

Hello everybody and thank you so much to the Crime Research Centre at the University of Sussex for this invitation to speak about the barriers to investigating miscarriages of justice.

I have been a journalist all my working life. Almost. I used to say I went into journalism because I was unfit for anything else, which was kind of half a joke, half the truth at the same time.

Over the years I gravitated to writing about crime and criminal justice issues. I wanted to do journalism that meant something, that resonated in people's lives. I guess too that I was interested in matters of life and death. I recognised that serious crimes such as murder placed ordinary people in extraordinary circumstances and gave rise to compelling characters and narratives in the context of tragic events.

I wanted to know why, I wanted to know how, and I became increasingly fascinated by our cultural responses to crime. I think you can judge a mature society by the way it regards and manages its wrongdoers. Take the two boys who killed a child, James Bulger in 1993 when they themselves were just ten years old. Were Robert Thompson and Jon Venables evil or damaged? Did they deserve our revulsion or our compassion, did they need to be helped or made an example of?

Punishment is no longer the bloodsport it was in years past when excited crowds gathered for hangings outside the Old Bailey and local inns sold food and drink and ringside seats in an early incarnation of corporate hospitality.

Those days are gone, thankfully, but the mindset behind them still persists. Just recently I have been working on an article for The Sunday Times Magazine about how prisons deal with terrorist offenders. About a week ago a taxi driver on the way to Brighton station asked me what I did for a living and for some reason I told her of this assignment. I know how I'd deal with them, she said, I'd kill them.

A trade secret that all journalists know is that taxi drivers make cheap, easy, quotable copy, so I apologise for falling into the trap, but even so, it was a shocking reminder of how hard it is to deliver, and find support for, humane justice.

Politicians know that they won't win votes by making prisons more comfortable or by being kinder to offenders. No doubt some of that thinking underpins the brutal cuts the justice system has faced in recent years. Who cares? Who cares if prisons are a bit more crowded. Who cares if prisoners are locked up 23 hours a day because there aren't enough staff to look after them? Who cares if people are wrongly convicted, because the system was stacked against them, after delays and ill funded representation?

There can be little doubt, surely, that the even deeper chaos into which our justice system has plunged since the pandemic began will lead to significant new miscarriages of justice. Even greater delays will surely mean that some people will be convicted when they shouldn't have been. Some will go to prison, when they shouldn't have, some for a long time. What will happen to them? How will the system identify the errors and put them right?

I met my first victim of a miscarriage of justice many years ago, when I wrote about him for the Sunday Times Magazine. I went to see him in a high security prison where he was serving a long sentence after being convicted of blasting his girlfriend's parents to death with a shotgun at close range.

I would usually counsel against making judgments like this – because I don't really think you can tell who is capable of murder or can believe someone who tells you they haven't committed a murder when the law says they have. I think you should judge on the facts and the law and not on gut instinct. But a less likely murderer than Jonathan Jones is almost impossible to imagine.

Jones was a mild-mannered and softly spoken young man, perhaps a bit unworldly and disorganised. He said he had been in Kent when the parents of his girlfriend, Cheryl Tooze had been killed with a shotgun at their remote home in South Wales in July 1993.

He had driven to the scene of the crime after the incident and had been allowed by police to enter the house and to sit at the kitchen table where his fingerprint was later found on a cup believed to have been used by the killer. Had Jones' print been put there before, or just after the shooting? What were the police doing, allowing him inside the crime scene? Against all the expectations of Jones and his legal team, he was convicted, his alibi not proved, the single print deemed to be vital evidence in spite of the questions about when it had got there. It was only later that his lawyers set out to further investigate his alibi and found a till receipt that supported his account of being in Kent when the crimes were committed. I was there at the Royal Courts of Justice when Jones was freed on appeal. A joyous moment, which I

was pleased to be a part of. He and Cheryl later married. The real killer of her parents has never been found.

I was struck by the fact that it was his lawyers' diligence, putting in the hours, drilling down into the minutiae of the case, that delivered the answer. They travelled to Kent from South Wales and conducted legwork, finding key witnesses in their quest for exculpatory evidence. Nowadays, a lot of post-trial and post-appeal work is conducted either pro bono, without payment, or at significantly reduced legal aid rates.

As the Justice Committee reported only yesterday, the future of legal aid must see rates for criminal defence work improve significantly, to prevent unfairness in trials and to stop even greater numbers of talented lawyers being driven away from criminal practice.

It was of course your own Dr Lucy Welsh and colleagues who earlier this year published their final report on legal aid and legal representation in applications to the Criminal Cases Review Commission. Their report confirmed the concerns of many, that cuts were diminishing justice and specifically undermining the quality of applications to the CCRC. It was somewhat alarming to read that an increasing number of unrepresented applications were presenting cases that were – and I quote – “poorly expressed, under prepared and often misguided.”

I should declare a degree of partisanship at this point. I mentioned earlier that I had been a journalist “almost” all my working life. I served a five year term of office, from 2013 to 2018 as a Commissioner at the Criminal Cases Review Commission. I helped to found the Commission's Research Committee and

played a small part in facilitating the development of Dr Welsh's team's research project.

I hope that the MoJ is paying attention to the report's recommendations and that improvements will come. As we all know they are sorely needed, but, as I have already observed, the rights and interests of convicted criminals are not very high on the political pecking order.

I was very honoured to become a Commissioner, appointed by the Queen on the recommendation of the Prime Minister, and I took the role seriously. I did it fulltime – I was in fact the last fulltime Commissioner to be appointed - investing as much of myself and my investigative journalistic skills as I could, in the cause of identifying and correcting miscarriages of justice. I aimed to do good.

It was always somewhat alarming to me, how often you would encounter people who did not know of the Commission's existence. Most troubling of all, it would sometimes come as a surprise to lawyers, even criminal lawyers.

Who knows, there may be one or two uninformed lawyers or others in the audience tonight. So bear with me while I give a very, very brief summary of the Commission's origins and role.

It began operation in 1997, following the recommendations of the Royal Commission on Criminal Justice - sometimes known after its chair as the Runciman Commission – which reported in 1995 on proposed solutions to the egregious set of miscarriages of justice which had recently occurred under the

law of England & Wales; many involving innocent Irish people convicted of terrorist acts of murder, such as the Guildford 4 and the Birmingham 6.

Previously, post appeal reviews of alleged miscarriages had been in the hands of a fusty and secretive government department known as Home Office C3, which left files languishing on shelves and placed decisions on new appeals in the hands of politicians. A terrible mistake. In my view, politicians should stay well clear of dispensing justice - and should not be caught criticising those who do.

The Commission employs around 100 people and receives around 1400 applications every year, the vast majority of which will not be found to be miscarriages of justice. But – and this is an important BUT – every new application is opened and evaluated by staff and Commissioners in the expectation or anticipation that it might be a wrongful conviction. It is the reason for being of the Commission and for everyone who works there.

To date the Commission has completed over 26,000 cases and referred over 760 to the court of appeal. 466 criminal appeals have been allowed.

The Commission occupies a unique role as the backstop of the criminal justice system. It is the place of last resort – there really is nowhere else to go when you've had your appeal turned down.

If the Commission finds that there is a real possibility that the conviction will not be upheld, it can make the referral of a criminal conviction back to the Court of Appeal. The Real Possibility test is enshrined in law – Section 13 of the

1995 Criminal Appeal Act, by which the Commission was created. The law decrees that referral decisions will be made by at least three Commissioners, sitting in committee. The Court of appeal cannot refuse to hear an appeal referred to it by the Commission.

Not everyone likes the Real Possibility test. They think it sets the bar for referral too high. In practice I am not sure a different test would make a significant difference. I do not recall a case during my time when it was said, if only we had a different test, we might have been able to refer this case. But I know the Commission has expressed support for a review of the test, and I think that must be the right approach.

Some people favour the test applied by the Scottish Criminal Cases Review Commission, which asks itself if a miscarriage of justice may have occurred and if it is in the interests of justice to refer the case for a new appeal. In truth, however, the broad scope of that wording has created some difficulties in Scottish appeals.

The other issue with the test here is the fact that there is any test at all – that the Court of Appeal retains the final word on second appeals, marking its own homework, in effect, and placing the Commission in a subordinate role, a kind of lapdog, an obedient puppy on the court's leash, in some people's minds.

The Runciman Commission had considered whether the new Commission might itself be put in a position to overturn convictions, but the judiciary were adamant that judges should retain that power. That is fine, providing the Court

of Appeal treats the Commission's decisions with respect and is not too conservative in its view of appeals.

I do think, in the past, that the Court was sometimes unnecessarily critical of some Commission decisions but, if anything, I hope, it made the Commission more determined not less to send through deserving cases. That was certainly the Commissioners' perspective anyway. That was a key aspect of the Commissioner role, you were a public appointee, not an employee - accountable to the public through parliament, yes, but not beholden to the organs of the state, not even to the judiciary.

From the start of my five years at the CCRC to the very end, I fought to preserve its independence, which I believed then and still do, was vested in the Commissioner role. The alleged erosion of the CCRC's independence has since been tested by the courts – the case was Gary Warner - and found to be intact, albeit with a warning that it must be, and must be seen to be not merely operationally independent, but constitutionally independent too. That is a hobby horse of mine, which I do not intend to start riding tonight. I do not agree the CCRC's independence is intact, but I do know the vast majority of people who work there are clever and well meaning and passionate about their work. They are independent minded, most of them, which is great, but I would merely caution that is not the same as being constitutionally independent.

Still, they do good work and important work, often operating in a difficult space between the expectations of applicants and the realities of their case,



between systemic delays and applicants' understandable impatience for results.

This is difficult, contested territory. I know that for many unsuccessful applicants, the Commission itself is perceived as a barrier to the investigation and resolution of miscarriages of justice; that it is considered too slow and too uncommunicative; considered too timid before the Court of Appeal, too deskbound, too reluctant to get out and investigate; unwilling to act with boldness and prone to be dismissive of applicants' claims.

Many applicants do recognise that the Commission is no exception within the generally creaking criminal justice system; that it has faced cuts and underfunding and that its performance is inevitably affected by those financial limitations.

We can agree I think, that better legal representation would advance applicants' cases and improve their chances of success; we can perhaps agree too that better funding might improve the performance of the CCRC. But still, unless that funding is going to be bottomless, someone, sooner or later is going to have to make a value judgement, and take an objective, neutral view of the evidence in individual cases. Someone is going to have to take a step back and consider which cases are most deserving of those finite resources.

It is free to apply to the Commission and you can apply as often as you like. You are supposed to have some new evidence or legal argument in your application but, in my experience, the new points were often either marginal or difficult to spot.

The Commission simply cannot investigate every case to the Nth degree. It has to make selections, choices about which cases are potentially meritorious. You close down the ones going nowhere as soon as you reasonably can and clear the way for cases of concern to be examined.

The public has a right to expect that those decisions will be made in a timely fashion, on the facts and the law and not on the prejudices of the decision-maker or the persistence of the applicants.

You want the decision-makers not to feel pressured to decide one way or another because of their caseload, because of arbitrary deadlines or because of external influences. You want them to be in full possession of all the available information about the history of the case, about its journey from then to now.

When I first went to the Commission I suddenly found myself on the other side of the fence. As a journalist I stood outside the system, peering over the fence, pleading - sometimes shamelessly pleading - for access to information. It was very different at the Commission. No more pleading. The Commission has absolute powers of access to information. It will not, and cannot be denied. It does not matter whether you are the security services, or the government, or the police, the CPS, the judiciary, the prisons, the NHS. Whoever you are. If the CCRC comes calling with a reasonable request to hand over information, you have to comply.

I found that both profoundly reassuring and quite thrilling. As a journalist I could only dream about those kinds of powers of investigation. Of course, with power comes responsibility.

Responsibility to look after the information, store it securely and safely, not hand it on to third parties, not misuse it.

No doubt, some aspects of those powers – their potential intrusiveness, for example - are awkward. The first purpose, as always, is to safeguard against wrongful convictions. But I used to wonder, for instance, how people would feel if they realised the Commission could quite properly look into the Police database records and backgrounds of complainants during reviews of sexual offences' convictions.

About a third of cases in the criminal justice system are sexual offences and that reflects – or did in my time – the workload of the Commission. About a third of applications come from convicted sex offenders. Increasingly, they are convictions arising from historic allegations made later in life. I used to find these the most troubling category of case to review. There were often only two people there when it happened. Very often there was little or no corroborating evidence, except maybe some circumstantial detail about the lives of those involved. The cases often seemed to turn on who had come across most credibly, in court, in the witness box. Their accounts were the evidence, but they were largely unsupported, so who did juries believe, and why.

It is a category of crime – especially when the victims are children – that we find morally and criminally repugnant, as a society. Therefore, it is often difficult for perpetrators to accept or admit. I think it likely that the majority of CCRC applications came from men in denial about their previous crimes. Remember it costs nothing to apply. It might help you to survive in prison, or in your own head, to say, look, I never did this, and here, to prove it, is my application to the CCRC.

BUT – as always the BUT – every new application has to be treated on its merits and approached fairly. It was common in the cases I saw for applicants to claim the complainant had made up the allegations. Could that be true and if so how could it be evidenced? You could look at the circumstances of the case for help, but you could also look at the history of the complainant too and that meant, in appropriate cases, accessing their public records. That work should have been done before trial, but it might not have been thorough, or new material might have emerged. Those inquiries certainly led to some important referrals during my time. Cases where complainants had made previous or subsequent allegations against others, perhaps, that appeared to be untrue or inconsistent, or had committed or been involved in other acts of dishonesty.

I follow the contemporary debate around the tailing off of rape charges and convictions with varieties of concern and alarm. Complainants are commonly called victims, before a crime has been proved. The concerns over what is sometimes called “digital rape” – namely, intrusive inquiries into mobile phones and devices may be well-founded. Complainants – and victims – are of course entitled to privacy and should not be subjected to such an invasion. But

at the same time, suspects are entitled to justice, and surely justice must trump privacy, where necessary.

Some of you may be familiar with the case of Liam Allan, a young man whose life was blighted by allegations of rape made by a former partner. He faced up to 12 years in prison. It was not until his trial had actually started in late 2017 that full disclosure of the content of the complainant's phone was made. His barrister, now a QC, Julia Smart sat up til 4am combing through 40,000 messages on 2500 pages of A4 in a pdf file. There she found messages that made it clear the sex between Liam and his accuser was consensual. There was no rape and the case collapsed. Liam had a narrow escape. Others – we don't know who or how many – will not have been so lucky.

How you reconcile this with the right of women to be spared men's violence, for men to be properly punished for the sexual crimes they commit, and for women not to feel that humiliating intrusion into their lives if they are the victims of sexual assault, I just don't know. It is a delicate balancing act.

But I do know that – as Blackstone's ratio asserts – it is better that ten guilty persons escape than that one innocent suffer.

I realise, even that will be a difficult pill to swallow for women who have been the victims of men's sexual violence.

The CCRC was acutely aware of its duties and responsibilities in this area. But I do wonder if those ethical concerns will eventually begin to inhibit the CCRC's powers of investigation. I hope that never happens.

I want to reflect for a moment on the issue of disclosure. We know it is a concern within the criminal justice system. We know that the defence has a right of access to anything that may undermine the prosecution or assist the defence. Liam Allan's accuser's texts are a prime example. As the digital world expands the sheer volume of potential material mushrooms and the risks of failings increase. The system is imperfect, and the Commission is always on the lookout for disclosure failings that might have rendered trials unfair. We know the withholding of information has loomed large in the notorious Post Office Horizon cases, which have so far led to more than 50 convictions being overturned.

But what about onward disclosure by the Commission to applicants? I know that applicants and their representatives can feel frustrated that the Commission is unable to share information it obtains in the course of reviews. I think applicants sometimes believe the Commission is acting for them, investigating on their behalf. But it isn't. The Commission acts in the interests of justice. There is legislation and court rulings – the case of Nunn and associated decisions that define the Commission's duties and the applicants' rights to post-trial information. The third party organisations to whom the Commission turns for access to information during its inquiries would soon start to complain if they were unable to share confidential information with confidence that it would be treated confidentially by the Commission.

There are issues of trust. Trust between organisations and the Commission. The trust between applicants and the Commission. Trust I think has to be earned. I did as much as I could during my time there, to give the Commission

a more outward face. I went to many miscarriage of justice conferences and spoke about the Commission's work wherever and whenever I could. In addition to helping to initiate the Research Committee I also helped to found the Commission's Stakeholder Forum, which enabled many of the Commissions' critical friends to sit round a table and talk openly with the organisation.

That was one way of improving trust. But, like I say, trust has to be earned. I believe the Commission could have done more from the beginning to promote awareness of its role, to be more bullish about trumpeting its work and singing its own praises when it had something to sing about.

A lot of fine work, a lot of exemplary work, actually goes on at the Commission.

A relatively recent case in point that I am aware of begins with the story of a successful, ageing, white, businessman, Stephen Simmons, who on the face of it is leading a comfortable life in the Home Counties, but carries inside him a haunting secret. 40 years earlier he had been arrested and convicted of stealing the contents of mailbags from the sidings at Clapham Junction and had been sent to borstal. He claimed at the time that the police had fitted him up, him and his friends – verballed them in the old fashioned parlance - and that they were innocent. His lawyer told him at the time that if he said the police were liars he would be locked up even longer. So he stayed quiet, and carried on staying quiet.

You might think after four decades the impact of such an incident would have faded. You would be wrong. Mr Simmons had never told his children what had

happened to him and kept it a secret from his friends and business colleagues. He lived in fear of his criminal history being discovered.

Then in 2014 he made an astonishing discovery. Armed with this new information he applied to the Criminal Cases Review Commission. It was not easy to investigate such an ancient case. Historically, retention of criminal and court records is patchy at best – it could be much improved – but some papers were available which showed the admissions that Simmons and his friends were said to have made. They were like something out of a comedy sketch. I done it guv, you got me, it's a fair cop and all that kind of thing.

But the key revelation, which Simmons had stumbled upon almost by accident on Google was that the British Transport police officer, Detective Sergeant Derek Ridgewell, whose evidence had convicted Simmons had himself subsequently been convicted and sent to prison – for stealing mailbags from the railway sidings at Clapham Junction! He had died of a heart attack in prison so was no longer around to talk to. But it turned out that DS Ridgewell had fitted up quite a few other people too, notably several groups of young black men known variously as the Oval 4 and the Stockwell Six, the Waterloo 4 and the Tottenham Court Road 2.

One of the Oval 4 was Winston Trew, by now in his late 60s, a Jamaican born man living and working in London as a university lecturer. He and his three friends had been arrested by DS Ridgewell in 1972 and imprisoned for robbery offences – muggings – they had never committed. Just imagine how that felt. Trew had campaigned for a long time and had written a book about the plight



of the Oval 4 which he called Black For A Cause, in which he had written about the same corrupt police officer, Derek Ridgewell.

Winston Trew had never applied to the CCRC but the Commission acquired a copy of his book during its research into the Simmons' case and contacted Trew and sought to track down the others and of course what remained of their own case papers.

The Commission's investigation into the Simmons' conviction might easily have foundered. It was all such a long time ago and there was so little trace of the case in the records. Who cared after all this time? Why did it matter? The Commission's caseload was swelling daily and the Case Review Managers were stacked up with cases. You could close Simmons down, get on with something more likely to be productive.

But thankfully, that was not what happened. In my view, there must never be any statute of limitations on correcting an injustice. It is never too late to put things right, however great the obstacles. As Mr Simmons later publicly revealed, the case was a blot on his life.

The Case Review Manager was tenacious in the gathering of information. No stone was left unturned and in time a proper referral was skilfully fashioned. There were a lot of gaps in the Commission's knowledge and it agonised over whether it had gathered sufficient information and constructed a persuasive enough legal argument.

Simmons' conviction was overturned by the Lord Chief Justice in January 2018. He noted Mr Simmons' praise for the thoroughness of the investigations of the CCRC's Case Review Manager, Adam Bell and added that the Court of Appeal "would wish only to note our regret that it has taken so long for this injustice to be remedied".

Following further investigations by a different, but no less determined, Case Review Manager Anona Bisping, who has also been publicly praised, the convictions of three of the Oval 4 were overturned, again by the Lord Chief Justice. The Oval fourth could not be traced at the time, but later came forward and he too has now had his conviction quashed.

As it turns out, Detective Sergeant Derek Ridgewell is the gift that just keeps giving. Only a few weeks ago, three of the Stockwell six had their integrity restored, when their appeals succeeded, 49 years after their original convictions. I suspect there are more to come.

My point in emphasising these cases is to stress the significant but happily not insurmountable hurdles the passage of time created. The limited case papers might have torpedoed the applications but the investigative zeal of the Commission's Case Review Managers won the day.

I don't know if any of you heard or saw Winston Trew speaking about his case on various leading news programmes. He spoke with eloquence, in calm, measured terms but no one listening would have been in any doubt about the anger and distress he had felt. Nor in any doubt about his gratitude for the existence of a body like the Criminal Cases Review Commission.

Miscarriages of Justice are an area of law that arouses considerable passion and opinion - often quite binary opinion. If you aren't for us, you are against us - why can't you see what we see. When applications are rejected or convictions upheld, the Commission is accused of being unfit for purpose, the system perceived to be weighed against innocent or unfairly convicted people.

I do wonder sometimes if people's judgment is affected by becoming too close to cases. Cases that, might, to me, look ambiguous at best become celebrated causes of injustice, a cause of frustration for their representatives and supporters who do not get the formal responses they believe their cases deserve.

I can think of a good number of examples of such cases, where I find myself at odds with people whose views and opinions I otherwise respect. I find it hard to give myself to some of those causes. I know some campaigners believe you can tell who is or isn't innocent, who is or isn't telling the truth when they say they didn't do it. I have heard seemingly sensible people say they look for "tells" in people to confirm their innocence or guilt.

If only it was that easy.

Just over a decade ago I went to interview Jeremy Bamber in prison. His story was recently told in a television drama *White House Farm*. He was 60 this year and he is currently serving a Whole Life Tariff for the five murders of his mother, father, sister and her two young sons one night in 1985, when he was 25.

Jeremy Bamber is one of those celebrated causes. He has protested his innocence since his conviction. He has had two appeals – both failed, obviously – and his fourth application to them is currently being considered by the Criminal Cases Review Commission.

Bamber has an entire campaigning organisation on the outside, who believe unwaveringly in his innocence and promote his cause in the media, at injustice conferences and other events. They wear Jeremy Bamber t-shirts. They are protective of Jeremy Bamber's public image, acting as a kind of gatekeeper for his outside interests.

My interview with Bamber was sanctioned, after a bit of a legal battle it must be said, by the Ministry of Justice. Legal precedent, known as the Simms/O'Brien ruling, has determined that serving prisoners claiming to be the victims of a miscarriage of justice should be allowed to put their case to the public via the media. It is commonly accepted that media campaigns can be influential in overturning wrongful convictions, though how much impact they have on the minds of Court of Appeal judges, I cannot say. Of course, sometimes investigations by the media can uncover new evidence.

I promised Jeremy Bamber an opportunity to put his case – which was the stated purpose of the interview – and assured him I would be objective. In my heart, I think, looking back, my reading of the evidence was such that I doubted his claims of innocence, but if you read now the article I wrote then, I am confident you would feel I had told his side of the story.

If Jeremy Bamber didn't kill his entire family, that night, in an attempt to secure his parents' estate for himself, only one other person can be responsible. As he relentlessly claims, his sister Sheila killed them all and then turned the gun on herself.

The major fly in the ointment of that case is that a rifle silencer was found in the back of a cupboard after the killings with blood that is almost certainly Sheila's inside it. If the silencer was on the rifle when Sheila was shot under the chin, while lying down, the weapon was too long for her to wrap her fingers around the trigger. She could not have shot herself. And also, how did the silencer find its way into the back of the cupboard when she was already dead?

The prosecution case was that Jeremy Bamber planned to blame Sheila, shot her himself and then, when it came to dress the scene made the awkward discovery about the weapon and hurriedly removed and hid the silencer, neglecting to clean it first.

If that is true he is in the right place. If it is wrong he has been unfairly locked up for 36 years.

Bamber has made multiple claims over the years about the lies of witnesses against him, misconduct by the police, including non-disclosure, and collusion to frame him by his relatives.

I remember saying at the end of the article I wrote that I had no idea of his innocence or guilt. I had put the case for and against and now it was up to readers. "Reader you decide", I wrote quite grandly.

The Bamber case echoes around the world of miscarriages of justice, just as much as it has echoed around the walls of the Criminal Cases Review Commission.

The barrier to investigating his case – as to investigating many other cases – is the weight of the evidence against him. He told his girlfriend he was going to murder his family. Or so she said. He showed his contempt, even hatred for his family to many. And of course he was – apparently - caught out by the silencer.

Any evidence of police misconduct or of mistakes or lies would have to be of a substantial nature to overturn that conviction. He thought he had found an answer in 2002 when the Commission referred the case for a new appeal on the basis of DNA evidence, but that was rejected by the Court. Bamber has since focused his efforts elsewhere.

I believe he now claims there were two silencers in the case, not one. The CCRC will no doubt examine and form its own view of that alleged new evidence.

Here is a difficult question: Is Jeremy Bamber an innocent man because he says he is? Is his case for innocence enhanced by the persistence of his claims?

You could say, he is sitting in his cell, going nowhere, with nothing better to do than try to find a way out of the hole he is in. Or you could say, he is fighting desperately to prove the truth and be justifiably free.

A fascinating thing about him that I always cite, is that Jeremy Bamber has no diagnosis of being mentally ill or a psychopath. To all intents and purposes he is as normal as you and me. He charms people still and wins them over to his cause. He is a fascinating study of the essence of investigating miscarriages of justice. He is what it's all about. The claim and counter claim, the obscuring of the truth, the complexity and ambiguity of the evidence, the lingering suggestion of police impropriety.

Did he, didn't he.

But there are other cases too, perhaps less celebrated, who embody the same concerns.

Sometime after I had left the Commission and returned to writing, I was asked by those who represent him – a solicitor and a QC both acting pro bono - to look at the case of Oliver Campbell, a black man with severe learning difficulties whose 30 year old murder conviction has been continuously questioned.

The CCRC is currently considering his second application, 15 years after the first application, made by the exact same legal team, was rejected.

The application faces a significant hurdle in that the legal team have not really uncovered very much that is new. The issues were largely played out at trial, on appeal or in the first application which was at the Commission from 1999 until it was rejected in 2006.

Oliver Campbell is now aged 50 and has long since served his 11 year tariff but of course, like all lifers he will remain out of prison on licence, liable to be recalled, forever. Life does still mean life, in some respects, even after release. He continues to assert his innocence.

However, he had also confessed to the crime, albeit in controversial circumstances.

He was 19 in 1990 when a shopkeeper, Baldev Hoondle was shot and killed during a robbery at an off-licence in Hackney. There were two men involved in the robbery. A key witness identified them both as black and both about 5' 10" tall. Campbell was 6 foot three.

One had been wearing a British Knights baseball cap, that was found in the road not far from the scene. Only 188 had been sold and one of those had been bought by Oliver Campbell, only eight days before the murder. He and an older associate Eric Samuels were arrested for the crime. Samuels, the co-accused, pleaded guilty to conspiracy to rob but denied murder. There was evidence that he was not even in the shop when the shooting occurred and he was acquitted of murder.

Oliver Campbell was convicted on both counts. Eric Samuels later claimed that Campbell had not been with him at the robbery. Samuels said he was accompanied by a man called Harvey instead. Unfortunately, the Court of Appeal has little regard for exculpatory statements made by co-accused after conviction, and even less for apparently phantom suspects like Harvey. The co-



accused have nothing to lose. They could say anything, make up anyone. Like Harvey, who was never traced.

In all but the most exceptional circumstances, it is no good turning up at the Court of Appeal unless you have something new to say. The Court must find that it is necessary or expedient in the interests of justice to admit the new evidence. There are strict protocols for the admission of fresh evidence, set out more than half a century ago at Section 23 of the 1968 Criminal Appeal Act:

It must be capable of belief

It must afford a basis for allowing the appeal

It must have been admissible at trial

And there must be a reasonable explanation why it was not put forward at trial

I think Eric Samuels' claim fell at the first hurdle. His suggestion of an accomplice called Harvey was simply not capable of belief.

But Oliver Campbell had bigger problems than that. He had confessed to the shooting following his arrest. When you looked at it, however, his confession was more than a little concerning.

Campbell had suffered brain damage following an accident in his early life and was mentally impaired with a low IQ. He had been in foster care for many

years. He was obviously a vulnerable young man. Police interviews of suspects are subject to the 1984 Police and Criminal Evidence act and The Human Rights Act, which came some years after Campbell's conviction. They are governed by still evolving codes of conduct.

Campbell was at first unaccompanied in his police interviews, then represented by a solicitor and a social worker, then they went home, the solicitor apparently assured by the police he would be called back if further interviews were planned. But Campbell was interviewed again and the solicitor was not contacted. This time Campbell was just with his foster mother as the appropriate adult and this time he confessed to shooting the shopkeeper.

Meanwhile, the hat Campbell had bought was examined. He claimed it had been stolen from him in Leicester Square before the crime. That might sound implausible but when the hat was forensically examined the only head hairs that were found did not match Oliver Campbell or his co-accused Samuels.

Campbell was put on an identification parade where the key witness failed to pick him out. Afterwards however, the witness told police he was increasingly sure the man at place nine – Campbell – had been one of the two men he saw at the scene.

So, there you have it. Four key pieces of evidence against Campbell and each one of them questionable.

First, the confession in dubious circumstances.

Second, Campbell's association with Samuels who admitted being at the robbery.

Third, the non-identification that had been turned into an identification almost by stealth.

And fourth and finally, of course the hat. Regrettably, the hat had gone missing, the CCRC had looked for it during its earlier review, apparently, without success, so whatever further forensic opportunities it might have offered by way of developments in DNA were lost to Campbell.

Each of those four pillars of the prosecution case had been part of the trial, the first appeal, the first application to the Commission. At first blush, taken together, they seemed to be the foundation of a strong, even overwhelming case for Campbell's guilt.

But the more I thought about it and considered them, the fact remained that each one was undermined and weakened as a pillar of evidence. There was an inherent danger that they were being unfairly used to prop each other up. If you constructed a building on four weak pillars it would collapse. Was the same not true for a criminal case?

On one view, if you took a step back, here was a vulnerable black teenager with a low IQ potentially being manipulated into a false confession by the police.

Who knew what was in the hearts and minds of those officers.

During my time at the Commission I noted that black and Asian applicants often raised claims of racism in their submissions. It was rarely obviously present in the facts of a case, but then that is the nature of racism. It isn't always in your face like abuse on Twitter. It can be subtle, it can be institutional. It does not always speak its name, but you know it's there. It's there in the findings of the David Lammy review into racism in the criminal justice system. It is there in all the statistics. In the overrepresentation of black people at all stages of the criminal justice system – until that is you get to the numbers of black police and black lawyers. Then the stats fall off a cliff. You are x times more likely to be stopped and searched, x times more likely to be tasered, more likely to die in custody, more likely to go to prison, more likely to serve longer in prison, more likely to be diagnosed with adverse mental health - less likely to be a police officer, less likely to be a lawyer and hardly like at all to be a judge.

Those stats are grimly familiar but they do not assist in examining the influence of racism during reviews of alleged wrongful convictions. I found that frustrating sometimes, as a Commissioner. But unless an officer or a witness acted or spoke in an overtly racist way, where was the evidence?

So with Oliver Campbell. You could imagine in 1990 how police attitudes might have hardened towards a young black man in a baseball cap who was suspected to have shot and killed a shop assistant.

The television programme Newsnight recently investigated Campbell's case and were able to elicit a comment from the officer involved who denied any

wrongdoing during Campbell's custody and interviews. There is no evidence that racism played any part in his conviction.

So, nothing new or fresh in the Oliver Campbell case except perhaps a different way of looking at the evidence and a powerful sense of lurking doubt and a question of applying modern standards of fairness. Would you interview and take a confession nowadays from a young black man with a low IQ in the presence of his foster mother and no one else, when you had reportedly assured his lawyer he would be called for any further interviews? Would you rely on identification evidence when the witness had not picked out anyone at the parade? Would you continue to rely on a hat that had mysteriously gone missing with head hairs that were not that of your suspect?

I hope not. I hope too that the Commission will look again and carefully at Campbell's case and consider it in the context of lurking doubt and modern standards of fairness. In exceptional circumstances the Commission does not need new evidence to refer for a new appeal. In that case, perhaps, the Commission could find that Campbell's conviction passes the Real Possibility test for a referral.

I am no longer a Commissioner, so the decision is for others. But still, I hope his lawyers' pro bono efforts succeed, and that Campbell gets a new appeal and that this time it tips in his favour. I do not know if he is guilty or innocent. But that is not the point. The single, the only important question is - was he fairly convicted? If he was not, then there should be no barrier to investigating and putting right his miscarriage of justice. THANK YOU. DJS July 28, 2021.