rity; and The proportionality of the possible sentence to the offending. This publication follows the House of Commons Justice Committee's Report on Joint Enterprise of January 2012. The report recommended the DPP issue this guidance, which has been published after a targeted consultation with criminal justice agencies, academics, the judiciary and campaigners.

Announced Inspection of HMP & YOI Parc Young People's Unit

Inspection 2/6 July 2012 by HMCIP, report compiled September 2012, published 21/12/12

Managed by G4S Care and Justice Services:Inspectors were concerned to find that: - automatic strip-searching of new arrivals had been reintroduced whether or not there was any individual intelligence to justify it; - high use of separation was a concern - young people were transported to HMP and YOI Parc in the same vehicle as adult prisoners; - Many of the young people had been very alienated from formal education - two out of five young people had learning difficulties, but there was no speech and language therapy available; and - there were only very limited opportunities for release on temporary licence (ROTL) , which denied the young people the opportunity to gain real work experience and put something back into the community. - Young people complained about the food with some justification - it was too often monotonous, served lukewarm an hour after it had left the kitchens and portions appeared pretty small. - Releasing a young person from a YOI into bed and breakfast accommodation is to give them a pretty certain return ticket - Almost two out of five young people had been looked after by a local authority at some stage in their childhood, and unit caseworkers had to work hard to ensure the relevant local authorities met their responsibilities. A relatively high number of young people were released to bed and breakfast accommodation or did not know where they would be staying until just before release.

Three Guards Hurt In Winson Green Prison 'Riot'

A prison officer has claimed "someone could die" in HMP Birmingham jail following the latest violent disturbance at the G4S-run prison. The warning comes after 3 officers were hurt, including one badly beaten, when up to 60 inmates took part in a "riot" at the jail. A warder was dragged from a cell and attacked by rampaging inmates during the latest flashpoint, according to a senior employee – who claimed it was only a matter of time before there was a tragedy unless staffing levels were increased. The officer, who did not wish to be named, also claimed there had been a catalogue of incidents during the past few weeks, with paramedics regularly called to treat injured staff and convicts. "The situation is so serious someone will die in there. Senior staff have left and they have not been replaced," said the source.In the latest incident, officers were injured on C Wing at the G4S-run jail in Winson Green during Monday afternoon 17/12/12.

Hostages: David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Sam Hallam, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Romero Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Miran Thakrar,Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Simon Hall, Paul Higginson, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan, Ihsan Ulhaque, Richard Roy Allan, Sam Cole, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Ray Gilbert, Ishtiaq Ahmed.

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

MOJUK: Newsletter 'Inside Out' No 404 27/12/2012)

Reece Donovan, John Kafunda - Convictions Quashed - Lack of Due Process:

Both were convicted and sentenced for robbing a Malaysian student during violent disorder in the London riots that shook the nation in August 2011. This robbery was the lead story on UK TV and front pages of the UK national papers and produced a media frenzy that was watched by millions around the world.

In March this year both were convicted on the evidence of two anonymous witnesses, Donovan sentenced to five years and Kafunda to four years three months. The verdicts were quashed on the 29th of November without an explanation of the decision to acquit.

That decision was handed down to day (18/12/12) and should be read carefully by all. As the decision to acquit was on a technicality 'lack of due process' in the proceedings, had the court followed 'due process' there might not have been a conviction? The judges have laid the blame on the Crown Prosecution for not making sure the court was aware of 'factual matters which would have provided a source of significant cross-examination about whether the witnesses were totally credible'.

Below the full transcript of Court of Appeal decision

Between: Reece Donovan, John Kafunda, Appellants- and - R Respondent

The Lord Chief Justice of England and Wales: Reece Donovan and John Kafunda were convicted at Wood Green Crown Court on 2 March 2012 of robbery and violent disorder committed on 8 August 2011. Donovan was also convicted of burglary on the same date. These offences formed part of serious incidents of public disorder in London and other cities in August 2011. They attracted considerable notoriety because filmed footage of the robbery was widely played on news programmes in the days and weeks following the disturbances.

The convictions depended on the evidence of anonymous witnesses, that is, witnesses whose true identity was not known to the defendants before or at any stage of the trial. They were never seen by the defendants giving their evidence, and their voices were disguised. This was quite deliberate. The purpose of the anonymity orders was indeed to ensure that the defendants did not know and could not know the identity of their accusers. Therefore they could not confront the witnesses who incriminated them. From their point of view the crucial evidence against them was given secretly.

The process is permitted by ss.86-90 of the Coroners and Justice Act 2009, in effect repeating s.4 of the Criminal Evidence (Witness Anonymity) Act 2008. Nevertheless, as this court has made clear, a witness anonymity order is to be regarded as a special measure of the last practicable resort, (R v Mayers [2009] 1 Cr. App. R 30) and, in accordance with long established common law principles, such an order cannot be made or upheld if, in the result, the trial would be or was unfair.

The only ground of appeal in this case challenged the anonymity orders, effectively on the basis that in a case in which the convictions depended on the evidence of anonymous witnesses, the orders caused irredeemable prejudice to the defendants. In effect, because of the asserted fears for their safety by the witnesses their identity or anything which might enable them to be identified could not be revealed. This ground of appeal required us to undertake

precisely the same exercise conducted by the trial judge, and involved an examination of all the relevant material in conditions to which public interest immunity principles applied. Having done so we concluded that the orders should not have been made and on 29 November this year the convictions were quashed. These are our reasons.

The facts: A young student, Ashraf Rossli, who had no involvement in the widespread criminality which erupted on 8th August 2011, was travelling with a companion in order to provide moral support to a mutual friend who was afraid to be alone in her house because she lived close to one of the scenes of public violence. The two of them set out by bicycle, reaching the disturbances in the Queen's Road in Barking at about 7.30pm. Mr Rossli's bicycle was stolen by members of a group of youths wearing masks or other disguises, including hooded jackets, some of whom were armed with sticks. Attempts were made to steal his mobile telephone. An unknown male punched him in the face, breaking his jaw in two places and knocking him to the ground. The individual responsible for this was convicted of offences of causing grievous bodily harm with intent and robbery, in a separate trial which is not the subject of this appeal. This was an awful incident. It was not, however, suggested that either of these appellants was responsible for the theft of the bicycle or the serious violent assault.

The role attributed to the appellants was no less disturbing. They were alleged to have been among a number of youths who surrounded the helpless victim while he was sitting on the ground. A man alleged to be Kafunda created the appearance of assisting him by helping him to his feet while a man alleged to be Donovan investigated the contents of the ruck-sack. When the victim noticed what was happening, this man pushed him backwards so that he could not prevent the robbery. The man alleged to be Donovan removed a number of items from the ruck-sack, and both men then left the scene. So far as the man alleged to be Donovan was concerned, he then formed part of another group which shortly afterwards broke into and looted a nearby supermarket.

The victim was unable to provide a description of his assailants. The events were however filmed by local residents, and recorded on CCTV. Nevertheless the view of the faces of these perpetrators was too limited to enable any identifications to be made. Accordingly identification parades were not arranged, and the prosecution did not instruct an expert in facial mapping. The prosecution depended on the evidence of one witness who identified Donovan and another witness who identified Kafunda after the event, from the filmed footage, but without being able to recognise the faces of the assailants.

Throughout the proceedings these two witnesses were known by pseudonyms, "Kieran Thomas" and "Sarah Bishop". Thomas identified Donovan and Bishop identified Kafunda.

In his evidence at trial Kieran Thomas said that he had known Donovan for a long time. He recognised him as the white man who rifled through the victim's ruck-sack. He based this recognition on the clothes he was wearing (a pair of trainers with a green flash or stripe, said to be unusual, the cap and Ralph Lauren jacket), his gait, his hair and the way he smoked a cigarette. He agreed that he could not distinguish any particular physical features of this assailant from the filmed footage. He accepted that he had a number of convictions for offences of dishonesty, but denied that he had any reason to make a false allegation against Donovan. During her evidence, Sarah Bishop said she had known Kafunda for about nine years. She recognised him as the black male who helped the victim to his feet from the side profile of his face and the way he was dressed, saying that the way he appeared to help the man to his feet was characteristic of Kafunda. However one examines this identification

Mr Benguit represented by CLP Solicitors 2nd Floor 5-6 Staple Inn, London, WC1V 7QH.**Hainsley Dixon to Court of Appeal**

CCRC has referred the firearms sentence of Hainsley Dixon to the Court of Appeal. Miss Dixon pleaded guilty in November 2010 at Birmingham Crown Court to unlawful possession of a firearm. She was sentenced to a mandatory minimum term of five years' imprisonment. Miss Dixon sought leave to appeal against her sentence in December 2010, but the Court dismissed the application. She applied to the Commission in August 2011. The Commission has decided to refer the sentence to the Court of Appeal because it believes there is a real possibility that the Court will reduce the sentence because it will conclude that the imposition of the mandatory term on Miss Dixon was arbitrary and disproportionate within the meaning attributed to that phrase in R v Rehman & Wood [2006] 1 CR App R (S) 77 & R v Boateng [2011] EWCA Crim 861

Prison Was Not On The Cards But Never, Say Never
I was doing well, life on the up, Then I met a man and things fucked up
He was selling drugs, not loads just bars, My head got dazed by the money and cars
Always abroad, mainly Marbella, Felt like I was dating a football player
Player was right, the guy was untrue, He was always telling me, but let me tell you
The shit that came with him I could not explain, Getting dragged out my car down a dark country lane
See, people got jealous of the things we had, It started off good, was getting real bad
We moved away and so things cooled down, The next thing we knew, the police came round
We were taken down and charged with the offence, Conspiracy to supply, it started to make sense
We had been smashing it by now, selling large amounts, Even importing and fiddling accounts
I thought I was smart, I thought I was clever, Prison was not on the cards but never, say never

Joint Enterprise Guidance Published *Crown Prosecution Service, 20/12/2012*

The Director of Public Prosecutions has published guidance that explains how charging decisions are made following crimes involving two or more participants in what is known as joint enterprise. Keir Starmer QC said: "This is a controversial and complicated area of the criminal law, so I want the public to understand how we take decisions to charge in these cases. This guidance for prosecutors explains the case law and sets out the key tests that we must apply to each case. What this guidance cannot do is change the law, which is a matter for Parliament and the courts. In particular, this guidance will assist prosecutors in deciding whether, and with what offence, suspects with minor roles in group assaults should be charged. Accidental presence at the scene of a crime or mere association with an offender is never enough to create liability - a suspect must assist or encourage the offence in some way. This is the fundamental distinction drawn by prosecutors and the courts in cases of joint enterprise, and our guidance makes this clear."

The guidelines make clear that the prosecution should only use association evidence if, when taken with the other evidence, it establishes that the suspect was knowingly assisting or encouraging the offending. In some circumstances it may be appropriate to consider alternative charges which do not require the use of the joint enterprise doctrine. If no alternative is available, the guidelines caution the prosecutor to weigh carefully the merits of proceeding with the more serious charge under the doctrine of joint enterprise. Each case will need to be considered on its own facts and on its own merits before a decision is made on prosecution.

Prosecutors take several factors into account when deciding which charges peripheral offenders should face and if a prosecution would be in the public interest, including:

The harm caused to the victim; The extent of any premeditation; The suspect's age or matu-

He added: "We would need to know what the Crown's position is."

A PSNI spokesman said: "Specifically it was submitted that the evidence of the principal witness was not analysed in depth, in particular with reference to the contrary evidence of the expert pathologist in relation to his findings about the nature and number of injuries sustained by the deceased and found during the post-mortem examination.Police will study the appeal decision and consult with the Public Prosecution Service and the McIlveen family about options for a way forward."

Ali Tahery to the Court of Appeal.

Mr Tahery was tried at Blackfriars Crown Court in April 2005 on charges of wounding with intent and attempting to pervert the course of justice. He pleaded not guilty to the wounding but was convicted and sentenced to nine years' imprisonment. He pleaded guilty to perverting the court of justice and received a concurrent sentence of 15 months' imprisonment for that offence. On 24 January 2006, the Court of Appeal dismissed Mr Tahery's appeal against his wounding conviction but allowed his appeal against sentence and reduced that sentence to seven years' imprisonment.

Mr Tahery applied to the ECtHR alleging that the judge's decision to allow a statement to be read from an absent witness violated his rights under Article 6 of the European Convention of Human Rights (ECHR). On 20 January 2009 the Fourth Section of the ECtHR ruled that the reading of the statement to the jury had violated Mr Tahery's rights under Article 6(1) and 6(3) of the ECHR. In the case of R v Horncastle and Ors [2009] UKSC 14 the Supreme Court considered and responded to the decision of the Fourth Section in Mr Tahery's case and in the linked case of Imad Al-Khawaja. The Supreme Court expressed its disagreement with some of the reasoning underlying the decisions of the Fourth Section in those cases.

The decisions of the Fourth Section were then referred to the Grand Chamber of the ECtHR and on 15th December 2011 the Grand Chamber gave its judgment. Although the Grand Chamber departed from some of the reasoning of the Fourth Section, it unanimously held that Mr Tahery's Article 6 rights had been violated by the judge's decision to allow the statement to be read to the jury.

Mr Tahery first applied to the Criminal Cases Review Commission in 2009 when the Commission concluded that it was unable to refer his case back to the Court of Appeal. In April 2012, following the Grand Chamber's judgment of 15th December 2011. Mr Tahery applied again to the Commission. The Commission has decided to refer Mr Tahery's conviction back to the Court of Appeal on the basis that the judgments of the Supreme Court and of the Grand Chamber raise a real possibility that the Court of Appeal will find that Mr Tahery's conviction is unsafe and should be quashed. Mr Tahery epresented by Martyn Fisher, Birds Sols, London, SW18 2P

Omar Benguit to the Court of Appeal.

Mr Benguit was convicted in January 2005 at Winchester Crown Court for the murder of Jong-Ok Shin. He was sentenced to life imprisonment. Mr Benguit appealed against his conviction but his appeal was dismissed in July 2005. He applied to the CCRC for a review of his conviction in May 2010.

Having conducted an extensive and detailed review of the case, the Commission has decided to refer the Mr Benguit's conviction to the Court of Appeal. The referral is based on new evidence which potentially impacts on the reliability of a prosecution witness who gave evidence at trial, and on new evidence in relation to another individual which, had it been known at the time of trial, would have enabled Mr Benguit's defence to suggest a possible alternative suspect for the offence.

evidence, and whether it was given anonymously or in the ordinary way, this did not provide overwhelming or compelling evidence of recognition or identification. As counsel for the prosecution was to accept at trial, on any view the identification evidence, although crucial, was not of the best.

The prosecution was able to indicate some additional material, independent of the identifying witnesses, which provided a measure of support. When Donovan was arrested he offered a false alibi, which was disproved by the cell site evidence directed at the whereabouts of his mobile telephone at the material time. He gave the police the wrong telephone number, in the sense that he said that the last three digits were 406 whereas the prosecution were able to prove that the mobile telephone he was using at the time ended with the numbers 405. The cell site evidence showed that he had been in the immediate area of Queen's Road shortly before these offences and that thereafter he moved to the area close to the premises which were the subject of the burglary charge. This, of course, was unfortunately true of numerous young men. Kafunda, like Donovan, denied any involvement in the offence, and told investigating police officers that he had been at home throughout that evening, watching news coverage of the disturbances. In due course, again like Donovan, at trial he accepted that he had lied to the police about his whereabouts at the time when the offences were committed. In any event, however, it was correctly agreed on both sides that whether or not the evidence of the identifying witnesses was the only evidence against each appellant, their evidence was decisive. Without it there would have been no case for either appellant to answer.

The Crown applied on 30 January 2012, in advance of the trial date, pursuant to s.86 of the Coroners and Justice Act 2009 for anonymity orders in respect of Kieran Thomas and Sarah Bishop. Each had given a statement for the purposes of the application, a redacted version of which was disclosed to the defence. Thomas stated that he feared for the safety of himself and his family. He said that he felt strongly that if Donovan heard his real name or saw his face, he would be liable to suffer serious harm. If identified, he would be put in fear of death. He would not give evidence if his identity could not be concealed. Bishop's statement was to the same effect, but in relation to Kafunda.

The anonymity orders

Section 88 of the 2009 Act provides that a witness anonymity order in criminal proceedings may only be made if three conditions are satisfied.

Condition A is that the proposed order is necessary—

(a) in order to protect the safety of the witness or another person or to prevent any serious damage to property, or (b) in order to prevent real harm to the public interest (whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities, or otherwise).

Condition B is that, having regard to all the circumstances, the effect of the proposed order would be consistent with the defendant receiving a fair trial.

Condition C is that the importance of the witness's testimony is such that in the interests of justice the witness ought to testify and—

(a) the witness would not testify if the proposed order were not made, or (b) there would be real harm to the public interest if the witness were to testify without the proposed order being made.

In determining whether the proposed order is necessary for the purpose mentioned in [Condition A], the court must have regard (in particular) to any reasonable fear on the part of the witness—

(a) that the witness or another person would suffer death or injury, or (b) that there would be serious damage to property, if the witness were to be identified.

Section 89 provides:

1) When deciding whether Conditions A to C in section 88 are met in the case of an application for a witness anonymity order, the court must have regard to—

(a) the considerations mentioned in subsection (2) below, and

(b) such other matters as the court considers relevant.

(2) The considerations are—

(a) the general right of a defendant in criminal proceedings to know the identity of a witness in the proceedings;

(b) the extent to which the credibility of the witness concerned would be a relevant factor when the weight of his or her evidence comes to be assessed;

(c) whether evidence given by the witness might be the sole or decisive evidence implicating the defendant;

(d) whether the witness's evidence could be properly tested (whether on grounds of credibility or otherwise) without his or her identity being disclosed;

(e) whether there is any reason to believe that the witness—

(i) has a tendency to be dishonest, or

(ii) has any motive to be dishonest in the circumstances of the case, having regard (in particular) to any previous convictions of the witness and to any relationship between the witness and the defendant or any associates of the defendant;

(f) whether it would be reasonably practicable to protect the witness by any means other than by making a witness anonymity order specifying the measures that are under consideration by the court.

The judge reflected carefully on the evidence as a whole as it applied to the case against each appellant. He accepted that "plainly the defence is handicapped by not knowing the identity of the witness" and he recorded the concession by the Crown that even if the "evidence is not the sole evidence against the defendant, it is decisive evidence". He considered whether there was:

"… any reason to believe that a witness has a tendency to dishonesty or any reason to be motivated against each defendant.

There is nothing I have seen or heard which leads me to conclude that either is motivated against the person that they have purported to identify. Both witnesses have convictions for dishonesty offences. Neither has convictions for deception or perjury."

Discussion: As we have already underlined, a witness anonymity order is to be regarded as a special measure of last practicable resort. These cases are, therefore, by their very nature exceptional, and the obligation on the Crown to comply with its duties in relation to full and frank disclosure applies with unremitting force (R v Mayers). In the somewhat different context of restraint orders, in In re Stanford International Limited [2011] Ch. 33, Hughes LJ observed:

"… in effect a prosecutor seeking an ex parte order must put on his defence hat and ask himself what, if he were representing the defendant … he would be saying to the judge …".

These observations apply equally to witness anonymity applications. The judge requires the assistance of the prosecution to ensure that the effect of any anonymity order, made following the hearing of an application at which the defendant is neither present nor represented, will not result in proceedings which, looked at overall, would or might be unfair. It is a hallmark of our traditions, and the principle of administration of criminal justice, that an unfair trial

It must always be borne in mind that the Home Secretary must not usurp the function of the jury or that of the Court of Appeal. Against that background I have carefully considered the case, including the fingerprint argument. I have been unable to find any new evidence or other material factor not already considered by the courts or previously available to the defence that would justify the Home Secretary seeking to intervene. That decision cannot and will not be affected by any extraneous consideration such as the demonstration upon which Mr. Foran is currently engaged. HC Deb 20/07/1982 vol 28

Aaron Wallace, Christopher Kerr And Jeff Lewis - Convictions Quashed

[However the three men wil remain in prison, the Public Prosecution Service (PPS) is seeking a retrial. The Court of Appeal will not make a ruling on whether there is to be a retrial until 7 January. Judges said they wanted to allow time for defence counsel to make written submissions..]

Three men jailed for the sectarian killing of a Catholic schoolboy, (the teenager was chased and asaulted in Ballymena in May 2006. He was beaten with a baseball bat and kicked as he lay defenceless in an alleyway) have had their murder convictions quashed. The Court of Appeal ruled that guilty verdicts against Aaron Wallace, Christopher Kerr and Jeff Lewis for killing Michael McIlveen were unsafe. It said this was due to flaws in how the jury was directed.

In May 2009, Mr Wallace, Mr Kerrand Mr Lewis, all of Ballymena - were all convicted of his murder and given minimum jail terms ranging from 10 to 13 years. A fourth man, Mervyn Wilson Moon, 23, of Douglas Terrace in the town, had admitted the killing at the start of the trial.

Lawyers for Mr Wallace, Mr Kerr and Mr Lewis based their challenges on the guidance and directions the jury received during the trial judge's summing up. They claimed there was a failure to expose the possibility that an eye-witness may have been lying about the three men's alleged roles at the scene of the attack. Mr Kerr, who was the only defendant to give evidence at trial, accepted retrieving the murder weapon - a baseball bat - but denied using it. He claimed he did not take part in the assault or encourage anyone else. His barristers, Frank O'Donoghue QC and Sean Devine, argued that the trial judge failed to put a succinct, structured and impartial summary of his case to the jury. They claimed the panel was wrongly invited not to rely on his evidence in any circumstances in the absence of supportive evidence.

Counsel for Mr Lewis also contested the finding that he was guilty of murder as part of a joint enterprise. Richard Weir QC argued that his client arrived at the scene separate from the others and knew nothing in advance about a baseball bat being acquired. According to him the fatal attack was mistakenly portrayed to the jury as having been planned and carried out by a cohesive, single-minded unit.

Mr Wallace's legal team took issue with how bad character evidence against him was handled. Delivering judgment on the appeals, Lord Justice Higgins set out how the prosecution accepted inappropriate directions were given on some of the points. He said: "It was submitted that there were failings in the construction and sequence of the judge's summing up and in the choice of language used to express the opposing arguments raised in the trial.Police will study the appeal decision and consult with the Public Prosecution Service and the McIlveen family about options for a way forward”

Justice Higgins, sitting with Justice Sir Declan Morgan and Lord Justice Coghlin, held that the cumulative effect of the points raised rendered all three men's convictions unsafe."Accordingly we grant the applications for leave to appeal and allow the appeals against conviction." The three men were returned to custody to await a decision on a possible retrial. Sir Declan confirmed that an eight-week slot beginning at the end of January was available if there is to be a fresh trial.

not the man, in the circumstances of this case would not take the matter sufficiently far beyond the state which was reached at the trial when evidence from these two men was read, to justify us giving leave for them to give evidence and reconsidering the matter." It will be clear that in the case of the two robberies to which I have just referred-the Apechis and the Trikain robberies-the case against Mr. Foran rested exclusively on the reliance to be placed on his alleged admissions at Leicester prison on 3 April. In the light of the conflict between the evidence of the police officers taking the confession and the prison officer to whom I have already referred, I have had further investigations made. These have, however, failed to reveal any further grounds for umpugning the police officers' account. It is to be remembered that the prison officer observed the interview from the adjoining room, and except for one occasion when he joined the interview at Mr. Foran's request, he did not hear the conversation between him and the police officers.

The case in respect of the offences against Mr. Rice and Mr. Holmes at the jeweller's shop is also based on Mr. Foran's alleged confessions, although in that case there is the additional factor that Mr. Holmes did positively identify him at the identification parade.

Mr. Whitlock"The hon. and learned Gentleman will agree that, while one of the four people who witnessed the third robbery identified Foran, the other three identified others in the identification parade.

Mr. Mayhew: That is perfectly true, but the hon. Gentleman cannot just pick on a factor and say that that is decisive to the exclusion of others. I hope that I have dealt with the matter fairly, but a fair account of the matter has to take note of the fact that in 378 the case of the jeweller's shop robbery there was an additional element of a positive identification on the part of Mr. Holmes. At his trial, Mr. Foran adduced an alibi for this period-that is to say, the period relating to the jeweller's shop robbery-but, although the trial judge carefully explained to the jury that it was not for Mr. Foran to prove that alibi, the jury was evidently not led by it to doubt the prosecution's evidence as to his confession.

I have also investigated the fact that partial fingerprint impressions found on the sword used during the robbery were not those of Mr. Foran. However, that does not take us any further. It was unchallenged at the trial that the sword was, for instance, handed by the white man engaged in the robbery to one of the West Indians, three of whom have not yet been traced. It would have been possible for Mr. Foran to have handled the sword without leaving any fingerprints upon it. The hon. Gentleman rightly said that the chief constable has said that it was by a genuine mistake that the fact that partial fingerprints had been found which were not those of Mr. Foran was not communicated to the defence. I think that I have dealt with that. It is a factor that does not take the matter further in any significant respect.

The hon. Gentleman has devoted great care to this issue. If he cares to examine in the Official Report what I have said, he will find that it is not an accurate or fair description of what took place to say that everything that would have weighed in Mr. Foran's favour was brushed aside. The judge was at pains at the trial to point out the discrepancies, for example, between the evidence of appearance given by Mr. Apechis and Mr. Trikain and the prosecution case. He was at pains to point out the discrepancies that arose between the evidence of the prison officer and the evidence of the police officers at the time that the confession was said to have been made. The hon. Gentleman cannot say that matters that were favourable were brushed on one side. The Court of Appeal had to ascertain whether there was anything that prevented a properly directed jury-it held that the jury was properly directed-from preferring the evidence of the police officers to the oral confessions that were made. It is for the jury, which has the advantage of seeing witnesses, hearing witnesses and making its own judgment of the reliability of witnesses, to come to a conclusion on the facts in a criminal trial.

cannot produce a safe conviction.

These present applications were made in formulaic and, save for the defendant's names, in identical terms. The law was set out in some detail, but as to the facts there was a brief summary: "The witness is in a position to give important eye witness evidence identifying (Donovan/Kafunda) as one of the people captured on film committing the offence. The witness knows the defendant well". In each case there was an anonymity application made by the Crown Prosecutor, a Superintendent's Report on anonymity, a Report and Risk Assessment from the police, redacted and unredacted versions of the witnesses' antecedents, redacted and unredacted statements from the witnesses about their fear of the respective defendants, and some handwritten statements from the witnesses.

In the course of our examination of the material we noted a passage on the second page of one of the handwritten statements taken from Kieran Thomas, dated 6 February 2012, and a passage on the first page of Sarah Bishop's handwritten statement of 5 October 2011 which caused us particular concern. If we were to relate these passages in the course of the judgment, the true identity of the witnesses would be likely to be revealed. We therefore record that these passages disclosed factual matters which would have provided a source of significant cross-examination about whether the witnesses were totally credible, and whether, when assessing their credibility, the jury could assume that they were truly dispassionate and objective. These handwritten statements were included in the papers put before the judge, but it is not clear whether the relevant passages were specifically drawn to his attention.

The relevant passages are not mentioned in the application, the Superintendent's Report or in the Report and Risk Assessment by the police, in either case (although this is unsurprising as regards Kieran Thomas's statement, given it is dated 6 February 2012). Counsel who appeared for the prosecution at trial was unable to recall whether he had specifically drawn this material to the attention of the trial judge. He may have done so, but he may not. For the purposes of these appeals Mr Dennis QC sensibly invited us to proceed on the basis that this has not happened.

Notwithstanding that concession, Mr Dennis submitted that the judge performed what he described as a "proper balancing exercise". The judge was required to make a careful judgment on two considerations which potentially, at any rate, are liable to conflict. The first is proper disclosure to the defence in the context of public interest immunity considerations and the second, the potential for unfairness to the defendant whenever an anonymity order is made. That is why s.89(2)(d) enjoins the judge to reflect whether the evidence of the witness can be properly tested if his or her identity is not disclosed, and s.89(2)(e)(ii) directs the attention of the judge to consider whether the witness for whom the anonymity order is sought has any motive to be dishonest in view of any relationship between the witness and the defendant.

The material we have seen suggests that the decision to grant anonymity to these two witnesses meant that in the case of each defendant the jury was prevented from hearing admissible and substantive material which was relevant to the question whether either or both witnesses may have been lying or may have had any motivation for lying. In short, material of potential value to the defence, providing grounds for believing that both witnesses may have had a motive for incriminating the defendant they purported to recognise from the filmed footage was indeed available. Nevertheless the trial judge did not allude to it, and his observations, noted at paragraph 14, suggest that, for whatever reason, he was unaware of its potential relevance. His decision was therefore flawed, and the subsequent trial was unfair.

Accordingly the convictions were quashed. http://www.bailii.org/ew/cases/EWCA/Crim/2012/2749.html

Prison Writings: Letter from Brendan McConville, HMP Maghaberry

Our battle for justice against the state and its considerable resources is akin to David versus Goliath, as not only do we have to overcome its' natural resistance to acknowledging its' own fallibility, but we must also confront the political considerations, which played no small part in returning the unjust verdict against us. It often seems like we are pawns n a game of chess, and just to make it that much more difficult, our side is playing blindfolded, which can be evidenced by the excessive use of Public Immunity Orders and Anonymity Orders, which have been invoked against our defence.

I have also been forced to contend with a number of separate, yet ultimately unsuccessful attempts by the Public Prosecution Service to advance other fallacious and erroneous charges against me on the initial indictment, in an effort to bolster, what they knew to be, a weak and unconvincing, circumstantial case.

The first of these assaults was to take the form of a trumped up charge of possession of explosives, which my defence team fought successfully to have severed from the main charge, in the face of strong resistance from the crown. This case was later to be dropped in October 2012, on the day that I was due to stand trial, when the prosecution QC declared to the court, that they would not be offering any evidence against me. The reality is that the evidence pertaining to this fabricated charge, consisted of a DNA profile which was attributed to me, being discovered on a battery which was found during a house search in 2007, and has since been proven not to form part of any potential device

The second onslaught was to manifest itself in the form of an outright criminal act, when the personal details of the Prison Governor were planted in my cell by prison staff opposed to his plans to initiate a programme of much needed reforms. This was to lead to an eighteen-month investigation into the incident by the Northern Ireland Prison Ombudsman which culminated in the publishing of a report, which found that "On the balance of probabilities, a member of prison service staff planted the note found in Mr. McConvilles cell".

While this further manoeuvre initially appeared to be unrelated to the original indictment, it was to become clear, after the disclosure of the list of the non-sensitive material, that the prosecution were scrutinizing the evidence of this crime, for which I was to be wrongly arrested, with a view a view to establishing proof of bad character on my part. The irony is that while I was suspect in this investigation, the prosecution appeared quite willing to advance a charge against me, yet when it later became evident that I was in fact the victim, I was to receive notification from the Public Prosecution Service, that it was not their intention to proceed with charges against a prison officer who had been under investigation for the crime.

All of this was to form the backdrop into which we were to be tried by a single judge in a non-jury 'Diplock' court in a highly inflamed political atmosphere, owing to the fact that Stephen Carroll was the first member of the Police Service of Northern Ireland (PSNI) to be killed since the signing of the Good Friday Agreement, and the recent highly lamented failures by the Public Prosecution Service to secure convictions in cases such as, the Omagh Bombing, the Loyalist Supergrass Trial and the attack on Massereeene Army Barracks, in which two soldiers were killed. It appears that both public and internal pressure on the Public Prosecution Service and the judiciary, was such that a conviction had to be secured at any cost. The question is, who really cares if that cost is borne by two innocent men, whose only crime appears to be that they are republicans?

Can any Irish person receive justice in a British Court? Have the public and judiciary

Mr. Foran was then interviewed by three police officers, to one of whom, when he was alone, he is said to have admitted his part in the robbery at the jeweller's shop, which occasion he described in great detail and with considerable accuracy.

Evidence was given at the trial that Mr. Foran had confirmed this confession to two other police officers, one of whom was a detective chief inspector. On 9 November, an identification parade was held. As Mr. Foran had moles on his face, all those taking part had sticking plaster in the relevant places. Mr. Holmes positively identified Mr. Foran. Mr. Rice, however, picked out another man, as did his wife and daughter. The latter had picked out Mr. Foran from some photographs but neither the trial court nor the Appeal Court regarded that as satisfactory.

On 13 March 1978, one Errol Campbell, a West Indian, was arrested and made a statement in which he admitted to all three robberies and said that Mr. Foran was involved in each. On 3 April 1978, two police officers interviewed Mr. Foran at Leicester prison, when they read Campbell's statement to him. Their evidence was that he thereupon admitted that he had taken part in the Apechis and Trikain robberies as well as that at the jeweller's shop.

At the trial, however, Mr. Foran denied entirely that he had confessed to any of the offences at any time, said that the police had fabricated all the evidence and, indeed, said that they had beaten him up for refusing to confess.

A prison officer who had escorted Mr. Foran when he was interviewed by the police at Leicester prison, and who had seen but not heard the interview, gave evidence for the defence. His evidence was in conflict with that of the police officers on certain matters, including the attitude of Mr. Foran during that interview, and in his summing-up the trial judge was at pains to draw the attention of the jury to all the descrepancies. It was for the jury to decide which evidence it preferred. I now return briefly to the robberies at the houses of Mr. Apechis and Mr. Trikain. Mr. Apechis described the man as being about 18 years of age, as I have mentioned. Mr. Foran was 33. Mr. and Mrs. Trikain said that the white man concerned in their robbery was about 25. That evidence was read at Mr. Foran's trial by agreement-it was not a matter of technicality, as the hon. Gentleman said, but by agreement-and the judge was again at pains 377 in his summing-up to point out to the jury that certainly Mr. Apechis's description of the white man did not even remotely resemble Mr. Foran.

When Mr. Foran sought leave to appeal against his conviction and his sentence, he sought leave to call Mr. Apechis and Mr. Trikain to give evidence. Mr. Apechis had said in a letter before the Court of Appeal that he was sure that Mr. Foran was not present. However, the full court refused the application, principally because the case against Mr. Foran had rested not on identification, for there was none in the case of the Apechis and Trikain robberies, but upon his confession to the offences. The court commented that Mr. Apechis's description had been before the jury, which had had its attention drawn by the judge to the fact that it did not in the least resemble Mr. Foran. Similarly, the court had been reminded that Mr. Trikain had not seen the face of the white intruder. The jury was entitled, nevertheless, to accept the police evidence as to the oral confessions.

Since the trial, said Lord Justice Donaldson, it had emerged that Mr. Trikain could say that he knew Mr. Foran and that it was not he who had robbed him. The court dealt with those applications to call further evidence in the following passage. Lord Justice Donaldson said: "We have given serious consideration as to whether there should be leave to appeal to enable these applications to call further evidence to be considered. We do not think there are any grounds for granting leave to call that further evidence, bearing in mind our analysis that this was a confession case and that identification or non-identification, or positive evidence that it was

four concurrent terms of 10 years' imprisonment. His application for an extension of time in which to appeal and for leave to appeal against his conviction and sentence was refused by a single judge on 21 May 1979 and by the full Court of Appeal on 11 March 1980.

I take the following brief description of the three robberies from the judgment of Lord Justice Donaldson, giving the judgment of the full Court of Appeal. He said: "The first count arises out of an incident which occurred in the early hours of the morning of Monday 26 September 1977. A Mr. Apechis woke up to find three West Indians and a white man in his bedroom. Each was armed with a knife. He described the white man as being 18 years of age and it should be noted that the applicant was then aged 33. All four wore masks which they later pulled up. Mr. Apechis was told that he had better produce his money or it would be the worse for him, and the men departed taking £2,800 from beneath the mattress and some sovereigns, having first tied up Mr. Apechis." "I now turn to the second robbery. There were three robberies in all, although they formed four counts. The second robbery occurred at half past midnight on 8 October 1977 at the home of a Mr. and Mrs. Trikain." Lord Justice Donaldson said that Mr. Trikain woke up to find a white man standing beside the bed with a bar in his hand. The intruder said that they, meaning he and others, wanted money and as long as they got it Mr. Trikain would not be hurt. Mr. Trikain then noticed that there was a coloured man on the other side of the bed. He had a bar in one hand and a torch in the other. That man ok some money from Mrs. Trikain's handbag and told the white man to keep an eye on the Trikains while he left the bedroom.

Mr. Trikain then went for the white man who departed speedily. Mr. Trikain's evidence was that both the men were young, the white man aged about 25-the accused was 33 at the relevant time-and the coloured man 18 to 20. Mrs. Trikain also agreed that the white man was about 25. The Trikains were faced with the difficulty that they could not see the white man's face and hair because he had taken the precaution of using a pullover belonging to the Trikain's daughter to put over his head. "That brings me"-" said Lord Justice Donaldson- "to the last robbery which is the subject matter of two counts. Mr. Rice had a jeweller's shop in Sparkbrook. On 13 October 1977 a Mr. Holmes called to see him. Some time between 5.30 and 6 in the evening these two men were in the back part of the shop when two coloured men entered, followed a few seconds 376 later by a white man who was brandishing some form of sword or cutlass which he used to cut the telephone lines. Immediately thereafter two more coloured men appeared. Mr. Rice and Mr. Holmes were ordered into the kitchen. The sword was handed over to one of the coloured men whilst the white man opened up one of the two safes. There were also two watches which Mr. Rice was repairing and they were taken and the till was emptied. While these operations were going on, Mrs. Rice arrived with her daughter, Karen. the door had been locked. Mrs. Rice knocked on it. The white man, telling Mr. Rice to keep out of sight, invited Mrs. Rice to come in. Apparently at that stage the white man decided that it would be better that all should depart. They did so in some hurry, dropping all the proceeds of the robbery other than about £30, and the sword or cutlass. Mr. Rice said that that white man was Irish, by which I take it he meant that he spoke with an Irish accent; that he had marks like moles on the sides of his face; that he was in his late twenties or early thirties; and wore a hat. Mr. Holmes who had his wrist watch and wallet taken, put the white man as being about 40 years of age and again said he had moles, specifying that they were on the right cheek." That was the summary of the facts given in the Court of Appeal. In May 1977, Mr. Foran had been arrested in connection with other matters and bailed. He jumped his bail, and a warrant was issued and he was rearrested on 24 October 1977.

already forgotten the lessons that ought to have been learned after the wrongful convictions of the Birmingham 6 and the Guildford 4, to name but a few? What does it profit society to keep innocent men and women lingering in prison cells, while the perpetrators are free to continue their activities? *Brendan McConville, HMP Maghaberry, December 2012*

Letters of Solidarity/Support to: Brendan McConville: HMP Maghaberry, Roe House (Roe 4), Old Road, Ballinderry Upper, Lisburn, BT28 2PT

* Maghaberry prison note 'planted by officer': Ombudsman

The note was found in the cell of Brendan McConville a dissident republican suspect in December 2009. The governor at the time, Steve Rodford, resigned a short time later because of fears he was under threat. Pauline McCabe Northern Ireland Ombudsman completed a 15-month investigation into the incident. She concluded the note was hidden in the cell by a member of staff opposed to planned reforms at the prison. BBC News, 28 March 2011

Diplock trials, the non-jury courts were introduced for paramilitary type offences after a 1972 report by senior judge Lord Diplock. The legislators were adamant that this would only be temporary measure for a few years, but 40 years later they remain. The government technically abolished Diplock courts in 2007 but non-jury trials continued to be used on the insistence of the then Northern Ireland, Justice Minister Paul Goggins, described as “politically convenient.” The practice was due to end in July 2011 but was again extended this time to April 2013. There have been many wrongful convictions under the Diplock trials and a large number of convictions have been overturned in the last few years.

Anonymity Orders: Criminal Evidence (Witness Anonymity) Act 2008

27 Year Fight Against Fitting up by West Midlands Serious Crime Squad

This particular case is the second time not the first time Martin was fitted up by the police. In 1982 Martin spent over 47 days on the roof of HMP Nottingham, after he was convicted in June 1978 on four counts, involving three robberies, and sentenced to 10 years' imprisonment on each, the sentences to run concurrently. He consistently asserted his innocence and repeatedly staged various types of demonstration to draw attention to his case.

Martin Foran Conviction Referred To Court Of Appeal *BBC News, 19/12/12*

A man's robbery conviction has been referred to the Court of Appeal after information emerged regarding a police officer's credibility, the Criminal Cases Review Commission (CCRC) said. It said the West Midlands Serious Crime Squad officer was involved in the case against Martin Foran, who was tried in 1985 and jailed for eight years. Foran was convicted of robbery and conspiracy to rob, the CCRC added.

The CCRC said Foran, who was tried at Birmingham Crown Court, was sentenced to six years in prison for robbery and a further two years, to run consecutively, for conspiracy to rob. It added that the commission had decided to refer his convictions to the Court of Appeal "because it believes that there is a real possibility the court will quash the convictions".

The CCRC said: "The case is being referred on the basis that information, not previously considered in proceedings against Mr Foran, has come to light regarding the credibility of a police officer from the West Midlands Serious Crime Squad who was involved in the case against Mr Foran. "This information, and a re-assessment of other matters relating to the officer that have previously been raised on Mr Foran's behalf, leads the commission to conclude that the officer's credibility is tainted." It also said "developments in case law mean that the fact that the evidence of a tainted officer is supported by an officer to whom no criticism is

attached, is no longer sufficient to uphold a conviction". Foran sought to appeal against the convictions but his appeal was dismissed in July 1986, the CCRC said. In 1992, he applied to the Home Office for a review of his case. It was reviewed and subsequently referred to the Court of Appeal. Foran's second appeal was dismissed in February 1995.

Mr. Martin Foran [Circa July 1982] - Mr. William Whitlock (Nottingham, North): While the House has been sitting, Mr. Martin Patrick Foran has entered his forty-seventh day on the roof of Her Majesty's prison, Nottingham. It is a demonstration that is intended to bring to public notice his statement of his innocence of the crimes for which he has been convicted. Many people in the Nottingham area, having learnt some details of his case, have become anxious about him and are convinced of his innocence. That deep anxiety and the fact that the prison is in my constituency has led me to raise the matter.

Foran was convicted on 21 June 1978 on four counts, involving three robberies, and was sentenced to 10 years' imprisonment on each, the sentences to run concurrently. Since then, he has consistently asserted his innocence and repeatedly staged various types of demonstration to draw attention to his case. As a result, many people, especially in the East and West Midlands have become worried about him. Many people believe that in his case there has been a miscarriage of justice of which he is the victim.

Foran is a constituent of my hon. Friend the Member for Birmingham, Ladywood (Mr. Sever), who has played a part in trying to help him. For a while, Foran was an inmate of Gartree prison in Leicestershire where he won the interest of the hon. Member for Harborough (Mr. Farr) who presented a petition to the House on his behalf in 1981.

The Bishop of Leicester has revealed that chaplains at Gartree prison have become deeply concerned about Foran's case and that some of them have become fully convinced that he was wrongly imprisoned. Other hon. Members in both Houses have taken an interest in Foran's case and have made representation to the Home Office. There have been petitions that have been signed by thousands of people. All to no avail-Foran remains in prison.

Martin Foran is no angel. He has "form"-a criminal record-but on 21 June 1978 he was not being tried for his past record. Or was he? Some people fully believe that he was framed. The main witnesses to the robberies-the people who were allegedly his victims-were not called at the trial. For some technical reason, only their statements were read out. The judge at the trial agreed that the descriptions given by the witnesses "did not even remotely resemble Foran"." Since then, those witnesses have said that Martin Foran was not among the persons who robbed them and that they are willing to give evidence to that effect.

No fingerprint evidence was produced at the trial and the chief constable of the West Midlands police force has said that "by genuine mistake" it was not revealed to the defence that Martin Foran's fingerprints were not found at any of the three scenes of the robberies of which he was found guilty, nor were they found on the sword that was used to cut telephone wires in one of the robberies, although other prints were found at each of the scenes.

Dealing with Foran's application for leave to appeal against both his conviction and his sentence, the Court of Appeal (Criminal Division) concluded that "there were no grounds upon which Mr. Foran could reasonably expect to argue an appeal with the slightest prospect of success" 374 and his application was refused. The Court of Appeal said that his case was "a confession case, not an identification case"." The evidence by witnesses who were victims of the robberies that Foran was not among the robbers was therefore not thought to matter. The evidence given in court that he was at a house in Ladywood at the time of one of the robberies

was thought to be of no consequence. Nor did it matter, apparently, that the absence of Foran's fingerprints at any of the scenes of the crime was not made known to the defence. Everything that would have weighed in his favour was brushed aside. As the Court of Appeal said, it was not an identification case but a confession case. Yet from the very beginning Foran has strenously maintained that any suggestion that he confessed to the crime was a complete fabrication and there is no signed confession by this man.

As I have said, there was a lack of evidence identifying Foran as participating in the robberies, but that lack of evidence was considered to be of no importance. Because that view was taken at the trial, the Court of Appeal in effect stated that identification was unnecessary and waved aside the evidence on. Foran's side that had not been made available at the trial.

I find that absolutely perverse. If that kind of logic is always adopted by our legal luminaries, my previous faith in British justice must disappear. What seems to have weighed heavily with the Court of Appeal was that at the trial Foran was "represented by an extremely experienced team of leading counsel and junior counsel"." It seems, therefore, to have been of paramount importance that a belief in the infallibility of members of the legal profession should be upheld-no matter what the consequences for Foran, and no matter what errors of judgment the learned counsel may have made in conducting the case.

Serious doubts and considerable unease exist in the minds of many people who have taken an interest in Martin Foran's case. We owe it to ourselves as much as to Foran to investigate these doubts and to dispel that unease.

I hope that the Minister of State will be able to tell us that there is an opportunity to have further investigations and that the unease exists in his Department, too. I hope that he will be able to take steps to ensure that all the feelings about Foran are dispelled by a further investigation and by re-opening the case in some way that he has found.

Minister of State, Home Office (Mr. Patrick Mayhew): I have listened with care to what the hon. Member for Nottingham, North (Mr. Whitlock) said about the case of Mr. Foran. I shall study the report of the hon. Gentleman's speech in the Official Report.

Before I deal with some of the points made I shall explain the jurisdiction that the Home Secretary has in individual cases in which it is alleged that there has been a miscarriage of justice. The duty of administering justice in individual criminal cases lies with the courts. While it is true that the Home Secretary has certain powers to intervene following a conviction, either by recommending the exercise of the Royal prerogative of mercy or by referring the case to the Court of Appeal under section 17 of the Criminal Appeal Act 1968, he must not exercise those powers in any way which tends to usurp the proper 375 function of the courts. Therefore, in practice he can consider intervention only if significant new evidence or other material factor of substance bearing upon the reliability of the conviction comes to light which has not already been taken into consideration by the courts or which was not previously available to the defendant to be made use of in his defence.

The Home Secretary must not assess the decisions of the courts on the basis only of facts or arguments that they have themselves considered. That would be to act as though he were a further court of appeal himself. In particular, it would be wrong for the Home Secretary to intervene merely because he might have taken a different view of the facts had the original decision rested with him instead of a properly directed jury.

As the hon. Gentleman rightly said, Mr. Foran was convicted on 21 June 1978 at Birmingham Crown court of three robberies forming the subject of four counts. He was sentenced to