

RACISM, POLICE AND COURTS IN SCOTLAND

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INTRODUCTION

1999 should be remembered as a vintage year in the ethnic history of Scotland because the issue of racism came closer to the centre of the political stage than ever before. In February the report of the Stephen Lawrence Inquiry was published and the Home Secretary made clear that he required a response from Scotland as well as England and Wales. In May, the Scottish parliament was elected without a single member of black and minority ethnic origin and the president of the Association of Chief Police Officers in Scotland admitted that Scottish forces were a long way from eliminating racism in their dealings with the public. In June, the Lord Advocate admitted that the prosecution service was failing ethnic minorities. In August, the new Justice Minister released his Action Plan response to the recommendations made by Sir William Macpherson in the Stephen Lawrence Inquiry. Members of the Scottish Parliament responded to the protest campaign which was gathering considerable momentum and began to ask questions about the case of Surjit Singh Chhokar. Gordon Jackson, Q.C., the MSP for Govan, one of the most sensitive constituencies in Scotland, refused to acknowledge a conflict of interest between his parliamentary role and his brief as defence counsel in the forthcoming second Chhokar trial, but stood down.

There is a strong possibility that the Chhokar case will prove to be as much of a cause celebre in Scotland as the Stephen Lawrence case in England. Surjit Singh Chhokar was stabbed to death in the street outside the house of his girlfriend on 4 November 1998. Three men were arrested, but only one was brought to trial in March 1999 and convicted of assault. Lord McCluskey, the

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presiding judge, criticised the prosecutor's handling of the case, saying he could not understand why only one accused had been brought to trial. The Lord Advocate responded by stating that Lord McCluskey's comments were ill-advised and ill-informed. Four months later, in July, the Crown Office announced that two other men had been charged with murder. By the end of 1999, the second trial had still not started.

The precise detail of what went so badly wrong will only be available after the second trial has closed. But what is clear is that the issue of racism has hit Scotland's criminal justice system at the precise historical moment when Scotland has assumed greater control over its own affairs and proclaimed its commitment to social inclusion and equality. Moreover, the points of weakness which have been exposed lie within the courts.

Why has the issue of racism hit the courts so hard? In this article two components of relevant history are explored – police recording of racial incidents since 1988 and five murder trials in which the victims were Asian, Jamaican and Somali. The police statistics indicate that there has been progress towards understanding the ways in which racism impacts on minority communities and the need for effective response. The murder trials indicate that there has been a hardening of attitude in the direction of denying racist context among some senior lawyers.

FORENSIC SKILL - ANALYSING THE RACIST CONTEXT OF CRIME

The starting point for the forensic science of analysing racism is the suspension of disbelief. Police officers and lawyers in Scotland are massively, overwhelmingly white, and they simply cannot rely on their innate common sense to identify and assess racism. Forensic skill is honed through knowledge and experience. Neither police nor lawyers have been taught and examined on the facts of racism in Scotland and relevant case history. Indeed they have even less factual data on which to draw than their counterparts in England and Wales because Scotland has not undertaken the ethnic monitoring of crime. Moreover, the knowledge gap cannot be filled through experience for the simple reason that white people do not experience racism in the same way as people of colour.

The experience of everyday harassment, in addition to any other disadvantages which black and minority ethnic people share with their white neighbours, is a fact of life which police and courts must grasp. The debilitating misery which results from the seemingly trivial, but frequently

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occurring, forms of behaviour such as racist name-calling and 'joking' lowers the quality of life for the targets, causes loss of confidence and generates fear and distrust, not just of the 'jokers', but also of the authorities if they fail to recognise or respond to what is happening.

Gordon Allport demonstrates in his influential study **The Nature of Prejudice** (1954) that racist name-calling, verbal rejection, even when it occurs in an environment where banter is common, creates a fertile environment for other forms of racism. Racist name-calling is usually associated with avoidance - distaste not just for particular individuals but for their ethnic group, whether neighbours, clients, customers, colleagues, or even strangers. If there is avoidance and distaste, then discrimination is likely because there will be a consensus, often unspoken, that the targeted groups do not deserve the same facilities or opportunities as others. If avoidance and discrimination are tolerated, then feelings against the targeted ethnic groups can be used to motivate and justify attack, on the property (the house or shop) of the avoided group, or on individuals, often picked out at random, unknown to their assailants.

Allport's study focused attention also on the serious commitment of some organisations and individuals to the causes of white supremacy and race hatred. Within Scotland the malign presence of extremist organisations has been noted on several significant occasions. In 1991 a cell of the British National Party moved into the Muirhouse housing scheme in Edinburgh in an attempt to inflame tensions around the few black and Asian families living in a mainly white estate. In 1993 the Scottish organiser of the British National Party launched a recruiting drive in Falkirk, Perth and Dundee where there had been outstandingly serious community tensions. While careful to curb the rhetoric in their newspapers so that they stay within the terms of the 1986 Public Order Act, they move swiftly into any locale which they consider ripe for agitation.

Allport maintains that if race haters achieve positions of power, above all state power, they ensure that popular action is incited, encourage mob violence and implement draconian measures of discrimination. Examples of the effectiveness of the race haters abound in European history. Over the centuries there have been waves of mob violence and persecution against the two oldest indigenous minorities - Gypsies and Jews - culminating in the 19th century pogroms of eastern Europe, and the Nazi Holocaust. But hatred has been propagated against other ethnic groups who are 'racialised' for political ends. The most recent and shocking examples have been within the former Yugoslavia (where, yet again, Gypsies have been repeatedly attacked within

the different war zones) and the central Asian republics of the former Soviet Union.

There is a gulf in experience and understanding between people in positions of power, authority and influence in Scottish society, and the ethnic minority communities who are subjected to racist abuse. This gulf may be based on disbelief that there can be anything in Scotland which bears any resemblance to the horrors unleashed by the regimes of Hitler and Milosovic. Nonetheless, whatever its base, the disbelief leads to denial - the refusal to acknowledge that people of minority communities are being picked out commonly, persistently, even systematically, for harassment. The disbelief also leads to ignorance about the connections between everyday harassment and attacks that sometimes result in murder.

In Scotland, a widespread assumption is that race haters are few and far between. Therefore, according to Scottish reasoning, there must be little racism. The likelihood that Jews are still subjected to offensive or abusive behaviour, and may indeed be harassed or attacked, is not taken seriously in spite of graffiti and literature displaying swastikas:

I noticed that the outside light was on. It had been triggered by two young men and a dog in the street outside. I went to look and found the following inscription on the fence: 'F--- (swastika) ALDOF: GO HOME KRAUTS: GO HOME FRITZ'

(A retired couple in Tayport, quoted in Fife 1991)

The fact that Traveller and Gypsies are commonly disliked and stigmatised as anti-social is tolerated without being understood as a warning sign of their status (Fonseca 1995). And who is making the connections between the origins of minority communities in the countries of the former British Empire and the history of Scots in those same countries? Is it not possible, indeed likely, that Scottish experience of domination overseas has persisted in attitudes of white supremacy at home (Maan 1992)?

The incidents reported by people of the minorities may not be 'serious' for police and courts attuned to dealing with thousands of breaches of the peace, and hundreds of assaults resulting from conflict between neighbours, shop theft, pub brawls and street fights between youths. But they are deadly serious for the fearful victims of crime who lose confidence and withdraw into themselves if their experience is denied. For people facing racism every day of their lives, the racist context to their peace being breached must be acknowledged.

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A survey by the Scottish Ethnic Minorities Research Unit of 100 people of minority ethnic origin in Glasgow in 1986 found that 49% of Pakistanis and 55% of Indians had experienced damage to their property; that over 80% of both groups had experienced racial abuse; and that 18% of Pakistanis and 22% of Indians had experienced physical attack (Walsh 1987). In June 1999, Harris Beider, chief executive of the Federation of Black Housing Associations, summarised the findings of research carried out in Belfast, Cardiff, Glasgow and London in **The Herald**:

I wanted to believe that Scotland did not have the same problems as the rest of the UK because I know the Asian community is well-established. We found exactly the same sort of harassment in Glasgow as in Hounslow. It does not usually result in a brick through a window or murder, but it is a daily occurrence, even for young kids. The statutory agencies have failed black Scots in Glasgow. Victims of abuse are let down by the way their complaints are dealt with.

Recognition of racist context is primarily a matter of human rights, but is also an essential forensic tool. Racist attacks do not occur at random in a vacuum, even when the victims are unknown to their assailants. Why? Because the assailants themselves have moved from abuse to harassment. Indeed, they may be associated with white supremacist organisations, such as the BNP. The forensic tool is highly developed within minority communities who know how to read the signs. If their knowledge and insight is put aside, then vital police intelligence is lost and further crimes are committed. If the courts fail to take account of the racist context of a crime in their judgement and ultimate disposal, then an injustice has been done and will be remembered. So have the police been learning the forensic skills?

RACIAL INCIDENTS: THE CONDUCT OF THE POLICE

The Stephen Lawrence Inquiry is the second occasion on which British politicians have been jolted so severely that they have intervened to force the pace of change within the police. The first was in 1981 when there was widespread disorder and rioting starting in Brixton and spreading to major cities in England and Wales. The rioting was aimed particularly at the police, indicating a gulf in confidence and persistent accusations of police brutality. Lord Scarman was appointed to investigate and to make recommendations for change, but his report failed to have far-reaching impact, even after there was further rioting in 1985.

However, in the aftermath of his inquiry, the police throughout Britain adopted a straightforward definition of what comprises a 'racial incident':

Any incident in which it appears to the reporting officer or investigating officer that the complaint involves an element of racial motivation. Or any incident which includes an allegation of racial motivation made by any person.

This definition was to have increasing effect because it overrode the discretion of police officers to decide whether an incident is, or is not, a racial incident. This intrusion into professional discretion was accepted by the Associations of Chief Police Officers because they had to acknowledge that there was a considerable problem. Minority communities complain of persistent harassment, persecution and attack. Police officers, usually white, consistently play down the 'racial' element in incidents. Police disbelief causes communities to lose confidence in the authorities and to stop reporting crime. Lord Scarman realised that a drop in community confidence affected police intelligence and contributed to spiralling problems of law and order. The decision to insist on such a simple definition, and to require annual reporting of racial incidents, was not taken lightly.

Scottish Police have been reporting annual statistics on racial incidents since 1988 (summarised in the Appendix to this article) and these data reveal important developments:

- ◀ In 1998 the Scottish total of 1271 incidents was more than four times greater than the 299 in 1988
- ◀ The most marked increases in the Scottish total occurred in 1990 when Lothian and Borders' total doubled and Tayside's quadrupled, and 1997 when the figures for Strathclyde doubled
- ◀ Dumfries and Galloway started reporting in 1994, but their figures have not steadied
- ◀ Fife's figures have varied around a mean of 40 since 1991
- ◀ Grampian's figures rose to 20 in 1992, then to 60 in 1998
- ◀ Northern recorded only one racial incident in 1995, but 15 in 1998
- ◀ Central's figures increased by 50% in 1998

These details reflect changes in police practice as officers become aware of the importance of recording racial incidents. For instance, the 1990 rise in Lothian and Borders resulted from new procedures introduced by the Chief Constable in the aftermath of the death of Axmed Abuukar Sheekh and the

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initial refusal to acknowledge that his murder should be classified as a racial incident (see discussion below). Once he was persuaded, he responded by implementing new procedures and the figures doubled within a year (from 91 in 1989 to 178 in 1990). In Strathclyde, the figures defied common sense for a region with two-thirds of Scotland's black and minority ethnic population. In 1997, the Chief Constable instituted measures to improve reporting; within nine months the figures increased by 61%. Commenting on this change, the Chief Constable pointed out that the rise in the figures was matched by a rise in the rate of detection – a sign that the complaints were being taken seriously. The same has been claimed for the 1998 increase in Central.

The recording of racial incidents has no intrinsic value of its own. As a procedure it gains value only as an indicator of local developments or as a catalyst for change. When it was first instituted in Scotland, it was viewed by many police officers as a token exercise, a politically expedient gesture imposed by Westminster. Their resistance is indicated by the initial failure of some police services - Dumfries and Galloway, Fife and Northern - to report any racial incidents at all, and by the low level of reporting of others. Their change of heart is revealed by the rise in reporting - when new chief constables were appointed, or senior officers were convinced about the importance of the procedure.

Statistics that are monitored gain a ratchet effect over time. They can be used to ask questions, about the relative performance of different divisions within one police force, between police forces, and about what happens to the 'racial' tags attached to reports given to procurators fiscal. In 1994, Crawford Gordon, then secretary of the District Courts Association, complained that cases were being brought to court without sheriffs being made aware that the alleged offences were racially motivated. He stated that if they had been aware of the racist context of the incidents, then there would have been different sentences. Within Strathclyde, a watchful divisional commander tracked the cases which he had tagged as racial incidents and challenged the procurator fiscal to explain why the tags had been ignored when deciding on disposal.

But most importantly of all, reports of racial incidents should change awareness of the racist context of crime because they generate data that can be analysed for indicators of trouble in particular neighbourhoods. For instance when Muirhouse became the focal point of BNP activities, their presence was indicated after the event by a rise in reports of racial incidents (Lothian and Borders 1991) and the same occurred after racial harassment peaked in Maxwelltown, Dundee (Tayside 1993). Indeed it could be argued that community tensions rose so high in the hotspots of Muirhouse and

Maxwelltown precisely because the local police were not yet attuned to gathering this form of community intelligence.

A member of the Asian community, Mr Mohammed Bhatti, said that he was at the end of his tether after the fourth break-in in less than two months. In 14 years he says that neither he nor his family had experienced racism of any note, apart from the odd nasty comment. The trouble began last month. Between June 2 and 5 the garage was broken into three times, then again on Sunday. Each time the family's two cars had been damaged. Responding to the situation, Chief Superintendent Bob McMillan said: 'We can confirm that a number of incidents have taken place. We have made contact with Mr Bhatti and are arranging for crime prevention advice to be given'.

(The Courier and Advertiser)

Mr Bhatti was quite clear about the warnings he was giving the police – he was attuned to the signs that even more serious trouble was likely. But his information was not translated into criminal intelligence.

His frustrating, and ultimately dangerous, experience of not being taken seriously by the police was shared by his compatriots in Fife. In 1991, a survey of 40 individuals commissioned by Fife Regional Council reported the following (FRC 1991). Twenty-eight believed that they had been the victim of racist incidents, and 13 stated that they were the victims of regular racist incidents. Only seven had reported incidents to the Police. Twelve of those interviewed said that they were dissatisfied with the police response to racism; only three had made a complaint against the police. One man reported how he had telephoned the police three times, but got no response. He stated that he ran to the police station himself and was told that no-one was available to help. Another who reported trouble from teenagers hanging around his shop was asked 'where do you expect them to go?'

One testimony amounted to 21 hand-written A4 pages cataloguing a series of events across the years and ending with a plea:

It won't ever stop until people who aren't racially harassed/abused start taking notice and realise that there is a very large and serious problem in Fife. People who are racially harassed/abused nearly always don't report it, because nothing gets done. We are treated like third class citizens and made to take a back seat while the bullies and loud mouths get the law on their side.

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Reports of racial incidents are invaluable in the process of collaboration with other agencies – particularly education, housing and social work departments. Multi-agency collaboration has been developed in Strathclyde and Central in the knowledge that a joint response will be more effective than the police working alone. Police have also learned to work with community organisations and Racial Equality Councils, comparing notes on current reports, seeking to identify the neighbourhoods in which there may be everyday harassment in school playgrounds and shop keepers enduring racial abuse, alongside the more prominent cases of assault.

There can be no doubt that the imposition of the duty to report racial incidents has precipitated a process of change by creating an arena for informed debate, within the police and with other agencies. Disbelief within the police has been reduced and realisation has grown that the essential tools of effective policing (community intelligence and the reporting of crime) are reinforced by explicit reference to racist context. Slowly, unevenly, Scottish police have begun to provide an appropriate and professional service to people who experience racism.

FIVE MURDER TRIALS: THE CONDUCT OF THE COURTS

A rich source of information about processes, attitudes and behaviour within the criminal justice system lies in the transcripts of trials. Unfortunately, these transcripts are normally withheld unless there is an appeal. Until now, neither the Secretary of State for Scotland, nor the Lord Justice General, has chosen to exercise their powers to authorise the release of transcripts even in cases of murder where the victims were Black or Asian, and where there was dispute about the racist context of the crime.

Through newspaper reports, it was possible to obtain summary detail of cases in which five men died, three Asians, one Jamaican and one African – Noor Mohammed in Glasgow in 1925, Hector Smith in Glasgow in 1975, Axmed Abuukar Sheekh in Edinburgh in 1989, Shamsudden Mahmood in Orkney in 1994, and Imran Khan in Glasgow in 1998. In only two of these cases was there explicit reference to the racist context of the crime. In the other cases, the racist context was put aside.

Noor Mohammed

Noor Mohammed, a young man of 27, newly arrived from India, was stabbed during a fight in his house after a compatriot, Nathoo Mohammed, was pursued by a mob. Noor, Nathoo and their friends were outnumbered and overwhelmed. Two other Indians were wounded before the police arrived,

called by a neighbour. The three men accused of the murder, John Keen, John McCormack and Robert Fletcher, were well-known to the police. During the trial, evidence was given about the 'racial' differences between the victims and the accused, and careful attention was given to ensuring that the interpretation of evidence in the mother tongue of the Indians was beyond reproach (the Chief Constable of Perthside was employed). Also the presiding judge, Lord Ormidale, directed the jury to ensure that they took the murder of an Indian as seriously as if he had been a native of Scotland or England and remember that Noor was an innocent victim. Keen was sentenced to death, McCormack to seven years penal servitude and Fletcher to nine months in prison.

Bashir Maan, now Convenor of Strathclyde Police Board, made a special study of this case in his book **The New Scots** (1992) and commented:

There were moves in certain quarters for a petition to be launched in support of mercy and leniency for Keen. But British justice prevailed and the criminals paid for their gruesome crimes according to the laws of the land and the norms of the day.
(p. 113).

Hector Smith

In 1975, Hector Smith, a Jamaican who arrived in Britain ten years earlier, was shot at point blank range in the house where he lived with his wife, Anne, and their three children. Hector and Anne's friend, Frank McGinlay, had arrived with three men unknown to them, Brian Hosie, John Jack and Samuel Maxwell. Outside, John Stewart and his wife waited in a car. Hosie was a notorious thug with extremist views, who claimed to be a member of both the Ulster Defence Association and the National Front. Hosie demanded money from Smith, and when he refused he shot him. Hosie was sentenced to life imprisonment, Maxwell to nine years, Jack to four years nine months, Stewart to four months in prison.

During cross-examination, evidence was given of Hosie's hatred of black people, and Donald Macaulay, the defence counsel for John Jack, gave a succinct analysis of the 'racial motivation' behind the murder:

Is it a possible explanation for this dastardly murder that Hosie was so obsessed by his hatred of the coloured man, so crazed out of his mind by the sight of this man bravely resisting his attempts to extort money that he shot him, callously and brutally, through the head? ... The murder was a result of blind colour prejudice.

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On the basis of the conduct of the Noor Mohammed and Hector Smith cases, it would seem that the Scottish courts were able to recognise racist context and racial motivation in murders. When we turn to the more recent cases, the situation changes dramatically.

Axmed Abuukar Sheekh

In January 1989, Axmed Abuukar Sheekh and his cousin, Abdirizik Mohamed Yusuf, refugees from Somalia, were assaulted by a crowd of white youths outside a pub in the Cowgate, Edinburgh. Axmed was stabbed and died in hospital. His cousin escaped. Their assailants were completely unknown to Axmed and Abdirizik. Three men were indicted; two were tried. Terence Reilly was found guilty of possession of a knife during an incident earlier in the evening and of repeated punching of Axmed. He was sentenced to eighteen months in prison. Francis Glancy was found not guilty of murder. Evidence of their association with the National Front was put aside.

The outcome of the court case was greeted with disbelief, precipitated a crisis in community relations and galvanised black and minority ethnic communities and white anti-racists into united action. One month after the trial 2000 people marched through the city centre protesting that the police had refused to record the murder as racially motivated and that the court proceedings had been incompetent. Among the complaints about the conduct of the court was the issue of the failure to provide professional interpreting facilities for Abdirizik (for further details about interpreting failures in Scottish courts see Ferry, Kelly and Onifade 1999).

Six months later the police agreed that the murder should be classified as a racial incident, and the Chief Constable tightened police procedures, stating:

All incidents which have at their core the moral cancer of racial bigotry are most distressing to members of the ethnic community, and the murder of a Somalian student in Edinburgh has crystallised that concern.

However, there has been no review of the court proceedings and ten years later the case remains notorious, as Joyce Macmillan reflected in **The Scotsman** in January 1999:

Small wonder that Neville and Doreen Lawrence feel such a profound sense of anger and betrayal; nothing, they say, can compensate for the pain of knowing that after all their struggles, the five men accused of the killing are still walking free and unpunished. Their pain is shared by a group of people who will gather in Edinburgh this weekend to remember another victim of racist violence. ... On the night of his death, Axmed

and his cousin were attacked outside Sneeky Pete's Pub by a group of soccer casuals who had already racially taunted them inside the pub. ... Today the Axmed Sheekh Commemorative Group is still campaigning for better awareness of racial issues in both the police and the judiciary.

Shamsudden Mahmood

On 2 June 1994, Shamsudden Mahmood was shot by a man in a black balaclava in front of diners in the Kirkwall restaurant where he was serving. His murder was the first in Orkney for 25 years. Shamsudden was a popular, likeable young man of 26, the youngest son of a prosperous Bangladeshi family. In spite of interviewing several thousand people, including all the inhabitants of Kirkwall, and tourists and visitors as far afield as Canada and Japan, police could find no motive and the murderer has still not been found. In the aftermath of the murder, the following incidents occurred. They reveal the racist context to the crime and raise the possibility that there was racial motivation for the murder.

Three Sikhs who arrived in nearby South Ronaldsay the day before the murder, selling clothes from door to door, aroused local suspicions. 'The odd thing about them was that if you didn't want to buy anything, all they said was OK, fine. Door-to-door salesmen are usually quite pushy,' said one resident. The Sikhs stayed at a bed-and-breakfast and dined in the Mumtaz restaurant. On Friday, they were questioned by police, and their car was searched, then they were released. 'They were very frightened. They thought the shooting could be a racist attack. After they were released they left the island on the next ferry.'

Then, on 23 June, two young farmers appeared in court after threatening to shoot an Asian woman taxi driver. The Sheriff court was told:

The driver was from the Indian subcontinent. Eunson approached the taxi mumbling about balaclavas and saying he was going to shoot her. Forbister then walked across the front of the taxi, removed part of his clothing and exposed himself. Eunson and others entered the taxi and the taxi driver radioed for help. She dragged Eunson and another out of the taxi, at which stage one of the company said: Get the balaclava, we'll shoot the *** bitch'. One of the group raised a clenched fist and threatened to smash her face. She was nearly hysterical by now and drove to the police station to report the matter. Police attending the incident found the two men later at the Quoyburray Inn, Tankerness, where they were detained. When charged, Eunson told police: 'It was a bit of a drunken laugh'.

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At the end of June, the restaurant owner, Moina Miah, revealed the fears of his family, when he spoke about one of his young sons being threatened by two men on his way home from school. Orkney's senior police officer stated that the matter had been dealt with but added: 'We don't see the incident as in any way racial'.

Under current conditions of disclosure, it is rare to have access to as much detail in a murder investigation and related court hearings as reported by the local newspaper in Orkney, **The Orcadian**. The three incidents described above give invaluable insight into the racist context in which Asians live in Scotland. A month after the event Mr Miah was still so frightened that he tried to sell his business, but coverage of the shooting reached the London-based Bangladeshi weekly newspaper. He said 'We need new staff, but we can't get anyone. The distance away from London used to be bad enough, but now nobody wants to come here after they know what happened'.

In 1994, Northern Constabulary recorded a single 'racial incident'. Does it relate to the threat to Mr Miah's son, the harassment of the taxi driver or the stereotyping of the Sikhs? All incidents meet the conditions of the definition to which all Scottish police should have been working. If the harassment of the taxi driver was recorded as the racial incident, did the Sheriff take sufficient cognisance of the racist aggravation to assuage the terror of the woman?

Sheriff Scott Mackenzie told the accused:

I have rarely heard, indeed, never heard, a nastier carry-on. You abandoned all standards that evening and both of you are old enough to know better. You are a disgrace to your family and your community. It would have been disgraceful in any event but to have happened so soon after the recent tragedy – the murder in this community – defies description. For your victim to be a woman leaves me speechless. I have been seriously considering what to do with you ... your behaviour was so bizarre ... it was silly, stupid and childish. It is all very well to be sensitive about it after the event.

He sentenced each man to 200 hours of community service and £400 compensation to the taxi driver. Should we conclude that the court displayed disbelief and denial?

Three years later, in May 1997, the investigation of the murder took an extraordinary turn. Orkney Police Constable Eddie Ross, a registered firearms instructor, was charged with wilful neglect and violation of his duty by

attempting to conceal evidence from officers during the murder investigation. Ross was alleged to have tried to hide evidence because he was afraid that suspicion for the murder might fall on him, his relatives or his acquaintances. He was found guilty and sentenced to four years in prison. In June 1999, Ross was released, declaring his innocence of any involvement in the murder. He has vowed to clear his name by finding the killer.

The failure to find the killer of Shamsudden Mahmood, and the prosecution of an Orkney police officer for crimes which obstructed police enquiries, have left lasting disquiet. As Ron Ferguson, minister of Kirkwall's St Magnus Cathedral, wrote in **The Herald** at the conclusion of the trial of Police Constable Ross:

The head of the murder inquiry insists that the people of Orkney have nothing to worry about. Really? A young man has been slain in daylight for no apparent reasons, and the murderer is at large.

Imran Khan

Imran Khan, a Glasgow schoolboy, was stabbed in February 1998 during a fight between white youths, including twin brothers, Colin and Craig Gilmour, and Asian youths, including Imran's cousin Burhan Ilyas, who was also stabbed. Imran died eight days later in hospital. The twins pleaded self-defence. Colin was detained for seven years for attempted murder by stabbing Imran in the back, Craig to two years for slashing and assault of Burhan.

Wisely conducted, this case could have led to greater understanding of a racist context in which white and Asian youths were at odds, in a Glasgow neighbourhood where there had been serious racial tensions for some time. The school attended by all the boys had been badly shaken by serious racial incidents, the Gilmour twins had been expelled for racial harassment and a specially commissioned research report revealed what young people were experiencing:

Black and minority ethnic participants who cited racial experiences in school believed that nobody really cared about what happened to them and felt that the increase in racism, especially in secondary schools, was due essentially to the lack of effective action taken against perpetrators. As a result, participants resorted to alternative methods for dealing with the situation. While some retaliated in an equally aggressive manner, others passively accepted the abuse as they often saw little benefit in taking further action.
(Hampton 1998)

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Instead of applying forensic skill of the kind displayed by Macaulay in the Hector Smith case, the court formed a consensus on denial of racism, summarised by the presiding judge, Lord Kirkwood:

Both the defence and the prosecution have said this was not a racially motivated attack. That is correct because there has been no evidence to suggest that this was a racist attack. This case again demonstrates the dangers inherent in young men going about with knives.

The conduct of this trial was so controversial that it was challenged in an editorial by **Scotland on Sunday**:

Lord Kirkwood is, of course, perfectly entitled to draw his own conclusions after hearing all of the evidence in this appalling case. However, we should guard very carefully against rushing too readily to accept the view that racial tension played no part in this tragedy. 'No racism here' is a glib and complacent slogan but it is little more than that. Furthermore, it is a perception which is not shared on the streets of Glasgow's south-side. There is a widespread belief there, notwithstanding the judge and counsels' comments, that racist motives played a significant part in this affair. Furthermore, there is a clear and unmistakable belief that racial tension is no myth but a very definite fact of life. ... pretending racism does not exist is not an option.

DISCUSSION

The key findings in this study of five murder trials are troubling. Before they met their victims, Hosie, Glancy and Reilly, and the Gilmour twins displayed blatantly racist behaviour and involvement in extremist organisations. But, whereas in 1925 and 1975 counsel and judges lent themselves to the task of forensic analysis, in the three contemporary cases they did not. Indeed, in the Imran Khan case, defence counsel Donald Findlay was reported by **The Scotsman** as follows:

Mr Donald Findlay, Q.C., defending, stated there was 'not a scrap of evidence' to show the case was racially motivated on either side. He added: 'That may be a disappointment to some people outside the courtroom'. There was no direct link in the chain of events from when Imran was stabbed to his death.

Something changed in the conduct of the High Court between 1975 and 1989. That 'something' is daunting in its implications. Serious questions have to be

asked about the competence of senior members of the judiciary to administer justice in cases where there is a racist context to the crime and there may be racial motivation.

The 'something' that changed is the bone of contention for people of minority ethnic communities of today. They feel that the courts do not treat them as equals because they do not take racism seriously. The cases of Noor Mohammed and Hector Smith suggest that things have not always been like this. There was a time when the racist context of a murderous attack would be examined and the full weight of the law would be brought down on their assailants. Clearly the courts and their handling of the racist context of crime must be changed. It is time for research studies of the 'race' history of the Scottish justice system to be compiled. These are only five of the murders which should be studied; the others are tucked away in the archives.

The conduct and outcome of murder investigations and trials have major influence on community confidence in a justice system. If a murder trial is handled badly, then confidence drops, the rate of reporting of crime falls and the incidence of crimes of violence rises. If the verdict and disposals are felt to be unjust, if the conduct of the case has not been above reproach, then the cases will be remembered. Ten years on, the conduct of the Axmed Sheekh case in Edinburgh is still being probed, and loss of faith in the justice system has been considerable. In the Imran Khan case, the legal consensus in denying racist context heightened community tensions in Glasgow.

There can be few moments in ethnic history more telling than the tragic occasion of the murder of a migrant, refugee or member of a settled minority ethnic community. Whatever the circumstances, the response of the authorities to the murder, its investigation and resultant court trial, are tests of community security and confidence. Murder trials are observed and reported closely through community networks, discussed and evaluated for their conduct either as statements of the dignity and value of the victim, or as a dismissal of their worth as a citizen, a human being with full rights. Any failing, on the part of the police or the court, to demonstrate their full commitment to deal with both the incident and its racist context is a setback in community relations. Every demonstration of the commitment, by the police and the courts, to ensure that racism is a factor to analyse with a high level of forensic skill is a safeguard for the future.

BRIDGING THE GULF – ACCELERATING THE PROCESS OF CHANGE

By 1995, the then Conservative government ran out of patience because so few of the measures suggested by Lord Scarman and successive Home Secretaries had been implemented by police and courts (see for instance the critical commentary in the 1991 report of the Inter-Departmental Racial Attacks Group). In order to force the pace, key measures in the 1995 Crime and Disorder Act were pushed into Scotland via the Criminal Law Consolidation Act. Section 50 requires police and courts to record 'racially aggravated harassment' and 'racially aggravated conduct'; Section 96 requires the court to take the 'racial aggravation' into account in the disposal.

This has had rapid effect. The 1998 annual report of the Crown Office and Procurator Fiscal Service for the first time made this statement:

The Department is committed to ensuring that racially motivated offences are prosecuted and following discussion with the Commission for Racial Equality, the Lord Advocate issued policy guidelines to Procurators Fiscal. During the year, 166 cases of racially motivated offences were reported under the relevant legislation and proceedings were taken in 160 cases.

In the autumn of 1999 an Integrated Scottish Criminal Justice Information System came on stream, and cases will be tracked from start to finish.

The Stephen Lawrence Inquiry was initiated in July 1997 by the incoming Labour Home Secretary who knew that the campaign of Stephen's parents for justice had gained formidable strength and would be a source of major embarrassment if he continued the policies of his predecessor. Stephen's murder on a London street in April 1993 and the shabby failure of the Metropolitan police to find his killers were the last straws for many people in the black and Asian communities living with 'undetected' racist attacks. Tensions between police and black youth were high, debate about reform was muted by the persistent refusal of the police to admit to any racism within their ranks, and professional standards and morale were slipping within an environment of accusation and denial.

The committee of enquiry, led by Sir William Macpherson, sought to provide conceptual tools to break through the culture of disbelief and resistance in the Metropolitan Police. They defined one form of racism which the Home Secretary requires all public bodies to adopt – the concept of institutional racism:

The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.

The thrust of Macpherson's report is that there is no more time to be lost in the Metropolitan Police or elsewhere. The leisurely pace of change indicated in the Scottish racial incident data cannot be allowed to continue. The 'ratchet effect' is to be accelerated by a tighter definition in all public agencies:

A racist incident is any incident which is perceived to be racist by the victim or any other person.

Police officers in Scotland will have to respond to this new definition, and they have the advantage of a decade's experience of scrutiny of their performance in relation to 'racial incidents'. However, the slowness and unevenness of response in a hierarchical, disciplined service does not bode well for the prospect of change in the courts. Many lawyers, by the very nature of their profession, are autonomous and speak their minds freely (as did Donald Findlay in the case of Imran Khan). Proposals are in hand to introduce training for procurators fiscal and sheriffs, but their disbelief will not be easy to shift and senior counsel and judges have not yet been pulled into learning the essentials of this form of forensic science.

A more enlightened environment will only be attained when the commitment of a dedicated few is matched by the understanding and skill of many more. There is a need for knowledge of ethnic patterns in crime. There is need for belief in the facts of everyday racism. As police officers and lawyers accept such knowledge, they gain experience in handling the facts of racism, and, consequently, become wiser and more skilled in their conduct of criminal investigation and trials. Where there are wise and skilled police and lawyers, there is community confidence. The Scottish police have demonstrated their capacity to learn; the courts have been left behind. If the courts of 1925 and 1975 could display forensic skills in this component of crime, why cannot the courts of today?

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Racial Incidents Recorded by Chief Constables in Scotland, 1988-1998

	Total Population	Minority Ethnic Population	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Central	267,492	1,947	9	18	45	69	51	52	75	125	105	114
Dumfries & Galloway	147,805	528	-	-	-	-	-	-	6	2	4	4
Fife	341,199	2,519	-	-	3	35	30	20	40	44	53	33
Grampian	503,888	4,458	4	4	9	4	20	28	44	25	37	56
Lothian & Borders	829,891	12,291	89	91	178	213	184	223	266	288	287	305
Northern	275,738	1,421	-	-	-	-	-	-	-	1	-	-
Strathclyde	2,248,706	35,121	197	236	300	254	250	205	225	230	206	461
Tayside	383,848	4,439	-	27	101	103	128	196	135	117	119	105
Total	4,968,967	62,724	299	376	636	678	663	724	756	791	832	1078
