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Criminal Law News

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Shipping piracy

Four Thai fishermen held captive by Somali pirates for nearly five years have been released after intensive negotiations by the United Nations(UN).

Picture: FV Prantalay 12

These four Thai seamen released recently were among 24 members of the crew on the *FV Prantalay 12*, a Taiwanese-flagged fishing ship which Somali pirates seized five years ago in April 2010. Of these 24 captured Thai seamen 14 were released in the year 2011, six others died from illnesses, and now the remaining four have been released in March 2015. The UN negotiated the release of the four seamen captured five years ago from *FV Prantalay 12*.

Picture: FV Naham 3

The UN reported that Somali pirates still hold 26 other hostages captured from Oman-flagged *FV Naham 3*, since March 2012. Somali piracy has been reduced in recent years due to anti-piracy patrols.

Picture: HMS Dauntless

Included in these antipiracy and maritime security patrols is the recent high-profile British contribution of HMS Dauntless (a Type 45 Destroyer commanded by Adrian Fryer) which was deployed to the Gulf from January to June 2015. Its presence there was to deter piracy and to keep the sea lanes open for free and safe passage of merchant vessels.
ENDS+

R v Vincent Tabak [2011] T20117031-revisited

Sally Ramage

The murder case

Joanna Yeates was a 25 year old woman who was murdered on 15 December 2010. Her body was discovered on 26 December 2010 and on 23 January, her next door neighbour Dr Vincent Tabak, a highly qualified Dutch architect/engineer working in Bristol, United Kingdom, was arrested and charged with her murder. Court 1 was the place of at Bristol Crown Court, Small Street, Bristol. The jury was sworn in a few days before te trial began.

There were no black persons among the jury evn though Bristil has a huge representation of black persons among its citizens.[1] The trial began on Monday 10 October 2011.

The Court

Bristol Crown Court is a modern, busy court.

The Crown Court is the correct jurisdiction for a murder trial. The status, jurisdiction and manning of the Crown Court is governed by the Constitutional Reform Act 2005, section 59(5), and Schedule 11, paragraphs 1 and 26, and by certain sections of the Criminal Procedure Rules 2005. See the Statutory Instrument 2005 Number 384.

Violent crime

Vulnerability to violent crime victimisation varies across the age spectrum. The victimisation rate increases through the teenage years, crests at around age 20, and steadily decreases through the remaining years. This pattern, with some exceptions, exists across all race, sex, and ethnic groups. [2]

The city of Bristol in England, United Kingdom

Bristol is a city in the region of Avon. It is an area of England with much crime. As for sexual related crimes, the following illustrate the problem that Bristol has with sex crimes. On Saturday 1 October 2011, a serious sex assault took place in Bristol between 9.15 pm and 10.30 pm when a woman dressed in 'fancy dress' became separated from a group of friends as they entered a nightclub in Park Street. A man who led her into an alleyway and subjected her to a serious sexual assault then befriended her. Police described the suspect as a '*stocky, broad shouldered, clean-shaven, six foot, and fair- haired, white male, aged in his thirties, with short hair, who was wearing a black bomber jacket and black jeans and who spoke with a local accent'*. This sex assault had occurred in a very busy part of Bristol. On 18 the September 2011, police released news of another sex assault which occurred in an underpass near the Young Men's Christian Association (YMCA) building in Lawrence Hill in Bristol on 18 th September, 2010. The suspect was described by police as '*male, black, bald, skinny, about 5ft 7in tall, has bad teeth and a strong African accent'*.

Joanna Yeates, Landscape Designer

Joanna Yeates was a 25 year old woman who was murdered on 17 December 2010. Dr Vincent Tabak, a highly qualified Dutch architect/engineer, working in Bath, near Bristol, at the international architectural consultants Buro Harrap Ltd, was the second person who was arrested on suspicion of Joanna Yeates' murder. Police charged Dr Tabak on 23 January 2011 with the murder of Joanna Yeates. This was five weeks after the victim had been found dead by a roadside, some two miles from her rented accommodation in Bristol, UK.

[1] Editor, 'Joanna Yeates murder trial: Jury sworn in', *Mirror*, 6 October 2011.
[2] See C.S. Perkins, 'The vulnerability of victims of serious violent crimes', *NCJ*, Issue 163021, July 1997.

Landlord Chris Jeffries arrested on suspicion of murder

At first the Bristol police arrested the landlord Chris Jeffries, (partly because Vincent Tabak and Tanja Morson reported to the police that they saw Chris Jefferies spying through windows and letting himself in with his own keys to Flat 1 where Yeates and Reardon lived). Then later, police arrested and charged Vincent Tabak, who lived with cohabitee Tanja Morson in the Flat next door to Joanna Yeates.

These were the two ground-floor flats and the building also contained two upstairs flats.The main entrance to the two upstairs Flats is a short stairway up to an imposing front door and into a shared foyer. The upstairs Flat on the right is owned by Landlord Christopher Jefferies, a retired English teacher of an English fee-paying school and he had lived in this property since 1990.

On the top floor of the house at 44 Canynge Road lived Geoffrey Hardyman who is a 79 years old. He is the man whose startement was read out in court. It said that he was in bed with a cold on that Friday evening of 17 December 2010 and he heard nothing all of that weekend.

Richard Bland, former head of Clifton College, and Michael and Gillian Woodman-Smith also live at 44 Canynge Road.(Michael Woodman-Smith was a teacher at Clifton College

In the year 2001 Christopher Jeffries had bought the two downstairs Flats for £300,000 each. Jeffries then formed a limited company to handle the tenancy income.[3]

Neighbours to 42 Canynge Road

At 42 Canynge Road lived Peter Stanley. Peter Stanley was the man who had supplied the jump leads for Greg Reardon on the Friday, 17 December, 2010 at around 6pm. Peter Stanley's vehicle was a 'Jeep'. Laurence Penney lived at Clifton Down, Trinmore (Garden Flat) Bristol BS8 3HT.[4]He is said to be a font designer and a world expert in his field..

Newspaper frenzy

This particular murder trial aroused intensive interest and the English newspapers profited hugely from the reporting of this case. Newspaper and television carried this story almost daily from the day that Joanna Yeates was reported as a missing person to the days after Vincent Tabak was convicted of her murder. After the conviction, the newspapers again went wild with salaciuos reports and double page spreads on this case. At trial, the press room was overcrowded.

Joanna Yeates' mother even wore a t-shirt supporting the press. In this murder trial, the majority of the prosecution evidence, apart from the post-mortem, was circumstantial and the only real evidence was the post mortem result and the oral evidence out of the mouth of the defendant himself, who seemed in an automated state and psychiatrically distressed state, in

[3] See '44 Canynge Road Management Ltd, 44 Canynge Road, Bristol, Avon, BS8 3LQ at http://www.landregistrydeeds.co.uk/Property%20Search/Address_Search.php.

[4] See http:// www.alexa.com/siteinfo/lorp.org.

the author's opinion, totally ignored by his defence barrister, William Clegg, QC; by the judge, Justice Field, whilst the prosecuting counsel, Nigel Lickley, QC rudely and crudely, verbally and psychologically badgered the defendant for hours and hours in the witness box.

Voir Dire

The Defence counsel, William Clegg, QC, had earlier pleaded with the judge, Justice Field, to accept the plea of 'manslaughter' but Justice Field was adamant that the charge of 'murder' must remain.

It is to be noted that this point cannot be raised as a 'point of law' for appeal because in *R v Archer* [2011] EWCA Crim 2252, it was held that the judge had not erred in rejecting a submission of 'no case to answer' where there was 'sufficient evidence' for a jury to convict a defendant. In this particular case, a 22 year old man, appealed his conviction for kidnapping. *The appellant had admitted in his evidence that he had lied in his police interview, but he maintained that there had been no discussion or planning in relation to the robbery on the victim, and that he was not involved in any way with it.*

Vincent Tabak, at trial, also maintained that he had not planned to meet with Joanna Yeates that fateful evening when she died. He insisted that Joanna Yeates had invited him into her Flat and that he was forced to put his hand over her mouth to stop her from screaming, thus suffocating her. He explained that all he had done was to attempt to kiss her in her kitchen where they stood chatting for over ten minutes before he moved to kiss her and she screamed.

Judge Field, the trial judge in *R v Vincent Tabak* [2011] refused during the *voir dire* to allow a plea of manslaughter and insisted that the charge of murder must stay. However, in *R v Archer* [2011], paragraph 11 of the Court of Appeal's decision, stated:

> *'The appellant …then gave evidence in line with the defence cases we have already summarised. The appellant admitted in his evidence that he had lied in his police interview but he maintained that there had been no discussion or planning in relation to the. It seems that in the course of his evidence he sought to give the impression that he did not usually behave in the way alleged, which led to the admission into evidence of the fact that he had previous convictions…'*

The point here is that, like the Appellant in *R v Archer* [2011], Vincent Tabak had admitted telling lies during the police interview, *but* unlike the Appellant in *R v Archer, in the course of his evidence, he sought to give the impression that he did not usually behave in the way alleged.* Vincent Tabak was correct in giving that impression, but disregarded by judge and jury.

No previous criminal convictions whatsoever

Indeed, he had no previous convictions for sex offences or for any other criminal offences and in fact was a virgin when he met his then partner Miss Morston. The judge cannot be said to have correctly directed the jury in their conviction of Dr Vincent Tabak for murder, because the trial judge, had been told beforehand by police officers, that a prostitute in Los Angeles had telephoned the Avon and Somerset police to identify Vincent Tabak as her one-time client for prostitution in Los Angeles and requested 'strangulation sex'. This self-

confessed prostitute had neither been sworn in to give witness nor had she been cross-examined, yet the trial judge had decided without a trial that she was telling the truth.

However, whilst *R v Archer* [2011] was an application for leave to appeal, in fact, Vincent Tabak should apply thus, yet no legal counsel has put an appeal forward for Vincent Tabak. In *R v Tabak*, the *only* 'sufficient evidence' came in the form of Vincent Tabak's self-confession. The evidence in the murder trial was wholly circumstantial but for what came out of the mouth of this Defendant, a curious case indeed.

Murder (Abolition of Death Penalty) Act 1965

In English law, it is unlawful to kill a person unless in circumstances where reasonable force was used in self-defence or by misadventure. Murder is unlawful homicide 'with malice aforethought', ie, if the defendant intended to kill that person or intended to cause grievous bodily harm to that person. Murder carries a mandatory sentence of imprisonment for life and murder is triable only on indictment. Hence Dr Tabak's trial by jury in October 2011. The sentence that Dr Tabak received must take account of time already spent in custody on remand, awaiting trial[5].

A miscarriages of justice

With the numerous miscarriages of justice in present day English courts, it is a very good thing that capital punishment has been abolished by the statute Murder (Abolition of Death Penalty) Act 1965, the same statute that imposed a life sentence for murder. This statute, and Article 1 of the Thirteenth Protocol to the European Convention on Human Rights, continues to prohibit any consideration of the re-introduction of the death penalty. A mandatory life sentence means that the sentence of imprisonment is not for a fixed period at the outset. However, the trial judge, after the defendant has been *convicted*, may decide to specify a minimum term to be served and the Home Secretary must release the offender on licence, once the stipulated period of sentence has been served.

Could Vincent Tabak have pleaded provocation?

If Dr Tabak was not drugged in prison and led to say that he 'did it' and 'was sorry' to an unqualified and unlicensed 'chaplain'; if it is true, was he provoked as per the Homicide Act 1957, section 3?

Section 3 states:

> '*Where on a charge of murder there is evidence on which the jury can find that the person charged was provoked (whether by things done or by things said or by both together) to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury and in determining that question the jury shall take into action everything both done and said according to the effect which, in their opinion, it would have on a reasonable man.'*

[5] See the caselaw report of *R v McKenzie* [2011] All ER (d) 143 (Sept).

Section 3 of the 1957 Homicide Act assumes the defence of provocation which reduces murder to manslaughter and which contains a subjective test and an objective test. Provocation is only allowed as a plea if '*there is a temporary loss of self control, rendering the accused so subject to passion as to make him or her for the moment not master of his mind.'*[6]

How might a person lose his self-control?

A person can have a *sudden*[7] *and temporary loss of self-control* through words or conduct of another[8] or self-induced[9]anger[10]despair[11] or frustration[12].

Heated legal debate about sentencing

It is argued that a mandatory life sentence is a fitting reflection of the seriousness of the offence; that it will deter others; and reflect the gravity of murder. Arguments as to sentencing gave rise to a study of the matter and in 1989, the Nathan Committee, a Select Committee of the House of Lords recommended that the mandatory sentence should be abolished and replaced with a maximum sentence of life imprisonment, thus giving the trial judge leeway to adjust the sentence to take account of the circumstances.

Again, in 1993, another committee, the *Lane Committee on the Penalty for Homicide (Prison Reform Trust)* made similar recommendations. However, it was not until the year 2005 that the UK government asked the Law Commission to review the law of murder and in 2006 the Law Commission completed its review and published paper number 304, titled *Murder, Manslaughter and Infanticide.*

In its recommendations, the Law Commission proposed an introduction of a three-tier ladder of general homicide offences to reflect different degrees of culpability and recommended that the mandatory life sentence should only apply to the most serious, first-degree murders.

The Law Commission recommended two degrees of murder. 'First degree murder' would include intentional killings and killings with the intent to cause serious injury where the killer was aware that his or her conduct involved a serious risk of causing death. [13]

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[6] *Duffy* [1949] 1 All ER 932n, CCA.
[7] In this matter, the word 'sudden' does not mean 'immediate'. See Ahluwalia [1992] 4 All ER 889, CA. See also *Attorney General for Jersey v Holley* [2005] UKPC 23, [2005] 2 AC 580.
[8] Ibid [1]
[9] *Johnson* [1989] 2 All ER 839, CA.
[10] *Doughty*
[11] *Morgan Smith* [2001] 1 AC 146 at 168, stated by Lord Hoffmann.
[12] *Ibid 4*
[13] Law Commission No. 304, para.2.69.

Lickley said Tabak looked on Internet for words 'murder' and 'manslaughter'

As to definitions of murder, as Mr Lickley QC alleged that Dr Tabak had searched for on the internet, the definition is contained in the Law Quarterly Review, Volume 104 at page 30[14] *in the year 1988 and the Law Quarterly Review, Volume 105 at 387 in the year 1989*[15]*. something that Vincent Tabak could never have known because he is not a lawyer. Such a spurious link in this murder case is despicable.*

The Law Commission's recommended third tier of murder is a redefined offence of manslaughter, consisting of two offences of manslaughter to replace involuntary manslaughter. These two offences, the Law Commission recommended as being:

'(1) killing another person through gross negligence ("gross negligence manslaughter") or

(2) killing another person:(a) through the commission of a criminal act intended by the defendant to cause injury, or (b) through the commission of a criminal act that the defendant was aware involved a serious risk of causing some injury ("criminal act manslaughter")'

The Jury

Six men and six women were selected after a three-day process to pick jurors for the four-week trial at Bristol Crown Court. Six men and six women were chosen, none being black or elderly. The jury was sworn on 7 October, 2011. **The trial was postponed for a day because Tabak's defence team, led by William Clegg QC, pleaded for time to read an extra 1,300 pages of evidence thrust upon the defence by the prosecution at the last minute.**

The court clerk told the jury that Vincent Tabak was charged with murdering Joanna Yeates between 16 and 19 December last year. He informed the jury that the defendant had pleaded '*not guilty'* and that it was the jury's job to say whether he was guilty or not.

The judge warned the jurors to avoid reading any background material and not to speak to anyone about the case.

When prosecution counsel opened the case, he produced copies of a A3 bound document which consisted of colour-coded pages of the timeline of the alleged murder: every incident from emails, mobile texts, landline telephone calls, travel , shopping, etc of the parties involved , ie. Joanna Yeates and her cohabitee; and

Vincent Tabak and his cohabitee. Importantly, these schedules also included alleged internet searched by Dr Tabak. This A3 document looked dauntingly complex and it is believed that not all members of the jury followed this document; were on the right page and the right time as narrated by prosecuting counsel Mr Lickley. One juror at the end of the front row was almost asleep toward the end of Monday 10th speech by prosecuting counsel; Justice Field yawned several times during that day and it is arguable whether the document was used in **be reproduced in any material form (including photocopying or storing it in any medium**

[14] A paper written by Lord Goff titled 'The mental element in the crime of murder'.
[15] Glanville Williams, 'The Mens Rea for Murder: Leave it Alone'.

by electronic means and whether or not part or at all by the jury, although it appeared to be a very impressive document of listings, as alleged by the prosecution counsel, Mr Lickley. On Wednesday, 13 October 2011, His Honour Justice Field, the jury and a selection of journalists visited the crime scenes, accompanied by police officers.

Jury visiting protocol

After prosecuting counsel had summed up his case against Dr Tabak by mid-morning on Tuesday 12 October 2010, the rest of the day was taken up with agreeing a jury visiting protocol. *There is no precedent jury visiting protocol in the United Kingdom but in cases such as this, a protocol must be agreed between the judge, the prosecuting counsel and the defence counsel.* During the visiting protocol discussion, defence counsel William Clegg QC (of 2 Paper Buildings chambers, London) requested that the jury take note of how many minutes it takes to walk from the Hophouse pub in Clifton, the *Bristol Ram*, to 44 Canynge Road where Joanna Yeates, Greg Reardon, Tanja Morston and Vincent Tabak lived.

Defence counsel William Clegg, QC, also requested that the jury take a particularly close look at the view from Miss Yeates's kitchen window, which looks on to the path to the front door because Dr Tabak had made a statement that Miss Yeates and Dr Tabak first saw each other through this window. Defence counsel William Clegg, QC, also asked the jury to walk from 44 Canynge Road, BS 8 3 LQ, Bristol, to the front door of number 53 Canynge Road in order to ascertain whether, in the jury's judgment, they thought it possible that a scream that was made inside Flat 1, 44 Canynge Road could possibly be heard if you are standing outside number 53 Canynge Street, BS8 3LY, Bristol.

The judge, jury and news reportes visit crime scene

Whilst Justice Field travelled in an unmarked police car, the jury travelled in a secure coach with blacked-out windows, to hide the identification of the jury. The judge and the jury visited the Flat, Flat 1, 44 Canynge Road, Bristol, where Joanna Yeates lived. The six-man, six-woman jury was taken from Bristol Crown Court to key locations in the case.

Press reporters chosen to accompany the party of judge, police and jury, reported that the Flat where Miss Yeates lived has not been tampered with, everything remaining as it was on that night of 17 December 2010, apart from the belongings of Greg Reardon which have been removed. At the time of the murder, the house to the right had scaffolding on and the top two storeys have bathrooms with windows that overlook the front door of Flat One.

With the numerous miscarriages of justice in present day English courts, it is a very good thing that capital punishment has been abolished by the statute Murder (Abolition of Death Penalty) Act 1965, the same statute that imposed a life sentence for murder. This statute, and Article 1 of the Thirteenth Protocol to the 1950 European Convention on Human Rights, continues to prohibit any consideration of the re-introduction of the death penalty. A mandatory life sentence means that the sentence of imprisonment is not for a fixed period at the outset. However, the trial judge, if a defendant is convicted of the offence of murder, can specify a minimum term to be served and the Home Secretary must release the offender on licence, once the stipulated period of sentence has been served.

The Defendant

The accused, Vincent Tabak was in 2011, a 33 year-old professional man – who holds a Doctorate university degree in software programming for architecture and engineering. He is specialist in *people flow engineering*. He denied the premeditated killing of Miss Yeates, whose body was found on a snowy verge on Christmas morning, 25 December 2010.

Dr Vincent Tabak was a recent neighbour of Miss Yeates and her cohabitee Greg Reardon, both employed by an architects's firm in Bristol. Dr Tabak and his cohabitee Miss Morson (a qualified analyst) had been living at Flat 2 of the detached house at 44 Canynge Road, Bristol, whilst Miss Yeates and Mr Reardon had recently moved into the next-door Flat 1 in November 2010. During the time between Joanna Yeates move to 44 Canynge Road and the day before her disappearance, Dr Tabak was out of the country, working in Los Angeles, United States (US). Therefore, Dr Tabak did not know Yeates and Reardon. Dr Tabak returned to the United Kingdom on 11 December 2010. Miss Yeates had taken a few days off at the same time, having had a cold and had returned to work on 14 December 2010.

Greg Reardon

Joanna Yeates' cohabitee, Greg Reardon, had decided to visit his half-brother in Sheffield on the weekend beginning Friday 17 December 2010. Joanna Yeates, as was her usual routine every Friday evening after she finished work, went to *The Bristol Ram*, a public house near her place of work, in order to socialise and have some alcoholic drinks with people she knew. Having imbibed in several alcoholic drinks there, she decided at 8.00 pm to go home and proceeded to walk home in the snow, stopping at one shop to buy two bottles of cider and at another shop to buy one ready-prepared and uncooked pizza.

Greg Reardon was away for the weekend

At 5.00 pm on Friday 17 December 2010, Joanna Yeates'cohabitee, Greg Reardon, travelled to Sheffield (using Yeates' car) to visit his half- brother. He is alleged to have returned home to Flat 1 on *Sunday, 19 December 2010* in the evening at 8.00 pm. As Miss Yeates was not at home he waited, drank a half-empty bottle of cider he saw in the kitchen and cooked a pizza from their freezer, he later told police. He did not contact anybody about Joanna Yeates' disappearance for four hours even though she had not returned any of his mobile pone calls to her made from the Friday to the Sunday evening before he returned home.

Missing person report made Monday 20 December 2010

When she did not arrive back at their Flat at midnight, he telephoned the police to report her as a missing person. He did this at 1.00 am on Monday morning,

20 December 2010. Before he telephoned the police to report Miss Yeates as a 'missing person', he had telephoned his own mother and also Miss Yeates' mother. Miss Yeates' parents lived in Ampfield in the county of Hampshire, England, and they travelled to Bristol, their car journey taking some two hours.

Dr Vincent Tabak's movements

Dr Vincent Tabak returned to the United Kingdom from Los Angeles, US, on Tuesday 14 December 2010. He returned to his usual work routine the following day, Wednesday 15 December 2010, riding on his bicycle from Flat 2 to the Bristol Temple Meads train station where he travelled by train to his place of work in the nearby city of Bath.

On that Friday evening after she returned from the public house and whilst his own girlfriend Miss Marston was attending the annual pre-Christmas party held, at the employer's invitation for all employees of the company she worked for. Dr Tabak's girlfriend had travelled to the Christmas party by coach, arranged for the staff by her employers. Dr Tabak had planned to collect Miss Morston from the coach after midnight on its return at the end of the staff party. Miss Morston owned a grey car, a Renault Megane, which they both used, in a similar way that Greg Reardon and Joanna Yeates used Miss Yeates' car.

Dr Tabak is alleged to have killed Miss Yeates whilst his girlfriend was at Dyson's staff Christmas party; to have gone shopping in an *Asda* supermarket at about 22.30 that evening, having driven around Bristol to look for a suitable place to deposit Miss Yeates' body and having found one, did the deed before collecting his girlfriend from the coach after midnight and returning home, stopping off briefly to buy them both beef-burgers which they ate on their way home in the car, the prosecuting counsel told the court on the first day of the murder trial, Monday 10 October, 2011.

Opening Speech by Nigel Lickley QC

This is what the Prosecuting Counsel, in his Opening Speech, told the Court on the first day of the murder trial, Monday 10 October 2011. His Opening Speech lasted until Tuesday 11 October after Judge Field reminded Lickley QC to make sure his Speech was complete before the end of Tuesday 11 October 2011. During this Opening Speech Mr Lickley used prolific slide shows including many of the same slide of a dead body apparently that of Joanna Yeates. This one can only surmise was done to draw emotion and sympathy from the jury over and over again. Were this a Road Traffic case, one would not have seen a slide show of a dead body repeatedly forced onto the court audience of visitors, press reporters, jury, judge, witnesses and defence legal team in the courtroom.

The Lower Court Trial Judge

The trial judge was Judge Field. During this trial it seemed as if the verdict had already een decided. The judge appeared bored and I can swear that he appeared asleep in parts.

When asked by Defence QC, Mr William Clegg, an internaltionally acclaimed lawyer, whether he had a particular document before him, he replied, that it was in his judges chamer! Also, Judge Field dismissed the jury just before the Defence QC was due to present his opening speech and the court clerk had to quickly message the front lobby to catch them before they departed Bristol Crown Court.

I have never seen such disrespect to a Defence QC in my life. It took about half an hour whilst the court was in recess to settle back the jurors in their places so that the trial could continue.

The Jury

Six men and six women had been selected after a *three-day process* to choosethe jurors for the murder trial at Bristol Crown Court. The jury was sworn-in on 7 October, 2011. The court clerk told the jury that the Defendant, Vincent Tabak, was charged with the murder of Joanna Yeates **between 16 and 19 December 2010**.

The Court Clerk informed the Jury that the Defendant had pleaded '*not guilty'* and that it was the jury's job to decide whether Vincent Tabak was guilty or not. Judge Field warned the jurors to avoid reading any background material and not to speak to anyone about the case. This was a folly, bearing in mind that the jury had been chosen until December 2010 whilst Joanna Yeates death was was heavily publicised in local newspapers, national and international newspapers and on the television in an intensive manner from from 17 December 2010 for the next six weeks until Dr Tabak was arrested and charged at the end of January 2011. Most normal person in the UK would have read and seen salacious publishings about this case on the television, in free local newspapers, and on the Internet much before this jury was chosen on October 2011.

Mr William Clegg QC, Defence Lead Counsel

William Clegg of 2 Bedford Row Chambers in London is one of the best criminal barristers in the United Kingdom. Under his belt are some of the most important criminal cases of this century, namely, *R v S* (acquitted of gang related murder); *R v N Ltd, O & O (*corporate and gross negligence manslaughter plus related health and safety offences, corporate and individual, following death of worker in machine); *R v Patel (*defence of Patel, *a* surgeon charged with manslaughter); *R v Wardell; R v Stagg* (acquitted of the murder of Rachel Nichol); *R v Stone (*charged with the Chillingdon murders (Russell family); and *R v Duckenfield* (defending the police superintendent charged with regard to the deaths at Hillsborough Football Stadium).

2 Bedford Row is indubitably one of the best criminal sets in the country. These barristers work on some of the highest-profile cases in the world. William Clegg's chambers enjoy an unrivalled reputation for providing advice and representation in criminal trials. Recognised for its depth of ability at all levels, Number 2 Bedford Row's service is highly specialised providing insightful advice to those accused of criminal offences together with outstanding advocacy at a criminal trial. Each member of the team strives to ensure that the client is provided with the best possible service. Number 2 Bedford Row chambers pay particular attention to identifying appropriate defences and preparing legal arguments; ensuring compliance with the prosecution's duty of disclosure; first-class court room advocacy; and taking all steps necessary to ensure that the client's best interests are maximised.

The Judge and Jury, Police, and Press reporters visited places as part of murder trial

On Wednesday, 13 October 2011, His Honour Justice Field; the jury; and a selection of journalists; visited the crime scenes, accompanied by police officers and including the Flat where Joanna Yeates and Greg Reardon, her cohabitee, lived . The six-man, six-woman jury was taken from Bristol Crown Court to key locations in the case. The jury retraced the route Joanna Yeates allegedly took that evening of 15 December 2010- up Park Street and past the Bristol Ram public house, where she had met work colleagues and had had a few drinks with them The judge and the jury also visited the Waitrose grocery shop Miss Yeates had visited, as well as the Tesco Express grocery shop where she bought a pizza on her way home on Friday evening 17 December 2010.

This court visit included:

1. Flats 1 at 44 Canynge Road, the place where Dr Vincent Tabak and his cohabitee lived;

2. Flat 2 at 44 Canynge Road, the place where Joanna Yeates and Greg Reardon lived;

3. 53 Canynge Road, where a party was held on the night of 17 December 2010 (and a witness claimed to have heard screams);

4. Percival Court (adjacent to the rear of Miss Yeates's Flat because a witness from that building claimed to have heard screams that night);

5. Longwood Lane in Failand, North Somerset where Joanna Yeates's body was allegedly found on 25 December 2010.

Whilst Judge Field travelled in an unmarked police car, the jury travelled in a secure coach with blacked-out windows- to hide the identification of the jury.

Press reporters had been chosen to accompany the party of judge, security police and jury. Newspapers and television news reported that the Flat where Joanna Yeates lived '*had not been tampered with, everything remaining as it was on that night of 17 December 2010'*. This was not a proven fact because Greg Reardon had been in the Flat for four hours before he reported to police that Yeates was missing. He had moved items; he had eaten; he had tidied up; he had attended to the per cat; he had found Yeates earrings-one on the bed and another elsewhere; he had continued to live in the flat; he had taken showers; he had cooked meals, etc. *Yet some of the press photographs, **now taken down from the Internet,** had shown that the police had fingerprinted the whole of the bathroom and the kitchen.*

Visiting Protocol agree in Tabak trial

During the visiting protocol discussion, defence counsel William Clegg QC, made several documented requests:

1. He requested that the jury take note of how many minutes it takes to walk from the Hophouse pub in Clifton, *The Bristol Ram*, to 44 Canynge Road where Joanna Yeates lived.

2. He requested that the jury take a particularly close look at the view from Miss Yeates's kitchen window, which looks on to the path to the front door because Dr Vincent Tabak had made a statement to Somerset & Avon police that Miss Yeates and Dr Vincent Tabak first saw each other through this window on that Friday evening as he walked to the front gate to drive in his car to Asda shop. [16]

3. Defence counsel also asked the jury to walk from 44 Canynge Road to the front door of number 53 Canynge Road in order to ascertain whether in the jury's judgment they thought it possible that a scream that was allegedly made inside the Flat of number 44 could possibly be heard by the party-goer standing outside number 53 Cangyne Street, Bristol.[17]

Jury sent home for the rest of the day 13 October 2011

Following the site visits, the jurors were sent home for the day and trial continued in Court 1, Bristol Crown Court, the following day, 14 October 2010.

The Defendant, Dr Vincent Tabak

The accused, Vincent Tabak, aged 33 had denied the premeditated killing of Miss Yeates, whose body was found by dog walkers on a snowy verge on Christmas morning, 25 December, 2009.

The prosecuting counsel claimed that Dr Tabak, who lived in the ground-floor Flat adjoining Miss Yeates's home in Clifton, Bristol, murdered the 25-year-old woman after she returned home from having festive drinks with colleagues on Friday 15 December 2010.

Her cohabitee Greg Reardon had gone to Sheffield for the weekend to visit his brother for the weekend. JoannaYeates and Greg Reardon had planned to spend Christmas holiday 2010 with Yeates' parents.

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[16] It was alleged that her kitchen roller window blind had been broken for some time and therefore permanently left up. One would instinctively look towards a lit window in the cold dark snowy evening of 15 December 2010.

[17] In fact, television news and newspapers showed a clip from an off-licence shop showing this witness buying alcohol (presumably to take to the party at 53 Canynge Road). She was wearing her hair down over her ears and she was wearing a thick woollen winter hat. Could she have heard anything?

Salient points in this trial

1. Neighbours at a party said that they had heard screams on the night of Yeates' death. A priest is alleged to be the last person to see Yeates alive outside of her home.
2. Yeates had allegedly consumed a plate of chips at lunchtime. The post-mortem examination allegedly found no food in her stomach.
3. Prosecuting counsel told the court in his Opening Speech that Dr Vincent Tabak had accused the forensic science service of forgery and corruption.
4. The prosecuting counsel alleged that Dr Vincent Tabak had searched the Internet for information about murder and manslaughter sentences.
5. Lickley, prosecuting counsel said that at some point during the evening of Friday 15 December 2010, Dr Vincent Tabak had moved Joanna Yeates' body, put her in the boot of his car and left the body at Longwood Lane.
6. A forensic examination of the scene where Yeates' body was found allegedly located Yeates' blood on a wall of a neighbouring quarry.
7. Prosecutor concluded that Dr Vincent Tabak tried to lift her corpse to throw the body into the quarry over the wall.
8. Nigel Lickley, QC his story by saying that in the days after Yeates' murder, Dr Vincent Tabak attended parties and dinners and coolly maintained the pretence of a worried neighbour.
9. Differences of Documentary and Real Evidence
   In general, the construction of documents is a matter for the jury[18] except documents, which are binding agreements between parties and all forms of legislation.[19]The effective definition of hearsay is in section 114(1) of the UK Criminal Justice Act 2003:*'A statement not made in oral evidence in the proceedings'.* Therefore any statement in a document will be hearsay and inadmissible if the purpose for which it is sought to tender it in evidence is to rely on the truth of the statement, unless the document can be brought within one of paragraphs (a) to (d) of subsection 1 of section 114 Criminal Justice Act 2003.
   Documents including Internet documents. Where public documents or private documents are being considered in a court trial, two issues arise: (1) How may the document be proved? This includes questions such as whether a copy will suffice, whether *parol evidence* of the contents may be given and how to prove the execution of a private document. (2) Once the document has been proved or secondary evidence of its contents given, what use may be made of the contents? It is only in relation to the second issue that the matter of hearsay arises. If objection is successfully taken to the admissibility of a document on the ground of hearsay, then,

[18] See *R v Adams*, The Times, January 28, 1999.
[19] See *R v Spens*, 93 Cr. App. R. 194, CA).

it must not be put in evidence at all. Questions of hearsay usually arise in the context of private documents. Public documents can be regarded as constituting in themselves *an exception to hearsay rule.* [20] The common law is supplemented by a mass of legislation making specific provision for the admissibility in evidence of particular categories of document, or of copies thereof. Many statutes also make specific provision as to the use, which may be made of the documents in question. It is in the case of *private documents* that the purpose for which the documents are being tendered has to be identified. Often, the documents are being put in evidence for a reason, which has nothing to do with the hearsay rule. Correspondence with the defendant is an obvious example.[21] The witness may exhibit a letter written by the witness to the defendant. Its significance is that it is what was said to the defendant. The letter may contain assertions of fact. Putting it in evidence does not make it evidence of the truth of those assertions. That is hearsay. If the matter is within the knowledge of the witness he may, of course, give direct evidence thereof. This assumes that the document in question can be properly proved and that there is no other reason for its exclusion. Examples would be that the letter contained assertions of fact prejudicial to the accused, which could not be supported by other admissible evidence, or, that it contains prejudicial and irrelevant material, such as the author's knowledge of the accused's previous convictions. In either case, editing might solve the problem. These are matters *for the discretion of the judge*: they have nothing to do with the principle of hearsay. Apart from cases such as correspondence, where it is the fact of the document's existence and what was done with it, or what happened to it that is relevant and which do not constitute an exception to the hearsay rule (because they are not being included to prove the truth of their contents) there is another class of document where no question of hearsay arises. This comprises documents that constitute 'real' evidence. The principal statutory exceptions to the hearsay rule in relation to private documents are the Bankers' Books Evidence Act 1879 and the Criminal Justice Act 2003. The presence of a document at a particular location together with the word or words upon it may often be of evidential significance. The judge said in *R v Romeo* [1982] 30 S.A.S.R. 243:

'Sometimes it is possible to avoid] the hearsay rule by showing that a statement made in a document is being used as an original and independent fact for instance, that a person who made use of the document had certain information in his possession at a relevant time - and not as evidence of the facts stated. It is always important therefore, whenever an objection is taken on hearsay grounds, to ascertain for precisely what purpose the evidence is being tendered. It may be hearsay for one purpose and not, and therefore admissible, for another'.

Police computer expert showing pages allegedly clicked by Tabak

In order to put a document in evidence as 'real evidence' *a sufficient foundation* must be laid to link the defendant to the document. *It is only relevant if he were the author of the document* or was in possession of the printed contents of the webpage or was in some way connected to the website document viewed by millions of people. *There must be prima facie evidence that he was in some other way connected with it.* [22]

[20] See *Sturla v Freccia* (1880) 5 App. Cas. 623, HL; *Irish Society v Bishop of Derry* (1846) 12 Cl. & F. 641. See also *Wilton & Co v Phillips* (1903) 19 T.L.R. 390.
[21] See *R v Rouse* [1957] Crim. L. R. 112, CCA.
[22] See cases of *Howey v Bradley* [1970] Crim.L.R. 223, DC; *R v Horne* [1992] Crim.L.R. 304 and *R v Podmore*, 22 Cr. App. R. 36, CCA.

Website pages admitted as prosecution evidence

Where the prosecution are in possession of a potentially incriminating document, the provenance of which they can prove but the contents of which they cannot prove against the defendant as part of their case, the document can still be used. The appropriate procedure is for the finding of the document to be proved as part of the prosecution case with no reference to the contents (to give notice to the defence of the use, which might eventually be made of the document).

However, website pages cannot be proved unless the prosecution can also within the case bring *witnesses who wrote the pages* in order to prove their reliability. There are millions of rubbish pages on the Internet.

If the Defendant is called to give evidence, he may be asked if he was aware of the document and of its contents; if he answers in the affirmative, he may be asked about the meaning thereof. [23] As Dr Tabak is not a lawyer, he cannot give legal scholarly explanations as to the nuances of the words contained in the law.

Absence of an entry in a particular record

Where it is the absence of an entry in a particular record that is relied on, the record itself may be regarded as 'real evidence.' To have any evidential value, however, it will have to be properly produced by a person responsible for maintaining it who can explain the significance of the entries and omissions.[24]

Computers

Information obtained from a computer, whether printed out or read from a display, may be divided into three categories: (1)The first is where the computer has been used simply as a calculator to process information. [25] (2) The second category is information, which the computer has been programmed to record.[26] Apart from the programming, installation and maintenance of the computer, there is no human input in the information produced. (3) The third category is information recorded and processed by the computer, which has been entered by a person, whether directly or indirectly. It is only information from a computer in the third category, which is hearsay, and to be admissible, it must be brought within one of the exceptions to the rule against hearsay[27]. The computer output in the first two categories is sometimes referred to as 'real evidence'.

10. ABUSE OF PROCESS

To use this law to cause the conviction of Dr Vincent Tabak in a serious trial as a murder trial is an ABUSE OF PROCESS and a judicial review should be applied for

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[23] As in *R v Gillespie and Simpson*, 51 Cr.App.R. 172, CA; and in *R v Cooper* (W.J.), 82 Cr.App.R. 74, CA (letter signed in the name of the defendant and his wife, but in the handwriting of his wife only); also in *R v Cross*, 91 Cr.App.R. 115, CA (note of a telephone call between the defendant and another, made by the other).

[24] See *R v Patel*, 73 Cr.App.R. 117, CA (for the purpose of proving that a named man is an illegal immigrant it is insufficient for an immigration officer to state that he has examined the Home Office records; it is necessary for an officer responsible for the compilation and custody of the records to testify as to the method of compilation and as to it being such that if the man's name is not there, he is an illegal immigrant). See also *R v Shone*, 76 Cr.App.R. 72, CA.

[25] *R v Wood (S.W.),* 76 Cr.App.R. 23, CA. See also *Sophocleous v Ringer* [1988] R. T.R. 52, DC.

[26] See *R v Pettigrew*, 71 Cr.App.R. 39, CA (recording of serial numbers of bank notes); *R. v. Spiby*,91 Cr.App.R. 186, CA (recording of details of outgoing telephone calls from hotel rooms); and *R(O) v Coventry Magistrates' Court* [2004] Crim.L.R. 948, DC (computer printout with breakdown of defendant's attempts to enter a website and of charges to be made to his credit card).

[27] As to which, see the Criminal Justice Act 2003, s. 129.

on this point. *This law is intended to be used for accounting and banking transactions and not murder.*

Evidence will go to weight unless unreliability is proved

Prior to the repeal of section 69 of the Police and Criminal Evidence Act 1984 by the Youth Justice and Criminal Evidence Act 1999, s. 60, it was necessary to prove the reliability of the computer before any statement in a document produced by a computer could be admitted in evidence. This applied whichever category the information fell within. [28]The repeal of section 69 means that any evidence pertaining to the reliability of a computer will go to weight. In the absence of any evidence to raise the issue of reliability it would seem that the maxim *omnia praesumuntur rite esse acta* will apply. *Omnia praesumuntur rite esse acta*is a maxim of law that '*omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium'*, upon which ground, until the contrary is proved, it will be presumed, *even in a case of murder*, that a man who has acted in a public capacity or situation was duly appointed, and has properly discharged his official duties.[29] See other caselaw *Campbell v. Wallsend Shipway and Engineering Co. Ltd* [30]and *Gage v Jones.* [31]

This principle will not operate so as to prove a fact, proof of which is central to an offence. In the case *Dillon v R* [32]on a charge of negligently permitting escape, the fact that the prisoner was in lawful custody is an essential ingredient of the offence.

Computer printout with no hearsay element

In a commentary on *Shephard* ([1993] Crim.L.R. 295 at296), a situation was identified where it was sought to put in evidence a computer printout, and in which there is no hearsay element. This is where the printout is the fact to be proved.

It is not relevant in the Tabak case.

Such a situation is exemplified by *R v Governor of Brixton Prison, ex parte Levin*[33] in which it was held that where a bank's computer transfers funds from one account to another (as a result of a payment request by a customer made via a computer linked to the bank's computer) and the computer records the transaction automatically, a print-out of the record is not a hearsay assertion that the transfer occurred; it is a record of the transfer itself; production of the record is evidence in proof of the transfer with no hearsay element involved. In *ex parte Levin*, it was assumed that section 69 of the 1984 PACE would have to be complied with. In such a case, the reliability and accuracy of the computer are obviously relevant. In other cases, however, they have no relevance at all. The significance of the computer generated document lies not in its accuracy, but in the defendant's behaviour in relation to it.

In this lower court trial, *R v Vincent Tabak*, Dr Tabak merely looked at a webpage, if his defence expert witness can confirm in the affirmative. *The prosecution could have*

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[28] *R v Shephard* [1993] A.C. 380, HL.

[29] See R. v. Gordon(1789) 1 Leach 515; R. v. Rees(1834) 6 C. & P. 606; R. v. Jones(1806) 2 Camp. 131; R. v. Verelst(1813) 3 Camp. 432; R. v. Murphy(1837) 8 C. & P. 297; R. v. Catesby(1824) 2 B. & C. 814; R. v. Newton(1843) 1 C. & K. 469; R. v. Townsend(1841) C. & Mar. 178; R. v. Cresswell(1876) 1 Q.B.D. 446; R. v. Manwaring(1856) Dears. & B. 132; R. v. Stewart(1876) 13 Cox 296; and R. v. Roberts(1878) 14 Cox 101, CCR.

[30] [1977] Crim.L.R. 351, [1983] R.T.R. 508, DC (proof that a constable was in uniform).
Kynaston v DPP, 87 Cr.App.R. 200, DC (proof of 'reasonable grounds for suspicion' under the Police and Criminal Evidence Act 1984).DC. In *Campbell*, the court held that the presumption applied to the validity of appointment of a Health and Safety Inspector and could not be weakened by mere challenge.

[31] [1983] R.T.R. 508, DC. Proof that a constable was in uniform.

[32] .[1982] A.C. 484, PC.

[33] [1997] A.C. 741, HL.

made it all up unless defence experts were allowed to examine it. It is much too late now that all the metadata has been altered and so this evidence should have been excluded.

11.The relevance of police assertion that Tabak viewed Internet pages

Dr Tabak, even if he did look at Internet pages: He did not print them. He did not use them. He did not act on the information in them. He did not act in response to them. He did not annotate them.

It is the defendant's *behaviour in relation to the printout* that is important; as such, there is no hearsay element involved and no reliability issue.

But as Dr Tabak did not print out this information, this is not relevant to his case. Behaviour, as the prosecution counsel alleged in his Opening Speech, does not constitute what normal professional people living next door would email each other about. There are millions of people in the UK who are keen followers of true-crime-whose shelves are filled with true-crime books – does that make them murderers?

12. Proving a document- Procedure

The appropriate procedure is for the finding of the document to be proved as part of the prosecution case with no reference to the contents (so as to give notice to the defence of the use which might eventually be made of the document).But website pages cannot be proved unless the prosecution can also within the case bring witnesses who wrote the pages in order to prove their reliability. there are millions of rubbish pages on the internet. If the defendant gives evidence, he may be asked if he was aware of the document and of its contents; if he answers in the affirmative, he may be asked about the meaning thereof as in the following caselaw:[34]**As Dr Tabak is not a lawyer, he cannot give legal scholarly explanations as to the nuances of the words contained in the law.**

13. Information obtained from computers

Information obtained from a computer, whether printed out or read from a display, may be divided into three categories. The first is where the computer has been used simply as a calculator to process information.[35]

14.In the absence of any evidence, to raise the issue of reliability it would seem that the maxim *omnia praesumuntur rite esse acta* will apply.

15. Computer print-out with no hearsay element

In a commentary on *Shephard* [1993] Crim.L.R. 295 at296 , another situation was identified where it is sought to put in evidence a computer print-out, and in which there is no hearsay element. *This is where the print-out is the fact to be proved.*

It is not relevant in the Tabak case because one cannot prove retrospectively, intention to murder by looking at a webpage. Such a situation is exemplified by *R. v. Governor of Brixton Prison, ex p. Levin* [1997] A.C. 741, HL, in which it was held that where a bank's computer transfers funds from one account to another (as a result of a payment request by a customer made via a computer linked to the bank's computer) and the computer records the transaction automatically, a print-out of the record is not a hearsay assertion that the transfer occurred; it is a record of the transfer itself; production of the record is evidence in proof of the transfer with no hearsay element involved.

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[34] *R v Gillespie and Simpson*, 51 Cr.App.R. 172, CA; *R v Cooper* (W.J.), 82 Cr.App.R. 74, CA (letter signed in the name of the defendant and his wife, but in the handwriting of his wife only); *R. v Cross*,91 Cr.App.R. 115, CA (note of a telephone call between the defendant and another, made by the other).

[35] *R v Wood (S.W.)*, 76 Cr.App.R. 23, CA. See also*Sophocleous v Ringer* [1988] R. T.R. 52, DC.

16.Significance of computer document is the defendant's reaction to it

In *ex parte Levin*, it was assumed that section 69 of the 1984 PACE would have to be complied with. In such a case, the reliability and accuracy of the computer are obviously relevant. In other cases, however, they have no relevance at all. The significance of the computer generated document lies not in its accuracy, but in the defendant's behaviour in relation to it.

In this case, Dr Tabak merely looked at a webpage. The prosecution could have made it all up unless defence experts were allowed to examine it. It is much too late at trial, and so this evidence have should be excluded. Prosecution team handed Defence team 2000 pages of disclosure on morning of trial. This is unacceptable and springing a surprise tactic like this is almost criminal. There should be a retrial.

ENDS+

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