Joint Enterprise

An investigation into the legal doctrine of joint enterprise in criminal convictions

THE BUREAU
OF INVESTIGATIVE
JOURNALISM

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Joint enterprise, a definition:

Joint enterprise is a doctrine of common law dating back several centuries that has been developed by the courts to allow for more than one person to be charged and convicted of the same crime. If it can be proved that the participants were working together in some way, then they are all guilty of all the crimes committed during the course of their joint enterprise, regardless of the role they played. Unlike the crime of conspiracy, in which the offence consists of merely agreeing to commit a crime, in joint enterprise all parties are convicted of the actual offence, for example: murder.

"Who is guilty of murder when four people surround somebody? The one who kicks? The one who suddenly produces the knife that is the offensive weapon that causes the death? The one who eggs on the man who has the knife? The one who says to him, 'For God's sake!'… it is one thing to be party to punching somebody, and quite another to be party to using a potentially lethal weapon on him."

LORD JUDGE, 2011

Introduction

"The law on joint enterprise is clear and unforgiving - you do not need to deliver the fatal blow or even be at the actual scene of the killing to be found guilty and sent to jail." These were the words of Detective Chief Inspector John McFarlane of the Metropolitan Police in July 2013 after the last of 17 young people was convicted for involvement in the murder of a schoolboy in London's Victoria tube station. It was the biggest joint enterprise murder case in the history of the 300-year-old doctrine of English common law, and the police were unequivocal about the power of joint enterprise to put people behind bars who may not have struck the fatal blow.

The horrific murder of 15-year-old Sofyen Belamouadden was an act of brutal savagery by a group of youths, some of whom had come to the station armed for a fight. The conviction was heralded by many, including McFarlane, as a prime example of how a complex tool of law - the doctrine of joint enterprise - can be deployed to successfully prosecute crimes involving large numbers of people.

However, the case also strongly illustrates some of the concerns and complexities associated with this loose point of law. For example, one of the teenagers charged with the murder under joint enterprise was acquitted after it was found he played no role in the events, but had merely been at the scene. Another, convicted of murder and sentenced to life imprisonment, was outside the station at the time of the attack. He had a samurai sword and had led a charge towards the station but under joint enterprise, even though he took no part in the actual murder, his actions made him as guilty as those who stabbed, kicked and punched Belamouadden to death. Others involved in the actual attack were convicted of manslaughter.

Joint enterprise means all those who jointly commit a crime can be convicted, even if they play very different roles in it. The most controversial variant of the doctrine is sometimes called 'parasitic liability': it means that if a group of people jointly commit one crime (for example affray or robbery), and realise or foresee that one of them will intentionally commit another crime in the course of it (for example murder), then all are guilty of the murder. Proof that the others intended or took a direct part in the murder is not required.

In recent years there has been a growing chorus of concern from leading figures in the judiciary and academia, MPs and campaign groups that something is going wrong with a law that casts its net so wide that even someone on the periphery of the crime can be found guilty of murder.

Lord Phillips, former Lord Chief Justice and former president of the Supreme Court, told the Bureau that joint enterprise is "capable of producing injustice". Professor David Ormerod, the Law Commissioner, one of the most senior criminal lawyers in the country who advises the government on criminal legal reform, says the law is unclear and questions whether or not it is fair. "Unless the law is clear - and I'm not certain it is - then you increase risk of injustice. If the law is unclear, it can be applied in an inconsistent way. It's possible because of the complexity of the law that it has been applied incorrectly," he told the Bureau.

"Even if you made the law on joint enterprise crystal clear, that leaves the question whether the law on murder is fair when applied in such cases? Is it fair that someone is convicted for murder if they have foreseen as a possibility that someone else might intentionally kill or cause serious harm?" he added.

Professor Graham Virgo of Cambridge University told the Bureau: "My main concern is that a defendant can be convicted for murder, with the mandatory life sentence, even though he or she did not cause death and did not have the intention to kill or to cause serious injury."

Professor Jeremy Horder, former Law Commissioner and now at the London School of Economics, has described the problems with joint enterprise as "an open festering wound".

In 2011 an inquiry by the Justice Select Committee into the use of joint enterprise tried to establish how widely it was used. The then Director of Public Prosecutions (DPP), Keir Starmer, was called up to explain the complex legal doctrine of joint enterprise and to inform MPs about just how the doctrine was used by the Crown Prosecution Service (CPS).

Elfyn Llwyd MP, a member of the committee, told Starmer: "Nowadays, there are statistics to prove and disprove everything on earth. It seems to me rather strange that there are no statistics to show how often [joint enterprise] is being used."

Llwyd was to remain mystified. The CPS did not have the figures.[1]

Until now, there has been no information on the reach of this powerful part of the criminal justice system. But here, for the first time, the Bureau of Investigative Journalism is able to supply new evidence into the extent joint enterprise is used in homicide convictions, where most concerns about potential injustice lie. This new data frames the concerns around the looseness of the law, making a strong case for debate and further reform.

1 House of Commons Justice Committee, Joint Enterprise Eleventh Report of Session 2010–12, 17 January 2012 http://www.publications.parliament.uk/pa/cm201012/cmselect/cmjust/1597/1597.pdf p. 25

Executive summary

Until now it has not been known how many people have been charged under joint enterprise. The Bureau of Investigative Journalism can reveal that in the past eight years alone, at least 1,800 people have been prosecuted for homicide using the 300-year-old doctrine. This is 17.7% of all homicide prosecutions in this time frame. This data shows that this is not a small, peripheral aspect of law. In addition, in depth interviews with senior professionals highlight the legal and moral complexities of joint enterprise, and give weight to a call for reform.

The Bureau set out to provide the data that the select committee was unable to get. We used freedom of information requests and undertook a survey of legal professionals designed and conducted with the Centre for Law, Justice and Journalism at City University London. We also undertook in depth interviews and detailed analyses of court papers in selected case studies.

We found that between 2005 and 2013 there were 1,853 people prosecuted for homicide in a charge that involved more than four people. Academics and senior lawyers agreed these prosecutions almost certainly relied on the joint enterprise doctrine.

In the same eight years there were 4,590 prosecutions for homicide with two or more defendants. That was equivalent to 44% of all homicide prosecutions in those years. Former Director of Public Prosecutions, Keir Starmer noted, in reference to the CPS's own search for data: "Where two or more defendants are charged on the same indictment with murder and/or manslaughter it is assumed that they were jointly charged in relation to the same victim." The Bureau's use of data for four or more defendants involved in the same crime is therefore a more conservative estimate.

The Bureau also found that the more defendants involved in a homicide charge, the more likely it would be that the prosecution would later drop the case against some of the defendants, or that the trial would go ahead and some defendants would eventually be acquitted. This suggests that in multiple prosecutions some people are being swept up into serious trials who should not be there.

17.7% of all homicides involved four or more defendants

37 out of 43 lawyers expressed concern about joint enterprise

22% of all Court of Appeal rulings involved a joint enterprise conviction, in 2013

1,853 people prosecuted for homicides involving four or more defendants

We also found that joint enterprise convictions are being frequently appealed, and we noted a large increase in the rate of appeals in the three years studied. Analysis of rulings handed out by the Court of Appeal showed 22% of all convictions appealed in 2013 had an element of joint enterprise, compared to 11% in 2008.

Our survey of barristers and solicitors revealed widespread concerns about the issue of establishing intent of a crime in joint enterprise cases, given that it is not always necessary for the prosecution to prove that all defendants intended the outcome of the crime. The survey respondents also expressed concerns over the mandatory life sentences given out to secondary parties in joint enterprise murder cases.

Many of the concerns outlined in the survey were echoed by leading figures of the judiciary who spoke to the Bureau.

This report explores these concerns: establishing intent of those associated with the crime, the restrictive sentencing options for those convicted of murder and concerns that joint enterprise means those on the periphery of a crime get "scooped up" in prosecutions.

The following reforms in the use of joint enterprise were suggested: using case law or statute to clarify the doctrine, introducing a higher burden of proof for establishing intent and encouragement and creating new gradations of murder convictions, such as secondary degree murder, to allow for discretionary sentencing.

THE KEY FINDINGS

- Between 2005 and 2013, 1,853 people were prosecuted by the CPS for homicides that involved four or more defendants. This is the closest approximation that can be made to the use of joint enterprise. Most academics agree these prosecutions almost certainly relied on the joint enterprise doctrine.
- In the same eight years 4,590 people were prosecuted for homicides involving two or more defendants.
- The peak for homicide prosecutions involving four or more defendants was in 2008 (20.4%). The lowest rate was 14% of all prosecutions of homicide, in 2010.
- The rate of four or more defendants facing a homicide charge rose slightly between 2012 and 2013, (from 17% to 17.4% of all homicide trials). This coincides with new guidance produced in December 2012 by the DPP on prosecuting joint enterprise offences. The guidance was intended to clarify the use of joint enterprise by prosecutors.
- The more defendants involved in a prosecution, the lesser the chances of securing a conviction. The average conviction rate for all homicides is 80.4%. Where there are two or more defendants the conviction rate drops to 76.7% and for four or more defendants it is 73.3%.
- The data also shows that the more defendants involved in a homicide trial, the more likely it is that the CPS will "offer no evidence", leading to the charge being dropped at trial stage. This suggests people are being drawn into homicide prosecutions without enough evidence to convict.
- 37 out of 43 solicitors and barristers responding to survey questions on concerns with the use of joint enterprise in murder convictions said they were "very concerned" or "somewhat concerned" about the doctrine.
- 41 of those that responded to questions on concerns found issues over establishing the defendant's criminal intent was the most worrying element of joint enterprise.
- 27 of the 43 people that gave an opinion on the DPP's guidelines said they believed that the guidelines "did not have much impact, if any, on the use of joint enterprise". Nine people said they did not know and four said they were not aware of the guidelines.
- The rate at which joint enterprise cases are appealed appears to be on the rise. In 2008 11% of published Court of Appeal rulings dealt with convictions where there had been some element of joint enterprise. In 2013 the rate had increased to 22%, or 43 out of 194 published rulings.
- Homicide charges were the most common form of joint enterprise conviction appealed in all three years analysed.
- In 2008 and 2012 it was more likely a joint enterprise homicide ruling would be upheld at the Court of Appeal as compared to a non-joint enterprise ruling. This suggests it is harder for those convicted under joint enterprise to get their sentences reduced. 2013 bucked this trend with a significant jump in the number of non-joint enterprise homicide appeals being upheld.
- Only one lawyer out of the scores spoken to said the law of joint enterprise should be scrapped. Instead, many noted its vital importance but suggested revisions and reform were required.

1

Chapter One
Background & Methodology

Background

What is Joint Enterprise?

Joint enterprise is a common law doctrine, developed through the courts rather than statute that allows for more than one person to be charged for a crime if it can be proven that the participants were "in it together" in some way. Unlike conspiracy charges, where the agreement to commit a crime is the offence, joint enterprise means all parties are convicted of the actual offence, for example: murder.

According to the CPS's definition:

"Joint enterprise can apply where two or more persons are involved in an offence or offences. The parties to a joint enterprise may be principals (P) or secondary parties (accessories / accomplices) (D).

"A principal is one who carries out the substantive offence i.e. performs the conduct element of the offence with the required fault element.

"A secondary party is one who assists or encourages (sometimes referred to as 'aids, abets, counsels or procures') P to commit the substantive offence, without being a principal offender. However, a secondary party can be prosecuted and punished as if he were a principal offender: s8 Accessories and Abettors Act 1861.

"Secondary liability principles can be applied to most offences. The principles remain the same, whichever offence they are applied to. The principles are commonly used in offences of violence, theft, fraud and public order.

"A joint enterprise may or may not be pre-planned. Sometimes a jointly committed crime occurs spontaneously."[2]

A history of the law with key cases is outlined in Appendix A.

Benefits of Joint Enterprise

Joint enterprise is considered by many legal professionals as a vital part of the criminal justice system. It allows prosecutors to pursue a conviction for those who are genuinely culpable for their part in a crime, even if they did not strike a fatal blow. Joint enterprise was eventually used to convict Stephen Lawrence's killers, even though it was impossible to say who of those present had inflicted the fatal wound that killed the teenager in 1993. Under joint enterprise the person who hires a contract killer is as guilty as the gunman. It is used to convict gangs of organised criminals, drug dealers, people traffickers, getaway drivers, look-outs, robbers and thieves.

Joint enterprise is a common law doctrine... that allows for more than one person to be charged for a crime if it can be proven that the participants were working together

Growing Concerns

However, in recent years the use of the doctrine has been questioned by a variety of voices.

The topic has been occasionally raised in parliamentary questions, twice in relation to making it easier to convict perpetrators of child abuse. But in each case the concerns were not addressed.

2 CPS Guidance on: Joint Enterprise Charging Decisions, December 2012 http://www.cps.gov.uk/legal/assets/uploads/files/Joint_Enterprise.pdf p 3

In 2008, Lord Nicholas Phillips, then Lord Chief Justice, questioned the fairness of the law of joint enterprise in a lecture on reforming the law of homicide. His comments were made as part of an Essex University/Clifford Chance lecture on reforming the law of homicide.

One of the most vociferous commentators has been Gloria Morrison, who launched the group Joint Enterprise Not Guilty by Association (JENGbA)[3] in 2010 after her teenage son's best friend was convicted of murder, having been present at a stabbing. Four years on, nearly 400 prisoners have made contact with JENGbA claiming unfair conviction.

In 2011 Lord Judge, then Lord Chief Justice, asked at a press conference: "Who is guilty of murder when four people surround somebody? The one who kicks? The one who suddenly produces the knife that is the offensive weapon that causes the death? The one who eggs on the man who has the knife? The one who says to him, 'For God's sake!'…. It is one thing to be party to punching somebody, and quite another to be party to using a potentially lethal weapon on him."

In late 2011 the House of Commons' Justice Select Committee held an inquiry into the state of the law of joint enterprise. The committee discovered no official records are kept of joint enterprise prosecutions and recommended that data be collated. The committee's report also called on the Director of Public Prosecutions to give guidance on the threshold at which association potentially becomes evidence of involvement in crime.

It said: "Over-charging under joint enterprise will not assist the task of those trying to deter young people from becoming involved in gangs. It may also deter potential witnesses to an offence who fear that they might be charged under joint enterprise if they come forward, impeding the justice process. We recommend that the Director of Public Prosecutions issues guidance on the proper threshold at which association potentially becomes evidence of involvement in crime. Such guidance should deal specifically with murder, although we acknowledge such guidance will not assuage the concerns of some of our witnesses."

The final recommendation outlined in the committee's report was that the doctrine of joint enterprise be enshrined in legislation.

In response, the CPS published guidelines in December 2012.[4] Their usage and efficacy will be explored at page 35.

The CPS provided information to the Select Committee in November 2013,[5] after collecting some of the data requested for the year 2012. Its records revealed that more than 300 people were jointly charged with murder in that one year alone. The CPS later added to this data providing figures for 2013.

However, the CPS's data for two years cannot reveal trends in the use of joint enterprise.

Nor does it explore the central issue raised by campaigners and the Justice Select Committee, namely: is the doctrine of joint enterprise working fairly and justly?

The Bureau's research aims to fill these two gaps in the understanding of this complex area of law.

SCENARIOS

The three following scenarios were put forward by the CPS to demonstrate types of joint enterprise:

1 Where two or more people join in committing a single crime, in circumstances where they are, in effect, all joint principals

E.g. P1 and P2 agree to commit a robbery. Each plays a part in carrying out the conduct element: together they attack and take money off security men making a cash delivery. Both are liable for robbery as joint principals.

2 Where D assists or encourages P to commit a single crime

E.g. P and D commit a burglary. P alone enters as a trespasser and steals from the premises. D assists or encourages P by driving P to and from the scene and/or acting as a look-out, knowing that P is going to commit burglary. Both are liable for the burglary, P as the principal, D as an accomplice.

3 Where P and D participate together in one crime (crime A) and in the course of it P commits a second crime (crime B) which D had foreseen he might commit

E.g. D and P carry out a burglary (offence A). P acts as principal, entering the premises and stealing. D assists or encourages P by acting as a look-out. However, in the course of the burglary, P kills householder V, with intent to kill or do really serious harm. P is liable for murder of V as a principal. D may also be liable for murder, as a secondary party, if D foresaw when participating in the burglary with P, that P might commit a criminal act (use unlawful force) with intent to kill or do really serious bodily harm.[6]

3 www.jointenterprise.co
4 CPS Guidance on: Joint Enterprise Charging Decisions, December 2012 http://www.cps.gov.uk/legal/assets/uploads/files/Joint_Enterprise.pdf
5 Correspondence (with executive summary) between Keir Starmer QC, Director of Public Prosecutions, and Chair of the Justice Committee, re: Joint Enterprise Guidance, published 14 November 2013 http://www.publications.parliament.uk/pa/cm201314/cmselect/cmjust/writev/keirstarmer.pdf
6 All examples taken from 'CPS Guidance on: Joint Enterprise Charging Decisions' http://www.cps.gov.uk/legal/assets/uploads/files/Joint_Enterprise.pdf

Methodology

The Bureau of Investigative Journalism undertook an eight month research project, using a variety of techniques to compile a comprehensive picture of the use of joint enterprise in homicide cases over the past eight years.

A key issue to come out of the Justice Select Committee's inquiry into joint enterprise was the distinct lack of quantifiable data on its use.

There is no joint enterprise check-box in any of the records kept about crimes. Neither the CPS nor the Home Office actively logs if a prosecution was attempted using the joint enterprise doctrine.

Representatives from the Ministry of Justice told the Select Committee that it would require a manual trawl of every single case prosecuted in the courts to establish whether or not joint enterprise had been a part of the trial.[7] Even then, it might not be a straightforward exercise, as the doctrine of joint enterprise can be termed in several different ways, such as common purpose, joint venture, complicity and even parasitic accessorial liability. It may not even have been explicitly referred to in court papers at all.

Without any data to inform the debate, criticism of joint enterprise and the potential scale of any problem in its application were impossible to quantify.

Given the paucity of obvious data sources, the Bureau consulted academics and legal experts to establish what other key indicators could be used to track joint enterprise use.

Researchers from the Bureau undertook Freedom of Information requests to gain data that legal experts had suggested would indicate the use of joint enterprise. In conjunction with the Centre for Law, Justice and Journalism at City University London, we undertook a cross-profession survey. We also undertook a thorough analysis of criminal court papers and Court of Appeal rulings and we conducted in depth interviews with legal professionals.

Freedom of Information Requests

Experts, including practicing lawyers and law academics, suggested an indicator for joint enterprise use would be an analysis of figures for convictions where more than one person was in the dock for the same crime, during the same trial.

Indeed, former DPP Keir Starmer noted, in reference to the CPS's own search for data: "Where two or more defendants are charged on the same indictment with murder and/or manslaughter it is assumed that they were jointly charged in relation to the same victim."

Preliminary consultations with legal professionals suggested that one of the areas where the use of joint enterprise caused most concern was in homicide convictions. This was because of the mandatory life sentences applied to murder convictions, meaning those on the periphery of a murder using a gun would be sentenced to a minimum term of 30 years.

Accordingly, requests made under the Freedom of Information Act were submitted to the CPS asking for the number of homicides prosecuted or charged each year, and how many of those involved two or more defendants or four or more defendants.

Annual figures were requested from 2005 up to the end of 2013.

The CPS's principal offence category "Homicide" includes offences of murder, attempted murder, causing or allowing the death of a child or vulnerable adult,

7 House of Commons Justice Committee, Joint Enterprise Eleventh Report of Session 2010–12, 17 January 2012 http://www.publications.parliament.uk/pa/cm201012/cmselect/cmjust/1597/1597.pdf p 47

child destruction, conspiring or soliciting to commit murder and causing death by dangerous or careless driving.[8]

The Home Office was also asked to provide the number of secondary parties charged with murder. Although this does not necessarily mean a secondary suspect holds any less legal responsibility for the crime, it does indicate less direct involvement.

In addition, we asked the CPS to supply the number of times an inchoate offence – where somebody is tried for assisting a crime - was brought to hearing between 2009, when the offence was first charged, up to 2013.

Survey

The Bureau and academics from the Centre for Law, Justice and Journalism at City University London designed a survey which sought the opinion of legal professionals on the use of joint enterprises in criminal convictions.

The anonymous online survey included ten questions. A sample group of barristers' chambers and solicitors' firms that specialise in criminal law were selected using a random sampling method on data in the Chambers UK 2013 listings.

Forty-three barristers' chambers and 43 solicitors firms were contacted.

The survey responses were collected and analysed by the Centre for Law, Justice and Journalism at City University London. The results of the survey can be found in Appendix D.

Analysing rulings

Discussions with legal professionals revealed that joint enterprise trials can be legally complex even for lawyers to follow. We set out to discover how often joint enterprise convictions are appealed at the Court of Appeal. Again, no official data was held on this but the Law Commission had provided a figure for 2010 in its submission to the Justice Select Committee.[9]

Researchers used the Law Commission's methodology and undertook the same methods to look at appeals in the years 2008, 2012 and 2013.

We analysed all the Court of Appeal rulings published on the British and Irish Legal Information Institute's portal (bailii.org) for the three years selected. The year 2008[10] was chosen as it was the peak in joint enterprise usage rates, according to the information supplied through our Freedom of Information request data. 2012[11] and 2013[12] were chosen to explore what effect, if any, the DPP guidelines introduced in January 2012 had on prosecutions.

Researchers read all 819 rulings published over the selected three years. We logged instances where there appeared to be a clear joint enterprise element in the original convictions. In some instances this was explicitly stated, in others it could be reasonably inferred through information about co-defendants, their convictions and the crime itself.

Murder, manslaughter and attempted murder were noted, both with and

8 Stated in CPS's FOI response.

9 "In 2010 there were eight Court of Appeal decisions on this topic. The outcomes of the trials and indeed of the appeals are often perceived as illogical or unfair. The case for legislative reform seems overwhelming." From the Law Commission's written evidence. pg 42 House of Commons Justice Committee, Joint Enterprise Eleventh Report of Session 2010–12, 17 January 2012 http://www.publications.parliament.uk/pa/cm201012/cmselect/cmjust/1597/1597.pdf

10 http://www.bailii.org/ew/cases/EWCA/Crim/2008/

11 http://www.bailii.org/ew/cases/EWCA/Crim/2012/

12 http://www.bailii.org/ew/cases/EWCA/Crim/2013/

without a joint enterprise element. The date of the original conviction was recorded as was the result of the appeal.

These records were then used to produce figures on the rates at which joint enterprise convictions were appealed, and what the outcome of those appeals was. This was compared to the outcome for homicide convictions that did not have a joint enterprise element.

It should be noted that the website bailiil.org does not publish all Court of Appeal rulings, only a selection. These findings are not, therefore, definitive. However, they do give useful indicators on the rate of joint enterprise convictions that are appealed.

Investigating individual cases

One of the concerns raised by campaigners, the Justice Select Committee and lawyers over the use of joint enterprise is that in some cases defendants who are only peripherally involved in a crime have received very severe sentences. To test this proposition, a shortlist of cases was drawn up, based on information provided by JENGbA, a previous study by Dr Dennis Eady, a consultant to Cardiff University's Law School Innocence Project, and a trawl of newspaper records. The lawyers in most cases were contacted, as was the person convicted. Where possible we gathered court papers, including the skeleton arguments of the prosecution and defence, the judge's steps to verdict and summing up.

Court records and discussions with the lawyers involved allowed researchers to check the facts of the cases featured in this report.

Interviewing legal professionals

Researchers conducted interviews with a number of legal professionals with an experience of joint enterprise in criminal legal work.

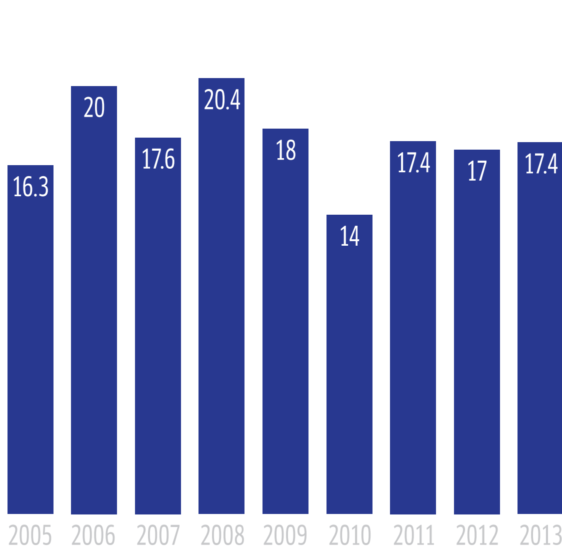
The following legal and academic professionals were consulted:

1. Crispin Aylett QC, QEB Hollis Whiteman
2. Tim Bittlestone, HP Gower Solicitors
3. Dr Matthew Dyson, Cambridge University
4. Dennis Eady, Cardiff University and South Wales against Wrongful Conviction - Cardiff University's Law School Innocence Project
5. Francis FitzGibbon QC, Doughty Street Chambers
6. Andrew Hall QC, Doughty Street Chambers
7. Professor Jeremy Horder, London School of Economics
8. Andrew Jefferies QC, Dyers Chambers
9. Andrew Keogh, CrimeLine
10. Simon Natas, ITN solicitors
11. Professor David Ormerod QC, Criminal Law Commissioner at the Law Commission
12. Orlando Pownall QC, 2 Hare Court
13. Lord Nicholas Phillips, former Lord Chief Justice
14. Greg Stewart, GT Stewart Solicitors
15. Professor Bob Sullivan, University College London
16. Richard Thomas, Doughty Street Chambers
17. Professor Graham Virgo, Cambridge University
18. James Wood QC, Doughty Street Chambers

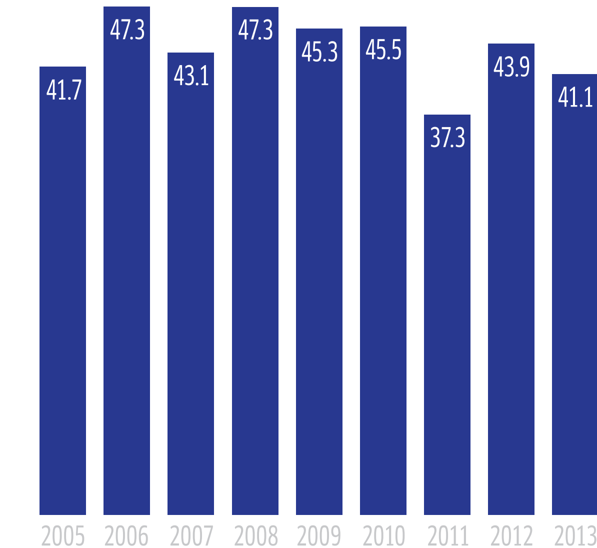
CHAPTER TWO
Data

Data

Multiple-defendant prosecution and convictions



GRAPH A: Four or more defendants in a homicide prosecution as % of whole



GRAPH B: Two or more defendants in a homicide prosecution (% of total)

FOUR PLUS

Data from the CPS shows that 1,853 people were prosecuted by the CPS between 2005 and 2013, for homicides that involved four or more defendants.

We wanted to establish how often the joint enterprise doctrine was being used, i.e. the rate of usage. Therefore the number of cases involving four or more defendants was calculated as a percentage of the total number of homicide prosecutions each year, (see Graph A).

Prosecutions for homicides that involve four or more defendants in the same case ranged from 14% to 20.4% of all homicide prosecutions between 2005 and 2013. The peak was in 2008. The lowest rate was 14% of all prosecutions, in 2010.

As well as charting prosecutions, we also noted how often a prosecution involving four or more defendants was successful.

Over the eight years analysed the average conviction rate for homicides involving four or more defendants was 73%. By comparison the average successful prosecution rate for all homicide prosecutions was 80%. The rate of successful prosecutions in cases with four or more defendants was below that of the average homicide successful prosecution rate.

The successful conviction rate for four or more defendants in homicide prosecutions peaked in 2009, when 79% of prosecutions were successful.

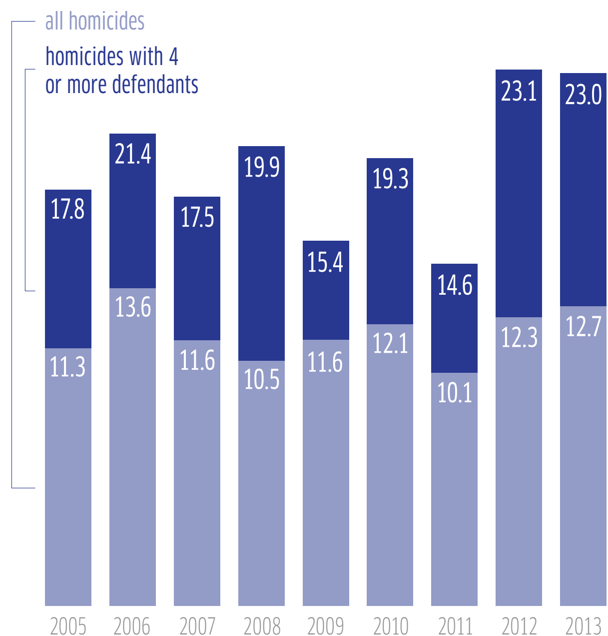
Interestingly, the rate of four or more prosecutions rose slightly between 2012 and 2013, (from 17% to 17.4%). The rise comes over a period when new guidance produced by the DPP on prosecuting joint enterprise offences was introduced.

TWO PLUS

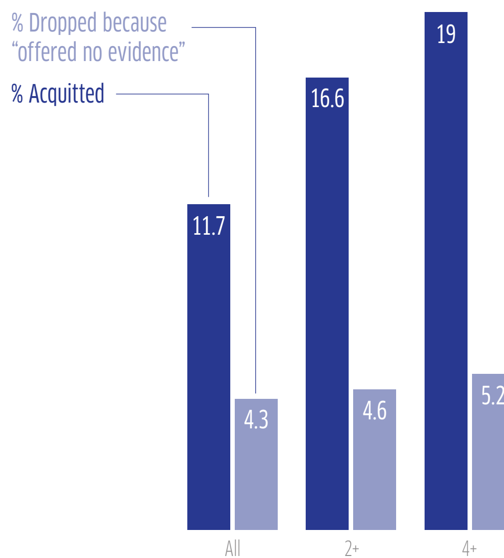
Between 2005 and 2013 there were 4,590 prosecutions for homicide with two or more defendants. That was equivalent to 44% of all homicide prosecutions in those years, (see Graph B).

In 2013, the most recent year for which we have data, 41% of all prosecutions for homicide involved two or more defendants.

The years with the highest rates for two or more defendants for homicide were in 2006 (47.33%) and 2008 (47.31%).



GRAPH C: Acquittal rate for homicide (% of total)



GRAPH D: Reason for unsuccessdul conviction. (% of total)

CONVICTIONS

Between 2005 and 2013, the average conviction rate for homicide – the number of people convicted of homicide out of the total number of people prosecuted - was 80.4% of all prosecutions.

However, the more defendants involved in the prosecution, the lesser the chances of securing a conviction. For two or more defendants the conviction rate dropped to 76.7% and for four or more defendants it was 73.3%.

In 2012 and 2013, 23% of the people charged in prosecutions involving four or more defendants ended in acquittals. These two years showed the highest acquittal rate out of the period studied- the average acquittal rate for four or more defendants being 19% over the period. (By comparison the total homicide acquittal rate was around 12% in those years.)

The data also showed that the more defendants involved in a homicide trial, the more likely it was that the CPS would "offer no evidence" against at least one of the defendants, leading to the charge being dropped at trial stage. Between 2005 and 2013 the average was 4.3% of all trials for all homicides, and 5.2% for four or more defendants.[13]

13 Home Office - suspects
As well as collecting data from the CPS on the frequency with which it pursued convictions for multiple defendants, we also collected data from the Home Office's Homicide Index. This data is explored in Appendix B as it is not directly comparable to that of the CPS's because the two agencies use different definitions of 'homicide'.

Data

Appealing a conviction

We reviewed and analysed Court of Appeal rulings from three selected years: 2008, 2012 and 2013. 2008 was chosen as our data shows this year represented the peak of joint enterprise use. 2012 and 2013 were chosen to explore any changes the DPP's guidelines may have had on rulings at the Court of Appeal.

Over a fifth of the Court of Appeal rulings published in 2013 involved an element of joint enterprise.

Analysis of over 800 published Court of Appeal rulings for the three years looked at also revealed a marked increase in the rate at which cases tried using joint enterprise were brought to appeal.

In 2008 11% of published Court of Appeal rulings dealt with convictions where there had been some element of joint enterprise. In 2013 the rate had increased to 22%, or 43 out of 194 published rulings.

Homicide charges were the most common form of joint enterprise conviction appealed in all three years analysed.

In 2012 37% of all the cases involving joint enterprise involved some homicide charge. Last year the rate had dropped, with 26% of the joint enterprise cases appealed involving homicide crimes, such as murder. Despite this drop, the overall rate of joint enterprise convictions being appealed increased over the three years studied.

Getting a conviction overturned

Despite the increase in joint enterprise cases being brought to the Court of Appeal, the convictions were very rarely judged to have been unsafe.

In 2008 and 2012 it was more likely a joint enterprise homicide conviction would be upheld, as compared to a non-joint enterprise homicide, suggesting it is harder for those convicted under joint enterprise to get their sentences reduced.

In 2012 there were 11 appeals for homicide that involved joint enterprise. Of these seven were upheld (64%), one had a sentence altered and three were quashed.

Comparatively there were 15 appeals for non-joint enterprise homicide. Of those nine cases were upheld (60%) and 40% were altered.

2013 bucked this trend with one joint enterprise murder case being quashed, but no non-joint enterprise homicides quashed.

In the 38 joint enterprise homicide appeal cases analysed by the Bureau, only four were ever quashed.

Out of the four quashed convictions only two were quashed on grounds relating directly to joint enterprise.

Lynette and Shirley Banfield, who had been convicted of the murder of Donald Banfield had their convictions overturned after it was found that the original prosecution had erred in using joint enterprise to argue that the women had to be working in consort, and therefore the prosecution did not need to prove who did the deed. (See case study on page 20).

Arfan Rafiq's conviction for a joint enterprise murder was quashed in 2012 after the appeal court found the jury's decision on the joint enterprise element was illogical, (see page 28).

Sam Hallam's conviction was quashed after new evidence showed he had not been at the scene of the crime.

Adam Joof was released after it was found that evidence from a key witness could have been contaminated by police interaction.

COMPLICATIONS IN APPEAL

It is particularly hard to appeal a joint enterprise conviction. The appellant has to provide new evidence or argue there was a legal error with the way the original trial was held. In other words, it is not enough to simply argue that being convicted as a peripheral character to a crime was wrong.

Convictions are rarely overturned. The Bureau's analysis of joint enterprise homicide conviction appeals shows that the appeal failed nearly 70% of the time in the three years studied.

That was the case for Wayne Collins.

CASE STUDY
Wayne Collins

Collins was caught up in the 2011 riots and was sentenced to 18 years imprisonment for rioting and possession of a firearm with intent to endanger life, despite the fact, accepted at his trial, that he never held the weapon. In fact Collins maintains he did not know the gun existed before it was used, and CCTV footage proves he took no active part in the rioting and burning of a pub.

In December 2013, after much work on the part of his lawyers, his case came before the Court of Appeal. The appeal was fought on two grounds, firstly that the original trial judge's oral instructions to the jury on how to reach a verdict may have confused them over the level to which Collins' presence made him liable.

In the original trial the judge had given 30 pages of written directions to the jury. These directions had already been wrangled over by lawyers on both sides before being handed to the jury.

However, Collins' appeal lawyers argued that "the very way the learned trial judge dealt with [the steps to verdict] exacerbated the problem," suggesting that by "ad libbing" on the issue of the limits of presence, participation and second party liability the judge may have confused the jury in his oral evidence.

Secondly they argued that, given it was accepted that Collins took no active role in the events, had never touched the weapon in question, and was very much on the periphery of the action, that an 18 year jail sentence was "wholly disproportionate to what this defendant actually did".

Acting QC James Wood told the appeal judge, Justice Leveson: "We are deeply concerned about the extraordinary length of this sentence."

Wood also drew attention to the confusing nature of convictions sought through joint enterprise, telling the court: "It is not just me but many lawyers, and the public find it hard to understand joint enterprise, the system may need a lesser and more compassionate approach."

In January 2014 Collins' appeal was rejected on all grounds.[14] Appeal judge Leveson said: "Not only did Collins encourage by his presence but, on the jury's verdicts, he intended to do so in relation to the riot, the arson and the use of firearms directed at the police: this was participation in extremely serious offending."

His legal team now plans to take the case to the European Court of Human Rights.

14 Lewis & Ors v R [2014] EWCA Crim 48 (21 January 2014) http://www.bailii.org/ew/cases/EWCA/Crim/2014/48.html

CASE STUDY
Shirley and Lynette Banfield

On April 3 2012 Shirley Banfield and her daughter Lynette were sentenced to life imprisonment for murder. Their victim was Donald Banfield, husband to Shirley and father to Lynette.

But this was far from a straightforward murder trial. There was no dead body, no clear date when the crime was supposed to have happened and no suggested method of killing.

Donald Banfield had gone missing in 2001. He was 63 years old.

Before he went missing, Donald had complained to his doctor and the police that he had suffered assaults from his wife and daughter.

Later, it was found Shirley had rerouted his work pension to her personal account.

The police suspected that Shirley and Lynette could have killed Donald for financial gain.

But other facts could have pointed in a different direction. Donald had debts of £50,000 and had drawn down £30,000 from his pension shortly before his disappearance.

A local police officer claimed to have seen him driving near his home after the date Donald was allegedly murdered. He had also told the police that his house was about to be sold and that he was thinking of moving to his native Trinidad.

The prosecution argued that there were five possible scenarios for the disappearance of Donald: that mother and daughter acted in concert to kill him, that Shirley killed him and Lynette encouraged her, that Lynette killed him and Shirley encouraged her, or that one of them killed him without the other there.

The prosecution argued that both women should be found guilty, as one woman alone would have found it difficult to kill and hide the body. Both were found guilty.

Late last year the case came to appeal. The presiding judge Lady Justice Rafferty DBE summed up the complications of the original trial: "This was an alleged joint enterprise murder with no body, no suggested mechanism of death, no identified day when the murder was said to have occurred, no time and no place and no suggestion of what happened to the body."

William Clegg QC, acting for Shirley, told the appeal court: "The Crown did not suggest when, where or how he was killed, who was present, the mechanism of death or what happened to the body."

> "Although it is unfortunate that a guilty party cannot be brought to justice, it is far more important that there should not be a miscarriage of justice."

The appeal court noted that the Crown's original argument, that one woman alone could not have killed Donald, could be easily disproven.

The appeal judges also found that the Crown had failed to prove that the women were working together at the moment Donald was murdered. While they may have worked together to reroute Mr Banfield's funds for themselves, there was no sign that this extended to a joint plan to kill the man. That active collusion would have been necessary to prove a joint enterprise.

In the ruling Judge Rafferty noted "the likelihood is that one or other appellant murdered Donald" but that there was no proof who did nor that they were working together. A previous judgment was noted in R v Abbott, where the judge said: "Although it is unfortunate that a guilty party cannot be brought to justice, it is far more important that there should not be a miscarriage of justice."

In light of the reviewed evidence the cases against both women were quashed. They were freed, 15 months after their conviction.

Getting a case to appeal

Despite an increase in the number of joint enterprise cases coming before the Court of Appeal, it remains difficult to get a case heard.

In general, lawyers need to provide either fresh evidence, that may have made significant impact if it had been known at the time, or argue that something went seriously wrong during the trial process, such as errors by the judge or a failure by the prosecution to disclose relevant material.

The appellant must first apply to the court and be granted permission to have the case appealed. Most cases never get past this stage.

The researchers also noted that getting a case quashed at the appeal stage is getting harder for all cases, not just those involving joint enterprise. The Bureau's analysis of Ministry of Justice figures, produced through Freedom of Information requests, shows that in 2008 appellants in the Court of Appeal were more likely to get their conviction quashed or their sentence reduced, compared with 2012.

In 2008 75% of appeals on sentences were allowed, while the most recent data, that of 2012 shows this has gone down to 70%.

The statistics also show that appeal judges were ordering fewer retrials in 2012 than they were in 2008. 72 retrials were ordered then, but just 39 ordered in 2012.

The CPS figures

In March 2014, DPP Alison Saunders wrote to Sir Alan Beith MP, chair of the Justice Select Committee. She was following up on a commitment made by former DPP Keir Starmer to provide figures on the use of joint enterprise to the committee [15]

To collate its figures, the CPS went through all of the murder prosecutions logged on its Case Management System (CMS). These records were then manually filtered for all those involving multiple defendants.

Starmer had previously noted that in the CPS's search: "Where two or more defendants are charged on the same indictment with murder and/or manslaughter it is assumed that they were jointly charged in relation to the same victim."[16]

The CPS provided figures for 2012 and 2013. The figures reveal that in those two years the CPS prosecuted 260 murder and/or manslaughter cases with multiple defendants. This amounts to 893 defendants in the dock.

Of the 260 cases recorded by the CPS, 210 were cases where two or more defendants were jointly charged with murder as opposed to manslaughter. These involved 659 defendants. This mirrors the Bureau's figures for these two years

CPS'S OWN FIGURES FOR 2012- PROVIDED TO THE JUSTICE SELECT COMMITTEE FOLLOWING A MANUAL TRAWL OF IT'S CASE FILES:

	2012	2013
Cases	139	121
Defendants	470	423
Cases where two or more defendants were jointly charged with murder	115	95
Cases where two or more defendants were jointly charged with manslaughter	23	18
Defendants jointly charged with murder	360	299
Defendants jointly charged with manslaughter	65	55
Defendants charged with murder but not manslaughter	316	250
Defendants charged with manslaughter but not murder	33	17
Defendants charged with murder and manslaughter	54	49
Defendants charged with murder and/or manslaughter and a lesser offence	210	179
Defendants charged only with a lesser offence	67	95
Defendants convicted of at least one offence	326	326

15 http://www.cps.gov.uk/publications/performance/joint_enterprise/
16 ibid.

Survey

The Bureau wanted to solicit a wide range of opinions on joint enterprise from the legal profession. A survey was sent out to a sample group of barristers and solicitors working on criminal justice cases. The survey was constructed with City University London's Centre for Law, Justice and Journalism and was sent out to a sample group of 86 law firms and barristers' chambers.

Although the survey was sent out to a large number of lawyers, there are relatively few murder convictions through joint enterprise and it is a relatively small and highly specialised topic. We recognised that it was likely that many of the barristers and solicitors who received the survey had no personal experience in the area and thus chose not to take part.

Seventy-six people did answer the survey and their responses provide a good insight into the type of concerns about joint enterprise that exist in the legal profession.

> Thirty-seven lawyers said they were 'very concerned' or 'somewhat concerned' about the doctrine of joint enterprise.

Forty-three people responded to questions about specific concerns. Of those, 37 criminal solicitors and barristers said they were "very concerned" or "somewhat concerned" about the doctrine. Six respondents said they were "not very", or "not at all" concerned.

Murder convictions come with a mandatory life sentence, and a joint enterprise conviction can mean a person is jailed for over 30 years despite not having actively wielded a weapon. Thirty-eight lawyers, both defence and prosecutors, noted that this was a concern for them.

The survey asked respondents to briefly describe any additional concerns they might personally have about the use of joint enterprise in murder cases. One respondent noted: "of particular concern is the mandatory life sentence, which restricts the sentencing judge's role in providing appropriate sentences for secondary parties."

The greatest concern about the use of joint enterprise in murder trials, according to survey respondents, was that the "necessary intention" for the offence does not have to be fully established for all defendants. Forty-one of the 43 respondents who answered this particular question found this to be a concern.

Proof of criminal offences in general requires evidence that the accused performed the prohibited act (the actus reus) and did so in a particular state of mind (the mens rea) – for example intentionally or recklessly. In cases of murder, it is necessary to prove that a principal offender intended to kill the victim or to cause really serious harm, while performing an action that caused or contributed to the death. Uncontroversially, murder can be proved against those giving active encouragement to someone intentionally inflicting really serious harm in a fight, as their presence and encouragement helps the attacker and on a common-sense view all those present are "in it together". However, where the prosecution relies on "parasitic liability" it does not need to prove intent. It only needs to show that those not performing the murderous acts were engaged with the killer in some other crime but realised he might kill someone. They do not even have to be present.

> Twenty-seven lawyers said they believed that the DPP's guidelines 'did not have much impact, if any, on the use of joint enterprise'.

But eight respondents said joint enterprise in murder cases allows for more justice "because it allows for the attribution of criminal responsibility in difficult or complex cases".

Two respondents voiced concerns about joint enterprise being used against young black men. The data collated in this report does not show the ethnicity of those prosecuted. However, these suggestions echo statements by other lawyers spoken to in the course of our research. This could provide an interesting area for further research.

One survey respondent said: "Offences of murder in particular appear to disproportionately use joint enterprise especially where young black men are in a group. There is a frequent stereotype that such groups are an organised gang. Even where gang involvement is established the evidential approach to prosecuting routinely involves racist assumptions and/or stereotypes".

Respondents were also asked to comment on the effectiveness of the new guidelines on joint enterprise that were issued by the DPP in December 2012. Twenty-seven of the 43 respondents that gave opinions on the guidelines said they believed that the guidelines "did not have much impact, if any, on the use of joint enterprise". Nine respondents said they did not know and four respondents said they were not aware of the guidelines.

When asked how potential issues in the use of joint enterprise should be addressed, one respondent said: "There plainly needs to be public discourse on the subject. Joint enterprise prosecutions seem especially prevalent against young people and it is time their voices were heard and the voices of concern in those communities."

Another respondent called for compulsory training for prosecutors and judges as well as a clarification of the existing case law.

A further respondent has a more drastic suggestion, writing that the judiciary should "get rid of its use. [The prosecution] must prove its case against each defendant".

For full results see Appendix D.

CHAPTER THREE

Exploring the issues

Exploring the issues

Six recurrent concerns about the use of joint enterprise

1 Establishing intent

The most worrying element of joint enterprise murder convictions, according to our survey results, is that "the necessary fault/mens rea for the offence does not have to be fully established for all defendants".

The development of case law has created some tests on the required intent needed to convict someone of a joint enterprise murder. The defendant need not intend the victim to die, nor be aware that their co-defendant did, only an awareness or foresight that their co-defendant might intend serious harm to the victim.

This is succinctly explained by Beatrice Krebs, a lecturer in Law at Reading University, writing in the Modern Law Review. She says: "All the participants can be put on trial together and the jury is told to decide whether they foresaw the acts of others. [In terms of offence charges] no distinction is drawn between those who committed the offence and those who did not even intend the offence to be committed, as long as they foresaw its commission as a possibility. The prosecution can secure convictions without bothering to prove individual acts and intentions." She says this has "troubling implications" for the rule of law.[17]

Andrew Hall QC, who has defended clients in several joint enterprise cases, explains that applying the doctrine can often rely on inferring that another defendant had the intention or foresight to cause harm. That can be hard to prove or disprove.

"No-one would have any difficulty finding you guilty if you participate in some way in the offence and you intend what happens to happen, or you hope it will happen, or you encourage it to happen. You can see why you then ought to carry criminal responsibility," he says.

"[But] we've reached the point that if you simply foresee a possibility that someone may cause someone some really serious harm [it's enough to convict]," explains Hall. "Then it becomes a much lower threshold. The way the law has developed permits people to be convicted of murder who did not intend or desire that to be the result of what was going on. It seems to me that crosses the line. It goes too far."

Several of the legal experts interviewed by the Bureau agreed that the requirement in a joint enterprise case to prove only foresight that a murder may occur makes the threshold for conviction too low.

Professor David Ormerod, the Law Commissioner, is one of the most senior lawyers in the country who advises the government on criminal legal reform. He says: "There is the issue as to where the boundary of murder through joint enterprise lies, and whether people are in prison because of the way the law on murder has been defined. Even if you made the law on joint enterprise crystal clear, that leaves the question of whether the law on murder is fair when applied in such cases? Is it fair that someone is convicted for murder if they have foreseen as a possibility that someone else might intentionally kill or cause serious harm?"

I. Presence

Case law suggests that mere presence at the scene is not enough to assume intent. However, once present it can be hard for defendants to argue that their presence was not an encouraging factor. A heavy burden is placed on them to explain themselves, and this appears to be inconsistent with the cardinal rule that the prosecution bear the burden of proving guilt.

"This doctrine," says solicitor Simon Natas, an expert on joint enterprise, "allows a defendant to be prosecuted for a serious crime such as murder on the basis that he/she encouraged the commission of the offence through his voluntary presence at the scene. He/she could be convicted even if there was no evidence that they intended that the offence be committed; the prosecution would only be required to prove that he/she foresaw what the principal offender might do. In my opinion, this sets the bar too low. It creates too great a risk that an innocent bystander might be convicted of an offence in which he did not in fact participate."

II. A weapon

As Professor Ormerod explains, it is easier for the prosecution to build a case once knowledge of a weapon is involved. "You can prove a lot through inference, particularly in cases where the secondary party knew the other defendant had a weapon," he says. "Once knowledge of the weapon has been established, then it can be easy to prove to a jury that the secondary must have foreseen the principal may use it to kill or cause serious harm. If they knew their co-defendant had a weapon, you can infer they must have foreseen they may use it, and then you're half way there to a murder conviction."

17 Modern Law Review, Volume 73: Issue 4 - July 2010 pp. 578 - 604

CASE STUDY
Samson Odegbune

Samson Odegbune was involved with a crime that shocked the nation. He was one of a number of teenagers involved in a gang fight in Victoria Station in 2010. The confrontation ended in the violent death of 15-year-old Sofyen Belamouadden, who was stabbed to death in the midst of bustling rush hour commuters.

Seventeen people were eventually convicted of offences, including three people jailed for murder and five for manslaughter. Odegbune, who was 16 at the time of the offence, was one of those charged with murder. He was sentenced to 18 years.

However, Odegbune did not strike a single blow on Belamouadden. In fact, he never even got close. At the time Belamouadden was being set upon, Odegbune was metres away, having chased another boy out of the station.

There is no question Odegbune was spoiling for a fight. The confrontation between rival school gangs had been planned during the school day, with some of the group's members going out in their lunch break to buy knives.

Odegbune had brought his weapon from home: an ornamental samurai sword. He was also one of those that led the charge on the group, allegedly being one of the first to run while shouting "we're going to fuck you up".

Despite not striking a single blow on the victim, Odegbune's role in the planning of the attack, and his aggressive actions at the station led to the jury finding him guilty of murder. He was sentenced to 18 years.

It took four separate trials to convict all 17 teenagers over the death, and there were varying levels of criminal behaviour ruled upon.

Some of those that kicked and punched Belamouadden received lesser sentences. One boy who was found to have kicked Belamouadden three times, including kicking the boy's head with "horrifying ferocity", was convicted of manslaughter.

Odegbune was part of the second trial. His five co-defendants in that trial were also up for murder but received lesser charges, including manslaughter and conspiracy to cause grievous bodily harm.

This is a fact that confused Odegbune. Responding to a JENGbA survey he wrote: "In the first trial the jury convicted three of manslaughter who were in fact downstairs attacking the victim and ran off with the people who stabbed him. I was in the second of the trials."

"I should not have been tried for murder but only the other two counts which were conspiracy to cause GBH and violent disorder as the weight of evidence did not support a murder conviction," he added.

> "I should not have been tried for murder but only the other two counts which were conspiracy to cause GBH and violent disorder"

Last year Odegbune brought an appeal to the Court of Appeal and his sentence was reduced from a minimum term of 18 to 16 years. The court accepted the reduction after hearing arguments that Odegbune's role was not as grave as those who actually stabbed Belamouadden, and that while he had a part in the planning of the attack, he had not intended a death. The murder conviction was upheld.

CASE STUDY

Joseph[18]

Joseph was 15 when his involvement in a fight after school left one teenager dead and Joseph facing a murder charge. On his way home from school one day in May 2010, he met up with some friends, members of the SG gang. They went to a local park to have a standoff with a group of rival youths, known as the Sydenham Boys. There were weapons present on both sides, but no violence actually took place and the Sydenham Boys ran off after a short time. Sixteen-year-old Nicholas Pearton arrived in the park just as his friends from the Sydenham Boys had run off. He found himself alone, facing the advancing SG gang.

Pearton was chased out of the park and stabbed in the back as he crossed a road. He staggered into a chicken shop doorway and died from a single stab wound that penetrated his heart, delivered by one person, 16-year-old Dale Green, who was convicted of his murder. During the trial it was established that Joseph was still in the park, as far as 120 yards away from where Pearton was stabbed.

Joseph admitted picking up a knife he saw lying on the ground in the park, which he said was a defensive gesture as the other gang were armed and he wasn't. A witness said they saw him produce his own knife from his trousers too. He was also was seen after the stabbing with the others, clenching his fist in the air, shouting "SG, SG, SG'".But he didn't know [at the time] that a boy was dead," says his solicitor, Greg Stewart.

Lawyers during the trial argued that gang stand offs were common but usually consisted of displays of bravado and posturing rather than actual violence.

Joseph was convicted of murder on a joint enterprise basis, having been found to have foreseen that someone may have been seriously injured and that in joining in the chase, his presence encouraged the stabber, even though he was not in sight at the time of the murder. He was sentenced to life with a minimum of 12 years, as he was 15 at the time of the killing. Two others, including the stabber, were sentenced to murder and four others to manslaughter. Joint enterprise, says Stewart, "covers such wide elements of behaviour and intent that it becomes a lottery if you are convicted or not".

Joint enterprise… "covers such wide elements of behaviour and intent that it becomes a lottery if you are convicted or not."

18 Full name has been omitted to protect other members of the man's family.

2 Life sentences

Once found guilty of murder, no matter what role was actually played, a life sentence will follow.

In 2003 Schedule 21 of the Criminal Justice Act introduced minimum tariffs for life sentences.[19] The starting point for a murder involving a firearm is a minimum term of 30 years before being considered for release.

In 2010, the minimum term for a murder involving a knife was increased to 25 years from 15.

Judges have some discretion over the length of the minimum terms, but tariffs have increased markedly since 2003.

In the Bureau's survey of legal professionals, 38 lawyers, both defence and prosecutors, noted that sentences in joint enterprise murder trials were a concern.

In many of the interviews conducted separately by Bureau researchers, legal experts expanded on some of the reasons behind these concerns.

Professor Graham Virgo of Cambridge University, told the Bureau: "My main concern is that a defendant can be convicted for murder, with the mandatory life sentence, even though he or she did not cause death and did not have the intention to kill or to cause serious injury."

In 2006 the Law Commission produced a report calling for a reform of the Homicide Act. The report called the current law: "seriously flawed".

"It lacks a proper structure, including defences of the right kind and of the right scope. In addition, the rules governing the partial defences of provocation and diminished responsibility are complex and, in the case of provocation, uncertain."[20]

CASE STUDY
Laura Mitchell

Late on a Saturday night in January 2007 in the Kings Head on Halifax Road, Bradford, 22-year-old Laura Mitchell, who was about to begin a course in midwifery and was the mother of a five-year-old child, got into a fight over a taxi that ended up with her being convicted of murder.

Mitchell, her boyfriend and three other friends had been drinking. They left the pub and seeing a taxi waiting piled in. But the taxi had been booked by another group of drinkers and when they came out to claim their ride, a fight broke out. It was a sudden, vicious, alcohol-fuelled scene.

Mitchell accepted, in court, that she was centrally involved at that stage of the violent incident and that her conduct, seen by many witnesses, was "violent, abusive and aggressive".

The fight ended and Mitchell, who had been in the thick of it, began stumbling about the car park trying to find her shoes, which she had somehow managed to lose. Meanwhile, her male companions went to a nearby friend's house, armed themselves with knuckle-dusters, a medieval mace and CS gas and returned. A second, much more serious fight broke out during which 50-year-old Andrew Ayres was beaten to death.

One man, Carl Holmes, pleaded guilty to murder. But Mitchell, her boyfriend and another man were also convicted and sentenced to life in prison. She was sentenced to a minimum term of 13.5 years.

In her police interview Mitchell said: "When I was in the car park looking for my shoes I was not there encouraging anyone. I did not want a fight. I didn't want to support a fight. I did not want to encourage a fight."

The prosecution however, argued that because she was involved with the fight by the taxi, Mitchell was part of a single joint enterprise from which she had not withdrawn at the time of the fatal attack. They said that because she had remained present it was open to the jury to conclude that she was there to encourage the others and that she had not withdrawn from the enterprise.

Her case was brought to appeal in 2008, but was rejected. Conflicting witness accounts in the original trial had led to doubts as to just how far away from the violence she had been. The appeal judge ruled that it was up to the jury to decide whether or not she had withdrawn from the scene or was still playing a part in the attack that killed Ayres.[21]

Her case is now being explored by a pro-bono solicitor who is attempting to track down the original witnesses.

19 Criminal Justice Act 2003 http://www.legislation.gov.uk/ukpga/2003/44/schedule/21
20 The Law Commission Consultation Paper No 177 (Overview) A NEW HOMICIDE ACT FOR ENGLAND AND WALES? An Overview http://lawcommission.justice.gov.uk/docs/cp177_Murder_Manslaughter_and_Infanticide_consultation_overview_.pdf
21 http://www.bailii.org/ew/cases/EWCA/Crim/2008/2552.html

3 Clarity of law

Another issue raised by legal professionals is that, because joint enterprise is a common law doctrine, continually evolving through case law, it can prove technically complex, both for lawyers and juries.

Professor David Ormerod says: "My complaint is that the law as it stands is not clear enough and could be made clearer. Unless the law is clear - and I'm not certain it is - then you increase risk of injustice. If the law is unclear, it can be applied in an inconsistent way. It's possible because of the complexity of the law, that it has been applied incorrectly."

Sir Alan Beith MP, chair of the Justice Select Committee, says the current state of the law on joint enterprise is "so complex that juries might find it impossible to understand how to reach the right verdict."

Lord Phillips, a former judge and founding President of the Supreme Court, says: "Joint enterprise is capable of producing injustice, undoubtedly. You have to rely on juries and on the judge to more or less say who was involved and how. There is huge discretion on how it is used by prosecutors.

"It's very complicated for juries and it falls to the judge to do his best to explain things to the jury. Some of the scenes of group violence are so horrifying they can leave a jury willing to convict anyone who was there."

The Bureau's research into the occurrence of joint enterprise cases in the Court of Appeal shows there is a rise in the number of joint enterprise cases getting to appeal. The Bureau examined all joint enterprise cases heard at the Court of Appeal occurring in 2008, 2012 and 2013. The majority of the cases examined relied on challenges on technical points of law rather than new evidence coming to light.

It is not just juries that can be confused by the law. In December 2013 the Queens' Bench Division of the High Court of Justice quashed a child's conviction for a joint enterprise attempted robbery.[23] The conviction had been handed down by the District judge in Highbury Corner Youth Court, and so no jury was involved.

The case involved a group of young teenagers, ranging from 14-years-old upwards, bullying another group of 12-year-old boys in a KFC restaurant. The boys then left and, on seeing one of their victims produce a mobile telephone, an attempt was made by one of the group to take the phone from him. The appellant L was there at the time and had been in the KFC.

The appeal judges found that: To say that by staying there [as the attempted robbery took place] and by remaining part of that group he must be taken to have intentionally encouraged the commission of the offence is, in my judgment, to go too far and that is not, I regret to say, a reasonable conclusion which, in my judgment, could be reached from the evidence which is so carefully and clearly set out."

Justice Collins went even further, calling the boy's conviction for a joint enterprise attempted robbery, "a decision which no reasonable judge could have reached upon the evidence".

Arfan Rafiq

The logic of joint enterprise can sometimes be hard for juries to follow.

In 2011 Arfan Rafiq was sentenced to life imprisonment with a minimum term of 18 years for his role in a murder. Rafiq was alleged to have supplied another man with a machine gun, which was then taken away and used to kill Nasar Hussain.

Rafiq was on trial on two counts, unlawful possession of a prohibited firearm and murder, under the joint enterprise doctrine.

The jury acquitted him of the firearm charge but found him guilty of murder.

Rafiq took his case to the Court of Appeal.

The Court of Appeal quashed the conviction finding the original jury's decisions were "irreconcilable" and unclear, and noted: "The appellant is in the position of not knowing on what basis he could have been convicted by the jury."

The appeal judges also said: "It is theoretically possible that the jury having acquitted upon count 4 [possession of a weapon] failed to appreciate the inevitability of a verdict of not guilty upon count 3 [murder]."

The conviction was quashed and Rafiq faced a retrial in 2012 where he was convicted of manslaughter and possessing a weapon.

4 Impact on young people

Andrew Jefferies QC hosts seminars for lawyers on joint enterprise and has defended clients in several murder cases. He believes joint enterprise is particularly harsh on young people. “The law catches those who often are unaware that their actions render them culpable as joint participants,” he says. “How many secondary parties would argue that they didn’t encourage, condone, desire or want anyone to kill the victim, but may be forced to admit that they realised that someone they were with might hit/attack the victim with the requisite intent?”

Once “association” with the group has been established, the prosecution has a powerful tool at its disposal. “If you are a member of a teenage group - you are kids who are all brought up together, went to same school, mates who hang out - the prosecution would describe you as a gang,” says Andrew Hall QC. “The prosecution will say some of the people in that group were prepared to use violence, you associated yourself with that group and because you knew these people, you must have appreciated there was a risk if they got involved in an incident, serious violence might result. You may not have wanted that to happen, it may not have been something you believed was going to happen but you must have foreseen it as a risk. That’s how wide the net gets.”

In 2012 Jeremy Corbyn MP was appointed the Justice Select Committee’s special rapporteur on joint enterprise. He was a key figure in the committee’s 2011 inquiry and has been following the issue ever since.

“I came to the issue because of dealing with young people in my constituency who are peripheral members of gangs,” he told the Bureau. “These are young people who are peripheral to some, often horrific, incidents. That doesn’t make them all guilty. It makes them in the wrong place at the wrong time, often, but it doesn’t make them all guilty. Unless there is incontrovertible proof [that they took an active part in an attack] then we end up prosecuting and ruining the life chances of quite a lot of young people, who are frankly bored and hanging around the streets.”

Corbyn went on to suggest that joint enterprise convictions can be a way for police and the CPS to be seen to be tackling gang-related violence. [See page 37 – Educating young people].

Research by Dr Dennis Eady explored the convictions of over 100 people prosecuted under the joint enterprise law. The research team wrote to every prisoner on JENGbA’s files asking them to fill out a questionnaire - 101 people responded. The researchers found that 80% of those under 18 had been accused of being a gang member by the prosecution (according to the convict’s own testimony). The same was true of 68% of 18-21 year olds. The research found that the older the defendant, the less likely gang-affiliation would be used in the prosecution’s arguments.[22]

According to the data produced by the Bureau’s FOIs to the CPS, the peak of prosecutions for homicide in cases involving four or more people came in 2008. It is the view of many lawyers that this was connected to the spike in gang violence at that time.

A number of legal experts told the Bureau joint enterprise was often used to address gang-related incidents, in particular murders, allowing police and the CPS to charge large numbers within a single gang for their gang-members’ crimes.

Government figures show that the number of young homicide victims, aged 13-24 years, peaked between 2004-2005 and 2007-2008. The number of young people admitted to hospital for assault peaked in 2006-2007.[23]

22 Perceptions of People Maintaining Unjust Conviction under Joint Enterprise Law, June 2013, JENGbA and Dennis Eady, p 51
23 Ending Gang and Youth Violence: A Cross-Government Report including further evidence and good practice case studies, 2011 https://www.gov.uk/government/publications/ending-gang-and-youth-violence-cross-government-report

5 Net cast too wide

Some legal experts told the Bureau that joint enterprise convictions result in people being pulled in to convictions, despite there not being sufficient evidence to link them to the crime.

The Bureau's data revealed that the acquittal rate for homicide prosecutions increased as the number of defendants did.

Averaging out rates from 2005 to 2013 homicide trials with four or more defendants, the Bureau found 19% of defendants were acquitted of the charge.

By comparison in trials with two or more defendants the acquittal rate was 16.6% and for all homicide trials it was 11.7%.

In 2012 and 2013, 23% of all four or more defendant prosecutions attempted ended in individuals being acquitted. (By comparison the total homicide acquittal rate was around 12% in those years.)

The data also revealed that the more defendants involved in a homicide trial, the more likely it was that the CPS would "offer no evidence" against some of those defendants, leading to the charge being dropped at trial stage, and the suspect being acquitted. Between 2005 and 2013 the average was 4.3% of all trials for all homicides, and 5.2% for four or more defendants.

These figures suggest that individuals may be being drawn in on multiple defendant prosecutions, despite there not being sufficient evidence to convict.

Francis FitzGibbon QC says joint enterprise "can work like a drift net, catching little fish as well as big ones, and lumping them together. In murder cases, joint enterprise and the mandatory life sentence taken together can result in sentences out of all proportion to the culpability of offenders who were marginally involved."

This scooping up of suspects has been facilitated through developments in technology. In several of the cases analysed by the Bureau, telephone records and social media footprints were used to prove association, pulling in other suspects on a murder charge.

CASE STUDY
Ijah Lavelle Moore

It was April 2012 and Ijah Lavelle Moore was with his friend Malcolm Francis. "X Box, football… bumped into other lads, chilled with them for a bit, had a smoke, a drink, went to Malcolm's house. It was Friday night and there was loads of phone traffic… what you doin' tonight?", he says.

Lavelle Moore, who was 20, lived in Basford in Nottingham and had lots of friends in the area. He had seen another friend, Cameron Cashin, earlier that night, and then been in touch a few times afterwards. Cashin texted Lavelle Moore at about 3.45am on the Saturday morning saying, "Kum nah man", [Come now man].

Fifteen minutes earlier 19-year-old Malakai McKenzie was shot dead while sitting in a car with his brother and two cousins outside a pub called The Hubb, a mile or so away.

The police suspected Lavelle Moore and Francis of having had a role in the shooting. They were arrested and charged with murder, and three charges of attempted murder and possession of a weapon.

The case against Lavelle Moore was based on his communications with Cashin that night and interpretation of that text. The prosecution case was that Cashin was summoning Lavelle Moore and Francis after the murder as his trusted lieutenants.

The prosecution produced photos of Lavelle Moore posing with Cashin during celebrations for Lavelle Moore's 20th birthday a few weeks beforehand. "This was meant to show that we were part of a gang, not just a bunch of lads on my birthday."

Lavelle Moore spent 14 months on remand awaiting trial.

During his trial, Lavelle Moore's mother was diagnosed with bowel cancer. The disease progressed quickly and she died. Nine days after her death Lavelle Moore was acquitted of all charges.

The judge told the prosecution: "There is a real hurdle in the chain of events ….. All we have is a chain of inferences and suspicious activity. [There is] no evidence of presence of Malcolm Francis and Ijah Lavelle Moore at Meridien court, or Bagthorpe close…[they are] not on any CCTV. The image of the group on Ijah Lavelle Moore's birthday is an inference." They were acquitted.

Lavelle Moore reflects on the experience: "It has changed my life for the better in a way but fucked it up as well. It's bitter sweet, like a fairytale gone wrong, because I got to make a bond with my mum and who knows what would have happened if I hadn't been arrested. Everything happens for a reason. But I feel cheated because a year and a half of my life was taken away, and my name was in the papers. People look at me and you can see they're thinking, you got away with it. People judge you and you can't blame them – we all do that. People I thought would have stuck around, didn't. It's made me look at life in a totally different way. I've got to because I haven't got a mum. Readjusting is a big thing. I haven't done 30 years but any time in prison is time in prison. I am trying to take advantage of life, trying to make the most of it."

6 Maintaining innocence

It is a recognised problem for many prisoners that if one maintains one's innocence it is often harder to get parole or move forward in the penal system. This can be a particular problem for prisoners convicted under joint enterprise, as many feel they were convicted of the wrong offence.

All prisoners are ranked in categories of security clearance from Basic to Enhanced based on their perceived risk to the public. Those assessed as being Enhanced and with a lower risk can be offered the opportunity to partake in day-release trips.

People convicted of the most serious crimes will enter the prison system as a highly-ranked category, but can reduce that categorisation through good behaviour, involvement in courses and by acknowledging their crimes.

The Parole Board and Prison Service maintain that there is no policy to prevent a lifer from progressing through the system, and a new Ministry of Justice policy document released in November 2013 stated that: "The fact that someone is in denial of their offence should not automatically prevent them from progressing through the privilege levels, including to Enhanced level. It is a prisoner's commitment to rehabilitation, good behaviour and willingness to use their time in custody constructively which should determine whether they meet required standards."

> "A number of courses require you to accept your offending behaviour... this is a particular problem with joint enterprise..."

But Mark Gettleson, Campaigns and Communications Manager at the Howard League for Penal Reform, told the Bureau: "We have anecdotal evidence from client discussions of how maintaining innocence can make it very difficult for them. There is case law that says that maintaining innocence should not prevent progression. But of course it does, as a number of courses require you to accept your offending behaviour to engage fully. This is a particular problem with joint enterprise because just being present at the scene can amount to joint enterprise, even if you did not have any active part."

Certainly many convicted under joint enterprise see maintaining their innocence as a barrier to progression. A study by Dr Eady drew together responses from 101 people who were convicted using the joint enterprise doctrine, including 81 people facing life sentences.[24] Of those on life sentences 36 reported perceived categorisation problems, including trouble with courses and finding it hard to progress through the system.

CASE STUDY
Gordon McPherson

Gordon McPherson was convicted of a joint enterprise murder along with eight other defendants in 2004.

The case involved a drive-by shooting in Sheffield. McPherson, who was then 24, claimed he was not in the car at the time of the shooting. The prosecution relied on evidence of a mobile telephone being used near the shooting, and at the burning of the getaway vehicle. McPherson denies the mobile belonged to him.

He received a 22 year sentence.

In 2006, another of those convicted, Leon Bryan, admitted that he was responsible for shooting the gun. The case went to appeal but the judges found that Bryan's confession was "not credible" and all of the convictions against the defendants were upheld.

Ten years on and McPherson is serving his sentence in HMP Full Sutton and he is finding that by maintaining his innocence he is facing extra hurdles to release.

"I will not and could not admit to the offence I'm in for, I'm fully innocent," McPherson told the Bureau, writing to us from his prison cell.

"When I say this to prison staff or probation they tell me 'we go by the court's verdict' and my denial will end up holding me back."

He also claims that one probation official warned him continued denial may mean he is never released.

McPherson is classed as a B-category prisoner but has been held in an A-category prison for years.

"I was told that I can't move as I have not lowered my risk... numerous times I've been told that it is hard to get a lower category prison to accept me because I am denying my offence and therefore there are no courses available for me in those prisons," he added.

McPherson was involved in the same case as Dean Pinnock (see Appendix E).

24 Perceptions of People Maintaining Unjust Conviction under Joint Enterprise Law, June 2013, JENGbA and Dennis Eady

Those in support of the law

None of the legal experts interviewed for this report suggested scrapping the doctrine of joint enterprise, advocating, instead, for reform. Indeed, eight of the lawyers that responded to the Bureau's survey said that joint enterprise could be beneficial in that it "allows for the attribution of criminal responsibility in difficult or complex cases".

Sixteen-year-old Tyrone Clarke was killed in 2004, by a group of up to 20 young people. The group beat Clarke with baseball bats and poles, before he was stabbed. Four men were jailed for his murder. There was no evidence to suggest which, if any of them, stabbed the boy.

Clarke's mother expressed appreciation for the doctrine that allowed the four men to be prosecuted of the murder.

"We need this law," she says. "Without this law people could get away with murder."

John Johnson, father of murdered 22-year-old Kevin, expressed similar sentiments after his son was stabbed to death in 2007. One of those convicted was found to have been bragging about doing the deed. Two others were jailed for life alongside him.

Mr Johnson told the press: "They acted as a group, they were all carrying knives - they knew what they were doing."

In December 2012, Baroness Newlove, the wife of Gary Newlove, whose killers were convicted using joint enterprise, was appointed Victim's Commissioner. She has spoken many times in support of the joint enterprise doctrine. In 2010 she announced her support for the use of joint enterprise to convict groups present at a crime saying: "Would you stand there watching somebody else kicking and punching? Would you actually think that was right to watch even if you didn't do the act? They were all as guilty as the person doing the act." She declined to comment for this report.

Former solicitor Andrew Keogh does not see a problem with the way joint enterprise functions in the courts.

"There's nothing wrong with the law of joint enterprise. What we have are some very extreme cases involving people on the periphery of the crime that get a lot of publicity. There are times when you can feel sorry for some people because of the circumstances, but you don't find many cases where you feel uncomfortable with the charge," he says.

"When people say they were just in the wrong place at the wrong time - more often than not, they were involved."

Keogh also disputed the idea that joint enterprise makes it easier for courts to convict. "There is no lower bar of evidence - you have to prove the joint enterprise. There is no dilution of the legal test. If the principal offender acted outside the joint enterprise, you will not be convicted.

"Society has to decide whether these other individuals are culpable as well - and society does decide, in the form of the jury. They have to believe they were part of a joint enterprise. And if they convict the individual, they have done."

Lorraine Fraser: Mother of murder victim

Lorraine Fraser's son Tyrone Clarke was murdered in 2004. Sixteen-year-old Clarke was set upon by a group of around 20 men near his home in Beeston, Leeds. The group wielded metal bars, baseball bats and knives. Clarke died from stab wounds.

Four men were convicted of the murder. Their convictions were then appealed in the Court of Appeal before being ruled on in the House of Lords, in R v Rahman (see Appendix A). There the Lords ruled that even though the appellant in question, Islamur Rahman, had not inflicted the fatal injury, the outcome of the attack was not "fundamentally different" to what he could have expected to happen.

The conviction of Clarke's killers has become important in case law, which informs use of joint enterprise.

Since her son's tragic death Fraser has been a vocal supporter of the joint enterprise doctrine.

"We need this law," she explains. "Without this law people could get away with murder. Police officers tell me they do convict using it, and that this law is a good deterrent on the streets."

She also believes the doctrine leads to just convictions. "If it were your loved one that had been knifed and the others had gone in a group, encouraged it and did nothing to stop it, wouldn't you say they were all involved, that they all played a part?"

She noted that in prosecution proceedings groups of suspects might protect each other, "often those that were there at the killing will refuse to testify about who was responsible," Fraser noted. "But if no-one admits who did the stabbing then they can all go down. The alternative is no-one is convicted, and that's wrong."

Fraser also disputes the notion that joint enterprise is a lazy law. "The joint enterprise doctrine is a very, very complicated law," she says, "judges don't just convict willy nilly, there has to be evidence that puts the suspect there at the scene. These judges know what they are doing, they do not rush anything, they delve into it."

She goes on to say that where there are concerns the conviction can be appealed at higher courts. Her son's killers took their case to the Supreme Court, where Lords upheld the conviction.

"Or are we saying that these Law Lords don't know what they are on about?" she questions.

"I wouldn't want to see anyone convicted of a joint enterprise murder if they weren't placed at the scene," she adds, "but if they were there and a person died, well at the end of the day we all know right from wrong."

"It is a very complicated law but a necessary law to have in our country," she adds.

CHAPTER FOUR
Ways forward

Ways forward

Over the course of the Bureau's research a number of legal experts put forward suggestions of ways in which joint enterprise prosecutions could be improved.

In our survey to legal professionals respondents were asked: "How do you personally think potential issues in the use of joint enterprise should be addressed?"

Some respondents noted the role prosecutors could play in making decisions, calling for:

"Compulsory training for prosecutors and judges".

Others suggested that enshrining the law in statute could clarify some of its complexities.

The need to consult with the public and those that make up juries was also considered.

"There plainly needs to be public discourse on the subject. There are many local community groups which specialise in assisting young people. Joint enterprise prosecutions seem especially prevalent against young people and it is time their voices were heard and the voices of concern in those communities."

Another respondent suggested the use of a "questionnaire to elicit [jurors'] views on dealing with such cases and using the results to address the problems caused by the prosecution of such cases to date".

Only one respondent suggested scrapping the use of joint enterprise altogether.

"Get rid of its use, and conspiracy as well. Prosecution must prove its case against each defendant."

"More precise decisions should be made by prosecutors as to the specific role played by a defendant in the commission of an offence."

"Joint enterprise prosecutions seem especially prevalent against young people and it is time their voices were heard"

What has already been done?

1 Guidelines and charging for lesser crimes

To try to address some of the concerns about joint enterprise, the then director of public prosecutions, Keir Starmer, drew up guidelines in December 2012. He said the guidelines would assist prosecutors "in deciding whether, and with what offence, suspects with minor roles in group assaults should be charged."[25]

The guidelines, directed at CPS prosecutors tasked with deciding what charges to pursue, warned: "Accidental presence at the scene of a crime or mere association with an offender is never enough to create liability - a suspect must assist or encourage the offence in some way."

The guidelines noted that special care must be taken when prosecuting someone under the age of 18. "As a starting point, the younger the suspect, the less likely it is that a prosecution is required," he wrote.

The guidelines also prompted prosecutors to consider other, lesser charges: "Where D's role as an accomplice is minor or peripheral but the offence is a serious one, consider whether a less serious charge than that charged against the principal is more appropriate."

Starmer said the first figures published by the CPS on joint enterprise in November 2013 showed the guidelines were working. The figures, from the CPS's 2012 case files, showed: "Out of a total of 470 defendants, 210 were charged with a lesser offence as well as a murder/manslaughter charge, and 67 were charged only with a lesser offence." Starmer wrote: "The number of defendants charged with lesser offences may indicate that prosecutors are properly applying the principles set out in the guidance, by selecting charges that reflect the role played by the defendant, and which allow the jury to convict the defendant of a lesser offence, where appropriate."

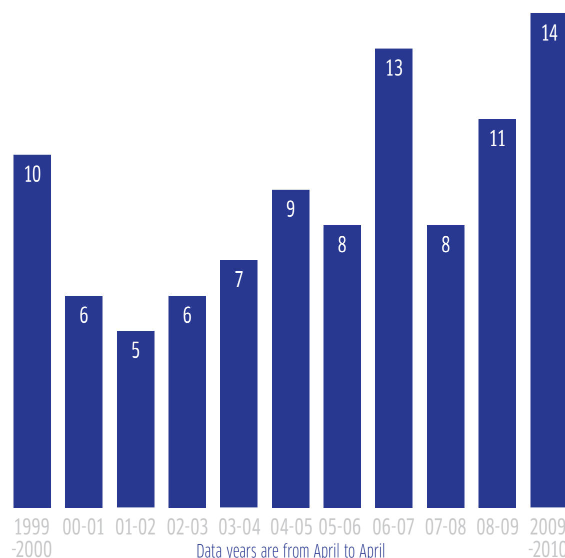
The Bureau's own data, drawn from information released by the Home Office, indicates that the use of lesser offence charges is on the rise.

Figures show the rate at which secondary suspects on a homicide charge are convicted for a lesser offence. The rate has increased in recent years.

Lesser crimes could involve affray, perverting the course of justice, or GBH. Importantly, they do not involve a mandatory life sentence in the way a murder conviction does.

However, a suspect could be charged with both murder and a lesser offence, such as perverting the course of justice. Therefore, while these figures show lesser offences being used more often, one cannot assume that they are used in place of a murder charge, as they could be additional to it.

It should also be noted that according to the Bureau's data, the rate of homicides cases in which four or more defendants are charged with murder, which were prosecuted by the CPS, still rose slightly between 2012 and 2013, (making up 17% of all homicide prosecutions in 2012 and 17.4% in 2013).



Secondary suspects for homicide convicted of a lesser offence (% of total)

25 CPS Guidance on: Joint Enterprise Charging Decisions, December 2012 http://www.cps.gov.uk/legal/assets/uploads/files/Joint_Enterprise.pdf

2 Inchoate offences

In 2007 the charging options open to the CPS were increased with the adoption of the Serious Crime Act. The Act introduced inchoate offences to cover those culpable by aiding or encouraging crimes.

Inchoate offences were introduced to replace the charge of incitement, and allow for someone to be convicted of encouraging or assisting an offence, even if the substantive act is not realised.

When it comes to charging a group of people for a single crime, these new charging offences can provide prosecutors with alternatives to using the joint enterprise doctrine, meaning secondary parties need not be charged with the principal offence, such as murder.

The Bureau's data reveals the use of inchoate offence charges is on the rise. In 2009 there were 13 cases brought before the magistrates courts, in 2010 there were 47, in 2011 this rose to 121 and in 2012 there were 196 cases. There was then a slight drop off in 2013, where 143 inchoate charges were brought.

This is a minuscule fraction of all trials brought to the magistrates courts, but still represents an 11-fold increase between 2009 and 2013.

Inchoate offences: Serious Crime Act 2007[26]

Section 44 Intentionally encouraging or assisting an offence

1. A person commits an offence if –
   (a) he does an act capable of encouraging or assisting the commission of an offence; and
   (b) he intends to encourage or assist its commission.
2. But he is not to be taken to have intended to encourage or assist the commission of an offence merely because such encouragement or assistance was a foreseeable consequence of his act.

Section 45 Encouraging or assisting an offence believing it will be committed

A person commits an offence if –
(a) he does an act capable of encouraging or assisting the commission of an offence; and
(b) he believes –
(i) that the offence will be committed; and
(ii that his act will encourage or assist its commission.

Section 46 Encouraging or assisting offences believing one or more will be committed

1.A person commits an offence if –
(a) he does an act capable of encouraging or assisting the commission of one or more of a number of offences; and
(b) he believes–
(i) that one or more of those offences will be committed (but has no belief as to which); and
(ii) that his act will encourage or assist the commission of one or more of them.
2. It is immaterial for the purposes of subsection 1.(b)(ii) whether the person has any belief as to which offence will be encouraged or assisted.
3. If a person is charged with an offence under subsection 1.–
(a) the indictment must specify the offences alleged to be the "number of offences" mentioned in paragraph (a) of that subsection; but
(b) nothing in paragraph (a) requires all the offences potentially comprised in that number to be specified.
4. In relation to an offence under this section, reference in this Part to the offences specified in the indictment is to the offences specified by virtue of subsection 3(a).

26 Serious Crime Act 2007 http://www.legislation.gov.uk/ukpga/2007/27/part/2/crossheading/inchoate-offences

3 Educating young people

In 2005 the Metropolitan police force investigated the murder of Michael Campbell, who was stabbed in a street brawl between two groups of young men in West London.

Three men were charged with the murder using the joint enterprise doctrine. One of those charged was Kenneth Alexander, a 20-year-old social worker, who had not taken part in the attack and was not carrying a knife. Instead, Alexander was convicted for his part in telephoning friends alerting them to a possible fight, and for the fact he knew some friends did carry knives and therefore was aware of the potential for serious harm.

In the months after the trial the homicide detectives from the Metropolitan police force who were involved in the case decided to do something about training young people aged between 12 and 17 years old on the meaning of joint enterprise. So the Met's joint enterprise education programme was born.

These days it is spearheaded by Brian Fitzpatrick. He estimates that he, and his team of volunteers, have spoken to around 20,000 to 30,000 young people in the past three and a half years.

“The message most people get is that they didn't realise they had put themselves in jeopardy”

“When I take the session in to schools it gets an incredible reaction, people are knocked for six. There are tears, arguments, debates, some kids come up and shake my hand. The message most people get is that they didn't realise they had put themselves in jeopardy,” Fitzpatrick explains.

“The young people often talk about fairness especially when it comes to sentencing. The general feeling is those involved in the murders all are guilty but shouldn't all get the same sentence.

“I am not going out trying to sell joint enterprise to anyone, I am just telling people it exists,” he adds.

Lorraine Fraser is the mother of murdered teenage Tyrone Clarke, whose killers were convicted using joint enterprise, (see page 32). Fraser has been involved in producing an educational DVD, “A Mother's Story”, which has been distributed to schools. She delivers talks in schools and to youth offending teams, warning of the reality of knife crime and prosecutions through joint enterprise.

“We need to start educating kids about this in primary school,” she says, “I'll always say be nosey with your children, find out who they're hanging around with.”

Ways forward

Suggested changes to make the law clearer

The lawyers and academics to whom the Bureau spoke suggest there are several ways to tackle the perceived problems with the joint enterprise doctrine:

1 Dealing with intent: Using case law to clarify the limitations of 'encouragement'

The Bureau has seen several of the judges' steps to verdict - the written explanations to juries of how someone could be convicted of joint enterprise. These steps lay out how a defendant's encouragement of their co-defendants could make them guilty under joint enterprise.

Often, because such encouragement can be hard to substantiate, juries are asked to infer whether encouragement was offered.

The court in R v Stringer addressed the difficulty in defining the evidential threshold for encouragement:

"Whether D's conduct amounts to assistance or encouragement is a question of fact....[but] it is sometimes difficult to know what degree of assistance is to be regarded as aiding. Several centuries of case law have not produced any definitive legal formula for resolving that question. This is unsurprising because the facts of different cases are infinitely variable. It is for the jury, applying their common sense and sense of fairness, to decide whether the prosecution have proved to their satisfaction on the particular facts that P's act was done with D's assistance or encouragement".

Barrister Richard Thomas worked on the appeal for Wayne Collins (see page 19). Thomas suggests that in joint enterprise convictions, what amounts to encouragement by presence alone is a grey area and can lead to injustice.

Thomas suggests the insertion of the word "active" before encouragement could simplify the processes for juries, and ensure that the prosecution must provide proof that the encouragement was an overt act.

Thomas draws on the case law of R v McCarthy[27] during which the court found that it was possible to encourage another person's possession of a weapon on the basis "that he was present actively encouraging or in some way helping the principal offender in the commission of this offence".

The court's use of that word "actively" could have resonance, suggests Thomas.

"If you were to say that you have to have 'active encouragement', that might require a jury when considering secondary party liability to focus on what the person actually did, and that might take away some of the cases on the edges of encouragement by presence alone. This is where it gets into very grey areas and where there really is a potential for miscarriages of justice."

27 R v McCarthy [1964] 1 WLR 196

2 Dealing with excessive sentences: Revising mandatory life sentences for murder

A possible solution to some of the harsh consequences for those convicted in murder cases, but who seemingly played a minor role, would be an end to mandatory life sentencing. This would give the judge, in some cases, more discretion as to how long those on the fringes of a murder should serve.

Similar suggestions were put forward in a 2006 report from the Law Commission that called for a revision of the Homicide Act.[28]

The report argued that: "Individual offences of homicide should exist within a graduated system or hierarchy of offences. This system or hierarchy should reflect the offence's degree of seriousness, without too much overlap between individual offences."[29]

The authors of the report go on to suggest: "The mandatory life sentence should be confined to the most serious kinds of killing. A discretionary life sentence should be available for less serious (but still highly blameworthy) killings."[30]

The report suggests that "manslaughter", with a discretionary life sentence, would be appropriate when the defendant is proven to have been "participating in a joint criminal venture in the course of which another participant commits first or second degree murder, in circumstances where it should have been obvious that first or second degree murder might be committed by another participant."[31]

Crispin Aylett QC, who prosecutes joint enterprise cases, says: "There is a good argument for looking again at the mandatory life sentence. The effect of raising the tariff from, say, 15-17 years for a murder with a gun to 30 years, or 12-15 years to 25 for a murder with a knife, has resulted in very long sentences for those who are convicted as secondary parties on the basis of joint enterprise. This may give rise to a sense of injustice."

However, as Andrew Jefferies QC says, while the end of the mandatory life sentence might well be of benefit to those convicted as secondary parties, "they would still be classed as murderers".

HOW ENCOURAGEMENT IS CURRENTLY DEFINED

The 2007 Serious Crime Act outlines how someone can be guilty of encouraging a crime.

Section 44 (1)
Intentionally encouraging or assisting an offence
1. A person commits an offence if –
   (a) he does an act capable of encouraging or assisting the commission of an offence; and
   (b) he intends to encourage or assist its commission.
2. But he is not to be taken to have intended to encourage or assist the commission of an offence merely because such encouragement or assistance was a foreseeable consequence of his act.[32]

This section suggests an act must be committed. Case law suggests mere presence at the scene is not a sufficient act to warrant a conviction.

A report on Joint Participation, produced by the Law Commission in 2007, also gave guidance on what constitutes encouragement. The commission recommended that "that 'encouraging' a person to do an act should include doing so by emboldening, threatening or pressurising another person to do a criminal act."[33]

28 The Law Commission (LAW COM No 304), 'MURDER, MANSLAUGHTER AND INFANTICIDE: Project 6 of the Ninth Programme of Law Reform: Homicide' http://lawcommission.justice.gov.uk/docs/lc304_Murder_Manslaughter_and_Infanticide_Report.pdf
29 The Law Commission (LAW COM No 304), 'MURDER, MANSLAUGHTER AND INFANTICIDE: Project 6 of the Ninth Programme of Law Reform: Homicide', p. 16
30 The Law Commission (LAW COM No 304), 'MURDER, MANSLAUGHTER AND INFANTICIDE: Project 6 of the Ninth Programme of Law Reform: Homicide', p. 16
31 The Law Commission (LAW COM No 304), 'MURDER, MANSLAUGHTER AND INFANTICIDE: Project 6 of the Ninth Programme of Law Reform: Homicide', p. 17
32 Serious Crime Act 2007 http://www.legislation.gov.uk/ukpga/2007/27/section/47
33 Page 52 http://lawcommission.justice.gov.uk/docs/lc305_Participating_in_Crime_report.pdf

3 Dealing with collecting data

One of the Justice Select Committee's main concerns stemmed from the fact that there was no data recorded on the usage of joint enterprise. This report, along with bespoke figures produced by the CPS has aimed to fill in some of the blanks on this issue. However, the introduction of a recording mechanism for joint enterprise usage would allow for cases to be tracked in the future.

The CPS Case Management System could be developed to include a check-box for joint enterprise, thus easily rectifying the data-gap.

To be able to fully explore a case it is necessary to have access to case files, which nobody outside of the CPS has access to. The CPS has been working through its case files to count the number of times joint enterprise has been used in murder prosecutions in 2012 and 2013. Researchers could use sampling techniques to explore a selection of these joint enterprise murder prosecutions, to analyse them in greater depth, and explore some of the issues raised.

4 Dealing with issues of clarity in the law:

i) Enshrine the doctrine in statute

Some legal experts the Bureau spoke to said it should not be left to the courts to interpret and reinterpret joint enterprise and instead the law should be debated and voted on in parliament. The law of joint enterprise would then be on the statute books, and what amounts to participation in a joint enterprise would be clearly defined. This, they argue, would stop individual courts being able to reinterpret and stretch the law in every case.

The Justice Select Committee recommended this kind of legislative reform in the findings of its inquiry into joint enterprise.

The Law Commission's Professor Ormerod believes the case for legislative reform is "overwhelming", and Professor Horder, from the London School of Economics, agrees, saying the DPP's guidelines, although helpful, are "no substitute for statutory reform".

"The doctrine of joint enterprise needs to be clarified and simplified through being embodied in a statute, rather than being left to develop through judges' decision-making from case to case, which has led to some inconsistency and uncertainty, especially in murder cases where of course all those convicted will receive the life sentence whatever the basis on which they participated," says Professor Horder.

ii) Use case law to clarify issues

As joint enterprise has been developed through the courts thus far, it has also been suggested that a well argued, thorough ruling could provide valuable jurisprudence on elements of the doctrine.

"There are two ways to remedy the problems - one remedy is for Government to take forward the recommendations made by the Law Commission on joint participation. If the legislature will not do that, maybe the courts can look at it," says Professor Ormerod. "If the Supreme Court got the right case in front of it, it could do a lot to amend the current situation."

However, there are limits, "The Supreme Court can fix the difficulties with the joint enterprise cases, but it can't go the whole way - it can't create a primary and secondary murder category," says Ormerod.

Possible wording for potential statute can be drawn from the Law Commission's recommendations in its review "Participating in Crime".

The "Participating in Crime" report sets out recommendations for prosecuting joint enterprise crimes. It states:

"**We recommend that, for D to satisfy the conduct element of clause 2[34], he or she must either:**
1. agree with P to commit an offence; or
2. share a common intention with P to commit an offence.

We recommend that, if P and D are parties to a joint criminal venture, D satisfies the fault required in relation to the conduct element of the principal offence committed by P if:
1. D intended that P (or another party to the venture) should commit the conduct element;
2. D believed that P (or another party to the venture) would commit the conduct element; or
3. D believed that P (or another party to the venture) might commit the conduct element.

We recommend that, even if D intended or believed that P would or might commit the conduct element of the principal offence, he or she should nevertheless not stand to be convicted under clause 2 of the principal offence if P's actions in committing the principal offence fell outside the scope of the joint venture.

We recommend that, if P and D are parties to a joint criminal venture, for D to be convicted of a principal offence that P commits, D must believe that P, in committing the conduct element of the offence, might be committing the offence."[35]

34 Clause 2 of the Law Commission's proposed Bill, covers the following: "In relation to clause 2, D would be liable for any offence committed by P provided that its commission fell within the scope of the joint venture. A joint criminal venture is formed when the parties agree to commit an offence or when they share with each other a common intention to commit an offence.52 D would be liable for any offence (agreed or collateral) that he or she foresaw might be committed as a possible result of the venture. The mere fact that D was not present when the offence was committed or that he or she would rather that it was not committed would not in itself preclude a jury finding that the offence fell within the scope of the joint venture."

35 The Law Commission (LAW COM No 305) 'PARTICIPATING IN CRIME' http://lawcommission.justice.gov.uk/docs/lc305_Participating_in_Crime_report.pdf p 130-131

Summary

In this report the Bureau has attempted to quantify the use of joint enterprise, and explore attitudes and opinions surrounding its use

Data analysis of key indicators, such as multiple defendant homicide prosecutions, shows the frequency of use of joint enterprise by prosecutors has remained fairly consistent since 2005, peaking slightly in 2008 when gang violence was most common.

We have found that homicide prosecutions that involved four or more defendants made up 17.7% of all homicide prosecutions between 2005 and 2013, suggesting that the use of joint enterprise is common when prosecuting serious crimes such as murder.

We also found that in homicides involving four or more defendants it was more likely that a defendant would eventually be acquitted - suggesting people may be being scooped up into serious prosecutions without there being strong enough evidence against them. The impact this can have on an innocent person's life is huge.

Analysis of published Court of Appeal rulings revealed an increase in the rate at which joint enterprise convictions were brought to appeal in 2013 compared to 2008. Out of the joint enterprise convictions, the charges of homicide were appealed most often, suggesting something is going wrong with initial prosecutions. However, it was also found that these convictions are very rarely quashed.

Surveying the opinions of defence and prosecution lawyers provided new proof of the range and seriousness of concerns amongst the legal profession. Survey respondents felt most concerned about the court's role in establishing the intent of someone on the periphery of a murder.

Leading legal professionals voiced concerns that joint enterprise had the potential to cause injustices, some worried this may have already happened.

But we also heard from many that the doctrine should not be scrapped altogether; most recommended reform instead.

Suggestions were put forward for ways to develop and clarify the doctrine, including enshrining the doctrine in legal statute or, alternatively, developing key jurisprudence on the limits of the law through landmark rulings.

Finally we have explored the cases of several people convicted for murder under the joint enterprise doctrine. The stories of Laura Mitchell, Wayne Collins and Dean Pinnock among others provide clear examples of times when those on the periphery of crimes were prosecuted and convicted along with the principal offenders. These convictions may adhere to the law as it currently stands, but they also raise important moral questions about the fairness of long sentences, and whether justice is actually being served.

What this report has raised is the very real question of how many people have been convicted under joint enterprise for crimes for which they were not culpable.

Nor has it been possible to tell how many people have received sentences that are disproportionate to their crime under joint enterprise.

We hope this report will provide both qualitative and quantitative evidence that can be used in future debates and academic study around the law of joint enterprise.

Afterword

MELANIE MCFADYEAN

Like most of the UK population I had never heard of the law of joint enterprise until I met Andy Hall QC two years ago and we got talking about his client in the infamous Victoria Station trial.

It was a horrific case. Twenty teenagers were accused of murdering 15-year-old Sofyen Belamouadden who was viciously attacked and murdered in March 2010 in broad daylight at Victoria Station. It was clear there was indeed a joint enterprise that could have been foreseen to lead to murder. But one of the 20 in the dock, Hall's client Jason Nwogbe, a promising A-level student, had no connection beyond being in the wrong place at the wrong time and being loosely associated with the wrong people (most of whom he didn't know). He was in the station at the time of the attack and had run towards the drama, but soon retreated when he saw what was happening. He played no role in the attack at all and I was amazed that his case had made it past the police let alone the CPS. There was nothing that one would ordinarily associate with proper evidence against him. But under joint enterprise he could be charged with murder.

Curious to find out more about this law, I sought out Gloria Morrison, a woman I had heard about from one of the barristers in the Victoria Station case.

Morrison is engaging and tireless, a voluble and passionate campaigner and founding member of Joint Enterprise Not Guilty by Association (JENGbA). She eats and sleeps joint enterprise. We sat in her campaign headquarters - her kitchen - and she told me one story after another, showing me letters from prisoners. She told me about Laura Mitchell, Dean Pinnock, Wayne Collins and many others and put me in touch with their sisters and mothers. That was in the summer of 2012 when she had a pile of about 250 letters on her kitchen table – now JENGbA has over 400. Pressure from Morrison and others added to the impetus that resulted in the Justice Select Committee looking into joint enterprise. This led to a report in January 2012. She and others also encouraged screenwriter, Jimmy McGovern to write Common, a drama based on joint enterprise, for BBC1.

From there I searched for statistics – there were none. I was told it wasn't possible to collect the data I was asking

for through Freedom of Information. It would be too difficult. Cases weren't logged according to whether they were joint enterprise or not. So there was no telling how many people might be serving prison sentences as a result of joint enterprise cases.

I sat in on the Victoria Station trial a few times. One day as I was leaving the court, Hall was walking by in wig and gown, and Nwogbe, a shy, well turned out teenager, smiled and offered him a sweet. Shortly afterwards the jury found Nwogbe not guilty. By then he had spent 18 months waiting for the trial with a possible life sentence hanging over him and then several weeks in the dock before being acquitted. Had it not been for the law of joint enterprise, he would never have been in court. Had he not been expertly represented, and had the jury not been convinced of his innocence, he could now be serving a life sentence.

Joint enterprise has become an unwieldy behemoth. It is riven with anomaly and contradiction, as many of those quoted in this report say. The reasons for this are complicated. Inconsistent and changing formulations of the doctrine by judges in the highest courts show that it is really difficult to grasp, mutating and accruing nuances as it evolves through case law. It is also convenient politically. Gang violence and gun and knife crime are real problems, which result in tragedy and inspire fear in the public. Those responsible for law and order have to do something. Joint enterprise provides a rough, ready and powerful solution.

There were 17 convictions in the Victoria Station case, for murder, manslaughter and other offences. Afterwards DCI John McFarlane, the senior investigating officer, said: "This case is an effective reminder that the law on joint enterprise is clear and unforgiving - you do not need to deliver the fatal blow or even be at the actual scene of the killing to be found guilty and sent to jail… I hope this case will act as a deterrent to others in the future to avoid getting themselves caught up in this type of situation."

The idea of the law as deterrent to deal with gangs has been repeatedly bolstered through the courts. In the case of R v Powell & English in the House of Lords, Lord Mustill said that the law is determined by "practical and policy considerations", and that "intellectually, there are many problems with the concept of a joint venture, but they do not detract from its general practical worth". Lord Hutton stated: "There are practical considerations of weight and importance related to considerations of public policy … which prevail over considerations of strict logic." In the same case Lord Steyn said: "In the real world, proof of an intention sufficient for murder would be well nigh impossible in the vast majority of joint enterprise cases."

> "In the real world, proof of an intention sufficient for murder would be well nigh impossible in the vast majority of JE cases"

In that real world, proof of guilt relies on proper evidence but as I got further into the small print of joint enterprise, sometimes it seemed I had wandered through the looking glass. Joint enterprise relies on foresight of what others might intend. It stretches common sense to assume that a person can predict the intentions of another, particularly when spontaneous acts of violence occur, and particularly if you are young and inexperienced.

Joint enterprise sweeps multiple defendants perceived of as threatening into court and subsequently to prison, the logic being the streets are then safer for the rest of us. Maybe they are. But joint enterprise is a blunt instrument that risks criminalising people who, by any ordinary reckoning of common sense, aren't responsible for the specific acts of violence for which they end up convicted - or at least bear much less responsibility than those directly involved in the offences. This seems a disproportionate and crude response to "practical and policy considerations", which should be addressed with more enlightened and subtle measures.

One of the main concerns about joint

enterprise is the relative ease with which it draws what the law calls secondary parties into its remit. These are people who have not taken a direct role in the offence. A group of friends, for example, could be out drinking. They get into a fight with another bunch. Someone is killed by one of the group. All the people in that group could be charged with murder on the basis that they must have realised that the person who killed the victim would intentionally use lethal violence, and by their presence gave the killer encouragement. They are all therefore part of a joint enterprise.

That's how Laura Mitchell transmuted from a drunk girl with no criminal record who had been in a brawl in which nobody was seriously hurt, into a murderer who at the time of the killing was some distance away looking for her shoes. Because the law says she was party to the first fight, she is deemed to have been involved in the second which broke out a little time later.

Part of the anxiety informing those who question the fairness of joint enterprise is that these secondary parties may be people on the peripheries, caught up and dragged in as Nwogbe was.

> "the doctrine of secondary liability has developed haphazardly and is permeated with uncertainty"

Under a less malleable law with a higher evidence bar, these defendants would, arguably, serve lesser sentences or be acquitted. Beatrice Krebs, who lectures in law at Reading University, refers to joint enterprise in an essay in The Modern Law Review (July 2010) as a lazy law, adding that it "unduly favours the prosecution and undercuts established principles of criminal law – at the cost of individual rights".

> Joint enterprise "unduly favours the prosecution and undercuts established principles of criminal law – at the cost of individual rights"

The mandatory life sentence for all cases of murder, irrespective of the degree of culpability, is disproportionate. It means that the person who foresees that lethal violence might be used, and whose mere presence has been found to give encouragement, must be treated in the same way as the stabber or the shooter.

In 2007 the Law Commission report on secondary liability said it was "characterised by uncertainty and incoherence..." and that "the doctrine of secondary liability has developed haphazardly and is permeated with uncertainty".

Solicitor Greg Stewart, who has represented many joint enterprise clients, cites the danger of scooping up "tail-end Charlies, thrown in just to get a conviction", something he calls a "tactical device". Our research revealed that in multi-handed trials the Crown is less likely to get convictions. But in the process, those accused on evidence set at the low bar required under joint enterprise, like Jason Nwogbe and Ijah Lavelle Moore, spend months on remand living in dread of being given a life sentence.

As the Bureau team read though some 70 cases sent to JENGbA for research done by Dr Dennis Eady, a case consultant at Cardiff University's Law School's Innocence Project, we were horrified by the nature of many of the crimes but also struck by how many people claimed innocence of the crime for which they were convicted or wrongful sentences.

They fell roughly into four categories:

- Bystanders in the wrong place at the wrong time, unfortunate circumstances, caught in spontaneous conflict
- People with chaotic lives involved in small time drug dealing where rivalries turn vicious
- Young people in gangs, or groups depicted as gangs, in which fights and

feuds result in violence
- People with criminal convictions

But as diverse as they were, men and women of all ages, teenagers, black, white - what they had in common was that they were from less privileged fringes of society.

Then you look at the news stories relating to their cases and most are spine chilling.

The accused stare menacingly out of police mug shots, which enhances the image of them as mindless thugs, before they've even gone on trial. But when you see family snaps of these defendants or meet them, they look like anyone else.

The prisoners who contact JENGbA have few champions despite the growing chorus of concern from senior legal figures about the law of joint enterprise. They are, as one barrister described them, perceived of as "unsympathetic characters". A barrister who recently defended someone accused of joint enterprise spoke in court about the group of which his client was a member in less than complimentary terms. His point, in an ironic way, was that no matter the status of a defendant – layabout or not – everyone deserves justice.

How many are there like Mitchell, Nwogbe, Lavelle Moore, Pinnock et al, against whom proof is at best tenuous and at worst doubtful? Nobody knows. But we know more than we did since my first request for data was turned down two years ago.

The Bureau found out that 17.7% of all those prosecuted for homicide between 2005 and 2013 were involved in a case with four or more defendants.

In the years 2005 to 2013, the total number of people tried for homicides involving more than one person was 4,590. Of these 1,853 people were involved in cases with four or more defendants. The success rate for conviction was 73%.

This gives a snapshot of the large number of people convicted in murder trials under joint enterprise. How many of those locked up have disproportionate sentences, and how many would not be in jail at all were it not for the elasticity of joint enterprise? Had they been tried under the homicide laws, the evidence bar would have been higher for all secondary parties. Unless and until there is an in depth investigation into a sample of such cases, nobody will know. The data is very troubling.

Despite the growing concern about joint enterprise, there is little public or political will to address it because the people locked up are thought of as unsympathetic characters who deserve what they get. The Justice Select Committee recommended that joint enterprise be enshrined in statute but this has not happened so far.

Lord Falconer, former Lord Chancellor, summed up the political attitude and collective consciousness when he spoke on Radio 4 in 2010: "The message that the law is sending out is that we are very willing to see people convicted if they are a part of gang violence - and that violence ends in somebody's death. Is it unfair? Well, what you've got to decide is not 'does the system lead to people being wrongly convicted?' I think the real question is do you want a law as draconian as our law is, which says juries can convict even if you are quite a peripheral member of the gang which killed? And I think broadly the view of reasonable people is that you probably do need a quite draconian law in that respect."

Is Falconer implicitly justifying possible injustice in the name of the greater good? Is it really the view of "reasonable people" that it is best to condone an evidence bar set at a level that allows peripheral members of a joint enterprise to slip under it in the name of deterrence? Our research demonstrates that this is a dangerous state of affairs. Justice must be impartial – be they an innocent bystander or someone with a criminal history - nobody should do time for a crime they did not commit.

Appendices

Appendix A

History

Joint enterprise is an ancient part of England and Wales's common law. Its origins date back to times of dueling, when not only those who wielded swords and pistols at each other could face prosecution, so could those who stood as seconds, as well as surgeons who attended the scene.

Over hundreds of years, successive court rulings on what amounts to participation and encouragement in a crime have created a complex web of liability when more than one person is involved.

One of the most famous joint enterprise cases was that of Derek Bentley, who was convicted in 1952 of the shooting of a police officer. His accomplice Christopher Craig committed the actual murder. But Bentley's words just before Craig fired - "Let him have it" - were used as evidence that he encouraged Craig to kill and that they were in a joint enterprise together. Craig escaped the death penalty because he was 16 at the time, but Bentley was hanged in 1953.[36]

Joint enterprise is applicable to all crimes, but has become particularly complex in murder cases. To be guilty of murder as a lone killer, you must intend to kill or cause serious bodily harm that results in death. When a group of people is involved, however, the law of joint enterprise has developed so that you do not have to intend to kill or cause serious harm to anyone. You can be guilty of murder merely if you foresaw that someone might be killed or seriously hurt during the course of your criminal actions. If it can be proved that you thought it may happen, and you still carried on participating in the crime, joint enterprise says you are as guilty as the actual killer.

This principle of foresight was established in the case of Chan Wing-Siu in 1985,[37] involving a gang of three men who had gone to collect a debt from an associate. At least two of the men attacked the victim with knives and he was killed. All three men were convicted of murder. Their convictions were upheld on appeal. The judges ruled that having gone along with the group knowing that serious bodily harm might take place, all were guilty of murder.

In 1999, the House of Lords ruled on two cases - R v English[38] and R v Powell[39]– that also set a new benchmark for joint enterprise. In the Powell case, three men went to buy drugs. One pulled out a gun and shot the dealer dead. All three were convicted of murder, even though the prosecution could not identify who actually fired the gun. Their convictions were upheld, because they all knew one of their co-defendants had a gun and they must, therefore, have foreseen he might use it, according to the ruling.

In the English case, two men beat up a policeman with sticks. One produced a knife and stabbed the policeman to death. English's conviction was quashed because he successfully argued he didn't know about the knife. Knowledge of a weapon was key: because the murder arose from an entirely different league of violence that had been contemplated by the secondary party, he was not guilty of murder.

In 2008, another landmark ruling by the House of Lords in the case of

36 1953: Derek Bentley hanged for murder, BBC, http://news.bbc.co.uk/onthisday/hi/dates/stories/january/28/newsid_3393000/3393807.stm
37 Chan Wing-Siu v The Queen [1985] AC 168
38 R v English HL 30-Oct-1997
39 R v Powell (Anthony) and English (1999) 1 AC 1

R v Rahman[40] was supposed to clarify all issues surrounding the doctrine. The case involved a vicious attack on Tyrone Clarke in 2005 by a group armed with baseball bats, metal bars and knives. Clarke died from two deep knife wounds to his back. There was no evidence Islamur Rahman himself inflicted the fatal injuries but he and others were convicted under joint enterprise.

Like in the English case, the ruling said that unless the act committed by the actual killer was "fundamentally different" to what the rest of the group were expecting to happen, all are guilty. The judges found that in this case, the stabbing was not a complete departure from what Rahman must have contemplated when taking part in the attack. So unless someone in the group produces and uses a weapon about which the secondary party knew nothing, or that is more lethal than any weapon the secondary party thought may be used, then the secondary party can be found guilty of murder.

In 2011 the Supreme Court took on a case that showed further complexities in the doctrine. Armel Gnango was a gangster.[41] He had a dispute with another local gangster, known as Bandana Man, and the two began a shoot-out on a street in New Cross, south London. A Polish care worker, Magda Pniewska, was walking past just as Bandana Man fired a shot at Gnango. The bullet missed its intended target but hit Pniewska, who died at the scene. A man suspects to be Bandana Man was arrested, but there was not enough evidence to convict and charges were never brought. Gnango was also arrested and charged with the murder of Pniewska, even though the bullet that hit her was intended to hit him. He was convicted on the basis that he was in a joint enterprise with Bandana Man, even though they were intending to harm each other. The Court of Appeal overturned this conviction in 2010, saying Bandana Man and Gnango had had no common purpose. The case then went to the Supreme Court, which overruled the Court of Appeal and reinstated the conviction.

40 R v Rahman [2008] UKHL 45
41 R v Armel Gnango [2011] UKSC 59

Appendix B

Secondary suspects for murder - data from the Home Office

As well as collecting data from the CPS we also asked the Home Office to provide information. The Home Office collates its own data on murder convictions and divides its numbers into principal and secondary suspects.

The Home Office's category of "secondary" does not necessarily mean a secondary suspect holds any less legal responsibility for the crime but it does indicate less direct involvement.

Figures provided by the Home Office show that there were 1,309 secondary suspects indicted for murder between 2005 and 2013, and 497 convicted.

Comparing this to all murders in that time period, this means an average of 21% of all murders involved a secondary suspect.

The peak was highest in 2005-2006 when 25% of those convicted of murder were secondary suspects. The lowest rate was in 2010-2011, when 16% of convicted murders had been classified as secondary suspects. Since then the rates have crept up again, rising between 2011 and 2013.

These results are not directly comparable to those from the CPS as they chart different categories of crime and are measured over different time periods (calendar versus financial year).

	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	
Secondary suspects indicted	209	214	256	215	153	100	82	80	1309
Secondary suspects convicted	94	78	92	65	61	39	38	30	497
Total number convicted of murder	379	341	382	326	284	245	223	163	2343
Percentage of total murders that were secondary suspects	24.80%	22.87%	24.08%	19.94%	21.48%	15.92%	17.04%	18.40%	21.21%

Appendix C
Data

Four or more defendants on homicide prosecutions (As supplied by the CPS after FOI requests)

	Convictions		Unsuccessful		Total
2005	152	73.08%	56	26.92%	208
2006	188	71.76%	74	28.24%	262
2007	161	70.61%	67	29.39%	228
2008	199	73.16%	73	26.84%	272
2009	174	78.73%	47	21.27%	221
2010	111	74.00%	39	26.00%	150
2011	125	75.76%	40	24.24%	165
2012	120	65.93%	62	34.07%	182
2013	126	76.36%	39	23.64%	165
	Average	73.27%	Average	26.73%	
				TOTAL	1853

Two or more defendants on homicide prosecutions (CPS)

	Convictions		Unsuccessful		Total
2005	401	76.92%	123	23.08%	524
2006	466	75.16%	154	24.84%	620
2007	420	75.27%	138	24.73%	558
2008	492	77.85%	140	22.15%	632
2009	435	78.24%	121	21.76%	556
2010	385	78.89%	103	21.11%	488
2011	266	75.35%	87	24.65%	353
2012	344	73.35%	125	26.65%	469
2013	309	79.23%	81	20.77%	390
	Average	76.70%	Average	23.30%	
				TOTAL:	4590

All homicide prosecutions (CPS)

	Convictions		Unsuccessful		Total
2005	1003	78.54%	274	21.46%	1277
2006	1034	78.93%	276	21.07%	1310
2007	1018	78.55%	278	21.45%	1296
2008	1097	82.11%	239	17.89%	1336
2009	999	81.35%	229	18.65%	1228
2010	869	80.99%	204	19.01%	1073
2011	773	81.63%	174	18.37%	947
2012	854	79.89%	215	20.11%	1069
2013	775	81.58%	175	18.42%	950
	Average	80.40%	Average	19.60%	
				TOTAL:	10486

MULTIPLE DEFENDANTS AS A PERCENTAGE OF ALL HOMICIDE PROSECUTIONS

	4+ defendant as % of all homicide prosecutions	2+ defendants as % of all homicide prosecutions
2005	16.29	41.74
2006	20.00	47.33
2007	17.59	43.06
2008	20.36	47.31
2009	18.00	45.28
2010	13.98	45.48
2011	17.42	37.28
2012	17.03	43.87
2013	17.37	41.05

REASONS FOR UNSUCCESSFUL HOMICIDE PROSECUTIONS (CPS)

	Year	Total Unsuccessful	Total	Acquitted	Offered no evidence	Withdrawn	Discontinued	Other
All homicides	2005	274	1277	141	51	15	55	12
	2006	276	1310	178	58	3	26	11
	2007	278	1296	150	67	8	31	22
	2008	239	1336	140	61	5	17	16
	2009	229	1228	143	48	2	23	13
	2010	204	1073	130	31	2	25	16
	2011	174	947	96	47	2	17	12
	2012	215	1069	131	53	3	12	16
	2013	175	950	121	34	2	12	6

2+ defendants in homicides	2005	123	524	79	23	0	16	5
	2006	154	620	122	24	0	6	2
	2007	138	558	92	25	3	6	12
	2008	140	632	94	34	2	5	5
	2009	121	556	90	25	0	4	2
	2010	103	488	82	9	0	11	1
	2011	87	353	53	27	0	5	2
	2012	125	469	80	33	1	6	5
	2013	81	390	71	10	0	0	0

4+ defendants in homicides	2005	56	208	37	8	0	11	0
	2006	74	262	56	16	0	0	2
	2007	67	228	40	14	0	4	9
	2008	73	272	54	19	0	0	0
	2009	47	221	34	12	0	1	0
	2010	39	150	29	1	0	8	1
	2011	40	165	24	15	0	1	0
	2012	62	182	42	15	1	1	3
	2013	39	165	38	1	0	0	0

Court of Appeal rulings

Year	Number of hearings	Number of hearings involving JE	% of all hearings that had a JE element	Number of JE homicide	% of all JE cases that were homicide	% of all rulings that were JE homicide
2008	443	52	11.7%	16	31%	3.61%
2012	182	30	16.48%	11	36.7%	6.04%
2013	194	43	22.16%	11	25.58%	5.67%

Year	Number quashed	Number reduced	Number upheld	Upheld % of homicide	Number non-JE murder	Quashed	Changed	Upheld	Upheld % of homicide
2008	0	7	9	56.25%	29	2	15	12	41.38%
2012	3	1	7	63.63%	15	-	6	9	60.00%
2013	1	3	7	63.63%	21	-	4	17	80.95%

Home Office figures on number of secondary parties to homicide who were convicted of lesser offences:

Years	Convicted of a lesser offence (as % of total)
1999/00	10
2000/01	6
2001/02	5
2002/03	6
2003/04	7
2004/05	9
2005/06	8
2006/07	13

Inchoate offences brought to trial, figures collected by the CPS:

	2009	2010	2011	2012	2013
Serious Crime Act 2007 { 44 }	6	26	76	93	84
Serious Crime Act 2007 { 45 }	7	15	26	65	29
Serious Crime Act 2007 { 46 }	0	6	19	38	30
Total	13	47	121	196	143

CPS's own figures for 2012- provided to the Justice Select Committee following a manual trawl of their case files:

	2012	2013
Cases	139	121
Defendants	470	423
Cases where two or more defendants were jointly charged with murder	115	95
Cases where two or more defendants were jointly charged with manslaughter	23	18
Defendants jointly charged with murder	360	299
Defendants jointly charged with manslaughter	65	55
Defendants charged with murder but not manslaughter	316	250
Defendants charged with manslaughter but not murder	33	17
Defendants charged with murder and manslaughter	54	49
Defendants charged with murder and/or manslaughter and a lesser offence	210	179
Defendants charged only with a lesser offence	67	95
Defendants convicted of at least one offence	326	326

Appendix D

Survey results

1. Please specify your qualification

Answer	Frequency	Percentage
Barrister	21	27.63%
Barrister QC	8	10.53%
Solicitor	46	60.53%
Other - please specify	1	1.32%
Solicitor QC	0	0.00%
Total	76	100.00%

2. Have you acted in any cases involving a joint enterprise since 2003?

Answer	Frequency	Percentage
Yes	71	93.42%
No	5	6.58%
Total	76	100.00%

3. On which side have you acted in joint enterprise cases since 2003?

Question	Never	Rarely	Occasionally	Frequently	Response
Prosecution	12	3	2	6	23
Defence		1	16	24	41
Appeal prosecution	15		4		19
Appeal defence	8	4	7	8	27

4. How often have you acted in joint enterprise cases for the following charges since 2003?

Question	Never	Rarely	Occasionally	Frequency	Response
Murder	5	13	15	7	40
Manslaughter	18	6	5	1	30
Offences against the person	2	2	14	19	37
Sexual offences	12	8	10	3	33
Burglary	3	7	15	10	35
Robbery	2	4	12	18	36
Theft and handling	2	6	16	9	33
Fraud and forgery	5	8	16	5	34
Criminal damage	8	13	10	2	33
Drugs offences	1	3	16	18	38
Public order offences	2	1	18	15	36

5a. To what extent, if at all, are you personally concerned about the use of joint enterprise in murder cases?

Question	Very concerned	Somewhat concerned	Not very concerned	Not at all concerned	Total
Your overall personal concern about the use of joint enterprise in murder cases	19	18	4	2	43
Severity of the punishment: all accomplices receive mandatory life sentences if convicted	27	11	5		43

Equal responsibility/charge/sentence for all defendants regardless of their level of involvement	28	11	2	1	42
Clarity and complexity: details of the case and scope of participation can be badly defined, complex and unclear when joint enterprise is used	23	16	3	1	43
Fairness: the scope of liability under the doctrine of joint enterprise compromises the fairness of the judgment	25	13	3	1	42
The necessary fault/mens rea for the offence does not have to be fully established for all defendants	30	11	1	1	43
Juries: joint enterprise is overly complex for juries	15	20	6	2	43

5b. Briefly describe any additional concerns you might personally have about the use of joint enterprise in murder cases:

Free text responses
The particular concern is the mandatory life sentence which restricts the sentencing judge's role in providing appropriate sentences for secondary parties
Offences of murder in particular appear to be disproportionately use joint enterprise especially where young black man are in a group. There is a frequent stereotype that such groups are an organised gang. Even where gang involvement is established the evidential approach to prosecuting routinely involves racist assumptions and/or stereotypes. The Judiciary are far too willing to allow cases of joint enterprise murder to continue after the end of the Prosecution case when the evidence that there was joint plan or that the participants in the plan knew that a weapon was in the possession of one of their number.
In my view the slack allows some idle prosecuting and also the use or threat of a murder charge to duress a reluctant witness to turn QE. It is the inflexibility of the sentencing juxtaposed against the often wooliness of the facts in joint enterprise cases that gives rise to concerns.
It impacts disproportionately on young offenders, who are more likely to act as part of a group and less likely to understand the possible legal implications of their actions. They are also less likely to have the same level of culpability as adult offenders due to their developmental stage and the increased influence of peer pressure on that age group.
The complexities involved reflect those in Conspiracy cases - juries appear to have their hands tied when asked to assess the circumstantial evidence that points to a particular defendant being involved to a limited extent - to then extrapolate to involvement in a conspiracy where the evidence is tenuous, weak or non-existent.
Joint enterprise is just a licence for the state to send young black men to prison for life.
None, all dealt with above.
The whole concept needs revisiting--it cannot be abolished altogether but it has to be more restrictive in scope
The effect of prosecutorial discretion and the lack of clear and menaingful guidance from the DPP
Defendants unwilling to give evidence against the individual committing the actus reas because in same prison and court room with them, and they fear for their safety and that of their family if they do. Most importantly the mens rea for murder is intent to GBH which means the joint enterprise brings into scope those that did not actually intend death and did not commit the act themselves.

6a. To what extent do you agree or disagree with the following statements about the use of joint enterprise in murder cases?

The use of joint enterprise in murder cases allows for…

#	Strongly Disagree	Disagree	Agree	Strongly Agree	Total
…greater efficiency of the law in terms of flexibility and more appropriate reach	14	23	6	14	43
…more justice because it allows for the attribution of criminal responsibility in difficult or complex cases	14	21	8	14	43

6b. Briefly describe any benefits you might personally see in the use of joint enterprise in murder cases:

Free text entry
I see no benefits. It provides an easy outlet for lazy prosecution decisions.
In appropriate cases, where for example it is clear that all the members of a group contributed in a significant and plainly foreseeable way to the deceased's death the doctrine is beneficial. It is also beneficial where the group have behaved in the way previously described and the actual person who inflited the fatal injury can not be identified.

In the case of joint principals where A commits the actus reus but both A and B have the mens rea, it allows for the adequate punishment of B.
It is not necessary to determine who struck the fatal blow (which would often be impossible to prove otherwise).
i've dealt with one joint enterprise murder since 2003. My client was convicted on a majority verdict. He was about 20 years at the time with no previous 4 violence and , i think, no previous 4 dishonesty. Some of the jury were visibly shocked and wept(reported in national newspaper) when they heard the then minimum sentence of 15 years imposed. I didn't then see any benefit in the use of joint enterprise and nor did his Qc. i think the jury was placed in an impossible position re its decision. se rise um sentence of 15 years imposed
If there is sufficient evidence to link an individual to the murder when this individual is not at the scene when the murder takes place.
ANY PARTICIPANT IN A MURDER IS EQUALLY GUILTY AND SHOULD BE SO CONVICTED, BUT THEN THEIR LEVEL OF CULPABILITY SHOULD BE DISTINGUISHED IN THE SENTENCED IMPOSED.
None.
Should make people more concerned/aware not just about their actions but the actions of those they associate with. And as above in that some cases it would be impossible to prove criminal responsibility in case where clearly that would be unjust.
Where a limited number of say 1-3 suspects who all contributed in some way to the outcome the jury can convict some or all

7a. To what extent are you personally concerned, if at all, about the use of joint enterprise in cases other than murder?

	Very concerned	Somewhat concerned	Not very concerned	Not at all concerned	Total
The necessary fault/mens rea for the offence does not have to be fully established for all defendants	15	16	8	3	42
Clarity and complexity: details of the case and scope of participation can be badly defined, complex and unclear when joint enterprise is used	12	21	7	2	42
Your overall personal concern about the use of joint enterprise in cases other than murder	9	21	11	2	43
Fairness: use of joint enterprise does not maintain the appropriate scope of criminal liability	14	16	7	5	42
Equal responsibility/charge/sentence for all defendants regardless of their level of involvement in the case	13	17	8	4	42
Juries: joint enterprise is overly complex for juries	9	20	8	5	42

7b. Briefly describe any additional concerns you might personally have about the use of joint enterprise in cases other than murder:

Free text entry
I am particularly concerned about the use of this doctrine in cases involving black defendants and its use to criminalise young men from that particular social category.
Prosecutors include peripheral suspects to gain evidence or contradictions to assist overll prosecution
As identified above racial stereotyping used to support Prosecutions
The law is often complex and -- especially in magistrates'; courts -- simply not known or understood by many prosecutors.
The questions are wrongly framed as the defendant(s) still need the necessary fault/mens rea to be convicted and sentence will not be the same as the role of each defendant will be taken into account
because the intent is specific in other offences I am less concerned than murder cases.
It has and will continue to hamper good advice to suspects who are currently reluctant to place themselves at the scene even though not involved and may even be potential prosecution witnesses.
It is just an abrogation of the responsibility of the state to prove its case against an individual
As above, over-used by The Crown to lighten its burden of proof.

8a. To what extent, if at all, do you agree with the following statements about the use of joint enterprise in cases other than murder?

The use of joint enterprise in cases other than murder allows for...

	Strongly Disagree	Disagree	Agree	Strongly Agree	Total
...greater efficiency of the law in terms of flexibility and more appropriate reach	9	23	11		43
...more justice because it allows for the attribution of criminal responsibility in difficult or complex cases	8	23	12		43

8b. Briefly describe any benefits you personally see in the use of joint enterprise in cases other than murder:

Free text entry
As above
Group offending such as public order offences can be prosecuted more easily
See above for murder but applied to other cases, eg robbery
Some degree of flexibility is desirable and, where not accompanied by a mandatory minimum sentence, this can be beneficial to a just outcome.
The criminal law has to be subtle.
There is no good reason why people who are working to a common purpose and who all take part in it should not be convicted of the main offence. IN my experience, juries are more than capable of understanding the difference between those who are simply bystanders, those who have taken some part but have seen things go well beyond their shared intention and those who are fully participating in crime.
efficiency in joining defendants in a single trial rather than seperate ones.
Enables morally blameworthy people to be punished when that might not otherwise be possible. Avoids need to charge conspiracy instead.
If there is sufficient evidence to link an individual to the index offence, it will assist in the prosecution of this individual even if not present at the scene.
AS ABOVE - CONVICTION DOES DEPEND ON THE DEFENDANT'S PARTICIPATION AND SENTENCE ON THE LEVEL OF PARTICIPATION.

9a. The Director of Public Prosecutions (DPP) issued new guidelines on joint enterprise in December 2012.
How do you personally think these have impacted,if at all, on the use of joint enterprise?The DPP guidelines have....

Answer	Percent	Response
..alleviated problems in the use of joint enterprise	2.33%	1
.. increased problems in the use of joint enterprise	2.33%	1
..do not have much impact, if any, on the use of joint enterprise	62.79%	27
There are no problems with the use of joint enterprise	2.33%	1
Not aware of the DPP guidelines	9.30%	4
Don't know	20.93%	9
Total	0.00%	43

9b. How do you personally think potential issues in the use of joined enterprise should be addressed?

Free text entry
More precise decisions should be made by prosecutors as the specific role played by a defendant in the commission of an offence.
There plainly needs to be public discourse on the subject. There are many local community groups which specialise in assisting young people. Joint enterprise prosecutions seem especially prevalent against young people and it is time their voices were heard and the voices of concern in those communities.
(1) Compulsory training for prosecutors and judges (2) A clarification of the case law as called for by David Ormerod.
i think more and more that politicians with some support from senior lawyers box in/ignore proper professional concerns with the use of evidence ; areas such as joint enterprise and hearsay.
Law reform by the introduction of something akin to the Law Commission's proposed Participation in Crime Bill
Use juries to consider joint enterprise offences, questionnaire to elicit their views on dealing with such cases and using the results to address the problems caused by the prosecution of such cases to date.
PROPER JUDICIAL DIRECTIONS
have specific rules re intent required in murder cases.
Get rid of its use, and conspiracy as well. Pros must prove its case against each defendant.
The only concern should be if justice is being done. I don't know enough about recent changes to comment on if this is being achieved.

Appendix E

Case studies

CASE STUDY
Wayne Collins

It was the summer of 2010 and Wayne Collins, a barber from Luton, went to Birmingham to spend the weekend with some friends. They went to a party, got drunk, went clubbing and Collins ended up staying the night at the flat of a friend of a friend.

The next day a friend took Collins to retrieve his car, which he had parked elsewhere at the start of the weekend. A stranger to the city, Collins had no idea where he had left it. On the way there his friend made a detour to the Barton Arms in Aston. There was a group of 15 or so men milling around. Collins got out and joined his friend. After a time the group set about smashing up the pub and setting fire to it. Collins, who didn't know the area, stayed where he was. During the rioting the police arrived and a helicopter circled above. When the crowd started running, so did Collins, looking over his shoulder as someone fired at the police. CCTV footage shows Collins did nothing other than stay with the group.

Collins is currently serving an 18-year sentence for arson with intent to endanger life, possession of a firearm with intent to endanger life and rioting.

Under the law of joint enterprise, his presence at the scene of the crime and association with two co-defendants - one of whom was found guilty of firing a gun - was enough to get him convicted. His phone was traced to the same location as one of the gunmen earlier in the day, so it was inferred that he would have known the man had a gun and planned to use it.

The prosecution also argued that Collins could have left the scene but chose to stay with those rioting, and that in doing so his presence encouraged their actions.

This made Collins complicit in a joint enterprise - his presence an encouragement, his association meaning that he shared a common purpose to commit the subsequent crimes.

The judge at trial said Collins "played no active role" in the rioting, but sentenced him to six years in prison for this offence. When it came to arson and being reckless as to endanger life, the judge said: "Although you played no part in the events at the Barton Arms, your presence there encouraged others." He gave him six years for this as well. He was also convicted of the joint enterprise of possession of a weapon. Added together his count was a sentence of 18 years.

His aunt, Deborah Taylor, insists on his innocence. "He was there," she says, "but does that make him guilty, does that justify 18 years? He had no firearm, he's never had one. How could he be convicted?"

Collin's solicitor, Nigel Leskin, was also shocked by the sentence: "I thought at worst he might get up to four years for violent disorder because he was there with the group during the damage to the pub and stayed with them. But he wasn't alongside the gunman when the gun was fired and did nothing to encourage him. He did not do anything. When the judge said 18 years I was incredibly shocked. Even if he knew the man had a gun, and he said he didn't, and even though he went out with him and others, he didn't actually do anything."

Collins's case went to appeal in December 2013. In January the court ruled that his sentence and conviction would be upheld.

His legal team told the Bureau: "We find that decision remarkable, but there is no further appeal that can be had in this country. We are now looking at ways of challenging the sentence before the European Court of Human Rights."

CASE STUDY
Laura Mitchell

Laura Mitchell, her boyfriend Michael Hall, and two other men were convicted of murdering Andrew Ayres during a fight that flared up over a taxi outside a Bradford pub in January 2007. After the trial, the police described the group as "absolute animals" who, fuelled by heavy drinking, had turned into a wild gang. Press reports labelled Mitchell and her co-defendants drunken yobs who had mindlessly battered someone to death.

Mitchell was 22 at the time, a single mother with a five-year-old son. Gloria Morrison, a campaigner who helps support those convicted under joint enterprise, has visited Mitchell in prison. "She's tiny and softly spoken. She told me her story, and I saw how biased the newspaper reports were. I think she feels very lost."

During the trial, the court heard that in the early hours of a January morning, a fight broke out over a taxi outside a pub. Mitchell had no previous history of violence, but on that night, she was undoubtedly in the thick of the fight. When things died down, Mitchell began to look for her shoes - backless stilettos, according to her younger sister Casey - which had come off during the fight. Unbeknownst to her, she claims, two of her co-defendants then went to a nearby house and returned to the car park with a mace, CS gas and knuckledusters. A more vicious fight began, during which Ayres was murdered. "When I was in the car park looking for my shoe[s] I was not there encouraging anyone. I did not want a fight," Laura Mitchell told the court.

Solicitor Simon Natas is concerned that there has been a miscarriage of justice, pointing out that she was elsewhere in the car park when Ayres was killed. The story the jury was left to consider, Natas explains, was that "the spontaneous violence that occurred during the argument over the taxi and the second fatal assault were part of a single joint enterprise."

This meant Mitchell was deemed as guilty as the man who stamped on Ayres' face and killed him. The Court of Appeal upheld her conviction on the basis that her continued presence in the car park amounted to assistance or encouragement even if she didn't actually take part in the assault. "That," says Natas, "is a very problematic basis on which to convict someone of murder and sentence them to life imprisonment." Mitchell was so broken by the appeal ruling, says her sister Casey, that if she had the chance to appeal again, she may not even try a second time.

Mitchell's son lives with his father and visits Casey and his grandmother once a month. They take him to visit Mitchell in prison. "It's horrible to see her there and leave her there," says her sister. Laura didn't do well at school and was pregnant at 16. But according to her sister, she had got her life back on track, was a good mother, and had been accepted for a trainee midwifery course at the time of murder. She is serving a life sentence with a minimum term of 13.5 years. When she gets out in 2021 her child will be grown up.

When Derek Buxton, a Manchester solicitor with 30 years experience, read about Mitchell's case, he said it was one that jumped out at him. Now acting pro bono for Mitchell, he has contacted the Criminal Cases Review Commission (CCRC) with information, which he thinks could be the first steps to a second appeal.

In January 2014, Buxton contacted the Bradford Telegraph and Argus. They ran two articles. In one, unusually, the paper named three prosecution witnesses asking them to come forward. It was after receiving one interesting but anonymous call regarding a key witness statement that he wrote to the CCRC. He hopes they will follow up the anonymous call, and contact the relevant witness whose details will be in their files. He also visited Carl Holmes at HMO Gartree. Holmes, who pleaded guilty to the murder, gave Buxton a statement in which he said Mitchell had nothing to do with the murder. He had planned to give this in court but his legal team advised him not to.

CASE STUDY
Shirley and Lynette Banfield

On April 3 2012 Shirley Banfield and her daughter Lynette were sentenced to life imprisonment for murder.

Their victim was Donald Banfield, husband to Shirley and father to Lynette.

But this was far from a straight forward murder trial.

There was no dead body, for one thing. No clear date when the crime was supposed to have happened. No suggested method of killing.

Donald Banfield had gone missing 10 years previously, in 2001. He was 63 years old at the time. Later, it was found Shirley had rerouted his work pension to her personal account.

Before he went missing, Donald Banfield had complained to his doctor and the police that he had suffered assaults from his wife and daughter.

The police suspected that Shirley and Lynette could have killed Donald for financial gain.

But other facts could have pointed in a different direction. Donald had debts of £50,000 and had drawn down £30,000 from his pension shortly before his disappearance.

A local police officer claimed to have seen him driving near his home after the date Donald was supposedly murdered. He had also told the police that his house was about to be sold and that he was thinking of moving to his native Trinidad.

Despite the contradictory evidence the prosecution argued that there were five possible scenarios for the disappearance of Donald: that mother and daughter acted in concert to kill him, that Shirley killed him and Lynette encouraged her, that Lynette killed him and Shirley encouraged her, or that one of them killed him without the other there.

The prosecution argued that both women should be found guilty, as one woman alone would have found it difficult to kill and hide Donald's body. Both were found guilty.

Late last year the case came to appeal, where the presiding judge Lady Justice Rafferty DBE summed up the complications of the original trial, saying: "This was an alleged joint enterprise murder with no body, no suggested mechanism of death, no identified day when the murder was said to have occurred, no time and no place and no suggestion of what happened to the body."

William Clegg QC, acting for Shirley Banfield, told the appeal court: "The evidence proved that Don Banfield disappeared over the weekend of May 12 and 13, 2001. The Crown did not suggest when, where or how he was killed, who was present, the mechanism of death or what happened to the body."

Mr Clegg went on to state that: "200,000 people disappear each year, and 2,000 of those are not heard from again. Don Banfield could have been one of those 2,000."

The appeal court heard the evidence against the women again, and noted that the Crown's original argument, that one woman alone could not have killed Donald, could be easily disproven.

The appeal judges also found that the Crown had failed to prove that the women were working together at the moment Donald was murdered. While they may have worked together to reroute Mr Banfield's funds for themselves, there was no sign that this extended to a joint plan to kill the man.

That active collusion would have been necessary to prove a joint enterprise.

In the ruling to the court Judge Rafferty noted "the likelihood is that one or other appellant murdered Donald" but that there was no proof who did nor that they were working together. A previous judgment was noted in R v Abbott, where the judge said: "Although it is unfortunate that a guilty party cannot be brought to justice, it is far more important that there should not be a miscarriage of justice."

In light of the reviewed evidence the cases against both women were quashed and they were freed, 15 months after their conviction.

CASE STUDY
Samson Odegbune

Samson Odegbune was involved with a crime that shocked the nation. He was one of a number of teenagers involved in a gang fight in Victoria Station in 2010. The confrontation ended in the violent death of 15-year-old Sofyen Belamouadden, who was stabbed to death in the midst of bustling rush hour commuters.

Sixteen people were eventually convicted of offences, including three people jailed for murder and five for manslaughter. Odegbune, who was 16 at the time of the offence, was one of those charged with murder. He was sentenced to 18 years.

However, Odegbune did not strike a single blow on Belamouadden. In fact, he never even got close. At the time the boy was being set upon, Odegbune was metres away, having chased another boy out of the station.

There is no question Odegbune was spoiling for a fight. The confrontation between rival school gangs had been planned during the school day, with some of the groups' members going out on their lunch break to buy knives.

Odegbune had brought his weapon from home: an ornamental samurai sword. He was also one of those that led the charge on the group, allegedly being one of the first to run while shouting "we're going to fuck you up".

Despite not striking a single blow on the victim, Odegbune's role in the planning of the attack and his aggressive actions at the station, led to the jury finding him guilty of murder. He was sentenced to 18 years.

It took four separate trials to convict all 16 teenagers over the death, and there were varying levels of criminal behaviour ruled upon.

Some of those that kicked and punched Belamouadden received lesser sentences. One boy who was found to have kicked Belamouadden three times, including kicking the boy's head with "horrifying ferocity", was convicted of manslaughter.

Odegbune was part of the second trial. His five co-defendants in that trial were also up for murder but received lesser charges, including manslaughter and conspiracy to cause grievous bodily harm.

This is a fact that confused Odegbune. Responding to a JENGbA survey he wrote: "In the first trial the jury convicted three of manslaughter who were in fact downstairs attacking the victim and ran off with the people who stabbed him. I was in the second of the trials.

"I should not have been tried for murder but only the other two counts which were conspiracy to cause GBH and violent disorder as the weight of evidence did not support a murder conviction," he added.

Last year Odegbune brought an appeal to the Court of Appeal and his sentence was reduced from a minimum term of 18 to 16 years. The court accepted the reduction after hearing arguments that Odegbune's role was not as grave as those who actually stabbed Belamouadden, and that while he had a part in the planning of the attack, he had not intended a death.

The court found that: "Although his leading role must be underlined (and doubtless led to his conviction for murder), the finding of a specific intention to kill in his case cannot be sustained."

However, the charge of murder was upheld.

Lord Leveson, who oversaw the Court of Appeal ruling, also took the opportunity to speak out about the role of joint enterprise convictions acting as a deterrent.

"Albeit entirely self inflicted, it is also worth pointing out that a dozen or so young people of prior good character with academic achievement and promise have also blighted their own lives and impacted on the lives of those who have been supportive of them. The account of this case should be told and repeated to young people everywhere: knives kill people and the effect of the madness of a few hours – or of a moment – will ripple out and destroy or devastate many lives. That is why the courts will and must always place punishment and deterrence at the forefront of any sentencing decision is cases such as these."

CASE STUDY
Sam Hallam

Sam Hallam was one of the few people convicted of a joint enterprise homicide to have his conviction quashed at the Court of Appeal, in the three years explored by the Bureau. But not before he spent seven and a half years imprisoned for a crime he did not commit.

Hallam was purported to have been part of a group that set upon Essayas Kassahun, 21, in 2004, stabbing him in the head. The prosecution never suggested that Hallam had wielded a weapon but he was said to have been in the area, and it was argued his presence would have been an aggravating factor.

It later turned out the sighting of Hallam was a case of mistaken identity, and a photograph found on his mobile phone proved that he was in a pub with his father at the time of the killing.

Hallam was 18 when he was convicted and spent seven and a half years in jail before his conviction was quashed.

While he was in prison Hallam's father died. Speaking outside the court on the day of his appeal ruling, his mother Wendy Cohen told the press: "I am just shocked. I knew this would happen, he should never have been in there. My family has gone through hell, it is like we were all being tortured. Sam's father killed himself while he was inside, all of us have suffered."

Hallam told reporters: "The identification evidence against me was so unreliable it should have never been put to the jury. The Metropolitan Police should have followed up leads which would have proved my innocence of the terrible murder of Essayas Kassahun."

He called his ordeal a nightmare and said: "Justice has long been denied to me but it has now finally prevailed."

Hallam's lawyer, Henry Blaxland QC, said: "Sam Hallam – and I put it boldly – has been the victim of a serious miscarriage of justice brought about by a combination of manifestly unreliable identification evidence … failure by police properly to investigate his alibi and non-disclosure by the prosecution of material that could have supported his case."

There had never been any suggestion by prosecutors that Hallam was the principal attacker, but Kassahun's killers attacked in a group and a now discredited eye-witness placed Halam near the scene of the crime. That meant that the joint enterprise doctrine could be used to convict him of murder.

Several lawyers spoken to for this report expressed concerns that the bar for evidence is set too low in joint enterprise prosecutions.

Commander Simon Foy, head of the Homicide and Serious Crime Command at the Metropolitan Police, noted the complications of investigating and prosecuting crimes that involved large groups of people, explaining that these investigations often relied on people coming forward to give personal accounts.

He said: "We continue to face challenging investigations such as these and there are undoubtedly certain lessons to be learned for police and the wider criminal justice system from today's judgement."

CASE STUDY
Joseph[42]

Joseph was just 15 when his involvement in a fight after school left one teenager dead and Joseph facing a murder charge.

He was an aspiring athlete attending his local grammar school in south London, hoping to study for A-levels. But some of his friends were part of a gang, SG gang. On his way home from school one day in May 2010, he met up with some of them to have a standoff with a group of rival youths, the Sydenham Boys, with whom there had been a row earlier in the day at another school.

Boys on both sides had weapons, and a lot of brandishing took place. But no violence occurred and the Sydenham Boys ran off after a short time. Sixteen-year-old Nicholas Pearton, a member of the Sydenham Boys, arrived in the park just as his friends had run away. He found himself alone, facing the advancing SG gang.

Pearton was chased out of the park and stabbed in the back as he crossed a road. He staggered into a chicken shop doorway and died from a single stab wound that penetrated his heart, delivered by one person, 16-year-old Dale Green. Green was convicted of his murder. So was Joseph, even though it was established during the trial that Joseph was still in the park, as far as 120 yards away from where Pearton was stabbed.

The case against Joseph was not helped by the fact he admitted picking up a knife he saw lying on the ground in the park, which he said was a defensive gesture as the other gang were armed and he wasn't. He was also seen after the stabbing with the others, clenching his fist in the air, shouting "SG, SG, SG". This was taken to be triumphant gesture following the fatal attack on Pearton. "But he didn't know [at the time] that a boy was dead," says his solicitor, Greg Stewart.

Joseph was convicted of murder on a joint enterprise basis, having been found to have foreseen that someone may have been seriously injured during the confrontation with the rival group and that in joining in the chase, his presence encouraged the stabber, even though he was not in sight at the time of the murder. He was sentenced to life with a minimum of 12 years.

Joint enterprise, says Stewart "covers such wide elements of behaviour and intent that it becomes a lottery if you are convicted or not".

42 Surname removed to protect the man's family.

CASE STUDY
Armel Gnango

The strange case of Armel Gnango is an example of just how bizarre the law on joint enterprise has become, revealing the extent to which the judiciary has tied itself in knots over the scope of what constitutes a joint enterprise.

In October 2007, Gnango was a 17-year-old drug dealer in south London. He went looking for someone he believed owed him money, armed with a gun. While in a car park on an estate in New Cross, the man he was looking for appeared wearing a red bandana over his face. Bandana Man, as he was referred to during the trial, pulled out a gun and started shooting at Gnango. Gnango returned fire.

Meanwhile, a 26-year-old Polish care worker, Magda Pniewska, was walking home from work, talking to her sister on her mobile phone. As she passed through the same car park, Bandana Man fired a further shot at Gnango. He missed his intended target but hit Pniewska in the head as she walked past. She died at the scene.

There is no doubt that the bullet that killed Pniewska was fired by Bandana Man, not Gnango. A man believed to be Bandana Man was later arrested, but was never charged. Gnango was arrested four days after the shooting, and was charged with the attempted murder of Bandana Man, having a firearm with intent to endanger life and with the murder of Pniewska, even though the bullet that hit her was intended to hit him.

At trial, the prosecution originally tried to argue that Gnango had aided and abetted the murder in the course of the shootout, but this was rejected by the judge, as it would have meant Gnango was a party to his own attempted murder. The judge told the jury, however, that they could convict Gnango of murder if the gunfight was a crime of affray, and that Gnango and Bandana Man were in a joint enterprise together to commit this crime. If this was the case, the judge said, and if Gnango foresaw a murder might be committed when they carried out the affray, he was as guilty of the murder as Bandana Man.

The Court of Appeal quashed this conviction in 2009, saying although Bandana Man and Gnango had indeed both committed the crime of affray, they could not have had a common purpose, as they actually had diametrically opposing intentions, that was, to harm each other. Joint participation in an affray, the appeal judges ruled, was not enough to make Gnango guilty of being in a joint enterprise to murder.

The case then went to the Supreme Court, where the Crown attempted to revive its original arguments rejected by the trial judge that Gnango was an accessory to his own attempted murder by Bandana Man and that Gnango had aided and abetted the commission of the murder by actively encouraging Bandana Man to shoot at him.

To the surprise of many in the legal community, the Supreme Court overturned the Court of Appeal and reinstated the murder conviction, saying Bandana Man and Gnango had indeed shared a common purpose. “On the jury’s verdict, the respondent [Gnango] and Bandana Man had chosen to indulge in a gunfight in a public place, each intending to kill or cause serious injury to the other, in circumstances where there was a foreseeable risk that this result would be suffered by an innocent bystander. It was a matter of fortuity which of the two fired what proved to be the fatal shot. In other circumstances it might have been impossible to deduce which of the two had done so. In these circumstances it seems to us to accord with the demands of justice rather than to conflict with them that the two gunmen should each be liable for Miss Pniewska’s murder,” the judges said.

A man, believed to be Bandana Man, was arrested on suspicion of murder, but the police did not have enough evidence to charge, and he was released.

CASE STUDY
Dean Pinnock

Leah Pinnock, an accountant from Nottingham, is convinced her brother Dean is serving a life sentence for a murder he didn't commit.

In December 2002, Dean, aged 18 at the time, travelled with a friend from his home town of Nottingham to Sheffield to do some Christmas shopping and hang out. At around 7pm, he was at a fried chicken shop with some other home friends. A scuffle broke out inside the shop between some local lads and his Nottingham friends. Dean and another friend had their mobile phones stolen.

Later that night, in another part of Sheffield, a nightclub bouncer was shot and killed in what appeared to be a drive-by shooting. CCTV footage of the scene showed what police believed to be a convoy of cars travelling around the car from which the shots were fired. The next day, a car matching the make and model of that used in the shooting was found burned out near Nottingham.

The police could not identify the gunman, nor any of those present. But relying largely on evidence of where certain mobile phones were at certain times, they linked the incident at the chicken joint to the shooting and the burning of the car.

Pinnock and eight others were charged with murder under joint enterprise. The prosecution case was that having been "disrespected" in Sheffield, the Nottingham lads called friends back home and began "marshalling troops" for a revenge attack. A car was borrowed in Nottingham and a convoy of vehicles assembled. The convoy travelled to Sheffield and the gunman randomly chose his victim as a display of power and control.

Pinnock didn't deny witnessing the incident at the fried chicken joint, but insists he was not involved in either that fight nor the murder. No evidence puts Pinnock at the scene of the shooting, but he was present when the car was burned. He says he was just there with friends, and no evidence links him to the actual burning of the car. The prosecution, however, convinced the jury that he must have been part of the plan to commit the murder, having been present at the two incidents.

Sentencing Pinnock, the trial judge said, "I am puzzled by your involvement." He was sentenced to a minimum term of 20 years. The man who actually admitted to burning the car was not charged at all and became a prosecution witness at trial.

Leah says she will never stop fighting to prove her brother's innocence. "How is this possible? How are people allowed to send an innocent boy to prison?"

The gunman subsequently confessed to pulling the trigger, saying it was an accident. He also said Pinnock wasn't present. But when the case went to appeal, the judges said his confession was "not credible" and all of the convictions against the defendants were upheld.

CASE STUDY
GH[43]

GH was doing well. He was a self-employed plumber and was doing good business. Then, on July 28 2013, he went out drinking with a few friends in Windsor, they ended up in a club hanging out with the friends of a friend. By the end of the night he had been connected to a chain of events that was to see him charged with murder.

The murder had happened on the walk home from the club, at around 3am, when the group GH had been with clashed with another group of young men. Twenty-four-year-old Sean Noctor was fatally stabbed by Jordan Doyle, one of the men GH had met that night.

For four months GH was held on remand. In early February 2014 he arrived at the Old Bailey, facing a murder trial along with four other defendants. The prosecution summed up its case and, in an unusual move, before evidence was heard the judge ruled that there was no basis on which to pursue a murder charge for GH. He was acquitted.

But it was not before months of agonising wait, as GH's life was put on hold. His barrister Orlando Pownall told the Bureau: "There was no justification for charging GH at all." It was accepted on both sides that GH met Doyle for the first time that evening. He had not travelled to Windsor with the other three defendants, nor was he to leave the scene with them. Instead CCTV footage showed he was not with the group when they first ran into Noctor and his friends, nor was he with them when two of the group ran to their car to collect a knife. When the two groups later clashed in a path by a park, GH was at the other end of the path with three women he had met that night. Witnesses suggest he originally tried to break up the fight before getting angry and shouting at one of the other group.

Two of GH's friends were originally arrested on suspicion of murder but were not charged after CCTV evidence showed they were elsewhere.

GH did not have legal representation for the first two police interviews.

It was, thinks Pownall, a case of GH getting scooped up into the conviction. "Sometimes people are scooped up in the hope that they will turn on each other as witnesses, or at least so that the defence can't call them," he said.

43 Name removed to protect identity.

CASE STUDY
Edward Conteh[44]

Conteh was born in Sierra Leone in 1993, when civil war was tearing through the country and horrific acts of brutality were being meted out by armed groups. Aged four, with the war still raging, his family fled to France. They then sought refuge in Flemish-speaking Belgium, before coming to the UK when Edward was 12.

By the time he was 16, the lonely and vulnerable teenager had borderline learning difficulties and was struggling. He'd been excluded from school and had fallen in with a bad crowd. "Edward is on the cusp of being educationally subnormal. A psychologist's report produced at trial found his personality was abnormally compliant and suggestible. He was part of this network of kids, and he was the one they pushed around. They called him Fobby - as in Fresh off the Boat," says Francis FitzGibbon QC, who defended him at trial.

In May 2010, some of this bad crowd, known as the SG gang, came to call at his house. There had been some kind of row with a rival group of boys at another school earlier in the day, and they wanted the fight to continue at a park near Conteh's house, so they went round to his place first. They played on his Playstation for a while, then headed to the park. Conteh went with them.

Boys on both sides had weapons, and a lot of brandishing took place. But no violence occurred and the rival group, the Sydenham Boys, ran off after a short time. Sixteen-year-old Nicholas Pearton arrived in the park just as his friends had scarpered. He found himself alone, facing the advancing SG gang.

Pearton was chased out of the park and stabbed in the back as he crossed a road. He staggered into a chicken shop doorway and died from a single stab wound that penetrated his heart. The stabbing was done by one person, 16-year-old Dale Green. Green was convicted of his murder.

The CCTV footage shows Conteh was nowhere near the scene of the actual stabbing. He was still in the park, dawdling along on a bike at the time. "By the time he came out of the park on the bike, the rest of the group were on their way and Pearton was in the chicken shop," says FitzGibbon.

Conteh, however, was convicted of manslaughter and sentenced to serve seven years.

"The difficulty Edward faced in terms of the law was that there was evidence that people in the park were armed with knives. The question for the jury, then, was did he know anyone had a knife, and did he foresee that a knife would be used. In the end, the jury reached a compromise verdict. He was too distant from the stabbing to be convicted of murder so they found him guilty of manslaughter."

As a foreign-born convicted criminal, Conteh will be deported from the UK on his release from prison. His family has the right to permanently live in the UK, but Conteh holds Belgian citizenship, so will be sent there, even though he was only there as a child for a short period. "This is our next battle for Edward. We will fight for him to stay here with us," his mother says.

"I think Edward should have been acquitted of all homicide charges," FitzGibbon says. "The jury were welcome to convict him of affray. But it's a real stretch to convict him of a homicide offence. Foreseeing that someone might come to some harm should not be enough to find you guilty of a homicide offence. The law doesn't take into proper account the grey areas and can sweep up defendants who are vulnerable and compliant and lacking the mental capacity to act differently."

44 Same case as Joseph

CASE STUDY
Ijah Lavelle Moore

It was April 2012 and Ijah Lavelle Moore was with his friend Malcolm Francis. "X Box, football...bumped into other lads, chilled with them for a bit, had a smoke, a drink, went to Francis's house. It was Friday night and there was loads of phone traffic… what you doin' tonight?"

Lavelle Moore, who was 20, lived in Basford in Nottingham and had lots of friends in the area. He had seen another friend, Cameron Cashin, earlier that night and then been in touch a few times afterwards. Cashin texted Lavelle Moore at about 3.45am on the Saturday morning saying 'Kum nah man" [Come now man].

Fifteen minutes earlier 19-year-old Malakai McKenzie had been shot dead while sitting in a car with his brother and two cousins outside a pub called The Hubb, a mile or so away.

By daylight rumours were flying around: "It was this group of lads, that group of lads and then someone said it was Basford lads. That's when my story started," says Lavelle Moore.

The following Wednesday morning at 5am, armed riot police blocked off the street where Lavelle Moore, his mother Lise and 17-year-old brother Malachi lived. The police came to their door. They told Malachi to come out with his hands up and took him out at gunpoint. Lavelle Moore wasn't there.

According to Trish Lavelle, Ijah's aunt, a trade union official with the Communication Workers Union, her sister Lise was told she didn't have to go with the police but if she didn't they could arrest her. She co-operated fully, thinking it was all a terrible mistake. She and Malachi were taken to different stations. He was released 30 hours later, and no further trouble came his way.

It was Lavelle Moore they were looking for.

Lavelle Moore and Francis had already left town but had not gone very far. Their departure looked suspicious but Lavelle Moore says that they left because there had been other gun incidents on their streets and the murder had scared them. "There was a gunman on the loose killing people like us – we felt unsafe." When he heard about the raid on his house, although panicked, he says he thought the police would find the perpetrators and realise it had nothing to do with him or Francis.

It didn't turn out that way. Cameron Cashin was eventually to be charged with the murder and handed down a life sentence. Lavelle Moore didn't know at the time that he and Francis had been identified as two of four hooded figures approaching the car in which McKenzie was murdered. The case against Lavelle Moore also depended on his communications with Cashin that night and interpretation of that text. The prosecution case was that Cashin was summoning Lavelle Moore and Francis after the murder as his trusted lieutenants. Three other suspects had left the country. Two have never been found. The third was acquitted in a trial ending in February 2014.

At the police station, Lise rang Lavelle Moore and told him they wanted to talk to him. He refused. He says he didn't know he was a suspect or he would, he says, have come forward, confident of his innocence.

He and Francis were picked up and it was then he found out they were being charged with murder, attempted murder and the possession of a gun.

Lavelle Moore says he felt confident of his innocence but when his solicitor told him that despite being innocent he could still be found guilty under joint enterprise, he was angry. He had never heard of the law.

When Cameron Cashin was accused of the shooting, because of their communication with him on the night, Francis and Lavelle Moore were deemed to be part of a gang involved in a feud resulting in McKenzie's death.

But the initial evidence that they were two of four people seen on CCTV

approaching the car at the time of the murder was dismissed before the trial. What remained was the mobile phone communication and further evidence attached to a jacket said to have been worn by Cashin. The police found it in Francis's hotel room during the days he and Lavelle Moore were out of Nottingham in Leicester and Derby. They had indeed found a jacket but it was Francis's, there was no DNA or other evidence to tie it to Cashin. They just had identical jackets.

A third piece of evidence centred on a snapshot. Lavelle Moore had turned 20 a couple of weeks before and had gone to a park with some friends to celebrate. Someone took a picture, which was produced as evidence by the prosecution. Cashin and Francis were in the photo. "This was meant to show that we were part of a gang, not just a bunch of lads on my birthday."

The prosecution also had a photo taken two years previously of Lavelle Moore in his back garden with an air pistol and a BB gun, which, when the case came to court, they put forward as evidence of bad character. The judge disallowed it, saying: "Bad character evidence should not be used to bolster a weak case" and "you can't make a case on bad character alone".

Lavelle Moore spent 14 months on remand awaiting trial. "It wasn't nice but I didn't let it eat me up." He took the opportunity to study while in prison, having been expelled from school at 16. His mother visited him regularly and they spoke often on the phone. Lavelle Moore says he and his mother hadn't had the best of relationships. "At the time I was a little shit bag. But we connected more when I was in prison. She visited me every week and I rang her every day. I didn't have that bond with her when I was on the other side of the wall. You take it all for granted – freedom, family, friends then when they're taken away, you realise what you have lost."

The trial started on May 20 2013. Three weeks in, Lavelle Moore rose as usual at 5am to get ready to go to court. A guard told him there was bad news, his mother was seriously ill.

Lise had had backache and had lost a lot of weight, which she had put down to stress. But that morning she collapsed and was diagnosed with bowel cancer, which had spread. It was terminal.

The Judge, Justice Royce, allowed Lavelle Moore to visit his mother under police guard. Lise died on June 8.

Four days later Lavelle Moore's legal team put forward submissions to the judge: "Whatever view the Court takes… it is left with no evidence that Ijah Lavelle Moore fulfilled any of the roles for which the prosecution contend. It is submitted that not only is it speculation to suggest that he fulfilled any of the roles identified by the prosecution, but what is more, the existence of any such roles is also speculation."

On June 17 the judge instructed the jury to acquit Lavelle Moore and Francis. "There is a real hurdle in the chain of events," he told the prosecution. "You cannot get Lavelle Moore and Malcolm Francis to Bagthorpe Close or The Hubb [scene of crime]. It is not a case where you can show knowledge that Cashin had a gun. ….. All we have is a chain of inferences and suspicious activity. [There is] no evidence of presence of Malcolm Francis and Lavelle Moore at Meridien court, or Bagthorpe close. …[they are] not on any CCTV. The image of the group on Lavelle Moore's birthday is an inference." They were acquitted.

Lavelle Moore reflects on the experience: "It has changed my life for the better in a way but fucked it up as well. It's bitter sweet, like a fairytale gone wrong, because I got to make a bond with my mum and who knows would have happened if I hadn't been arrested. Everything happens for a reason. But I feel cheated because a year and a half of my life was taken away, and my name was in the papers. People look at me and you can see they're thinking, you got away with it. People judge you and you can't blame them – we all do that. People I thought would have stuck around, didn't. It's made me look at life in a totally different way. I've got to because I haven't got a mum. Readjusting is a big thing. I haven't done 30 years but any time in prison is time in prison. I am trying to take advantage of life, trying make the most of it."

ABOUT THE AUTHORS

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