

Centre for Criminal Justice Studies, University of Leeds

## **CRIMINAL JUSTICE REVIEW**

**2002 - 2003**

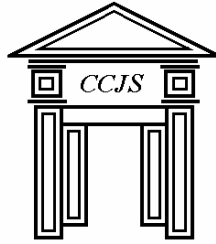
*(Fifteenth Annual Report)*

<http://www.leeds.ac.uk/law/ccjs/homepage.htm>

The Centre for Criminal Justice Studies (CCJS) was established in 1987 for the pursuit of research and study into all aspects of criminal justice systems. It is governed by an executive committee and its work is supported by an advisory group composed of academics, practitioners and policy makers in relevant fields of experience. The CCJS Constitution and Membership are set out in *Appendix 1*.

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## **Information about the Centre for Criminal Justice Studies**

The Centre for Criminal Justice Studies was established in 1987 at the University of Leeds to pursue research into criminal justice systems and criminological issues. It has since become recognised as one of the leading centres of its genre with a growing international profile. In support of its goals, the Centre fosters an active and flourishing multi-disciplinary academic environment for teaching and research. It has a wide research capacity covering all aspects of criminal justice and criminology, with a particular strength in policing. Some of its more recently commissioned projects - funded by the ESRC, AHRB, Home Office, Nuffield Foundation, Leverhulme Trust and various Police forces - are at the cutting edge and include the following research issues: "plural policing", "community police", "policing cyberspace", "terrorism and commercial targets", "Criminal Celebrities and Celebrity Criminals", "Cybercrime", "pre-trial processes", "Bail Hostels", and "criminal justice élites". The Centre's work is supported by upwards of twenty senior advisors who are drawn from principal positions within the police, judiciary, probation service, prisons and the courts. The Centre runs both undergraduate and postgraduate teaching programmes, has a vibrant postgraduate research community and an active public seminar programme. It attained a 5A rating in the 2001 Research Assessment Exercise.

Further information, plus downloadable copies of the annual reports are available from the Centre's WWW site at <<http://www.leeds.ac.uk/law/ccjs/homepage.htm>>

In July 2005 the Centre will host the annual conference of the British Society of Criminology.

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# 1. INTRODUCTION

As I embark on my third year as Director I am very pleased to present a review of the work, activities and achievements of the Centre for Criminal Justice Studies for the period 1 October 2002 to 30 September 2003. During this period the CCJS has further expanded, sustained high quality research, teaching and publications and for these efforts it has received recognition from the broader academic community as a leading centre of excellence in Criminal Justice, Criminal Law and Criminological studies.

Our teaching and research programmes have continued to grow, reflecting highly the good academic standing of the CCJS and its members. The BA in Criminal Justice and Criminology recruited very strongly at a ratio of 1 place to every 20 applications. The MA in Criminal Justice Studies continued to recruit well and the LLM in Criminal Justice and Criminal Law, introduced for the first time in Oct. 2002, proved to be very popular.

One of the CCJS's main strengths is its Policing expertise and research capacity, which is now amongst the strongest in the country and some of the recently commissioned projects are at the cutting edge of research into the subject. But whether in policing or other aspects of criminal justice, a distinctive characteristic of criminal justice research and teaching at Leeds is the balance between the law and social action and the new appointments reflect this multi-disciplinarity. In 2002-3 we warmly welcomed five new colleagues. Sarah Blackburn and Jon Burnett joined as research fellows to work with Prof. Adam Crawford. Dr Anthea Hucklesby joined us in March from the University of Hull to teach and research Criminal Justice Process, Punishment and Society, and Youth Justice. Andy Roberts came from the University of Nottingham to teach and research criminal law. Our final addition was Dr Louise Ellison from the University of Manchester, who teaches and researches criminal law and evidence. During her first semester at Leeds, Louise completed a Leverhulme Research Fellowship researching vulnerable witnesses in court. A former student of Leeds (LLB and PhD), Louise took up the position vacated by our longstanding and much valued colleague Peter Seago, OBE, JP who retired in July 2003. Peter was instrumental in setting up the Centre and also in its early development. To show its appreciation of his long and faithful service Peter was awarded the honour of life fellow by the University of Leeds and he will remain an associate fellow of the CCJS.

During the past year CCJS members have given many high profile presentations and speeches at key international events and they have also been involved in a wide range of 'third arm' activities. The CCJS public seminar series (now organised by Dr Dave Whyte) was highly successful in 2002/3 and continues to attract good attendance. Perhaps the largest single event of the year, however, was Prof. Clive Walker's Court Technology conference which drew over 100 senior international academics and judiciary to Leeds to discuss IT and the justice processes. It laid the foundations of the interdisciplinary Court21 project here at Leeds (see <http://www.leeds.ac.uk/law/court21/ct-indx.htm>).

In addition to the many high profile media contributions made regularly by CCJS staff, the publication of the New Earswick Community Policing Initiative report captured the attention of the major national (and local) press, television and radio and gained the authors much coverage.

Finally, we must congratulate our PhD students on their successes: Zaiton Hamin and Haitham Haloush passed their *vivas* and for the second year running, Ruth Penfold was awarded the British Society of Criminology prize for best postgraduate paper at the society's annual conference. Ruth's paper is included in the working papers section which I invite you to read along with various contributions from other colleagues and information about our teaching programmes, research projects, publications and seminars.

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## 2. RESEARCH DEGREES AND TEACHING PROGRAMMES

### a) Research Postgraduates

*Postgraduate research degree schemes* - The Centre for Criminal Justice Studies invites applications from students wishing to pursue research into all aspects of the criminal justice system. This subject may be taken to include, for example, the judiciary, the prosecution system, the police and policing authorities, the prison and probation services, the courts and the judiciary, criminology and penology, criminal law and terrorism, victims and mediation, cyber/ computer crime. Any relevant research topic in these or related areas will be considered. A number of possible areas of research have been considered with our Advisers and can be suggested on request, but applicants are not precluded from devising their own proposals. Comparative studies will be considered. The work of students may be assisted by practitioners in our Advisory Committee or by other contacts in the field. Formal instruction in research methodology is provided as a standard training package, and joint supervisions in interdisciplinary subjects can be arranged.

The relevant degree schemes on offer by research and thesis only are as follows:

*Master of Arts (M.A.)* - one year full-time or two years part-time;

*Master of Philosophy (M.Phil.)* - two years full-time or three years part-time;

*Doctor of Philosophy (Ph.D)* - three years full-time or four years part-time.

The entrance requirements common to all three schemes are that applicants must normally possess a good honours degree, but those with professional qualifications or substantial professional experience will be considered. The detailed regulations governing the above degree schemes are available on request from the University's Student Office.

The Centre's research postgraduates are located in the Law Graduate Centre where they are provided with access to desk space, a lockable area, a good quality computer with printing facilities and a very convivial and collegial environment in which to conduct their work. The University's (central) Graduate Centre also has further facilities for research postgraduates and provides a range of very useful training courses.

### b) Taught Postgraduate Courses

The MA in Criminal Justice Studies has run successfully since 1993. A number of variants have since been introduced and in 2002 an LLM in Criminal Justice and Criminal Law was introduced. Further details of the taught postgraduate programme in criminal justice are as follows.

#### **MA in Criminal Justice Studies (180 credits)**

*Objectives* - To enable students to acquire new theoretical perspectives on, and wider knowledge about, criminal justice systems as well as gain a grounding in research methodology and the capacity to undertake research projects.

*Duration* - 12 months full time; 24 months part time. Note that some of the courses offered can be taken as free standing units with later accreditation.

*Entry requirements* - A good honours degree in law, social sciences or related subjects.

*Contents* (to amount to 180 credits):

Compulsory courses include:

Criminal Justice Research Methods and Skills (30 credits)

Criminal Justice Process (30 credits)

Criminal Justice Policies and Perspectives (30 credits)

Dissertation of up to 15,000 words (60 credits)

Optional courses include (students must select 30 credits - other modules may also be available)

Policing I & II (15/15 credits)

Theories of Crime and Punishment (15 credits)

Victims and Victimology (15 credits)

Forensic Process (15 credits)  
Corporate Crime (15 Credits)  
Transnational Criminal Justice (15 Credits)  
Cybercrimes: Computers and Crime in the information age (15/30 Credits)  
Negotiated Study (15 or 30 credits)

### **Diploma in Criminal Justice Studies (120 credits)**

*Duration* - 9 months full time, 18 months part time. Note that some of the courses offered can be taken as free standing units and later accreditation can be granted.

*Entry requirements* - A good honours degree in law, social sciences or related subjects. Persons without degrees but with professional qualifications or experience will be considered.

*Contents* - Students select from the courses listed for the MA scheme. There is no dissertation.

### **Certificate in Criminal Justice Studies (60 Credits)**

*Duration* - 9 months part time. Note that some of the courses offered can be taken as free standing units and later accreditation can be granted.

*Entry requirements* - A good honours degree in law, social sciences or related subjects. Persons without degrees but with professional qualifications or experience will be considered.

*Contents* - Students select from the courses listed for the MA scheme.

### **LLM in Criminal Justice and Criminal Law (180 credits)**

The LLM follows the specification for the MA in Criminal Justice Studies except that a good honours degree in Law is normally required. Students also take a 45 credit module in Criminal Law and a 15 credit legal research methods as core subjects in place of Criminal Justice Research Methods and Criminal Justice Policies and Perspectives. These latter subjects may, however, be taken as optional subjects.

The CCJS also provides teaching in the following areas:

**Crime Prevention and Community Safety (Certificate and MA)**

**Criminal Justice and Policing Studies (Certificate and MA)**

**Contemporary Issues in Criminal Justice (Certificate and MA)**

## **c) Taught Undergraduate Programmes**

### **BA (Hons) Criminal Justice and Criminology**

This new full-time undergraduate programme in Criminal Justice and Criminology offers students the opportunity to specialise in criminal justice studies within the context of a grounding in Law and Social Policy/ Sociology. This scheme adopts a broad understanding of "criminal justice and criminology" that includes the study of both formal and informal processes of regulation and control. Accordingly, "Criminal Justice and Criminology" at Leeds draws upon a number of disciplines, ranging from legal philosophy through political and social sciences to socio-legal studies. It is the interplay between the legal, social and political which gives this scheme a uniquely progressive and flexible profile and special vitality. The BA scheme is an exciting joint inter-disciplinary venture which is built around courses offered by leading academics from two prestigious, research-led, departments of international academic excellence.

The degree has four principle objectives. The first is to familiarise students with the various theories that explain crime, the social reactions to it and also criminal justice. Secondly, the scheme explores the policy debates which emerge as a societal response to crime. Thirdly, students will develop an understanding of the institutional features of, and professions within, the criminal justice processes. Fourthly, and finally, students will come to understand the dynamic processes which shape the outcomes of criminal justice such as cultures and discretion, the impact of social change, and the interaction between criminological research and institutional action.

*Entrance Requirements:* Normally 3 passes at A level, or two passes at A level and 2 AS levels, or equivalent qualifications. The grade requirements are BBB (including General Studies).

*Teaching and assessment:* All the taught modules are delivered by way of a mixture of teaching methods – lectures and seminars. Study visits may also be arranged. Assessment is by examination and written work.

*Potential Career Opportunities:* The scheme offers a grounding for graduates who wish to work in criminal justice related professions. The Centre for Criminal Justice Studies has links (especially through the Advisers) with a wide range of agencies and practitioners and a very lively programme of conferences and seminars, many involving representatives from those sectors. These links are supplemented by those forged through the School of Sociology and Social Policy and the School of Law, which have a variety of other contacts. There are exciting career possibilities for graduates. Criminal justice provides a good academic base for those considering careers in the police, the prison service, the private security sector, probation, social work, community care and law, community safety, as well as regulatory fields. It will also provide a base for further academic study. Many of these career options will require further study and qualifications after graduation. The police, for example, have their own induction courses (including the Police Accelerated Promotion Scheme for Graduates), while the Probation Service requires further professional qualifications. Likewise, the legal professions will require further qualifications, though for the first stage (the Common Professional Examinations), the structure of the BA allows a student to put together a package of compulsory/option/elective subjects that provide part exemption.

Further details of the BA (Hons) Criminal Justice and Criminology can be found at <<http://www.leeds.ac.uk/law/ccjs/ba.htm>>

### **3. RESEARCH PROJECTS**

This section describes the various research projects which are currently being conducted by members of the CCJS. They are organised alphabetically by topic.

#### **1. POLICING, REGULATION AND GOVERNANCE**

##### **The Contractual Governance of Anti-Social Behaviour**

Adam Crawford has been awarded a Leverhulme Trust Major Research Fellowship for 2 years commencing in October 2004. This will allow him to explore the manner in which deviant conduct and disorderly behaviour are governed by new forms of contractual instruments in diverse fields of social life. The research will examine forms of regulation and policing through contracts in housing, education, leisure and lifestyle opportunities, private security and criminal justice. The research will explore the manner in which anti-social conduct and disorderly behaviour are governed by new forms of contractual instruments in diverse fields of social life. It will explore modes of regulation and policing through contracts in housing, education, leisure, private security and criminal justice. It will draw together empirical research findings and theorise the connections between these developments to understand the genesis and implications of contemporary 'contractual governance'. It will analyse the manner in which contractual forms of controlling anti-social behaviour depart from traditional conceptions of security and justice and embody novel notions of crime and deviance. The Fellowship will result in the production of a research monograph.

##### **Evaluation of Police Community Support Officers in West Yorkshire**

West Yorkshire Police are funding an evaluation of the deployment of Police Community Support Officers (PCSOs) in West Yorkshire. The research is being conducted by a team including Adam Crawford (Principal Investigator), Stuart Lister and Sarah Blackburn. PCSOs are auxiliary patrol officers employed by the police, introduced by the Police Reform Act 2002 (s. 38). They are civilian staff without the full powers, equipment or training of a sworn police officer. The powers of PCSOs are limited to hand out fixed-penalty tickets for minor disorders, to request the name and address of a person acting in an anti-social manner, to stop vehicles, direct traffic and remove vehicles and to confiscate alcohol from people in designated areas and from minors. Detention powers for up to 30 minutes are being piloted in 6 forces (including West Yorkshire). Currently, all but 5 of the 43 police forces in England and Wales have opted to recruit PCSOs, assisted with Home Office funding.

In late 2002 West Yorkshire Police (WYP) bid for and were successfully granted 60 PCSOs by the Home Office as part of the first wave of national funding. In line with the Street Crime Initiative the bid focused upon the city centres of Bradford(40) and Leeds(30). Half of the PCSOs were to be deployed in each area. Funding for a further 10 PCSOs was also obtained from the Neighbourhood Renewal Fund. In the second round of funding in 2003 WYP were allocated another 100 PCSOs on a matched funding basis, currently being recruited and deployed across the force. WYP also secured funding from the Police Authority for a further 100 match funded PCSOs and appropriate partners are being sought. PCSOs are currently being deployed in other areas of West Yorkshire such as Halifax , Huddersfield , Dewsbury, Batley and Wakefield.

The research is evaluating the deployment of the first wave of PCSOs concentrated in the city centres of Leeds and Bradford. The research is collating data from a variety of sources, including observational data, interviews with key stakeholders, PCSOs and police managers, focus group interviews with members of the public working within the city centre as well as crime and disorder data. The evaluation began in March 2003 and will produce an interim report in March 2004 and a final report in March 2005. West Yorkshire Police are keen to use the research to aid the development of the role of PCSOs within the wider force area.

##### **Community Policing: New Earswick Community Policing Initiative**

The Joseph Rowntree Foundation (JRF) funded project 'Evaluation of a Local Community Policing Initiative - New Earswick' was published in October 2003 in a report entitled 'Great Expectations: Contracted Community Policing in New Earswick' (see findings in Appendix). This in depth three year study examined the work and impact of community policing initiative in New Earswick, in which the JRHT a housing trust purchased an additional level of community policing from North Yorkshire police. The evaluation recorded how the experiment ran into difficulties from the outset:

- The time that JRHT purchased for policing New Earswick was additional to any operational policing on the estate, but the designated officer remained largely accountable to the police alone. Emergencies and more pressing crime incidents elsewhere tended to draw the officer away from community policing duties. Sick leave, holidays and training further reduced the time spent in the village.
- Hopes of employing a single, community police officer who could get to know residents were disappointed. Three different officers held the post in the two years before the contract was terminated almost a year early.
- There was a lack of clarity about the role of 'community policing' and the activities that the designated officer would undertake. This gave individual officers wide discretion over the way they interpreted their role and how they used the additional time.
- The project created high expectations among residents about the level of policing and its impact on crime. There was constant tension between what residents expected from police and what the extra 24 hours a week could realistically achieve.

### **The Extended Policing Family – Yorkshire and Humberside Region**

A second JRF report, commissioned as a result of the New Earswick initiative, has been completed and will be published in the form of a final report entitled 'The Extended Policing Family: Visible Patrols in Residential Areas' co-authored by Adam Crawford and Stuart Lister.

The report draws upon research over a 15 month period commencing July 2002 which has sought to provide an overview of the development of a market in visible patrols within residential areas in the Yorkshire and Humberside region. Kathryn Munn was employed as researcher on this project. The research provided an examination of the different models of visible patrols in residential areas provided by public, private, municipal and voluntary sources. The research included surveys of housing providers and police in the region, a national survey of private security providers operating in residential areas and more detailed analysis of a number of targeted case studies, including local and national key stakeholder interviews. The research:

- highlights different models and contractual arrangements of visible patrolling;
- outlines key implementation issues arising from the experiences of visible patrolling arrangements;
- focuses upon accountability arrangements; and
- considers the wider implications of given initiatives for public policing more generally.

The report entitled 'The Extended Policing Family' will be published in April 2004 by the Joseph Rowntree Foundation.

### **Plural Policing**

The Nuffield Foundation project entitled 'Plural Policing and the Growing Market for a Visible Patrolling Presence' Adam Crawford (Principal Investigator) with Stuart Lister, Sarah Blackburn and Jonathan Burnett, began in July 2002. The project has been extended and will now culminate in a report to be published in the autumn 2004. The research aims to map and analyse the fundamental changes to policing provision, providing an overview of significant developments and initiatives in the provision of reassurance policing within England and Wales and more broadly across different European countries; studying the implementation of plural policing partnerships or networks in a number of case study areas; analysing the dynamic relations and interplay between different plural policing providers within specified contexts; and conceptualising the nature and implications of plural policing relations within specified contexts. It is anticipated that the research findings will have implications for our understanding of the changing nature of the 'extended police family', its regulation and the role of the police therein. The study will seek to meet its aims through both macro and micro studies:

- a survey of selected developments in a number of European countries;
- an overview of national developments in England and Wales; and
- five in-depth local studies of areas involving the interplay between different plural policing initiatives.

In each local study area we are examining different types of purchaser/provider arrangements for a visible patrolling presence, providing an understanding of their aims, implementation and community safety impacts. Of particular concern will be the extent to which the various forms of plural policing connect with and impact upon public policing as a common good, and the potential that each has for harnessing public and private institutions in furthering public safety. The following six case studies have been selected as they



represent innovative plural policing arrangements and/or interesting combinations of plural policing providers within confined geographic areas:

- MetroCentre, Gateshead – large retail centre with dedicated public police, contracted public police, in-house and external private security and in-store security.
- Liverpool City Centre, Goldzone development – city centre with contracted public police, street wardens, private security and potentially community support officers.
- Trafford Park, Manchester - industrial estate with dedicated public police, street wardens and diverse private security firms.
- The Halton Moor area of Leeds – residential area with public police, neighbourhood wardens and private security.
- Foxwood area of York – residential area with public police and private security.
- Bradford City Centre – city centre with public police, PCSOs, wardens private security

The research team is being supported and overseen by an Advisory Board, the members of which are drawn from key national contributors to policy debates concerning plural policing and the nature and regulation of the 'extended policing family'. The Advisory Board has met twice and will meet in June to consider a draft report to be published at a one-day conference to be held in Church House in central London on Friday 15<sup>th</sup> October 2004. As a result of the ongoing 'plural policing' research Adam Crawford has been invited to be a member of the Reference Group for Her Majesty's Inspectorate of Constabulary (HMIC) Thematic Inspection of 'Civilianisation of the Police in England and Wales'.

### **Police National Legal Database Consortium**

A team from the West Yorkshire Police has established a wide-ranging database of legal information for police officers. The Centre for Criminal Justice Studies acts as auditors of the data, and Clive Walker is the principal grant holder, the co-ordinator and the primary researcher. The success of our work has encouraged interest from other police forces, and a similar agreement to provide advice was made in late 1995 with the British Transport Police. Income of over £5000 has been generated. A number of academic papers have arisen from the research for the police, for example, "Internal cross-border policing" (1997) 56 *Cambridge Law Journal* 114-146.

## **2. CRIMES OF THE POWERFUL**

David Whyte has recently completed a long-term collaborative research project on the construction of criminological knowledge and representations of corporate and state crime, published as an edited collection entitled 'Unmasking the Crimes of the Powerful' (Peter Lang, 2003 - with Steve Tombs) and an article in the May 2004 issue of the *British Journal of Criminology*. He is currently completing a text 'Safety Crimes' (co-authored by Steve Tombs) scheduled for publication by Willan in late 2004. Research activities planned for the coming academic year include collaboration with the Finnish government on a project titled 'New Approaches to Corporate Crime Prevention'. David is also currently working on a book entitled 'War, Crime and the Bottom Line', which is under contract with Zed Books.

## **3. CRIMINAL JUSTICE AND INFORMATION TECHNOLOGY**

### **Cyberscams: Internet related Frauds and Deceptions in the UK**

In 2000, David Wall was funded by a Home Office Innovative Research award to conduct research into internet related scams. The overall objective of this research was to develop knowledge and gain an understanding of the types of frauds and deceptions (confidence tricks, scams etc) that are taking place via the Internet. The intended outcome of the research is to provide a body of knowledge about deceptions which will inform the development of intervention programmes and public awareness campaigns to warn users of the Internet of potential victimisation. This knowledge will also assist with the development of policies to police the offenders and to enforce law. It will also inform the academic debates over new dimensions in theft. The final report was submitted in early 2002 and further research is currently being conducted.

### **Child Pornography, the Internet and the Law: National and International Responses**

Conducted by Yaman Akdeniz, this project explores the important issue of child pornography law within the context of the Internet. It is anticipated that the research will culminate with an Ashgate monograph in early

2003. To-date, the most prominent concern of governments, regulators and law enforcement bodies in relation to illegal Internet content has been the widespread availability of child pornography. Regularly the subject of media coverage (for example, Lexis holds 726 media stories as of 14 September, 2001) and debate by national and international regulators, the project looks at UK laws, regulations, and case law specifically in relation to Internet child pornography and draws upon research into Internet child pornography since 1995. Comparative research covering the legal situations in North America (US and Canada) in the same field will also be included within this project as will policy initiatives at a supranational level of governance (such as the EU and COE) and international level (UN). The project will also explore the self-regulatory and co-regulatory proposals for fighting Internet child pornography at national, supranational and international levels.

### **Civil Participation in the development of an Information Society in Turkey**

In 2003 Yaman Akdeniz became a Policy Fellow of the International Policy Fellowships program of the Open Society Institute, Budapest, Hungary. He was awarded \$60,000 by the Soros Foundation to work on a project entitled Civil Society Participation to the policy making process of the Turkish Government in relation to the development of an Information Society in Turkey between February 2003 – March 2004.

### **Evaluation of the New Uses of Electronic Monitoring**

Funded by the Home Office, this project was carried out by Dr Anthea Hucklesby with Professor Keith Bottomley (University of Hull) and Professor George Mair (Liverpool John Moores University). The research evaluated two new uses of electronic monitoring namely, as a requirement of a community sentence and as a condition of a release licence. Both powers were introduced by the Criminal Justice and Courts Services Act 2000 and piloted in three probation areas. The research involved the collection of data on those subject to the new powers and comparison groups as well as interviews with offenders, prisoners and criminal justice personnel. The report is due to be published in 2004.

### **Forensic Identification Technologies and 'Justice' in the Risk Society**

Carole McCartney is currently undertaking a research project into the ways by which forensic identification technologies are supporting and encouraging an agenda of criminal process reform based upon a shift away from justice as 'fairness' (procedural justice) to justice as 'truth' (process outcomes reflecting 'substantive' rather than 'legal' truth), leading to a criminal process in which dispositive and adjudicative decision making occurs earlier in the criminal process and the risk of miscarriages of justice is increased. Further, forensic identification databases are being co-opted into surveillance and social control mechanisms with concomitant new 'risks', including the creation of a 'suspect society'.

### **Legal Process and Informatics Project**

This project is developing the area of legal process and informatics. It is a consortium of the Law (Clive Walker and David Wall) and Business Schools and the School of Computing. It seeks to answer the academic questions that the impact of IT upon the legal process are asking, especially with regard to the courts systems and developments in dispute resolution technology. The answers to these questions will inform the continuous strategic investment in IT within the justice process. The project, which incorporates Court21 (<http://www.leeds.ac.uk/law/court21/ct-indx.htm>). The immediate focus of the project is the development of a Law Technology Laboratory which is, in effect, a virtual courtroom. This facility will become the hub of the project's academic research programme, academic teaching programme, research and development capacity and knowledge transfer programme.

### **The Production of Criminological Knowledge about Cybercrimes**

In this exploratory project David Wall seeks to identify and deconstruct the various means and processes which enable or impede the production of criminological knowledge about cybercrimes.

### **The Regulation of Deviant Behaviour on the Internet**

David Wall has been awarded an AHRB fellowship (2004) to conduct research into the roles of law and 'policing' as governance in the regulation of deviant behaviour on the Internet. The research continues David's ongoing research into the policing of the internet and this project focuses upon the mechanisms of governance, especially the use of law as a tactic in the policing process. The output of this research will inform the development of the next stage of the project and also a section of David's book on *Cybercrimes* for Polity Press.

### **Regulating Closed Circuit Television Systems**

Nick Taylor is currently conducting research into changes in the regulation of Closed Circuit Television Systems. These changes have been brought about by the introduction of internal guidelines and also the Data Protection Act 1998 and Human Rights Act 1998 which have sought to bring about greater transparency in operation and a commitment to the protection of individual privacy. Nick's research involves analysing a number of public, or quasi-public schemes throughout West Yorkshire. It is intended that the results of this research will be available in 2003.

## **4. CRIME PREVENTION**

### **Distraction Burglary: an evaluation of the Leeds Distraction Burglary Project**

In September 2001, Stuart Lister and David Wall were awarded £60,000 to undertake a two year project that evaluated the impact of the Leeds Distraction Burglary Project. Distraction burglary is the specific targeting of elderly people, often through deception, and can have a devastating impact upon the victim. It differs from most other forms of burglary because the offenders seek to engage directly with the victim and exploit their perceived weaknesses. The aim of the research is to examine 'what works' in the efforts to prevent this very specific type of burglary in which the vulnerable are deliberately targeted as victims. The final report has been submitted to the Home Office and the findings are currently being written up.

## **5. CRIMINAL JUSTICE PROCESSES (UK and EU)**

### **Bail: Better Bail Decisions**

Dr Anthea Hucklesby was invited in early 2003 to become a member of the English and Welsh taskforce on a project funded by the European Commission and coordinated by the Law Society. The aim of the project is to improve bail decision making across the EU particularly in the light of enlargement, the introduction of the European Arrest Warrant and the possible introduction of a European Reporting Order. The project involves partnerships with Spain and the Czech Republic. Dr Hucklesby was responsible for producing the country report on the bail process in England and Wales. The project reports to the European Commission at the end of 2003.

### **Bail: National Evaluation of Bail Supervision and Support Projects**

Dr Anthea Hucklesby was funded in the Autumn of 2002 by NACRO Cymru to undertake an examination of the user feedback as part of a broader evaluation of Bail Supervision and Support Projects. These schemes were created by Youth Offending Teams (YOTS) and funded by the Youth Justice Board to reduce offending on bail, absconding and the number of young people remanded in custody while awaiting trial. The feedback was collected by regional evaluators from criminal justice agencies and professionals, Yot workers, partner and voluntary agencies, bail supervision and support workers and young people and was analysed for the report.

### **Enforcement of Financial Penalties**

This project is funded by the Home Office and Clive Walker is part of a team headed by Professor John Raine from the University of Birmingham. The research covers more than 20 separate projects, and Clive Walker is responsible for evaluating the projects in Grimsby and Teesside. Magistrates' courts rely heavily on imposing financial penalties in sentencing offenders. They generate revenue and do not appear to be any less effective in terms of conviction rates than other sentences. But the use of the fine has been declining for a number of years. One of the purposes of the research was to investigate to what extent the difficulty courts have in enforcing payment is a contributory reason for this decline in use. This report summarises the progress and results of an action-research programme designed to support improvements in the enforcement of financial penalties in magistrates' courts. It involved negotiating and implementing a range of enforcement initiatives in 20 volunteer courts, and monitoring their impact by applying 'before and after' measurement of outputs and outcomes. The project final report has been delivered to the Home Office and published as *Clearing the Debts: The Enforcement of Financial Penalties in the Magistrates' Courts* (09/03, 2003, 115pp).

### **Impact on the Courts and the Administration of Justice of the Human Rights Act 1998**

The purpose of this research project was to assess the impacts on courts of the implementation of the Human Rights Act 1998. The research took a three-stage longitudinal approach and examined, first, the planning and preparation work undertaken by courts and related agencies in the period ahead of implementation of the Act, second, the effects immediately after implementation (in October 2000) and, third, the position almost a year later to assess the longer term impacts. While wide-ranging in its concern with impacts, a particular priority for this research (which was based on fieldwork at three Crown Court, three County Court and three magistrates' courts), was the effect of the legislation on court workloads and in terms of productivity and throughput of cases.

Initially, the fairly widely held (though by no means universal) expectation was that the new Act would have a marked effect on the workload of the courts and on throughput rates because of the additional requirements for compliance (for example, having to give reasons for decisions in magistrates' courts). Also widely expected were human rights challenges from the defence, particularly in criminal litigation, adding to case lengths by creating trials within trials.

However, one year after implementation, the general picture from the research was one of relatively limited impact of the Human Rights Act in terms of challenges and additional workload for the courts, although it had invoked a number of significant and specific policy and practice changes and more generally was felt to be engendering a stronger human rights culture within the courts. The study highlights the comparative success with which the courts managed the implementation process and the ways in which they have adapted their practices to accommodate some potentially significant Human Rights Act issues, most notably the 'giving of reasons' and the 'conduct of means enquiries' in the magistrates' courts.

So far as overall workload implications are concerned, the research noted a modest increase in average case lengths in the magistrates' courts, resulting in particular from the requirement to formulate and articulate reasons for all decisions. In the period under investigation, the average duration of trials increased by around 15 minutes – an interval which was mostly able to be accommodated within the existing court sitting schedules, rather than requiring additional sessions. At the same time, while the study highlighted indications of growing human rights consciousness within the courts over the eighteen months of investigation, it was also recognised that these would be relatively early days in terms of the potential for such development in criminal and civil justice practice more generally. A report is available from the Lord Chancellor's Department (No 9/2002 - The Impact on three Courts and the Administration of Justice of the Human Rights Act 1998) <<http://www.lcd.gov.uk/research/2002/9-02es.htm>>

### **Justice and Community in Comparative Context**

Adam Crawford is contributing to a collaborative research project involving contributors from France, Germany, Belgium, the Netherlands, Ireland, Canada and the UK. The focus of the research is upon contemporary criminal justice policies that have coalesced around the relationship between justice and community'. These terms have very different meanings in different cultural and legal contexts which the research intends to explore and theorise. The project is co-ordinated and funded by the Groupe Européen de Recherche sur les Normativités (GERN). A series of research seminars are being held throughout 2003/4, in the UK, France and Ireland.

### **Juvenile Justice in Europe**

Adam Crawford is contributing to a collaborative research project involving contributors from various European Union countries including accession states, including representatives of France, Italy, Sweden, Germany, Poland, Greece, Slovenia, Czech Republic, Hungary, Portugal, Spain and England. The project is co-ordinated by the Groupe Européen de Recherche sur les Normativités (GERN) and is part-funded by the European Commission. The research consists of a series of research seminars held over 2003/4. The first two 2-day conferences were held in Strasbourg in 2003.

### **Referral Orders and Youth Offender Panels**

Adam Crawford was part of the research team that conducted the Home Office/Youth Justice Board evaluation of the referral order pilots. The final report of the evaluation was published in April 2002 (Home Office Research Study 242) to coincide with the national roll-out of referral orders to Youth Offending Teams across England and Wales. Together with Tim Newburn (LSE), he wrote a book arising out of and drawing upon the research findings. The book was published in 2003 by Willan Publishing and is entitled: *Youth Offending and restorative Justice: Implementing Reform in Youth Justice*.

Together with Tom Burden of the Police Research Institute, Leeds Metropolitan University, Adam has recently been contracted by Leeds Community Safety Partnership to evaluate the work of the Restorative Justice Team of Leeds Youth Offending Service with regard to victim involvement in referral orders. The evaluation, which is due to report at the end of 2004, is intended to improve victim experience of the service and also increase victim attendance at youth offender panel meetings.

### **Remand Management**

Dr Anthea Hucklesby, in conjunction with Nacro Cymru, conducted research into, and wrote effective practice guidance on the pre-trial process for youth justice workers. Funded by the Youth Justice Board, the project involved a literature review of current research and policy documents and initiatives on the pre-trial youth justice system which was then incorporated into a checklist of effective practice and a source document (available on the Youth Justice Board web-site).

### **Tolerance, Democracy and Justice**

Juliet Lodge (who is also Director of the Jean Monnet Centre) is conducting an EU funded research project into employment, tolerance and democracy. Central to Juliet's research is a transnational study of the various understandings of justice, liberty, freedom and Pillar III.

### **The Vulnerable Witness in Court**

Louise Ellison was awarded a Leverhulme Research Fellowship of £6684 in 2003 to conduct research into 'The Vulnerable Witness in Court: Barriers to Credibility'. This research study aims to provide a systematic, critical analysis of the law of evidence as it relates to the issue of witness credibility in criminal trials. Specifically, it aims to challenge the prevailing orthodoxy regarding the circumstances in which experts may testify on matters reflecting on witness credibility. This has particular relevance for child and adult victims of sexual offences.

## 4. PUBLICATIONS 2002-2003

This section describes a considerable number of publications by the members of the Centre for Criminal Justice Studies during the period covered by this report. They represent books, chapters of books, research reports articles in academic journals and shorter articles or reviews (CCJS members are in bold).

### BOOKS

**Crawford, A.** and Newburn T., *Youth Offending and Restorative Justice: Implementing Reform in Youth Justice*, Cullompton: Willan Publishing, pp. 264 + xiv, 2003.

Hobbs, D., Hadfield, P., **Lister, S.** and Winlow, S. (2003) *Bouncers: Violence and governance in the night-time economy*, Oxford: Oxford University Press.

**McCartney, C.**, Lincoln, R. and Wilson, P. (2003) *Justice in the Deep North: An Historical Perspective on Crime and Punishment in Queensland*, Bond University Press, Gold Coast.

**Wall, D.S.** (ed) (2003) *Cyberspace Crime*, Aldershot: Dartmouth/ Ashgate (Dartmouth International Library of Criminology and Penology). pp. 582 + xxvi (ISBN 0 7546 2190 1).

### CHAPTERS IN BOOKS

**Akdeniz, Y.** (2003) 'CyberCrime', chapter in *E-Commerce Law and Regulation Encyclopedia*, Sweet & Maxwell.

**Akdeniz, Y.** (2003) Internet Governance, and Freedom in Turkey, in Organization for Security and Co-Operation in Europe ("OSCE") Representative on Freedom of the Media eds, *Spreading the Word on the Internet: 16 answers to 4 questions, Reflections on Freedom of the Media and the Internet*, pp 29-43, Vienna.

**Crawford, A.** (2003) 'The Prospects for Restorative Youth Justice in England and Wales: A Tale of Two Acts', in McEvoy, K. and Newburn, T. (eds) *Criminology, Conflict Resolution and Restorative Justice*, pp. 171-207, London: Palgrave, 2003.

**Crawford, A.** (2003) 'In the Hands of the Public?', in Johnstone, G. (ed.) *A Restorative Justice Reader: Texts, Sources, Context*, pp. 312-19, Cullompton: Willan Publishing, 2003.

**Crawford, A.** (2003) 'The Pattern of Policing in the UK: Policing Beyond the Police', in Newburn, T. (ed.) *The Handbook of Policing*, pp. 136-68, Cullompton: Willan Publishing, 2003.

**Crawford, A.** (2002) 'The Politics of Community Safety and Crime Prevention in England and Wales: New Strategies and Developments', in Hebberecht, P. and Duprez, D. (eds) *The Prevention and Security*

*Policies in Europe*, pp. 51-94, Brussels: VUB Press, 2002.

**Crawford, A.** (2002) 'The State, Community and Restorative Justice: Heresy, Nostalgia and Butterfly Collecting', in Walgrave, L. (ed.) *Restorative Justice and the Law*, pp. 101-29, Cullompton: Willan Publishing, 2002.

**Hucklesby, A.** (2002) 'Bail in Criminal Cases' in M. McConville and G. Wilson (eds) *Handbook of the Criminal Justice Process*, pages 115-136, Oxford: Oxford University Press. (also pub in Beijing pp: 103-136.)

**Walker, C.** (2003) 'Policy options and perspectives: British perspectives' pp. 11-35 in van Leeuwen, M., *Confronting Terrorism*, Dordrecht: Kluwer

**Walker C. and Akdeniz, Y.** (2003) 'The governance of the Internet in Europe with special reference to illegal and harmful conduct' in Wall, D.S., *Cyberspace Crime*, Aldershot: Ashgate

**Walker, C.** (2003) 'Fundamental rights, fair trials and the new audio-visual sector' in Wall, D.S., *Cyberspace Crime* in Wall, D.S., *Cyberspace Crime*, Aldershot: Ashgate

**Wall, D.S.** (2003) "Mapping out Cybercrimes in a Cyberspatial Surveillant Assemblage", ch 7. pp.112-36 in Webster, F. and Ball, K. (2003) *The intensification of surveillance: Crime terrorism and warfare in the information age*, London: Pluto Press (ISBN 0-7453-1994-7).

**Wall, D.S.** (2003) *Introduction: Cyberspace Crime*, pp. xv – xxvi in Wall, D.S. (ed) (2003) *Cyberspace Crime*, Aldershot: Ashgate/ Dartmouth (International Library of Criminology and Penology) .

**Wall, D.S.** (2003) "Cybercrimes: New wine, no bottles?", pp. 3-38 in Wall, D.S. (ed) (2003) *Cyberspace Crime*, Aldershot: Dartmouth/ Ashgate.

**Wall, D.S.** (2003) "Policing and the Regulation of Cyberspace", pp. 477 – 490 in Wall, D.S. (ed) (2003) *Cyberspace Crime*, Aldershot: Dartmouth/ Ashgate.

### RESEARCH REPORTS

**Akdeniz, Y.** (2003) *Internet Governance: Towards the modernization of policy making process in Turkey*, Turkish Informatics Society, Istanbul: Papatya

Yayincilik, September, ISBN 975-6797-44-4 (both in English and Turkish).

**Akdeniz, Y.** (2003) An Advocacy Handbook for the Non Governmental Organisations: The Council of Europe's Cyber-Crime Convention 2001 and the additional protocol on the criminalisation of acts of a racist or xenophobic nature committed through computer systems, Cyber-Rights & Cyber-Liberties, November 2003.

Bottomley, A.K., **Hucklesby, A.** and Mair, G. (2003) *The New Uses of Electronic Monitoring: findings from the implementation phase*, Report to the Home Office.

**Crawford, A., Lister, S. and Wall, D.,** *Great Expectations: Contracted Community Policing in New Earswick*, York: JRF, pp. 50 + x, 2003.

**Crawford, A. and Lister, S.** *An Evaluation of a Contracted Community Policing Experiment*, JRF Findings, York: JRF, p. 4, 2003.

**Hucklesby, A.** and Nacro Cymru (2002) *Remand Management: Guidance for Practitioners*, Youth Justice Board.

**Hucklesby, A.** (2003) *Better Bail Decisions: country report for England and Wales*, Report to the European Commission.

Levi, M. and **Wall, D.S.** (2003) 'Crime and Security in the Aftermath of September 11: Security, Privacy and Law Enforcement issues relating to emerging information communication technologies', pp. 92-100 (s. 6.2), and pp. 163-186 (Annex 2), in *Security and Privacy for the Citizen in the Post-September 11 Digital Age: A Prospective Overview* (EUR 20823 EN - ISBN: 92-894-6133-0). Report to the European Parliament Committee on Citizen's Freedoms and Rights, Justice and Home Affairs, Institute for Prospective Technological Studies, Joint Research Committee, European Commission, Seville, July.

Raine, J. and **Walker, C.** (2002) Lord Chancellor's Department, *The Impact on Courts and the Administration of Justice of the Human Rights Act 1998* Research Series 9/02, ii + 95

## JOURNAL ARTICLES

**Crawford, A.** (2002) 'La Réforme de la Justice des Mineurs en Angleterre et au Pays de Galles', *Déviante et Société*, 26(4), 387-402, 2002.

**Crawford, A.** (2002) 'Las políticas de seguridad local y de prevención de la delincuencia en Inglaterra y en el País de Gales: Nuevas estrategias y nuevos proyectos', *Revista Catalana de Seguretat Pública*, 11, 83-124, 2002.

**Crawford, A.** and Newburn, T. (2002) 'Recent Developments in Restorative Justice for Young People in England and Wales: Community Participation and Representation', *British Journal of Criminology*, Special Edition on 'Restorative Justice', 42(3), 476-95, 2002.

Earle, R., Newburn, T. and **Crawford, A.** (2003) 'Referral Orders: Some Reflections on Policy Transfer and "What Works"', *Youth Justice*, 2(3), 141-50, 2003.

**Ellison, L.** (2003) 'Responding to Victim Withdrawal in Domestic Violence Prosecutions' *Criminal Law Review*, 760-772

**Ellison, L.** (2003) 'Special Measures for Vulnerable Witnesses' *Journal of the Judicial Studies Board*, 16/10-13

**Ellison, L.** (2003) 'The right of challenge in sexual offence cases: SN v Sweden' *E & P* 7/62-66

**Ellison, L.** (2003) 'Prosecuting Domestic Violence without Victim Participation' *Modern Law Review* 65(6) 834-858

**Ellison, L.** (2002) 'Cross-examination and the intermediary: bridging the language divide?' *Criminal Law Review* 114-127

**Fitzpatrick, B.** (2003) "Double Jeopardy: One Idea and Two Myths from the Criminal Justice Bill 2002" (2003) *Journal of Criminal Law*, vol. 67, 149-164

**Fitzpatrick, B.** (2003) "Young Man's Defence: Compatibility with the European Convention on Human Rights: R v Kirk and Russell", *Journal of Criminal Law*, vol. 67, 1-6

**Fitzpatrick, B.** (2003) "Reverse Burden and Article 6(2) of the European Convention on Human Rights: Health and Safety at Work etc Act 1974: David Janway Davies v Health and Safety Executive", *Journal of Criminal Law*, vol. 67, 97-101

**Fitzpatrick, B.** (2003) "Strict Liability: gambling-related insolvency offence: R v Mithun Muhamad", *Journal of Criminal Law*, vol. 67, 101-108

**Fitzpatrick, B.** (2003) "Reverse Burden and Article 6(2) of the European Convention on Human Rights: drunk in charge: Sheldrake v DPP", *Journal of Criminal Law*, vol. 67, 193-197

**Fitzpatrick, B.** (2003) "Rape: Elements of offence; hearsay: R v JF", *Journal of Criminal Law*, vol. 67, 198-201

**Fitzpatrick, B.** (2003) "Reverse Burden and Article 6(2) of the European Convention on Human Rights: counterfeiting offence: Roger S v London Borough of Havering", *Journal of Criminal Law*, vol. 67, 201-207

**Fitzpatrick, B.** (2002) "Tinkering or transformation? Proposals and principles in the White Paper, 'Justice for All'" [2002] *Web Journal of Current Legal Issues*, vol. 5, <http://webjcli.ncl.ac.uk/2002/issue5/fitzpatrick5.html>

**Fitzpatrick, B.** (2002) "Silence and lies of defendant: directions to jury: Sylvester and Walcott v R" *Journal of Criminal Law*, vol. 66, 397-399

**Fitzpatrick, B.** (2002) "Provocation: requirement of evidence: R v Kromer" 66 *Journal of Criminal Law*, vol. 66, 399-401

**Fitzpatrick, B.** (2002) "Strict liability: corporate management offences: R v Doring" *Journal of Criminal Law*, vol. 66, 487-491

**Ormerod, D.** (2002) "Sounding Out Expert Voice Identification Evidence", *Criminal Law Review*, p. 771

**Ormerod, D.** (2003) "Presumption of Intercourse" *Archbold News*, January.

**Ormerod, D.** (2003) "Police Cells and Unwanted Bugs", *Journal of Criminal Law*, vol. 67, 37-50.

**Ormerod, D.** (2003) "ECHR and Exclusion of Evidence: Trial Remedies for Article 8 Breaches", *Criminal Law Review*, p. 61-81.

**Ormerod, D.** (2003) "Improving the Disclosure Regime" (2003) *International Journal of Evidence and Proof*, vol. 7, 102-129.

**Ormerod, D.** (2003) *Criminal Law Review* Commentaries throughout the period.

**Ormerod, D. and Roberts, A.** (2003) "The Police Reform Act 2002: Increasing Centralisation, Maintaining Confidence and Contracting Out Crime Control", *Criminal Law Review*, p. 141-164

**Roberts, A. and Clover, S.** (2002) "Managerialism and Myopia: The Government's Consultation Draft on PACE - Code D", *Criminal Law Review* 873-889.

**Roberts, A.** (2003) "The Perils and Possibilities of Partial Eyewitness Identification Evidence: R v George", 7 *International Journal of Evidence and Proof* 130-136.

**Roberts, A.** (2003) "Questions of 'Who was there?' and 'Who Did What?': The Application of Code D in Cases of Dispute as to Participation but not Presence", *Criminal Law Review* 709-716.

Hall, T and **Whyte, D.** (2003) 'On the Margins of Provision: community safety, partnerships and the policing of domestic violence on Merseyside', *Policy and Politics*, 31/no 1.

**Sanders, T. and Hubbard, P.** (2003) "Making space for sex work: female street prostitution and the production of urban space", *International Journal of Urban and Regional Research* 27:1, 73-87.

**Sanders, T.** (2002) "The Condom as Psychological Barrier: Female Sex Workers and Emotional Management" (2002) *Feminism and Psychology: An International Journal*, 12:4, 561-566.

**Taylor, N.** (2003) 'Policing, Privacy and Proportionality', *European Human Rights Law Review*, Special Issue, 86-100

**Taylor, N.** (2003) 'Compensating the Wrongfully Convicted', *Journal of Criminal Law*, 67(3), 220-236

**Taylor, N.** (2002) 'You've been framed: the regulation of CCTV surveillance', *Journal of Civil Liberties*, 7(2), 83-107

**Taylor, N.** (2002) 'State Surveillance and the Right to Privacy', *Surveillance and Society* 1(1), 66-85

Tombs, S and **Whyte, D.** (2003) 'Two Steps Forward, One Step Back: towards accountability for workplace deaths?' *Policy and Practice in Health and Safety*, 1/1.

Tombs, S and **Whyte, D.** (2003) 'Corporations Beyond the Law? Regulation, Risk and Corporate Crime in a Globalised Era', *Risk Management*, 5/2.

Tombs, S and **Whyte, D.** (2002) 'Unmasking the Crimes of the Powerful', *Critical Criminology*, 11/3.

Tombs, S and **Whyte, D.** (2003) special issue of the journal *Risk Management* : 'Regulation, Risk and Corporate Crime in a Globalised Era.' (vol. 5, no 2.).

**Walker, C., & Akdeniz, Y.,** "Anti-Terrorism laws and data retention: war is over?" (2003) *Northern Ireland Legal Quarterly*, 54(2), Summer, 159-182.

**Whyte, D.** (2003) 'The Dynamics of Economic Crime Control: an evaluation', *Oikeus Law Journal* (Helsinki), 3/300-308.

**Whyte, D.** (2003) 'Behind the Line of Truncheons': Crimes of the Powerful and the Policing of Valid Knowledge,' in Tarling, R (ed.) *British Criminology Conference: Selected Proceedings. Volume 5.* [ISSN 1464-4088] available at <http://www.britisocrim.org/bccsp/vol05/whyte.htm>

## SUBMISSIONS TO GOVERNMENT COMMITTEES

**Walker, C.P.** (2003) Submission to Lord Carlisle's Review of the Terrorism Act 2000

**Walker, C.P.** (2003) Submission to Privy Council Committee on the Anti-Terrorism Act



**Walker, C.P.** (2003) Submission to House of Commons Home Affairs Committee, Anti-Terrorism Act

**Walker, C.P.** (2003) Submission to Home Office Draft Code of Pt I chap2 of RIPA

**Walker, C.P.** (2002) Submission to All Party Parliamentary Internet Group, Communications Data Retention

### SHORT ARTICLES REVIEWS AND CASE NOTES

**Lister, S.** (2003) Review of 'Private Policing' by M. Button, *Journal of Forensic Psychiatry* 14 (2).

**Lister, S.** (2002) 'Violence as a Commercial Resource', *Journal of Forensic Psychiatry*, vol. 12, no. 2, 245-249.

**McCartney, C.** (2003) 'The England and Wales Criminal Justice System; An Outline of the 'DNA Fast-Track' Program of 2020.' *The Magistrate*, Winter, vol. 59 (10) p.313.

**Ormerod, D.** (2003) *Criminal Law Review* Commentaries throughout the period.

**McCartney, C.** (2003) 'The Future of the National DNA Database' (2003), *Justice of the Peace*, vol. 167, 386-387.

**Penfold, R.** (2003) Review of 'Punishment and Civilisation' by John Pratt, *The British Journal of Criminology*, vol.43(4), pp.815-817.

**Whyte, D** (2002/2003) 'War is Business, Business is War', *Corporate Watch: Attack on Iraq Special Issue*, nos. 11/12, December/January, also translated into Spanish for [www.rebellion.org](http://www.rebellion.org).

**Whyte, D** (2002) Justice at Last? *Big Issue in the North*, October 19-25, no. 437.

## 5. CONFERENCE AND PUBLIC SEMINAR PRESENTATIONS

Between 1<sup>st</sup> October 2001 and 30<sup>th</sup> September 2002 members of the CCJS gave presentations at many conferences and seminars. They are listed alphabetically by CCJS member.

**Akdeniz, Y.** (2003) *Internet Governance and Freedom in Turkey*, paper presented at the Organisation for Security and Co-operation in Europe Conference on Freedom of the Media and Internet and, 13-14 June, 2003, Amsterdam, Netherlands. (invited speaker)

**Akdeniz, Y.** (2003) *A critical assessment of the Council of Europe Cyber-Crime Convention*, paper presented at the 21<sup>st</sup> Century Digital Court, 28 May, 2003, the University of Leeds, Leeds.

**Akdeniz, Y.** (2002) *Communications Surveillance: Implications for Workplace Privacy*, speech at the Data Protection/Freedom Of Information (Walker Morris) Conference, Leeds, 30 October, 2002.

**Crawford, A.** (2003) Plenary presentation to European Conference on 'Public Safety in Urban Areas', Institute for Social Safety Studies, University of Twente, the Netherlands, 20-21 March. 2003

**Crawford, A.** (2003) Invited contributor to the 'Global Reflection' workshop, International Centre for Comparative Criminology, University of Montreal, 22-23 February 2003.

**Crawford, A.** (2003) Plenary presentation to European Conference on 'Public Safety in Urban Areas', Institute for Social Safety Studies, University of Twente, the Netherlands, 20-21 March 2003.

**Crawford, A.** (2003) Invited keynote presentation to the GERN 'Community and Justice' conference, Buxton, 4-6 June 2003.

**Crawford, A.** (2003) Plenary speech 'The Challenges in Evaluating Police Community Support Officers', ACPO Conference, Belton Woods Hotel, Lincolnshire, 28/29 July 2003.

**Crawford, A.** (2003) 'The Future of Reassurance Policing', Plenary presentation to 'The Future of Policing' Conference, LSE, 10 October 2003.

**Crawford, A.** (2003) Presentation to, 'In Search of Security', international conference organised by the Canadian Law Commission, Montreal, 18-22 February 2003.

**Crawford, A.** (2003) 'Authors meet Critics: Youth Offending and Restorative Justice', (with Tim

Newburn), British Society of Criminology, 24-26 June 2003.

**Crawford, A.** (2003) 'Great Expectations: Contracted Community Policing in New Earswick' (with Stuart Lister), British Society of Criminology, 24-26 June 2003.

**Crawford, A.** (2003) Two presentations to the World Congress of Criminology XIII conference, Rio de Janeiro, Brasil, 10-15 August 2003.

**Crawford, A.** (2002) 'Implementing the New Youth Justice: Referral Orders and the Restorative Justice Ideal', Department of Applied Social Sciences, University of Manchester, 25 November 2002.

**Crawford, A.** (2002) Plenary presentation, round table contributor and workshop leader 'Evolution de la Justice Pénale des Mineurs en Europe', Centre National de Formation et d'Etudes de la Protection Judiciaire de la Jeunesse, Ministry of Justice, Paris, 28/29 November 2002.

**Crawford, A.** (2002) Invited contributor to the Groupe Européen de Recherches sur les Normativités (GERN) Interlabo, Sciences Politiques, CNRS, Paris, 6 December 2002.

**Crawford, A. and Lister, S.** (2003) *Great Expectations: Contracted community policing in New Earswick*, paper presented to the British Conference of Criminology, Bangor University, July.

**Crawford, A. and Lister, S.** (2003) *The Patchwork Shape of Reassurance Policing in England & Wales: Integrated Local Security Quilts or Frayed, Fragmented and Fragile Tangled Webs?*, paper presented to the Law Commission of Canada, In Search of Security: An International Conference, Montreal, February.

**Ellison, L.** (2003) 'Responding to Victim Withdrawal in Domestic Violence Prosecutions' SLS Conference, September Oxford

**Ellison, L.** (2002) 'Prosecuting Domestic Violence without the Victim's

**Ellison, L.** (2002) 'Testimony' Centre for Criminal Justice Studies, University of Leeds, December

**Ellison, L.** (2002) 'Prosecuting Domestic Violence without Victim Participation' British Society of Criminology Conference, Keele, July

**Fitzpatrick, B.** (2003) "Theft and Deception" College of Law, York, July 2003

**Fitzpatrick, B.** (2003) "Theft and Deception" College of Law, Birmingham, July 2003

**Fitzpatrick, B and Taylor, N.** (2003) "The English Criminal Court", Alwoodley, Community Centre, November 2003

Hadfield, P. and **Lister, S.** (2003) *The Night-Time Economy in Britain: Visions, realities and futures*, paper presented to the British Conference of Sociology, York University, March.

Hillyard, P, Sim, J, Tombs, S and **Whyte, D** (2003) 'Leaving a "Stain on the Silence": critical criminology and the politics of dissent', paper to 'Tough on Crime, Tough on Freedoms? from community to global interventions' conference, Chester, 22-24 April, published by *Statewatch* and available at: [www.statewatch.org/news/2003/aug/19hstw.pdf](http://www.statewatch.org/news/2003/aug/19hstw.pdf)

**Hucklesby, A.** (2003) "Effective Practice in Remand Management", Nacro Youth Crime Conference, University of Loughborough, April.

**Hucklesby, A.** (2003) "Better Bail Decisions in England and Wales", Better Bail Decisions Symposium, Law Society, London, October.

Levi, M. and **Wall, D.S.** (2003) "Crime and Security in the Aftermath of September 11", *Workshop on the balance between privacy and security*, Institute for Prospective Technology Studies, EU Joint Research Committee, Seville, 18<sup>th</sup> June.

**Lister, S.L. and Wall, D.S.** (2003) "Distraction Burglary: ageism in the victimisation of the elderly", British Society of Criminology Conference, University of Wales, Bangor, 24<sup>th</sup>-26<sup>th</sup> June, 2003.

**Ormerod, D.** (2003) "Article 8 and the Criminal Trial", Judicial Studies Board, Nottingham Crown Court, March 2003

**Ormerod, D.** (2003) "ECHR Developments", Criminal Bar Association, Fairburn House, March 2003 (See also the report in *Counsel* 2003).

**Ormerod, D.** (2003) "ECHR and Trial Remedies" Criminal Bar Association Annual Lecture, Grays Inn, April 2003.

**Ormerod, D.** (2003) "RIPA", Police Service, London, April 2003.

**Ormerod, D.** (2003) "Digital Courts in the 21<sup>st</sup> Century" University of Leeds, Court 21 Project, May 2003.

**Ormerod, D.** (2003) "Privacy and Policing" Annual Covert Policing Conference, The Belfry, October 2-4 2003.

**Taylor, N.** (2002) 'Policing, Privacy and Proportionality', December 2002 at Masons, London

**Taylor, N.** (2002) The Privacy Law Conference 2002, organised jointly by JUSTICE/Sweet & Maxwell

**Taylor, N.** (2002) 'Understanding Proportionality' The RIPA Conference 2003, organised by Just Legal Training, , November 2003 in London.

**Walker, C.P.** (2003) Organiser - Hate Speech Symposium, April 2003 – With speakers from England and the USA, discussing issues arising from extremist speech and constitutional conflicts plus terrorist-related issues.

**Walker, C.P.** (2003) Organiser - The 21<sup>st</sup> Century Digital Court, May 2003 New communications technologies are having major impacts on litigation and the very nature of the courts. The electronic presentation of evidence, video links with remote witnesses, digital document exchange and court web pages are amongst the important developments which will be discussed in this conference. With speakers from England and the USA, including practitioners, policy-makers and academics, the conference will provide information and insights into the 21st Century Digital Court.

**Walker, C.** (2003) 'Terrorism: Laws and policy for the 21<sup>st</sup> Century' (paper at Foreign & Commonwealth Office, Conference on Responding to International Terrorism, Wilton Park, Sussex, September)

**Walker, C.** (2003) 'Political Violence and Commercial Risk' (paper in the Current Legal Problems annual series, University College London, January)

**Walker, C.** (2003) 'Liability for Acts of Terrorism' (at conference of the European Centre for Tort and Insurance Law, Liability of acts of terrorism, Munich Re, Munich, February )

**Walker, C.** (2003) 'Biological attack, victims and terrorism', Seminar paper at conference on Anti-terrorism Legislation conference, McKays, Solicitors, Leeds, April

**Walker, C.** (2003) 'The war of words on terror' at Hate Speech Symposium, Leeds, April

**Walker, C.** (2003) 'Internet access to the courts' at conference on The 21<sup>st</sup> Century Digital Court, Leeds, May

**Walker, C.** (2003) 'Biological attack, terrorism and the law', Conference on Terrorism and Human Rights (ESRC funded), Centre for the Study of Political Violence and Terrorism, St Andrews, June

**Walker, C.** (2003) 'Miscarriages of Justice in England and Wales' at First International Workshop on Wrongful Convictions, Briel/Brigels, Switzerland, August,

**Walker, C.** (2003) 'The Retention of communications data', Media and Communications Section , SLS, Oxford

**Wall, D.S.** (2003), "Surveillant Internet technologies and the growth in information capital(ism): The email of the species is more deadlier than the mail?", *The New Politics of Surveillance and Visibility* conference, Green College, University of British Columbia, Vancouver, Canada, May 23rd - 25th, 2003.

**Wall, D.S.** (2003), "Overview of Electronic Attack: Mapping out Cybercrime", *Electronic attack conference*, Police Staff College, Tullian, Scotland, March 11<sup>th</sup>.

**Wall, D.S.** (2002), "More or Less(ig)! Virtual Utopias and Dystopic Networks: Policing Cyberspace Dystopias", *American Society of Criminology Annual Conference*, Chicago, 15<sup>th</sup> November 2002 (*Policing Dystopias* Session 424 – Chair: Jean Paul-Brodeur).

**Wall, D.S.** (2002), "Spams and Scams, the 'white noise of cyberspace': the problem of small impact multiple victimisation deceptions on the Internet", *American Society of Criminology Annual Conference*, Chicago, 14<sup>th</sup> November 2002 (*Globalised Crimes on the Internet* Session 242 - Chair: Hedi Nasheri).

**Wall, D.S.** (2002), "Producing criminological information about Internet related frauds to inform policing policies", Plenary Session, *Annual Conference of the Society for Policing Cyberspace (RCMP)*, Executive Plaza Hotel, Richmond, Vancouver, Canada, 5th November.

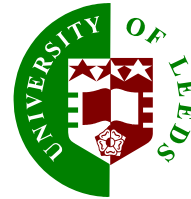
**Wall, D.S.** (2003) "Cybercrime: fact or Fictions", Joseph Bell Centre for Forensic Statistics and Legal Reasoning, Glasgow Caledonian University, April 30<sup>th</sup>, 2003

**Wall, D.S.** (2002) "Cybercrimes as Asymmetric Crime: New Wine in Old Bottles or New Wine, No Bottles?", *Issues in International Justice Seminar Series*, Institute of Advanced Legal Studies, October 23<sup>rd</sup>, 2002.

**Whyte, D** (2003) plenary speech on 'Corporate Crime Prevention' at the Annual Meeting of the European Group for the Study of Deviance and Social Control, Helsinki. August.

**Whyte, D** (2002) 'Privatising Military Violence: neo liberal rule and the rehabilitation of the dogs of war', paper to the *annual meeting of the American Society of Criminology*, Palmer House Hotel, Chicago, 13-16 November, copy available from author.

## 6. SEMINAR PROGRAMME FOR – 2002-4



### CENTRE FOR CRIMINAL JUSTICE STUDIES SEMINAR PROGRAMME - 2002/4

All seminars held in the Moot Court Room, Law School, 20 Lyddon Terrace, Leeds. Contact Dr Dave Whyte 0113) 343 2529 ([d.a.whyte@leeds.ac.uk](mailto:d.a.whyte@leeds.ac.uk))

Wednesday 13<sup>th</sup> November 2002 - 1.00 p.m.:

*“Prosecuting Domestic Violence without Victim Participation”*  
**Dr. Louise Ellison**, Law School, University of Manchester

Wednesday 20<sup>th</sup> November 2002 - 1.00 p.m.:

*“The Protection of Suspects’ Rights in the Investigation of Crime in France”*  
**Dr. Jacqueline Hodgson**, Law School, University of Warwick

Tuesday 26<sup>th</sup> November 2002 - 5.00 p.m.:

*“Jury Research and Reform in New Zealand”*  
**Dr. Yvette Tinsley**, Law Department, University of Wellington, New Zealand

Tuesday 25 February 2003 - 5.00 p.m.

*“Leaving a ‘Stain Upon the Silence’: critical criminology and the politics of dissent”*  
**Professors Joe Sim and Steve Tombs**, Liverpool John Moores University

Thursday 20th March 2003 - 4.00 p.m.

*“The Emerging City States and the Role of Visual Surveillance”*  
**Dr Roy Coleman**, Liverpool John Moores University

Tuesday 13th May 2003 LSR 3, 4.30 pm

*“Seriously Flawed: Reviewing a Home Office Study on Crime Prevention”*  
**Dr. Paul Marchant**, Leeds Metropolitan University

Tuesday 20 May 2003 - 5.00 p.m.:

*“Why is Juvenile Delinquency not a Problem in Italy?”*  
**Professor David Nelken**, University of Macerata, Italy and Cardiff Law School

Wednesday 29 October 2003, 1.00pm

*“Comparative Criminologies of Youth”*  
**Dr Julia Fionda**, University of Southampton

Tuesday 11 November 2003, 5.00pm

*“Youth Crime in Scotland”*  
**Dr Lesley McAra**, University of Edinburgh

Wednesday 19 November 2003, 1.00pm

*"Police Pathways into Crime"*

**Prof. Maurice Punch**, London School of Economics

Tuesday 26 November 2003, 5.00pm

*"Rethinking Miscarriages of Justice"*

**Dr Michael Naughton**, University of Bristol and **Hazel Kierle**, Director, MOJO

Thursday 4 December 2003, 12.00pm

*"Young People, Homelessness and Drug Use"*

**Dr Emma Wincup**, University of Kent

Tuesday 9 December 2003, 5.00pm

*"Deviant Knowledge"*

**Dr Reece Walters**, University of Stirling

Tuesday 3<sup>rd</sup> February 2004, 5.00pm

*"Hang 'em High: Understanding Punitive Public Attitudes"*

**Dr. Shadd Maruna**, University of Cambridge

Tuesday 17<sup>th</sup> February 2004, 5.00pm

*"Asian Youth, Race and Policing"*

**Dr. Colin Webster**, University of Teeside

Tuesday 24<sup>th</sup> February 2004, 5.00pm

*"Policing culture, privatising migration: Blunkett's new race doctrine"*

**Arun Kundnani**, Institute of Race relations

Tuesday 2<sup>nd</sup> March 2004, 5.00pm

*"The Death Penalty in Japan"*

**Prof. Satoshi Mishima**, Osaka City University and University of Leeds

Tuesday 16<sup>th</sup> March 2004, 5.00pm

*"Making sense of the senseless - Crime talk, ageing and self identity"*

**Dr. Tony Kearon**, Keele University

Tuesday 29<sup>th</sup> April 2004, 5.00pm

*"Catastrophe, Risk, Insurance and Terrorism"*

**Prof. Richard Ericson**, University of Oxford

## 7. WORKING PAPERS BY CCJS MEMBERS

The following papers represent aspects of the work of some of the members of the Centre for Criminal Justice Studies during 2002-2003 (see Contents page for complete listing).

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### **Evaluation of a contracted community policing experiment**

*Adam Crawford and Stuart Lister*

In 2000, the Joseph Rowntree Housing Trust (JRHT) entered into a formal agreement with North Yorkshire Police to purchase an additional level of policing cover for the village of New Earswick. New Earswick is not a high crime area, and nor does it have high levels of social breakdown or neighbourhood disorder. Nevertheless, it reflects the kinds of concerns over security and the growing demands for reassurance policing that have become commonplace in many parts of Britain. Adam Crawford and Stuart Lister of the Centre for Criminal Justice Studies at the University of Leeds conducted a detailed three-year evaluation of this experimental initiative.

The study found that:

- Owing to a number of implementation difficulties, the initiative failed to meet its stated aims and was terminated early.
- Crime and the fear of crime increased during the project's implementation, and residents' satisfaction with the local police declined.

The principal obstacles to success were:

- lack of clarity from the outset as to how police time was to be used, and the roles and responsibilities of the different partners;
  - insufficient consideration given to what community policing would comprise and how it might achieve the project's aims;
  - ineffective management of residents' expectations of what the project could realistically deliver;
  - the manner in which the designated officer was drawn away from dedicated work within the village to cover for other colleagues or wider emergencies, since operational control remained within the police;
  - considerable turnover of police staff – three different community officers filled the designated post, and four different police managers oversaw the project's implementation;
  - lack of appropriate formal mechanisms for accounting for the service provided and the nature of any progress made.
- The researchers conclude that the provision of additional policing and security measures may serve to

heighten levels of anxiety and harden lines of difference among local people. The demand for policing or security solutions to local order problems may fail to tackle more fundamental social issues underlying these difficulties.

#### **Background**

Over the last two decades, British policing provision has undergone major change. Increased use of technology and greater professionalisation have encouraged restructuring along more centralised, specialised and managerial lines. This has reduced the number of proactive, locally-tied community officers, not least because organisational imperatives are predominantly drafted in terms of reactive performance indicators.

The demand for a visible police presence has continued to rise, faster than the number of available police officers. National surveys suggest that the public have increasingly lost confidence in the capacity of the police, notably since the mid-1990s. Public satisfaction is lowest with regard to the level of foot patrols. Meeting public demands for visible patrols from within existing police resources is proving highly problematic. Hence a sizeable 'expectations gap' exists between public demand and the level of policing that the police are able to provide.

The emergence of this 'policing deficit' has fostered a growing market for additional patrolling and security provision, both human and technological. Visible patrolling now constitutes a central element of this emerging market, particularly with the dramatic expansion of the commercial security industry. This new market has provided residential communities and social landlords with new choices and opportunities concerning the provision of security. The manner in which the police adapt to this new scenario, in which their own efforts form only one part of the overall 'extended policing family', constitutes a central aspect of the unfolding shape of the local governance of crime and security.

One way in which the police have sought to adapt has been to compete within the emerging security market. The police have experimented with novel forms of service provision, involving financial and contractual arrangements with 'purchasers'. Legislative changes have enabled the police to generate income by selling aspects of their services, including the patrolling function. Section 9 of the Police and Magistrate's Courts Act 1994 provided the statutory basis for the

police to charge more widely for service provision, significantly extending the scope for commercial activity.

### **Contracted community policing – the New Earswick project**

The New Earswick project aimed to contribute to a visible presence on the community's streets "as a means of providing reassurance and a source of security to the public". Under the contract for additional community policing, JRHT purchased 24 hours of police time per week at a cost of £25,000 per year, for an initial three-year period. This time was to be in addition to any operational policing in the area (i.e. the usual reactive, round-the-clock cover and a limited amount of community policing). The contract specified that all operational and deployment decisions remained with the police, and that the designated police constable was to be "solely accountable to the police at all times".

About 18 months after the start of the project, JRHT decided that the initiative had not lived up to expectations, and exercised the option to end it almost a year earlier than originally anticipated. As a consequence, the New Earswick policing project joined a list of community-based crime prevention initiatives whose hopes and expectations have been undone largely by implementation failure.

### **Impact on the community**

During the project's first year, recorded crime figures fell slightly by 5% on the previous year. However, during the second year, the overall number of recorded crimes rose by 99% on the first year. Given the low level of crime in the village at the outset, the subsequent variations inherently appeared relatively dramatic. Much of the rise involved less serious crimes. Furthermore, recorded crime in the surrounding areas also rose during the initiative's second year, albeit less steeply. The policing initiative may have had a limited beneficial impact on recorded crime in the first six months of its implementation, but this appears to have worn off reasonably rapidly.

Two extensive surveys of local residents, conducted near the beginning and end of the initiative, revealed that:

- by the time of the second survey, between a third and a half of respondents felt that the initiative had been unsuccessful in meeting a variety of aims that residents had identified as relevant in the first survey;
- only two-fifths of respondents had seen the contracted community police officer in the previous year, and just over one-fifth had spoken to the officer;
- over three-fifths reported having had no direct contact with the community police officer over the lifetime of the project;
- 6 per cent found the police officer to be easier to contact during the initiative, but 17 per cent felt that he was less easy to contact;

- 16 per cent felt more likely to contact the police, but 10 per cent felt less likely to do so;
- respondents' level of satisfaction with local policing declined over the two surveys, from 31 to 22 per cent. Correspondingly, the percentage who felt dissatisfied increased from 30 to 40 per cent;
- during the life of the project, the percentage of residents who felt unsafe while out alone after dark in New Earswick increased, albeit slightly, from 37 to 43 per cent;
- in the second survey, 87 per cent of respondents agreed that there were not enough police on the streets of New Earswick;
- four-fifths agreed that the initiative had increased their desire for a greater level of visible patrolling in the village;
- over a third of respondents indicated that the initiative had increased their concerns over security and safety. This was reflected in the increased use or possession of a variety of security measures and devices.

An unintended consequence of the initiative was to raise the security threshold in the village, in that residents' perceptions of insecurity appeared to increase, as did their desire for security solutions. Towards the end of the project, a private security firm was hired to patrol the village, with local council funding, and JRHT installed new CCTV cameras.

### **Managing expectations**

The launch of the project stimulated a variety of expectations among residents regarding both the quantity and quality of policing, and the anticipated impact on crime, disorder and the quality of life within the village. Some of these expectations were unrealistic and extended beyond the project's specific aims. Expectations were also raised by lack of clarity over how the designated police officer was to use the time allocated to the village under the terms of the contract. This led to a number of misunderstandings about the initiative, which served to undermine perceptions of its success.

The above illustrates how an additional policing initiative has the capacity to fuel both realistic and unrealistic expectations. It also shows that those charged with the task of implementation must seek to manage appropriately the scope of community expectations. In New Earswick, the development of community hopes and aspirations was largely unmanaged. This created an 'expectations deficit', which the project consistently struggled with. Moreover, the commercial nature of the arrangement tended to change the relationship between residents and the police. It raised expectations as to the standards of service delivery and the manner in which the police should account for the service provided. Unwittingly, policing as a *commodity* arising from a commercial contract seemed to transform the residents into 'consumers' of a purchased good, with increased expectations of the purchaser-provider relationship.

Lack of clarity about the project's purpose and method gave significant discretion – as well as considerable responsibility – to the individual frontline police officers implementing the initiative. This resulted in personal traits and characteristics overly determining the nature of the policing service delivered. It also led to divergent demands on the designated officer(s), which raised questions as to whether the amount of time purchased was sufficient to make a significant impact. Regardless of the implementation obstacles, the intensity of the intervention may have been too small-scale to deliver the desired outcomes. Multiple aims may have spread the resource too thinly to have a significant impact, and further fuelled unrealistic expectations.

### **Staff turnover**

The contract specified the employment of a single designated police officer, so that this officer would be familiar and accessible to village residents. It was hoped that this would better enable the officer to understand the particular needs and problems of the community. These aspirations were largely undone by the high turnover of staff filling the post. During the project, three different officers assumed the community policing post. This unforeseen level of turnover hindered the construction of mutually beneficial relations and went some way towards undermining the initiative's capacity to meet its objectives for providing reassurance.

The emphasis on familiarity with an individual officer also inevitably placed considerable importance on the personality of that officer. The absence of clear guidelines for the purchased activities and tasks added to the 'personalities' issue by giving each of these designated officers significant latitude over what they actually did with their allocated time in the village. Tying the purchased resource to a designated officer also meant that whenever that officer took sick leave or holidays, or attended training events and specialist postings, the village did not receive its contracted hours of community policing.

### **Demands of public policing versus the private contract**

A tension between the broad, generic demands of public policing and the narrow, parochial demands of the private contract served to undermine the initiative further. This tension was exacerbated by two specific factors. First, in comparison to some neighbouring communities, New Earswick is a relatively low crime area and its policing needs less immediate than in other areas where crime is a more serious problem. Secondly, community policing focused around reassurance is, of necessity, a less pressing organisational priority than reactive 'crime management' policing. As public policing is largely incident-led, both of these factors tended to relegate the priority accorded to the initiative by the police, whose primary purpose is the provision of a *public* service.

Wider resourcing demands – particularly the policing of emergencies and major incidents – served to draw the designated officer(s) away from privately contracted duties in the village. The inflexibility of the police rota system represented an additional pressure which prioritised reactive policing duties at the expense of community-based policing.

### **Managerial control and accountability**

Operational control of the contracted officer remained with the police. As a result, JRHT as the purchaser and the residents of New Earswick as the beneficiaries found themselves in the position of purchasing a commodity over which they had no control and little ownership. Direct accounting for the designated officer's activities was limited. When it did occur formally, it was retrospective, explanatory and largely related to crime management incidents. There was little long-term problem-solving analysis or feedback for reassurance-type activities. This does not mean that no such activities took place during the life of the initiative, merely that the processes of measurement and accounting were not made sufficiently explicit. The resulting tensions underlined that action plans and forms of accounting needed to be clarified at the outset.

### **Conclusions**

The researchers conclude that the above findings have broader implications:

- In delivering community policing, an appropriate balance needs to be struck between the reactive duties of officers in responding to incidents, and their more proactive roles of reassurance and crime prevention. Community policing requires police forces to look to problem-oriented solutions which draw on community capacity and local knowledge, rather than relying on existing organisational remedies.
- Police forces need to consider how they can sell a public resource (police time) without having an adverse impact on the wider policing service or undermining service purchasers' expectations of control and ownership when the resource is pulled into wider policing demands. Where managerial control of the contracted resource remains with the police, consideration should be given to clarifying mechanisms and forms of accountability.
- The provision of additional policing raises questions about the equitable distribution of security. There may be an adverse impact on surrounding areas where additional security is absent, reinforcing the notion of policing and security as a commodity available only to those able to afford it.
- Responding to public demands for greater security by providing additional policing or security hardware may fail to engage with the issues underlying these demands. It may also miss the opportunity to subject these demands to rational debate and local dialogue. Seeking solutions to problems of local order through policing and security alone may serve to exacerbate



residents' fears and solidify lines of difference within and among local communities.

### About the project

Over a three-year period the study evaluated the implementation and impact of the contracted community policing initiative, using a variety of social research methods. The data collected combined police recorded crime figures and incident logs, together with extensive interviews with residents and stakeholders within and outside the village, the activities of the designated officers, and observational data. 'Baseline' and 'repeat' surveys were conducted, both of which elicited robust responses from approximately half of all households in the village.

### How to get further information

The full report, **Great Expectations: Contracted community policing in New Earswick** by Adam Crawford, Stuart Lister and David Wall, is published by the Joseph Rowntree Foundation (ISBN 1 85935 1476, price £13.95). The Report is available from York Publishing Services, 64 Hallfield Road, Layerthorpe, York YO31 7ZQ (01904 430033) price £13.95 plus £2 p&p.

For an adobe acrobat version of the full report:  
<http://www.jrf.org.uk/bookshop/eBooks/1859351484.pdf>

For an adobe acrobat version of the Findings:  
<http://www.jrf.org.uk/knowledge/findings/socialpolicy/pdf/023.pdf>

For a copy of the press release issued on publication see:  
<http://www.jrf.org.uk/pressroom/releases/091003.asp>

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## Prosecuting Domestic Violence without Victim Participation

Louise Ellison

In June 2003 the Home Office published a consultation paper setting out proposals to tackle domestic violence.<sup>1</sup> The Government's declared strategy is based, the document purports, on three elements: to *prevent* domestic violence occurring or reoccurring; to increase *support* for victims; and to ensure improved legal *protection and justice* for domestic violence victims. Under the last heading the Government has declared its commitment to improving the prosecution of domestic violence cases and ensuring that victims are not deterred by the way they are treated at any stage of the criminal justice process. A striking feature of the proposals contained within the consultation paper is the extent to which they both presuppose and serve to reinforce reliance on victim testimony. Efforts are centred instrumentally on both encouraging victims to come forward and assisting victims to give their best evidence in the course of criminal proceedings. This focus is significant given that studies indicate that a substantial number of domestic violence victims withdraw their support for a prosecution after making an initial complaint. In one recent study as many as 46 per cent of victims fell within this category while others estimate a significantly higher withdrawal rate.<sup>2</sup> Crucially, research moreover suggests that a sizeable number of victims will remain unwilling or unable to participate actively in criminal prosecutions regardless of attempts to minimise the ordeal of giving evidence and the emotional and practical support on offer. Domestic violence victims confront formidable pressures to withdraw; they include but are by no means confined to well-founded fears of retaliatory violence, threats to financial security, reluctance to criminalise a partner, hopes for reconciliation, fear of alienation from families or communities, concern for the welfare of children, and a belief that court sanctions are not worth the process. Given these pressures it is simply unrealistic in some cases to expect a victim to take the step of publicly denouncing her abuser in the context of a state prosecution. When a victim does refuse to testify the institutional reliance traditionally placed on her testimony and perpetuated in the Home Office consultation paper ensures that the outcome is invariably discontinuance. In 1998, for example, the CPS Inspectorate reported that in over 75 per cent of cases where the complainant withdrew her support for the prosecution the case was terminated as a result.<sup>3</sup>

<sup>1</sup> Home Office, *Safety and Justice: The Government's Proposals on Domestic Violence* (Home Office: London, 2003).

<sup>2</sup> Crown Prosecution Service Inspectorate, *The Inspectorate's Report on Cases Involving Domestic Violence* (London: Crown Prosecution Service Inspectorate, 1998).

<sup>3</sup> *Ibid.*

In other jurisdictions police, prosecutors and the courts have, in a coordinated effort, responded to the acute challenges posed by domestic violence by developing an approach that is singularly less complainant-reliant. Cases are in fact routinely treated as though no victim were available to testify and conducted in a similar manner to murder trials. According to reports, for example, the majority (around 70 per cent) of domestic violence prosecutions in San Diego, California, proceed without the participation of the alleged victim with a high level of success, thus effectively dispelling the widespread view that the probative burden in domestic violence cases cannot be satisfied without the victim's testimony.<sup>4</sup> This article provides a brief examination of initiatives introduced in San Diego and critically assesses the potential advantages of so-called 'victimless prosecution' in the context of domestic violence. It should be stated at the outset that the aim is not to present the case for a blanket 'no-drop' prosecution policy. Whether a prosecution is in the public interest will naturally depend upon the individual circumstances of any given case and respect for the autonomy of victims of domestic violence demands that full and sensitive consideration be given to withdrawal requests as far as possible in all cases. Nevertheless, there will inevitably be cases, albeit a minority, where, *inter alia*, the severity of harm inflicted and the likelihood of reoccurrence render it in the public interest to prosecute a perpetrator of domestic violence regardless of the alleged victim's non-cooperation. The inability of the criminal justice system to respond effectively in such instances is a serious concern and one that one might reasonably have expected the Home Office consultation paper to raise for public debate.

### **Victimless prosecution in San Diego**

A decisive development in the prosecution of domestic violence in the United States has been a shift from so-called 'victim-based' policing towards what may be described as 'evidence-based' policing and the adoption of specific evidence-gathering techniques. Specifically, officers are instructed to investigate domestic violence crime with the assumption that the victim will be unable to participate in any subsequent trial. As part of this strategy officers are advised in all cases to conduct separate interviews with the alleged victim and suspect on arrival at the scene and to identify and interview any possible witnesses including children and neighbours. Officers are additionally directed to record the size, age, description and location of all physical injuries and make note of the emotional condition or demeanour of all present. A particular emphasis is placed on the gathering of photographic evidence. Officers were initially equipped with Polaroid cameras but reports suggest that these are gradually giving way to digital

technology and videotaping. As well as photographing the victim's injuries investigators are instructed to photograph the suspect, the setting and any weapon used as a matter of routine. The importance of taking follow-up photographs of the victim's injuries some 24-72 hours later is stressed. Naturally, evidence gathering at the scene extends to the preservation of any physical evidence such as bloody clothing and damaged property. To help law enforcement in gathering evidence at the scene, the San Diego police department, alongside police departments in other counties, has introduced a 'standard reporting' form for officers to complete when called to an alleged incident of domestic violence. The purpose of the form is to ensure that necessary evidence is collected and documented so that abuse can be substantiated.

This shift in domestic violence policing policy was prompted by the implementation of a revised prosecution strategy which emphasised the importance of continuance with prosecution action in domestic violence cases and was accompanied by expanded training for system personnel (police, prosecutors and judges) and the instatement of a Domestic Violence Coordinator in San Diego Police Department. The adopted prosecution protocol states the basic proposition that no case will be dismissed solely because a victim is uncooperative or reluctant to testify. Charges may be filed without victim cooperation, the document explains, if there is sufficient independent corroboration of the crime to prove the charges without the victim's full involvement. In determining whether to proceed with a prosecution the prosecutor is directed to consider, *inter alia*, the extent or seriousness of the injuries, the use of a weapon, and the defendant's past history of violence whether charged or uncharged. It should be stressed that initial efforts are focused on working with victims, providing appropriate support through a coordinated community response and encouraging their participation in the legal process. The investigative apparatus and prosecutorial policies in place simply set the stage for victimless prosecution where this cooperation is not forthcoming and prosecution is nevertheless deemed in the public interest.

Significantly, prosecutors in California have also exerted pressure on the courts to relax their evidentiary standards to allow the admission of evidence traditionally excluded in criminal proceedings. In 1996, for example, a specific hearsay exception was inserted in the California Evidence Code allowing for the admission of an absent victim's prior written hearsay statement in a wider range of circumstances. The new hearsay exception lays down fairly stringent admissibility requirements but has nevertheless been described by supporters as 'an invaluable evidentiary tool' to assist in the continued prosecution of an abuser when an alleged victim of domestic violence recants or otherwise withdraws her co-operation.

Enhanced evidence gathering and innovations at the trial stage have reportedly led to the successful

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<sup>4</sup> C. Gwinn, *Toward Effective Intervention: Trends in the Criminal Prosecution of Domestic Violence* (San Diego City Attorney's Domestic Violence Unit) <http://www.sandiegodvunit.org/article1.htm>.

prosecution of increased numbers of offenders in San Diego. City Attorney in San Diego, Casey Gwinn, estimates that nearly 70 per cent of filed cases involve uncooperative or absent victims and yet convictions are obtained in 90 per cent of cases: 'About 70% of are cases are provable without the victim based on 911 tapes, photographs, medical records, spontaneous declarations by the victim to the officers, admissions by the defendant, neighbor testimony, relative testimony and general police officer testimony related to the cases and the subsequent investigation.' Surveys examining the impact of victimless prosecution strategies in other states suggest broadly similar results. Although the statistics surrounding victimless prosecution are to date based on limited empirical evaluative research and must accordingly be regarded with caution they do appear to confirm a predictable correlation between improved evidence gathering and successful prosecution in the absence of a co-operative complainant.

### **Potential advantages of victimless prosecution**

A principal potential benefit of 'victimless prosecution' is that it effectively removes power and control from the defendant. The strategy specifically eliminates incentives for abusers to resort to intimidation for the express purpose of deterring her from testifying against him in court. Victimless prosecution is also comparatively less burdensome for victims when compared to a system of forced or mandated participation. Key objections to mandated participation in domestic violence cases centre on the threat to the victim's autonomy. Critics specifically argue that the state should not substitute itself for the batterer by taking control of the woman's life. Some have argued that forced participation risks re-victimising the victim by subjecting her to further coercion at the hands of the state. Others have voiced concerns that forcing a woman to participate effectively holds *her* responsible for stopping the abuse and disempowers her from responding to the abusive relationship on her own. Victimless prosecution may attract similar criticism as prosecutions may proceed regardless of the victim's expressed wishes. Prosecuting a case without a victim's testimony and support is however distinguishable from forcing a reluctant or hostile victim to attend court and testify against her wishes under the threat of contempt proceedings. The latter clearly poses a more potent threat to the victim's autonomy. Moreover, it gives victims no choice but to participate in a process they may well find stressful and intimidating and exposes them to an increased risk of retaliatory violence. One may also question the extent to which the decision to withdraw support for a prosecution following an initial complaint is likely to be an autonomous choice in many cases. Research indicates that it is in fact a decision often shaped by significant situational constraints and the controlling behaviour of a violent partner.

There has as yet been no authoritative attempt to elicit the views of domestic violence victims themselves. It

may be noted however, that among the opinions expressed by a random sample of 47 women interviewed in Hanmer et al's study was the view that the CPS should place less reliance on women when men are prosecuted.<sup>5</sup> More recently, Hester et al interviewed 74 domestic violence victims and report that some women would have welcomed a prosecution 'brought entirely by the police'.<sup>6</sup> Nicola Harwin, national coordinator of the Women's Aid Federation of England has also expressed support for victimless prosecution stating that '[t]he State needs to take on greater responsibility for the gathering of evidence, and take responsibility away from the domestic violence survivor.' What emerges is that complainant withdrawal does not necessarily mean, as commonly assumed, that the woman does not wish a prosecution to proceed; it may simply mean that she is unwilling or unable to assume *responsibility* for the prosecution by giving evidence. In this sense victimless prosecution can be seen to reflect the dynamics of an abusive relationship and to recognise the psychologically debilitating effects of long-term physical, sexual and mental abuse.

It is suggested that a shift towards victimless prosecution would also improve police responsiveness to domestic violence situations and possibly address the continued marginalisation of domestic violence units within forces. Removing victims from the equation would specifically eliminate a key source of uncertainty and police frustration. The police response is not of course merely shaped by evidential considerations. Research suggests that officers are also influenced by concerns that the criminal justice system was unable to meet the needs of many of domestic violence victims and working rules regarding the sanctity of the family unit. Nevertheless, officers may be more inclined to commit limited resources to an investigation when attainability of a 'positive result' (successful prosecution) is independent of complainant support. This may be attributed to a recognised commitment to crime control values and the concordant tendency to view discontinuance as a 'failure'.

Finally, reports from the United States suggest that victimless prosecution may improve conviction rates in domestic violence cases either through successful prosecutions or offenders pleading guilty prior to trial when confronted with physical evidence including photographs of victims' injuries. This may serve a useful symbolic purpose, sending a clear message to perpetrators that violence between intimate partners in private is taken as seriously as violence between strangers in public. It would also provide the state with an opportunity to intervene in a greater number of

<sup>5</sup> J. Hanmer, S. Griffiths, D. Jerwood, *Arresting Evidence: Domestic Violence and Repeat Victimization* Police Research Series Paper 104 (London: Home Office, 1999), 39

<sup>6</sup> M. Hester, J. Hanmer, S. Coulson, M. Morahan, A. Razak, *Domestic Violence: Making it Through the Criminal Justice System* available at <http://www.nr-foundation.org.uk/>

cases where dangerous men pose substantial risks to the physical safety of their partners or ex-partners and hopefully engage constructively with those men with the aim of changing their offending behaviour. Prosecution offers at least some hope for controlling violence against women and for ultimately reducing the physical injury and related social, economic and personal costs caused by domestic violence.

### Conclusion

Victims of domestic violence are a heterogeneous group; they do not all experience the same severity or frequency of violence, they have varying levels of resources for managing abuse and they have different needs and expectations from the criminal justice system. Compared to other victims of violent crimes, victims of domestic violence can moreover face heightened risks to their personal safety following official intervention and operate within formidable situational constraints. For these reasons, the criminal justice system needs to have the flexibility to be able to respond to domestic violence with a range of strategies. Institutional reliance on victim testimony in domestic violence cases currently militates against such an approach as it effectively closes the door to successful criminal prosecution where victims are unable or unwilling to cooperate even where the circumstances of the case render prosecution appropriate. Reducing reliance on victim participation in the manner described within this article can conversely maximise the range of options available to prosecutors. The decision to proceed against a victim's wishes is, of course, one that must be taken only after careful consideration by an experienced Crown Prosecutor following consultation with investigating officers and, it is suggested, personal consultation with the victim. Only after such a process of consultation will a Crown Prosecutor be able to perform the inherently delicate task of weighing the competing public interest factors likely to arise in any individual case.

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## The Future of the National DNA Database

Carole McCartney

Recent announcements that the Criminal Justice Bill is to include provisions to permit the taking of fingerprints and DNA samples from all arrestees should come as little surprise in light of legislative development to date and the recent ruling in the *Marper* case.<sup>7</sup> Since the advent of criminal DNA profiling and the establishment of the National DNA Database (NDNAD), legislation has repeatedly expanded the list of those from whom a sample may be taken; downgraded the authority required to sanction and perform sampling; increased access to the database, as well as now permitting samples, (in addition to the resulting data profile) be retained indefinitely. Critics who warn of the imminence of a national comprehensive DNA database can point to this expansionist trend to support their foreboding, whilst those in favour of a comprehensive database have already begun publicly rehearsing their support.

The pre-cursor to PACE, the Phillips Report of 1981, rejected non-consensual taking of samples, asserting that the use of compulsion to obtain intimate bodily fluids was 'objectionable' (para 3.137). Subsequently, PACE defined 'intimate' and 'non-intimate' samples (s.65 and Code D para. 5.11), and provided that intimate samples<sup>8</sup> could only be taken by consent (by a doctor or dentist), under authorisation of an officer at least the rank of superintendent, and then only if there were reasonable grounds to suspect that the detainee was involved in a serious arrestable offence and that the sample would confirm or disprove such involvement. Non-intimate samples<sup>9</sup> however, could be taken by a police officer and without consent.

The Criminal Justice Act 1988 made available to the Royal Ulster Constabulary these same powers (CJA 1988 s.149; sch.14), albeit with one important difference. In Schedule 14, the list of items defined as 'non-intimate' included buccal (cheek-lining) swabs, listed as 'intimate' by PACE and therefore only able to be taken with consent. Taking such samples *without* consent was justified by the argument that terrorists are less likely to consent and more likely to resist usual methods of policing. It was then perhaps inevitable that the Runciman Report of 1993 recommended the downgrading of mouth swabs to non-intimate samples

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<sup>7</sup> R (on appl. of S) v Chief Constable of South Yorkshire and R (on appl. of M) v Chief Constable of South Yorkshire [2002] EWHC 478

<sup>8</sup> Including dental impressions, samples of blood, semen, saliva or any other tissue fluid, urine, pubic hair and swabs taken from a person's body orifices.

<sup>9</sup> Defined to include a sample of hair (other than pubic), a sample taken from under a nail, a footprint or similar impression of a person's body other than their hand.

for mainland police forces. However, the report went further in also recommending that sampling should be permitted for a broader range of offences, supporting the police assertion that in light the unrivalled power of DNA profiling to assist the fight against crime, they should be permitted to forcibly remove samples of hair or saliva etc. in the interests of 'justice'.

The Criminal Justice and Public Order Act 1994 consequently redefined mouth swabs and saliva samples as non-intimate, but also went further than the Runciman recommendations in extending powers to take non-intimate (potentially non-consensual) samples to an even wider range of offences, replacing the 'serious arrestable offence' trigger with 'recordable offence'. The power to collect samples was also supported by an arrest sanction, providing that individuals required to submit samples must do so within one month of receipt of seven days notice or risk arrest, extending sampling powers to cases where DNA evidence may not be relevant to proving guilt and suspects may not have been in police detention. This was perhaps the first signal that samples were now to be taken, not simply to establish guilt or innocence, but to commence the building of a large database of DNA profiles from a wide range of 'offenders'.

The CJPOA also legalised 'speculative searching' of the growing database so that officers could compare samples with those already on the database. It became apparent however, that there remained a legal loophole, with offenders convicted before the CJPOA, escaping the new sampling regime and inclusion on the NDNAD. In order to plug this 'hole', the Criminal Evidence (Amendment) Act 1997 repealed s55(6) of the CJPOA, enabling police to take non-intimate samples from individuals convicted of serious offences (listed in Schedule 1) if convicted before April 10, 1995 and still serving a prison sentence (the date significant because this was when non-consensual mouth swabbing was introduced).

Meanwhile, s.64 of PACE (which ordered the destruction of samples upon acquittal or charges being dropped) gave rise to a series of appeals prompting consideration of further legal changes. In July 1999, the Home Office published proposals<sup>10</sup> for revising relevant legislative measures, asserting that the fourteen years since PACE had seen significant technological advances making it important that the relevant legislation kept pace. The proposals included amending s.64 of PACE to permit the retention and use of all DNA samples regardless of the outcome of the investigation in which context they were taken; the retention of samples taken from volunteers with their consent; retaking samples should scientific failure inhibit the production of a profile or where the sample has been destroyed prior to analysis; and checking of

DNA samples against those from outside the jurisdiction.

Subsequently, the Criminal Justice & Police Act 2001 enacted most of the proposals while also downgrading the level of authority required for the taking of samples without consent, with 'inspector' replacing 'superintendent'. (The requirement that the compulsory taking of non-intimate samples be performed by a doctor or registered nurse was later downgraded when the Police Reform Act 2002 authorised 'health care professionals'). The order to destroy fingerprints and DNA samples after an investigation had ended was abolished with s.82 of the CJPA 2001 allowing for their retention after fulfilling the purposes for which they were taken. This was controversial inasmuch as it had the effect of legislating for apparent prior illegal practice. Section 64 had been revealed to have been 'honoured in the breach' by an HMIC report in July 2000 which had found over 50,000 DNA profiles on file which should have been removed.<sup>11</sup> In addition, s.82 rendered the treatment of those convicted and those acquitted, or not even proceeded against, the same. This legislative development was inevitable however, in light of *R v B*, the *Attorney General's Reference No 3 of 1999*<sup>12</sup> in which Lord Steyn ruled that the use of DNA evidence which had been kept in breach of s64 did not automatically render the evidence inadmissible but that admissibility be left to the judge's discretion.

A Chief Constable's discretionary power to retain samples under s82 was recently considered by the Court of Appeal (Civil Division) in the *Marper* case,<sup>13</sup> focusing on the legality of permitting the storing of samples and considering the compatibility of such powers with Article 8 privacy rights and the Article 14 rights against discrimination. It was held that the retention of samples did interfere with Article 8 rights but that the adverse interference to the individual's rights were not out of proportion to the benefits to the public. The majority of the Court also held that whilst all citizens were entitled to be regarded as innocent, the different treatment of those who had been the subject of a criminal investigation could be justified 'since the samples were lawfully taken in conjunction with a bona fide investigation and no harmful consequences would flow from the retention unless the fingerprints or sample matched those of someone alleged to be responsible for an offence'.

The question of discrimination was the source dissent by Sedley LJ. His Lordship posited that if there were a comprehensive DNA register then no discrimination would exist. Sedley LJ did not consider that, lawfully compiled, such a database would be an unacceptable

<sup>10</sup> Available at <http://www.homeoffice.gov.uk/ppd/finger.htm>

<sup>11</sup> 'On the Record: A Thematic Inspection Report' (Report of Her Majesty's Inspectorate of Constabulary, London, Home Office, July 2000)

<sup>12</sup> [2001] 2 A.C. 91

<sup>13</sup> see fn2.

invasion of privacy, that such a resource available to the police and courts would be 'a real and worthwhile gain in the endeavour to ensure that the guilty, and only the guilty, are convicted of crimes.' We await to hear the House of Lords opinion on such a development when *Marper* is heard on appeal there, but already such sentiments have been echoed by police, scientists and politicians, who claim that a comprehensive national database would not only allow the speedy identification (and elimination) of suspects, but would curtail costly and time-consuming police investigations and guarantee the accuracy of convictions, bringing to an end the continuing blight of miscarriages of justice.

With judicial confirmation that current police powers are in line with human rights, it could be envisaged that in the future, police could arrest suspects on flimsy evidence and subsequently, having taken their fingerprints, release the suspect, thus enabling police to collect and retain fingerprints of whomever they so choose. Thus would be built a national database of fingerprints and DNA samples of 'the usual suspects'. Indeed, the ruling in *Marper* supports such an eventuality and the recent provisions in the Criminal Justice Bill provide the police with the powers to build such a database. This outcome was explicated in the Human Genetics Commission's 2002 Report *Inside Information*,<sup>14</sup> expressing concern that 'the combination of new powers and increased funding may mean that people are arrested for, but not charged with minor crimes, which result in a DNA profile being retained on the NDNAD for life'.

Whilst Justice Sedley may not be able to envisage any legal problems with a comprehensive national database, there will most certainly be consequences in terms of the power of state surveillance and social control apparatus, individual's genetic privacy rights and the potential 'chilling' effect of suspicion falling upon all of us, perhaps even at birth. It is also far from clear that such databases do indeed eliminate miscarriages of justice, while the growth of social injustice, particularly in terms of discriminatory targeting of suspects for DNA sampling, may in reality result. The future uses of DNA samples remain unspecified while their current use in investigations and trials should still be considered problematic, not least of all in terms of fiscal justification. The rising costs of maintaining such a large database and storing millions of DNA samples must eventually be subject to cost-benefit analysis and may be found wanting. In any event, it is critical that the ever-expanding NDNAD be debated further before politicians give the green light to the sampling of every citizen for the crimes that we may one day commit.

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<sup>14</sup> p.149. Available at [www.hgc.gov.uk](http://www.hgc.gov.uk).

## **Krays out, Barrymore in: The rise and fall of the criminal celebrity**

Ruth Penfold

Until recently the complex relationships between celebrity, crime and punishment including the iconicity of notorious offenders and the scandalous crimes attributed to celebrities have been hinted at by scholars but largely overlooked. However these issues have begun to be excavated allowing unprecedented insight into the glamourisation of crime, which has plagued the criminal justice system's reputation and authoritative legitimacy. This paper seeks to advance a conceptual elaboration of the criminal celebrity phenomenon and thereby propose the decline of the criminal celebrity and the rise of the celebrity criminal. I adopt the terms criminal celebrities for the criminal who becomes celebrated and celebrity criminal for those who are of celebrity status prior to their crime. An analysis of the historical progression of the celebration of criminality will be presented by suggesting three stages of development and subsequent decline of the criminal celebrity phenomenon within Britain and the US. I will suggest that contemporary processes such as globalization and mass media development have contributed to not only the dilution of the criminal celebrity phenomenon but also the establishment of a new celebrated criminality, celebrity criminals.

### **The Criminal Celebrity Phenomenon: criminal heroes and social banditry**

As far back as recorded history goes there has always been a fascination bordering on obsession between the 'normal' law-abiding public and criminality. As Hibbert (1963: 300) reflects,

'[It is] hypocritical to suggest that most of us – perfectly normal people as we are considered to be – do not find...[criminals] fascinating...those who do not share it, or profess not to share it, are the unnatural ones...'

This fascination has led to criminality becoming something that is not necessarily shameful but an activity of glory, reward and daring in the eyes of the public. I suggest that stage one of the criminal celebrity phenomenon is distinguished by two forms of celebrated criminality that existed prior to, and up to, the mid-nineteenth century. Firstly there is the 'criminal hero' who sets down strong roots via characters such as self-styled Colonel Blood, who attempted to steal the crown jewels from the Tower of London in 1671. This act of cunning and audaciousness caught the imagination of the country including King Charles II who pardoned him (Hibbert, 1963: 294). As such criminals like Blood were heroised due to their sheer daring and dramatic criminal activities leading to increasing numbers of criminal figures to 'cash in' on their notoriety. For instance John Sheppard, a house and gaol breaker gave

his personal account to novelist, Daniel Defoe of *Moll Flanders* fame, which he proceeded to recommend at his execution in 1724, making it perhaps one of the earliest publicity stunts in history (Hibbert, 1963: 293).

The second early form of criminal celebrity is that of 'social banditry'. Social banditry differs from criminal heroes because they are not celebrated *because* of their criminality but due to following a publicly acceptable pattern of outlawry. This is defined by a moral code otherwise referred to as the motifs of the outlaw hero tradition. These motifs, (numbering ten in total) involve being a friend to the poor, fighting against oppression, and being forced into banditry; these social bandits are brave, generous, courteous, and cunning, not indulging in unjust violence; furthermore their downfall is brought about by betrayal and they live on after death via myth and legend (Seal, 1996: 11). Consequently social bandits are believed to voice popular discontent, becoming a construct, a stereotype, a figment of the human imagination that represents the fundamental aspirations of rural people (Hobsbawn, 1959: 1-29; Blok, 1972: 500). However this model of banditry fails to fully account for social bandits who do not necessarily promote peasant interests in the national context (Blok, 1972). Therefore it is "necessary to be aware of romanticizing the robber as a friend of the poor, just as much as of accepting the official image" (Moore, 1968: 214). Part of the romanticisation of social bandits is related to them being predominantly male. However there is a need to reflect upon this gender issue for although a female role in social banditry is predominantly one of a lover or a supporter of male bandits they can also become social bandits themselves (Hobsbawn, 1959: 136). Although admittedly evidence of this occurring falls outside of Britain and the US upon which this paper focuses.

The classic text *Primitive Rebels* by Hobsbawn in 1959 attempts to provide an understanding of social banditry by describing it as a 'universal and virtually unchanging phenomenon embodying a primitive form of organized social protest of peasants against oppression making them special in that public opinion does not see them as simple criminals'. Through this definition Hobsbawn limits social banditry to a primitive society, which is vigorously contested by American scholar Kooistra (1989: 161). He asserts that social bandits have a role to play in non-primitive societies and that they can actually expand and develop following bureaucratic and technological development. It is also interesting to note that Hobsbawn (1959) himself also contradicts his own definition within the same text by saying that although social bandits are an 'organised social protest', their eventual decline is related to their lack of organizational capacity and the rise of modern forms of political mobilization, which renders them obsolete (cited by Blok, 1972: 494). This confusion over social banditry has been resolved within my own research by the observation that although social bandits did indeed largely disappear by the mid-nineteenth century due to changing social,

cultural, political and economic circumstances they have left an indelible effect on society. This is primarily because they have evolved into a new form of celebrated criminality namely the celebrity villain and the notorious villain.

### **New Era of the Criminal Celebrity: the celebrity villain and the notorious villain**

Notably from the mid-nineteenth century in Britain and the US there is a distinct lack of criminal heroes and traditional social bandits although admittedly an urban form did emerge in the shape of urban bandits and gangsters in the 1920s-1930s such as Bonnie and Clyde. Thus a large part of Kooistra's assertion that celebrated criminals would thrive in a mediated environment has proven to be true in the form of the 'celebrity villain', who becomes celebrated for their crimes and the 'notorious villain', who commits unacceptable crimes, such as child abuse or serial murders, but becomes as well known as a celebrity. The celebrity villain and its notorious counterpart mark a distinct shift into the second period of criminal celebrities dating between the 1850s-1960s. It is important to note that both of these second era celebrated criminals are intimately related to societal shifts and developments going on during this time period. For instance the rise of the mass media and other communication technologies provided a whole new level upon which to glamourise crime for an increasingly global audience was able to be reached across time and space via the written word, and audio and visual forms.

The celebrity villain still maintains many of elements of the social bandit making them out to be apparently 'noble criminals'. By fulfilling a range of qualities possessed within social banditry they are valorised, idealised and romanticized by the public. However it is significant to note that key elements of the social bandit are largely rejected. For instance a criminal individuals may claim the alleged generosity of a social bandit in that he gives ill-gotten gains to the needy, but it will not prevent him from lining his own pockets or from committing excessive violence both of which social bandits are believed by the public not to have done. This lack of nobility behind criminal behaviour has interestingly not alienated the public fascination and love from the criminal villain as it would a social banditry reinforcing the assertion that a shift within the criminal celebrity phenomenon has taken place.

The infamous villain is not celebrated but feared and loathed on a public scale. This lack of celebrity does not dismiss them from the debate of celebrated criminality for they are often the most well known criminal individuals within society. This well knowness for a negative achievement places these criminals into the 'iniquitous' category of celebritization therefore making it necessary to conduct some investigation into these infamous criminals who commit unforgivable crimes. These villains gain infamy and not celebrity due to the horror of their crimes which seen as evil, callous and cowardly for

they tend to be crimes conducted against the vulnerable such as the old or very young. Predominantly the crimes committed are related to sexual assault or abuse, or murder using torture, sadism or even cannibalism, which is often on a large scale. Consequently serial killers are prime examples of infamous villains as illustrated by Charles Manson, leader of his own religious cult the Manson Family who committed the serial murders for him in the 1960s. His cult status has not lessened over the years with fans creating numerous websites to him and his music and sending mail to him to the extent that he has received more mail than any other US inmate<sup>15</sup>.

Part of the distinctiveness of the second era of celebrated criminals is that a 'golden age' of the criminal celebrity phenomenon identified here as during the 1960s. During this decade the criminal celebrity phenomenon appears to reach a peak in the variety, number, and range of celebrated criminals. This golden age of the criminal villain is marked by criminal celebrities such as John McVicar who following a sentence for 23 years for robbery and assault infamously escaped from prison twice, remaining at large the second time for 2 years and the Great Train Robbers whose robbery of a Royal Mail train in 1963 became international news. This particular story was sensationalized by the media via the characters involved, such as Ronnie Biggs who obtained legendary status by escaping jail to exile in Brazil in 1965 only returning to England in May 2001 to face his sentence. However it was not just robbers that appeared in abundance and with a vibrance never before witnessed but also London born and raised gangsters including the Kray Twins, the Richardsons and 'Mad' Frankie Fraser.

What is of particular significance during this golden age is not only a climax of celebrated criminality but also the sudden surge of notorious criminals who have become so well known that nearly a quarter of century later they remain key examples of notoriety and live on in the public memory. Instances include 'Moor's Murderers' Ian Brady and Myra Hindley and Peter Sutcliffe otherwise known as 'The Yorkshire Ripper'. However notably this particular thread of criminal celebrity status did not, like celebrity villains, reach a climax from where it progressed into decline. Instead this notorious criminality appears to have begun at the height of celebrated criminality only to flourish in our contemporary global society as illustrated by well known serial killer cases such as Donald Neilson, 'The Black Panther'; Fred and Rose West of the Cromwell street murders; US cannibal, Jeffrey Dahmer; and Dr. Harold Shipman. Furthermore there appears to be a new method of gaining notoriety via criminal acts in the shape of terrorists. These individuals no longer remain anonymous components of a group which claims credit for their actions, but instead become

notorious in their own right as in the instances of Timothy McVeigh, 'The Oklahoma Bomber' and Osama Bin Laden, the mastermind of the September 11<sup>th</sup> Bombing.

However the abundance of celebrated criminality does not explain why the 1960s could be identified as the golden age of the criminal celebrity phenomenon. What was it about this moment in history that allowed a golden age to occur? In order to answer this it must first be asked what made this time so conducive to the celebritization of criminals. The 1960s was a decade dominated by change, development and reform at an economic, technological, social, political and cultural level. Despite Harold Macmillan's 1959 declaration that we have 'never had it so good' it was not until the 1960s that Britain reached an economic apogee. During this decade national income grew nearly half as fast again as in the 1950s, unemployment remained below 2.5% of the labour force, inflation averaged below 4%, and reform ideas to accelerate economic growth were implemented such as experiments in income policy. Other initiatives included efforts to join the European Community, new universities, and the relaxation of laws labelled as 'permissiveness' (Kindleberger, 1992: 1). However despite this apparent success Britain in the 1960s is still remembered as a decade of repeated crises particularly relating to balance-of-payments such as currency uncertainties (Kindleberger, 1992: 2).

It was not only the economy that was shifting at this time but also the social and cultural attitudes of the British people living within the 'swinging sixties'. The shift from over-regulated to under-regulated lives was occurring through sexual behaviour, fashion, literature and art, spoken language and personal appearance. In short, powerful public and private codes had been replaced by near-total choice; the process of liberation was occurring (Dahrendorf, 1992: 145). This ideology altered not only family life but also played havoc with moral authority such as churches; undermined national self-understanding; degraded the media, entertainment and popular culture; and subverted institutions entrusted with preserving and transmitting high culture (Kimball, 2000: 14). Other dramatic changes within society were related to political activism such as the Black Power Movement, Feminism and Gay Liberation, all of which highlighted a new degree of permissiveness (Kimball, 2000: 255) and helped define the 1960s by its radical, emancipationist assaults (Kimball, 2000: 13). Therefore as Marwick (1998) effectively summarises the 1960s that "Gone was the stuffy conservatism of previous decades, while the radical, divisive, philistine conservatism of Reagan and Thatcher were yet to come."

This context provided the criminal celebrity phenomenon with a new set of circumstances that were highly conducive to celebritization in general but especially that of criminals. The societal openness to change and the anti-establishment sentiments of the 1960s populace propelled them into responding to

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<sup>15</sup> 'Charles Manson and the Family'  
<<http://www.bbc.co.uk/crime/caseclosed/charlesmanson.shtml>>



criminals (apart from the infamous ones) as hero-like figures. Mass media coverage of crimes and criminals encouraged the social reaction towards criminals that led to the development of the criminal celebrity. The media was relatively free in its coverage of events compared to under the rule of Thatcher in the 1970s and 80s therefore dramatic and infamous crimes received detailed reporting. However this would not have greatly affected the public if the social mind set of the public been different to that, which existed in the 1960s. At a time when society was largely anti-establishment and keen on crossing class boundaries to mix with the social elite criminal readily became celebrities because they represented the ultimate challenge towards the state and rules being imposed. Thus criminal celebrities in the 1960s were supported and loved due to the cultural revolution that was not only intellectual, artistic but also developed a political basis founded upon many adolescent values and attitudes (Kimball, 2000: 6).

### **The Dilution of Criminal Celebrities: Underworld Exhibitionists**

The criminal celebrity phenomenon having reached its peak in the 1960s faced a degree of decline although the celebration of criminality in general was far from weakening. Instead a new era of criminality emerged, in the form of 'underworld exhibitionists'. This was a new and lesser form of criminal celebrities who actually sought out celebrity status by 'cashing in' on criminal pasts and were motivated by profit, whether it be in the form of money, reputation or status. This differs vastly from previous criminal celebrities who have mostly not deliberately sought celebrity status. The celebrated status of criminal celebrities has previously been based upon their current activities and reputation and not as in the case of underworld exhibitionists which has been founded upon their past behaviour and actions. This selling of the past as opposed to the present ultimately constricts underworld exhibitionists potential as criminal celebrities for they produce nothing new to be celebrated; they rest primarily upon their old and increasingly dated reputation. Consequently it is hereby suggested that the phenomenon of criminal celebrities has declined via the rise of the new diluted form of celebrated criminality.

British ex-gangster 'Dodgy' Dave Courtney also known as the 'Yellow Pages of Crime' and 'Heir to the Krays' is a key example of an underworld exhibitionist through his attempts to enter the celebrity circuit via his past<sup>16</sup>. Unlike celebrity villains, Courtney has openly proclaimed giving up his criminality (as other criminal celebrity wannabes are also doing), stating that he has 'gone legit'. Consequently he ploughs his energies into turning his self-professed notoriety and infamy into celebrity status by having his own website,

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<sup>16</sup> Underworld exhibitionists are not limited to Britain or America alone as illustrated by Australasian Mark Brandon 'Chopper' Read who has projected his notoriety as a criminal into an acting and writing career.

hiring himself out to speak at various events, being interviewed for magazines and appearing on television programmes<sup>17</sup>, whilst also being involved in music recordings<sup>18</sup>, films<sup>19</sup>, and publishing a number of books on himself and his past. Courtney's 'diamond geezer' method of speech which is reflected in his writing is characterized by cockiness, boasting, story telling and a level of arrogance; he appears to be keenly aware of the image that he conveys, or rather needs to convey, in order to live up to his projected image of a dangerous glamour.

Interestingly underworld exhibitionists appear to have not noticed that they are only a dilute form of the criminal celebrity phenomenon. This is illustrated by careful management and mixing on the celebrity circuit failing to move underworld exhibitionists such as Courtney, into celebrity status. As a result underworld exhibitionists remain something of a non-entity, known by a few but far from achieving the household name status achieved by celebrity criminals of the past with less effort. The control that is exerted by the underworld exhibitionists over their image in both the pictorial and self-identity sense is intense. For instance Courtney has placed himself on the books of public relations agency, The Drum Consultancy to promote his life as an author, actor and singer.<sup>20</sup> He also attempts to use the Krays techniques of controlling the image via cultural artifacts but does not quite succeed. For instance Courtney makes available 'Dave Courtney Memorabilia' including his personal, 18ct gold diamond-encrusted knuckle-duster<sup>21</sup> not only for his own profit but also for charity events much like the Krays. However the need to commit one notorious act to become a legend has not been adequately filled by Courtney's acquittal of murder ("even though I done it")<sup>22</sup> and he has not got the exceptional image associated with the Krays due to their twinning which restricts him to underworld exhibitionist status.

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<sup>17</sup> Roger Cook from the Cook Report did a programme on Courtney; Courtney and partner, Jennifer appeared on the Vanessa show; Jennifer was interviewed by BBC's Inside Story series which was making a documentary called 'Gangster's Molls' (Courtney, 2000: 388-389).

<sup>18</sup> Courtney convinced his partner, Jennifer to release a rap with her twin sister about the injustice of the Krays imprisonment (Courtney, 2000: 243).

<sup>19</sup> Courtney has appeared as an extra in a number of films including Mel Gibson's *Hamlet*, Kenneth Branagh's *Henry V*, and *Robin Hood: Prince of Thieves*. Furthermore he claims that the character played by Vinnie Jones in *Lock, Stock and Two Smoking Barrels* is based upon him and some of his past gangster activities such as slamming a sunbed lid down on a person who was inside (Courtney, 2000: 204, 397).

<sup>20</sup> Stop Press, 19/7/2002 'Former Gangster Hires Drum Consultancy'.

<sup>21</sup> South Wales Echo, 27/5/2002 'Ex-Gangster's Good Deed for Appeal'.

<sup>22</sup> The Guardian, 20/7/2002 'The Guide: Crime Watch: An increasing number of programmes are lauding minor-league gangsters as cultural icons'.

Yet another important factor in the dilution of the underworld exhibitionist is that increasingly these celebrated criminals are unable to effectively project, and thus draw upon, the image of a victim. Claiming victimhood is increasingly hard in contemporary society due to (actual) victims becoming a central cultural motif. Thus victims of crimes are entering to some extent celebritization as they become nationally or internationally well known due to the crime committed against them. Instances of celebrity victims are perhaps most well illustrated by criminal laws, which have been passed having been named for the victim such as Stephanie's Law<sup>23</sup> in the US. Valier and Lippens (2003<sup>24</sup>) examine this phenomenon regarding the images of murdered mothers in particular those involved in the Moors Murders such as the mother of Keith Bennett who still does not know where his body lies<sup>25</sup>. She has become a well-known media figure due to her victimhood, which has left her a broken and bitter woman. In both of these instances the victims despite being dead are not silenced, they are consistently resurrected particularly in the latter case where the victim's body has never been laid to rest.

#### **The Weakening of the Criminal Celebrity Phenomenon: what caused the decline?**

The assertion that underworld exhibitionists are merely a dilute form of celebrated criminality due to various factors, which undermine its celebritization impact on the public, raises questions about what else contributes to the weakening of the criminal celebrity phenomenon. In this paper three key developments are used to effectively highlight how the criminal celebrity phenomenon has gone into decline. Firstly there is the expansion of the mass media into a globalised mass media. Advancements in the mass media from the 1970s onwards shifted the range and variety of media forms to a global scale, thereby allowing information and images to be distributed on a global scale to a global audience. It is important to note that the rise of celebritization was not dependent on global mass media but had its power, influence and reach vastly increased by this development. Global media has been the key in providing links between communities scattered across the planet, making the social world smaller and obliterating the barrier of time and space thus enabling increasingly frequent and easy communication (Demers, 1999: 23). Or as Giddens (1990: 64) states in his understanding of globalization, it is

the intensification of worldwide social relations which

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<sup>23</sup> Stephanie's Law requires the *de facto* jailing of persons who have already served prison terms for sex offences. <<http://www.gwu.edu/~ccps/etzioni/B310.html>>

<sup>24</sup> 'Weeping Women' Unpublished Paper at British Society of Criminology Conference, Keele, July 2003.

<sup>25</sup> 'Brady offers to look for victim's body' 21/12/2001 <[http://news.bbc.co.uk/1/hi/english/uk/newsid\\_1723000/1723362.stm](http://news.bbc.co.uk/1/hi/english/uk/newsid_1723000/1723362.stm)>

link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa.

Despite being hailed as a menace as well as a messiah<sup>26</sup> the impact of the global media has been significant everywhere it has touched. This is predominantly due to it being characteristically a multidimensional phenomenon, that is closely related to complex connectivity, confounding any attempts to separate categories of human life such as social, economic, political, technological (Tomlinson, 1999: 13).

Giddens (1990: 19) writes that modernity via globalization tears space from place and fosters relationships at a distance between people not united in face-to-face presences of a locale. This has major consequences for the criminal celebrity phenomenon particularly due to the importance of locale and timing that is required to create a niche for a symbol such as a criminal celebrity. As Kooistra (1989: 10-12) writes celebrated criminals are a product of group conflict during times where there is a national 'market' for such symbolic representations of social justice. As such it is the social interpretations of lawlessness based upon kinship and community rather than impersonal bureaucratic procedures established by the state that is of prime importance. Therefore the majority of criminal celebrity figures of either celebrity villain or infamous celebrity villain status are dependent on local or even national support and recognition. This is demonstrated largely by the celebrity villains of the golden age of the criminal celebrity phenomenon who were all securely grounded within a locale such as the Krays in the East End of London or at most a nation as in the instance of the Great Train Robbers. Therefore beyond the locality or community of their regime many criminal celebrities find their status dwindles because their reputation and deeds are inextricably tied to the area in which they live and the activities which they commit in the vicinity.

Although the mass media aided the telling of criminal celebrity narratives that increased their range and status it appears that global mass media is the destroyer of this phenomenon. The celebrity villain loses their impact and drive on a scale larger than a nation, they become lost in a sea of global criminality that belittles their criminality and strips them of their celebrated status. This is especially so considering the high competition between the most horrific, dramatic or sensationalised crimes and that many villains who appear horrendous in their local community become a minor issue in the light of global comparisons.

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<sup>26</sup> Critics of global media argue it is a menace in that it does not care about promoting a diversity of ideas, democratic principles or equality in its pursuit of profit. In contrast it has been heralded as a messiah in that it has emerged to satisfy the desire for information and entertainment needs of a complex and interdependent world that national mass media has failed to do (Demers, 1999: 4-5).

Therefore the significance of Giddens' (1990) structuration theory, in that distanciation breaks the bonds of community, is that it explains why even criminal ties to the locality are shattered. Significantly however, many infamous celebrity villains appear to all extents and purposes to thrive under global mass media in direct opposition to its counterparts decline. This suggests that some infamous crimes are so dramatic and sensational that they are acceptable horror fodder across the planet.

The second catalyst to the decline of the criminal celebrity phenomenon is also connected to the media in relation to its coverage of crimes and criminals. The violence portrayed in the media and its consequence of public desensitization is a key factor in aiding the criminal celebrity to decline. Concerns about the effects of the media especially its coverage of violence occur whenever a new communication medium appears. For instance despite there being no conclusive evidence of movies having degenerative effects on audiences popular romantic/adventure novels of the nineteenth century and motion pictures at the beginning of the twentieth century have been widely criticized (Gunter, 1994: 163-164). However through various studies effects of media violence has been proven to have a number of effects at a psychological level that can be broadly divided into cognitive, affective and behavioural categories. Effects at a cognitive level are envisaged to influence and shape individual's beliefs and opinions about the world around them. Thus the media represents one of the more significant sources of information about the world that people take into account when developing opinions and impressions of social reality (Gunter, 1994: 183).

Affective or emotional effects suggest that the media produce both weak and pronounced emotional responses amongst viewers particularly regarding intense fright reactions (Gunter, 1994: 187). Behavioural effects are specified to act through mechanisms of catharsis, arousal, disinhibition, imitation and desensitization. The latter is the most significant for explaining the decline in the criminal celebrity phenomenon for the effect of desensitization refers to repeated media violence viewing leading to a reduction in emotional responsiveness to the violence portrayed and an increased acceptance of violence in life. An important part of this desensitization is that of habituation, which refers to emotional tolerance increasing over time. It is this tolerance that appears to lead to an increasing demand for more and more extreme forms of mediated violence as viewers become habituated and it loses its 'kick' and hence its appeal (Gunter, 1994: 167-169). Desensitization occurs to audiences who are exposed to violent portrayals can respond both immediately and also over a long period of time. Significantly exposure to such media violence has been found to change the attitudes of both children and adults about violence and its victims (Thomas, Horton, Lippincott and Drapman, 1977). This desensitization process towards the plight of victims

and violence in general also portrays that violence is a 'normal' part of society, that it can be used successfully, is not always punished and is frequently rewarded (Potter, 1999: 42, 221). Therefore people, over time, do not react as strongly to particular portrayals of violence such as when programmers present the same elements over and over, the repeated portrayal loses the ability to put viewers in flight-or-fight mode where heart rate and blood pressure are raised.

As a consequence of this habituation the portrayal of violence and aggression needs to be stronger each time, or heavily exposed people will lose the 'arousal jog', the pleasant feeling of being excited via pleasure or fear (Potter, 1999: 252). This desensitization process is particularly illuminating regarding the decline of the phenomenon of criminal celebrities as it suggests that desensitization via media violence is not limited to fiction but also applies to reality. Therefore the more crime and criminals are portrayed within the media the more dramatic or horrific they need to be in order to become celebrated. Consequently criminals who are seeking celebrity status are necessitated over time to do more and more dramatic crimes in order to gain widespread public celebration. This helps to explain why, since the 1960s, there has been a shift away from celebrated villains and also, why those committing infamous crimes remain in the public eye because their actions are characterized by horror, violence and drama.

The third significant catalyst component to the decline of the criminal celebrity phenomenon is that of criminal justice. Celebrated criminals have always posed a problem for criminal justice because they contradict its primary message that 'crime doesn't pay'. This is particularly the case since the 1960s when it became only too apparent, through the mass media via the numbers and range of celebrity villains that were conveyed, that criminal justice would have to adjust to "live with the media and by the media" or sacrifice their reputation and public support (Castells, 1996: 334). In a globalised mass mediated world the management of visibility assumes great import (Thompson, 1995) and as such criminal justice agencies such as the police, have developed an active concern and wariness of popular criminal images.

The major problem for the police is that they are founded upon the principle of policing by consent (Mawby, 2002: 66), which requires this criminal justice agency to be recognized as legitimate in the eyes of the public it serves. Consequently,

The police have become proactive in making their public image. The police now accept that in relation to a particular incident or activity, a proactive approach to the news media is useful in controlling the version of reality that is transmitted, sustained, and accepted publicly (Ericson, Baranek, and Chan (1989: 93).

Thus the police have come to demonstrate an active concern and wariness, bordering on fear, of popular criminal images rather than the villains themselves to extent of changing their approach towards criminals and also their own projection of image. Therefore along with promoting themselves the police have taken steps towards inhibiting the development of any more potential criminal villains. Their success is illuminated by the lack of celebrity villains and the diluted version of underworld exhibitionists failing to achieve the same level of hype and public recognition as their criminal celebrity predecessors.

Despite the care of criminal justice agencies to respond to celebrated and glamourised crime and criminals, it has failed to foresee the rise of a new form of celebrated criminality in the shape of celebrity criminals. Significantly, the very factors that encouraged the decline of the criminal celebrity have provided a fertile environment for this new form of celebrated criminality. The celebrity criminal thrives in a global mass mediated world with its increasingly desensitized public, whose attitude towards celebrities is one of lenience and expectation of deviance and criminality. As a result the celebrity who commits a crime, or is merely associated with a crime or deviant behaviour, can become celebrated in a new way. For instance transgressing a 'nice guy' image can be a positive move as discovered by Hugh Grant after his indiscretion with Divine Brown that ultimately improved his career. However in contrast crime association can cause a fall from public favour as experienced by one time family entertainer Michael Barrymore following the suspicious death of a man in his swimming pool. All in all, in a society that is fascinated with both celebrities and criminality it is of perhaps little surprise that a combination of both is coming to dominant the phenomenon of celebrating criminality.

### Concluding Remarks

This paper has sought to highlight the process of glamourised crime by tracing the rise and fall of the celebrated criminal that has long been detrimental to the policy and authority of criminal justice whilst being beloved by the public. The development of a periodisation of criminal celebrities provides an outline of the changing forms within the phenomenon revealing that a number of components contributed to each shift of celebrated criminal time period. It is perhaps communication forms that appear to contribute the most although the importance of public favour that seems to coincide with certain societal and cultural circumstances also seems to be a key factor. Finally it has been sought to emphasize the contribution of societal processes, such as the globalised mass media to explain the decline of the criminal celebrity phenomenon and the rise of new forms of celebrated criminality in the shape of celebrity criminals. This has highlighted that the criminal justice battle with popular criminals and glamourised crime is entering a new phase demanding new tactics in order to remain a legitimate authority in the eyes of the public.

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## The Perils and Possibilities of Qualified Identification: *R v George*.

Andy Roberts

The trial and appeal<sup>27</sup> of Barry George attracted considerable media attention. He was convicted of murdering Jill Dando, a well-known television presenter, who was shot on the doorstep of her home. His appeal raises points of general importance on the admissibility of evidence concerning identification procedures during which witnesses fail to make an identification, or make 'qualified identifications' (i.e. indicate that more than one member of the parade might be the culprit, with the suspect being one of these persons).

### *The facts and decision.*

The appellant was arrested for the murder over a year after it had occurred. At trial the prosecution case rested on the weight of a significant amount of circumstantial evidence. Although the crime was committed in a London street at 11.30 a.m. no one witnessed the event. There were a number of witnesses who provided descriptions of a man they had seen in the street on the morning of the murder and the previous evening. Two of these witnesses had seen the same man close to the scene just moments after the crime had been committed.

The police arranged for identification parades to be held. Given the period that had elapsed between the murder and the identification procedures, the witnesses' task was an extraordinarily onerous one. They were further disadvantaged by the fact that although both the person they had described and the suspect were clean shaven at the time of the murder, the suspect had since grown a significant amount of facial hair.

The appellant was not picked out at an initial identification parade, with the witness failing to make any identification. Thereafter, the appellant refused to take part in any further 'live' parades and arrangements were made for the remaining witnesses to view video parades. One witness made a positive identification of the appellant while three others made no identification. The remaining witnesses each made 'qualified identifications'. One initially had difficulty in choosing between three images, including one of the appellant. Her uncertainty then narrowed to the image of the appellant and one other before she selected the innocent foil, stating that she was 85% certain of her choice. Of the remaining witnesses, one picked out the appellant, at first stating that she was sure that he was the person she had seen, but then that she was 'not quite sure'. Another had a 'gut-feeling' that the

appellant was the person she had seen but could not make a positive identification.

The trial judge permitted the prosecution to adduce evidence of what had occurred at the video identification procedures. On appeal it was argued that unless there had been a positive identification during an identification procedure, the prosecution should be prevented from adducing evidence concerning the circumstances surrounding a failure to make an identification or any qualified identification - the jury should hear no more than a statement that the witness failed to make a positive identification.

As to a witness's *failure to make an identification* at a parade, it was held that this was no bar to that witness being called to the witness box to describe the offender, the event, or what had occurred on a parade.<sup>28</sup> It was further held that, while evidence of a *qualified identification* alone is not sufficient to convict a defendant,<sup>29</sup> there are at least two situations where such evidence may be both relevant and probative:

(i) Where it supports or at least is consistent with other evidence that indicates that the defendant committed the crime with which he is charged.

(ii) Where the explanation for non- or qualified identification may help to place that evidence in its proper context, e.g. to show that other evidence given by the witness may still be correct.

### *Perils and Possibilities.*

The proposition that both the prosecution and the defence may examine a witness on the circumstances surrounding his failure to make an identification appears uncontroversial and largely unobjectionable.<sup>30</sup>

The more troubling aspect of the decision concerns the admissibility of evidence of a qualified identification. The appellant submitted that there should be "no place for qualified identifications in a system manifestly aware of the dangers of mistaken identification"<sup>31</sup>. However, this is an oversimplification, and ignores the fact that such identifications if procured through

<sup>28</sup> *Ibid.*, para 25.

<sup>29</sup> *Ibid.*, para 35.

<sup>30</sup> Under the present regulatory framework the police are required to hold an identification procedure as soon as practicable "in the interests of fairness to suspects and witnesses"; Police and Criminal Evidence Act 1984 (Codes of Practice) (Temporary Modifications to Code D) Order 2002, S.I. 615/2002, para. 2.14. However, where the police do not believe that a witness will be able to make an identification, the obvious temptation, to which the courts have to be alive, is to delay the holding of a procedure so that any failure to identify can be explained by the detrimental effect of the passage of time on the witness's memory thereby limiting any damage to the prosecution case and diminishing any advantage to the defence.

<sup>31</sup> *George*, *supra* n.1, para. 29.

<sup>27</sup> [2002] EWCA Crim 1923, (29<sup>th</sup> July 2002); Times, August 30, 2002.

appropriate procedures might offer the innocent suspect *greater* protection against wrongful conviction than positive identifications made in procedures in which, at least in theory, the witness's only alternative is to state that he is unable to make an identification.

The provisions of the Police and Criminal Evidence Act 1984, Code D - regulating the holding of pre-trial identification procedures - require the police to warn witnesses prior to any attempt at identification that if they are unable to make a positive identification they should say so.<sup>32</sup> It has been suggested that the strictness of this selection criterion is undesirable.<sup>33</sup> The premise of this claim is that the process of making an identification requires the witness to compare those participating in the procedure with a mental image of the offender. Even if the suspect appearing in the procedure is in fact the culprit, there will probably be dissimilarities in the witness's mental image and perception of him in the procedure.<sup>34</sup> The witness who asserts that the suspect is the offender will in practice only ever be satisfied that his perception of the suspect is *sufficiently* similar to the retrieved image of the culprit. However, in making this assertion even the most cautious witness will have to make a 'leap of faith'.<sup>35</sup> The degree of dissimilarity that the witness is willing to countenance in making an identification, as Levi and Jungman<sup>36</sup> observe, can position a positive identification at any point on a spectrum of probability between chance and virtual certainty.

Requiring the witness to make either a positive identification or no identification presents him with an onerous task. The accurate yet conservative witness might be reluctant to make a positive identification of a guilty suspect, while an impulsive witness might feel less inhibited and make a positive identification of an innocent suspect. In contrast, the jury's task is relatively straightforward. These difficulties are exacerbated by the fact that eyewitness identification is an internal process that is impervious to challenge by way of cross-examination.<sup>37</sup> Where an eyewitness maintains that his positive identification of the suspect is correct, the jury is left with the simple choice of accepting or rejecting the witness's testimony. The

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<sup>32</sup> S.I. 615/2002, *op. cit.* n.4, Annex A, para. 11 (video identification); Annex B, para. 16 (identification parades).

<sup>33</sup> A. Levi and N. Jungman, "The Police Lineup: Basic Weaknesses, Radical Solutions" (1995), 22 *Criminal Justice and Behavior* 347.

<sup>34</sup> See Levi and Jungman *ibid.* at 349, who suggest that it is likely, for example, that there will be differences in facial expression, the amount of facial hair etc. The witness's mental image of the culprit might also change over time.

<sup>35</sup> See, M. Redmayne, "Appeals to Reason" (2002), 65 *Modern Law Review* 19.

<sup>36</sup> Levi and Jungman, *op. cit.* n.7, at 351.

<sup>37</sup> See Report to the Secretary of State for the Home Department of the Departmental Committee on Evidence of Identification in Criminal Cases (Devlin Report), (1976), (London: HMSO), para. 4.25.

innocent suspect faced with an inaccurate and impulsive witness who confidently purports to identify him is placed in an invidious position.

However, if permitted to select any number of images in a video procedure, the witness would not necessarily be faced with the dilemma of whether or not to make the 'leap of faith' and assert that any one person is the culprit. In this sense the procedure is less onerous and might encourage identifications from inaccurate witness's but the probative value of any such identification would diminish with each additional selection made.

In contrast to the straightforward acceptance or rejection of a purported identification made in a procedure that requires the witness to make a single positive identification, qualified identification requires a rather more complex probabilistic evaluation of the evidence. It is in this respect that permitting qualified identification under the existing Code D procedures runs into considerable difficulty.

The main problem lies in the inadequacy of the empirical basis on which the jury must determine the weight that should be accorded to a qualified identification of the suspect. The jury might be assisted by evidence from witnesses regarding the confidence that they hold in their respective choices. It appears that a relatively weak correlation exists between the confidence that witnesses express in their choices immediately after an identification procedure and identification accuracy.<sup>38</sup> Code D, however, makes no provision for a confidence statement to be taken. Confidence is malleable and the possibility of it being influenced in the period between the procedure and trial, for example by reassurance offered by a police officer, militates against reliance on a statement of confidence provided by the witness during the course of his testimony.

Alternatively, assuming that the suspect and the foils bear a sufficient degree of resemblance, juries might draw intuitive probabilistic inferences from the number of selections made by the witness. However, this is a purpose for which the Code D video identification procedure is ill suited. The relatively small number of images involved provides an inadequate basis for the kind of reasoning required of the jury. What is it to make of circumstances in which the witness is undecided between an image of the suspect and one or two others, as was the case with some of the witnesses in *George?* Suppose that instead of being shown 9 images the witness had been presented with 90. Perceptions of the probative value of the resulting identification would differ dramatically depending on whether the larger procedure reflected the outcome of

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<sup>38</sup> For a summary of research findings on the relationship between eyewitness confidence and accuracy, see G. Wells et al., "Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads" (1998), 22 *Law and Human Behavior* 603.

the smaller procedure in *absolute* (i.e. the witness selected 2 of 90 similar images) or *proportionate* terms (i.e. the witness selected 20 of the 90 images). The risk of miscarriage of justice in relying on qualified identifications is manifest. Suppose a jury's perception of the selection of two persons in a 9 person procedure accords with the first of these possibilities, when in fact, a procedure comprising a greater number of images would have led to the second eventuality. The undue weight attached to the qualified identification evidence might, in the eyes of the jury, be sufficient to tip the prosecution case over the evidentiary threshold required for a conviction.

It is submitted that evidence of qualified identification must be presented in manner in which its probative value is far more transparent to a jury. Consideration ought to be given to the adoption of a procedure similar that advocated by Levi.<sup>39</sup> He proposes that witnesses should be shown a sequence of 20 video images<sup>40</sup> including that of the suspect. It would be pointed out to the witness, *inter alia*, that people often look alike, that there may be more than one person in the sequence that the witness strongly suspects may be the offender, and that they *may* choose more than one person. The evidential consequence of multiple selection would also be explained. The witnesses would then be shown each image in turn, being permitted to view any one image as many times as desired. A decision in respect of each image must be made, and it is not permitted to revisit images on which a decision has been made. The benefits of the adoption of such a procedure appear to be manifold. It involves a sequential mode of presentation that when compared with simultaneous presentation (e.g. in a live parade) brings lower incidence of inaccurate identification while having no detrimental effect on the rate of accurate identification. Such a procedure would provide a better indication of the probative value of a qualified identification whilst not denying the witness an opportunity to assert that the suspect is in fact the culprit. Furthermore, were a witness to be tempted into making a speculative attempt at a single identification the greater numbers of images reduces the probability that the innocent suspect will be unfortunate enough to be selected by chance.

Such proposals in respect of live parades would have been met with objections on the grounds of practicability - the police have often found it difficult to find eight people of sufficiently similar appearance to form an identification parade. However, advances in

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<sup>39</sup> A. Levi, "Protecting Innocent Defendants, Nailing the Guilty: A Modified Sequential Lineup" (1998), 12 *Applied Cognitive Psychology* 265.

<sup>40</sup> There appears to be no reason why compilations should not contain larger numbers of images. No significant reduction in culprit identification was found across experiments in which witnesses were shown 20, 40 and 160 images, see A. M. Levi, "Some Facts Lawyers Need to Know About the Police Lineup" (2002), 46 *Criminal Law Quarterly* 176, at 183-4.

technology have led to video identification being placed on an equal footing with live parades in the hierarchy of procedures set out in Code D<sup>41</sup> and some police forces now possess databases containing thousands of images. The Code currently requires that a video procedure comprises of an image of the suspect with images of *at least* eight other persons<sup>42</sup> and so does not prohibit video compilations containing a far greater number of images than are commonly used i.e. the minimum requirement. The procedure suggested by Levi would necessitate minor amendments to the Code to dispense with the requirements to warn the witness to make only a single positive identification and ensure that the entire set of images are viewed at least twice before reaching a decision.

It is submitted that qualified identification could be embraced as a means of offering a better indication of the probative value of an identification rather than being seen as the second-best product of a flawed procedure. Many of the dangers discussed above do not arise in the present case as evidence of the qualified identifications supported a positive identification. Furthermore, the court was of the opinion that other forms of circumstantial evidence adduced by the prosecution was "capable of being powerful support of the identification evidence"<sup>43</sup>. However, one of the implications of this decision is the possibility that, in the future, the prosecution will be encouraged to proceed to trial in cases in which there is relatively weak circumstantial evidence supported by a qualified eyewitness identification in the hope that the jury will accord the qualified identification evidence significant weight. In the absence of the necessary changes to Code D, the decision to permit qualified identifications ought to be viewed with considerable concern and applied with great caution.

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<sup>41</sup> See, S.I. 615/2002, *op. cit.* n.4, p.iv, also; The Report of the Joint Home Office/Cabinet Office Review of the Police and Criminal Evidence Act 1984, (2002), p.38, which recommends that all police forces be directed to make use of video identification technology. On the government's proposed amendments to Code D see, A. Roberts and S. Clover, "Managerialism and Myopia: The Government's Consultation Draft on PACE - Code D", [2002] *Crim. L.R.* 873.

<sup>42</sup> S.I. 615/2002, *ibid.*, Annex A, para.2.

<sup>43</sup> George, *supra* n.1, at para. 125.

## 'Commercial Sex: Making Money & Managing Risk'

Teela Sanders

In this brief working paper I will sketch out the arguments concerning whether selling sex for commercial gain can be considered a form of work or is necessarily exploitative. Moving on from this, I locate the importance of understanding different types of occupational risks that women who sell sex encounter. The existing literature is problematised as I argue that risk is not an objective outcome for sex workers but depends on their reactions and responses to potential harm. I argue that sex workers adopt rational and calculated strategies in order to make money by selling sexual services and at the same time manage physical, emotional and social risks.

There has been much controversy over the question of whether women enter the sex industry voluntarily or are forced, either directly by a male coercer or indirectly by the economic and power inequalities inherent in an industrial "patriarchal system" (for a review see Gulcur and Ilkkaracan, 2002). Some scholars have argued that selling sex for money is always oppressive for the agents involved (Barry, 1979, Jarvinen, 1993, Jeffereys, 1997). This argument, which has come to be known as the abolitionist perspective, concentrates on the suffering and victimisation of women and argues that because the nature of prostitution commodifies the body there can be no consent to prostitution. Some scholars argue that a woman can never be a 'sex worker' because she is turned into a 'sex object' by unequal power relations between men and women (Dworkin, 1996, Mackinnon, 1982, Pateman, 1988).

Others, by contrast, have argued that selling sex should be considered as legitimate work (Boynton, 2002, Brewis and Lindstead, 2000, Chapkis, 1997, Perkins *et al.*, 1991). Chapkis (1997:67), for instance, explains how some women make an informed "rational choice" to work in prostitution, rather than a "free choice", available to few individuals in a society that is structured hierarchically by race, sex and class. The prostitution rights movement (such as Europap, COYOTE, The International Union of Sex Workers and the English Collective of Prostitutes) regards the selling of sex for money as employment, and contends that those who work as prostitutes should receive equal status, protection and rights as those bestowed on other employees (Jenness, 1993, Weitzer, 1996, West, 2000). Some radical feminists view prostitution as action against male exclusivity of sexual control (Perkins *et al.*, 1991:389) or as an expression of sexual emancipation, exploration and empowerment (Chapkis, 1997). Other scholars demonstrate that the issues of control and consent in prostitution mean that neither the radical explanation or the work model adequately explain the real relationship between a female

prostitute and a male client (see O'Connell Davidson, 1995, 1998).

Some recent sociological thinking on sex work supports the accounts of the women I interviewed in an ethnographic study of the sex industry in a large British city. Women explained their capacity to choose how to earn money, given their limited options and specific economic circumstances. This choice is made within a series of constraints, both personal and structural (e.g. paid employment, limitation of skills and training, benefit dependency, child-care commitments, single parenthood). O'Neill (1996b) highlights the fact that prostitution provides an attractive income for working relatively few hours, combining flexible working hours with family commitments. Day (1996:78) reports that "longitudinal research between 1986-91 amongst London sex workers found that the 'idea of business' is central to women in all sectors of prostitution, irrespective of their backgrounds". This suggests that some women decide to work in prostitution after calculated evaluations of how to earn money.

However, it is clear from other qualitative research with women who work as prostitutes (especially Hubbard, 1999, O'Connell Davidson 1998, O'Neill 2001, Phoenix, 1999) and from my own observations and discussions with women in the sex industry, that selling sex is very different from other, mainstream, occupations. Few other jobs attract stigma and marginalisation to the same extent as prostitution. Also, the fact that selling sex, particularly on the street, is criminalised and continually policed by law enforcement agencies and vigilantes increases the stress and stigma experienced when trying to earn money. The striking differences between prostitution and mainstream employment also lie in the significant likelihood of being robbed, attacked, raped or even killed. With over sixty sex workers murdered in Britain during the last ten years (O'Kane, 2002), prostitution is a violent and dangerous business, marking it out as one of the most perilous ways of earning money.

The research I have been undertaking since 2000 challenges the premise that women involved in the sex industry are a homogeneous group and tried to resolve some of these stark dichotomies. I develop the complex debate regarding the nature of prostitution by discussing how it has special organisational properties because of the unique nature of the commodity that is sold, yet, at the same time, the sex industry takes on the same organisational features found in other, mainstream occupations. In doing this I focus on exploring the nature of sex workers occupational experiences and specifically the type of risks they encounter in their work life and how these risks affect their personal life. Much of the literature focuses on street prostitution, the level of risk in relation to public health, especially the spread of HIV and other sexually transmitted diseases (see Campbell, 1991, Plant, 1990, Ward et al 2000) and the relationship between drug



and street sex work markets (Green et al, 2000, May et al 2000).

While such empirical data is essential in understanding the nature and organisation of the street market, the off street sex markets (where the majority of sex is bought and sold in Britain) has been relatively ignored. Equally, the focus on risks such as disease and drugs obscures other forms of risk that sex workers encounter everyday. For instance, findings from my research highlight that because many women work in the sex industry in secret, without their partners, family and friends knowing, the risk of 'being discovered' is potentially more preoccupying than health risks, over which they have more control. Equally, the risk of violence is not considered a high risk for women who work in relatively safe off street environments such as saunas where there are several colleagues, employed security and effective working relationships with the police. Instead, the psychological and emotional issues that threaten to cause distress and harm in the personal spheres of sex workers lives, requires intense and sustained attention as women switch between work and home life.

It is not only the types of different risks that need to be given greater consideration but the outcome of risk. The objective probability of a certain event happening to a sex worker is not the only influence on the possible outcome. The reactions and responses made by an individual also determine the outcome of a particular risk. For example, women who work as escorts, visiting men alone in isolated circumstances, will all encounter a similar chance of being harmed. However, some individuals will be prone to taking risks while others will avoid risks at all costs. Those who recognise the risks will take precautions, deterrents and protection strategies to reduce the chance of a bad outcome, whereas others who are either less concerned with outcomes or who are inexperienced in assessing risk, may not. Therefore the outcome of risk depends on the individual's assessment and response to the risk.

It is not only the presence of a range of occupational risks that can explain the nature of prostitution, but I argue that it is in the responses and reactions that sex workers make to these risks that the organisational features of the sex industry are illuminated. Sex workers do not simply accept the hazards of their work but create strategies to manage risks, minimise harm and maximise profits. They do this individually and collectively, relying heavily on a set of norms regarding their own behaviour, the operations of sex markets and establishments and the expectations of men who buy sex. A distinct code of conduct exists amongst sex workers with subtle differences between the street and off street markets. Moral hierarchies of power, decision making and rule setting exist amongst veterans, novices, brothel keepers and escort agents (Sanders, 2004). Equally, systems of training, apprenticeships and career mobility are evident. These features of the sex industry in Britain mirror similar

organisational features of other mainstream occupations.

In conclusion, while the debate regarding the occupational status and properties of selling sex remain unresolved, and the volatile, marginal and stigmatised natures of selling sex remain, there is strong evidence to suggest that commercial sex is organised along the lines of many other businesses. It is clear there is more to the sex industry than 'a quickie on the back seat of a car' or a bit of 'tie and tickle'. The sex industry is a complex business of intricate systems, codes and hierarchies that enable women to make money while at the same time manage risks and minimising risks.

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## Policing, Privacy and Proportionality<sup>44</sup>

Nick Taylor

### Introduction

Until the passage of the Human Rights Act 1998 the concept of privacy was one that neither Parliament nor the courts had taken the initiative to develop.<sup>45</sup> In 1996, in *R v Brown*<sup>46</sup> Lord Hoffman stated that, 'English common law does not know a general right of privacy and Parliament has been reluctant to enact one'. The House of Lords later that year in a case concerning covert police surveillance commented upon the 'continuing widespread concern at this apparent failure of the law'.<sup>47</sup> Such a reluctance to develop the law has partly been a result of the inherent difficulties in defining such a nebulous concept. In 1970 JUSTICE emphasised the difficulty in establishing 'a precise or logical formula which could either circumscribe the meaning of the word 'privacy' or define it exhaustively'.<sup>48</sup>

However, though 'privacy' as a domestic legal term might be lacking clear parameters, the right to respect for private life under Article 8 of the Convention brings with it decades of developing jurisprudence. The European Court's jurisprudence lays down a minimum set of values that must be respected in signatory states, and, even prior to the Human Rights Act, this had impacted indirectly into UK law and practice.<sup>49</sup> Therefore, though there is a range of policing actions that might be considered to be invasions of the right to private life, such as carrying out a search of persons or property, such actions will often already satisfy the Convention's minimum standards. For example, s.8 of the Police and Criminal Evidence Act 1984 outlines the procedures which govern the power of a justice of the peace to issue a search warrant. Limiting the occasions when such a search might take place undoubtedly respects, to a degree, a person's right to private life. Section 2(9) does not authorise a constable to require a person to remove any part of his clothing in public other than an outer coat, jacket or gloves. Arguably, such a restriction on the power to search respects the

<sup>44</sup> This is an edited version of a paper which appeared in the *European Human Rights Law Review* [2003] Special Issue 86.

<sup>45</sup> See, Feldman, D. (1994) *Secrecy, Dignity or Autonomy? Views of Privacy as a Civil Liberty*,

47(2) *Current Legal Problems* 41. Though in recent years the law of confidence had been developing: Fenwick, H. and Phillipson, G., *The doctrine of confidence as a privacy remedy in the human rights era* (2000) 63(5) *M.L.R.* 660

<sup>46</sup> *R v Brown* [1996] 1 All E.R. 545 at 556.

<sup>47</sup> *R v Khan* [1997] AC 558 at 582.

<sup>48</sup> JUSTICE (1970) *Privacy and the Law*. London at p. 5

<sup>49</sup> *R v Secretary of State for the Home Department ex parte Brind* [1991] 1 AC 696

individual's right to a limited degree of privacy in public spaces. However, a particular problem with UK law and the governance of policing action has been its piecemeal approach. The Human Rights Act has brought about the development of a coherent and comprehensive system to ensure that all police action that might interfere with Article 8 is Convention compliant. It has also ensured that the courts must address directly the question of when a particular action interferes with the right to respect for private life.

#### *The Right to Respect for Private Life*

Before considering particular aspects of policing it is instructive to note the general demands of Article 8 of the Convention.

8(1). Everyone has the right to respect for his private and family life, his home and his correspondence.

8(2). There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

A number of general principles have derived from the interpretation of the exceptions to the general right. Firstly, if the primary right is engaged in a particular case, then the restriction upon that right must be 'in accordance with the law'. European Convention jurisprudence has interpreted Article 8(2) to mean that, regardless of the end to be achieved, no right guaranteed by the Convention should be interfered with unless a citizen knows the basis for the interference through an ascertainable national law.<sup>50</sup> That law should be sufficiently clear and accessible to ensure that people can adequately determine with some degree of certainty when and how their rights might be affected. There is no requirement, however, that that law be statutory.<sup>51</sup>

Secondly, any interference with the primary right must be directed towards a legitimate aim. In terms of the right to private life, restrictions that may be justified are found in Article 8(2). The restrictions on the primary right are numerous and widely drawn and it could be argued that it is not overly burdensome to require state conduct to remain within such boundaries. However, the list is intended to be exhaustive and there should be no capacity for the State to add to those grounds.

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<sup>50</sup> *Malone v UK* (1984) 7 E.H.R.R. 14, *Leander v Sweden* (1987) 9 E.H.R.R. 433

<sup>51</sup> *Sunday Times v UK* (1979-80) 2 E.H.R.R. 245; *Barthold v Germany* (1985) 7 E.H.R.R. 383

In addition to being lawful, and for one of the prescribed purposes, the restriction must also be 'necessary in a democratic society'. 'Necessity', though not defined in the Convention itself, has been interpreted by the European Court as not synonymous with 'indispensable' but not as flexible as 'ordinary, useful, reasonable' or 'desirable'.<sup>52</sup> Instead, what is required is that the interference with the primary right should be in response to 'a pressing social need'. Intrinsic within this idea is the notion of proportionality, which should be determined on a case by case basis.

#### **The Principle of Proportionality**

The Human Rights Act has brought the concept of proportionality directly into play in the United Kingdom. In the context of qualified rights, such as Article 8, proportionality has a special relevance. From the policing perspective, law governing policing action will rarely be found to be of itself incompatible with the Human Rights Act, but attention will instead focus on the exercise of such powers, and their 'proportionality'. The interpretation of this concept is therefore crucial. In *Brown v Stott*,<sup>53</sup> Lord Steyn commented:

... a single-minded concentration on the pursuit of fundamental rights of individuals to the exclusion of the interests of the wider public might be subversive of the ideal of tolerant European liberal democracies. The fundamental rights of individuals are of supreme importance but those rights are not unlimited: we live in communities of individuals who also have rights.

Proportionality is thus the vital factor that attempts to find a balance between the interests of the individual and the interest of the wider community. Despite not explicitly appearing within the text of the Convention itself, it is said to be a defining characteristic of the way in which the Strasbourg court seeks to protect human rights. It is, according to the Court, "inherent in the whole of the Convention".<sup>54</sup>

The jurisprudence of the European Court identifies numerous factors to be taken into account when considering the issue of proportionality.<sup>55</sup> For example, at the extreme, if a measure, which restricts a right, does so in such a way as to impair the very essence of the right it will almost certainly be disproportionate.<sup>56</sup> Furthermore, the need to have relevant and sufficient reasons provided in support of the particular measure has been emphasised.

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<sup>52</sup> *Silver v UK* (1983) 5 E.H.R.R. 347 at para. 97

<sup>53</sup> *Brown v Stott* [2001] 2 W.L.R. 817.

<sup>54</sup> *Soering v United Kingdom* (1989) 11 E.H.R.R. 438 at para. 89

<sup>55</sup> Further, see, Starmer, K., *European Human Rights Law: The Human Rights Act 1998 and the European Convention on Human Rights* (Legal Action Group, 1999), Ch. 4

<sup>56</sup> *Rees v UK* (1987) 9 E.H.R.R. 56

The Court will look at the interference complained of in light of the case as a whole and determine whether the reasons adduced by the national authorities to justify it are relevant and sufficient and whether the means employed were proportionate to the legitimate aim pursued.<sup>57</sup>

It should also be considered if there is a less restrictive alternative. It is unlikely that a measure could be considered to be proportionate where a less restrictive or intrusive alternative was available. As stated by Harris *et al*, "action for the prevention of crime may be directed against homicide or parking offences: the weight of each compared with the right sought to be limited is not the same".<sup>58</sup> Thus a balancing exercise takes place that requires a consideration of whether the interference with the right is greater than is necessary to achieve the aim. As Feldman states, this is not an exercise in balancing the right against the interference, but instead balances the nature and extent of the interference against the reasons for interfering.<sup>59</sup> In *Campbell v United Kingdom*<sup>60</sup> a blanket rule on the opening of prisoners mail was found to be a disproportionate response to the problem identified and thus was in breach of Article 8. The argument put forward by the Government that the interference was necessary to ensure that prohibited material was not contained in the mail was rejected on the grounds that the same policy objective could have been met by opening the mail in the presence of the prisoner without actually reading it.

A further factor in the proportionality equation is to assess the adequacy of procedural fairness in the decision making process. Where a public body has exercised a discretion that restricts an individual's Convention rights, the rights of the affected individual should have been taken into account. For example, the policy should not be arbitrary but should be based on relevant considerations.<sup>61</sup> The guarantee against arbitrariness is one at the heart of the ECHR provisions.

Proportionality can be more easily established where it could be shown that there are sufficient safeguards against abuse in place. This was expressed clearly in *Klass v Germany*:

One of the fundamental principles of a democratic society is the rule of law... [which] implies, inter alia, that an interference by the executive authorities with an

individual's rights should be subject to an effective control...<sup>62</sup>

Given that most policing actions will have a basis in law and will invariably satisfy the requirement of being in pursuit of a legitimate objective (principally, the prevention and detection of crime), the crux of a case will often be the proportionality of the action under scrutiny. In *ex parte Kebilene*, Lord Hope commented:

... the Convention should be seen as an expression of fundamental principles rather than a set of mere rules. The questions which the courts will have to decide in the application of these principles will involve questions of balance between competing interests and issues of proportionality.<sup>63</sup>

It is also important to make the distinction between proportionality and the margin of appreciation, particularly when the ECHR jurisprudence is being interpreted and developed in domestic law. It is the duty of domestic courts to safeguard Convention rights.<sup>64</sup> The role of the European Court is different in that its role is one of supervision and it has no role to play unless the domestic system fails in some way to protect rights. The domestic court must determine if a particular restriction on a Convention right is compatible with the Convention, and it is the European Court's role to supervise that analysis. The margin of appreciation is a recognition on the part of the European Court that the Convention need not be applied uniformly in all states 'but may vary in its application according to local needs and conditions'.<sup>65</sup> However, the margin of appreciation is an international law concept alone, and therefore when a decision of the Strasbourg court involves a margin of appreciation that decision cannot be determinative of a decision in domestic law. The domestic courts will have to apply a more searching inquiry into whether an interference with a right such as Article 8 is justified in the particular circumstances of the case.<sup>66</sup>

### **Policing and Privacy**

The European Court has never sought to give a conclusive definition of privacy, considering it neither necessary nor desirable. However, in *Niemietz v Germany* the Court stated:

it would be too restrictive to limit the notion to an 'inner circle' in which the individual may live his own personal life as he chooses and to exclude therefrom

<sup>57</sup> *Jersild v Denmark* (1995) 19 E.H.R.R. 1 at para. 31

<sup>58</sup> Harris, D.J., O'Boyle, M., and Warbrick, C. (1995) *Law of the European Convention on Human Rights*. (London: Butterworths) at p.297

<sup>59</sup> Feldman, D., *Civil Liberties and Human Rights in England and Wales*, (2<sup>nd</sup> Ed. Oxford, 2002) at p. 57

<sup>60</sup> *Campbell v United Kingdom* (1993) 15 E.H.R.R. 137

<sup>61</sup> *W v UK* (1988) 10 E.H.R.R. 29

<sup>62</sup> *Klass v Germany* (1979-80) 2 E.H.R.R. 214 at para. 55

<sup>63</sup> *R v DPP, ex parte Kebilene* [1999] 3 W.L.R 972, at 994

<sup>64</sup> For example, this is reflected in Article 1, which requires contracting states to secure Convention rights to everyone within their jurisdiction.

<sup>65</sup> *R v DPP ex parte Kebilene* [1999] 3 W.L.R 972, at 993

<sup>66</sup> Further, see, Plowden, P and Kerrigan, K., *Advocacy and Human Rights: Using the Convention in Courts and Tribunals*. (Cavendish, 2002) Ch. 3

entirely the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings. There appears, furthermore, to be no reason of principle why this understanding of the notion of 'private life' should be taken to exclude activities of a professional or business nature since it is, after all, in the course of their working lives that the majority of people have a significant, if not the greatest opportunity of developing relationships with the outside world.<sup>67</sup>

Furthermore, in *Botta v Italy*, '... private life... includes a person's physical and psychological integrity'.<sup>68</sup>

From this it can be seen that a range of policing actions impinge upon Article 8 including the interception of communications, surveillance, the storage and retention of DNA, fingerprints and communications data, and search and seizure. The remainder of this paper will consider the example of surveillance as considered in Part II of the Regulation of Investigatory Powers Act 2000.

### Surveillance

Part II of RIPA provides a regulatory framework for the use of three types of covert surveillance, namely, directed surveillance, intrusive surveillance and the use and conduct of covert human intelligence sources. Part II begins by drawing a somewhat ambiguous distinction between 'directed' and 'intrusive' surveillance. Directed surveillance is covert and undertaken for the purposes of a specific investigation, is likely to result in the obtaining of private information about a person (even though that person may not be specifically identified in relation to the operation), and is not an immediate response to circumstances or events. Authorisation of directed surveillance is outlined in s.28 and requires only internal authorisation. A designated person may grant authorisation for the carrying out of directed surveillance if he believes that it 'is proportionate to what is sought to be achieved'. The necessary grounds include, in addition to those in Article 8(2), 'for the purpose of assessing or collecting any tax, duty or levy payable to a Government department; or for any purpose not mentioned ... which is specified by an order made by the Secretary of State'. These represent wide grounds for authorisation and set a relatively low threshold. For example, there is no requirement that authorisation be made in relation to the prevention or detection of *serious* crime.

Intrusive surveillance is covert surveillance that is carried out by an individual on residential premises<sup>69</sup>

<sup>67</sup> *Niemietz v Germany* (1992) 16 E.H.R.R. 97 at para. 29

<sup>68</sup> *Botta v Italy* (1998) 26 E.H.R.R. 241 at para. 32

<sup>69</sup> s.48(1) 'residential premises' are defined as so much of any premises as is for the time being occupied or used by any person, however temporarily, for residential purposes or

or in any private vehicle or is carried out by a surveillance device in relation to anything taking place on residential premises or in a private vehicle. Furthermore, section 26(5) adds that if the device is not actually present on the premises or in the vehicle the surveillance will not be regarded as intrusive 'unless the device is such that it consistently provides information of the same quality and detail'. These definitions appear to protect places rather than people, with 'intrusion' only occurring if the target is situated in his or her residential property or a vehicle. It would appear to fail to recognise that surveillance that is intrusive might occur outside of these places through, for example, prolonged surveillance, or in a place in which the target would legitimately expect to enjoy privacy.<sup>70</sup> The European Court has recognised the existence of privacy rights beyond the home. For example, in *Niemietz v Germany*,<sup>71</sup> it was held that a person is entitled to a degree of privacy beyond an 'inner circle and as such may include business and professional relationships.

A further difficulty is raised by section 26(5). If a listening device is used remotely to gather information from inside residential premises, then whether it is directed or intrusive will depend upon its recording capabilities, though the actual invasion of privacy may not be any less. The practical effect is that the capability of the equipment used will determine the extent of the authorisation required rather than the impact of the invasion of privacy. The blurring of the boundaries between directed and intrusive surveillance also has consequences for the level of authorisation required. Therefore, the requirements of proportionality will need to be strictly applied, and carefully scrutinised if challenged, in all cases of authorisations for directed or intrusive surveillance in individual cases. The blurred boundaries might see the authorisation of directed surveillance, made on the basis of wider grounds than intrusive surveillance, with

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otherwise as living accommodation (including hotel or prison accommodation that is so occupied or used), but under s.48(7)(b) does not include a reference to so much of any premises as constitutes any common area to which he has or is allowed access in connection with his use or occupation of any accommodation.

<sup>70</sup> *R v Mason* [2002] E.W.C.A. Crim 385; [2002] Crim L.R. 841: The court called for urgent clarification of whether a police cell is governed by "intrusive" or "directed" surveillance under RIPA. On a legitimate expectation of privacy, see, Response of the Data Protection Commissioner to the Government's Regulation of Investigatory Powers Bill: A Briefing for Parliamentarians, (2000) para. 10 (see, <http://wood.cta.gov.uk/dpr/dpdoc.nsf>); Covert Surveillance Code of Practice see SIs 2002 Nos. 1932, 1933, available at [www.homeoffice.gov.uk/ripa/](http://www.homeoffice.gov.uk/ripa/) It follows that most CCTV systems fall outside RIPA, despite raising many privacy concerns: Taylor, N. You've been framed: the regulation of CCTV surveillance. (2002) 7(2) J. Civ. Lib. 83. Norris, C., Moran, J., and Armstrong, G. (eds.), *Surveillance, Closed Circuit Television and Social Control* (Ashgate, Aldershot, 1998).

<sup>71</sup> *Niemietz v Germany* (1992) 16 E.H.R.R. 97

only internal authorisation, though the effect on the individual's private life might be equally intrusive.

### **Conclusion.**

The Human Rights Act has ensured that the courts must now address head on the question of whether police action breaches the right to private life in an individual case. No longer can the courts merely lament the lack of a right to privacy whilst accepting as legally valid gross invasions into private life. The Human Rights Act means that having addressed the issue of privacy, the courts must then assess the validity of police action against a set of coherent standards. These include consideration of whether the action is question satisfies a legitimate ground for interference with the right, and, equally, whether such action is necessary and proportionate. It is in the area of proportionality where a right to private life may be given real meaning in respect of police action. Laws that govern police action are, in the main, Convention compliant. The crux of whether private life will really be respected comes in the operation of everyday policing practice and the proportionality attached to the use of such powers. It is here where the approach of the courts must be robust enough to help to shape the occupational and professional culture of the police. The interpretation of the law will help to shape how it is viewed and applied. Proportionality is an issue that is being addressed in regard to legislation governing police action, such as through the language and approach of RIPA, but the current message from the courts is that private life is one consideration in a case, but one that holds no special importance. Developing a coherent approach to how breaches of Article 8 are dealt with will ultimately help to bring about a situation whereby forethought as to the impact of police actions on individual rights will become second nature to those who both plan and carry out policing actions.

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## **The war of words with terrorism<sup>72</sup>**

Clive Walker

### **Introduction**

The war of words against terrorism did not commence on the 11 September 2001. Like most facets of United Kingdom policy and actions against terrorism, it has a long history. One might especially recall the furious reaction to the broadcasting of "Death on the Rock" about the Gibraltar shootings in 1988. Even before this time, Prime Minister Margaret Thatcher coined a key phrase in the summer of 1985 after the TWA airline hijack in Beirut. She told the American Bar Association in London, 'There is an urgent need to starve the terrorist of the oxygen of publicity.' Outright censorship was explicitly imposed only in November 1988 under broadcast licensing powers. The ban was upheld as lawful in *R. v. Secretary of State for the Home Department, ex parte Brind* ([1991] AC 696). Likewise, the European Commission of Human Rights upheld limited broadcasting bans (*Purcell v. Ireland* Appl. no. 15404/89, 70 D.R. 262; *Brind v UK*, Appl no.18714/91).

Without rehearsing in full the pros and cons relating to the censorship of terrorist messages, it is certainly accepted by the government that it should primarily be left to the security forces to control at source the initial output of information rather than to try to censor journalists. It is the possession of the guns and bombs of terrorists which are to be feared and resisted. Their words are without popular support and can be effectively reflected or command a significant following and must be accommodated. Either way, the law and State must trust to the public's judgment but sometimes lacks the patience to do so. It has again shown a level of impatience with its measures against religious hate speech which emerged after September 11. Though presented primarily a measure of social solidarity, it is better explained as part of anti-terrorism policy and will be enforced in that context.

### **The Anti-terrorism, Crime and Security Act 2001**

This Bill ambitiously extended the offence of incitement to racial hatred to encompass religious hatred. Clause 38 of the original version of the Bill inserted a definition of religious hatred after section 17 of the Public Order Act. Religious hatred was defined as hatred against a group of persons defined by reference to religious belief or lack of religious belief. The hatred may relate to the religion (or lack of it) prevalent amongst the group or the fact that the group does not share the religion of another group. This definition was designed to cover a wide range of religious beliefs but did not define either what amounts to a 'religion' or a 'religious belief'. The group must

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<sup>72</sup> Paper delivered to the Hate Speech Symposium, Leeds, April 2003

be defined by reference to religion, so a group identified by any other factors, such as political opinion, would not be caught, save that it might often be difficult to separate religion and politics.

After fierce debate in Parliament, this proposal was dropped at the very last gasp so as to ensure passage of the Bill. The government accepted the need for further and calmer debate on the subject, particularly after it was found difficult to offer convincing guidelines on prosecution policy through the Attorney-General along the following, woolly lines:

'Given the high threshold tests set by these offences it is not easy to foresee circumstances in which legitimate methods of religious debate will justify a prosecution. So, expressions of, or indeed criticism of, one's own or another's religious beliefs or practices, even when robustly expressed, or satirising or poking fun at or making comical representations of religion, people who are religious or who follow particular religions are unlikely to offend the statute. Legitimate expressions of religious belief which, taken within their context, time and the wider national and international arena, could not be construed as anything other than the expression of a religious tenet are, similarly, not likely to amount to an offence of incitement to religious hatred'

The defeat also followed prompting by the Home Affairs Committee (Report on the Anti-terrorism, Crime and Security Bill 2001 (2001-02 HC 351) para.61):

'The proposals in the Bill would be difficult to enforce. We note in particular the evidence from a group of distinguished Muslim organisations and individuals: "we have grave reservations about the extension of this criminal power to cover religious groups at this particular time."

In terms of what the 2001 Act does achieve, albeit on a more limited basis, there are three elements.

Part V begins by extending the existing concept of racial hatred as used, in connection with the offences of incitement to racial hatred, in section 17 of the Public Order Act 1986. The extension is to remove the limit on protection which could only apply to a group of persons in Great Britain or Northern Ireland, as the case may be. By means of this change, it becomes an offence under sections 37 and 38 to stir up hatred against identifiable racial groups abroad. But the express extension of the definition of 'racial' to religious groups was rejected.

In addition to these changes in definition, sections 40 and 41 increase the maximum penalties for race hatred offences from two to seven years.

Next, and more boldly, section 39 of the Anti-terrorism, Crime and Security Act allows a religious motivation to be treated as an aggravating factor in charging offenders under the Crime and Disorder Act 1998, section 28 and then sentencing them under section 153 of the Powers of Criminal Courts (Sentencing) Act 2000. This applies to nine specified offences in sections 29 to 32 of the Crime and Disorder Act 1998 and relating to assaults, criminal damage, public disorder and harassment. The effect is to advance the indirect protection against religious attacks granted by section 28 of the Crime and Disorder Act 1998. In defining 'racially aggravated', by sub-section (3) 'it is immaterial ...whether or not the offender's hostility is also based, to any extent, on ... the fact or presumption that any person or group of persons belongs to any religious group'. Under the 2001 Act, the predicate offence will become an aggravated offence under the 1998 Act if there is evidence of hostility towards the victim of the offence by the perpetrator at the time of committing the offence or immediately before or after doing so and that hostility is based on the victim's membership of a racial or religious group. Alternatively, an offence will be aggravated if there is evidence that it was motivated by hostility towards members of a racial or religious group.

Corresponding to the unsuccessful clause 38, a 'religious group' is defined by reference to a person's particular religious belief, lack of a particular religious belief, or lack of any religious belief or where the hostility is based on the fact that the victim does not share the particular religious beliefs of the perpetrator. This phraseology encompasses traditional organised religions, but also the subjective beliefs of an individual (or a small group of individuals, such as The First Church of Jesus Christ, Elvis) or indeed a person's atheist 'non-belief'.

### **Explanations**

The presence of Part V in the 2001 Act was explained, if not justified, on two grounds (HC Debs. vol.375 col.703 26 November 2001 David Blunkett):

'Two factors affected my thinking on whether to include religion... the first of which was internal reassurance. Since 11 September, people in this country have had a genuine fear, ... that individuals would seek to attack or abuse people, not because of their race but because they are Muslims. Similarly, there is a fear that those who sought to stir up hate against those whom they described as the infidel were equally untouchable under the existing law.

The second factor was international provision. In the past 11 weeks, considerable attention has been focused on the United Kingdom by other countries, particularly Arab countries. In satellite broadcasts and interviews, it became patently clear that the commitment on religion made on 3 October had a significant impact on

people living in and viewing satellite broadcasts in certain countries, including interviewers. They appreciated that that particular change had an impact; they perceived that we were prepared to protect people whom they were told we did not care about and in whom we had no interest because, prima facie, the intention was to damage their religion. Those serious issues deserve serious consideration for the reassurance, resilience and social cohesion of our own community; it is important to be able to contribute to that.'

Incidents under the first heading included the closure of the first state-funded Islamic school, the Islamia Primary School, in Brent after threatening telephone calls (HL Debs. vol.629 col.1190 10 December 2001, Lord Goldsmith). Evidence under the second heading is rather more difficult to garner.

But a third, unarticulated explanation is that the new laws would be designed against extreme speech by Muslims and not against Muslims. It was always predictable that such speech would be received within Western societies with less sympathy and understanding than extremist speech against Muslims. The war against the axis of evil certainly includes those divisions of the forces of evil which are closely associated with clerics, whether in Afghanistan or Finsbury Park.

And so it has proven. The only reported prosecution for hate speech with reference to religious aspects since the 2001 Act has concerned Abdullah el-Faisal, who was charged with soliciting murder under the Offences against the Person Act 1861 (the first such conviction of political speech since 1905) and race hatred.

### **Critique**

Should there be a full offence of stirring up religious hatred?

On practical grounds, the answer must be negative. It can be predicted that any new law would be largely a dead-letter, just as offences of race hatred under Part III of the Public Order Act 1986 have been exceedingly rare (see HC Debs. vol.373 col.851w 1 November 2001 and 8 January 2002: col. 574W). However, one might say that the value of such legislation is symbolic, in that it sends a strong signal as to the bounds of permissibility which comforts some and deters others.

In addition, there is evidence that the racially aggravated provisions under the Crime and Disorder Act 1998 have had much more impact with hundreds of applications per year (rather than single figures under the 1986 Act). This difference relates to the facts that a wider view of what is racially motivated is taken under the 1998 Act and that the race hatred offences may not be prosecuted without the consent of the

Attorney General (section 27), whose fiat is rarely forthcoming.

Next, one might argue that strengthened protection against religious hate speech is required by international law. For example, by Article 20 of the UN International Covenant on Civil and Political Rights, 'Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.' More indirectly, Article 14 of the European Convention on Human Rights forbids discrimination on any ground, including religion, in connection with the exercise of freedom of expression, freedom of thought, conscience and religion, freedom of assembly and association. There exists softer international law which expresses disquiet, such as the UN International Convention on the Elimination of all forms of Racial Discrimination 1965 (UNGA Res 2106A (XX) of 21 December 1965, Cmdd.4108, 1969) and the European Parliament's Joint Declaration against Racism and Xenophobia (C176/62 p.62, 14 July 1986). And there are institutional expressions of reaction in Europe, including the Council of Europe's European Commission against Racism and Intolerance (ECRI, established 1993) and the European Union's European Monitoring Centre on Racism and Xenophobia (EUMC, set up in 1997 by Council Regulation (EC) No 1035/97). In *Faurisson v France*, (Communication No 550/1993, [1996] IIHRL 86), the United Nations Human Rights Committee held that the French Gayssot law against Holocaust denial was a justified interference with rights of free speech. In 1998 the European Court of Human Rights sanctioned laws prohibiting Holocaust denial with its decision in the case of *Lehideux and Isorni v France* (App.no. 24662/94, 1998-VII). However, one cannot be certain these precedents justify extensive new offences in the UK. In both *Faurisson* and *Lehideux* it was made clear that free speech restrictions must be a proportionate response to a problem. In the former case, the proportionality was deemed to lie in the fact that Holocaust denial was the 'principal vehicle of antisemitism in France'.

Also, in terms of necessity and proportionality, one might argue that there are plenty of other relevant offences in domestic law without running any risk of curtailment of free speech. Some of those offences are within the Terrorism Act 2000. One is the use of hate speech materials to raise money for terrorist organisations. Activities relating to proscribed organisations are banned through section 12 of the Terrorism Act. Part III of the Act is wider and deals with 'Terrorist Property' even if the organisation is not proscribed.

Next, there is an incitement offence in section 59 of the Terrorism Act. By section 59, a person commits an offence if (a) he incites another person to commit an act of terrorism wholly or partly outside the United



Kingdom, and (b) the act would, if committed in England and Wales, constitute one of the offences listed in subsection (2). The listed offences are (a) murder, (b) an offence under section 18 of the Offences against the Person Act 1861 (wounding with intent), (c) an offence under section 23 or 24 of that Act (poison), (d) an offence under section 28 or 29 of that Act (explosions), and (e) an offence under section 1(2) of the Criminal Damage Act 1971 (endangering life by damaging property).’ By sub-section (4) it is expressly immaterial whether or not the person incited is in the United Kingdom at the time of the incitement.

The government was of the view in 2001 that there was a need to balance free speech interests against the unacceptability of ‘encouraging and glorifying acts of terrorism’. However, this is one of the areas where a mature democracy should have maintained its patience with the politically intemperate. Any prosecutions under sections 59 to 61 will be open to challenge under article 10 of the European Convention, especially if made by a person who could be designated as a politician and especially if made against a government.

In addition, there may be less controversial offences to hand, including under the Malicious Communications Act 1988 and the Protection from Harassment Act 1997. One should also be aware of quasi-legislation. The Internet Watch Foundation responded in early 2000 to pressures by the DTI and Home Office to extend its remit to racist materials.

Given these existing constraints on hate speech, it must remain a matter of debate whether the reincarnation of criminal libel and the public repression of fringe extremists would really serve the interests of racial or religious harmony. Free expression can include the words of deluded racists whose patent error of thought and extremism of manner is at least as likely to prompt individual awareness and group solidarity against such poisonous ideas as to subvert democracy and harm human dignity.

Of course, some would argue that Millian concepts of harm are inadequate. There is sympathy for this view in the Canadian *Keegstra* judgment ([1990] 3 SCR 697 at 746 per Chief Justice Dickson):

“...words and writings that wilfully promote hatred can constitute a serious attack on persons belonging to a racial or religious group.... a response of humiliation and degradation from an individual targeted by hate propaganda is to be expected. A person’s sense of human dignity and belonging to the community at large is closely linked to the concern and respect accorded the groups to which he or she belongs... The derision, hostility and abuse encouraged by hate propaganda therefore have a severely negative impact on the individual’s sense of self-worth and acceptance.”

Ideally, another reaction altogether is ideally to be encouraged. In the words of Supreme Court Justice Brandeis, “[the] remedy to be applied is more speech, not enforced silence.” (*Whitney v California* 274 U.S. 357 (1927), at p.377). Especially since the Internet facilitates easy, free and instantaneous public discourse, self-assertion is available to all. A prominent role for cultural education and promotion and open lines with the media is also suggested by the EUMC study of Islamophobia in the European Union after 9/11 (2002).

This conclusion against religious hate speech offences is however conditional. It assumes that there will be genuine attempts at education and continued efforts to reform ingrained, if not institutional, attitudes. But prejudice against religion should not be equated with prejudice against race – religion is a matter of choice, faith and opinion in a way which race is not. It is in the interests of neither to be associated or established without thought for these distinctions. As a Liberty briefing paper suggested (see <http://www.liberty-human-rights.org.uk/>, 2001), ‘... a climate of religious freedom and tolerance will not be created by criminal censorship.’

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## Can we can the spam?<sup>73</sup>

David Wall

Individually spams are little more than a nuisance, but collectively they pose a considerable threat to our infrastructure. They bring little cheer to the New Year, except perhaps to the manufacturers of anti-spam software and possibly to Hormel Foods' Spam merchandising returns (the original meat product manufacturer - see spamgift.com). Current indications are that the spamming industry will continue to thrive at the expense of computer users and recent legislation is unlikely to turn the tide in the short-term future. This article argues that spamming is a complex issue and therefore requires a framework of solutions, of which law is but one part.

Incidentally, for the handful of souls still unaware, spams are unsolicited bulk emails containing invitations to participate in ways to earn money; obtain free products and services; win prizes; spy upon others; obtain improvements to health or well-being, replace lost hair, increase one's sexual prowess or cure cancer. The term is derived from a Monty Python sketch in which the word 'spam' was repeated to the point of absurdity in a restaurant menu (*CompuServe Inc. v. Cyber Promotions*, 962 F.Supp. 1015 f/n 1).

Although a vague argument in favour of spam can be based upon the promotion of legitimate commercial activity and also upholding rights to free expression, the demerits far outweigh the merits as they undoubtedly degrade the quality of virtual life. They rarely live up to their promises, often carrying unpleasant payloads in the form of potent deceptions or harmful computer viruses and worms. Moreover, they choke up Internet bandwidth and slow down access rates, reducing efficiency and costing internet service providers and individual users lost time through their having to manage spams.

Currently about half of our emails are spams (Brightmail) and along with pop-ups and web ads, unsolicited messages constitute a major obstacle to effective internet usage and its further development. All the more worrying when it is likely that the growth in spam numbers will continue to double each year (Wall, 2003) despite concerted attempts to stem their flow by recent anti-spam legislation and technology. The recent UK legislation (SI/2003/2426) which required internet users from 11/12/03 onwards to opt-in to email lists and the US CAN-SPAM Act which gave users the right to opt out of spam lists from 1/1/04 have already become the focus of criticism for their various shortcomings (see *NLJ*, 28/11/03, p. 1780). Apart from this obvious discordance between the UK and US approaches, perhaps the main challenge to UK

law is that most spam received in the UK originates outside the country.

We clearly need to know more about spam, and ongoing empirical research (See Wall, 2003) is revealing that the spam problem is far more complex than commonly assumed. Not only is the spamming industry in fact two quite different sets of enterprises: the compilation and production of bulk email lists which are then sold on (to spammers) and the use of the lists to spam recipients with a variety of offers. But offending related to the spamming process clearly needs to be disaggregated from the intent that motivates many spams.

### **Bulk email list compilation**

The current legal method of compiling email lists in EU countries (under Directive 2002/58/EC) is to require voluntary opt-in to email lists through subscription. More common place, however, is the compilation of email address lists (now illegal to use in the EU) through automated 'spider-bots' that scour the www. The economics are simple. Email addresses have no perceivable individual worth, but when collated with 10, 20, 40 or 80 million others they accumulate value. Spammers tend to use email addresses from lists sold to them in CD-ROM format by bulk email compilers. Banners such as "Email Addresses 407 MILLION in a 4-disk set. Complete package only \$99.95!!" will be familiar subject lines to many readers. But few spams from these addresses will ever reach the recipient because most will be inactive, there again only a few responses are needed to recoup costs and make a profit. Ironically, some of the major victims of the spam list compilation industry are themselves intending spammers.

Active email addresses have a much higher value, rising further when profiled by owner characteristics. In common with advertisements, spams containing information relevant to the recipient are most likely to obtain a positive response and result in a successful transaction. One popular strategy to confirm that an email address is active and also to yield important information about the recipient is to send out 'spoof spams' using one of three tactics. A blank email may be sent which requests an automatic response from the recipient's computer upon opening. Else, it may include offensive subject content or make preposterous claims that incite the recipient to 'flame' the sender. Alternatively, the spoof may include the option to 'deregister' from the mail list, not only providing important information but sometimes leading recipients to pay recurrent 'administration charges' and embroiling them in a 'remove.com' scam.

An ongoing survey of spams between 2000-2003 reveals that only a relatively small proportion, possibly just over ten per cent of all spams, are genuine attempts to inform recipients about products or services. The remaining 90 per cent lack plausibility, suggesting that spammers are short on business acumen, or they are victims of unscrupulous list builders, or they

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<sup>73</sup> Published in *Computers and Law*, Vol. 15, No. 1, February/March 2004. Reproduced with kind permission

deliberately intend to deceive the recipient (Wall 2003). Approximately one third of all received spams are 'spoof spams'.

### **The contents of unsolicited bulk emails**

An analysis of spam content lends weight to the earlier implausibility argument and outlines clearly the types of risk that recipients might face. Though not a precise match, the following categories and proportions listed in order of prevalence find a resonance in Brightmail's 2002 *Slamming Spam* and other spam surveys.

- *Income generating claims* - 28% (business opportunities; investment schemes; pyramid selling; working at home; investment opportunities; Nigerian Advanced Fee scams).
- *Pornography and materials with sexual content* - 16% (sexually explicit materials; sharing images; increasing web traffic with sex sites).
- *Offers of free or discounted products, goods and services (including free vacations)* - 15% (free trial periods for services; free products; cheap grey market goods such as cigarettes, rare stones, body parts, alcohol, fuel, sexual services).
- *Advertisements /information about products and services* - 11% (cheap office supplies and equipment; cheap medical equipment; cheap branded goods; educational qualifications; internet auctions; bulk email lists).
- *Health cures/ snake oil remedies* - 11% (miracle diets; anti-ageing lotions and potions; prescription medicines; non-prescription medicines; Viagra; hair loss remedies; body enhancement potions; plastic surgery; cures for cancer).
- *Loans, credit options or repair credit ratings* - 9% (credit facilities without the checks or security; repair of bad credit ratings; credit cards with zero interest).
- *Surveillance information, software and devices* - 3%. (surveillance and counter-surveillance soft and hardware).
- *Hoaxes/ Urban Legends, Mischief collections* - 3% (perpetuating Urban Legends; 'gullibility viruses' tricking recipients into destroying files or opening virus attachments; threatening chain letters; post-9/11 email victim-donation scams; links to hoax WWW sites).
- *Opportunities to win something, on-line gambling options (3%)* (free credit in trial gambling sites; prizes).

Most of the above are disguised forms of entrapment marketing from which victims subsequently find it hard to disengage.

### **Victims and offenders**

Victims of spam content are very hard to identify because of the general problem of under-reporting. Spam-assisted crime will be recorded by the principle offence, though usually the individual losses are either too small or victims are too embarrassed to make a report, else they do not know who to report to. Yet, an analysis of ISP complaints statistics suggests that the overall threat to the majority of individuals is reasonably small because they tend to find their own ways of dealing with spams - although novel forms of spamming do frequently catch internet users unaware (Wall, 2003).

The greatest danger posed by spams is towards vulnerable communities: the poor with financial problems; the terminally sick ever hopeful of some relief from their pain; the poor single parent who sends off their last \$200 for a 'work at home' scheme; the youths who seek out 'cheats' for their computer games. A particularly vulnerable group are the newly retired who possess all of the ingredients for online fraud - spare time, lack of computer knowledge, large sums of money to invest.

The spammers are also a very heterogeneous group. At one end of the spectrum are the honest brokers who genuinely seek to advertise products and services, but at the other end are the dishonest brokers whose aim is purely to entrap and defraud. Somewhere in the middle are the misguided brokers, protesters, pranksters, smugglers, artists, list builders.

### **Canning the Spam!**

There are a number of ways that we can deal with spams, of which increasing legislation is the most obvious. However, while the law tells us what is right and wrong, various challenges to law enforcement and also issues of unequal access to justice for the individual emerge because the spam problem is trans-jurisdictional. As Stewart Room argued (*NLJ*, p 1780), the real weapons may not actually be found in Directive 2002/58 or SI2003/2426. So, 'under the shadow of the law' there a number of other techniques that can be adopted to curb spams.

The first technique is target hardening computers by technological means, using spams filters, email preference services, email filtering facilities, and other software. But self-protection through technology does not make up for shortfalls in law.

The second technique is more education to understand nature of the beast - what is and what is not spam and what the risks are. Information that is currently provided by coalitions of interested parties, NGOs and government organisations. Especially informative is Spamhaus.org, the Coalition Against Unsolicited Commercial Email (cauce.org), and also David Sorkin's spamlaws.com site.

The third technique is for individuals to consult counter-spam groups such as Spamhaus.org, Spambusters.com and Junkbusters.com about how they can remove their own addresses from existing spam lists.

The fourth is to choose an internet service provider with a robust policy towards spams. Some (mainly UK) are more diligent about this than others. Also make sure your employer has such a policy (they should).

The fifth and final technique is to lobby politicians into pushing for a more co-ordinated international response. The Parliamentary All Party Internet Group (apig.org.uk) have been very active in this endeavour.

To conclude, individual spams are little more than a nuisance, but collectively they pose a considerable threat to our infrastructure. We need to wise up to the fact that spam is here to stay in one form or another. Not only will they continue to increase in number, but spammers and their software are very inventive and reflexive to changes in security. Unfortunately, this reflexivity means that if we are to maintain current internet freedoms and openness and not become strangled by security, then we also may have to tolerate spam to some degree. Although, on a more encouraging note, spam legislation, when accompanied reflexively by a range of other measures, constitutes the most viable and effective attack upon what has quickly become 'the white noise' of the internet.

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This article is based upon research originally funded by a Home Office Innovative Research Award. See further pp. 123-130 Wall, D.S. (2003) 'Mapping out Cybercrimes in a Cyberspatial Surveillant Assemblage', pp.112-36 in Webster, F. and Ball, K. (2003) *The intensification of surveillance: Crime terrorism and warfare in the information age*, London: Pluto Press.

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## Shining a Light on Power? Reflections on British Criminology and the Future of Critical Social Science<sup>74</sup>

Steve Tombs<sup>75</sup> and Dave Whyte

"When looking to future research capacity what is at issue is the question of what will be deemed legitimate research into law in the new academic world fostered by corporatisation"<sup>76</sup>

"unprofitable research and, in particular, research with a political agenda or theoretical focus has an uncertain future"<sup>77</sup>

In recent years, the SLSA has been a key site of reflexive considerations regarding the nature and trajectory of socio-legal research and teaching, considerations to which the recent pieces by Richard Collier and Louis Bibbings have significantly contributed. With others, we have for four years been working on a series of critical reflections regarding trends in the content of British *criminology*.<sup>78</sup> Within this broader project, our own focus has been upon what the trajectories of criminology mean for the possibilities of researching the illegalities of the powerful, namely states and corporations. This focus both reflects our own research interests and serves as a reasonable yardstick against which to measure the critical pretensions of a discipline – namely, the extent to which it can, or even seeks to, hold a light to power.

Now, British criminology has rarely focussed upon corporate or state crime. While there is a range of reasons for this, crucial are the origins and nature of British criminology itself. In a now famous passage, Foucault claimed that 'the whole content of criminology - with its 'garrulous discourse' and

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<sup>76</sup> R Collier (2003) "'Useful Knowledge' and the 'New Economy': an uncertain future for (critical) socio-legal studies?" *SLN* 39:4.

<sup>77</sup> L Bibbings (2003) 'The Future of Higher Education: "sustainable research businesses" and "exploitable knowledge"' *SLN* 40:3.

<sup>78</sup> With our best market-orientation to the fore, we should point out the main outcomes of this research thus far, namely: S Tombs and D Whyte eds. (2003) *Unmasking the Crimes of the Powerful: scrutinising states and corporations*, New York/London, Peter Lang; P Hillyard, J Sim, S Tombs. D Whyte "Leaving a 'Stain Upon the Silence': contemporary criminology and the politics of dissent", *British Journal of Criminology*, (forthcoming); and S Tombs and D Whyte "Unmasking the Crimes of the Powerful", *Critical Criminology: an international journal*, 11, (3). This paper would not have been possible without our collaboration in these projects with Paddy, Joe, and many others.

'endless repetitions' - is to be explained with reference to its application by the powerful.' The questions asked and the answers reached within criminology have always been subservient to, if not determined by, power.

Yet recent social, political and economic processes have marked a dramatic intensification in this servile relationship, so that the discipline seems to have entered a qualitatively different phase. The key momentum for this intensification has been the emergence to dominance of neo-liberalism, and its subsequent onslaught upon all of the institutions of civil society from which universities have not been insulated: they are increasingly required to act as economic actors, both in external markets – as competitors for students, research funds, prestige, and so on – and through the development of internal markets; further, knowledge is increasingly treated as something to be traded, as a commodity, with a realisable exchange value within some internal or external market. Courses, departments, faculties, and so on become individual cost centres, required to generate a surplus or perish, competing for students (as a resource) at all levels, with academics increasingly required to generate income to meet their wage or salary. The disciplinary whip of the market has been institutionalised through the fact that around 40,000 research staff and upwards of 90% of all new university appointed staff in the UK are on fixed-term contracts.

One effect of the marketisation of the universities and the commodification of research is that certain types of research get organised off the public agenda as academics compete for research grants provided by the state and distributed through research councils and government departments, generating reliance upon direct funding for specific, pre-ordained research projects often with narrowly defined fields of inquiry and outputs. And so criminology does precious little to explore and demystify some of the key law and order questions of our age: it has had virtually nothing to say, for example, about deaths brought forward by pollution, or the series of medical crimes of the 1990s (including the most notorious serial killer in history, Harold Shipman), or BSE, Foot and Mouth or the ever-present consumer food safety crisis that mundanely exposes consumers to toxins and deadly infection, all social harms within which criminal acts have been, and remain, central. Rather, the discipline is dominated by an endless reproduction and multivariate analyses of local and national surveys and statistics on youth offending, burglaries, car crime, shoplifting or graffiti and vandalism.

The increasingly narrow and utilitarian trajectory of British criminology poses problems for the conduct of *critical* criminology, not least of all work on the illegalities of states and corporations. For example, in the dominant scramble to accumulate state grants, studies of corporate or state crime are increasingly rare - Lauren Snider has recently written an 'obituary' for

the sociology of corporate crime, highlighting that, in the US, funding for corporate crime research, never that significant, has, to paraphrase, virtually dried up. Research commodification has certainly stacked the odds even higher against criminologists who seek to scrutinise the powerful. But the increasing protection of the powerful from critical scrutiny is not simply an issue of research funding. If company boardrooms, corporate hierarchies and the corridors of government have always been somewhat impenetrable to the researcher, these inner sanctums are likely to be even more tightly sealed from outside scrutiny, not least where the aim is to investigate actual or possible illegality. Nor are securing funding or access discrete elements of the research process – they are mutually reinforcing phases. Thus, large scale funding from, for example, the Home Office, virtually guarantees access to relevant state institutions. But even if funding and access are secured, then there remains the problem of dissemination or publication of research findings. In what remains a highly secretive state, censorship, use of the Official Secrets Act, or more mundanely vetting by commissioning departments of research findings in the UK remains a frequent state response to those who produce government-funded work that does not sit comfortably with government or departmental policy. The fury over censorship expressed publicly by more than a handful of government-funded researchers at the 2003 British Criminology Conference is testimony to the current intensification of Home Office control under Blunkett.

Further, the increasing penetration of the private sector into state functions creates another level of obstacles and complexity for the researcher: at the very least, the incursion of private companies into spheres of activity such as prison management and policing means that previously formally accountable public authorities are supplanted by corporations who may deploy the privileges of the corporate veil and the device of 'commercial confidentiality'. Indeed, the commodification of criminal justice provision itself has meant that academics researching 'crime' and criminal justice are increasingly working directly for private interest, so that there have emerged sub-economies of research on demand, with concomitant conflicts of interest.

And so the rude health in which academic criminology currently finds itself – witness the proliferation of postgraduate and undergraduate courses, the ceaseless torrent of academic texts and journals, the seemingly increasing intrusion by criminologists in public and government-led debates around 'crime, law and order' – mystifies a range of perverse trends in the *content* of criminology. Of course, criminology is not socio-legal studies. Indeed, as we have indicated, there are peculiarities about (British) criminology that have made it particularly susceptible to the demands of power. Nevertheless, the gradual self-imposed exile of criminologists to the barren intellectual wastelands of 'official' research can offer lessons to socio-legal studies, and other critical social sciences which are

intrinsically more capable than criminology of critical self-reflection.

As the neo-liberal hegemonic project gains momentum, the harsher political, social and academic climates for critical work pose fundamental challenges for critical criminologists in particular, and critical social science in general. These are not challenges that we are all equally well-placed to meet. Those academics who enjoy *relative* privilege – such as permanent contracts, above average salaries, some traces of academic freedom and discretion – have a greater responsibility than others. But let us be clear that these climates pose challenges for those engaged in ‘mainstream’ work also. The fact that we live within a society that has amassed the highest per capita prison population in Western Europe, while at the same time the poverty gap continues to widen at the fastest rate in Western Europe, cannot be disconnected from our enterprise in an academic discipline which provides the intellectual resources to support the government apparatuses overseeing those trends. It is now commonplace to note that criminology is by definition a highly political enterprise. And if criminologists cannot choose to opt out of their political role, clear choices remain as to how we position ourselves in relation to this role. In this atmosphere of orthodoxy, contemporary

criminologists should reflect upon the morality of keeping ‘their snouts in the state’s trough’ as opposed to actively disengaging from the snorting huddle around the trough and proactively engaging in the search for alternative means of sustenance. To paraphrase Martin Nicolaus, the choice is to disappear behind the line of truncheons and thus fuel an already out of control juggernaut of criminalisation, or to use research and writing to promote social justice and seek to halt the juggernaut’s destructive advance.

Being an academic means engaging in an inherently critical enterprise, one that requires us to ask awkward questions of power and the existent social order. It is time to face up to the realities of this task and resist the rising tide of utility corruption that looms before us both inside and outside the walls of educational institutions. We urge colleagues to join the debate began in the pages of SLN, and then to begin to develop ways to act upon, and resist, the numbing, cancerous spread of commodification that now threatens the independence, integrity and imagination of our enterprise.

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# APPENDIX 1 - CONSTITUTION AND MEMBERSHIP OF THE CENTRE FOR CRIMINAL JUSTICE STUDIES

## a) Constitution

### Object of the Centre

1. The object of the Centre shall be to develop, co-ordinate and pursue research and study into, and the dissemination of knowledge about, all aspects of criminal justice systems.

### Membership of the Centre

2.1 Any member of the academic staff of the School of Law may be a full member of the Centre.

2.2 Other individuals may be appointed to full membership of the Centre by the University Council on the nomination of the Executive committee. Membership of the University is not a prerequisite of appointment to full membership of the Centre.

2.3 Associate members may be appointed by the Director on nomination of the Executive committee for a fixed term of up to three years. Membership of the University is not a prerequisite of appointment to associate membership of the Centre. Associate members shall normally be concerned with the pursuit of a programme of research and shall be provided with suitable facilities by the Centre. Any further rights or duties (such as in relation to teaching) shall be the subject of specific agreement.

### Administration of the Centre

3.1 The Centre shall be administered by a Director, a Deputy Director and an Executive Committee.

3.2 The Director and Deputy Director, who shall be appointed by the Council on the nomination of the Head of the School of Law after consultation with members of the Centre, shall each normally hold office for a period of five years, and shall be eligible for immediate re-appointment.

### Administration of the Centre

3.3 The Director shall be responsible to the Executive Committee for the running of the Centre and the representation of its interests. The Director shall have regard to the views and recommendations of the Executive Committee and the Advisory Committee. The Director shall be assisted by up to two Deputy Directors.

3.4 The Executive Committee shall consist of the Director and the Deputy Director(s) together with the Head of the School of Law (ex officio), the Chair of the Advisory Committee (ex officio), and up to ten others who shall be appointed by the Director, Deputy Director and Head of the School of Law.

3.5 The Executive Committee shall meet at least twice a year, with the Director acting as convenor. Special meetings may be held at the request of any member of the Executive Committee. All full members shall be entitled to attend meeting of the Executive Committee.

3.6 Minutes of the meetings of the Executive Committee shall be presented by the Director to the following meeting of the School of Law.

3.7 There shall be an Advisory Committee appointed by the Executive Committee which shall formulate advice and recommendations and which shall consist of:

- (i) all members of the Executive Committee;
- (ii) up to three persons who shall be members of the teaching staff of the University of Leeds other than the School of Law whose activities or interests have relevance to criminal justice studies;
- (iii) up to twenty persons who shall be practitioners in criminal justice systems (or other appropriate persons).

3.8 The Advisory Committee shall meet once a year, with the Director acting as convenor. Special meetings may be held at the request of the Executive Committee.

### Amendment to the constitution

4.1 This constitution may be amended by the Council (or any committee acting with authority delegated by the Council) on the recommendation of the School of Law and the Executive Committee of the Centre.

## **b) Membership of the Centre for Criminal Justice Studies**

### **Centre for Criminal Justice Studies**

#### **University of Leeds**

Director	Professor David S. Wall
Deputy Director	Professor Adam Crawford
Executive Committee	Dr Yaman Akdeniz Dr Louise Ellison Mr Ben Fitzpatrick Dr Anthea Hucklesby Mr Stuart Lister Professor Juliet Lodge Professor David Ormerod Mr Andy Roberts Mr Nick Taylor Professor Clive Walker (Head of School of Law) Dr David Whyte
Advisory Committee	Professor David Ormerod (Chair) Mr Jeremy Barnett, (Barrister) Mr Tom Burden (Leeds Metropolitan University) Prof. Graham Clarke (University of Leeds, School of Geography) Chief Constable Colin Cramphorn, (West Yorkshire Constabulary) His Honour Judge Ian Dobkin Mr Nick Frost (University of Leeds, Continuing Education) Ms Jane Gill, (Leeds Magistrates' Courts) Chief Superintendent Don Harrington (Director of Training, West Yorkshire Constabulary) His Honour Judge Geoffrey Kamil Lord Justice Kennedy Mr Geoffrey Kenure (Probation Service) Mr Peter McCormick OBE (Solicitor) Professor Cynthia MacDougall (University of York) Ms Anne Mace (Kings College London) Mr Richard Mansell, (Barrister) Mr Andy Mills (Community Safety, Leeds City Council) Mr Robert Rode, (Solicitor) Mr Steven Rollinson (West Yorks Police Authority) Mr Paul Wilson (Chief Probation Officer, West Yorkshire)
Associate Fellow	Mr Ian Brownlee (Crown Prosecution Service, formerly Univ. of Leeds)  Dr Jo Goodey (United Nations Office for Drug Control and Crime Prevention, formerly University of Leeds)  Mr Peter J Seago OBE JP (Life fellow of the University of Leeds).



## **APPENDIX 2 - RESEARCH PAPERS FROM THE CCJS PRESS**

**Publications also available through the Centre for Criminal Justice Studies:**

### **VICTIM CONTACT WORK AND THE PROBATION SERVICE:**

#### **A Study of Service Delivery and Impact**

**Adam Crawford and Jill Enterkin**

This book reports upon the findings of an 18 month study of victim contact work in two Probation Services analysing the manner in which the Victim's Charter requirements to contact victims of serious crimes, both post-sentence and pre-release, have been realised in practice. It explores the value and impact of the Victim's Charter requirements upon the Probation Service. This research is the first major study of this important but controversial service. The study, funded by the Nuffield Foundation, draws upon interviews with victims, service providers, probation officers and service users.

**CONTENTS (pp. 102 + iv) - PRICE £10.00- 1999 - ISBN 0-95-110323-7**

### **THE RENEWAL OF CRIMINAL JUSTICE? New Labour's Policies in Perspective**

**edited by Adam Crawford and Clive Walker**

This book contains the proceedings of the Tenth Anniversary Conference of the Centre which was held on the 22 September 1998. With the passage of the Crime and Disorder Act 1998, and the flurry of discussion papers that have emerged, both from the Home Office and from the Lord Chancellor's Department, are we now witnessing the "Renewal of Criminal Justice"? The book brings together contributions from Jack Straw, Geoff Hoon, Rob Allen, John Abbott, David Jessel, Ben Emmerson and Kier Starmer, amongst others. This book explores current developments in criminal justice and seeks to put these New Labour policies in perspective. In particular it focuses upon changes to the courts, policing and community safety.

**CONTENTS (pp. 65) - PRICE £8.00 - 1998 - ISBN 0-95-110322-9**

### **THE ROLE AND APPOINTMENT OF STIPENDIARY MAGISTRATES**

**Peter Seago, Clive Walker and David Wall**

In 1993 the Royal Commission on Criminal Justice recommended that there should be a more systematic approach to the role of Stipendiary Magistrates. In response, the Lord Chancellor announced, in October 1994, the establishment of a Working Party in pursuit of the Commission's recommendations. This research report was commissioned by the Lord Chancellor's Department to inform the deliberations of the Working Party. This research presents an important profile of Stipendiaries and their place in the Magistrates' court.

**CONTENTS (pp. 178) - PRICE £10.00 - 1996 - ISBN 0-95-110321-0**

### **CRIME, CRIMINAL JUSTICE AND THE INTERNET: special issue of *Criminal Law Review*** **Clive Walker (ed)**

This collection, originally published as a special issue of *Criminal Law Review* in December 1998 contains a range of interesting articles on crime, criminal justice and the internet by (in order):

- "The Governance of the Internet in Europe with special Reference to Illegal and Harmful Content" - Clive Walker and Yaman Akdeniz
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- "Cyberstalking" – Louise Ellison and Yaman Akdeniz
- "Criminal Law and the Internet" – David Davis
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