Finally, the Court found a violation of Article 3 on account of Mr Salakhov's handcuffing in hospital. The materials in the case file confirmed that he had been handcuffed all or most of the time while in hospital. There was no indication that he had ever behaved violently or attempted to escape. Moreover, he had been constantly guarded by the police and it had been clear that he was severely ill and extremely weak. His handcuffing could therefore not be justified by security considerations and in view of his poor state of health it had to be considered inhuman and degrading.

Article 2 (Mr Salakhov's death): It was impossible to assess, and not decisive, whether or not the authorities' efforts could in principle have prevented Mr Salakhov's death. However, the Court found that the authorities had not done everything reasonably possible in the circumstances, in a timely manner, to try to save his life. In particular: he had been denied urgent hospitalisation, which he had required, for over two weeks; he had remained detained without any justification and while in a critical health condition; and, he had been subjected to continuous handcuffing which had further exacerbated his health condition. It followed that there had been a violation of Article 2 on account of Ukraine's failure to protect his life.

The investigation into Ms Islyamova's complaints concerning the medical care provided to her son had been closed and reopened several times and had lasted for over three and a half years. There was no information available to the Court as regards the progress of the criminal proceedings in respect of the hospital's doctors.

Furthermore, the failure of the investigating authorities to obtain Mr Salakhov's complete medical file from the detention facilities, even though Ms Islyamova had insisted on that measure, disclosed, in the Court's view, a flagrant deficiency of the investigation. Ukraine had thus failed to account sufficiently for the deterioration of Mr Salakhov's health and his subsequent death. There had accordingly been a violation of Article 2 on that account as well.

Article 3 (Ms Islyamova): The Court considered that Ms Islyamova had been a victim of inhuman treatment, in violation of Article 3. In particular, the Court took the following factors into account: the parent-child bond between her and her son; the activeness of her efforts to save his life; the authorities' indifferent attitude towards her appeals; the fact that she had had to witness the slow death of her son without being able to help him; and, lastly, the duration of her suffering for about three months.

Article 34: Finally, the Court found that Ukraine had failed to meet its obligations under Article 34 by not complying promptly with the Court's indication under Rule 39 of its Rules of Court to immediately transfer Mr Salakhov to hospital for appropriate treatment.

Article 41 Just satisfaction : Court held that Ukraine was to pay Ms Islyamova 50,000 euros in her capacity as Mr Salakhov's successor in the proceedings and 10,000 in her personal capacity in respect of non-pecuniary damage and EUR 925 in respect of costs and expens-

Hostages: Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, 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.

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MOJUK: Newsletter 'Inside Out' No 417 21/03/2013)

Glyn Razzell - My Struggle - 3,415 Days Wrongly Imprisoned

It's almost ten years since I was wrongly imprisoned and there's no end in sight. The evidence that would clear my name in any rational society cannot be used for an appeal because, although it was not put before the jury, it was available to my barristers before my trial and the Appeal Court insists on new evidence.

The Wiltshire Police are in possession of evidence that was not available to my legal team before trial and which should qualify as 'new evidence' for Appeal Court purposes but they will not disclose it. The disclosure is being blocked by one Superintendent who was a Detective Chief Inspector at the time of my trial and the senior investigating officer in my case. My appeal lawyers have barrister's advice that the police have a duty to disclose but have been unable to enforce it so far.

The documents being withheld by the police include three boxes of paperwork from the now defunct Forensic Science Service. I am waiting for the test case Nunn v Chief Constable of Suffolk to be heard in the Supreme Court, which covers similar issues.

My legal team have deduced from the HOLMES records that hundreds of other items or evidence Were not even listed on the MG6C disclosure schedule. It emerged part way through my trial there had been an ex-parte Public Interest Immunity hearing. The PII protocols weren't followed and I've never been able to discover whether the hearing covered all the undisclosed material or only some of it.

I am under no illusions that even if the police were forced to disclose the withheld material, it is likely that any key evidence would 'go missing' before my appeal team got access to it as has happened in so many other cases.

Scientific advances may also give me a route back to the Appeal Court. I'm trying to keep abreast of new forensic techniques but it's not easy from prison with no internet access for research. If new techniques emerge in the right areas they might be able to clear me.

Police corruption played a part in my wrongful conviction. My first CCRC application, rejected in 2007, described 53 separate incidents of police malpractice including abuse of process, making false statements, fabricating evidence and failing to secure evidence that would have exonerated me. When talking to other prisoners I've discovered that these sorts of things happen in all major police investigations. They call it 'dressing the case' or 'helping the evidence along' but really it's perverting the course of justice and it seems to have been endemic in British policing for years.

Police corruption occasionally makes the news in cases like Hillsborough, Plebgate, or the Cardiff Three but nothing is ever done to stop it. Successive Home Secretaries seem powerless or unwilling to confront the issue. It's almost as though there is cross party political support to keep the police bent. Until the corrupt officers and those who are supposed to be supervising them lose their pensions in disgrace nothing will change.

Meanwhile Im stuck in prison for the foreseeable future. After ten years I've become accustomed to the day to day prison regime with all its pointless stupidity, depravations and abuses, but it still rankles. I've been labelled with various 'risk factors'. I've learnt that it's pointless trying to argue that their reports about me are wrong, because if I succeed they just make up

something else to replace it with. They say I'm unsuitable for courses but then add that I haven't addressed any offending behaviour. I point out that I have no offending behaviour to address but each year they update their fanciful reports about me and even resurrect allegations that were dropped before trial.

In many ways it is easier now that I have so little left to lose. During the first few years in prison I felt helpless as one by one the important things in my life fell away. Now my career is finished, my children have grown up without me, and intimate relationships became impossible long ago.

Despite everything I count my blessings, Compared to some wrongly convicted prisoners I've had an easy ride at relatively soft jails. My friends and family outside are very supportive. I've still got my health. I've studied the prison rule book and have the patience and literacy to fight back with pen and paper when opportunities arise.

I don't know what the future-holds~-There are several potential grounds being worked on that might allow me a fresh CCRC application. Public awareness of police corruption and the impotent CCRC is growing and may eventually bring change. When I read of other's successful appeals it helps to keep up my hope that eventually the truth will emerge and I will be cleared.

Glyn Razzell A0744AK, HMP Guys Marsh, Shaftesbury, SP7 0AH

No Defence: Miscarriages of Justice and Lawyers

[This is the first in a new collection of essays as part of the Justice Gap series and following on from Wrongly Accused: who is responsible for investigating miscarriages of justice?]

Eric Allison: Show me a miscarriage of justice and, nine times out of 10, I will show you the blueprint that caused it. There is a pattern, a template, in virtually all of these cases, made up of the following strands.

- First: you have a defendant who has little or no knowledge of the criminal justice system and, in many cases, a touching belief in the integrity of that system.

- Two: investigating police officers who act as judge and jury, making up their minds they have the right person and going to great lengths to hamper the defence. Non-disclosure of evidence being the main obstacle they place in the path of truth.

- Three: prejudicial pre-trial reports by the media. Jurors are told to ignore this, but I suggest this is asking too much of them, especially in high profile cases.

- Four: poor legal representation. In every case I have studied, I have found glaring errors on the part of the defence lawyers. These include, failure to call witnesses, failure to seek full disclosure of evidence and a general lack of endeavour on the part of those chosen to lead defendants through the minefield of criminal trials. And, with cutbacks in legal aid biting deeper, this situation can only get worse.

- Last, but not least, those wrongly convicted face a hostile, intractable, appeal system, with an appeal court seemingly concerned only with maintaining the status quo, that being, the validity of the original conviction. Their Lordships never being more unyielding than when confronted with the assertion that an appellant’s trial lawyers let him or her down. The wigged ones all feed from the same trough and few will question the abilities of another of their ilk.

Other factors go towards the likelihood of more and more innocent people being convicted.

Reasonable doubt: The introduction of majority verdicts, in 1967, was a dangerous step. Given it is for the prosecution to prove guilt; I would have thought two people, out of 12, not being satisfied with the Crown’s case, constituted reasonable doubt? Not so and many high profile alleged miscarriages were the subject of majority verdicts -notably Jeremy Bamber, found guilty on a 10 to two

Ms Islyamova subsequently complained to the prosecution authorities that her son had not received timely and adequate medical care in detention, alleging that this had led to his death. In February 2009, the Ministry of Public Health set up a commission to investigate the complaints. Its March 2009 report concluded that the hospital bore no responsibility for Mr Salakhov's death. Upon Ms Islyamova's renewed complaint, the investigation was reopened and it was subsequently closed and reopened several times.

In November 2010, a forensic investigation ordered by the prosecutor found, in particular, that the doctor's assessment in early June 2008 that Mr Salakhov's urgent hospitalisation was not required had not corresponded to his diagnoses. A criminal investigation into the hospital's liability was opened in December 2010.

The applicants complained under Article 3 about the inadequate medical care during Mr Salakhov's detention, unjustified delays in his hospitalisation and his permanent handcuffing in hospital. Relying on Article 2, they cornplained that the State had failed to protect his life. After Mr Salakhov's death, Ms Islyamova added to this complaint that the domestic investigation into the circumstances of her son's death was ineffective.

Relying on Article 3, she alleged mental suffering on account of the fact that she had to witness her son dying without adequate medical care while being in totally unjustified detention, subjected to permanent handcuffing and confronted with the indifference and cruelty of the authorities. Finally, the applicants complained that in June 2008 it had taken the Ukrainian authorities three days to comply with the European Court's indication to immediately transfer Mr Salakhov to hospital for appropriate treatment, in breach of Article 34.

Ms Islyamova's submission that her son had immediately informed the investigator of being HIV positive was not supported by any evidence. The Court therefore accepted that the authorities had only become aware of Mr Salakhov's HIV infection on 5 June 2008, when he was examined in hospital.

The Court observed that the applicants had made specific submissions regarding the deterioration of Mr Salakhov's health from March 2008. According to them, the medical response on the part of the detention facilities had been limited to sporadic ambulance calls. In the course of the investigation into his death, Ms Islyamova had sought access to and examination of his complete medical file from the detention facilities. However, that request had not been granted and the documents had not been made available to her or to the prosecution authorities. It had therefore been for the Ukrainian Government to submit copies of any relevant medical documents in the proceedings before the Court, which they had failed to do.

The Court could infer from that failure that Mr Salakhov had not received adequate medical assistance for his deteriorating health in the detention centres, even assuming that the authorities had been unaware of his HIV infection until 5 June 2008. There had accordingly been a violation of Article 3 as regards the medical care in the detention centres.

The Court further found a violation of Article 3 on account of the inadequate medical care provided to Mr Salakhov in hospital. While in hospital he had remained in detention and thus under the full control of the authorities, which had been obliged to account for his health and to provide him with adequate medical care. While it was not the Court's task to assess the quality of the medical treatment, it noted that, as a result of the forensic investigation, the Ukrainian authorities themselves had acknowledged that the medical assistance provided to Mr Salakhov by the hospital's doctors in June 2008 could not be regarded as adequate. The Court saw no reason to question those findings.

unrest in the city of Port Said. Amnesty International has documented excessive and unnecessary lethal force in the security forces' response to the unrest - including the use of firearms when it was not strictly necessary to protect life. Amnesty International calls on the authorities to commute without delay all death sentences.

Another important ECtHR Case, confirming that the State must provide quality healthcare to those the state detains in prisons and where such treatment cannot be provided must transfer them to an hospital that can. Further that a person must not be handcuffed whilst in hospital, if the person is weak and guards are presentD

Ukrainian Authorities Responsible for Death of detainee Shortly after Release

ECtHR judgment in the case of Salakhov and Islyamova v. Ukraine (application . 28005/08), which is not final, the EctHR held, unanimously, that there had been: - Three violations of Article 3 (prohibition of torture and of inhuman or degrading treatment) of the European Convention on Human Rights, on account of the inadequate medical care provided to Mr Salakhov both in the detention facilities and in hospital, and on account of his handcuffing in hospital; - Two violations of Article 2 (right to life) of the Convention, on account of the authorities' failure to protect Mr Salakhov's life and on account of their failure to conduct an adequate investigation into the circumstances of his death; and, a violation of Article 3 in respect of his mother's mental suffering. The Court further found that Ukraine had failed to meet its obligations under Article 34 (right of individual petition) by not complying promptly with the Court's indication under Rule 39 (interim measures) of its Rules of Court to immediately transfer Mr Salakhov to hospital for appropriate treatment. The case concerned the lack of appropriate medical care given to a detainee, who died from AIDS two weeks after he was released from detention.

Principal facts: The applicants, Linar Salakhov, born in 1981, and his mother Aliya Islyamova, born in 1955, were/are Ukrainian nationals. Ms Islyamova lives in the town of Zuya in Crimea. After her son's death in August 2008, she continued his application before the European Court of Human Rights on his behalf and introduced her own complaints.

Mr Salakhov was arrested in November 2007 on suspicion of robbing a mobile phone and placed in pre-trial detention. Tested HIV positive in 2005, his health sharply deteriorated in March 2008. He allegedly had a constant fever and suffered from serious digestive problems, making it necessary for the administration of the detention facilities to call an ambulance on several occasions. It is in dispute between the parties whether Mr Salakhov informed the investigator of his HIV infection upon his arrest. According to the Government, the authorities only learned of that infection in early June 2008, when he was taken to a hospital for examination. An infectious disease specialist diagnosed him, in particular, with pneumonia and candidosis. He concluded that Mr Salakhov's HIV infection was at the fourth clinical stage but found that there was no urgent need for hospitalisation. On 17 June 2008, the European Court of Human Rights granted Mr Salakhov's request for an interim measure under Rule 39 of its Rules of Court, indicating to the Ukrainian Government that he should be transferred immediately to hospital for appropriate treatment. On 20 June 2008, Mr Salakhov was transferred to a hospital, where he was constantly guarded by police officers and, according to Ms Islyamova, kept continuously handcuffed to his bed.

On 4 July 2008, Mr Salakhov was found guilty of having acquired the mobile phone by fraud, and was sentenced to a fine. He remained in detention for two weeks after the verdict as a preventive measure pending its entry into force, despite his state of health being critical. Following his release on 18 July 2008, Mr Salakhov's health deteriorated and he died on 2 August 2008.

basis. The law changed in 2003 to allow into evidence of a defendant's convictions for previous offences. Prior to then, unless a defendant attacked the character of a prosecution witness, juries were kept in the dark about previous convictions the people in the dock had to their name. Easier for the prosecution to prove it's case. But is it fair? 'Give a dog a bad name…'

Safety net: On paper, the Criminal Cases Review Commission (CCRC) provides a safety net for those floundering in the mire of a wrongful conviction. But the CCRC has disappointed those who hoped the establishment of such a body would deal swiftly and surely with miscarriages of justice.

In practice, the CCRC is under-resourced and seemingly unable to carry out the in-depth investigations required to uncover the truth when the justice system has got it wrong. Critics see them as gatekeepers to the court of appeal, trying to second guess how that tribunal will view the cases they refer, rather than the independent, fact finding, body hoped for.

Of all the alleged miscarriages of justice I have researched, the cases of Jeremy Bamber and Susan May stand out for two reasons: firstly, I have absolutely no doubt about their innocence and, secondly, they tick every box of the blueprint of how the system fails.

Both were people of hitherto good character, with no experience of the criminal justice system. If either had had one tenth of the knowledge of the law – and trial procedure – they have now, both would have walked free – of that I am certain. (Despite both falling victim to prejudicial pre-trial reporting and biased police investigations.) Both have had their cases rejected by the court of appeal twice. Both have had their submissions rejected by the CCRC – though Susan's case is now being reviewed again by that body.

I am convinced there are more miscarriages of justice now than at any time since I have been a student of the system-a study going back over half a century. I am personally aware of well over a hundred, serious, cases that scream out to be looked at again. And I repeat, I believe the situation is set to worsen a) because of cut backs in legal aid and b) the massive increase in convictions for historical sexual offences.

The latter area concerns me greatly – in the current, post-Saville, climate, I expect the conviction rates for these offences to take a surge. And yet this is one area where greater care than ever ought to be taken in deciding guilt or innocence. Almost uniquely, as far as criminal trials are concerned, a defendant can be convicted on the uncorroborated word of the accuser. There are usually no witnesses to such crimes and, because of the passage of time, no forensic or medical evidence to support the allegations. It is one person's word against another.

I have researched several convictions for historical sexual offences and, in some cases, my findings are deeply troubling. It is a murky world to peer into and any concern for the safety of such a conviction can be taken as having some sympathy for people deemed beyond the pale in the court of public opinion. Questioning some of those convictions is to risk being accused of having no understanding of the awful trauma endured by victims of sexual abuse. But two wrongs never made a right and some things need to be said.

Consider this: Albany prison, on the Isle of Wight holds some 560 prisoners – virtually all sex-offenders, many convicted of historical offences. Around half of the population of Albany is in denial. This means they are not addressing their offending behaviour and not participating in treatment programmes. Because of their plea of innocence, they will never become eligible for parole. Many are serving extremely long sentences, so they count the difference in years and some will die in prison. They will not have their security classification downgraded – a move which invariably means better prison conditions – and, on their eventual release, will find their place on the sex offenders register coming under intense scrutiny.

Without doubt, some of these men will be in denial because they cannot come to terms with the offences they have committed. But over 250 of them, in one jail? Something is wrong.

Like many, I hoped, with the freeing of the Birmingham Six, Guildford Four et al and the setting up of the CCRC, we had seen the back of wholesale wrongful convictions. The ever burgeoning case file of alleged miscarriages of justice tells me the hope was in vain. We are back to where were before we thought: 'This cannot happen again'.

Attorney General's Reference No. 077 of 2012, R v H

The court refused an application by the Attorney General under section 36 of the Criminal Justice Act 1988 in a case where there was one occasion of unwanted sexual intercourse during a period of otherwise consensual sexual relations. After the offence, continuing consensual relations continued over a not inconsiderable period. There was no evidence of psychological harm and no evidence of anger. The offender was convicted of rape and sentenced to two years' imprisonment and to three months' imprisonment for common assault consecutively, the total two years three months.

The jury concluded that on two or three occasions in 2003 H raped his wife whilst she was sleeping, or unconscious in bed having drunk heavily. After the first, she told him not to do it again, but he did. Their relationship ended in 2007, and in 2009 he began a relationship with another woman. After an argument he pinned her to the bed and headbutted her, this last the foundation for the allegation of common assault.

Counsel for the Attorney made it plain that although argument might have surfaced in respect of whether the allegation featured more than one rape, a single instance of rape was indicted and it is upon that basis that the Attorney advanced his arguments.

"EH" met H in a nightclub in 1997, when she was 19, and he 12 years older. They married some two years after they met, however their relationship ended in 2007. It was accepted that during their relationship EH would often drink heavily. In 2003, on more than one occasion, when asleep or through drink unconscious in bed she awoke to find her vaginal area wet with semen. H accepted he had had sexual intercourse with her. After EH, in 2009 he met "EJ". Once again turbulence set in and led to the allegation of common assault. The 46 year old offender had no previous convictions but one caution for common assault in July 2010.

The Attorney relied on the following aggravating features: there was an element of breach of trust since EH, asleep or unconscious, was vulnerable, and there had been ejaculation. In mitigation it was conceded that this was a long-term consensual sexual relationship and, particularly, that post-offence it continued consensually. Further, that the aggravatory effect, if any, of ejaculation had to be much reduced on the particular facts.There was little, if any, psychological harm in evidence to EH. There were no previous convictions.

It was complained that the sentence failed to reflect the gravity of the offending and in particular EH's overall vulnerability, the mitigating circumstances did not warrant a reduction of more than half the starting point set out in the work of the Sentencing Guidelines Council and the judge should not have gone below the bottom of the range. The work of the Sentencing Guidelines Council on the Sexual Offences Act 2003 contains a consideration of general principles, 1.2 and 1.3. Where relevant, the guideline on seriousness provides: "1.2 ... the seriousness of an offence is to be determined according to the relative impact of the culpability of the offender and the actual or foreseeable harm caused to the victim. Where there is an imbalance between culpability and harm, the culpability of the offender in the particular circumstances ... should be the primary factor in determining the seriousness of the offence. 1.3 ... For these

a military agent, will be totally examined. The relationship with the military and his role was never explored when he stood trial in Belfast Crown Court for offences for which he was convicted." Nelson was unmasked as an army agent involved in murder in 1990 after an investigation into collusion by Sir John Stevens, then the Deputy Chief Constable of Cambridgeshire. Two years later he pleaded guilty to five counts of conspiracy to murder - including Gerard Slane - and was jailed for 10 years. During a brief preliminary inquest hearing at Mays Chambers in Belfast it emerged that the Ministry of Defence had 20 volumes of sensitive documents relating to the killing. A further four volumes of non-sensitive material would also be disclosed.

Family barrister Fiona Doherty said: "I think it is clear that the security forces were involved in this death whether directly or indirectly." Speaking outside court, Mr Slane's widow Teresa said the family had waited too long for an inquest. "We cannot hold out any longer, we just want to know the truth. They are talking about sensitive and non-sensitive files but where was the sensitivity when my husband was murdered? After 25 years, why can they not just put all the files on the table and tell the truth. We want justice for Gerard and we need the British to tell the truth." Mrs Slane said her family had been unable to move on. "Nothing has changed in the past 25 years, we cannot get on with our lives. It is with us everyday."

Egypt Football Violence Death Sentences Condemned

Amnesty International has condemned death sentences handed down against 21 people in the Port Said football violence trial on 9 March 2013. The trials which led to the death sentences seem to be more about scapegoating a few rather than providing answers about what happened on the day of the game and the role the authorities may have played. The organization opposes the death penalty in all cases as a violation of the right to life and the ultimate cruel, inhuman and degrading punishment.

The death sentences were handed down by the New Cairo Criminal Court, a month and a half after the court referred the case files to Egypt's Grand Mufti for his review. Under the Code of Criminal Procedures, the Mufti must review death sentences imposed by criminal courts, but his opinion is not legally binding. Ahead of the verdict, the Mufti had reportedly requested more time to review the case but the court decided to move ahead and confirm the sentences. Amnesty International had written to the Grand Mufti to urge him not to approve the death sentences. Over 230 people have been sentenced to death since the "25 January Revolution" in 2011, and there was at least one execution. In February 2012, 74 people were killed during violence at a football match between Al Ahly and Al Masry clubs in Port Said. On 9 March 2013, the New Cairo Criminal Court sentenced 21 people to death and 24 individuals to prison terms for their involvement in the violence. A further 28 of the accused were acquitted.

However, the investigation into the Port Said incident and trial were marred by reports that some of the defendants were subjected to torture and other ill-treatment in detention. Amnesty International urges the Egyptian authorities to ensure any such allegations of torture or other ill-treatment are subject to an independent and impartial investigation.

Following the Port Said incident, the security forces were widely criticized for failing to prevent the violence or protect those who had been attacked. The former head of the Port Said. Security Directorate and another security official were both sentenced to 15-year terms. However, seven other members of the security forces were among those acquitted by the court. The court's decision to refer the files of 21 of the defendants to the Mufti in January 2013 sparked

belonging to another individual, identified only as G McG, following a forensic examination of the matchsticks. The court was told that Mr McDonald's predecessor, Dr Watson, had ruled out G McG's DNA profile found on the matchstick.

However when questioned as to whether he now accepted that a mixed DNA profile, not belonging to Mr Shivers, was also contained on the matches, Mr McDonald said: "Yes I accept that it could be a mixed profile that we've seen these two low level possible components that may indicate DNA from somebody else. "So if we accept that they're genuine components, yes, there's an indication that it could be DNA from more than one person, yes."

The court was told that forensic experts had tested the matchsticks for DNA from two men, identified only as D McG and G McG.

Questioned as to whether DNA tests had identified G McG's profile on the matches, Mr McDonald said: "I can't exclude him as being a potential source of that DNA if it's genuine."

Mr Pownall asked: "So your answer would be, in answer to the question: Could either of these persons (D McG and G McG) have contributed to the DNA profile which was obtained from that item, WRM 13?" Mr McDonald: "My answer would have been yes."

On Monday the Detail revealed that the matches recovered from the getaway car had been placed into the same forensic bag, potentially contaminating each other. Questioning the forensic expert about the possible contamination of placing the two matches in the same evidence bag, Mr Pownall asked: "Let's just stick with the matches for a moment, that is the two inside the car. We can all be wise after the event, but would it be fair to say that it would have been better from everybody's point of view if those two matches had been bagged independently, the one of the other?" McDonald: "I guess, maybe."

Mr Pownall: "If you put two matches together, and matches have rough surfaces, and where you're dealing with these almost infinitesimally small bits of DNA, if they're next to one another in a bag then one can rub DNA onto the other?" Mr McDonald: "Yes, there is the potential for that to happen, yes." Mr Pownall: "Of course, and I mean that's not a laughable flight of fancy, is it?" Mr McDonald: "No, no." Mr Pownall: " And so it may be that had those matches been independently bagged and you'd swabbed them the result would have been on one match nothing, and on the other match a profile?" McDonald: "Yes that's one outcome".

The DNA expert was questioned as to whether it was possible for one of the killers wearing gloves to have used the matchsticks to set fire to the car without leaving his DNA. Mr Pownall: "You simply could not say, could you, that the DNA on that match was left by the last person who touched the match?" "No," Mr McDonald replied.

Loyalist Victim's Inquest 'Most Significant' *News Letter 13/03/13*

An inquest into the death of a loyalist murder victim could shed a chilling light on one of the murkiest periods from Northern Ireland's bloody past, it has been claimed. A solicitor for the family of Gerard Slane, 27, who was gunned down at his west Belfast home, said the hearing would lay bare the full role of a controversial army agent. Mr Slane, a Catholic father-of-three, was shot dead by a UDA gang acting on information provided by Brian Nelson. At the time, Nelson was working for a secret army intelligence unit known as the Force Research Unit (FRU). The gunmen sledge-hammered their way into his house at Waterville Street and opened fire, hitting Mr Slane in the head.

"This could be one of the most significant inquests that the Coroner will have to determine," said Paul Pierce. It will be the first time that we are aware of that the role of Brian Nelson,

types of offence more than for many others, the sentencing process must allow for flexibility and variability. The suggested starting points and sentencing ranges ... are not rigid, and movement within and between ranges will be dependent upon the circumstances of individual cases and, in particular, the aggravating and mitigating factors ..."

Developed guidance is as follows: For a single offence of rape by a single offender, starting point five years' custody and a sentencing range of four to eight years.

The court was referred to Millberry [2003] 2 Cr App R (S) 31, and to Attorney General's Reference 77 of 2010 [2011] 2 Cr App R (S) 96, often known as Moir, which, the Attorney conceded was readily distinguishable from this case.

That a victim was not aware of the rape and therefore neither frightened nor fearful nor seeking to fight off what must have been a brief offence does not constitute mitigation. In particular, the court pointed out: "... In the end a sentencing judge must reflect what actually happened and the circumstances in which the offence of rape took place. In this case the rape occurred just two weeks after the victim's pregnancy by the offender had been terminated; she had made it clear to him, quite unequivocally, that she did not want to have a sexual relationship with him; and in the course of the incident of rape he put her at risk of another pregnancy …

We are unpersuaded that any mitigation arises from the fact that the victim was asleep. We are equally unpersuaded that there was any mitigation arising from the fact that her reaction was anger rather than distress. Nor are we able to accept that no harm was caused ... The circumstances certainly were unusual … However, having reflected on the fact that the circumstances were unusual, in a case which proceeded as a trial during the course of which the victim had to give evidence about what she remembered, with no guilty plea a sentence of three and a half years' detention might very well have been regarded as unduly lenient. A sentence of two years undoubtedly was."

The sentence was increased to five years' detention. Close attention in this case to the words of the judge when passing sentence repays dividends. He accepted that these were unusual offences for particular reasons; they went back to 2002, so were old, and they came to light only because of the subsequent complaint of common assault on EJ. The rape was an offence committed in the context of a consenting relationship and, said the judge: "... it is very important that I make plain what the real distinction here is ... it wasn't for Mrs [J] to make the judgment as to whether what happened amounted to rape as it plainly did, the fact that she did not regard it in that way at the time reflects perhaps most importantly on the effect it had on her mind. Her relationship continued with you as a full sexual consenting relationship after this and indeed there was plainly evidence after the end of the time when you were living together she continued to have strong feelings for you and it does seem to me that I can therefore reflect the other factors that really flow from that ... there was no force here, no threats, no attempt to pin her down ..." And later: "The reason that the guidelines suggest you start at five years for any offence of rape is for the reasons that I have given. It seems to me that in this particular case there are very good reasons for coming well below that level ... the right sentence is one of two years..."

The court agreed with the Attorney that there were readily distinguishable differences between this case and Moir. This was one occasion of unwanted sexual intercourse during a period of consensual sexual relations. After the offence, and when the offence was known, continuing consensual relations continued over a not inconsiderable period. There was no evidence of psychological harm and no evidence of anger. The court said that those were remarkably distinctive facts which the judge was correct in identifying as such. The court concluded that the judge was entitled to take the course that he did and refused leave.

R v Sharma, Simpson, Westwood and Watkins

Section 125 of the Coroners and Justices Act 2009 does not require the judge to state in terms that the interests of justice require that he goes outside the Guidelines.

The appellants Sharma, Watkins and Simpson pleaded guilty to conspiracy to steal (count 3). Watkins also pleaded guilty to dangerous driving. Westwood was convicted of conspiracy to burgle (count 2), conspiracy to steal (count 3) and dangerous driving (count 5).

They were sentenced as follows: Sharma, following his plea, three years' imprisonment; Watkins three years for the conspiracy to steal and nine months for the dangerous driving; Westwood six years for the conspiracy to steal, seven and a half years for the count 2 conspiracy to burglary (he was the only one of the defendants who was a party to that conspiracy), and 18 months for dangerous consecutive giving him a total sentence of nine years' imprisonment. In addition, Watkins was disqualified from driving for two years with a requirement to take an extended retest and Westwood for four years.

In August 2011 an Audi RS1 motor car was stolen and used in the burglary of 13 commercial premises. Three were targeted in the early hours of the morning when some £60.000 worth of cigarettes was taken following entry into shops and off-licences. That accounted for some ten of these burglaries. There was also a ram-raid on the jewellers H Samuels when gold and diamonds were taken. Westwood alone was involved in this conspiracy. The judge considered him to be the leader of the group and his planning and contribution were instrumental in that operation.

The conspiracy to steal in which all the appellants were a party involved the use of the Audi as one of the getaway vehicles. This conspiracy involved the gang attacking an ATM cash machine on the forecourt of a garage. The Crown's case was that Westwood had recruited the gang to attack the machine which held some £22,500. It could not be prised open with a wrench so they decided to try and cut open the machine with oxyacetylene cutting equipment. Sharma purchased a van for the equipment and to carry those involved in the theft. Cutting equipment was purchased and number plates from a van similar to one purchased by Sharma were stolen and substituted for the number plates on the van.

On the night of 14 January there was an attack on the machine but in the event, the ATM was too robust and the appellants gave up. Unknown to them they had been watched by the police who closed in as they were leaving. Green, Watkins and Sharma went off in a van driven by Watkins. The police blocked the van and Watkins drove into it. That gave rise to his dangerous driving charge. All three men were then arrested. Westwood and Simpson made off in the Audi followed by police resulting in a dangerous car chase lasting some 40 minutes.

39 year old Sharma had seven previous convictions for 11 offences, principally involving drug and driving offences. He had only one previous conviction for a non-residential burglary. 34 year old Watkins had 15 previous offences for 34 offences, principally theft. He had one previous conviction for a non-residential burglary. Westwood, also 34, had 14 previous matters recorded against him for 33 offences, principally theft and driving offences, but he had five previous matters recorded against him for burglary, mostly non-residential, and convictions for conspiracy to burgle and conspiracy to steal. Simpson was the youngest, 26 years old and had eight previous matters recorded against him for 21 offences, principally theft and drug and driving offences.

The judge in sentencing dealt with Westwood on the basis that he was the key man in the conspiracy to burgle, noting there had been significant loss and damage and shops had been targeted for cigarettes. Westwood had an appalling record for which he had received prison sentences and specifically in relation to conspiracies to burgle and steal.

ted to addressing the needs of young adult offenders. Our approach is to manage each young adult woman on the basis of an individual assessment of risk of harm, likelihood of reoffending and offending associated needs, with decisions being made locally on how resources are deployed to achieve outcomes in terms of reducing reoffending. The National Offender Management Service (NOMS) has developed a segmented analysis of the needs of different groups within the offender caseload to support more effective targeting of interventions as part of its evidence-based commissioning approach.

An example of a service provided specifically for young women is the Spurgeons' Sisters project, launched on 7 December 2012, to work with young women aged 15 to 24 who are currently in young offenders institutions and prisons across England. The project works to reduce reoffending by this cohort by providing them with improved opportunities and the motivation to improve their own physical and mental health. NOMS has also developed a transitions protocol that will assist establishments holding young adult offenders before, at the point of, and after they transition from youth custody services. The protocol sets out the responsibilities of staff throughout this process and offers guidance on how to prepare an offender for transition and support them after their arrival. NOMS, the Youth Justice Board and the Ministry of Justice co-chair a cross-Government transitions forum that aims to improve transitions from youth to adult services for all young offenders.

DNA of 2nd Man Found On Massereene Murder Evidence *Barry McCaffrey The Detail 13/03/13*

The Massereene murder trial has been told that a second person's DNA was found on a matchstick used to try and destroy the killers' getaway car, as well as that belonging to murder accused Brian Shivers. Magherafelt man Brian Shivers is accused of involvement in a Real IRA gun attack on Massereene army barracks in Antrim in March 2009, which resulted in the deaths of sappers Mark Quinsey and Patrick Azimkar. Shivers (47) is accused of attempting to destroy the killers' getaway car, which was found partially burnt out seven miles away shortly after the attack. A crucial part of the prosecution case against Shivers is the presence of his DNA on two matchsticks and a mobile telephone found inside the vehicle.

Today (Wednesday 13th March 2013) Forensic Scientist Andrew McDonald told the court that he had only become involved in the case last month after his colleague, Dr Emma Watson, who had carried out the original DNA tests on the items recovered from the car, was declared medically unfit to take part in the trial. Mr McDonald was asked to re-examine a series of items, two matches found inside the getaway car, another matchstick found outside the vehicle and DNA swabs which had been taken from a mobile phone found in the killers' Vauxhall Cavalier car. The DNA expert told the court that he had compared miniscule samples of DNA recovered from the vehicle, which were a billion times smaller than a gram, which linked Mr Shivers' DNA to the matchsticks found in the getaway car. He stated:"In my opinion DNA which could have originated from Mr Shivers was detected on the two matches, item WMR13 combined. The results are what I would expect if he had contributed DNA to the result obtained. I have estimated that the probability of obtaining the matching DNA profiles, if the DNA detected on the matches originated from someone who is unrelated to Mr Shivers is less than 1 in 1 billion."

Counsel for Shivers, Orlando Pownall QC, subsequently told the court that Brian Shivers was not disputing that his DNA may have been on the match sticks and mobile phone but contested the circumstances in which his DNA had been placed on the items.

Meanwhile the court was told that forensic experts had also found a second DNA profile

Principal facts: The applicants, Mrs Kerime Aydan and Mrs Kasern Aydan, are Turkish nationals who were born in 1968 and 1948 respectively and live in Siirt (Turkey). They are the widow and mother of Abdullah Aydan, who was fatally wounded in Eruh town centre on 6 September 2005 by shots fired from a military jeep while he was waiting for a bus close to a demonstration in support of Mr Ocalan, head of the PKK. A. Aydan sustained a bullet wound to the head and died the same day in Dicle Hospital (Diyarbakrr).

During the investigation, the suspect G.Y. stated that he had been driving a jeep accompanied by two other gendarmes. Their way had been blocked and they had been surrounded by 150 or 200 armed individuals who had thrown stones at them and attacked them with bars and knives. After issuing two warnings which went unheeded, he had fired through the broken windscreen of the vehicle to disperse the assailants. According to G.Y., since the weapon had been on the automatic setting, there had been a burst of gunfire; however, he had not aimed at the crowd. The other two gendarmes confirmed G.Y.'s statement but were unsure as to whether armed demonstrators had been present at the scene. Two police officers who had made a video recording of the demonstration said that they had not seen any armed demonstrators at the scene.

Judge Approves use of 'Truth Serum' on Accused Murderer James Holmes

Legal and medical experts are questioning the decision of a judge in Colorado to allow James Holmes, charged with multiple counts of murder arising from the shooting at the Century 16 cinema in Aurora, Colorado in which 12 people were killed and 58 injured. On Tuesday, a plea of not guilty was entered for Holmes after his lawyer told the court that the defendant was not ready yet to enter his own plea. Judge William Sylvester ruled that in the event of Holmes pleading insanity his prosecutors would be permitted to interrogate him while he is under the influence of a medical drug designed to loosen him up and get him to talk. The idea would be that such a "narcoanalytic interview" would be used to confirm whether or not he had been legally insane when he embarked on his shooting spree on 20 July last year. The precise identity of the drug that would be used has not been released, other than a statement that it would be "medically appropriate", but it would most likely be a short-acting barbiturate such as sodium amytal. *The Guardian, Tuesday 12 March 2013*

Offenders: Brain Injuries *House of Lords / 13 Mar 2013 : Column WA69*

Baroness Howe of Idlicote to ask Her Majesty's Government how many (1) children and young people between the ages of 10 and 17, and (2) young adults between the ages of 18 and 24, currently in prison have an acquired brain injury, what plans they have to address the levels of brain injury amongst young offenders in custodial settings. [HL5876]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): Individuals held in secure settings are not routinely screened for acquired brain injury (ABI) at present. The Youth Justice Board and the department have developed the comprehensive health assessment tool (CHAT). This evidence-based reception screen and health assessment tool is verified for use with people aged under 18 years held in custodial settings. CHAT will assess the physical health, mental health, substance misuse level and extent of neurodisability and ABI amongst young offenders, enabling them to access the most appropriate treatment. We expect the ABI assessment component of CHAT to be available by the end of 2013.

Baroness Howe of Idlicote to ask Her Majesty's Government what plans they have to address the distinct needs of young adult women in custody between the ages of 18 and 24.

The Minister of State, Ministry of Justice (Lord McNally): This Government are commit-

The judge considered that the Sentencing Guidelines, where the range for a category 1 offence was up to five years, did not properly reflect either the multiple offences or indeed the record of this particular applicant. Having regard to those factors, he fixed the sentence at seven and a half years for the conspiracy to burgle with six years concurrent for the conspiracy to steal, but he made the dangerous driving sentence a consecutive one.

The judge noted that in relation to the conspiracy to steal count it was a well-planned and prepared operation, albeit unsuccessful in the event. Westwood, he considered, was the prominent member in this conspiracy also.

It was submitted that there was no justification for stepping beyond the Guidelines unless the interests of justice require it. That is specifically what section 125 of the Coroners and Justices Act 2009 states. In this case, the judge did not say that the interests of justice required him to go above the five year maximum. Moreover, the judge had given a sentence of seven and a half years, which, in any event, even if he could properly go above the maximum, was disproportionate and excessive.

The court did not accept that submission. The section does not require the judge to state in terms that the interests of justice require that he goes outside the Guidelines. The circumstances must be such that it is in the interests of justice to do so. Where the nature of the offending considered in the light of the antecedents is such as to warrant a sentence in excess of the guidelines, then it is necessarily in the interests of justice for the judge to impose that sentence. It would be absurdly formalistic for the judge to have to repeat that as a mantra on every occasion when a sentence in excess of the guidelines is imposed.

Given Westwood's record, the court saw nothing wrong with the sentence of seven and a half years, particularly taking into account the aggravating feature of the conspiracy to steal for which he was given a concurrent sentence. There could be no complaint with 18 months for the dangerous driving in this case. Indeed, the court suspected that it could have been significantly higher but for considerations of totality, and accordingly his application for permission to renew leave against sentence failed.

As regards the other appellants, the judge was only concerned with the single unsuccessful conspiracy to steal. He considered that Simpson was close to Westwood albeit not equal to him as concerned his role in the conspiracy. Simpson on his own admission had carried out reconnaissance on the day before the attack on the cash machine and the Recorder was satisfied that he knew all about the plan. The judge considered that his role was more serious than that of either Watkins or Sharma. He gave Simpson full credit for his guilty plea and so the sentence of four years was in fact equivalent to the six after trial he gave Westwood.

In relation to Sharma and Watkins, the judge was satisfied that they had played a lesser role, albeit still an important one. Watkins was the driver and had been involved in the attempt to remove the ATM. The judge considered him to be on a par with the co-accused Green, and Sharma. Green received four and a half years but was because he did not plead. In fact, Watkins' record was worse than that of Sharma. Watkins also complained about the nine month consecutive driving sentence and said it should have been lower but did not contend that it was wrong for the judge to make it consecutive.

The court rejected a submission that Watkins and Sharma were playing a less significant role in the conspiracy than the judge identified; they were both clearly involved to a significant degree, albeit Watkins was not involved in the planning as fully as Sharma was. Nonetheless he played a central role on the night in question.

Having said that, the court concluded that for the conspiracy to commit this single offence did not merit the sentences which these conspirators received. Apart from Westwood, who was the leading figure, something less than the sentence imposed by the judge should have been imposed. The judge was entitled to find that Simpson played a bigger role than Sharma and Watkins, an appropriate starting point for him would have been five years and giving full credit for the plea that came down to three years and four months.

With respect to Sharma and Watkins, the starting point should have been three and a half years which brought Sharma with credit down to two years and four months. Watkins would have the same sentence as far the conspiracy was concerned, but the court did not think the judge was wrong to make the nine month sentence for dangerous driving consecutive. He was entitled to consider that on balance Sharma and Watkins should be treated the same. It followed that Sharma's sentence was reduced from three years to two years and four months and Watkins' sentence from three years and nine months to three years and one month. Simpson's sentence was reduced to three years and four months from the four year sentence imposed on him.

Terry Smith v Information Commissioner

An application for permission to Appeal to the Upper Tribunal has been considered by the Tribunal Judge (M. Carter) and has been refused. 10th January 2013.

Background: the Appellant submitted a Freedom of Information Act request to Essex Police (09/11/2011) to obtain access to the location of ANPR cameras along three roads in Brentwood Essex. The salient reason for disclosure of this information is it would confirm that police possessed vital information that the Appellant was incapable of committing a serious indictable offence of conspiracy to rob and exonerate him.

The information, however, was considered: " . . . exempt information if its disclosure would, or would likely to, prejudice: (a) the prevention and detection of crime and; (b) the apprehension and prosecution of offenders." Accordingly, the Appellant argued, that is precisely why he sought the information as it would not only detect a serious crime - where senior Loomis employees who tendered falsified Data Track documents at his trial - but it would also lead to the apprehension and prosecution of those responsible for the police/Loomis manufactured fit-up. Please note, according to Subject Access Requests and FOIA responses, senior BTP detectives in the case have avoided misconduct proceedings by taking early retirement and the senior Loomis employees have been dismissed.

As a result, the Appellant urged the Tribunal Judge to "suspend" the decision the "strike out" the original Appeal --- as an investigation to uncover a conspiracy between British Transport Police and the Essex Police ANPR Unit was still ongoing. Extra time would allow the Appellant to submit further documentary evidence which would substantiate serious police malpractice and in all probability swing the public interest balancing test in the Appellant's favour.

The Tribunal Judge ruled: (1) I refuse permission to appeal. (2) The Appellant claims that I was wrong in law to strike out the case as "vital unseen documents that should have been considered were not provided to the Tribunal by the Appellant." In essence, the Appellant is seeking to reopen the case by introducing new evidence after the case has been determined. This cannot amount to an error of law in the decision previously taken. (3) Permission to appeal may only be given if there is a reasonable argument that I made an error of law in the decision to strike out the case. As this new evidence was not before me, it cannot have been an error of law not to have taken this into account. Frustrating though this must be, the

Appellant had his chance to present his case and was given a further opportunity to comment before I decided whether to strike it out. (4) I understand the Appellant believes the public interest in disclosure would have been strengthened by the consideration of this new material. It is of course open to the'Appellant to make a further freedom of information request for the same material again (sometime having elapsed since the original request), this time relying upon the new information for the purposes of the so-called public interest balancing test. That however is a matter outside the jurisdiction of this Tribunal. (5) I therefore conclude that my earlier decision to strike out this appeal did not include any errors of law.

In conclusion, the Appellant now argues, although he had made it crystal clear in the FOIA application that the underlying reason for the non-disclosure of the ANPR data was because the Information Officers at Essex Police were institutionally obliged to prevent disclosure that would confirm gross misconduct amongst their work colleagues.

The overriding significance of police corruption in the public interest balancing test was only made known to the Appellant AFTER the decision was made to strike out the case. It is tantamount to advising a swimmer to wear a life jacket after they have tragically drowned.

More disturbingly, in a recent FOIA response from Essex Police (Ref: 4701, 13/12/2012) in relation to a request to know the employment status of senior ANPR manager, Essex Police Inspector Russell Bush. Who the IPee have confirmed " ..• tendered false evidence at Mr Smith's trial." It was confirmed Police Inspector Russell Bush had be~demoted to Police Sergeant.

The senior Information Officer Nigel Amos also proclaimed: "I do not feel that it is in the public interest to continue to employ our resources in considering and responding to your requests for information about this matter, and I must inform you that any further request relating to yourself, the investigation against you, and any persons connected with that investigation, are likely to be regarded by Essex Police as vexatious within the meaning section 14 of the FOI Act in which we will not be obliged to comply with that request."

It is quite bizarre that the author of this piece has a learned Judge of the First-tier Tribunal advising him to resubmit a fresh FOIA request which is to include the new information of police corruption and simultaneously a senior Information Officer at Essex Police threatening to unjustly boycott any future FOIA requests from a priso~who has been wrongly convicted of a crime that. Did Not Exist! The ANPR fiasco continues. Will keep you updated.

Terry Smith, A8672AQ, H M Prison Swaleside, Eastchurch, Sheerness, Kent, ME12 4AX.

Turkish Policeman who Killed a demonstrator Could not Claim Impunity

In today's Chamber judgment in the case of Aydan v. Turkey(application no. 16281/10), which is not final", the European Court of Human Rights held, unanimously, that there had been:

three violations of Article 2 (right to life) of the European Convention on Human Rights, and

a violation of Article 6 § 1 (right to a fair hearing within a reasonable time) on account of the length of the proceedings.

The case concerned the accidental death of a passer-by who was shot by a gendarme on the fringes of a violent demonstration. The Court held that it was not established that the force used to disperse the demonstrators, which had caused A. Aydan's death, had been necessary; that the State had failed in its obligation to secure the right to life; and lastly, that the courts should have carried out more detailed inquiries or reassessed the evidence in order to take account of the contradictions between witnesses' statements.