Ched Evans Continues his Fight for Justice and to Clear his Name

On 20 April 2012 Chedwyn Evans, a 23 year old professional footballer, was convicted of rape at Caernarfon Crown Court. He is currently serving a 5 year prison sentence. Chedwyn Evans maintains his absolute innocence and his family, friends and many who know the true facts of the case believe that his conviction was a gross miscarriage of justice.

The long journey to clear Ched's name starts a new chapter with the instruction of a new legal team. *Liberton Investigations, a specialist investigations company, headed by ex- senior detective Russ Whitfield have been working on behalf of Ched and his family reinvestigating the prosecution case and the North Wales Police enquiry. Mr Whitfield says 'Having reviewed this case and caused further enquiries to be made, I have some investigative concerns about the conviction. It appears some aspects of the case that were relevant to Ched's defence may not have been fully explored pre-trial" . A recent media appeal was made by Ched's family and friends asking for witnesses to come forward.

David Emanuel of Garden Court Chambers, a leading appeals lawyer with an outstanding reputation for Court of Appeal work and a successful record of CCRC applications, has been instructed to consider all the papers including possible fresh evidence with a view to making an application to the Criminal Cases Review Commission. There is real hope that this will lead to a further appeal. The family of Ched would like to thank members of the public for their continued assistance and messages of support.

*Liberton Investigations are continuing to review all aspects of the original investigation, new evidence and the circumstances surrounding the original trial. We are very aware of the sensitivities surrounding this case but every opportunity must be explored to ensure Justice is done for all parties concerned. Although available prior to the original trial, we are still discovering relevant material which was incredibly never fully explored at the time and hence did not feature during the trial. Had all these matters been placed in front of the jury it is our professional opinion that the outcome may have materially differed. Everything collected and examined so far has been given to the new defence team who are drafting the submission to the Criminal Complaints Review Commission, the only avenue now open to Ched to gain a second appeal. One of the most important new discoveries concerns who knew what, and when, together with how this did not feature in the original trial or subsequent appeal. We are being deliberately cryptic until the submission to the CCRC is complete. We continue to urge any person with new information or information that persons' feel was not fully explored at the time of the original investigation to come forward and help Ched in his quest for justice.

Ched Evans: A4677CN, HMP Wymott, Ulnes Walton Lane, Leyland, Preston, PR26 8LW

Hostages: Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Romero Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, 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, Carl Kenute Gowe, Eddie Hampton, Tony Hyland,

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MOJUK: Newsletter 'Inside Out' 462 (30/01/2014)

Convictions Quashed Over Withheld Evidence of Police Spy *Rob Evans,Guardian, 21/01/14*

A group of environmental protesters have had their convictions overturned after senior judges ruled that crucial evidence gathered by an undercover police officer was withheld from their original trial. The 29 protesters were convicted in 2009 after they blocked a train carrying coal from going into the Drax power station in North Yorkshire.

On Tuesday 21/01/14 the lord chief justice, Lord Thomas, and two judges quashed their convictions after it was admitted that the involvement of Mark Kennedy, the undercover police officer who infiltrated environmental groups for seven years, had been hidden. Thomas said there had been "a complete and total failure" to disclose evidence that would have been fundamental to the activists' defence. He said reasons for the failure remained unclear.

Earlier, Brian Altman QC, for the prosecution, told the court of appeal that the failure had been catastrophic, and it was unclear whether the fault lay with the police or prosecutors. The verdict brings to 56 the number of protesters who have been wrongly convicted or prosecuted as a result of undercover police operations.

The appeal court heard that Kennedy attended a private meeting where the 29 campaigners formulated their protest. He hired a van and drove some of them to the protest. The court was told that police had conceded after the original trial that Kennedy had been "the sole driver" for the protest against climate change, raising the possibility that it would not have gone ahead if he had not been involved. Thomas ruled that Kennedy's role should have been disclosed to the activists as it would have enabled their lawyers to argue at the original trial that the spy had been an agent provocateur or that there had been an abuse of the legal process. The 29 were charged with obstructing engines or carriages on railways, which is an offence under the Malicious Damage Act 1861.

One of the acquitted campaigners, Robbie Gillett, said: "In our trial in 2009, the police and the Crown Prosecution Service deliberately withheld evidence from the jury. They're not interested in providing a fair trial to the political activists which they spy upon. "This is political policing. It is an invasion of people's lives, a waste of public money and from the police's perspective, a legal failure."

Thomas suggested that those responsible for the misconduct should be required to pay for costs of the wrongful prosecutions. The judge said he would decide whether police or prosecutors should pay. Kennedy was unmasked by activists in 2010 after they became suspicious of his true identity, sparking a series of revelations over the work of undercover officers who have been deployed to infiltrate political groups since 1968.

In another case, police and prosecutors withheld evidence of Kennedy's infiltration from 26 campaigners who planned to occupy Ratcliffe-on-Soar power station in 2009. Twenty had their convictions quashed, and the prosecutions of another six were dropped.

On Tuesday, Altman described some of the covert work of the spy who had transformed his appearance and pretended to be a committed environmental activist using the alias Mark Stone. He read extracts from the notebooks of the long-haired, tattooed spy recording how he had been approached by an activist to see if he would be prepared to drive some campaigners to a protest. A day later another campaigner told him that a group of activists were going to delay the train going into the Drax power station.

Kennedy, who cultivated his image as an activist with money to spare and earned himself the nickname Flash, used £250 of the state's cash on the hire of a van. Early on 13 June 2008 he used the van to drive some of the activists to the protest and dropped them off. Within minutes he was on the phone to his police handler reporting what the activists were doing. At the original trial, some of the group were ordered to do 60 hours of unpaid work and others were given conditional discharges.

During the protest the freight train was stopped by two men posing as Network Rail staff, wearing orange jackets and hard hats, who held up a red flag. Moments later, the train and a nearby bridge were scaled by the protesters wearing white paper boiler suits and carrying banners. The protest lasted 16 hours, causing delays to numerous freight and passenger services. The clean-up operation cost Network Rail nearly £37,000. Defendants told jurors they did not believe they were doing anything criminal because they were trying to prevent climate change.

The court of appeal hearing in London came after an announcement in 2012 by the then director of public prosecutions Keir Starmer that there were concerns about the safety of convictions in the Drax case. Starmer said he was inviting those convicted after the Drax protest to appeal after a review of the case by a senior CPS lawyer and after taking advice on the safety of the convictions from a senior QC.

On Tuesday Lord Thomas also asked counsel to prepare written submissions on the question of who should be responsible for the substantial legal costs incurred, to be decided at a later date. Querying why the Ministry of Justice should foot the bill, he commented: "This is a plain case of fault, either by the West Yorkshire police or the CPS, so why shouldn't they pay?"

After Tuesday's ruling, John Sauven, executive director of Greenpeace, said: "The sheer scale of covert policing against legitimate organisations is corrosive to the democratic values and principles we hold dear. "I join with others including Neville and Doreen Lawrence to demand that the government hold an independent judge-led inquiry into who was responsible for instructing these officers to spy on peaceful, legitimate organisations."

Learning From PPO Complaints - Use Of Force On Prisoners

Lesson 1 – Ensuring force is necessary

It is important that staff and managers understand that a refusal to obey a 'lawful order' is not, in itself, sufficient to justify the use of force. Force should only be used where it is necessary to prevent a risk of harm. Staff should also be clear about what harm they aim to prevent; force is more likely to be justifiable where there is a risk of serious physical harm to the prisoner or others.

Lesson 2 – Ensuring no more force than necessary is used

Pain compliance techniques in particular should only be used where there is a clear justification, and this must be set out in detail in the Use of Force paperwork.

Lesson 3 – Ensuring sufficient detail on Use of Force forms

The Annex A statements must provide sufficient detail to justify the use of force. It is particularly important that the events leading up to the use of force are described, and that a clear explanation is given of why force was necessary. Attempts to de-escalate the situation should be described in detail. If de-escalation was inappropriate or impossible, the reasons for this should also be made clear.

Lesson 4 – Ensuring strip searching is justified

A decision to strip search must always be considered and justified separately from the decision to use force.

Lesson 5 – Ensuring CCTV and video evidence is retained.

When a prisoner makes a complaint about a use of force, it is important that any relevant

harm and suicide monitoring programme, was able to take her own life. However the failings in this case lie in a criminal justice system that imprisons women like Amy in institutions fundamentally ill-equipped to deal with their complex needs. What is needed is a complete overhaul with the way women are dealt with by the criminal justice system, and investment in community-based alternatives. As we have said time and again these deaths will continue until we stop imprisoning women into institutions that cannot keep them safe."

The family was represented by INQUEST Lawyers Group members Trudy Morgan from Hodge Jones and Allen solicitors and barrister Philip Dayle of No5 Barristers Chambers.

Worst Ever Case of Non-Disclosure - No Police to be Prosecuted

"This is a very bad case of non-disclosure. It bears similarities to Maxwell [2011] 1 WLR 1837, [2010] UKSC 48, [2011] 2 Cr App Rep 31. It is to be hoped that the appropriate measures will be taken against those responsible for what appears to us to be a serious perversion of the course of justice, if those measures have not already been taken. It is to be hoped that lessons will be learnt from this shocking episode. Justices: Hooper, Smon & Stalden

[CPS are more than happy, sometimes downright eager to use 'Hearsay Evidence' against alledged criminals but as in this case, won't under any circumstances use 'Hearsay Evidence' against, criminal wrongdoing by the police]

Kevin Nunes Murder Case: Officers 'Will Not Be Charged'

The Crown Prosecution Service (CPS) has said there is insufficient evidence to charge five serving or former police officers over their roles in a murder investigation. The CPS said a decision in relation to a sixth officer would be made later.

Kevin Nunes was shot dead in Staffordshire in September 2002. Five men jailed for murder were freed on appeal after it emerged concerns over the credibility of witnesses were not disclosed to the defence. Police believe Mr Nunes was a drug dealer who was shot in an execution-style killing in Pattingham after straying into another gang's territory.

Five men from the West Midlands jailed in 2008 were released after an appeal hearing in March 2012, prompting an investigation into the police's handling of a key witness and how disclosure was dealt with afterwards. The officers investigated go up to the rank of Detective Chief Inspector, although three of the five have since retired, the Independent Police Complaints Commission (IPCC) said.

'Hearsay Evidence': The CPS said it concerned allegations that officers dealing with a protected witness and their immediate superiors had perverted the course of justice by failing to record and report that the witness had potentially stolen a sum of money. Simon Orme, a specialist lawyer from the CPS, said: "To prove an offence of perverting the course of justice the prosecution would need to demonstrate that the failure to document the potential theft was a deliberate act intended to pervert the course of justice. "The only evidence to support the allegation that the five officers conspired together to pervert the course of justice by collectively agreeing to omit details of alleged theft is statements allegedly made by one officer to another. "I have determined that these would not be admissible as hearsay evidence and there is no other evidence to support the allegations."

The IPCC, which carried out the initial investigation, said it would be submitting files to the CPS on nine further officers. The nine are believed to include four senior officers still serving with forces, including: Another four of the nine are retired from Staffordshire Police, the IPCC said. Regardless of the CPS's decision, officers could still face misconduct proceedings, the IPCC said, although it added that a decision would be taken after the CPS had concluded its investigations.

as ' the model for the future'. We need to expose this model as the fraud it undoubtedly is and all of G4S' deeply harmful activities. Activists from various Stop G4S campaigns are coming together for a UK-wide gathering in Sheffield on February 8. Come along and share, network, strategise and plan how to build an even more effective Stop G4S campaign. The gathering is open to all who oppose G4S and want to work with others to Stop G4S from taking over public services for private profit while violating human rights. If you are planning to come please let us know by sending a mail to <mailto:stop-g4s@riseup.net>stop-g4s@riseup.net.

Jury Rules 24 Year Old Amy Friar Took Her Own Life At HMP Downview

INQUEST Press Release Friday 24 January 2014

The jury at the inquest into the death of Amy Friar at HMP Downview has returned a conclusion that she took her own life. Amy was found hanging in her cell at HMP Downview on 30 March 2011. She had a long history of mental ill health, depression and self harm. Her father committed suicide when she was very young. She had also been a victim of rape and domestic violence. Amy had a history of drug dependency and had served several short prison sentences for drug offences. Amy was 24 years old at the time of her death and had a daughter who was 8 years old.

Amy was sentenced in August 2010 and was transferred to HMP Downview a week later. On 14 March 2011 a former prisoner with whom she had been having a relationship was found murdered in the community. Because of her distress, the prison began suicide and self harm management which involved prison officers checking on her twice an hour when she was locked in her cell.

A decision was then taken to reduce her observations to night time only. A senior prison officer raised concerns about the absence of daytime observation. The prison officer receiving this information decided to address the issue in a review meeting to be held the next morning. The meeting was then rescheduled for the afternoon. As a consequence, there were no observations in place for the lunchtime of 30 March 2011 when Amy was found hanging in her cell.

According to a wealth of academic and official research and the comprehensive review carried out by Baroness Corston, women are five times more likely than men to self harm in prison. This is in part due to their complex histories of abuse, drug dependency and poor mental health. Despite this, the head of the safer custody team stated in her evidence to the inquest that the level of risk to the prisoner depended on the individual rather than their gender, demonstrating a worrying lack of understanding of the well known and documented vulnerabilities of women prisoners. The Coroner has stated he will make a Regulation 28 report to prevent future deaths concerning the emergency response codes used by prisons.

Amy's mother Karen Gammon said: "This inquest has been a very difficult experience, made harder by the lack of financial assistance from Legal Aid, and initially the prison HMP Downview, which meant that I was not able to attend and hear all the evidence. Although I am disappointed with the brevity of the verdict, I have been reassured by the number of changes the prison made following Amy's death, including a complete overhaul of their self-harming and suicide prevention measures. For other bereaved families who are in this same sad situation, I would encourage them to keep pushing for changes, to ensure prisons do learn and continue to lower the rate of deaths in custody. If the changes made following Amy's death save one life, then this process will be worth it."

Deborah Coles, co-director of INQUEST said: "This is another entirely preventable death of a young mother who had complex mental health needs and who, despite being on a self

video or CCTV footage is retained until the prisoner has had the opportunity to pursue all internal and external avenues of complaint. Relevant footage includes footage of events before and after the incident, even where the use of force itself has not been captured on film.

Lesson 6 – Using all the available evidence.

Circumstantial and hearsay evidence (including previous complaints about individual members of staff) should be considered where appropriate.

Lesson 7 – Conducting internal investigations.

Complaints about use of force will generally require a formal investigation. A written record should be kept of the evidence considered, who was interviewed and what they said, and the reasons for any conclusions. It is important that the investigation considers the key issue of whether the use of force was necessary, reasonable and proportionate. A manager should inform the prisoner about the investigation and conclusions, preferably in person.

Lesson 8 – Ensuring prompt police involvement when requested.

Where a prisoner requests police involvement after a use of force, this must be facilitated without delay. It is reasonable to ask prisoners to make such requests in writing, but a request included in a COMP1 complaint should be treated as a written application.

PSO 1600 states that "use of force will be justified, and therefore lawful, only:

- If it is reasonable in the circumstances
- If it is necessary
- If no more force than is necessary is used
- If it is proportionate to the seriousness of the circumstances

"Staff should always try to diffuse conflict, where possible, and importantly the policy says that the "best defensive weapon that staff have is their verbal and non-verbal communication skills"

Nigel Newcomen, Prisons and Probation Ombudsman said: "My office has an important role to play in independently investigating allegations of physical abuse of detainees by staff. These investigations can ensure staff are held accountable for any misbehaviour but, equally, can provide reassurance that the use of force by staff in a particular case was appropriate and necessary for the preservation of security and safety. Accordingly, complaints about use of force are among the most serious issues that come to my attention and are also some of the most complex to investigate.

"Given the nature of prisons, the use of force must always be available to staff. But the physical restraint of prisoners is only lawful if it is reasonable, necessary, involves no more force than required and is proportionate to the seriousness of the circumstances. In my view, use of force should always be a measure of last resort, to be deployed only when all other avenues and opportunities for de-escalation have been exhausted.

"In complaints about this issue, the question of whether force was used or not is rarely in dispute. The most usual question my investigations have to answer is whether it was justified and met the rigorous tests required by the law. Given the particular vulnerability of detainees – and the risk of malicious allegations against staff – in the closed and hidden world of custody, there is no more important an area to be subject to objective and independent scrutiny.

"This bulletin draws a number of lessons to be learned about the use of force. These include the need for staff to demonstrate clearly that force was reasonable, necessary and proportionate; the importance of proper record keeping; the retention of relevant CCTV evidence; the undertaking of thorough internal investigations; and ensuring the involvement of the police where a prisoner requests it. Learning these lessons may assist in minimising unnecessary use of force and thus better protect both prisoners and staff.

Reasonable: Factors to be taken into account when deciding what is 'reasonable' will be

things such as the size, age and sex of both the prisoner and member of staff concerned in the use of force and whether any weapons are present.

Necessary: It is not enough that a prisoner be given a 'lawful order' to do something and has refused to do so. It is important to take into account the type of harm that the member of staff is trying to prevent: risk to life, risk to limb, risk to property or risk to the good order of the establishment. It is clearly easier to justify force as necessary if there is a risk to life or limb.

Proportionate: There should be a reasonable relationship of proportionality between the means employed and the aim pursued. Action taken is unlikely to be regarded as proportionate where less injurious, but equally effective alternatives exist.

Is force necessary?: Often the incident immediately prior to the use of force was the prisoner's refusal to comply with an order. PSO 1600 is clear that this alone is insufficient grounds to initiate force. Force should only be used when it is necessary to prevent harm and it is important to take into account the harm that the member of staff is trying to prevent – risk to life, limb, property or the good order of the establishment. The PSO goes on to say that it is clearly easier to justify force as necessary if there is a risk to life or limb. Our investigations suggest that this is not understood by all staff or managers and that the simple fact of non-compliance is too often seen as adequate justification for the use of force.

Case study 1: During the lunch hour, while prisoners were locked in their cells, staff went to Mr A's cell and told him that he was required to move to another wing. He was willing to move but asked to be allowed to pack his own possessions because some of his property had gone missing last time he had been moved. He was told that this was not possible and was given a direct order to move. When he refused, he was restrained using C&R and moved forcibly.

Our investigation established that, prior to the use of force, Mr A was sitting on his bed talking to staff and, although he had been refusing to move, he had not been aggressive or threatening. Force was used solely to enforce compliance with the order. We considered that there was no reason why Mr A should not have been allowed to pack his property and we were satisfied that, if he had been able to do so, he would almost certainly have moved voluntarily. He posed no risk to staff or property and, as other prisoners were locked in their cells at the time, he posed no risk to the good order of the wing. We concluded that the use of force had not been justified as there had been a "less injurious, but equally effective" alternative.

*No more force than necessary is used***:** Most complaints about alleged assaults by staff are in the context of a restraint. By their very nature, C&R techniques involve force and will be painful if the prisoner is not compliant with the instructions they are given by staff. Being forcibly restrained is likely to be traumatic and to be experienced as an assault. However, this does not necessarily mean that the use of force was unjustified or excessive. One area where we have expressed concern is the use of pain compliance techniques. There are specific, approved techniques for pain compliance such as the Mandibular Angle Technique, which uses a pressure point below the ear. The justification for such techniques is to end resistance quickly. However, their use on young people is particularly controversial and the Ombudsman has been very critical where it cannot be demonstrated that a non-painful alternative could not have achieved the same outcome. Whatever the prisoner's age, in the Ombudsman's view, it is best practice for use of force in general, and pain compliance in particular, to only be used as a last resort when all other avenues have demonstrably been exhausted.

Case study 2: A young offender, Mr B, refused an order to go into his room. He became aggressive and C&R was used to place him in the room. The Ombudsman concluded that

nology with "one of the greatest remaining paper-based systems in the country". Ms Janes says it is essential the Parole Board's resources are at least trebled to meet the predicted increase in hearings. She added: "It's ironic as the Parole Board seemed to be getting itself on an even keel by reducing delays [for hearings], but this feels like all of that progress is going to be undone."

Mark Day, head of policy at the Prison Reform Trust, said: "On the grounds of fairness and justice, the Supreme Court has made clear the right of most prisoners to an oral hearing by the Parole Board. This will require a significant increase in resources for the Parole Board, who are already facing a growing backlog of cases as a result of the rapid growth in indeterminate sentenced prisoners. England and Wales have by far the highest number of indeterminate sentenced prisoners in Europe – more than France, Germany and Italy added together – with a growing number held beyond their tariff expiry date."

Giving evidence to the House of Commons' Justice Select Committee last month, Parole Board chairman Sir David Calvert-Smith said: "All bets are off now until we sort out the consequences of Osborn [the Supreme Court case]. There are bound to be delays in the short term." He added that what have been traditionally three people on any one hearing panel might have to be reduced to two or even one. When the Parole Board was set up, it was all on paper. You just got a letter from the minister saying, 'Sorry, you have not got parole this time round', signed by the Home Secretary. We have developed to oral hearings from paper." A Parole Board spokeswoman said: "We're in early days [post-Osborne] and are trying to understand what the impact will be and what the changes will mean."

Convictions Joint Enterprise/Hearsay Evidence Upheld By Appeal Court

Shelton Harvey, Emmanuel Laurencin, Yasemin Tutar and Levi Defreitas were convicted on 21 May 2012 at Snaresbrook Crown Court of offences of aggravated robbery, possession of a prohibited firearm and ammunition, and (Defreitas only) intimidating a witness and perverting the course of justice. The doctrine of joint enterprise was used to link them to the crimes.

Key evidence against them was the statements of Asha Charles and Marlon David who are alleged to have been suspects themselves. They refused to testify at the trial, claiming that they were in fear of the defendants and their supporters. Judge Pardoe refused defence applications to admit evidence of the serious criminal offences and criminal associations of Charles and David. At the appeals against convictions on all counts on 24 January 2014, the court's judgement given by Lord Justice Adrian Fulford, formerly of Michael Mansfield's Tooks Court Chambers, upheld the trial judge's decisions and refused the appeals.

Full Judgement available <http://www.bailii.org/ew/cases/EWCA/Crim/2014/54.html>. . .

Stop G4S Campaign Convergence

11am-5pm, Saturday Feb 8, Quaker Meeting House, 10 St James Street, Sheffield, S1 2EW

G4S manage. HMPs, Birmingham, Altcourse, Oakwood, Parc, Rye Hill, Wolds; IRCs Brook House & Tinsley House. G4S continues to hit the headlines not only with its incompetence but also its abuses of human rights in the UK, Palestine, South Africa and beyond. But resistance to G4S is also gaining ground and the company is losing contracts with universities and companies as its track record of abuse is exposed. Campaigners are calling for corporate manslaughter charges after an inquest into the death of Jimmy Mubenga, who died at the hands of G4S guards, recorded a verdict of unlawful killing. But there is still work to do. The Government still regards G4S prison services, in spite of the disturbances recorded there

Mr Hague's ability to credibly raise human rights concerns with other governments would be gravely damaged were Britain to withdraw from the European Convention on Human Rights, a dangerous and misguided policy position endorsed by some of his ministerial colleagues. Those who suffer abuses around the world need Britain to consistently and strongly champion international human rights, and the institutions that help to further them.

New Inquest Ordered Into Rubber Bullet Death

The Attorney General has ordered a fresh inquest into the death of a Londonderry man who was hit by a rubber bullet 41 years ago. Thomas Friel, 21, was shot in Creggan on 18 May 1973 after returning from a night out. He died four days later. The new inquest has been ordered after fresh documents were uncovered. One of the documents reveals that the Ministry of Defence knew that the bullets were more dangerous than had previously been admitted. Another says that this type of bullet converted into "a potentially lethal weapon" in certain circumstances. The inquest will also examine a new pathology report, commissioned by the Historical Enquiries Team (HET), that casts some doubt on the findings of the original inquest.

Parole System Failing Prisoners and Close to Being Overwhelmed Mark Leftly, Indpendent

Staff cuts together with a groundbreaking Supreme Court ruling about the way parole hearings are conducted are causing expensive delays. As a result, lawyers are warning, the Parole Board is close to being overwhelmed. The problem has been compounded after video equipment used to conduct parole hearings repeatedly failed. A ruling in October that prisoners were entitled to face-to-face hearings means the Parole Board must now conduct thousands more oral rather than paper-based hearings, exposing its lack of manpower after cutting staff last year.

Claire Bassett, the Parole Board's chief executive, has told MPs the ruling has "huge" implications which she forecasts will lead to the number of oral hearings increasing from about 4,500 a year to 12,000 to 14,000. The oral hearings are considered to be fairer than cheaper paper-based applications for parole – which the board was previously able to insist upon in the vast majority of cases – as the inmate can appeal his or her case in person. This comes at a time of cost-cutting in which Parole Board staff numbers have been reduced by nearly one in five. Many of those staff supported 232 Parole Board members who are paid per hearing and include psychiatrists and psychologists. To cope with the sudden surge of oral hearings, many are now taking place by video link from the Parole Board's Grenadier House headquarters in London to prisons around the country. But reliability issues have dogged the system.

Criminal defence solicitor Simon Rollason said two of his clients have had their hearings postponed by up to four months because the video technology broke down on the day, adding that the Parole Board was now "inundated". He said the system was "close to crisis" and that the Ministry of Justice must increase the board's £12.5m funding to hire additional parole board members. Mr Rollason said: "More members really has got to be the way forward to reduce the backlog of people who should be released from custody who are eligible for parole. I've got a gentleman where all the indications were that he should be released, but the video link failed on 3 January. His hearing will now take place in May at a cost to the taxpayer. Given it costs £22,000 to keep someone like him in jail for a year, that's nearly £10,000 extra just for him. Using technology is a false economy because it is failing."

Laura Janes, legal co-director at the Howard League for Penal Reform, added that the video system has "proved to be pretty chaotic" because of the difficulties of integrating sophisticated tech-

the use of force had been justified but expressed concern that a pain inducing technique was used in the course of the restraint. Although Mr B was resisting strongly, staff were wearing full protective clothing at the time of the restraint and the Ombudsman considered that the risk of serious physical harm was minimal. In the circumstances, the Ombudsman was not satisfied that a pain compliance technique was either necessary or proportionate.

Use of Force paperwork: Mr B's case also illustrates another common issue. Following any use of force the staff involved are required to complete a Use of Force form, including a written account (known as an Annex A statement) recording the reasons for the use of force and describing the incident. It is important that these statements contain a detailed account of what happened and why, since they may be the only evidence available. Although the member of staff recorded that he had used a pain compliance technique on Mr B, he provided virtually no explanation for its use, and most of the other staff involved did not mention it at all in their statements. As a result, there was insufficient evidence to justify the use of a pain inducing technique. In general, the Annex A statements seen by the Ombudsman give a detailed account of what happened during the restraint – for example, which member of staff took control of which part of the prisoner's body – but often lack sufficient detail about why it was thought necessary to use force. For example, staff may employ vague stock terms such as "non-compliance" or "de-escalation" without explaining whether the lack of compliance was physical or merely verbal, or exactly what was done to try to de-escalate the situation. Without this detail the statements may not provide sufficient evidence to justify the use of force.

Strip searching: Another theme that emerges from the complaints is the use of strip searching by force. A strip search is one of the most intrusive actions that can be taken against a prisoner. For this reason, Prison Service policy2 rightly requires that such searches should only take place where there are high risks, serious concerns, and good reasons to suspect that a prisoner has secreted items. It does not follow that, because force has been used, a strip search is automatically justified. The decision to strip search, and especially to do so by force, must always be considered and justified separately from the decision to use force on the prisoner.

Case study 3: Mr C was strip searched by force following a restraint in a high security prison. The investigation found no evidence to suggest that a risk assessment was conducted to consider whether it was necessary to do a strip search – there was no suggestion that Mr C was concealing a weapon, for example – and the Ombudsman concluded that it was most likely that it was done as a matter of routine. There was also no evidence that a risk assessment was carried out to consider whether it was necessary to strip search Mr C by force, or that any attempt was made to secure his compliance first, and the Ombudsman concluded that it was most likely that this was also done as a matter of routine. Staff did not appear to recognise that the decision to use force, the decision to strip search and the decision to strip search by force were three separate decisions. Each needed to be justified and the reasons recorded.

CCTV and video evidence: An important source of evidence following use of force may be CCTV or video footage. A planned use of force should always be recorded on video. Although it may not always be possible for the video to capture everything that happens, video has the advantage of including sound recording. Sound can often provide useful evidence about the behaviour of prisoners and staff, even when the visual record is obscured. For example, it may be possible to hear if staff are talking calmly and professionally and trying to take the heat out of the situation, or if they are shouting and getting angry. Where the use of force is unplanned – which is often the case – CCTV evidence can be especially important. However, all too often we have to investigate cases where the CCTV footage has not been retained.

This tends to have happened for one of two reasons. First, prisons may destroy CCTV recordings routinely after a set period, for data protection reasons, without giving sufficient thought to whether there is an on-going complaint or whether it might be required as evidence in future. Secondly, CCTV footage may be destroyed because it is not thought to be relevant. This typically happens where the use of force took place in a cell where there is no CCTV coverage. However, although the actual use of force may not have been captured on CCTV, the events before and after the incident may have been captured and can provide valuable evidence about the behaviour of staff and prisoners.

Case study 4: Staff said they had used force because Mr D had become very aggressive when he arrived in the segregation unit, and had then lunged at them when placed in his cell. Mr D disputed this and said staff had attacked him even though he was compliant. The restraint itself took place in the cell and was not captured on CCTV. However, there were CCTV cameras on the landing. The footage from these would have shown Mr D's behaviour when he arrived in the unit and immediately prior to being placed in his cell, but unfortunately the recording was destroyed. In the absence of any evidence to support Mr D's account, the Ombudsman did not uphold his complaint.

Case study 5: CCTV footage provided useful evidence when Mr E complained about use of force by staff. Footage from immediately after the use of force showed a member of staff slapping one hand into the other in what appeared to be an aggressive gesture. Although this was not conclusive in itself, taken together with other evidence it contributed to our finding that the officer concerned had not behaved in a professional manner during the use of force. Timings from the recording also showed that, contrary to what was recorded on the use of force forms, staff could not have spent minutes trying to de-escalate the situation before resorting to force. The Ombudsman therefore upheld Mr E's complaint.

Other evidence: Where there is no CCTV or video evidence, it can be particularly important to consider whether there is any relevant circumstantial or hearsay evidence. For example, if a complaint is made about the behaviour of a particular member of staff, it may be appropriate to consider whether similar complaints have been made about that individual in the past that could suggest a pattern of behaviour. In the case of Mr E, the investigation found that the officer he complained about was the subject of a significant number of complaints, both before and after the incident in question. The officer was also on poor performance procedures at the time of the incident because of concerns about his behaviour. This evidence contributed to the decision to uphold Mr E's complaint.

Unless such material is taken into account, often the only evidence in investigations into complaints about the use of force can be the prisoner's account of the incident versus the accounts given by staff. In such cases, there may be no option but to conclude that there is insufficient evidence to reach a view about what happened, which is unsatisfactory for both prisoners and staff.

Internal investigations: When a prisoner makes a formal complaint about a use of force incident the prison should carry out an internal investigation in line with Prison Service policy3. Given the potentially serious nature of the complaint, the Ombudsman's view is that this should normally be a formal investigation, involving interviews with the prisoner and the staff involved, as well as a review of the Use of Force paperwork, any photographic or medical records of any injuries sustained, and any available CCTV or video footage. It may also be necessary to interview witnesses.

The records seen by the Ombudsman show some of the internal investigations undertaken are excellent. However, too often, they are flawed in one of two ways. First, there are

Britain not Consistent in Fighting Human Rights Abuses

What are the implications of this report closer to home? William Hague has repeatedly claimed that human rights are at the heart of Britain's foreign policy, and that ministers and diplomats press human rights concerns "whenever and wherever they arise".

While there are many areas where Britain is doing excellent work on human rights, for example on issues like sexual violence in conflict or combating the use of the death penalty, there are other areas where UK policy falls significantly short. Three in particular are worth highlighting.

Firstly, there are a number of important countries where the British government appears very reluctant to press human rights concerns with sufficient vigour or consistency. Saudi Arabia, China and Uzbekistan all fall into this category. Over the last year, the Saudi authorities have shown growing intolerance towards citizens advocating reform. Eight prominent human rights activists have been convicted on broad, catch-all charges, such as "trying to distort the reputation of the kingdom", and Saudi women and girls continue to suffer systematic discrimination through the male guardianship system.

Yet the British government's response to these abuses is extremely muted. In China, British ministers have lauded the country's economic achievements and the potential for greater trade and investment. But they have failed to apply sustained pressure over massive ongoing human rights violations, including repression in Tibet and Xinjiang, the detention and arrest of activists, and severe restrictions on freedom of expression and association.

In Uzbekistan, the British government has reached a deal with Tashkent to "gift" certain left-over military equipment from the war in Afghanistan, but said precious little about the country's truly abysmal human rights record, including a criminal justice system in which torture is endemic. In these three cases and others the British government, consistent with its declared policy, should be pressing human rights concerns much more strongly.

Secondly, the British government is failing to fully adhere to its obligations under the UN Convention on Torture, a point highlighted last year by the UN Committee on Torture. In a shocking breach of previous assurances, the Government announced last month that it is shelving plans to undertake a proper judge-led inquiry into British involvement in overseas rendition and torture. This is despite the fact that Human Rights Watch uncovered evidence in September 2011 that British security services were complicit in the rendition of Sami al-Saadi and Abdul Hakim Belhaj to Libya under Muammar Gaddafi, and in the torture of British citizens and residents in Pakistan between 2004 and 2007.

The British government has said that the Intelligence and Security Committee should have responsibility for further investigations. Yet this body has a poor track record of holding the security services to account. David Cameron has rightly said that these revelations have "stained our reputation" as a country. But this broken promise over the torture inquiry will do nothing to erase that stain or restore Britain's reputation.

Thirdly, British government ministers should curb their frequent and ill-judged attacks on the European Convention on Human Rights (ECHR). Drafted in the 1950s with the support of Winston Churchill and extensive British involvement, the Convention has proved its worth over the past 60 years in protecting and promoting rights for people across 47 countries in Europe. Its case law has helped to end commonplace torture in custody, promote equal treatment for women and lesbian and gay people, ban corporal punishment in schools, end abusive interrogation practices by the British army in Northern Ireland, and uphold the freedom of the media to publish articles in the public interest, against the wishes of the authorities.

subject to section 101(3) of the 2003 Act. He submitted that the essential matters in issue in Laing's case were (i) whether he was at home in Walsall at the time of the offences; and (ii) whether someone else was in possession of his 560 phone at the time. He further submitted that the Jury was aware that Laing had a conviction for possession of a firearm which was loaded and that he had relatively recently been released from a prison sentence. They were also aware that he had used the "560" phone for his drug dealing activities. He thus argued that gang evidence added little to the prosecution case. He pointed out that in the "Propane" video there was a lyric which included the words "Batty Boys, snitches and cops will get murdered" that he said was highly prejudicial. He contended that the probative value of the gang evidence was limited and its prejudicial effect was very great.

47. In his ruling, the judge said: "[W]hile it is undoubtedly true that the material underlines the gang connotations of this case, I do not consider that its admission does or may so undermine the fairness of the proceedings as to require its exclusion. What occurred outside the Bartons Arms on the night of the 9th August was most unusual. Police officers were fired on by men with handguns in indiscriminate fashion. That some of those alleged to have been involved in this activity had demonstrated allegiance to groups whose apparent views matches the very kind of violence carried out on 9th August is highly relevant. Its probative value is potentially very significant".

48. We agree with that analysis. Some of the material was undoubtedly prejudicial, but it was potentially highly probative. The judge was entitled not to exclude it. Albeit in the first trial and not before this jury, we point out again that Shah also featured in the "Illution" video making "6" gestures but was acquitted by the jury who tried him and who received similar directions as to the use to which this evidence could be put.

49. Finally, Gray appeared on "Illution", "Verse of the Sword", and "B6 Slash". He played an active part in each of them. On the last of the videos, he is seen making signs as if using a gun. In "Half Stepping" in which he appears, the lyric refers to gangs and guns. In "Don't get caught slipping" there is clear reference to the "MOB" squad and it features Gray making a gun sign and the "6" sign. On "Let me tell you" Gray is the vocalist and the lyric appears to refer to "B6" and the video involves significant reference to guns with Gray imitating the firing of a gun at one point.

50. On behalf of Gray, Mr Bartfeld argued that the prejudice was very substantial. He said that the natural reaction on looking at the videos is one of horror. He submitted that it would be very difficult for a Jury to approach the case in a balanced way.

51. The judge dealt with this submission in this way: "Taking all six videos together there is significant material to show allegiance to groups whose motivation is wholly consistent with the events at or near the Bartons Arms. It goes substantially beyond that which is otherwise available in Gray's case. I do not consider that it is superfluous to the prosecution case as is argued on behalf of Gray."

52. We conclude that the judge was in a good position to determine whether the evidence should be excluded under section 101(3). He had already presided over the first trial and, thus, was well aware of the fact that the jury had not been overborne by the prejudice that flowed from the admission of gang evidence against Shah (who appeared in the "Illution" video making "6" gestures). He was entitled to admit the evidence in the second trial.

53. In that context, it is important to remember that an assessment of the fairness of the proceedings should not only embrace consideration of fairness to the defence but also fairness to the prosecution. The second aspect of that balancing exercise is sometimes insufficiently considered.

54. In the circumstances, the appeals against conviction based solely upon the admissibility of bad character evidence are dismissed; the applications for leave to appeal against conviction on those grounds are refused.

investigations which are simply inadequate. There may be no record kept of who was interviewed, what they said, or why the investigator reached the conclusions they did. In the case of Mr B, for example, although the Ombudsman was told that his complaint had been investigated, there was no evidence at all to show that this had happened.

The other key flaw is that, while investigations may have been very thorough in terms of evidence gathering, some fail to address the key issues of whether the use of force was reasonable, necessary and proportionate. In the case of Mr A, for example, the prison carried out a very thorough investigation. This examined all the evidence and interviews were conducted with everyone involved, including with potential witnesses identified by Mr A. However, the investigator then went on to conclude that the use of force was lawful simply because Mr A had refused to obey a lawful order. They did not consider whether force had been necessary to prevent harm, in accordance with PSO 1600. In this case, as in others, it appeared that the investigator had focused on looking for evidence that Mr A had been "assaulted" in the sense of being kicked or punched, without appreciating that the use of force without adequate justification may itself constitute an assault in law.

Another concern is that, in some cases, the prisoner is never told the outcome of the investigation at all (which is clearly unsatisfactory), or is given inadequate information. In Mr A's case, he was simply told in writing that the prison was satisfied that there was insufficient evidence to support his complaint that he had been assaulted. As a result, Mr A formed the impression that the prison had not taken his complaint seriously or conducted a full investigation. This was not the case. In the Ombudsman's view, it would have been preferable for a manager to have sat down with Mr A and told him what the investigation had involved and explained why the conclusion had been reached.

Police involvement: Prisoners who believe that they have been assaulted by staff frequently request police involvement. The Ombudsman accepts that it is reasonable to ask prisoners to submit such requests in writing to avoid wasting police time, but, once a written request has been made, it is important that it is passed to the police without delay.

Case study 6: Mr F submitted a COMP1 form complaining that he had been restrained unnecessarily the day before, and that this constituted an unlawful assault by staff. He asked to see the Police Liaison Officer (PLO) to report the alleged assault. He was told in reply that he needed to submit a written application to see the PLO. The Ombudsman considered that Mr F's request on his COMP1 form had constituted a written application and that his request should have been facilitated without further delay. Requiring him to make a separate written application placed unnecessary bureaucratic barriers in the way of his access to the PLO. Although the investigation did not find that Mr F suffered any detriment in this case, the requirement to make a separate application was an unnecessary delay which could have hindered the retention and collection of any evidence.

The Prisons and Probation Ombudsman's vision is: To be a leading, independent, investigatory body, a model to others, that makes a significant contribution to safer, fairer custody and offender management.

Early Day Motion 984: Water Cannon

That this House notes with concern plans to equip the Met with a water cannon; further notes that no water cannon are currently in use on mainland Britain; recognises the physical harm water cannon can inflict, as demonstrated by their use in Germany; believes that the introduction of a water cannon onto London's streets would run against our tradition of intelligence-led, community policing; and calls on the Mayor of London and the Metropolitan Police to abandon these plans.

Gangs; Riot; Firearms – R v Lewis and Others – Appeals against conviction and sentence dismissed. Evidence of gang membership and the issue of bad character .

1. The main ground of appeal common to all those appealing conviction (save Collins) is to the effect that the Judge was wrong to admit bad character evidence that the appellant in question was a member of, or associated with, street/criminal gangs in the Birmingham area.

2. In the first trial, the prosecution put its application to adduce bad character evidence this way: "For such well organised violence to have been perpetrated, the irresistible inference to be drawn is that it must have been instigated and carried out by persons who, in part or together, were known to each other and who harboured similar attitudes. The association and knowledge enabled the defendants and others to organise themselves into a concerted armed group bent upon serious violence to be perpetrated against the police." "Video and U Tube footage. The prosecution have trawled through the available footage on the internet which relates to these defendants. Much of what has been obtained has emanated from the U Tube website where a number of videos have been posted for the world to see. A number of defendants can be identified on the videos. A police officer acquainted with this type of video and the language thereon has watched and listened to the videos. Transcripts will be served for ease of reference for each video. A number of defendants are identifiable on the footage; they are occasionally in company with co- defendants. Taken together with the lyrics, the pictorial content, the sound effects and general themes, the video footage will go to assist a jury in determining the issues in this case."

3. In the second trial, the prosecution put the matter similarly: "The prosecution contended that the evidence was Bad Character evidence admissible to prove association; gang association; similar conduct as a gang; and pro-firearm and anti police tendencies on the part of the various defendants. It was admissible under section 101(1) (d) of the 2003 Act as being 'relevant to an important matter in issue between the defendant and the prosecution'".

4. The relevant issues according to the prosecution were four-fold. First, it was common purpose: did the group act with a common purpose or was this violence simply coincidental to the other countrywide disorder occurring at the time? The second was identification: are those defendants who dispute presence correctly identified as having been at the scene? The third concerned rebutting innocent presence: are those defendants who admit presence at the scene likely to have been there as they assert by chance or inadvertence? Finally, the fourth was the possession (whether personally or jointly) of firearms: are these defendants persons who have links to or access to the use and carriage of firearms?

5. Turning to the law, it is now well established that evidence of membership of, or association with, a criminal gang may be admissible under gateway (d) of section 101(1) of the Criminal Justice Act 2003 ('the 2003 Act'): see e.g. R v Smith [2009] 1 Cr App R 36 and R v Elliott [2010] EWCA Crim 2378. Smith concerned a joint enterprise murder with a firearm. Elliot concerned possession of firearms and supply of cocaine.

6. In Elliott, giving the judgment of the Court, Holroyde J said: "9. The first question which arises is whether evidence tending to show the applicant's membership of a violent gang was capable of being admissible, pursuant to section 101 (1) (d) of the 2003 Act as being "relevant to an important matter in issue between the defendant and the prosecution. In our judgment it plainly is.

10. As Mr Bowers accepts, the case of R v Smith [2009] 1 Cr App R 36 provides support for the view that evidence gang membership is in some circumstances admissible as evidence of bad character. The jury in this case had to decide whether they were sure the applicant was in possession of all or any of the items to which the charges related. As part of that decision, they had to consider whether they could exclude any reasonable possibility that an item, particularly those in the store

cumulative effect. I have considered section 101(3) in the case of Francis. Admission of this material will not adversely affect the fairness of the proceedings in his case."

36. Before us it was contended that the video evidence was just 'too emotive and prejudicial'. We consider the judge was right to conclude it should be considered in conjunction with the images on the mobile phone. The material did have potentially significant probative value. The judge's approach to section 101(3) cannot be faulted.

37. Lewis appeared on "Gangbusters R Us". His role was less prominent than that of Francis, but he spent much of the video in close proximity to Francis. At one point, Francis made reference to a ".44" and "Phantom". Lewis at that point was standing close to Francis and is shown miming a shooting action.

38. The judge accepted that taken on its own the material might not be sufficient to show gang membership. But he went on to say: "Lewis's telephone at the time of his arrest contained images of his face coupled with the Raiders emblem and the word "Menace". It also contained downloaded images of a small automatic handgun - probably 0.25 mm calibre - and a larger handgun and an image of a hooded man pointing a handgun of some description. This evidence in combination is sufficient for a jury to consider as evidence of gang membership".

39. It was further argued, on behalf of Lewis, that the case against him was weak and, applying Hanson [2005] 2 Cr. App. R. 21, this evidence should not be admitted to bolster a 'weak' case.

40. The judge accepted that the core of the case against Lewis was the telephone evidence linking him with others and their respective movements. The prosecution contended this made a strong circumstantial case against Lewis. The defence argued it was weak. The judge decided that he would review the position after that evidence had been given. If he concluded the primary case was weak, he said the introduction of the gang evidence would not be enough to save the prosecution case.

41. In the context of this case, this was a prudent course for the judge to take. In a complex case the strength of a circumstantial evidence based on inferences to be drawn from cell-site analysis is not always easy to determine at the outset. Often it becomes much clearer when the evidence is given and tested.

42. In the event, the judge later concluded the case was of sufficient strength that the admission of this gang evidence was not simply to bolster a weak case. He was entitled to conclude that it did not require to be excluded under section 101(3).

43. Further, we reject Mr Rupasinha's suggestion that 'propensity' cannot properly be used to show presence as the scene of a crime. It patently can. The present case of evidence of gang association is just such an example.

44. Turning to the second trial, Laing appeared on seven different videos. In "Illution" those on the video frequently give the "6" sign. The video begins and ends with shots of men with obvious tattoos declaring gang affiliation. "Gangbuster R Us", which also featured Francis and Lewis, has a gang-specific chorus, lyrics with reference to relevant firearms and men giving the "6" sign. "Verse of the Sword" featured Laing as the principal vocalist with a closing gang specific lyric and what is intended to represent a shot from a gun. "Trappin" includes Laing showing a "6" sign and imitating pulling the trigger of a gun. "Propane" has Laing as a vocalist with gang related lyrics and showing the "6" sign. "B 6 Slash" also features Laing as a vocalist with gang references in the lyrics.

45. The judge concluded that: "[T]hey present a significant picture of a man closely associated with gang culture and wholly sympathetic to it".

46. On behalf of Laing, Mr Wilcock QC accepted realistically that the evidence was admissible

gang behaviour, both at the start and at the end. Rehman is visible and active throughout the video. The combination of the number of videos, the explicit reference to a gang and Rehman's active participation is sufficient to allow the jury (should they think it appropriate) to conclude that Rehman is/was a gang member. It will be for the jury to decide whether the material has the effect contended for by the prosecution. It was argued on behalf of Rehman that the gang evidence in his case is not critical and it would distract the jury from the real issue in the case. I accept that the gang evidence is not essential for the prosecution case. Equally, it is relevant to the relevant issues in his case, i.e. was he present at the Bartons Arms or was his presence around Park Circus at the same time as a group that had just engaged in violent conduct involving guns purely coincidental? I do not consider the admission of the evidence would have an adverse effect on the fairness of the proceedings."

29. This was essentially a judgment to be reached by the judge under section 101(3). He considered the probative value. The fact that the evidence was not "essential" did not mean that it should not be admitted. It was potentially supportive. He did not err in his approach. In our judgment, it cannot be said he was wrong to conclude as he did.

30. There is a supplementary point. After the video evidence had been played, PC Bennett, when giving his evidence about the "S.A.N." gang, explained that the "S.A.N." gang was a junior peer group affiliated to the "Johnson Crew"; however, as at August 2011 it had not been identified as having engaged in any criminal activity. It was a group of what might be described as "wannabees".

31. The question of the effect of the video evidence was raised with the judge and he was asked to reconsider his original ruling. He declined to alter it but indicated he would direct the jury to attach limited weight to the evidence in Rehman's case. That is what he did in appropriate terms in the summing up (at page 88 B-D). No application was made for the jury to be discharged in relation to Rehman.

32. It is contended by Mr Garcha, on behalf of Rehman, that the admission of the video evidence became even more prejudicial in the light of PC Bennett's evidence. We consider, however, that the judge's direction adequately dealt with the matter. As we have already pointed out, Shah who also featured on the "Illution" video making "6" gestures; but he was acquitted by the jury.

33. Turning to Francis, he appeared on three videos. In "Gangbusters R Us" there was a chorus referring to the "Johnson Crew" in which Francis participated. He delivered part of a lyric which could have referred to firearms. The "6" sign was made by him. "RAD 70" also featured him and involved "RAD" T-shirts and caps with the "Raiders" emblem and/ or masks/ bandanas. Francis is masked at one point. His part of the lyric made reference to the "RAD" gang and guns. There was other evidence on his mobile phone of images of a hand gun; a revolver; a "Raiders" emblem and cap; a masked figure in a "RAD" gang shirt.

34. In his ruling, the judge said: "The argument put on behalf of Francis is that he is a rap musician of genuine talent and the videos are much the same as many available on the internet or elsewhere. In essence what can be seen on the videos is just youth and/or black culture which does not have the connotation argued for by the prosecution. That is a proposition which can be put before the jury. Francis can support it by evidence if he wishes. But this argument is an argument for the jury to consider given the content of the video material. "

35. In relation to the images of the guns, the judge said: "[T]he defence argument … is that they are not necessarily photographs taken of actual weapons, rather they are downloaded images taken from the internet or a photograph of a photograph. Therefore the weapons were not available for Francis's use. It is argued that many young men have stored images on their telephones or elsewhere. Again that is an argument for the jury to consider. When considering the argument the jury will be entitled to consider the combination of the material and its

cupboard, was the property of a person or persons other than the applicant. Evidence which would satisfy them that the applicant was a member of a gang which was involved with drug crime and in the carrying or use of firearms was plainly capable of assisting the jury to reach their decision."

7. Analysing the issue in a case such as the present, there are four questions that a judge has to consider: (1) Is the evidence relevant to an important matter in issue between a defendant and the prosecution? (2) Is there proper evidence of the existence and nature of the gang or gangs? (3) Does the evidence, if accepted, go to show the defendant was a member of or associated with a gang or gangs which exhibited violence or hostility to the police or with links with firearms? (4) If the evidence is admitted, will it have such an adverse effect on the fairness of the proceedings that it ought to be excluded?

8. We set out our analysis of the answers to each of these four questions below.

9. The first question concerns relevance to an important matter in issue between a defendant and the prosecution and we have identified the four issues in respect of which the prosecution contended that the evidence of gang membership was relevant as common purpose, identification, innocent presence and firearms.

10. In his ruling in the first trial, the judge said : "So is the evidence relevant to an important matter in issue? In relation to some of these defendants the issue is whether they were at the scene at all. Membership of a violent gang is relevant to that issue. It is capable of supporting the other evidence that the relevant defendant was at the scene… In relation to Rehman, the issue is whether he came into contact with the group by chance at some late point in the evening's events. His membership of a violent gang (if proved) would undermine his case."

11. In the second trial, the judge referred to his ruling and reasons in the first trial and, in effect, incorporated them into his bad character ruling in that trial.

12. We are satisfied that, in principle, the evidence in question was of potential relevance to each of the four issues set out by the prosecution. The judge was certainly entitled to conclude it was relevant in the case of a defendant who disputed that he was there, and in the case of a defendant who said, in effect, I was there 'by chance'. The bad character evidence did not have to be considered on its own, but, rather, in conjunction with the other evidence against a defendant.

13. Turning to the second question, namely the sufficiency of proper evidence of the existence and nature of the gang or gangs, at the first trial, there was evidence was from officers from the Multi-Agency Gang Unit and the West Midland Police 'Gang Taskforce'. The officers had over a number of years dealt with the activities of street and criminal gangs in the Birmingham area. They had accumulated such experience and knowledge of the gangs as to be entitled to give evidence of the existence and operation of various gangs and about relevant signs and insignia associated with them. It was not contended at the first trial that the officers in question did not have the requisite knowledge and experience.

14. In the second trial, however, it was argued on behalf of Laing and Gray that DC Nevin who was to give the evidence, did not have the requisite knowledge and experience. Mr Bartfeld pursued similar argument on behalf of Gray before us.

15. In a detailed ruling, the judge set out what DC Nevin had said at the first trial about his experience and knowledge. In summary, this was that, from 2006, he had been a police officer in the Newtown and Aston area just north of central Birmingham; and on the beat, he had come to understand the gang culture that existed there, partly from what he observed, and partly from what he heard from others. Then he moved to the Multi-Agency Gang Unit, set up in 2008, in which he worked with other police officers, the Youth Offending team, the Probation Service and other

agencies. The purpose of the Unit was to try to persuade people who had some kind of affiliation with gangs to turn away from them. In the period 2008 to 2011, he spoke to many people in the Unit and with those affiliated to gangs. He learnt about the gangs, what they did, and what their signs were. He learned that some of the gangs produced videos. He knew about, or learned about, some of the crimes in which the gangs had been involved. The judge set out in detail what he said about each gang and affiliated gang.

16. Mr Bartfeld argued that DC Nevin could give evidence of what he had observed, but if he was relying in part on what he had been told, he would have to identify each and every source so it could be verified. The judge rejected that argument. He referred to R v. Hodges [2003] 2 Cr App R 15 and to Elliott (supra).

17. Hodges was a case involving evidence given by an experienced police officer about the street price of heroin, how it was usually purchased in a £20 bag and about how 14 gms would normally be more than for personal use. The officer had been the drugs liaison officer. His knowledge came from his own observations; from talking to prisoners and informants; and from forensic science reports. He was not able to identify his individual sources. It is sufficient to note that the Vice-President, Rose LJ, said (at paragraph [..]): "In our judgment, the evidence of DC Stevens of facts and opinion, was in the light of his experience, properly admitted."

18. Reverting to Elliott, the prosecution in that case adduced evidence of bad character under section 101(1)(d) of the 2003 Act from DC Whiteway; this specifically related to the applicant's membership of a violent street gang. That evidence related to the existence in Peckham, and involvement in drug and gun crime, of criminal gangs including the "PYG" ("Peckham Young Guns") and the "YBS" ("Yellow Brick Shower") formerly the "YBM" ("Yellow Brick Massive"). There was separate evidence seeking to show the applicant's membership of one or more of those gangs. On this issue, Holroyde J said (at paragraph [11]): "So far as the existence and criminal activities of the relevant gangs are concerned, this court is satisfied that the evidence of DC Whiteway was properly admitted. He was an officer of considerable experience of the violent criminal gangs of areas of south London including Peckham. The judge was entitled in accordance with the principles stated in Hodges (2003) 2 CR App R 15 to permit an experienced police officer to give evidence based on his own knowledge and experience about the existence of the gangs and about the insignia of the gangs."

19. In the present case, DC Nevin's evidence came in part from his own observation; in part, from other cases with which he had had involvement; in part, from what he had been told by ex-gang members or current gang members; and it also came from his discussions with colleagues in the Unit. The judge said: "Now it is true that DC Nevin is relying in part on hearsay. True it is that he is relying on sources which are unidentified, but the same plainly applied in the case of Hodges, and plainly applies in many cases heard up and down the country about drug suppliers, and it plainly must have applied to Mr Whiteway who was talking about gangs in south London."

20. In our judgment, the judge was entitled to conclude that this evidence came within the same ambit of evidence considered in Hodges and in Elliott and was admissible and that DC Nevin clearly had the requisite knowledge and experience.

21. The third question concerned whether the evidence, if accepted, went to show that the relevant defendant was a member of or associated with a gang or gangs which exhibited violence or hostility to the police and/or with links with firearms. Recognising that membership cards or documentary records of membership of street gangs were unlikely, the judgment in Elliot went on (at paragraph [17]):

"With a gang of this nature, it is not to be expected that there would be any formality about membership, and reference to a gang member or cognate terms must be taken as no more than a convenient shorthand to encompass membership of, or affiliation to, or support for the gang".

22. In this case, the prosecution relied principally on appearances by the appellants on one or more videos which make some reference to gang activity. The prosecution contended that no one would be allowed to be present at the making of such video and allowed to appear on it unless he was trusted by and affiliated to the relevant gang culture.

23. The judge took a more limited approach: "For the video material to be relevant evidence as to gang membership, there must be something more than an appearance on a video. That may be what the person does or says on the video. It may be appearances on more than one video. It may be an appearance on a video coupled with other evidence linking the defendant to a gang or gangs."

24. The video evidence in question was accompanied by a commentary by officers explaining where the videos were apparently filmed; the significance of the signs used; the significance of particular bandanas; and the significance of particular names. In our judgment, the appellants can have no valid criticism of the judge's approach. That is not to say, however, that an appearance on only one video could not, in appropriate circumstances, show gang membership or association.

25. The argument mounted by the defence was that these 'rap' videos were nothing more than that a demonstration of involvement in a musical genre; they did not signify gang membership and, in particular, the words and gestures should not be taken at face value. At the first trial (but not at the second), evidence was called before the jury by the defence to support that contention. That evidence, however, goes to weight: the issue before the judge was admissibility, and the judge was perfectly entitled to conclude that the evidence was clearly capable of showing membership of, or association with, a gang or gangs, exhibiting violence or hostility to the police or links with firearms.

26. The final question (and the argument most forcefully deployed both before the judge and before us) concerned the final question, namely whether the evidence, if admitted would have such an adverse effect on the fairness of the proceedings that it ought to be excluded. The argument before us was that the material was insufficiently probative and too prejudicial. It was likely to deflect the jurors rather than to assist them. Each appellant developed the argument based on the facts of his case.

27. During the course of his ruling, the judge referred to section 101(3) of the 2003 Act and clearly had it in mind. He concluded that he should not exercise his discretion under section 101(3) to exclude the bad character evidence; it was probative and would not have such an adverse effect on the jury so as to cause irremediable prejudice. It is significant, during the first trial, similar gang membership evidence was also admitted against Shah; but unlike some of his co-defendants, he gave evidence explaining it. The Jury was clearly not unduly prejudiced against Shah, however, because he was acquitted.

28. We turn to the individual appeals on this topic. In his ruling in relation to Rehman, the judge summarised his video appearances in this way: "He appeared on three videos. 'Illution' begins and ends with shots of men with significant tattoos showing the words MOB and GSA. Members of the group including Rehman give the "6" sign which is associated with gang membership. One of the featured vocalists is Laing. Grey also appears on the video. Unusually it is a mix of Asian and black men. 'Lean Back Take Over' features a smaller number of men. They appear to be of Asian background /origin. The video begins with the letters 'S.A.N.' on screen. Rehman is clearly visible giving the '6' sign. 'Mark my Words' is similar (if not the same) in terms of location and personnel to the previous video. It begins with 'S.A.N.' on the screen. The lyric is specific in relation to 'S.A.N.' and