a sentence of imprisonment to be imposed, the offence must be so serious that neither a fine alone nor a community sentence can be justified for the offence - Criminal Justice Act 2003 s.152.

5. Where imprisonment is imposed, it must be for the shortest term (not exceeding the maximum permitted) that, in the opinion of the court, is commensurate with the seriousness of the offence. Criminal Justice Act 2003 s.153

6. The reasons for a particular sentence must be explained - Criminal Justice Act 2003 s.174.

7. The Sentencing Council is tasked with producing guidelines for sentencing. Guidelines MUST be followed unless the court is of the opinion that it would be contrary to the interests of justice to do so - Coroners and Justice Act 2009 s.125. If the court is of that opinion then,

This was discovered to be untrue. The relatives owned very little land and assets. Unknowingly, Jeremy would have eventually inherited almost all of their own assets directly through both his father and mother.

· Assistant Chief Constable Simpson of Essex Police had been informed of the findings in both enquiries and had chosen not to act.

· As a result the Police Complaints Authority had also colluded to deceive the public to maintain trust in the police and ultimately by using Public Interest Immunity to ensure that many documents remained hidden from the Defence and public.

*Why is it so important that you get involved?*

The Police are public servants, your voice matters. Your opinion counts. Public money funds the police and also funds housing prisoners. Jeremy Bamber is being wrongly imprisoned at the cost of the tax payer. We have discovered that public servants have lied and covered up the truth to sustain his conviction.

*What should you do to help?*

We are asking that you send one letter to two people, that's the price of two first class stamps.

"The CPS state that Misconduct in Public Office has occurred if a public officer wilfully neglects to perform his duty and/or wilfully misconducts himself, to such a degree as to amount to an abuse of the public's trust in the office holder, without reasonable excuse or justification. We believe that Essex Police, the City of London Police and the Independent Police Complaints Authority (formerly the PCA) have abused our trust in them by allowing Jeremy Bamber to remain in prison a further 20 years after discovering that he was an innocent of all the charges he is currently imprisoned for."

Where do I send my letter?

Rt Hon Theresa May MP  
Home Secretary  
2 Marsham Street  
London SW1P 4DF

Mr Kier Starmer QC  
Director of Public Prosecutions  
The CPS 2 Southwark Bridge  
London SE1 9HS

Thanks for your support, Jeremy Bamber Campaign, Admin Team

### **Family calls inquiry after police & Crown Office bungle racist murder investigation**

The family of a man killed in a racist attack have criticised Lothian and Borders police for failing to act upon evidence that the attack was racially motivated. An internal police inquiry, conducted after the family lodged a complaint, concluded that "Lothian and Borders Police failed to recognise that the attack...was racist."

*Firm Magazine, 23rd August 2011*

Simon San was murdered in Edinburgh in 2009. Three of those accused of his homicide had prior history of racist acts. The report added that "the appointment of an untrained officer to a significant investigators post left both the officer and the organisation exposed and at risk. This impacted on the investigation throughout."

The family of Simon San have said the events have led them to lose their faith in the police, and the officers involved played a role in the "lack of justice" the family said they felt entitled to. They have called for an inquiry into the prosecution. "The officers did not help us to get the justice we deserved," said Trieu Seng San, the victim's father. My son lost his life and I am convinced that the accused received a lesser sentence because the officers failed to investigate the racial motivation of this case. The racial motivation was completely denied by the officers despite there being evidence."

looted in the riots in south London.

The 25-year old care worker and mother of a two-year-old girl had no previous convictions and there was no evidence that she was involved in the looting.

Edward Kirton, the solicitor acting in the case, said: "The right to bail is a long-standing and essential part of our criminal justice system. It should be carefully considered and each case should be looked at on its own merits.

"In relation to the riots, it seems that the Metropolitan police took a strategic decision to apply a blanket ban and deny everyone bail, no matter what their circumstances. I consider this policy is unlawful as a result."

The lawyers' letter to the Met describes the policy as amounting to "unlawful arbitrary detention" of people. The existence of the policy has a "chilling" effect on Article 5 under the European court of human rights which guarantees an individual's liberty and security, it says. Adopting a pre-action protocol for judicial review, the letter demands an apology for the violation of the woman's fundamental rights. The Met said: "Guidance was issued to officers to ensure a consistent approach to an investigation which was, and remains, unprecedented in its volume and complexity.

"To ensure the interests of justice were served, prevent further disorder and protect the public it was made clear that a decision should be sought to charge where there was sufficient evidence. With courts sitting extended hours, the recommendation that those charged were remanded in custody was made to ensure cases were dealt with quickly and again to protect the public from potential further disorder.

"Cases were, and continue to be, looked at on the basis of the evidence available. Where the threshold to charge was not met people have been bailed to return pending further inquiries, released with no further action or - in a small number of cases - dealt with by other police disposals."

### **Justice for Jeremy Bamber - 'Freedom Fortnight'**

On Monday 22nd August Jeremy's campaign team launched 'Freedom Fortnight' a two week campaign in which people supporting Jeremy's miscarriage of justice have the opportunity to write directly to the Home Secretary Theresa May and the Director of Public Prosecutions (DPP) with serious concerns over Jeremy Bamber's conviction. Details are below and on the web site at <http://www.jeremy-bamber.co.uk>

#### *What are the allegations?*

There have been two police investigations into the handling of the Bamber case; one known as the Dickinson Enquiry in 1986 and another by the City of London Police in 1991. Documents newly discovered by the Defence show that both enquiries discovered the following:

- That two police officers had authorization to falsify their testimony in favour of the prosecution
- That the chain of evidence for the key exhibit of the sound moderator had not been maintained allowing paperwork for two moderators to be merged together to bolster the prosecution's case
- That one of Jeremy's relatives had lied about the whereabouts of his gun and moderator in order for the police to fabricate evidence.
- There had been collusion between the police and the relatives in the fabrication of evidence
- Statements had been edited without the knowledge of witness including a forensic scientist.
- That Essex police did not disclose logs from the scene which would have aided Jeremy's Defence in giving him an alibi.
- The jury had directly asked the question Did the relatives have motive to give evidence against Jeremy? They were told the family had no motive and were wealthy in their own right.

as part and parcel of explaining the sentences (CJA 2003 s174), the court must state why it is of that opinion - see CJA 2003 s174(2)(aa).

The absence of specific guidance:

The lower courts seem to have been left much to their own devices in determining how to reflect the disorder in sentences for property-related offending such as theft. The Sentencing Council had not addressed this issue. In relation to sentencing in the Crown Court, there was some Court of Appeal authority on sentencing which arose from riots in Bradford, West Yorkshire back in 2001 - see R v Chapman 2002 and R v Najeeb 2003. The offences dealt with in those cases were serious public order offences.

As an example, consider a theft from a shop. Sentencing, in the Magistrates' Court, for the usual type of theft from shops is addressed at page 103a of the Magistrates' Court Sentencing Guidelines. It will be noticed that committing the offence during a period of disorder is not mentioned as an aggravating factor but the guidance makes it clear that the list of aggravating factors is not exhaustive.

It would be entirely reasonable to regard theft committed during a period of general disorder as more serious than such an offence committed at other times. However, that begs the question of the extent to which the offence is aggravated and how it should be reflected in sentence. The Crown Court has begun to address the question.

The Crown Court at Manchester: guidance:

In relation to offences dealt with in the Crown Court, more specific guidance may now be taken from the remarks of the Recorder of Manchester (His Honour Judge Gilbart QC) in R v Carter, Beswick, Boyd, Gillespie-Doyle - 16th August 2011. The learned Recorder described the events on 9th August and he spoke eloquently of how the cities of Manchester and Salford have improved in recent years - (see para 6). The offences committed by these individuals could not be viewed in isolation from the general criminality of that night. Judge Gilbart stressed that he had not received any guidance from the government or others but he made it clear that he had consulted with other Crown Court judges as to the level of sentencing required. In paragraph 18, he set out a table of sentencing ranges which defendants could expect. The sentences are substantial and clearly aimed at deterring future offending. The sentence ranges set out by Judge Gilbart are based on a defendant aged 18 or over, of previous good character who has been convicted after trial by jury.

The guidance in Judge Gilbart's remarks are reflected in further sentencing remarks of His Honour Judge Atherton in the cases of R v Twemlow, Downy, McGrath, Coudjoe, Swarbrick and Winder - Crown Court at Manchester 18th August. Judge Atherton pointed to the general fear which arose as a result of the widespread offending and he emphasized that, in such circumstances, the low financial value of a theft is not as significant a factor as it normally is. Again, substantial sentences (based on deterrence) were imposed. It is interesting that all of the offenders before Judge Atherton had pleaded guilty and had not been involved in organising, planning or active encouragement of offending. All of them received a one-third discount for their guilty plea.

The Crown Court at Manchester is to be commended for issuing clear and principled remarks as to how the relevant principles of sentencing have been applied and about why the court considered it justifiable to depart from any normal guidance. It must be doubtful whether the Court of Appeal would adopt a substantially different viewpoint apart, possibly, from the extent to which previous good character can be taken into account? Deterrence is a proper purpose of sentencing and in cases such as these the purposes of punishment, reduction of crime and protection of the public

carry greater weight than the purposes of rehabilitation and reparation.

Appeals against sentence to the Crown Court from the Magistrates Court?

The Times (20th August) reports that lawyers are predicting a flood of successful appeals against "hysterical" sentencing. This report notes that Judge Gilbart also dealt with an appeal from the Manchester City Magistrates' Court (District Judge Khalid Quereshi) who had sentenced Ursula Nevin to 5 months imprisonment for receiving stolen clothing (a pair of shorts). Judge Gilbart remarked that he considered it wrong in principle that Nevin had been imprisoned. She had not participated in the disorder. She was ordered to do 75 hours of unpaid work.

Disgracefully, the Police had "tweeted" about her original sentence. They later apologised for this. It seems likely that there might be a considerable number of similar appeals from the Magistrates' Courts to the Crown Court. For instance, the MTPT blog discusses the case of Nicholas Robinson sentenced, by a District Judge, to 6 months imprisonment for stealing a bottle of water. A considerable number of similar cases will exist.

Summary: Stiff sentencing was required for this offending but this must be based on the sentencing principles laid down by Parliament and on the specific facts of the particular case. The remarks of Judge Gilbart and of Judge Atherton show that this was possible. The offending took place in circumstances which lifted considerably the seriousness of those offences.

Perhaps the greater criticism about sentencing will be aimed at the Magistrates' Courts which were, in the main, staffed by District Judges. It is not easy to see how some of the Magistrates' Court sentences can be justified when the maximum sentence possible in those courts is 6 months imprisonment. It must be asked - how does an offender of previous good character and with an early guilty plea reach a sentence at the top end of the Magistrates' Court's powers? The high incidence of refusal of bail is also a concern. It is hard to believe that bail was not possible in more of the cases.

Doubtless more will be heard about all of this and more sentencing is yet to come.

Note: This post has considered sentencing only in relation to offenders aged 18 and over. For a short overview of sentencing of children and young persons see The Guardian - "England riots: how do judges go about sentencing young offenders."

### **England riots: how do judges go about sentencing young offenders?**

Magistrates may not be getting the message that custodial sentences are not always in the interests of the juvenile or society as a whole

In the current atmosphere, it is vital that the courts deal only with the facts as presented to them when sentencing convicted rioters

It is axiomatic that judicial discretion is at the heart of a humane criminal justice system but unbridled discretion can lead to discrimination, injustice and disproportionality - as we are learning. But, sentencing offenders, particularly juveniles, is a demanding and complex business. It is beset with the conflicting aims and ideals of the system itself, let alone the variety and nature of the offences and offenders.

As criticism grows of some sentences imposed on convicted rioters, it is useful to examine how judges arrive at their decisions.

Traditionally, sentencing is based on the four principles of retribution, deterrence, prevention and rehabilitation. There are also special constraints on sentencing in the youth court, including the duty to have "regard to the welfare of the child or young person", from the 1930s

emergency response to the outbreak of violence in the capital. It suggested that no one arrested in or after the riots should be let off with a caution - regardless of the offence - and that everyone arrested should be held in custody, with a recommendation that bail should also be denied when the case first goes to court.

Lawyers began proceedings on Monday for the first judicial review of the custody procedures, which resulted in 62% of those arrested for involvement in the riots remanded in custody compared with a normal rate of around 10% for more serious offences. They claimed the document amounted to a blanket policy of mass imprisonment of people.

The police document argues that the policy was necessary to prevent further public disorder as violence spread through the capital. But it also acknowledges that the force was so stretched at the height of the riots that it was "impractical" to bail people while they conducted "protracted" investigations, suggesting that investigating officers use special rules to fast-track cases to the courts with less evidence than is normally required. The recommendation could expose the Metropolitan police to accusations that it adopted a policy of "conveyor belt" justice in order to deal with its unprecedented workload.

The document, titled Operation Withern: prisoner processing strategy, includes a suggested statement for investigating officers to use in the prosecuting reports of individual cases, which are then passed to the Crown Prosecution Service. It says: "A strategic decision has been made by the MPS [Metropolitan Police Service] that in all cases an application will be made for remand in custody both at the police station, and later at court. This decision has been made in the interest of public safety and the prevention of further cases of disorder. The spontaneous nature of these offences and the significant burden it has placed on police resources has meant that not all inquiries have yet been completed. Some inquiries, such as gathering of CCTV, are not capable of being progressed at present due to the ongoing public disorder in and around London.

"As a result this case requires the application of a 'threshold test' for a charging decision based on the evidence present and the expectation that further evidence may be forthcoming."

Elsewhere the document says: "The volume of prisoners being processed makes it impractical to bail for the purpose of protracted investigation. Where evidence of an offence exists charging authority should be sought, that is likely to mean that the threshold test is applied."

The threshold test allows prosecutors to lower the burden of proof needed to remand someone in custody where there is reasonable suspicion and prospect of a conviction, and where there is a substantial risk if they are released.

The document sheds significant light on the Met's processes and could explain why people accused of apparently minor offences such as theft of small items or receipt of stolen goods were not cautioned. They included a 23-year old student with no previous convictions who was refused bail and then sentenced to six months in prison for stealing a £3.50 bottle of water. The debate about sentencing of people accused of taking part in the riots has so far focused on the courts' right to use "exemplary" sentencing - harsher sentences to deter people from rioting. But the document suggests that in deciding whether or not to grant bail the courts would have also been considering recommendations from the police to detain people in the vast majority of cases.

The document came into the hands of the solicitors Hodge, Jones & Allen, who have written to the Metropolitan police informing them they are starting judicial review proceedings of the decision not to bail an unnamed client, who was arrested for possession of £2,500 of items

doesn't matter, he didn't deserve that. He's never been in trouble before as far as I know. The officers threw him into the van by his arms and legs after they beat him. He was shouting for help. We were saying afterwards with the neighbours, nobody saw him get sprayed. It's an absolute disgrace. I don't think the police realise how many eye-witnesses there were. We were all shouting, "Get off him".

We were scared for him. They weren't listening, they didn't seem aware of us, or that there were kids watching. It lasted for 15 minutes that I saw, and he was handcuffed the whole time. I don't know why they kept hitting him. All he was doing was shouting for them to get off him. His parents are absolutely mortified. Jake was a popular, well liked lad. He was a friend of a friend of mine and was house sitting for her this week. She's absolutely distraught. It's a waste of a young life. It's a disgrace.'

Michael's father, a retired businessman who is also called Jacob, emerged from the property with his daughter after police officers spent 30 minutes speaking to them. Mr Michael Snr said: 'I cannot say anything at this stage because it's far too early to say what happened and we need to know how Jake died. All I want to know is what happened to my son and I'm sure everyone feels the same about that. All I can say is that the whole family are devastated at Jake's death and we need time to reflect on it before we say anything about it.'

A spokesman for the IPCC said: 'At about 5.15pm a number of police officers attended an address in Widnes in response to a call received. They arrested a 25-year-old man for alleged affray. During the course of the arrest it is understood police deployed pepper spray. The man was restrained and taken by police van to Runcorn police station.

Shortly after arrival he became unwell and paramedics were called. He was then taken to Warrington General Hospital by ambulance where he was pronounced dead at 7.09pm Investigators have been deployed to Widnes this morning to begin gathering evidence and gain initial accounts from police officers.

A post mortem is due to be carried out. The man's parents have been informed and investigators will be speaking to them today to explain the IPCC's role and what is known at this stage.' A Cheshire Police spokesman confirmed: 'The Independent Police Complainants Commission has been informed and will independently investigate the circumstances surrounding the incident.'

CS Pepper spray is an inflammatory product which causes immediate closing of the eyes, difficulty breathing, runny nose, and coughing. The duration of its effects depends on the strength of the spray but the average full effect lasts around thirty to forty-five minutes, with diminished effects lasting for hours. Although considered 'non-lethal', it may be deadly in rare cases, and concerns have been raised about a number of deaths in Britain where being pepper sprayed may have been a contributing factor for those people suffering from asthma. [ End ]

### **Riots: Metropolitan police planned to hold all suspects in custody**

Exclusive: leaked strategy amounts to a blanket policy of mass imprisonments and could lead to legal challenge, say lawyers

*Polly Curtis, guardian.co.uk, Monday 22 August 2011*

Senior Metropolitan police officers devised a policy of holding all people arrested on riot-related offences in custody and recommending that the courts also refuse bail after they were charged, according to a leaked "prisoner processing strategy" that lawyers argue could pave the way for a mass legal challenge.

The document, seen by the Guardian, was circulated to all investigating officers at the height of the violence two weeks ago by Operation Withern, the codename for Scotland Yard's

(significantly never repealed) and the duty of the courts to show regard for the "principal aim of the youth justice system to prevent offending", from 1998.

All these principles often conflict or overlap and their interpretation and emphasis are subject to those in judgment on that particular day, often three lay magistrates, each with their own perceptions of childhood and crime.

However, all youth court magistrates now have the Youth Court Bench Book, a comprehensive manual which includes structured decision making, sentencing guidelines, and the nature of the many different sentences available. It refers to domestic and international obligations to protect the welfare of juveniles but claims there was "an over-emphasis in the past on welfare" contributing "to the loss of public confidence in the youth justice system".

If you look at the guidelines and the sentencing matrix, anyone charged with riot, violent disorder, or harassment with intent, is immediately catapulted into the top "seriousness indicator", which will include custodial, non-custodial and non-punitive options.

If there are then aggravating features to the offence, such as using weapons, elements of planning, the targeting of especially vulnerable victims, custody becomes much more likely. On the same reasoning, it is logical for judges when dealing with offences of theft or burglary done in the context of a riot to regard that fact as being an aggravating factor.

Additionally, if the young offender is then assessed as at high risk of re-offending, custody becomes even more likely but still does not preclude constructive measures to prevent future offending. In the current febrile atmosphere, it is vital that the courts deal only with the facts as presented to them, and not what has been written and said in the media.

Whatever sentence is chosen the reasons for it must be given in open court and are recorded. It is perfectly proper that two boys found guilty of the same offence could be given very different sentences to reflect their very different circumstances. What would be improper is that the court does not or cannot explain that difference. That is where an appeal to a higher authority is an important safeguard.

It would be helpful to have more informed comment on the role of punishment in preventing crime. Reconviction rates for under-18s given custodial sentences is around 80% within two years, so it can hardly be said that custody is the panacea.

Indeed, if the youth offending team professionals assess these young offenders as more likely to respond constructively to intensive treatment, therapy or even work in the community, then it could well be argued that a custodial sentence would be wrong in law, as well as in the long-term interests of the juvenile and society as a whole. Is that the message the magistrates, lay people appointed specifically because they are ordinary members of their communities, getting from their newspapers and their TV?

Scotland cannot punish under 16s but rather seeks to prevent offending by dealing with the likely cause of such behaviour, and most of our European neighbours have much higher ages of criminal responsibility and systems based on the welfare of the juvenile.

They have accepted that the most effective way of preventing offending does not lie in the criminal justice system at all, but in all the agencies that nurture childhood, in supporting families however constituted, in dealing with domestic violence, in protecting the shocking number of children suffering abuse, often within their own homes, so that they do not grow into the angry, disaffected, and sometimes dangerous individuals we have seen recently.

By Lynne Ravenscroft, she has a PhD on juvenile justice in the UK and served as a magistrate for 23 years

## **Black August - 4 Deaths at the hands of the police in 19 days**

Police must be reminded they cannot act with impunity following alarming rise in deaths after the use of force

*Press release from INQUEST, Wednesday 24th August 2011*

The deaths of Philip Hulmes after he was hit with electric probes from a police Taser in his home in Over Hulton, near Bolton on 23 August; of Jacob Michael following police restraint and use of pepper spray on 22 August; and of Dale Burns following police restraint and use of a Taser on 16 August highlight a disturbing trend in deaths following contact with the police. Already in 2011 there have been five deaths in circumstances that involved the police use of force excluding firearms. In 2010 there were four deaths that clearly followed the use of restraint by police.

Helen Shaw, INQUEST Co-Director, said: "The shocking reports about three tragic deaths in eight days following the use of force by police highlights INQUEST's growing concern about deaths following contact with the police. For too long there has been a pattern of cases where inquest juries have found overwhelming evidence of unlawful and excessive use of force or gross neglect yet the police do not seem to have learnt the lessons from these previous deaths. Whilst we await the outcome of the inquests and investigations into these recent deaths it is imperative that the police are reminded that they cannot act with impunity."

Philip Hulmes, Killed by police Tuesday 23rd August

Jacob Michael, Killed by police Monday 22nd August

Dale Burns, Killed by police Tuesday 16th August

Mark Duggan, Killed by police Thursday 4th August

### **Man dies after Taser arrest near Bolton**

**IPCC to investigate police use of Taser to subdue man, 53 - the third fatal arrest using stun gun or pepper spray in a week**

*Helen Carter, guardian.co.uk, Wednesday 24 August 2011*

A man who stabbed himself in the abdomen has died after being Tasered by police officers. Philip Hulmes, 53, was hit with electric probes from the stun gun after barricading himself in his home in Over Hulton, near Bolton, on Tuesday night.

It is thought a concerned relative called police to the house at 8.30pm. Police were told that Hulmes, who was armed with a knife, had locked himself in, was making threats and had begun to stab himself. Officers arrived and smashed a hole in the door. When they spotted his injuries they called for Taser-trained back up. After further failed attempts to talk him out of the building they broke in and used the stun gun. He was taken to the Royal Bolton Hospital but he died about half an hour later.

Investigations by the Professional Standards Branch and the Independent Police Complaints Commission are due to begin. Greater Manchester police said the officers had been threatened. They entered the house and deployed a Taser. "After it was deployed, it became apparent he had a serious self-inflicted stab wound to his abdomen," police said in a statement. A Home Office postmortem examination is due to be carried out later today."

The GMP's Professional Standards Branch will oversee the investigation and will be making a mandatory referral to the IPCC.

The commission is also investigating another death when up to 11 officers arrested a man after restraining him with pepper spray. The man became unwell and died in hospital within two hours.

Jacob Michael, 25, from Widnes, Cheshire, died after he became ill on Monday evening. He managed to flee police but was brought down on a grass verge close to his home and restrained. Some witnesses expressed concerns about the arrest.

IPCC said pepper spray had been used and its investigators would carry out inquiries.

Cheshire police's assistant chief constable expressed his condolences to the man's family and friends. "I believe it is important for the community to know that the detailed postmortem examination ... found no physical injuries on Jacob that could be attributable to a cause of death," ACC Philip Thompson said. Whilst pepper spray was discharged during the course of his arrest, there is no evidence that the use of pepper spray was the sole factor or indeed a contributory factor to Mr Michael becoming unwell some time after his arrest or as a cause of his death." He appealed for calm and said further extensive tests would help establish an exact cause of death.

Last week, 27-year-old bodybuilder Dale Burns died in Cumbria after he was Tasered and sprayed with pepper spray by police during an arrest. A postmortem was unable to establish a cause of death. The IPCC is investigating Cumbria police.

### **Jacob Michael dies after being pepper-sprayed and arrested by 'Eleven police officers'**

*By Rob Cooper, Mail Online, Tuesday 23rd August 2011*

A 25-year-old man collapsed and died after being overpowered with CS spray as he was being arrested by up to eleven police officers. Jacob Michael was sprayed in the face inside his home in the Widnes area of Cheshire, but managed to flee officers before being brought down on a verge 30 metres away. He was taken to a police station where he suddenly became unwell and was rushed to hospital by ambulance. He was pronounced dead two hours later.

Police watchdog the Independent Police Complaints Commission confirmed it had begun an investigation into Monday's incident. Tests are due to be carried out into how Michael died.

The dead man - who was known as Jake - had been with his family and is believed to have dialled 999 himself over a threat made to him when police arrived at the semi-detached home at 5pm. Police said they were arresting him on suspicion of affray but there was a struggle and Michael was blasted in the face with the spray. Despite him being temporarily blinded by the effects, Michael managed to run out of the house and got to a grass verge before being tackled and brought to the ground by other police officers who were waiting nearby.

Neighbour Ann Blease, 40, said: 'I didn't know Jake that well but he seemed like a good lad, he was pleasant and good with all the kids, very friendly and happy-go-lucky. 'As far as I know he didn't have a job but lived with his parents and was just a really popular guy who knew a lot of people.' The mother-of-three claimed: 'What the police did was outrageous. He was handcuffed, on the floor with his legs restrained and they didn't even have the decency to pull up his pants. 'They seemed to be kneeling him in the back of the head. I counted 11 cops. They were all sat on him, giving him a kicking and giving him side digs. There was one woman officer, the rest were men, and she was getting her kicks in as well. They were chasing him in the street. I saw it because they chased him in front of my house. His mum told me Jake was the one who rang the police himself, saying that someone was threatening him with a gun. 'They started chasing him and hitting him in the back of the legs with batons. They said, "Why don't you stand up and give yourself some dignity," to him. But he couldn't even stand up after they'd hit him with the batons. It was so upsetting to see. I couldn't believe the police could do that. It was like something you see on those TV cop shows. I went to speak to his mum. She didn't know what happened. She was mortified when they knocked on her door those hours later and told her, "Your son's died". They had banged his head on the floor and they were giving him punches. He was already handcuffed and he was restrained when I saw him. I don't know what happened in the house, I just saw when they were on the street. He was shouting, "Help me, help me". He wasn't coherent. I don't know why they were bringing him in for affray. It