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# The investigation of murder in France and England: A comparative account

A thesis submitted to the London School of Economics and Political Science for  
the degree of Doctor of Philosophy

Department of Sociology  
December 2008

## **Declaration**

I certify that the thesis I have presented for examination for the PhD degree of the London School of Economics and Political Science is solely my own work other than where I have clearly indicated that it is the work of others (in which case the extent of any work carried out jointly by me and any other person is clearly identified in it).

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## Acknowledgements

My PhD was funded by a three-year Economic and Social Research Council Studentship, a *Bourse Marie Curie*, and my father, Dr Gordon Harris, who paid for childcare.

I thank everybody who has helped me in any way with the work that went into this thesis. As this began in 2002, when I started to improve my French language skills, there is a long list. Special thanks must go to the employees of the organisations who hosted both my fieldwork and language training and those who helped me arrange this. I cannot name the majority of the organisations or the people involved with this research, and it feels invidious to single out some but not others, but this doesn't lessen the extent of my gratitude to all concerned.

I would like to thank my supervisors Professor Paul Rock and Dr Janet Foster at LSE for their valuable insights and support, and also Renée Zauberman, of *CESDIP*, who gave me much needed guidance during my sojourn in France, as did her colleague Laurent Mucchielli, and a fortuitous cohabiter of my *Résidence* in France, Bron McKillop.

One final thank you to Dr Stefano Biagini who assisted in innumerable ways, not least acting as a human Endnote when the computer version failed. Needless to say, any errors are his!

## **Abstract**

This thesis – based on 13 months’ fieldwork observing specialized murder squads and justice personnel - examines the processes and practices of murder investigation in France and England. There is relatively little, particularly ethnographic, research in this field and my work is - to my knowledge - the first comparison of how these countries, often contrasted as instances of the archetypal inquisitorial and adversarial criminal justice systems, respond in practice to criminal homicide.

The thesis includes a detailed analysis of two similar cases that occurred in the French and English research sites. The cases are followed from the discovery of the body to the end of the trial. Highlighting two emblematic events within each process - the case conference in England and the *reconstitution* (or reconstruction) in France - I also explore the epistemological and sociological assumptions behind investigative procedures.

Although some of the activities observed in the two countries were similar, key differences were also found in the methods by which the investigations were progressed and recorded, the involvement of detectives at various stages of the investigation, the manner in which the media were used, and the way in which the offender and victim were treated - all of which affected how the investigators viewed their work and the nature of what formed the substance of the cases. A key theme discussed is the way the words used to describe similar processes and roles revealed the different ways in which the two countries viewed the criminal justice process.

In my conclusion, I suggest that part of the reason for the differences relates to the way the two societies conceive of the criminal. In England the criminal is seen as someone outside of society and this attitude to criminality affects all those who deal with it – including murder investigators. In France, crime and the investigation of murder has an accepted role in ‘normal’ life.

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## Introduction

This thesis examines the processes and practices of murder investigation in France and England. It compares how police detectives and judicial officials in the two countries conduct inquiries and the investigative tools they prioritise; how they treat suspected offenders and the families of victims; how they prepare cases for court hearings; and how their work, and their attitude to it, is shaped by the wider criminal justice system in which they operate.

Murder investigation is an under-researched field. The reasons for this are not entirely clear but could be linked to a number of issues. For policy makers, murder is a relatively rare event and its investigation often unproblematic - the detection rate for murder is consistently higher than for other types of crime, at around 90% (Povey *et al*, 2008; Mucchielli, 2002); primarily because of the frequent close personal link between offender and victim (Polk, 1994). For practitioners themselves, until recently there appeared to be no need for research in a domain in which they already seemed to perform so well, and among whom there was a decided culture of unteachable craft and professional know-how which could not and should not be inquired into too much by outsiders (Hobbs, 1988).

Finally, for the academic researcher, there were the practical difficulties of setting up observational research of an unpredictable event (Rock, 1998). The process of murder investigation is complex and a large amount of the information sensitive and therefore difficult to study (Feist and Newiss, 2001). Much of the qualitative tradition in the sociology of crime focused on the routine of everyday life, and murder is exceptional to most people's lives (although of course routine to a small number of specialists within serious crime investigation squads). There was perhaps also a feeling that we are already well informed about murder investigations because they are constantly presented to us on the television and in newspapers, in fiction and "true crime" accounts of *causes celebres* (Innes, 2003).

There was an increased focus on police murder investigation for many opinion formers and the general public in England in the face of high-profile failed cases - specifically those calling into question the reliability of confession evidence obtained by the police in relation to Irish terrorism (for example, the cases of the Guildford Four and the Birmingham Six – see Mullin, 1990) and those criticizing the methods of the police in the investigation of murder more widely. Two of the key cases in this regard were that of the ‘Yorkshire Ripper’, where the six-year enquiry spanning a number of forces experienced difficulties collating the mountain of information gathered (see the Byford Report reported in Doney (1990); and, more recently, the investigation into the murder of teenager Stephen Lawrence in London in 1993, where police were heavily criticized not only for ‘institutionalized racism’ but for bad management and poor training, specifically in relation to communicating with the families of victims (see the Macpherson Report (1999).

A number of changes were introduced into criminal investigation in general and murder investigation in particular. The Police and Criminal Evidence Act (PACE) of 1984 controls the way the police and other investigators deal with suspected offenders in custody. Computer software, known as HOLMES after the famous fictional detective, was introduced in a bid to manage the information coming into large enquiries. Efforts were made to standardize procedure in Major Incident Rooms and introduce key roles to be undertaken only by trained staff and these included the role of Family Liaison Officer. Since these changes have been put into place, a number of pertinent Home Office review documents have been published, and the first dedicated academic study in England of the murder investigation processes of a provincial police force has been undertaken (Innes, 1999a, 1999b, 1999c, 2002a, 2002b, 2003).

In the context of negativity surrounding the investigation of serious crime in England, it has become popular to contrast the lack of external supervision of the police “constructing cases” in the adversarial system in England (Maguire and Norris, 1992) with the inquisitorial model in France, one of the few European countries to maintain

the iconic role of the independent *Juge d'Instruction* – the “investigating judge” as it is often translated - “searching for truth” (Mansfield and Wardle,1993; Rose,1996).

Studies of the working processes of serious crime investigation are even sparser in France than in England. In France there is little tradition of empirical research, and much work is conducted in a theoretical or doctrinal context concerned more with concepts than with pragmatics (Verrest, 2000). Within criminal justice studies, there was a feeling among French sociologists that the police, a mere instrument of the state, were uninteresting to study (Monjardet, 1996: p.292). It has even been suggested that many sociologists, remembering first-hand physical confrontations between themselves (as students) and the police in the 1960s, did not want to study them using empirical research necessitating close contact (Levy, 2004). Even now, the French criminological imagination appears to be more inspired by incarceration figures than the criminal investigation process (Tournier, 2008).

For many years, the most thorough empirical study of serious crime investigation in France was Leigh and Zedner’s (1992) interview-based study for the English Royal Commission on Criminal Justice to assess the criminal procedure in France and Germany, and even this was criticized in more recent legal work by Hodgson (2000) for failing to specify exactly how many officials were interviewed. Much of the other commentary was largely rhetorical in nature not supported by an indepth observation of how the systems in the two countries actually operate in similar circumstances or an examination against the background of existing related literature of how and why this might be.

My aim was to redress the shortcoming apparent in the literature and to undertake a close examination of the content and context of the work of investigators in the two countries as they carried out their day-to-day activities. The successful investigation of serious crime has a significant role to play in the perceived legitimacy of the policing enterprise far and above its place in the workload of the police (Innes, 1999a) and it is therefore important to make the processes involved as effective and efficient as possible.

Looking at how others undertake the same function can be instructive in this regard, not only by extending our knowledge of alternative possibilities but by challenging what is taken for granted. There is also an increasing need for inter-country co-operation in criminal investigation and one of the first steps of enabling this to happen is an understanding of the methods of operation in other countries. The substantive chapters of this thesis have already been borrowed by English detective officers working on a case involving French nationals.

Initially my focus – perhaps influenced by having worked with and among police officers in my professional life (see Chapter 2) - was heavily procedural. I wanted to examine how investigators and their judicial colleagues in the two countries responded to criminal homicide – the tasks they performed, the processes they instituted - and with what results (i.e. court and conviction). Beyond this I wanted to look at why detectives did what they did, exploring the wider sociological and epistemological issues in the inquisitorial and adversarial conceptions of truth finding and justice exhibited by the two countries' legal systems.

The specific research questions I wanted to explore were:

- How do the police and judicial personnel observed in the two countries respond to criminal homicide?
- Do the activities that they routinely implement seem to be substantively different from one another?
- If there are material differences, can they be related to identifiable differences within the criminal justice or societal settings?

As the work progressed, I also became more and more interested in the methodological complexities of comparative research – both in the fieldwork stage and in the writing-up; and also in the social life of detectives, how the experience of being a murder detective is lived and played out, reflecting aspects of the different societies in which they operated.

The format of this thesis reflects these interests.

Chapter 1 reviews the literature relevant to the study of murder investigation. This includes research concerning criminal investigation in general and works on the French legal system as a whole. Although few advocates of a change towards French methods in this country mention this, France has also been rocked by a number of scandals relating to the investigation of serious crime (Vergès, 2002) and these and their effects are also described in this chapter. The process of ‘murder investigation’ is long and complicated and it is impossible to cover every aspect. Some subjects, such as forensic capture and analysis and forensic pathology, are only cursorily mentioned, although I am aware that increasing amounts of research are being done in this field (see for example Koehler, 2007; and Williams and Johnson, 2008).

Chapter 2 describes the methods I used to research the work of the murder detectives. These were mainly qualitative, based on 13 months’ observation (over two years) of specialised murder squad detectives (and their judicial colleagues) in the two countries. I also conducted interviews, read case files and collated statistical information. In addition, I explored the use of ancillary techniques such as asking detectives to fill out diaries of their days’ activities as well as giving them “vignettes” to consider their probable response to stylised scenarios. The chapter includes a discussion on the challenges of comparative work and how I attempted to overcome them. One of the key issues within the approach is how to compare procedures and processes that may appear similar but are in fact different. It is the magnitude of this issue which has shaped the format of the rest of the thesis.

Chapters 3 and 4 examine two cases – coincidentally alike in detail – that occurred during my period of observation in the French and English research sites. In these chapters the cases are followed to the end of the Pre-Trial phase - from the initial report of the body until the cases went to trial. By describing in detail the police response in the two countries I hoped to avoid giving the impression of ‘pseudo equivalents’ – those

activities that appear similar but are in fact different either in content or context - by describing how each role fits into the entire system. One example is crime scene investigation. A forensic examination of the crime scene takes place in both countries but the importance attached to it and the way in which it is conceived is very different.

Chapter 5 highlights two events from within this Pre-Trial phase that seemed to me to typify the epistemological and sociological assumptions behind the criminal justice procedures in the two countries as a whole. The events analysed are the *reconstitution* (nearest equivalent “reconstruction”) in France when the *Juge d’Instruction* summons the witnesses – including the suspect – to the scene of the crime to re-enact their version of events and confront each other with these versions; and for England, the case conference, the meeting between police and prosecution counsel to discuss how they will present their case in court and assess what further evidence is necessary in order for this construction to be presented and to fend off any defence counter attacks. Here important themes such as the notion of “Searching for the truth”, the physical confrontation of witnesses, and the power of the *Juge d’instruction* in France will be contrasted with the management and evaluation of evidence and the symbiotic relationship of barristers and police detectives in England.

Chapters 6 and 7 describe the trials of the two cases described in Chapters 3 and 4. At a basic level, the lengths of these chapters reflect one major difference in the French and English systems in that the French trial lasted three (albeit very long) days and the English five weeks. This disparity reflects the different role the trial plays within the criminal justice process in France and England. In England, part of the trial’s role is a public airing of the evidence; in France much of the examination of the information available has been conducted pre-trial by the *Juge d’instruction*. Other important themes are the relationships and allegiances between the court personnel – the lawyers, the ‘judge’ and the police - and the place of the family of the victim in the court scene.

Chapter 8 forms my conclusions. I noted that although some of the activities observed in the two countries were similar, key differences were also found in the formation of

the investigative teams, the methods by which the investigations were progressed and recorded, the involvement of detectives at various stages of the investigation, the manner in which the media were used, and the way in which the offender and victim were treated - all of which affected how the investigators viewed their work and the nature of what formed the substance of the cases. I argue that the reasons for some of these differences are linked to how the investigation of murder and all the groups of people involved - the detectives, the judicial and legal officers, the offenders, the victims and their families - fit into their wider society. In England the criminal is seen as someone outside of society, with little in common with it, and this attitude to criminality affects all those who deal with it – including murder investigators. In France, by contrast, crime has long been seen as part of ‘normal’ life and I suggest the process of the investigation of murder is seen as part of everyday life too, an unusual part certainly, but a part with a place coded by an inclusive State and its officials. When French detectives undertake murder investigation, they do not set this work apart from their everyday lives as French citizens – they work hard but they maintain the flow of French life – the summer break, the family lunch, the *pause café*. This affects how they view their work particularly in terms of morale.

For readers totally unfamiliar with the criminal justice system of either country, **Appendix 1** contains a brief outline of the criminal justice traditions of France and England as they pertain to the investigation of serious crime.

A **Glossary** of the key roles and procedures in each system together with other terms which may require explanation is also included at the end of the thesis.



## Chapter 1: Literature Review

This chapter summarises the literature relevant to the study of murder investigation to provide a framework for what is to follow.

### The nature of the literature

Although there is relatively little academic literature specifically about murder investigation – the notable exceptions being Innes (1999a, 1999b, 1999c, 2002a, 2002b and 2003), Stelfox (2006), Foster (2005 and 2008) and a number of Home Office reports and publications focusing mainly on hard-to-solve cases (for example, Feist and Newiss, 2001; France *et al*, 2004; Nicol *et al*, 2004), there is also useful data in other types of study (for example official reports on problem cases - Byford, 1981; Macpherson, 1999; Smith, 2003) and there is a large amount of research in related fields.

There is research concerning various aspects of the murder act itself – its extent and the profile of victims and offenders i.e. the workload of murder detectives (for example, Daly and Wilson, 1988; Soothill *et al* 1999; Polk, 1994; Povey *et al*, 2008; Mucchielli, 2002, 2004b, 2005; Brookman, 2005); and, to a lesser degree, its affect on victims' families (Rock, 1998).

There is a large policing literature – particularly in the Anglo-American tradition - and while this tends to focus on the uniform branch, some research addresses serious crime investigation and the lives of detectives generally (Sanders, 1977; Greenwood, Chaiken and Petersilia, 1977; Wilson, 1978 and Ericson, 1981 focusing on America; McConville, Sanders and Leng, 1991; Maguire and Norris, 1992 relating to England and, in France, Lévy, 1987 and Jeanjean, 1990 concerning the *Police Nationale*; and Zauberman, 1987 the *Gendarmerie*). These studies are all important for while murder detectives may have some work patterns and pressures specific to their work, they remain police officers, have often worked in different roles in the past and share some of their cultural norms. While the studies were conducted at intervals over a reasonably long period of time, and aspects of policing practice and technology have changed

considerably during that period, many characteristics remain or have influenced current ideas.

On the French side, I have used a number of works discussing the criminal justice system in general, mainly written by English lawyers (for example Hodgson 2001. 2002a, 2002b, 2002c, 2005; Leigh and Zedner, 1992; Spencer, 2007; Bell, 2001; and classics such as David, 1976). There has been continued interest from American legal scholars on the merits of the inquisitorial system over their own adversarial system summed up in the Yale Law Journal exchange between Goldstein and Marcus (1977) and Langbein and Weinreb (1978). This has inspired some intriguing experimental work in the United States attempting to evaluate the merits of the adversarial and inquisitorial systems using role play (summarised in Thibaut and Walker, 1975). A further source of information were the training manuals and course materials used to train detectives and judicial staff. There are also a number of journalistic contributions (for example Simon, 1991; van Geirt, 1995), sometimes focusing on specific scandals and *causes célèbres* (for example Dawant and Huercano-Hidalgo, 2005 on the notorious *affaire Outreau*, a bogus sex-ring case which has rocked France and called into question the integrity of the role of the *Juge d'instruction*; and Hémon and Tanneau (2005) on the long-running investigation into the murder of Cornish schoolgirl Caroline Dickinson in a French youth hostel in 1996) and, particularly in France, police and *Juge* memoirs (for example, Diaz, Fontanaud and Desferges, 1994; le Taillanter, 2001; Samet, 2000) which all offer “vignettes, scenes, encounters, and case narratives” (Manning, 2003: p 265) to set against my own empirical data.

I discuss the French and Anglo-American literature separately below because they are situated in different positions *vis-à-vis* the sociological traditions in each country and because I have separated the analysis of murder investigation in France and England in the chapters that follow. I recognise that in joining the English and American research together I am linking different cultures and procedures that are in many ways as different to each other as France is to either. For example, the position of District Attorney in America has many aspects comparable to the French role of *Procureur*.

Nevertheless, the English and American studies share a joint history of academic interest and research that French scholars have not until recently been a part of.

## **The Anglo-American tradition**

### **Government Reports – Macpherson, Smith and Byford**

In the last ten years there has been an increased interest in Britain in the investigation of homicide, beginning with the publication of the hugely influential Macpherson report following the failed investigation into the murder of black teenager Stephen Lawrence in London in 1993. The Report, which famously criticised the police for ‘institutionalized racism’, also highlighted endemic bad management in the processes employed to investigate murder by the Metropolitan Police at the time, whereby investigative opportunities were lost and key witnesses and particularly the family of the victim were treated badly.

There have been a number of Government-commissioned reports written in England, following murder cases which have raised particular issues or problems and each provides useful information about the systems and procedures in place to investigate homicide. One such Report concerned why the initial investigation into the serial murders of general practitioner Harold Shipman was aborted: concluding that this was due to a combination of inexperience, poor supervision and an inability to consider the possibility of a doctor killing patients (Smith, 2003). Many years before, the Byford Report looked at the investigation into the murders committed by Peter Sutcliffe “the Yorkshire Ripper”, where the six-year enquiry spanning a number of forces experienced difficulties collating the mountain of information gathered, and was also hampered by what turned out to be a bad decision relating to the elimination of suspects (see the Byford Report reported in Doney (1990).

### **Murder investigation in England – Innes, the Home Office, Foster, Brookman and Stelfox**

The key texts in the academic study of murder investigation are the series of studies by Martin Innes (in book form, 2003; and the PhD thesis on which this was based, 1999a)

of a provincial police force in the mid 1990s. While Innes raises a number of themes which are consistent across a range of studies of detectives and their work: their suspicion in the face of extensive lying by suspects and witnesses (Simon, 1991); the kudos of their work, both within the police force and within society as a whole (Sanders, 1977); and disagreement as to whether detection is more akin to a craft or a science (Repetto, 1978) - he also highlights the differences between detective work in general and that of murder detectives specifically.

In some respects the status of murder detectives is very high, given that they are dealing with the most serious of crimes. However, the work of murder detectives is actually far more heavily supervised and routine than other detectives who manage their own caseload. Innes (1999a) suggests that the detective culture so vilified in other studies is less apparent in a murder squad than elsewhere. In a chapter charting the history of the process of murder investigation in England, Innes suggests that the traditional status of the charismatic Senior Investigating Officer (SIO) has changed into a management role where there is a functional bureaucratic division of labour within the team. Part of this change is attributed to a cycle of scandal and reform in a bid to professionalise investigation. But there are financial imperatives also to arrest as speedily as possible, and efficiency and effectiveness are buzzwords in management meetings.

The processes of murder investigation are described by Innes (2003) in terms of information flow, with information “bursts” (p 205) at the beginning of enquiries and then information gradually being refined into knowledge and evidence for court. Family and friends may initially be under suspicion and the net is only widened after these have been eliminated. The victim is cast as an innocent and officers typify cases in an effort to distance themselves from the emotional intensity in their work. Cases are “self solvers” (it is immediately apparent who is responsible) and “whodunits”, or “runners”(where it is not immediately apparent who is responsible and therefore some element of investigation has to be undertaken to find the culprit – these investigations last some time, or “run”). The investigation is progressed through both formal and informal communication channels. Contrary to the image often portrayed by the media,

considerable work is done after the suspect is identified and Innes devotes some time to exploring the influence of the legal structure as a framework of the investigation. The proceedings at court have an “anticipatory structuring effect” (p 69) on the investigation with “the case” “bounding reality” (p 58) with such issues as admissibility and evidence leaving some “big facts” unmentioned at court. He suggests that the major miscarriages of justice brought to light in the 1980s were born of the kind of ethos where a constant side-stepping of the rules was prevalent both as a result of gradual “compliance drift” (p 242) but also a culture where skill at manoeuvring around rules was positively valued. In an article specifically addressing some of the issues raised by the Macpherson report, Innes argues that the failings of the Stephen Lawrence inquiry were endemic to the poor organisational standards of investigations in general (Innes, 1999c).

Innes also published a number of articles based on the same body of research in which he focuses on the strategic use of the media by the police during murder investigations (Innes, 1999b), the legitimating function of the murder investigation within the police and wider social world (2002a), and the standardised sequence of activities – shaped by the legal framework and the police organisational structure - that form a murder enquiry (2002b).

A series of reports about specific aspects of murder investigation have also recently been commissioned by the British Home Office on a variety of topics centring on cases which are hard to solve. These have included an analysis of the process of review initiated by the Association of Chief Police Officers’ recommendations in 1989 together with examination of those factors which were linked to unsolved cases (Nicol *et al*, 2004). The most common problems - accounting for three-fifths of the investigative weaknesses observed in the reviews the authors examined - were record keeping, document management, initial actions at the scene, witness and suspect management and staffing levels. Francis *et al* (2004) addressed the potential for use of data from the Homicide Index – the national database containing information on all homicides in the UK including mode of death and characteristics of victim and offender if known – in solving new cases. The authors concluded that the statistical modelling approach could

help an investigation with prioritising offender groups and considering alternative scenarios, and indeed these techniques are now being used. Feist and Newiss's (2001) work on hard-to-solve investigations focuses on the actions undertaken, the information received and the decisions made during an investigation. They emphasise the large amounts of information that amass, particularly at the beginning of an enquiry, some of which may seem important but may ultimately prove unimportant and vice versa, as the investigation becomes more focused. They suggest that most serious crime investigations rely heavily on a limited number of investigative techniques based on experience. Adhami and Browne (1996)'s work on the use of offender profiling in homicide investigation praises the use by a Canadian force of the same team of experienced detectives for all serious crime as a way of building up expertise. A number of other Home Office studies examine aspects of crime investigation but not specifically murder – these include Smith and Flanagan (2000) on the skills of a Senior Investigating Officer; Tilley and Ford (1996) on the role of forensics; and Feist (1999) on the effective use of the media.

Two of the most recent studies on murder investigation (Foster, 2005 and 2008) resulted from ethnographic observation of murder squads undertaken as part of a project commissioned by the Home Office on the impact of the Stephen Lawrence inquiry on the police in general. In the Home Office report, Foster (2005) describes a number of changes that have been made in the Metropolitan Police organisation since the inquiry – including the introduction of the use of Family Liaison Officers, the involvement of members of the public in community relations issues, an improvement in the provision of experienced advice at crime scenes and dedicated homicide teams. However, she suggests that the improvements were orientated around “pragmatic and tangible” (p 82) measures rather than towards some of the broader ideological issues raised by the report, notably institutional racism. Detectives were given no specific preparation concerning the impact on investigations of their own and potential witnesses' attitudes (to race, sexual orientation, etc.). They received little encouragement to think about the profile of murder in London, or how organisational processes – such as reduced resource allocation towards certain kinds of victims - could generate systematic discrimination.

In the later article Foster (2008) additionally comments on the observed defensiveness of detectives in the face of criticism of their practices even in simulated conditions such as training.

The murder profile said to be lacking by London officers is outlined in Brookman (2005) who provides a useful overview of the key trends in homicide. Each year in England and Wales there are approximately 700 homicides and, although the figure is showing a gradual increase, the rate per million population of 14.5 a year still puts England below the rate for both France (at 16.3) and the USA – 62.6. Other characteristics of the pattern of murder are more consistent throughout the world in that the majority of offenders, and to a lesser extent victims, are male, under 35 and of lower social class. In England and Wales, ethnic minority groups are over represented among victims and offenders making up 20% of victims and offenders, while forming less than 8% of the general population. However the exact relationship is typified (Tarde, 1912; Wolfgang, 1958; Polk, 1994), there is some sort of acquaintanceship between victim and offender in around 75% of cases. This has implications for the investigation of murder that makes it different from criminal investigation in general where victim and offender are more often unknown to each other (Innes, 2003). Stelfox (2006) disputes that this prevalence of prior relationship between offender and victim necessarily makes detection of relationship homicides any easier as it is unknown how often such offenders succeed in masking such homicides.

In this recent example of practitioner research, former murder detective Stelfox presents many interesting insights into the process of murder investigation. For his study Stelfox used all the murder cases recorded in a twelve month period from his home force in Greater Manchester. He describes the purpose of the homicide investigation as to “turn” the realities of the homicide incident into a legally relevant form – “not all information can attain the status of evidence” (p 22). The HOLMES (Home Office Large Major Enquiry System) computer software, the use of which became widespread following the prolonged Yorkshire Ripper inquiry, Stelfox regards as providing both an information processing capacity for the investigation but also a quality assurance system, although

he admits it can lag behind investigative activity. From his sample of 48 cases Stelfox argues that relatively few suspects (less than 10%) exercise their right to say nothing (p 257), although two-thirds of suspects denied the actual offence.

Another practitioner account of murder investigation is contained in Bennett's (2006) description of his leadership of the investigation into the serial killings of husband and wife Frederick and Rosemary West in Gloucester in the 1980s and 1990s. He vividly describes the pressures of time and long hours worked by detectives in what was an "upside-down" investigation (p 224) where investigators had the alleged offender in custody and were searching for victims.

### **Journalistic accounts**

There are also journalistic accounts of individual cases (for example, Wambaugh, 1989; Cathcart, 1999) and Simon's (1991) colourful tale of a year spent shadowing the various shifts of Baltimore Police Department's homicide unit. What this book might lack in systematic analysis, it makes up for in the sharp insight and pithy commentary relating to a number of themes and issues recurrent in more academic policing literature – for example the prevalence of lying among suspects and witnesses ("detectives ... assemble in the squad room to compare who's lying, who's lying more and who's lying the most" p 11) and the kudos of the murder detective ("Homicide is the major leagues, the center ring, the show. It always has been. When Cain threw a cap into Abel, you don't think the Big Guy told a couple of fresh uniforms to go down and work up the prosecution report" p 18 ) already noted in Innes, but also the importance of paperwork ("Murders come and go in this town, but God forbid you should forget to write the correct mileage on your activity sheet " p 8) that is highlighted in both Anglo-American and French research.

### **American criminal investigation research – Sanders, Wilson, Ericson and Greenwood**

There are a number of other studies from across the Atlantic that examine detective work more generally – either as how-to guides (Osterburg and Ward, 2000; Grau, 1993



– “The ingredients of an effective homicide investigation are teamwork, documentation, preservation, flexibility and common sense” 17-1) or observational studies. While some of them are inevitably dated, they offer insights into the detective world.

Sanders (1977), for example, looks at detectives as an extreme exemplar of how human beings in general construct information. While depicting detectives as professionals in this process of construction, he admits that detectives themselves are “never able to explain abstractly how information is gathered and recognized” (p 21). The best they could say is that the skill of recognising and processing information comes with experience. An experienced detective knows what to look for and what is incongruous in a situation and will be guided in his (sic) actions by that but he would still consider it safer to keep everything as “you don’t know what direction a case will take when it starts.”

Sanders also describes the prestige of the detective, noticing that the demeanour of uniformed officers “made up” to detective changed – the romantic image held by others of detectives influenced their own self worth and “detectives came to see themselves in terms of what others believed them.” While this image prevailed, detectives still felt the universal police need to “CYA” or “Cover Your Ass” in all their activities, many of which were fairly trivial and mundane – “a typical day a mosaic of little tasks. “

Sanders’ detectives still see themselves as the ultimate fact finders with physical evidence only made available for practical use through their interpretations. They are on the side of good and define their given tasks along this moral line. Faced with large numbers of liars - both offenders who deny their involvement in crime and victims who fabricate their own suffering - Sanders’ detectives define real crime as “righteous” – crime that is not only worthy of investigation but also actually happened. There is little mention of homicide work *per se* as Sanders’ period of observation did not include many relevant cases. He is concerned mainly with the lower level of investigator he spent his days with – he admits that he had little contact with and could see little effect of the work of the more senior management.

Published a year later, Wilson's (1978) study of the Federal Bureau of Investigation (FBI) and Drug Enforcement Agency has the management of lower ranking officers in these organisations as its core theme. Again homicide cases are not specifically mentioned as, perhaps contrary to popular belief, FBI investigators do not routinely deal with homicide cases, unless they happen on government property. However, Wilson has a number of interesting observations to make about detective life and how investigators fit into the criminal justice system. Wilson suggests that in detectives' working lives, as in police work more generally, there is "real work" and there is "garbage work". Among detectives there are high and low status jobs, intelligence work - "papershuffling" - is low status done by civilians and failed agents.

Wilson depicts detectives as working for a prosecutor as for a client who "announces in advance the kind of information he requires." The power balance between the two is skewed towards the attorney – for it is he or she who can have those useful informal chats with suspects on one end of the scale and subpoena a witness at the other. More importantly, the attorney presents the case in court at the all-important trial stage. Detectives are legally restricted as to the extent of their activity. Both police and attorneys can be deemed quite successful at what they do as most criminal cases are "won".

Internal police supervision of investigators was restricted to the quality and timeliness of paperwork, rather than to any guidance directly related to the quality or direction of any individual investigation. The importance of paperwork to detectives' daily lives is reflected in their jargon – they constantly referred to "greenies", the form, printed on green paper, relating to complaints about investigations not progressing. Another interesting use of language was the most common expression agents used to describe their work – "making a case". Wilson comments: "In time, one becomes so used to hearing it that one forgets how revealing it is" (p 160). Once a case is "made" – which usually means, once it has been accepted for prosecution - the agent thinks of him- or herself as having fulfilled his – and in Wilson's study it was universally his - task.

Ericson (1981) also famously talks of Canadian detectives “making” crime, though he uses the word “make” in a wider sense – the police manufacture crime in that they define what is crime and thus the crime situation, decide what type of offence to charge and the clearance category they will record. Because of their control of information on crime, the police have power over suspects, victims and the courts. Indeed victims are not treated that differently from suspects, losing control over their case once it is handed over to police hands. Despite this, it is not entirely a one-way relationship. Police rely on witnesses for their information; they do little investigation and almost all cases are made – or indeed made up - from information from either citizens or uniformed colleagues.

Unlike Innes, Ericson suggests the procedural law has little effect on how detectives go about their work, stating that American and Canadian police operate in similar ways despite different legislative frameworks. He also suggests that detective autonomy increases the more specialized the unit, calling the homicide team the most “haloed”. These divergences raise issues about the generalisability of observations across settings and time.

Ericson’s account reveals the boring and routine parts of the job, the long hours spent in the office. Many interviews of suspects take place in the detective offices. He suggests that, at the time of his study at least, performance indicators, so great a motivator in other parts of the force, were not so important in detective units.

A final American study (Greenwood, Chaiken and Petersilia, 1977) aimed to describe a more realistic portrayal of the working detective than the popular image of the “clever, imaginative, streetwise cop who consorts with glamorous women and duels with crafty criminals” in order to make policy recommendations for improved performance. While the image is a myth to some extent, the authors suggest it is potent in that officers perform tasks they – and the public – think need doing because of their media image, for example such highly visible if often pointless activities as fingerprint dusting.

In a wide overview of activity relating to the investigation of serious crime in a number of forces of various sizes across the United States, the authors find considerable disparity in practice from systems where the detectives have no contact with the prosecutor to those where the prosecutor not only reviews the investigation but has his own team of investigators to pursue other lines of enquiry. As far as internal supervision goes, there are systems where officers are only reviewed for the timelines of their reports on cases rather than their substantive content to those, considered more effective, where supervisors are encouraged to observe their officers undertaking interviews and appearing as witnesses in court. Overall, detectives – although homicide detectives do perform better – clear very few cases by investigation, and indeed spend half their time on administrative tasks. Less than an hour is spent at most crime scenes. The majority of what time is left is spent on gathering evidence in support of prosecution after the suspect has been identified.

The authors conclude by suggesting a move away from the individualistic detective enterprise where a lone detective worked his or her cases any way he or she wanted towards establishing teams of detectives led by a senior investigator whose primary responsibilities would be tracking the progress of cases and assigning priorities while individual officers would be assigned daily tasks – a system much like the English murder or major incident squad operating today.

### **Ethnographic studies of detectives - Hobbs**

On this side of the Atlantic, Hobbs (1988) is still one of the few ethnographic studies of detectives in England, though his primary focus is on East End entrepreneurial culture and only concerns detectives as they form a part of that milieu. Murder cases attract only a few paragraphs. While he presents an image of detectives in general as antithetical to the military model of uniform policing, suggesting that a detective adopts the culture in which he polices - in the case of the East End, this includes such qualities as “independence, tough masculinity, a traditional deviant identity and, most importantly, entrepreneurial ability” (p 84) – he suggests that detectives investigating more serious crime such as murder resort to a formal role of overt policing and “the ambiguities of

going native are dispensed with” (Hobbs, 1988, p 205). Because of the perceived increased legitimacy of investigation into murder, detectives have little need to try to improve their relations with the public by mixing with them. As with Innes, Hobbs characterises murder enquiries as providing a particular chance for the police, and the detective in particular, to “legitimise” their role in society in one of the few areas of their work where public and police are at one in their desire to combat the same evil. Murder is perceived by the CID officer as ‘pure’ crime untainted by the ambiguities involved in the routine investigation of ‘normal’ crime - “murder provides the detective with a licence for action that would prove awkward and unprofitable if implemented during the investigation of ‘normal’ crimes. Citizens not suspected of crime are not subjected to negotiation techniques: the liberal use of the word ‘murder’ is usually sufficient to inspire co-operation” (Hobbs, 1988, p 206).

Some of Hobbs’ conclusions may now be out of date – for example there are no longer unlimited resources to be put even into murder enquiries and one of the roles of today’s SIOs is to cost and compete for resources for his or her enquiry. Reports on recent murder enquiries also suggest that the use of the word ‘murder’ is no longer sufficient to persuade witnesses to come forward (for example Sentamu, Blakey and Nove, 2002).

### **English criminal procedure research – Maguire and Norris, McConville, Sanders and Leng**

Following the introduction of the Police and Criminal Evidence Act (PACE) in 1984, Maguire and Norris (1992) looked at the conduct and supervision of criminal investigation. They emphasise that there are different sorts of investigations and that there are different potential weakspots in the procedures of each. They argue that supervision in CID has traditionally been less onerous than in uniform units. This is partly because CID officers are more experienced and motivated than the raw recruits and old-timers who inhabit patrol rooms. First level supervisors in CID – Detective Sergeants – also tend to carry their own caseload and thus find it more difficult to differentiate themselves from “one of the boys”. However, Maguire and Norris argue that the quality of supervision rests heavily on the personality of the supervisor. There

is little in the SIO training to help them manage the quality of work of their subordinates and in any case experience is valued far more than classroom ability.

Maguire and Norris suggest that it is the specialised proactive squad in a big city that has usually been seen as the biggest threat for malpractice harbouring the culture of the hard drinking, hard-working performing detective who will bend the rules if 'he' has to. However, the authors also suggest that detective culture shows less solidarity in many ways than that of the uniformed officers – loyalties are fragmented and detectives are more loyal to partners or parts of teams rather than to the whole squad.

Maguire and Norris comment, similarly to Innes, that for major enquiries, such as murder investigations, the system is considerably more bureaucratised than for much police work, which has been characterised in general as a 'mock bureaucracy' - appearing to sustain a highly graded supervisory structure but in reality allowing much discretion to those in the lower ranks. There is a clear division of labour and specialisation of function within the murder team with some staff assigned to feeding the computerised information storage and retrieval system HOLMES, and others forming the outside enquiry team. Each member of the outside enquiry team is allocated tasks which he or she has to report on, they thus are akin to "pieceworkers" (p 60) – unlike their colleagues in divisional CID who manage the whole of a case, their input is only a small part of the investigation as a whole and therefore there is little incentive for bending the rules.

Maguire and Norris identify the weak spot as the SIO who comes under pressure from a number of angles to get a result. The authors suggest that he or she is under internal strain to solve the case and save resources, he or she could be under attack from the media if the case is high profile. His or her own promotional prospects could depend on quick success in investigations. The authors suggest that one way to reduce the pressure would be to protect SIOs from the demands of the media – as is the case in France. Maguire and Norris argue that the conduct of major investigations comes closest, among all investigative methods in use, to a model of inquisitorial truth finding,

since the system is designed, and resources allocated, to enable the systematic cross checking and corroboration of all evidence.

This picture of the reactive search for truth stands in contrast to McConville, Sanders and Leng's (1991) characterisation of the investigative process as the detective deciding who is guilty of a particular offence and constructing a case against him or her.

McConville *et al*'s study - undertaken in the first few years after the Crown Prosecution Service (CPS) was created to insert a separate body to prosecute police cases - suggests that the police remain the most powerful players in the process, with the ability to construct a case which is never really questioned or reviewed later. McConville *et al* ask whether miscarriages of justice are not just aberrations but the natural result of an adversarial process where the selective and therefore problematic police version of a complex reality is upheld by the criminal justice system, little challenged by the defence.

McConville *et al* argue that the interrogation is the central investigative strategy of the police and the control they exercise over this situation – in terms of physical setting and the topics of discussion – affects the rest of the case: “to permit material which contradicts guilt into the interview is to build weakness into the case and is the antithesis of constructing a case for the prosecution” (McConville *et al*, 1991; p 76).

### **The role of victims**

A completely different perspective on the processes of murder investigation is presented by Rock's (1998) study of the formation of support groups of families and friends of those who have been killed. Of particular relevance to my study is the section on the families' relationships with the police. These were often initially fraught with tension – families were sometimes suspected at first of involvement in the death of their relative and starved of information, they had often to endure hours of questioning or discover unpalatable facts about their lost relative's private life. They were kept from the scene of the last hours of their son or daughter's lives and were not allowed to see them – their

child had become “the body”, the property of the state to be looked at and intimately examined by strangers. As Foster (2005) noted, it is, since the Lawrence Inquiry, common practice for the police to assign a Family Liaison officer to the family, many of whom are reported in this book to respond with gratitude and emotional intensity to this individual. These feelings are also described in a book written by Sara Payne, whose eight-year-old daughter Sarah was murdered in 2000 (Payne, 2005).

The family has no legal status in the criminal proceedings unless as a witness and can be frustrated by a lack of knowledge about what is going on; a feeling described, again in a first-hand account, by Kevin Wells of his experiences following the murder of his daughter Holly in Soham in 2002 (Wells, 2005). In the past, the family of the victim has been given no right to their own place in the court room (except at the judge’s discretion) or a voice to speak (though this may be about to change (see Rock 2004; Falconer, 2005).

The situation regarding families, and indeed many other issues, is different in France.

## **French studies**

### **Homicide statistics – Mucchielli**

Statistics for France are provided by a series of studies by Laurent Mucchielli, who has looked not only at the traditional focus of the characteristics of the victims and offenders of homicides (2002; 2004b), but also at the activities of the investigators (2004a) and factors which can be linked to clearance (2005). Though based on far smaller sample numbers than similar studies in the Anglo-American literature, a comparable picture of the over involvement in homicide of young males from the lower social economic groups, with victim and offender knowing each other, emerges. He also highlights the over representation of “foreigners”<sup>1</sup> as offenders in homicide cases (Mucchielli, 2004b) suggesting that this is because this group lack ties to the community.

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<sup>1</sup> French statistics do not differentiate on the grounds of ethnicity but on whether or not someone is a French national.



In common with other researchers, Mucchielli reports that for the majority of cases, the culprit was identified following testimony from a witness or offender, and not directly from investigation. Physical material was only important later in forming evidence. Mucchielli suggests that this pattern reverses the importance that detectives themselves put on the activities of dealing with the human and material elements of the inquiry. Judging from the timing of their deeds, Mucchielli surmises that detectives prioritized the gathering of physical evidence, over the speaking to of witnesses. In stark contrast to even Stelfox's favourable interpretation of the English interview scenario, there were confessions in 99% of Mucchielli's sample.

Mucchielli's studies, specifically about homicide, are based primarily on documentary data - case files supported by interviews. To my knowledge there is no ethnographic study that examines the police processes of murder investigation in France specifically though there is research on the *police judiciaire* (usually translated as 'detective' but formally a legal designation in France entitling the bearer to carry out certain actions such as arrest) as a whole, and the police in general.

### **Ethnographic study of French *Police Nationale* – Lévy and Monjardet**

Reny Lévy's (1987) seminal ethnographic study on the early response of French *Police Nationale* detectives to crime relates largely to volume crime and his analysis centres on the activities of the police as a key segment of the criminal procedure rather than on the institution itself. The study is, in common with a number of the Anglo-American texts, dated – the fieldwork for it was completed almost twenty five years ago. This is not to say that Lévy's work does not offer insights into the life of detectives. Some of his observations strike a chord with police studies in a diverse range of places (Muir, 1977; Miyazawa, 1992; Reiner 2000a; Kadar, 2001) when he talks for example of the need for police officers to cover themselves should later repercussions from activity arise; and of the potentially adverse effects of statistical gathering on the activity of police in that in a service judged on productivity by its number of arrests, arrests are likely to be the favoured option of dealing with something. He talks of the suspicion of police officers

towards everybody outside their organisation and how many feel the law is a hindrance to what the police are asked to do.

On specifically French, or at least continental style legal systems, Lévy comments on the status and competitions between different services in France and the practical power of the police in the police/*magistrat* relationship based on the reliance of the *magistrat* on the police for information and initial labelling.

Lévy emphasizes that the French legal system attributes almost total credence to the written record of events, a situation which suggests the powerlessness of the defendant in the interrogation system where oral statements are transferred to a written account by the officer. His depiction of the interview situation identifies two almost separate parts to the process, the talk between the officer and the suspect or witness and the writing which is the officer's alone.

Lévy suggests that police officers in France see their work as finishing when their cases are passed to the magistrature. They have no interest in the final result of the process. He talks of officers' slang for arrest - "*crânes*" skulls or heads - and their appreciation of a good job - a "*belle affaire*" - one which is difficult to detect.

Another empirical classic of the French police (Monjardet, 1996) focuses on the patrol and public order functions of the *Police Nationale* but includes some interesting observations about the investigative function and policing in France generally. Monjardet describes the status of the investigative function and the investigative units as being "*performante*" - they have a reputation both of being successful in what they do and also their activities represent a perfect correspondence with the self-image of the police officer (Monjardet, 1986, p 263). The job of the police officer is portrayed as a man's job. Indeed, into the 1980s recruitment advertisements used the strap line "*un metier d'homme*" (Monjardet, 1986, p 80). Perhaps for related reasons, the French police are less open than some of their overseas counterparts to the civilianisation of any

police function, and Monjardet quotes figures (from the 1990s) comparing a ratio of 1 in 12 civilians to officers in the French police organization against 1 in 2.3 in Britain.

Monjardet comments on the almost universal dislike of the press among French police officers and connects this animosity to the atmosphere of secrecy, also noted by Anglo-American work on police culture (Maguire and Norris, 1992), within the police service. Police officers organise “opaqueness systematically, totally beyond what even a broad definition of the professional secret and inherent discretion might require<sup>2</sup>.”

Like Lévy, Monjardet emphasises the paramount importance of the written word in the French system, emphasising that the written account, though acknowledged to be a construction, is the basis for much monitoring of work and future legal decisions.

Jeanjean’s (1990) ethnography of *Police Nationale* patrol officers and juvenile liaison police, although criticised by some (Zauberman, 2004) for its naïve style and the basis on which it is written (less than two months in the field), again offers some interesting insights.

Aspects of police culture recognisable from studies around the world are apparent in Jeanjean’s depiction of officers distrusting outsiders and disliking lawyers and journalists particularly as a class; and coping with minimal resources – Jeanjean describes the ancient typewriters being used to write up a statement, “worthy of a museum of antiquity”. Officers complain about the conditions of the job, not of the job itself – complaining that like all public service it is too bureaucratised.

Jeanjean talks of the increased status of detectives over their uniform colleagues, and within the detective branch, of the increased status of the specialised unit over the local CID, culminating in the apotheosis of the city organised crime and murder squads. Yet

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<sup>2</sup> « Organiser systématiquement l’opacité, très au delà de ce que requiert une acception étendue du secret professionnel et de la discrétion inhérente à certaines tâches. » (Monjardet, 1996; p 190).

when detective and uniform meet at a scene of a crime, they shake hands even if they do not know each other.

Like Lévy, Jeanjean describes the dynamics of the interview – a game of cat and mouse – and the process of transcribing what is said by witness and officer into the “*procès-verbal*” of the statement. He describes the setting of interviews – a shared office with a poster of a woman in a suggestive pose on the wall. Jeanjean talks of the way eye contact is used between officers and their interviewees – officers “look the interviewee in the eyes, address him without looking at him while typing then, again fix his look on him, a look permitting confession, or weighing down on him with the authority from being a police detective.”<sup>3</sup>

On several occasions Jeanjean records comments from the mainly male officers he accompanies about their female colleagues. While individual female officers are said to be accepted or even respected, there are doubts expressed about the concept of women officers in general. Indeed, until just prior to Jeanjean’s research, women worked in separate areas of the offices. They are said not to be able to properly intervene in an arrest situation, to treat the “job” of a police officer as an “occupation”, something to occupy the working day rather than a vocation. Women are notably lacking the ultimate signifier of the 1980s French detective – a well-cared-for moustache.

Jeanjean describes the work atmosphere of the small team he studied, noting the importance of the character of the “*chef de groupe*” – the team leader (equivalent to an English Chief Inspector). The *chef* is held in high esteem, he<sup>4</sup> has at the same time authority to make decisions and hand out tasks but also he is close to his men and their work. He rules by his charisma. Should the nominal head of a group not possess the necessary charisma another officer in the group will often take on the leadership role. The *Commissaire* – the officer ranking over the *Chef de Groupe* – is described as

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<sup>3</sup> “Fixer l’auditionné dans les yeux, s’adresser à lui sans le regarder tout en tapant à la machine, de nouveau porter son regard sur lui. Un regard permettant la confession, ou bien encore pesant d’autorité policière” (Jeanjean, 1990, p 110).

<sup>4</sup> Jeanjean uses « il », the French for « he ».

passing by occasionally, keeping himself informed of what is going on, seeing a little bit of the case in hand and giving a bit of advice. The “big chief” – the head of the brigade – liaises with the prosecutor and takes the dossier to the magistrature. Though having little personal contact with them, some of the group criticise *Juges* for, for example, taking too long to respond to dossiers sent to them.

A final recent academic study examined the introduction of pilot proactive units in France. Wulleumier (2000) rehearses some existing themes and introduces new elements. She insists, for example, that the police do not write much down. At first glance this seems to contradict the evidence of others who suggest the written document - “*la procédure*” - is key. However, what she means is that the officers she studied do not commit to print much of why decisions are made, discussions of policy and so on, matters that are not statutorily required by the Justice department.

Wulleumier reiterates the scarcity of resources, the lack of people available to do the job, the rivalry between the different services to investigate good cases ‘(*les belles affaires*’, p 36) coupled with a solidarity between police officers of all units signified by the use of ‘tu’ to fellow officers whenever they meet. Wulleumier (2000, p 10) re-emphasises the status of the specialised squads, the “emblematic” squads dedicated to the “enigmas” - not ordinary cases without worth (“*valeur*”), and the quintessence of police success – the slow but gratifying investigation of crime that is denied to the specialized squad’s more harried colleagues. She suggests that the cash in hand payment to detectives – for both expenses and a job well done – is disappearing but confirms the assignment of jobs and task on the basis of length of service in the unit (“*l’ancienneté*”).

Wulleumier discusses at length the relationship of the detective branch to outsiders – the public, their colleagues in the judiciary and the criminals. She states, from the evidence of her study, that police officers almost universally feel disliked by the public. “The mission of the *Police Judiciaire* is a repressive one, so obviously we are not liked

by other people,”<sup>5</sup> one officer told her. Detectives have to work under the double hierarchy of the Ministry of the Interior (police) and the Ministry of Justice (*magistrats*) where judicial logic and police logic can fail to coincide, usually resulting in the police wishing to pursue a case when the *magistrats* want to bring it to a close within a legally stipulated “reasonable delay“ (p 58). Wuilleumier argues that police detectives appear to get on best with their informants and suspects. They are of the same social class; they use the same tools - cars driven at speed and guns; and everyone knows what is expected of them.

### **The Gendarmerie**

Zauberman’s (1997) work on the *Gendarmerie*’s handling of thefts and burglaries depicts differences and similarities between the detective *Police Nationale* and *Gendarmes*, but she too emphasises the importance of the written word, the “*procedure*”, and quotes figures suggesting that almost 50% of the time detectives devote to a case is in consigning it to a proper judicial form. Zauberman also suggests this form is a construction, but a construction reviewed and corrected by others in the hierarchy. She quotes *gendarmes* reluctant to have secretaries assist with the paperwork as there were certain things only detectives could put down on paper – a similar concern was expressed by English detectives over the ability of administrative staff adequately to transcribe interview tapes following the introduction of the PACE in 1984 (Maguire and Norris, 1992).

Zauberman represents the interview as the central method of solving crime, describes the intimidating atmosphere of interview, the insults, bluff and threat – “threats about the reputation and work of their relatives, apocalyptic description of the effect of a search, the house ransacked from floor to rafters, car disembowelled.”<sup>6</sup>

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<sup>5</sup> « La mission de la PJ est une mission répressive. Alors, forcément on n’est pas aimé par les autres ». (Wuilleumier, 2000, p 69).

<sup>6</sup> “... menaces contre la réputation et le travail des parents, descriptions apocalyptique de ce que sera une perquisition ; maison retournée de fond en comble, voiture désossée” (Zauberman, 1997: p 343)

Zauberman's work demonstrates almost experimentally the communicative importance to the organisation of the morning coffee ("*le café de matin*") and "*les multiples pauses-coffee*" taken by gendarmes on their arrival in the office and at various points in the day, "allowing informal exchanges which circulated news, gossip and information on current cases."<sup>7</sup> When a new commander attempted to cut short these gatherings, the information flow was noticeably diminished with an adverse effect on ease of work.

Zauberman has some interesting observations to make about the role of the "citizen" in the criminal process, describing the act of reporting crime as a duty or obligation. She suggests from her observation the closer links, compared to the *Police Nationale*, of the *gendarmes* to the community and the increased likelihood of obtaining intelligence. She also talks about the beginnings of a blame culture in the worries of patrol officers told on the one hand not to disturb crime scenes but running the risk of being criticized for not saving lives on the other.

The other main work on detection in the *Gendarmerie* which directly focuses on homicide cases (Matelly, 2000) is mainly descriptive of the organisation of the *cellule* or team that is formed to respond to a homicide.

### **Legal research on French system by foreigners – Hodgson, McKillop, Leigh and Zedner, and Bell**

A more disquieting picture of the policing and judicial worlds in France is presented by a series of articles and books by the British lawyer Jacqueline Hodgson (1995, 2001, 2002a, 2002b, 2002c, 2005). Although based on 18 months of fieldwork undertaken by Hodgson in conjunction with a French lawyer and a French sociologist in the officers of police, *gendarmes*, prosecutors and *Juges* in five different locations most of the direct quotations in the studies come from *magistrats*. Some of the few comments attributed to police officers relate to their deep distrust of defence lawyers whose presence they see, in common with the *magistrats*, as antithetical to the search for truth in that they are

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<sup>7</sup> "Le café du matin, à l'arrivée, permettrait les échanges informels qui faisaient circuler nouvelles, potins et informations sur les affaires en cours." (Zauberman, 1997, p 339)

“benefiting only the accused (rather than contributing to the overall integrity of the process)” (Hodgson, 2002c, p 5). Police officers doubt the integrity of lawyers citing instances where defence advocates have warned accomplices and stolen evidence from files (to which they have access). Yet officers also admit lapses into dishonesty themselves - falsely claiming to have a signed statement incriminating a suspect in order to make him confess – “If a lawyer had been there I couldn’t have done that, ‘playing’ with non-existent admissions. But you have to do that to get at the truth. We don’t have many resources. And the people who are here are not honest, responsible people. They wouldn’t be at the police station if there wasn’t some evidence against them ... We just want to get to the truth”. This quote, though striking, represented a minority view according to a survey undertaken by Hodgson during her fieldwork. For the majority of police, the limited presence of a lawyer in the police station was either “of no interest” or served to protect the police from false allegations – “There is no longer any violence - in 1970, yes – but not now” (police officer quoted Hodgson, 2002c, p 11). But Hodgson describes serious cases of violence that did occur. She also cites instances of racism, with officers telling her that “Arabs always lie – even when they have done nothing wrong” (Hodgson, 2002, p 251).

The lack of resources is emphasised by Hodgson - extensions were frequently granted because of lack of police resources for transport or the unavailability of judicial personnel for the next stage of the process.

Most of the other glimpses of life in the police station in Hodgson’s work are derived at second hand from the *magistrats* – who by their own admission rarely actually visit the premises. These *magistrats* are quoted (Hodgson, 2001: p 354-7) as saying: “The police station is a hostile environment. It’s unpleasant and the police will use more pressure.” “We know full well that if someone does not admit their guilt in *garde à vue* (arrest at the police station), they never will do after that”. “There are no innocents in the *garde à vue*”. The magistrature reap the benefits of the relatively invisible and unregulated conditions of the police station described in their quotes by being presented with a suspect who has often already made some admissions.



Hodgson repeatedly emphasises that the independent supervision of the police by the prosecutor or the *Juge* so vaunted by proponents of the inquisitorial system is almost entirely retrospective and based on information given to the magistrature by the police themselves either orally or in the case file (Hodgson, 2001). Supervision is also based more on form and outcome than on method. While the *magistrat* may discuss the progress and outcomes of investigations with officers, the initiative and direction of the cases remains with the police.

The relationship between the magistrature and the police is a strange one with the magistrature, although procedurally in charge, dependent on the police for both information and investigation. Although most *magistrats* would regard the police as subordinate to them and would never meet them in person either professionally or socially, many also recognise the need for co-operation and trust while still stressing the different worlds in which the two live – “They do not know the world of judges and I do not know the world of night-clubs” (p352, 2001) a *Juge* is quoted as saying. A police officer agreed: “Our work is different. They are in their offices and we are outside on the ground.”

Because of the limited contact between the two there is a potential for miscommunication and misunderstanding. Police officers are often heard complaining about *magistrats* not knowing about their cases and *magistrats* about how ineffective they thought the police were (2002b).

In another empirical study focussing on the relationship between *magistrats* and *police judiciaire*, Mouhanna (2001) suggests that detectives and *magistrats* working in closed fields, such as drugs and finance, enjoy a close working rapport inspiring mutual confidence and that the understanding between the two is better than that of either with their respective hierarchies.

Hodgson (2002a) highlights the relative privacy in which prosecutors act and cites instances where they harshly lectured people before them even when no “charges” had been brought. She also explores the wider world in which the work of the police and the magistrature sits, specifically discussing the increasing pressure in France more fully to recognise the rights of the victim – though these rights are less in the realm of direct support and more in the nature of rights to have a complaint taken and to be told of support agencies and the possibility of compensation.

The role of the media in publicising cases is also discussed (Hodgson, 2002b). There has been some tightening up of regulations in order to protect the victim – for example, it is now an offence to publish images of a crime without the victim’s consent if to do so would damage that person’s dignity. It is also an offence to take a public poll on the guilt of an accused person. These measures were the subject of heated debate, with the media contending that they attacked the freedom of the press.

While the academic focus has usually been on the position of the suspect in interview, Hodgson also reviews new regulations in France that mean that it is no longer possible to detain a witness against their will.

Hodgson’s research represents the most recent work in the field and has been described by Lévy (2004) as the best at conceptualising the French criminal process. Other legal contributions include Bron McKillop’s (1997) case study of a French murder trial; Leigh and Zedner’s research for the Royal Commission and John Bell’s monograph on French legal culture. Bron McKillop’s “anatomy” of a French murder case is focused on the trial stage of the proceedings and, although positing the investigation as the key stage of a French procedure heavily based in the written word, he examines this only briefly though the written dossier, giving no detail on the investigative tasks, decisions and working lives of the officers. As a lawyer, he focuses on the legal issues of the comparison between the French and more common law traditions discussing the levels of external control over the police investigation, the way expertise is used in court, and the protections, particularly over non-incrimination, given to the suspect.

Leigh and Zedner examined the French and German legal systems and laws with an explicit aim of assessing their transferability to English soil. They thus provide a useful summary of the legal framework and rhetoric of the prosecution and *instruction* system as they obtained in 1991. While broadly supportive of the desire to seek the truth of a situation, Leigh and Zedner recognize that the French system has “undesirable side effects” – namely the difficulty of procuring bail and the long periods spent in pre-trial detention. They suggest that the English public would not tolerate the rigours of the *garde à vue* process, and the vulnerability to police interrogation tactics this entails.

Bell looks at the elements of French law as a whole that make its culture distinctive. In a chapter on criminal law, he notes that France has an unusual approach in using criminal law for administrative and medical faults. In the trial procedure he suggests that the questioning of the accused by the President of the court is in language which seeks to explain the wrong which has been done and, in advance of judgement, to make the person appreciate the extent of the wrong done, as well as for the judge to understand the reasons why the offence was committed. Bell suggests that interviews of suspects by the *Juge d’instruction* took a similar approach. “This search for explanation has a more important role than the checking of the facts” (p 113).

There is a reluctance in France to admit mistakes by the jury system. Until 2000 there was no appeal against the decision of the French equivalent of Crown Court – the *Cours d’assises* - and the only recourse for miscarriages of justice was through revision under the *Cours de cassation* (which hears appeals on points of law). In total, only six convictions for murder have been quashed as a result of this process in 100 years. For example, an educationally subnormal teenager Patrick Dils who confessed to a double child murder he could not have committed underwent a fresh trial when new evidence was found before his conviction was quashed. “There seems to be a desire to be certain about the real cause of the crime rather than to focus simply on the uncertainty of the conviction” (Bell, 2001, p 114). Bell also suggests the role of the *Juge d’Instruction* is

under attack, amid increasing concern about their independence, but states that the *status quo* has been defended by the French Minister of Justice as being egalitarian.

### **American laboratory experimentation**

In a joint social psychological/legal contribution to assessing criminal justice procedures, a series of laboratory experiments were undertaken by Thibaut and Walker and colleagues in the 1970s onwards to test the capacity of the adversarial and inquisitorial justice systems to produce objective and rational decisions. Using law students to act out the roles of key participants in the systems, they played out planned variations in controlled settings. In the experiments there were two levels of information; one that was given out to all participants and the other only to those who asked appropriate questions. Participants could only ask the questions allowable in the inquisitorial or adversarial framework to which they had been allocated. The experiments suggested that the “adversary” system does not provoke a more rigorous search for initial facts but that the facts that are found will be more rigorously examined.

### ***Police and Juge* memoirs**

Another source of information about the work of the French murder squad detective are the memoirs of former police officers and *Juges* – to be taken, according to Zauberman (2004) “with a pinch of salt “.

Le Taillanter (2001) is representative of the literature written by police. He laments the good old days, the demise of the “subtle art of the interrogation, that psychological exercise that no school can teach” (p 380) for a world where the dossier is half made up of documents attesting to the fact that the suspect has been fed, rested, seen a doctor, seen a lawyer and been told he does not need to say anything. While admitting interrogations could be “*musclés*” (tough) he reminds the reader that the officers also took punishment at the hands of criminals.

Another somewhat partisan account of the work of the *Police Nationale* in general is Lucienne Bui Trong’s (2003). Bui Trong, who joined the police as a Commissaire at the

age of 43 after raising her family, offers some interesting statistics concerning women who now make up 10 per cent of the police force since being allowed to join as officers from 1972. On relations between the police and the justice department, Bui Trong says there is suspicion verging on hostility from the *magistrats* towards police, who in turn are a little defensive. Although she cites a survey study suggesting that 80 per cent of the French public appreciate the work the police do, she suggests that to the average French citizen imparting information willingly to the police would still smell of collaboration. French police officers put up with the inconveniences of the job – frequent house moves around the country to take up new posts, the lack of resources – because they are proud of representing the state. While they are not allowed to strike, they can – and do – demonstrate against extreme conditions.

Probably the most informative book from the police stable is that written by two *Police Judiciaire* commissaires and a *magistrat* (Diaz, Fontanaud and Desfarges, 1994) about the investigation of sudden death. They depict a very French world and it is easy to be drawn into the colour. They cite one fabled instance where a trainee *magistrat* left her cigarette butt in the ashtray at a crime scene and claim that this it is this blunder which makes the pipe such a popular accessory at the French murder squad today. They describe the investigation as a “*travail d’assimilation*” of the victim’s life where the detective endeavours to find out more and more about him or her and his or her lifestyle; “*chasseurs d’intimité*” they read letters, diaries, peruse bills and contracts. The house-to-house enquiry can be thought of as symbolic of the routine, pavement-pounding work that can lead nowhere, but it has to be done properly – each person, however unsympathetic when they open the door, has to be made to open up – a police officer describes this process as “something like a seduction.”<sup>8</sup>

The police detective never works alone. He works in a group of 4 to 6 involving a “cocktail of personalities” in which there are regular disagreements about what leads should be followed. The *Garde à Vue* is a “complex confrontation of two personalities”

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<sup>8</sup> “Une histoire de feeling, quelque chose comme de la séduction”. p161

– the interviewer and the interviewee - probably endless to the suspect but a short time for the police officers to be filled with interviews, searches, checks and writing it all up for the *Juge*. It is a time of sandwiches in the office and an endless tapping away at a typewriter. Comparatively, the police officers do not spend much time with the defendant. Once he is “charged” (“*mis en examen*”) they cannot interview him any longer. It is the *Juge* who will repeatedly interview him. The *Juge* here describes his final encounter with one suspect – “bon courage”, he says; “merci,” responds the defendant.

Other police and judicial memoirs are connected to individual cases. One such case - that of *le petit Grégory Villemin* - led to books not only by the two lead Investigators of the *Gendarmerie* and *Police Nationale* that consecutively were given the case (Sesmat, 2006; Corazzi, 2004) but also the *Juge* (Lambert, 1987) and the parents of the dead boy (Villemin, 1986). The case, which remains unsolved, made headlines in France when first the cousin of the dead boy’s father and then the dead boy’s mother were arrested on suspicion of the murder. The chaos in the case was variously ascribed to the poor collection of forensic evidence by the gendarmes first at the scene and an inexperienced *Juge d’instruction*. As a result of the case, the *Gendarmerie* has vastly increased its investment in crime scene attendance and child murders are invariably assigned to the *Police Nationale* (Mouhanna, 2001).

### **Journalistic accounts**

Two journalistic contributions complete the picture of the French system. The accounts by Van Geirt, and Jouve provide a useful insight into the French murder detective’s perspective. Until recently the work of the French police was a closed “black box”, but a spirit of openness has descended and now journalists have been allowed to undertake quite extensive periods of observation. While I was conducting my research, the squad I was observing had just finished hosting a journalist and had a television crew following their activity.

Van Geirt (1995) again describes the group as being the base unit of the detective organisation, with each group taking cases and working cases together. In common with other writers, Van Geirt highlights the central importance of the “*interrogatoire*” (questioning) to the police procedure. “Confessions are the obsession of police officers,”<sup>9</sup> the interview - the means to get them - lying somewhere between “a delicate art” and “a struggle without mercy”. Van Geirt talks of police strategies to obtain the psychological advantage in the interview, such as positioning the suspect’s chair in an awkward position, or taking him or her from the workplace of the officers into the more luxurious carpeted offices of the head of the *Brigade* – this is known as the “*coup de la moquette*” – being hit with the fitted carpet. It is indispensable that during interrogation – as opposed to witness interviews – the office doors are shut and “no one puts his head round the door to say ‘cuckoo’.” During the *garde à vue*, none of the officers has time to go out for the traditional lunch break, they send out for sandwiches or pizza, for themselves - and for the suspect. If a bond has been formed, the suspect stays in their offices and eats with them. According to Van Geirt, French detectives have to find out not just who committed a crime, but why. He describes the detailed observations at the scene of the crime with the “*procedurier*” – the officer in charge of forming the dossier of evidence for the prosecutor – working in concentric circles away from the body, a formation called “*l’escargot*” (the snail).

Jouve’s more recent account of the same murder squad (2004) describes the essence of detective work as French detectives see it – the need to savour the atmosphere of a murder scene to understand what has happened, the need to “*faire venir*” – literally to make come, to make someone be forthcoming – a suspect, to bring them to make a detailed confession, the kind of confession a suspect will only make to a police detective, not a *Juge*. Jouve speaks of the officers’ contact with the families of the victims; with tears in their eyes making a telephone call to break the news of the death to a parent. Although in principle impartial - as personnel of the justice system should be - officers stand with the families.

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<sup>9</sup> “Les aveux sont l’obsession des policiers , » p51

The French detectives accept they make mistakes – there are no certainties in this work where everyone lies; the suspects to save themselves and even the victim’s family to save their reputation. Some cases are made “*policièrement*” (p 35) – that is, the case may not have gone through the court system but the detectives feel they have identified the culprit. In many ways the *Brigade* officers are respected over the average police officer – even the young hooligans are impressed with them – but the feeling is not universal. This is a male world - Jouve describes only a “proletariat” (p 139) of women secretarial staff in the building.

Jouve also describes some scenes which could only take place in France – the head of the *Brigade* shaking hands with suspects as they are sent on their way to the *Juge*, the families of suspects brought into the offices to bring pressure to bear on their relative to confess or tell the truth, or at the very least to be “heard” by the detectives to bring more light to the case.

## **Conclusion**

In some ways the English and French detectives are portrayed as very different – the English working in their large bureaucratic teams and agonizing over information management, whereas the French discuss motivation over a cup of coffee. However, these different pictures stem in large part from the different nature of the literature used to examine them and the different access given to researchers – the French interrogation, for example, probably forms such a prominent part of researchers’ depictions of the police investigation process because it takes place in semi-public space in the police office rather than in a secret room in private. Despite the contextual differences of the reviewed literature, taken as a whole the studies provide a valuable reference framework on which to base my thesis. For example, whilst the French and the English criminal justice systems have conventionally been starkly contrasted as being the epitome of the continental and anglo-saxon traditions, it would also seem from an overview of literature that the worlds of the police, and detectives in particular, have much in common. While the differing legal frameworks undoubtedly place a differing emphasis on the process, both sets of officers are engaged in a process of construction of files as



the gatekeepers to the criminal justice process. Both have tended towards an inward-looking culture bounded in secrecy that values experience over classroom training and fosters a macho culture slow to accept women. Psychologically, police on both sides of the channel have a deep sense of suspicion of all strangers as a result of their job, and are wary of what strangers say to them. In view of this, it is perhaps surprising how easily I was welcomed into their lives, as I describe in the next chapter.

## **Chapter 2: The Observer's Story<sup>1</sup>**

This chapter outlines my research design and some of the methodological issues associated with it in the form of a chronological narrative of my experiences in the field.

### **My background**

Before I began my PhD, I had worked in various capacities alongside the police in this country. I started my professional life as a journalist often reporting on the activities of the police and criminal courts, and volunteering in my spare time as a Special Constable. I worked for five years in the Press and Community Relations Office of a regional police force acting on a number of occasions as press officer for murder investigations. At the time of starting at the L.S.E., I was finishing a research project involving the police working in multi-agency partnerships. I therefore felt I had some understanding of the police and the process of murder investigation in this country.

### **Why compare?**

“Comparison is one of the essential procedures of all sciences and one of the elementary processes of human thought” (Evans-Pritchard, 1951: p 1). To some extent all studies are comparative in that the researcher is comparing what he or she sees with what he or she expects to see, whether that be from common sense, his or her own experience or the literature on the subject (Marshall, 1998). As Durkheim (1895: p 157) wrote: “Comparative sociology is not a particular branch of sociology, it is sociology itself”. Explicit international comparison dates back to Aristotle and it was used by the founding fathers of sociology. Durkheim for example explored suicide (1897) and the division of labour (1893) from a comparative perspective as did Weber in his analysis of the rise of capitalism (Gerth and Wright Mills, 1958). These writers used comparisons on a macroscopic scale to develop theoretical models. Nowadays, much comparative work is done by teams of international researchers (Hantrais and Mangen, 1996)

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<sup>1</sup> The title is taken from Latour and Woolgar's (1986) *Laboratory Life*, p 45. The authors fabricate a fictitious character - 'The Observer' - to describe their observations of laboratory life. They do this both to facilitate an initial naïve Outsider's view of the laboratory and to draw attention to the importance of the contextual knowledge the observer brings to the observation to the nature of the account that is later constructed.

monitoring social and economic developments while solo researchers have adopted a number of different techniques to investigate cross-cultural variation – including content analysis, oral histories and secondary analysis of data provided by differing countries (Øyen, 1990) across all fields from anthropology to political science (Evans-Pritchard, 1963; Dogan and Kazancigil, 1994).

Within the criminological literature there is also a relatively long history of the use of a comparative perspective with some of the earliest sociologists and practitioners on policing using comparisons between two and more countries in their analysis (Banton, 1964; Fosdick, 1915). Banton and Fosdick's work are examples of the first of three different approaches to comparative policing studies identified by Mawby (1990) – i.e. overall comparisons of policing between different countries. Mawby's other two comparative approaches are texts which focus on policing in a particular society, either written by a foreign commentator who makes comparisons to policing "at home" or by "a local" for a foreign audience (e.g. Punch, 1979); and those which focus on specific aspects of policing in two or more societies - public order policing being one such example (e.g. Waddington, 1992). Much of the criminological literature is comparative merely by including chapters in a single volume on practices in a number of different countries (see for example, Brodeur, 1995). Nelken (1997) however distinguishes studies not by who or what is compared but by the aim of the comparison – so he distinguishes between studies that test theories of social control (Gottfredson and Hirschi, 1990); studies that show how crime and criminal justice are embedded within changing local and international, historical and cultural contexts (Crawford, 1996); and studies which aim to classify and learn from the rules, ideals and practice of criminal justice in other jurisdictions (Goldstein and Marcus, 1977). Nelken later (2000) created another typology around the methods of collecting data - 'Virtually There' (working from other peoples' direct studies or multiple researchers looking at what would happen in their own country); 'Researching There'; or 'Living There'.

My study – based on observing a specific aspect of policing, murder investigation, in two cultural contexts – would fit into Mawby's third (i.e. a text which focuses on

specific aspects of policing in two or more societies) and both of Nelken's second categories (i.e. studies that show how crime and criminal justice are embedded within changing local and international, historical and cultural contexts and studies involving 'researching there') - although there is an element of virtual research in that I have compared what I myself observed against what other researchers have already published about similar activity.

It is easy to be seduced by the rhetoric of those involved in comparative research. Bayley (1999; p 6) says comparison of different ways of doing "the same thing" is like setting up the equivalent of a international scientific "living" laboratory, a naturally occurring experiment; Sartori (1990; p 16) asserts that comparison is the only way that social scientists can create the control of an experimental or statistical researcher; Bertaux (1990: p 166) talks of it allowing "variables to vary". In an earlier work, Bayley summarised the benefits of comparative study as: extending knowledge of alternative possibilities; developing more powerful insights into human behavior; increasing the likelihood of successful reform; and gaining perspectives on ourselves as human beings (Bayley, 1976). International models allow the most scope for theory generation, the sort of "analysis which allows us to see beyond our own direct experiences challenging the taken for granted and enabling us to see how our own systems are moulded by other facets of our societies" (Mawby, 1999: p 190), exemplifying the constant comparison method of grounded theory (Strauss and Corbin, 1990).

For me the major benefit of comparison was the impetus it gave actually to see something beyond the normal processes and procedures I was familiar with; because, as Becker (1971: p 10) argues "it takes a tremendous effort of will and imagination to stop seeing only the things that are conventionally there to be seen". It was in part in order to try to give myself more of a questioning stance – what Callon (1986: p 200) called "generalised agnosticism" and Schratz and Walker (1995: p 107) term "looking twice" - deconstructing actors' frames of reference and cultural/normative social bonds, that I chose to undertake a comparative study.

An example of how the comparative stance paid dividends for me was in the development of one of the themes of my thesis - the way language was used by detectives to describe the processes of murder investigation. As I describe below, I did the bulk of my fieldwork in England before travelling to France and then returned to undertake some additional observation in England. In the notes I took in France – which in general terms were much more detailed than those I had taken in England – were many references to the use of language. For example, on my first day I noted that the English ‘case’ is referred to as an ‘*affaire*’ in France, especially when it is unsolved. Although ‘*affaire*’ has little of the frivolous overtones of the English equivalent, its use connotes a wider view of the circumstance and context of the event of murder compared to the legalistic ‘case’ or colloquial ‘job’ used in England. Once a suspect is found, the *affaire* is then referred to by the word ‘*procédure*’ or ‘*procès*’ referring to the file and process which the suspect undergoes – the officer who puts the paperwork together is called the ‘*procédurier*’. In France, the work of the police is seen as part of a whole which includes the work of the justice department as an equal if not larger partner in the procedure. Interviews with witnesses are referred to as ‘*auditions*’ – it might appear that a witness is given the opportunity to be ‘heard’ (‘*entendu*’) rather than restricted to the basic details of what will be affirmed in a “statement”. There was much talk in France of the ‘truth’, ‘*la manifestation de la vérité*’. Although some of this use, particularly on paper, is rhetorical and formulaic, nevertheless, many detectives spoke to me of *la vérité*, and with prosecutors and *Juges* this tendency was even more apparent.

This use of language is something I noticed in the French fieldwork because as an outsider I was sensitive to the words used to describe different things. While undertaking the English work, I literally did not notice the words used to describe the various activities – ‘interview’, ‘meeting’, ‘arrest’, ‘charge’ – because for me, as an insider, the word denoted the deed, there was no difference. It was only when I returned to the field in England after having been in France that I started to note some interesting use of words there too. Instead of what Martin Innes referred to as ‘whodunits’ I heard the more utilitarian ‘stickers’ for cases not immediately solvable i.e. sticking in the office and not going away. A number of civilian office staff referred to

the new cases as 'stories' saying "oh that's good: we've got a new story to work on". Many victims by their lifestyle or habits were described by detectives as being "volunteers" to die – by living as they did they had virtually chosen to die as they did. Not only this, but generally I found more the length (and substance) of the notes I took in England increased after my stay in France as it had sensitised me to alternative ways of looking and seeing things.

Despite the benefits of comparative research, there are also huge difficulties and challenges in conducting this type of work. There are issues over equivalence and definition, the sheer range of variables that can come into play, and the basic task of achieving more than superficial understanding not just linguistically but culturally.

A key issue concerns what aspects of the countries under study are isolated for comparison - the way the countries chosen are "cut into" (Scheuch, 1990: p 50) - to ensure that like is compared with like. Some researchers use the concept of "functional equivalent" (Rose, 1991) to slice up their data. They identify roles and practices in different countries that have a roughly similar purpose or aim and compare them. For others the idea of a functional equivalent is reductionist if it is the function itself which is different - Hodgson for example points out in a relevant example for me that the "*Procureur*" (usually translated as prosecutor) in the French system is a "different creature" (Hodgson, 2000: p 143) to the Crown Prosecutor in England in terms of wider responsibilities (specifically in relation to community crime concerns) and training. As will be seen in a later chapter describing the French trial procedure, the *Procureur* in the French system does not have the same attacking function *viv-à-vis* the defendant in the French trial that occurs in its English equivalent; some of this function is performed by the lawyers representing the *parties civiles*. Identifying functional equivalents undermines the possibility of discovering difference – if different processes do the same work, then their apparent dissimilarity disappears. Many comparative researchers insist concepts carried over from one country to the other are defined in exact terms (Brants and Field, 2000; Crawford, 2000). While this is undoubtedly helpful and essential in any kind of purely statistical survey, it is of course by no means an easy task to exactly define roles, concepts and procedures in your own culture and language never mind in

another. The very word ‘murder’ - central in my research - has both a legal and colloquial use in English that is only partially the case for the nearest French equivalent ‘*meurtre*’, where the legal category ‘*assassinat*’ would cover the formal charge of killing with pre-meditation. However, the murder definition is possibly one of the easier concepts to translate. Roles or concepts with no direct equivalent are more problematic. The obvious example in my fieldwork was the ‘*juge d’instruction*’ – to translate this, as is often done, by either ‘judge’ or ‘magistrate’ misconstrues the difference in role between a French *juge* and an English judge or magistrate. Many translations only partially capture all the connotations of the role often over-emphasizing one at the expense of another. For example, ‘Investigating judge’ conveys well the concept of the *Juge* being involved in the investigative stage of the enquiry but suggests a rather more active role than is actually the case. ‘Examining magistrate’ is better in trying to exemplify the role of the *Juge* in supervising the work of the police and re-interviewing witnesses but it still fails to convey all the responsibilities and status of the role and it is for this reason that I, like many others, do not attempt the challenge of translation and use the French word instead. Even when terms suggest the same sort of activity – ‘house to house enquiries’, for example, having the French equivalent of ‘*porte à porte*’ or ‘*enquête de voisinage*’, it is important to ask whether these events have the same importance in the processes of which they are a part? Which processes are intrinsic, which are almost irrelevant or done for form? Do similar expressions cover exactly the same set of activities? The French police *enquête de voisinage*, although usually translated as ‘house to house’ in English, refers to a wider line of enquiry than knocking on doors, drawing in information such as local crime statistics and reports.

Of paramount importance in order to delimit my study, is the necessity of defining the extent of a ‘murder investigation’.<sup>2</sup> I had initially identified the cut-off point of my ethnographic study as when a suspect was charged. Even in England, this causes

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<sup>2</sup> I use the word “murder” as opposed to the more generic “homicide” to reflect usage both within the English detective world and more popularly in this country though strictly speaking such a classification could not officially be designated until after the end of the court process (Innes, 1999). In addition, although the French would use the words “*crime*”, “*homicide*” or “*assassinat*” more commonly than “*meurtre*” the squads I observed were investigating only those cases which would popularly be conceived of as “murder” – crimes without immediate solution, requiring investigation.

problems as many detectives see “the real work” (Innes, 2003; p 216) starting after the suspect has been charged and in preparing the case for court. In France I had thought of using the now obsolete ‘*inculpé*’ as the equivalent of charging – for the suspect may not become the *accusé* until after, for example, the examinations into the suspect’s *personnalité*, such an essential part of the French system, has taken place. This could be well over a year after the offence. The alternative ‘*mis en cause*’ is more like ‘arrest’ – ‘put in the frame’ as it was described to me, and in the French system this is not necessarily by the police – and would cut off too early as being more like the English ‘suspect’. The French ‘*mis en examen*’ is more akin to the concept I am trying to pinpoint in the French and English processes – but the expression *mis en examen* encompasses both the English stage of ‘decision to charge’ and also someone is *mis en examen* all the time an *instruction* or investigation is taking place, that is, until the case goes to court. All these differences of terminology became part of the variance I wanted to explore and posed a series of questions for me about how events are defined and structured and why the systems are structured so differently. I had wanted to limit the focus of my comparison to the investigation up to “the French equivalent of charging”. I discovered there was no real equivalent and therefore I decided to extend my fieldwork to cover the ‘whole’ investigation process from discovery of the body (or classification of a suspicious death) right through to trial. Because of this I realised that I would have to extend my study beyond the work of the police out to the prosecutors and, in France, the *magistrats*.

Further difficulties arise in selecting sites for comparison to assess how much the “slice” or part of the country observed reflects the country as a whole and how far in depth qualitative methods intended to “unwrap” (Schunk, 1996: p 64) national differences actually unwrap regional, local or station or team differences. In my own research, which involved observations of more than one force, I noted differences between forces in France where one was in some ways more akin to its English counterpart than the other French force. Equally there were differences between the English force chosen for fieldwork, and the force I used to work for, where the composition of murder teams – in terms of specialist and non- specialist staff – was different.



The range of variables that need to be taken into account in analysing potential difference is considerable (Meyer, in Mawby, 1999, p 10). I used statistics where available to indicate how typical or otherwise the forces I studied and the teams within those forces were to other teams or areas (something which Innes (1999a) did too to assess the typicality of the cases he observed). I also asked detectives with experience in more than one area for their views, but this information can only at best be suggestive.

However, there remains for me a bigger challenge – understanding. This is not merely the barrier of language – which I return to below – but the danger of a sole researcher looking at two systems, spreading herself too thinly, producing superficial impressionistic material and falling prey to the “presentational data” (Hodgson, 2000; p 142), that is, the image that officials want an outsider to believe rather than what actually occurs. “There is a limit to the extent that even sustained personal experience can disentangle the contextual variables of an alien system and it is “all too easy to let the standards of validity which we set in viewing our own policing systems be laid aside when one ventures abroad” (Mawby, 1990: p 11).

Mawby tells a cautionary tale of the case of the Swiss crime figures which were examined by first one visiting academic, who based his study on interviews with local practitioners and concluded crime was very low, and then another, who spent a month in Switzerland and came to the conclusion that crime rates were in fact similar to the rest of Europe but that there was a low recording rate. The Swiss criminologist Martin Killias (Killias, 1989) attacked this report saying that it was a serious distortion of the evidence by someone “with no knowledge of the language and with little contact with Swiss academics or practitioners” (Mawby, 1990, p 11)

I used a number of strategies to try and minimise some of these problems. For example, I learnt French as well as I could before going to conduct my fieldwork. Some of this learning I completed in a police and criminal justice environment – teaching at a *Gendarme* international school one summer, attending detective training with the *Police*

*Nationale* and staying in the house of a *juge d'instruction*. Nevertheless I am by no means bilingual and it would be foolish to suppose that I did not miss things on occasion through a language deficit.

As regards the second of Killias' criticisms – that reports had been written by researchers with little contact with local academics or practitioners, I chose ethnographic methods, spent a good deal of time with practitioners, and talked to them in some depth about my perceptions as they arose, which created a kind of feedback. I also identified two officers who not only had longstanding knowledge of the French criminal investigation process but also had a very good level of English, and they agreed to read my written drafts and comment on them. While I would not necessarily change everything they disagreed with, their feedback provided me with useful perspective and suggested whether I have conveyed a world they recognized and could identify with. In addition, while undertaking part of my fieldwork in France, I obtained a Marie Curie grant to work with the French criminal justice research group C.E.S.D.I.P. This enabled contact with a number of French academics, including some of the very few who have conducted empirical work in the policing field or studied aspects of homicide. There is also other published work on the French criminal justice system to set my work and observations against – the most salient probably being Hodgson from a legal perspective.

Indeed, Hodgson's work was influential in my choosing France as a comparator to England. Explicit comparisons between countries are often based on a similar/different continuum where in order to make some kind of meaningful contrast, at least some factors must be the same. So, for example, in my own study France and England are both democracies of roughly equal population (Travers, 2004) with a public police force where killing someone is often unlawful and needs to be investigated by an agency unconnected to the victim. They differ in their legal systems and culture and it is the contrast between the inquisitorial legal system of France – the "Continental system par excellence", as Mawby (1990) describes it – and the adversarial culture of England that creates diametrical interest in the comparison. Previously, those who have made this

comparison have done so from a theoretical standpoint or from data limited in its application. I felt it would be very interesting to look empirically at the investigation of serious crime in France in practice. Unlike Hodgson, who compares the French system with the English by implication, I also wanted to watch English detectives in order to be able personally to assess how much I am comparing like with like – how much the various aspects of a murder investigation reflected similar (or different) processes, structures, conceptions and viewpoints.

### **Choosing qualitative methods - What's right with ethnography?**

It was partly in order to facilitate comparisons and be confident in my own mind that I was comparing like with like that I decided to use mainly qualitative methods based on observation and questioning and capable of producing “thick description” (Geertz, 1973) in my study. As I discussed in the preceding chapter, there is also only a limited (though growing) literature on the police investigation of serious crime, specifically murder, and therefore little research that might have enabled me to design something more quantitative in the way of a survey or questionnaire or to compare countries using other people's work on each of the countries involved. It seemed to me that the nature of my exploratory study - hoping to increase understanding of processes and practices in context - called out for qualitative methodology.

Many of the studies on criminal investigation outlined in chapter 1 involved some field observations, recognizing that what is presented “front stage” – in interview for example – might be different from what occurs in the “back region” and that documentary data, such as case files, may present only one partial, though consequentially important, version of reality (for example, Sanders, 1977). So Sanders spent a year in the detective bureau of a county sheriff's office in America; Ericson (1981) spent two months with six two-person investigation teams in Canada; Greenwood, Chaiken and Petersilia (1977) completed detailed follow-up observation on four police departments identified through an initial survey and even the journalist Simon (1991) spent a year on the killing streets in Baltimore's Police Department. In France, Reny Levy (1987) spent 17 months observing the criminal investigation process around Paris, spending time with both

police and *magistrats*. He also used interviews and quantitative data on crime rates, numbers of cases pursued and a number of other available figures. Jacqueline Hodgson is a committed observer using interviews to “permeate and interpret another culture” in her series of studies on various aspects of the French criminal justice system (Hodgson, 1995, 2002a, 2002b, 2002c). As regards British studies, while Dick Hobbs’s (1988) colourful ethnography is primarily about East End entrepreneurial culture and only about detectives in as much as they are part of this culture, it is also based on observation. Martin Innes (1999a and 2003) spent five months “in the field” as an “observer as participant” with both out-of-office detectives and office-based personnel.

I prefer the term “direct observation” (Hodgson, 2000) to the more commonly used “participant observation” as, despite the best efforts of some of my informants, I did not routinely participate - that is, have a role other than observer - in the activities observed. The term ‘direct observation’ reflects more accurately my observational activity - that is, not taking part except peripherally but nevertheless being there and watching overtly. Such observational work is variously justified as observing detectives in their “natural state” (Denzin, 1971) allowing the researcher the opportunity to identify important issues without the ‘total constraint’ of predetermined categories (Hodgson, 2000; p 146) and to see the interaction between detectives and the outside world - the public and other agencies - in “making” their product (Ericson, 1981), a process Sanders sees as close to the sociologist in constructing theirs. Although I have used other supplementary methods of data collection, the basis for analysis is the observation. As one (English) police officer said to me during an early conversation: “If all you do is talk to us all you will be able to say is that we are very pleasant, well-motivated chaps. You need to see us in action”; the inference being the two will present different data.

### **Ethnography: Reliability and validity**

Ethnographic research has often been regarded as unreliable and lacking in validity because of its small scale and subjective nature (Le Compte and Goetz, 1982). Some ethnographers reject this viewpoint entirely by saying reliability and validity are alien concepts to qualitative methods and have been falsely imported from quantitative

studies. While they may be “overrated” qualities (van Maanen, 1988; p xi), I want to take all steps to make my research as meaningful and credible as possible. It can be said that what ethnography lacks in external validity it makes up for in internal validity by virtue of the time spent in the field, the constant comparison and the data gathering conducted in a real life setting (Hammersley, 1992). External validity can also be added to by comparing my observations and conclusions with those of others who have already published in the field, either indirectly through reading their work or directly by communicating in person. For some (see Hammersley, 1992) relevance is as important as validity. Due to the seriousness with which the crime is regarded and the spotlight it receives, the investigation of murder has important repercussions for the reputation of the competency and legitimacy of the policing function (Innes, 1999a) far above its place in the workload of its officers and is thus of interest to practitioners and policy makers as well as wider society. So while I do not expect the results of my small scale study to be generalisable widely beyond or even necessarily within all areas of my study sites, my work is based on the idea that it can, if described in enough detail and with enough honesty and personal and epistemological reflexivity, be used as a comparison with other similar work to build a bigger picture. For this reason, the following sections give a detailed account not only of the nature of my fieldwork, what I did and did not see and the kinds of data from which I drew my conclusions, but also probe my role in the process of the research, my relationships in the field and the way in which my reactivity effected the resulting analysis.

### **Choosing fieldwork sites**

Murder does not occur in a uniform fashion. In both France and England, it is generally more prevalent in cities and large towns than in rural areas. This is reflected in policing arrangements. Some large cities, where the murder rate is sufficiently high, host specialist squads of murder detectives. Although not perhaps entirely reflective of murder investigation in general across the country, the option of trying to spend time with such a specialist squad made practical sense in terms of maximising the potential to see a ‘live’ murder investigation. In many more rural areas, for example, a murder team is formed for each new investigation out of local officers who are disbanded when the

enquiry is finished – a researcher could therefore spend six months waiting for a new case which might never happen. Whereas the “standing army” of specialist detectives could be relied on to be permanently conducting murder enquiries and the officers are physically present in one place to talk to. The situation was further complicated in France because there are two different types of police ‘forces’ who are ‘*compétent*’ as they would say, to conduct murder investigations. Their competence is largely geographical in that members of the *Police Judiciaire*<sup>3</sup> of the *Police Nationale* investigate in cities and large towns, while members of the *Police Judiciaire* of the *Gendarmerie* investigate in smaller towns and rural areas, though either force can in theory be given or “*saisi*” of cases by the Prosecutor. Although, taking a narrow view, there was no need to study the activities of the *Gendarmerie* if I was to base my comparison on what happens in large towns or cities, I would have felt insecure knowing nothing about *Gendarmerie* practice and how this compared with the work of *Police Nationale* specialist squads. On the English side, I had worked in other English forces before and could contrast the ‘standing army’ model with that elsewhere in the country.

### **Access – Getting In**

I regard the arranging of access to my fieldwork sites as part of the data-gathering process and revealing in the exposure both of patterns of organisational relationships in murder investigation in France and England and issues of concern at the different sites (Burgess, 1984). Like Brookman (1999), who obtained access to police murder files through the intermediary of a fellow academic who knew a high-ranking detective, I obtained permission to spend time with both English and French police through personal contacts.

On the French side, access to my main research sites was achieved through the important French concept of the sponsorship - or *parrainage* – of the police *attaché* at

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<sup>3</sup> An Officer of the *Police Judiciaire*, or OPJ, is what we would call a detective or member of the Criminal Investigation Department; the role has the status of a rank in the French policing system and gives the holder the authority to perform certain tasks – like putting somebody under “*garde à vue*” (arresting them).

the French Embassy in London. I was initially introduced to the police attaché by a retired English police officer then working as a civilian European liaison officer for the police force covering the area where I lived. I was at that time working on an evaluation of some new local legislation overseen by another retired officer who introduced me to the European liaison officer. I was subsequently invited to the Embassy to talk about my research. During this visit the police attaché was so accommodating I even began to wonder if he quite understood what I was asking for. At this stage, I was embarrassingly ill-informed about the French investigation system. In my defence, there was not much literature describing in detail how this worked, as until very recently French police organisations have been closed to outsiders and French researchers have not been eager to batter down their doors (Levy, 2004). I badly needed my contact to guide me through the maze of the French policing system. Without him, it would have taken a lot longer, and may even have proved impossible, to direct requests for observation to the right people. This was highlighted during the research when I was attempting to observe a post mortem. Unaware of the appropriate channels of authorisation, I initially made a *faux pas* in attempting to use the police detective as an entry card into the morgue when the correct procedure was to make a request through the prosecutor's office. This is redolent of the fact that the French police have less authority within the system than their English counterparts and that bureaucracy rules. In England, accompanying a police officer would have been sufficient.

My gatekeeper was keen, being a *gendarme* himself, that I should see not only the work of detectives of the *Police Nationale*, but also the *Gendarmerie*. I was grateful that he did so because it was because of his insistence that I noticed as many differences between forces in France than between countries. My contact, who seemed genuinely interested in my project and its success, also arranged my stay at the *Gendarmerie* international language school where, in return for helping *gendarmes* awaiting a UN mission with their English, I joined French classes offered to overseas nationals wanting to become French teachers.

The problem with working in this way through an intermediary was that I felt I had no control over the situation. With only a week to go before setting out for France, for example, I still had no contact details about where I was to go. My link was calm and said he would have them – as he proved eventually to do – but it was tense for me, especially when I was initially offered only two weeks with a murder or serious crime squad in my chosen city. Although I asked for more, my intermediary was unable to say why my stay had been limited to two weeks. After my two weeks there, and another two weeks at a local detectives’ office, I went back to my contact to ask for an extension and this was quickly achieved. It transpired that two-week *stages* (periods of work experience very common in french public service training) were always offered initially because it was felt easier to prolong a successful *stage* than get rid of someone who did not fit. The detectives thought I was “*terrible*” – I had initially taken this as a bad sign but “*terrible*” is a *faux ami extraordinaire* which can mean ‘terrible’ in the English sense or “really or terribly good” depending on context. My *stage* became indefinite!

For my time with the *gendarmes* the chief officer at the site I had been allocated was a professional friend of my liaison officer and I felt this would ease my path. As it transpired, he was away when I arrived, but his deputy greeted me and there were no problems. The patronage of the Embassy also explicitly opened the door to the office of the Prosecutor and the *Chambre d’Instruction*<sup>4</sup> after I realised that I needed to extend my study to their work. I asked another contact given to me by a magistrate who worked at the Embassy for a *stage* at the *Palais de Justice* (Magistrates’ and Crown Court would be the nearest equivalent) and the Embassy name assured me access.

On the English side, things were more familiar. Having worked previously as a civilian in a regional police force, I did not need the kind of organisational guidance required to wend my way through the French system. However, knowing who I needed to ask was not the same as having access agreed. At the end of my first year of study, I had lunch with a former PR colleague who worked for the police authority of the force I eventually researched. Like its French counterpart, statistics revealed a relatively high average of

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<sup>4</sup> The governing body of the *Juges d’Instruction*.



suspicious deaths occurring within the timeframe of my planned period of observation. My friend told me about a seminar arranged by the police that week that was aimed at keeping local council colleagues informed about the processes of murder investigation. The meeting was attended by the head of the serious crime group. Making myself known to the latter, I explained my research and arranged to meet to discuss it further. Access was again agreed quite easily – the fact that my French access was already arranged in a comparable city seemed to be a factor - and my high-ranking contact went further, saying he would find a more rural force for me to observe too so that I could make an up-to-date comparison with the work of the *Gendarmerie* in rural France. However ongoing difficulties of arranging access were demonstrated when, after meeting the lead detective from the rural force which had volunteered sponsorship of my project, his force headquarters subsequently refused access - though I was allowed to interview officers. They felt murder investigations too sensitive a matter to allow unlimited observational access.

As a condition of their access, my host force in England asked me to sign a contract, primarily relating to the contents of future publications, in which the head of the serious crime group had the right to read any publications before publication and could request the removal of anything which might result in civil liability being incurred by the police force, factual inaccuracies, anything that might jeopardize future legal proceedings, and anything which revealed covert or specific techniques that could jeopardize future police operations. On my side, the contract stipulates that should any dispute arise over the content of my writings, the matter will be dealt with in person by the head of the serious crime squad, and that all responses must be supplied within a month of my submitting a document. I regarded the provisions as an opportunity for me to gain formal practitioner feedback on my work (Strauss and Corbin, 1990). I also had to fill in a 20-page security clearance form giving details of me and my family and an insurance indemnity agreement. These, assurances, it has been suggested to me, are a sign of the increasingly important role of risk as a model of policing in Anglo-American world (see Ericson and Haggerty, 1997). The French were surprisingly – given their renowned bureaucracy - undemanding in requiring contractual protection. Every so often an

informant verbally reminded me, and more in a spirit of information in case I did not know, that an “*instruction*” – the investigation after a *Juge d’Instruction* has been assigned – is “secret” and therefore details of ongoing cases cannot be revealed publicly, but no effort was made to censor or read publications.<sup>5</sup>

### **‘Access relationships’**

Obtaining access is not, as numerous methodology studies have emphasised (Burgess, 1984) a one-off tick in the box. It requires ongoing work both with the people one is actually observing, who may not be and, in fact, often are not, the same people who agreed to one’s presence, and one’s original gatekeepers. This is particularly true in a long-term study like mine in which I tracked cases and made return observational visits. In this regard, the gaining of entrance into a field might more properly be described as “access relationships” rather than one-off arrangement of access (Denscombe, 1998).

When I returned to England from France, the English force wanted “something in writing” expressing what I had achieved so far, and what I still needed which would add to what I had already observed. The teams with whom I spent time were very busy, and I felt it was important to be sensitive about their workload in continuing to make demands on their time. This situation underlines the need to work continually on relationships while remaining flexible and open to other data collection possibilities. Maintaining these relationships has time implications for research projects.

I spent a total of six months with the English force – three and a half months initially and then return periods for further observation. I spent three months with the French city force mainly at the specialised murder squad, a month with the judiciary (prosecutors and *Juges*), a month with the *Gendarmerie*, then a further month with the city force and have returned for a number of shorter visits to see specific events.

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<sup>5</sup> Before jumping to conclusions about the relative circumspection of the police forces of the two countries based on my experience, it should be noted that Hodgson was required to sign a contract (complete with a wax seal) detailing the conditions of her access with the *Gendarmerie* and that she also had to negotiate with the French police unions before contacting officers of the *Police Nationale* (Hodgson, 2005).

### **Anonymisation of sites**

At the request of the English gatekeepers, and in the tradition – even “fetish” Becker (1998: p 51) suggests - of sociological studies, the locations of the sites where fieldwork was conducted will remain formally anonymous. As a former journalist for whom no story would be published *without* adequate identification of place and personnel – at the very least ‘a source close to’ the subject of the article would be quoted, this anonymisation feels odd, negating for me much of the strength of the description and its persuasive power. I tend not to credit stories unless places and people are named because only then could a reader verify them and assess the extent to which a particular context affects the conclusions. I imagine the differing naming traditions in journalism and sociology have grown up because of the professional milieu in which they operate – with sociologists being trusted to have observed what they say they have done without the necessity of overt checking and journalists not. Yet, the pseudonyms often given to ethnographic fieldsites make the accounts feel like fiction to me. It also seems as though the extensive descriptions of the locations necessitated by not being able to name them directly both often give away the location inadvertently and lend something of a game atmosphere to the ethnographic enterprise by encouraging fellow researchers to guess where the work was conducted (Boyce, 2006). While we as researchers are encouraged to say more about ourselves, in order to better detect the effect of the researcher’s values and beliefs on the research, the setting in which the research took place, remains unidentified.

The French detectives expressed no concern about being identified, although such sociological studies as there are concerning the French police also often ostensibly keep their sites anonymous. However because of the structure of the murder investigation units described, it may not be impossible for the initiated to work out the location of my sites. Not to describe the structure of the sites and the extent of their difference from other similar sites however would restrict the analysis. For this reason I have tried instead to anonymise both within the unit I studied - in terms of the individual teams

and officers I observed - and particularly the cases they dealt with. Although details of cases are given – again in order to strengthen the analysis – the exact time-frame within which I collected the data is not specified. I know from my own experience that similar cases reoccur quite frequently – and indeed use will be made of this in the way I have chosen to present my data - and omitting the chronology will help to anonymise specific cases. I have also changed some of the factual details. One of the key reasons, aside from the agreement with my hosts, for doing this is to try and protect as far as possible the friends and family of the victim from any further trauma which may arise from seeing their case used in this way (Rock, 1998).

### **Description of fieldwork sites**

In France, I spent the bulk of my time in a large city with a specialised squad of *Police Nationale* detectives dealing with “*crimes*” – which in French has a narrower meaning than in English, meaning a very serious offence and used quite often synonymously with the word “murder” - a *Brigade Criminelle*. The *Brigade Criminelle* observed had nine groups of seven officers each led by the “*Chef de Groupe*”, the team leader. A “*Commissaire*” (roughly superintendent) oversaw three of these groups and liaised with the prosecutors and the *Juges*. Above these in the hierarchy was the head of the *Brigade Criminelle* and his deputy. Each group was “on call” for one 24-hour period every nine days. “On call” meant that the group responded in the event of any new case attending the crime scene as either investigators or advisors depending on the nature of the case. During the week the group’s *commissaire* was on call with them. At weekends, the *Commissaires* took it in turns to be on call. In theory, any case arising when a group was on call was to be investigated by that group, though there was flexibility over this arrangement should one group become overburdened and because groups were only on call for 24 hours it was relatively easy for the next group to take on an “on call” prematurely. Overnight the officers were called in from home. At the weekend, one officer from the on call team would physically be in the office. In the *Brigade Criminelle* observed for this study, each group worked out of two offices in a rather cramped but picturesque and very famous building in the very heart of the city. All the groups worked out of the same building and, covering the city and the surrounding

suburbs, always worked out of their own office. In the year before I did my observations, the *BC* I studied investigated 101 homicides and attempted homicides. This figure is provided to give some idea of workload. Homicides and attempt homicides are grouped together in the French statistics as, under French law, an attempt and a completed act are legislatively the same. The figure is inflated because of one incident in which a large number of people were killed and wounded. However, the teams also dealt with a number of other crimes that had been deemed to require their investigative skill by the prosecutor. The teams do not in general investigate “simple” homicides – those for which a suspect is immediately evident - unless the case is for some reason sensitive. ‘Simple’ homicides are investigated by detectives locally (I also spent two weeks with a team of such investigators). In smaller cities, which have no Brigade, all homicides would be investigated by these sorts of teams.

I then spent a month with a *Section de Recherche (SR)* of the *Gendarmerie* in the north of France. A SR covers a much wider geographical area - two “départements” or counties – though not the cities in these areas. The remit of SRs varies a little regionally, but the one I was with had a financial, surveillance, drugs, personal violence and serious theft section. A middle-ranking “officer” was on call for a week at a time and dealt with initial actions calling out the higher-ranking *Capitaines* or *Lieutenant-Colonel* as necessary. All the *Section de Recherche* officers had a base within the region - and lived in barrack accommodation nearby - but when active on a job they were often displaced for weeks or months nearer the scene. Local officers were used to form the bulk of the murder investigation team as is the case in many forces in England. The “*Directeur d’enquête*”, or enquiry leader, was of Captain rank or *Marechal*, the rank immediately lower. Their work was overseen by the *Lieutenant-Colonel* who was co-located with them, and he in turn reported weekly to the departmental Colonel. In the year before I visited, the SR I studied investigated 6 homicides. Again the SR do not investigate “simple” cases, such as violence between partners, which are processed locally.

Once a suspicious death occurs, it is the Prosecutor (*ie Procureur*) who attends the scene at the request of the local officers and who decides whom to “*saise*” – to direct to undertake the enquiry. Although in the case of a murder it is usually a *Brigade Criminelle* or office of *Police Judiciaire* if no *Brigade Criminelle* exists in a city, and the *Section de Recherche* or *SR* in the rural areas, this is a decision for the Prosecutor and there can be rivalry as to who is given the enquiry, especially in areas where cities and towns abut between the *Police Nationale* and the *Gendarmerie*. Once a murder enquiry goes beyond the preliminary stages (*flagrant délit*), the Prosecutor in turn asks for a *Juge d’Instruction* to be assigned and from then on the *Juge* at least nominally directs the enquiry, though often the instruction given to the police - through a *Commission Rogatoire* to act on the *Juge’s* behalf - is very general. Once a suspect is identified, *Juges* interview suspects and witnesses in the presence of their lawyers (lawyers are not present when suspects are heard by the police) and order specialists’ reports. They can call for confrontations between witnesses and reconstructions of events. They have the power to suggest lines of enquiry and get involved in the investigation but the extent to which they do this varies, being particularly difficult in very busy areas like cities where *Juges* have a large number of dossiers to deal with. I spent four weeks in the offices of the Prosecutors, collectively known as the *Parquet*, and a *Juge d’instruction* respectively.

My fieldwork in England was conducted in another large city with a specialised major investigation unit which investigated murder and other very serious crime – for example, a riot at an asylum seeker detection centre or a series of rapes. Unlike their French equivalents, the unit currently investigated all homicides, even the relatively simple ‘self solvers’ (Innes, 1999a) where it was immediately apparent who was responsible for the death. In the year before I was there the unit as a whole investigated 176 cases. When I was working for a police force, they still worked a system where a murder investigation team was formed as needed from local officers with only the team leader a specialist from headquarters. Although now many of the 39 forces in England have some kind of permanent ‘major crime team’, this would consist only of about 30 officers or so to cover the whole county and additional staff would have to be pulled

locally should a murder occur. The system I observed would therefore be different from this in having a standing army of specialized detectives who investigated only murder and serious crime. The unit as a whole was divided into three to cover the city, each third was divided into nine teams headed by a Detective Chief Inspector, the Senior Investigating Officer (SIO) who led a team of 30 officers. The unit observed was headed by a Detective Chief Superintendent and three Detective Superintendents who aside from the reviews took little day-to-day role in enquiries but allocated resources and assigned cases. Each team was 'on call' for a week every nine weeks and two officers responded day or night to suspicious deaths calling in the DCI as necessary. The two officers on nights remained in the office over night. The 'on call' team kept the case for the first few hours but passed it onto another team – the team who was 'in frame' or available to take a new case – the following day. Members of this team took on specific roles for each investigation – the Family Liaison Officer would look after the family; the Exhibits Officer would be responsible for the integrity of any item seized in connection with the Enquiry including the body; the Disclosure Officer would be in charge of the documents that needed to be given to the eventual defence team. A number of officers and civilian staff were permanently based in the Major Incident Room, and they were entirely occupied feeding the HOLMES computer system. Support staff – that is, those not police officers – were also used as researchers and analysts. Although five of the teams on the unit I was with were based in the same block of buildings, the other four were based at other police stations. The major investigation teams are called out automatically to suspicious deaths by local uniform and detective officers attending the scene following the discovery of a body. The prosecutor – the Crown Prosecution Service – would not be involved at this stage and would normally only become engaged at the stage of decision to charge or if some innovative investigatory tactics were being considered. For this reason I did not feel I needed to spend time separately with the prosecutors in the English setting but was able to observe them through their interactions with the police and in interview.

## **In the field**

My first day of observation with the English murder teams began with a meeting with the officer who was to be my principal contact. We had met before when I had attended a meeting with my sponsor and the head of this particular unit. We met in the concrete office blocks to the north of the city where the supervisory officers were based, and she began to explain the structure of the unit and put forward a partly filled out schedule of observation including the two activities I had asked for on the suggestion of my supervisor – an introductory week doing nights with the homicide response car and a week-long Senior Investigating Officer's course. This pattern was the one followed throughout most of the English fieldwork – I suggested things I wanted to see or attend, and my contact either arranged it or said it could not be done.

The original plan was to adopt one of the nine teams on the unit as my own and follow their work pattern and hours as they did 'on-call', took on new cases, attended court, and so on, and in so doing build up a trusting relationship. That evening I made contact with the Senior Investigating Officer of "my" team and did my first night shift with two officers. My team was based at one of the outlying stations and arriving at shortly before 11pm the usually busy offices were mainly empty and dark.

Nothing happened – except the drinking of ten cups of tea. Not one single telephone call disturbed the silence. It seemed to be a great opportunity to chat, but I could not work out if the officers had other things to do and were just trying to keep me entertained or welcomed the diversion, so I took refuge in what was to prove a very useful prop on many occasions – reading; be it a case file, a policy document. Neither, despite having carefully chosen cities on the basis of their high suspicious death rate, did I see any new cases for some quite substantial period into my fieldwork. I was notorious for the calm that had descended on the unit since my arrival and officers joked of selling me to local commands for my crime prevention potential.

While the lack of cases should not matter in that the teams were a "standing army", therefore always working on cases that were ongoing and in some stage between finding



a suspect, case construction, and trial, I quickly “went native” in this regard and echoed the outside team officers’ constant desire for a new case and thinking if I did not see a case right from its outset, I was somehow missing out. In my long-running desire to see a new case, I found myself constantly “on call” - constantly making contact with new SIOs to ask them to call me in the event of a new case. I moved from team to team desperately seeking a new case (this desire was not wholly for neatness, there are elements in the first few days of an enquiry that are of extreme interest). The advantage of this method was that I could see the sometimes large differences in how teams and individuals in different roles worked within the same general remit. The disadvantage was that I was always waiting for that call and felt I could never move far from the telephone for the best part of three months. This was in fact the most stressful aspect of my research. I failed to take the planned time off and got very tired.

New cases did arise, and I came to realise that I could also usefully observe ongoing cases and see the differing roles performed by the teams. I observed Senior Investigating Officers, Investigating Officers, Case Officers, Family Liaison Officers, Exhibits Officers, Disclosure Officers and Scenes of Crime Officers; at team meetings, at management meetings, at case review meetings, at community impact meetings, at exhibits meetings, at case closure meetings, at armed response briefings, at post mortems, at press reconstructions; liaising with the press, liaising with prosecutors, liaising with forensic scientists, undertaking surveillance, gathering intelligence, gathering physical evidence, training, undertaking house-to-house enquiries, inputting data on computers, analysing data on computers, watching video surveillance, filling in forms, making telephone enquiries, eating lunch, having a drink, watching the TV; in their offices, in other people’s offices, in police stations around the city, in the streets, in the canteen and in a number of public houses. I read case files, manuals, training materials, decision logs, statements of witnesses and suspects, and minutes of meetings. I watched videos of crime scenes.

Although not strictly part of my remit – the investigation of murders once committed – I also observed the work of a special homicide prevention unit aimed at intelligence-

gathering around groups and gangs likely to commit violence. This happened both because the observation period was initially 'very quiet', and because the host force was keen to demonstrate this aspect of its work which it deemed innovative. The existence of the unit certainly suggested the kind of thinking that was directing the investigation of murder and other serious violence in the force area.

What is also interesting is where I was not allowed to go. I was not present at interviews of witnesses or suspects, at physical searches of crime scenes, or anywhere near any member of a victim's family. Officers were concerned about the possible legal repercussions of a third party being present at interview or statement taking – rather than the pragmatic reasoning of Sanders' detectives who thought the presence of a stranger in the room would upset the psychological balance. Sometimes the reasons for being asked not to attend certain events were understandable – a member of the public had been told that the surveillance to be based from his home was highly confidential and might therefore be upset to see a stranger introduced; sometimes less so, as when a Senior Investigating Officer asked "can you leave your court visit until tomorrow as everyone will be running around today". My abiding image of the fieldwork is sitting in a large meeting. The most striking recollection is being in the 'pub as detectives received a telephone call that told them that the blood on the murder weapon belonged to a relative of the victim.

### ***'Sur le terrain'***

When I arrived at the offices of the French murder squad I was armed only with a letter from the Embassy telling me to report at the building at 9.30am. This was enough to get me past the two officers on duty in front of the building and I was directed up three flights of stairs - there was no lift – to where I needed to go. I was fairly nervous, not just because of my unfamiliar surroundings but because I had no idea what to expect. Unlike in England, I had never met the people I was to spend the next days with and the access had been arranged for me, and I therefore did not really know what had been said and agreed. In addition, several French friends of mine had expressed surprise before I

left England that I wanted to spend time with the French police. Their reputation was not good.

A dapper man with a moustache came down to greet me and within minutes I was ushered into what was to be my team, sat down on one of the sofas in the corner of their cramped little office and offered my first cup of coffee. Everyone spoke very fast and my head span with unfamiliar words I could only just distinguish in the flow – ‘*procedurier*’, ‘*dossier*’, ‘*procès*’. With relief I was given a desk of one of the officers who was on holiday in the adjoining office and given the first dossier of one of their current cases to read. Unlike the French ethnographer Jeanjean (1990), who regarded dossier reading as a sop given to him to avoid taking him on more exciting activity, I welcomed the opportunity to acclimatise myself and take in my surroundings. A steady stream of visitors – almost entirely men – came into the office. To each I was introduced and much handshaking and smatterings of remembrances of English followed. No time at all seemed to have passed – and no notes had been written – before it was noon and I was gestured into the outer office to be asked if I wanted an aperitif. *Kir royale* was offered and accepted. I managed to ask my first question – was this the usual practice? Oh no, I was told, it was in my honour! By the end of the week arriving for the usual morning coffee I had my place on the sofa and was greeted warmly with a kiss on each cheek.

This was the first of a series of arrivals for me during the French fieldwork. After a fortnight with the *Brigade*, I spent a fortnight with local detectives who investigated more simple homicides. My new friends at the Brigade frowned when I told them where I was going and said they were different there. I was warned to wear high-necked tops. When I arrived at the outlying station my fears were founded when I was greeted by a rather angry officer who had not had my *stage* confirmed by the appropriate authority and therefore had not been expecting me. I apologized profusely as if it were all my fault and explained to him what it was I was doing and what I wanted to do – and felt some pride in the communication – one of my first in French where the person I was talking to was making no concessions to any language barrier. I was settled into the

command suite and it was all rather quiet. No one much spoke to me – or probably knew who I was – I lunched alone and I missed the friendliness at the *Brigade*, until the Friday when I discovered that downstairs there were teams of detectives who also took morning coffee and were rather jolly. I asked if I could do some observation with them. I was assigned the ‘on call’ team and the week blurred into a hive of activity as officers from other teams were keen for me to observe their work too. One day I was taken out on surveillance and, in the absence of any female officers, was repeatedly used as cover as one of the officers and I walked as a couple past the target’s house. On another occasion, I was called in the middle of the night to attend a confrontation between a woman, a part-time prostitute, and a client who she claimed had raped her after being told what she charged. The confrontation took place in the dark, empty detective offices. If I had not been there the victim would have been alone with her alleged attacker and the two male police officers. During the interview I was repeatedly asked whom I believed. The experience was like that described by Emerson and Pollner (2003) when they were urged actively to participate in an interrogation during their research. Again my presence was marked with aperitifs and early evening drinks. An officer drove me home saying the metro was not safe at that time of the evening – around 8pm. On the way, he said he was surprised I was not drunk as I had been given so many beers. I told him that in England I drank pints and it would take a lot of French beer in small glasses to make me fall over.

I then returned to the *Brigade* before going, first to the Prosecutors and *Juge*’s offices, and then the *Gendarmerie*. The Prosecutors were housed in the same building as the *Brigade*; indeed just the other side of a wall but it was a different world. The prosecutors worked in larger, better-decorated offices. There were many more women and they were dressed in a different way from the few in the *Brigade* – they wore floaty scarves and earrings and carried small handbags. While the on-call Prosecutors, who took the calls of police officers who had just ‘arrested’ someone, worked in a large open-plan office, the other prosecutors – those who pursued more serious cases – and the *Juges* worked alone in private offices. So while I met, and was friendly with, whole teams of detectives when I did my stage with the *Brigade*, when I was with the *Juge* I

only met a few other *juges* and spent most of my time alone with the *Juge*, her clerk and the suspects.

My stay with the *Gendarmes* was different again. I was given a tour of the building and then, for the first week, I was sat in the office of the senior officers and was able to view the activity centered around the command as the various officers came and went to chat and to ask for authority to do various things. I received the impression everyone was much more formal in the *Gendarmerie* than in the *Police Nationale*. Everyone called me by the formal ‘vous’ and ‘mademoiselle’. Although I was taken to the ‘mess’ everyday for lunch at the barracks, it was not until the end of the week after I had attended the annual barbecue that I got to know some of the other officers. I then took a seat in one of the other offices and got a quite different view of the world and what went on. I was ‘tu’ and Charlotte and I began to chat. Every so often the Lieutenant-Colonel would casually come by to see what I was doing. At the time, I thought he was checking up on me or his officers but I wonder in retrospect if he was genuinely interested in what exactly I was doing and wanted more information. Because I had not arranged the stage myself, I had just assumed he knew what I was doing. At the end of my *stage* the General-in-Chief gave me a *Gendarme* clock – set to English time – for me to remember my stay.

During the French fieldwork, I met *Commissaires*, *Chefs de Groupe*, *Directeurs d’enquête*, *Procéduriers*, scenes of crime officers, *Juges*, *Procureurs*; having morning coffee, discussing cases, attending post mortems, visiting families of victims, reconstructing the crime with the suspect, confronting a witness with a suspect, interviewing a suspect, interviewing witnesses, collecting physical evidence at the crime scene, going to a management meeting, having morning coffee, discussing the case with the Prosecutor and the *Juge d’Instruction*, going to the cinema, training, gun training, having a *pot*<sup>6</sup>, enjoying a barbeque with their families; in their offices, in their homes, in other police stations, in people’s homes, in cafes, in a trendy jazz bar listening to two of my team performing in the Brigade band. I received few knockbacks – though it was

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<sup>6</sup> Social celebration for birthdays, births of babies, leaving, here usually in the office.

probably easier to do this in a foreign culture where it was relatively easy to throw me simply by talking too fast. One surprising refusal was not to allow me to speak to the psychologists employed by the Gendarmerie to track serial offenders and assist in interview techniques. This is the kind of thing the English would be trying to promote. However, as ever, it is difficult to say if this one refusal was part of some kind of systematic protection of certain aspects of the investigative process, or just the result of an interaction between the officer from the SR who made the request and the officer from the psychology unit receiving it. My abiding images of France are the pile of baguettes bought in for sustenance before what was expected to be a long night following the “arrest” of a suspect, and me clutching the “murder weapon” as one of my teams piled into a small car on the way to a reconstruction.

### **The nature of observation – finding an observation point and choosing what to observe**

The lists above refer to events during a number of different cases. I saw aspects of more than 25 cases in England and 35 in France. Two things need to be emphasized here. Firstly, I use the term “events” advisedly. Despite the evidence of many televised and film murder enquiries, much of the work that goes into an investigation is not visible. There are “set pieces” such as The Post-Mortem, The Press Conference, The Trial. But a large amount of work is difficult to watch long-term – the endless telephone authorizations and analyses, writing up a decision log or review document, intelligence-gathering from computer datasets - without making one’s subject squirm, turn from his work and start talking to you. As van Maanen says “the activities that fill out the ethnographic curiosity represent a most uncommon adult role in virtually any social setting – hanging around, snooping, engaging in seemingly idle chitchat, note taking, asking odd (often dumb) questions, .. and so forth! “ (van Maanen, 2003: p 55) It is necessary to find a role which enables one to sit around watching all this sort of activity without such disruption. Sanders (1977) found this quite literally a problem in trying to find a spare seat during his research. In the French study there was always the sofa and I found appearing to be reading a manual or case file was a good strategy which allowed one to listen and watch without attracting much attention. There is always the -

generally well-meaning – tendency for detectives to want to take you off to some event that they think will be of more interest to you. While especially at the beginning you need to ask lots of questions, it is an untenable role to maintain if your presence is to be tolerable to others. There are, however, events in the murder investigation process which are tailor-made to create opportunities for prolonged questioning – surveillance (if in a van), post mortems, long car journeys and waiting for a jury verdict (in England).

The second point in relation to the events observed during different cases, is that in no one case did I see everything. Each member of the murder team was pursuing his or her own tasks simultaneously. Unlike the televised drama again, when the viewer can sit in front of the screen and, without moving, be sure to be presented with all the key elements of the investigation (if only eventually), I, as a researcher, had to select, or have selected for me, which members of the team and what event to observe – the Senior Investigating Officer, the lynchpin who would hear all new developments as they occurred and would be making the strategic decisions; the Investigating Officer who would be more involved in the practical mechanics of the investigation; the house-to-house team who would be liaising with the public and might hit upon the key witness who would form the basis of an eventual prosecution case; the Major Incident Room team to see how the data were inputted onto the HOLMES system; or the intelligence cell beaver away in the background to provide the missing link between suspect and victim. I tended to choose to try and observe as great a variety of people and roles as possible – in other words, what is termed ‘theoretical sampling’ - but sometimes it seemed that whoever one chose one was in the wrong place at the wrong time, and missing “all the action” and the real enquiry was happening elsewhere. Much of the observation was inevitably opportunistic sampling as events arose or individuals met. In any event, although I made every effort to cover the sometimes very long hours particularly at the beginning of an enquiry it is, as Renée Zauberman pointed out in her field study of *gendarmes* investigating theft and burglary (Zauberman, 1998), impossible to either be there ‘24/7’ or, if the enquiry is prolonged and necessarily pursued in a piecemeal way, ensure continued presence at that exact moment when a breakthrough occurs. Innes described the same feeling when he remembers three

murders happening in two days in different locations and it being impossible to cover everything (Innes, 1999a). What I saw were morsels, like jigsaw pieces, of investigations. The question is to what extent, and how, did what I observed relate to the whole set of possible observations. And even more complicated in a comparative study, to what extent can the events, activities and comments that I happened to observe in one setting be compared with the events, activities and comments that I happened to observe in the other. Continued and repeated observations together with supplementary methods including interviews of various kinds, reviewing case and policy files and collecting statistics, provided some answers.

### **Filling the gaps: Interviews**

I conducted 20 formal interviews at a number of key stages of the research. These were with personnel of differing roles and levels and were in addition to the thousands of snippets of conversation and questioning that occurred during observations. The interviews were unstructured or semi-structured in order to explore issues as they arose and for respondents to identify and elaborate on what they considered important areas. Some basic subject areas were suggested by my research questions - investigative activities and different investigators' responsibilities, what investigators saw as priorities and why, the potential for individuals' own input or ideas within the investigation, investigator attitudes towards their job and the people they deal with, case construction and relationship with other criminal justice process agencies – but my initial stance was to assume minimal knowledge on even basic questions. Towards the end of the fieldwork, I used interviews to put my ongoing analysis to individual officers.

Although it is accepted wisdom to tape interviews, I found, in common with other researchers in this field (Wuilemier, 2000) that it was not fruitful to do so. The classic example was someone I spoke to who took two minutes to answer all my questions on tape, but who the following day over a coffee was with me for longer than two hours. It would seem that police officers “like to question, not to be questioned” as one officer put it and to overemphasise the formal nature of the occasion is not helpful.



Interviewing police officers is in any case quite a challenge – as van Geirt points out (van Geirt, 1995, p12) police officers know all the tricks of the trade.

In order to fill some of the gaps generated by one researcher trying to observe the activity of a team of detectives acting concurrently, I also asked police officers to diary the chief activities of their days at various stages of their enquiries (as in Home Office 2001) sometimes around the team timeline already established from the reading of the case file. French officers, for whom being the subject of academic research remains a novelty, appeared to react more positively to this, asking me jollily if I wanted just work events or general life activity as well, with one team member quipping that there would be no difference - his job was his life. However, in the event, English officers who initially expressed more concern about what I wanted diaries for, suggesting it might be some ‘time and motion’ study liable to leave them open to criticism for their productivity, actually produced more in terms of numbers of diaries received and length of report.

I also briefly explored the possibility of using “vignettes” (Soydan, 1996) or what Feest and Murayama (2000) termed “virtual comparison” - presenting participants with scenarios, potentially real ones from the other site, and asking them what they think their response would be. Soydan suggests that the method is unthreatening and likely to elicit insights into behaviour and motivation which direct questions might not. An alternative was tracking down similar actual cases in the different countries and contacting investigating officers to see how they were actually dealt with. This idea came to me when I spotted in a French newspaper a case involving a body found in water that was very like one I had observed in England. This data I collected on similar cases was eventually put to a different use when, in a fortuitous coincidence for me, a very similar case occurred in my French site. As will be described in more detail below, this striking similarity in case detail inspired part of the format of my thesis when I decided to dedicate whole chapters to a detailed description of these cases (chapters 3,4.6 and 8) The numbers of other cases involving bodies found in water that I had

already collected from newspapers suggested that the risk of definitive identification was slighter than I had at first thought.

### **Filling the gaps: Case and policy files**

Reviewing case files was a valuable process because it allowed more cases to be examined than could be observed directly during the timescale of the fieldwork, so permitting contextualization to the observation. While such records do not necessarily represent “mirror reflections” (Garfinkel, 1967: p 186-207) of the actual handling of the case, they demonstrate how detectives go about constructing a meaningful account of the case, and their use of it, particularly if files relate to cases observed. Innes used 75 files in his research, forming a substantial aspect of his data set. I looked at substantially fewer and probably in a less systematic way. The reason for this was two fold – firstly the English force I was with used the HOLMES system in a different way from the force Innes researched, and I do not believe it would have been possible to map the cases purely from the computer system and the office based personnel as Innes did. Secondly there is no HOLMES system in France, so although it is interesting to compare the varying forms of the case file in the two countries, it would have been unwise to base in large measure comparison of murder investigation processes on the paperwork produced when the paperwork forms a different element in the process. For one, it is an organizing system during the investigation, for the other a formal report to the judicial authority.

Analyzing policy files also allowed a comparison to be drawn between guidelines and practice in the two countries. This was more relevant for England than for France where there seemed to be fewer practitioner guidelines, though the legal structure is outlined in the *Code de Procédure Pénale*.

### **Filling the gaps: Secondary data analysis**

I had intended to collect statistical data on murder rates, detection rates and attrition rates at various points through the criminal justice system in the two countries to give general background on workload, “success” rates of current methods (and how that

success may be defined in the two countries) and how the investigative stage fits into the justice process. Local figures for the areas I studied would also suggest how typical or otherwise the area was to the aggregate. This proved very difficult in practice because of the considerable differences between the two countries' statistical gathering operations. Anglocentrically, I had imagined that, although there might be slight variations in exact configurations, all European countries would collect reported crime data, charge data and conviction data in order to track case categories through the judicial systems. In France this is not the case. The *Police Nationale* and the *Gendarmerie* collect figures of how many crimes are reported, how many people are put in *Garde a Vue* (arrested) and how many sent to the prosecutor. The Justice department collects figures on the numbers pursued through the system to conviction. These two different sets of figures are not linked by the two departments. The only way to create such a dataset would be tracking individual cases. Published figures do not even break down conviction figures geographically. The two specialized units within the *Police Nationale* and the *Gendarmerie* that I observed were not very interested in statistics. Neither department, unlike their English counterparts, was judged by them. The Police are only given the difficult cases, without leads, and therefore their work is not judged numerically but by their renown in cracking a good case, a *bonne affaire*. When the *Section de Recherche* of the *gendarmerie* get a result, the success is accredited to the local brigade or police office where the offence was committed. Nevertheless, in an attempt to contextualise activity at least in terms of workload and process through the court system, I was able to track a sample of cases from each unit through the court system via the Prosecutor's office. This involved a good deal of liaison with workers in the seven *tribuneaux* which cover the area the murder teams covered and who did quite a bit of work on my behalf.

### **Field relationships**

Ethnographic study is one of the most intrusive forms of research, both for the researched and researcher's lives, as the two have to come into contact with one another and relationships of some sort have to be built. The nature of this inevitable relationship – there are very few circumstances in which you can become a “non-person” (Goffman,

1959; p 151) in the drama you are observing – deeply affects the nature of the data you collect (Levy, 1987).

In technical terms, in Robert Reiner's typology of researcher/research settings (Reiner, 2000b) I would be an Outside/Outsider, but one who has also been an Inside/Outsider, having worked within a police organisation, although not as a police officer and not for the forces studied. Ethnographers are divided as to what extent prior familiarity with a setting aids or hinders observation, understanding and analysis. Familiarity helps some level of understanding but can create a tendency to pre-judge and oversimplify (Burgess, 1984). Probably more importantly, I am also an Outside/Outsider who likes the Insiders, and, as Becker (1967) argued, need to guard against "sentimentality" (p 246) in describing a favoured culture. For not only am I in general terms pro-police but on a personal level, I found and continue to find the help I received, particularly in France, amazing.

Before I began my doctorate, I was introduced to two French police trainers who invited me to a *Police Nationale* detective training course and offered me a *stage* with a regional serious crime team. I also met a *Juge d'Instruction* from northern France who invited me to stay with her and observe proceedings at the *Palais de Justice*, including watching a trial and reading dossiers. These experiences were invaluable in helping me acclimatise both to the language and the legal culture of the country. My "fairy godmother" (Rock, 2001) at the Embassy arranged my basic fieldwork, coming back to me to check all was alright, answering my queries and solving my problems. I enjoyed my time in France and enjoyed the glimpses of French life that my contact with French police officers, magistrates and academics gave me.

Though the effect was less, I also enjoyed my fieldwork in England, I found it very interesting and found the officers very friendly. Although my initial access was negotiated through high-ranking hierarchical gatekeepers, I never knowingly encountered much in the way of the misinformation and distrust described by other researchers in the field (Ericson, 1981; Mucchielli, 2005). When my access to events

was curtailed it was more senior officers who voiced objections, rather than the lower ranks, who were keen to take me everywhere. I feel that some level of trust was established. The English police appeared, despite the current climate of being under siege in the British police, to find my presence unthreatening. Perhaps this was, as Hodgson suggests, that, as a relatively young woman in a predominantly male environment, I would be less of a threat. Perhaps, I was also unthreatening because I was merely a student (King, 2000). I also consider that the manner in which I presented myself contributed to their feeling of ease – I was not too young and idealistic, I had worked for many years in the “real world” specifically among police officers and knew that working conditions could be far from ideal, I was interested and willing to listen but knew enough that officers did not have to keep explaining things. The fact of doing a comparative study was also distancing – officers did not feel they were being studied to be criticised but to be compared, and both sides thought they would come off well in the comparison – the English officers’ image of the bumbling French *gendarme* and flash national police detective more interested in looking cool in a leather jacket than in investigating, reassured them that they would come off better in comparison. Many seemed genuinely interested in what I was doing – often suggesting other studies for me to do, comparisons say, with Germany, Russia, Scotland – and keen to know what their counterparts across the Channel did.

Both English and French detectives gave me nicknames – for the French because of my short-sightedness in reading documents close to my face and moving my face like a printer to read I was “Laser”, for the English in what I feared was rhyming slang I was “Eager” in my keenness to observe. As nicknames were also given to fellow officers, I took this as a sign of acceptance into the insider team. On several occasions French officers described me as being “part of the building”: the English “one of the team”.

### **Personal reflexivity – my effect on the research and its effect on me**

It is for the reasons outlined above that I need to guard against my gratitude for police help and friendliness colouring my impressions of what I observed of their work and procedures. I wonder looking back, too, how much I had a favourable recollection of

people and events because I deliberately chose to spend time with those whom I liked and got on with, and how much as well teams had been chosen for me because they would get on with me. While I did my professional best to spend time with as many different roles and people as possible, it is humanly inevitable that, if given a choice, one spends time with the people one likes. On a fairly basic level, for example, one is likely to lunch and go for a drink with those one empathises with and it is therefore their perspectives which are likely to be overemphasised.

The structure of PhD study assisted me in tackling this involvement by creating distance between my new friends and my thesis. The conflict for ethnographers between the desirability of getting close to the people in the field, of assimilating their 'logic in use' so as to understand it and then the necessary distancing from this position in order to stand back and analyse it, is widely recognised (Pollner and Emerson, 2001). The role of the distanced observer is criticised by some for denying access to the inner soul of a community, but to step further in may be to lose the analytical distance to see beyond one favoured perspective – as Hammersley and Atkinson (1983) suggest happened to Paul Willis (1977) in his study of working class youth. Having to come in and out of the field to fulfil the demands of the PhD process in terms of attending courses and producing sample chapters for the Upgrade examination enabled me to create some of this necessary distance by interspersing the gathering of data with periods of writing and reflection.

The experience of conducting this research has sensitized me to the effect of research on those who are researched. Unlike many ethnographers, I had initially seen the relationship between researcher and researched with the power being on their side – as they had access to give, information to tell me, events to let me see. They could easily foil me with their wiles. The police as a group particularly are not often seen as in need of protection (Holdaway. 1983). They are seen both as able to protect themselves and also in dire need of being researched because of their own power. However, as individuals many of the public servants were given little choice about taking part in my research and they were people I came to know and in many cases like and to whom I felt

some degree of loyalty. There were other people I came across in my research who were in positions of much greater vulnerability because of the particular circumstances of what had just happened to them and to whom I realized I owed great ethical responsibility. To this end, I extended honesty as regards research methods as far as is possible to the people I researched. I say as far as possible because some people have passed me by so quickly it is impossible to explain myself to them and others have assumed my role (usually a detective) or have been too dazed (suspects as well as victim families) to take it in. But I tried to explain what I was doing in as much detail as I think my questioner might want. Suspects being interviewed in France have been asked if they mind my presence (none did). I asked victims' families that I met in court that I would like to use their case in my research. They were surprisingly accepting. As I came to write up my research, I again began to appreciate the powerlessness of many of the researched in the process. For while my official gatekeepers in England got to read drafts, many of the people I have spoken to and who have helped formed my ideas will practicably not be able to add their perspective to my thinking but would find themselves objectified in my thesis.

### **The direct Hawthorn Effect**

There were a number of occasions when I could easily discern that my presence had a distinct practical effect on what I was observing. As I have already mentioned, I was sometimes brought into the interview strategy of French detectives with attempts being made to draw me in to voice an opinion on what to believe. On one occasion I was used as a translator, on another I joined in the search for the missing bullet cartridge. I was often asked my opinion and – worse – had to stop myself saying something when I felt they were missing something, particularly on the media side. However these effects were minimal, and, in general, because I felt the detectives reacted well to me, I could convince myself that I was observing life as a detective as it really was, unaffected by my presence. I was brought back to ground with a bump however near the end of my fieldwork when getting a lift back from a visit to a crime scene by the defence and prosecution barristers in a case. We were being driven by the exhibits officer whom I knew well and who normally I would have chatted to. The whole journey was spent in

silence apart from one remark about the weather. When we returned to court I asked the officer if they had travelled in silence on the outward journey. “Oh no”, he said, “they were laughing and joking” I reassured myself that these people were strangers and not my detective friends, and I too had been silent when normally I would have talked. But there were other signs that there was an effect. The prevalence of talk about other jurisdictions and comparisons between them and home must have been a reaction to my presence. Officers when first meeting me apologised when they swore. They felt themselves having to put front stage manners on in the back region.

### **Isolation and dealing with death**

Many ethnographic studies talk about the marginality of the role and the feeling of isolation this can engender, perhaps exacerbated in covert observation. Although it was sometimes difficult to find a role within the activity of murder investigation, it was sometimes uncomfortable being a third in an interview, standing around doing nothing when everyone else is really busy, I was an overt observer and everybody knew more or less what I was doing. The role of observer was less strange in the French setting as the *stagiaire* – someone doing a *stage*, or work experience with a department – was common in public service and therefore there was often somebody else besides me also observing and not necessarily doing much. Indeed at the prosecutors’ office the telephones were deliberately put to stereo in order to facilitate over-hearing. I was to some extent also used to being an outside observer throughout my working life – journalists observe others doing things and public relations officers again are one step removed from the practitioners they protect, one of them but not quite one of them. Of course I was not immune to the anxiety that can creep into one’s thinking when you seem to be kept out of events – for example, an officer putting his head around the door of the office where I was sitting and saying do you want a coffee to one of the other occupants - did he have something he didn’t want me to hear to say? Was something important occurring? Or did he just want a coffee with a friend? But again ethnographers are part of the social setting in which they observe and they too can cause anxiety – for example, I had been to interview my host *Juge*’s supervisor and, three days later as I was about to say goodbye, my host *juge* asked anxiously why I had needed to go and see her.



I had expected to feel more tension constantly being surrounded by death and enquiries into it. However, as Bluebond-Langner (1978) commented about her study of terminally-ill children, being around death is not necessarily morbid. Although I felt the “initial horror” of Howarth (1993) looking at dead bodies in the undertakers, it was not the body itself that inspired the horror but the rare occasions when I was present to see the reactions of relatives in the morgue. Otherwise, because my study was almost entirely from the perspective of detectives who are one step removed from the tragedy of many of the situations, and for whom there is an active role that is denied those nearer to the victims, I took on their stance of talking of “new cases”, ‘good cases’ and “nothing jobs”.

## **“Writing up”**

### **Fieldnotes**

More than a year of observation and interviews left me with several hundred pages of handwritten notes. As previously mentioned, a larger than proportionate amount of these materials are from the French fieldwork. This is due to two main reasons. Firstly, despite the best intentions to write everything down, in concrete detail with “the lowest level of inference” (Fielding, 1993: p 162), I found it far more natural to note down the exotic, different and unexpected that I found in a foreign country. The second is that in France nobody minded if I took fairly overt notes – which was just as well: there were no opportunities for clandestine writing (Reiner, 2000b) in the communal open-plan toilets! Nobody asked me what I was doing or what use I would make of the notes. Only one officer ever made a comment such as “careful what you say it will go in her thesis,” and that was on an occasion when I was without my notebook. There was more concern in England and on almost every occasion when I made a note in front of anybody – except in a formal interview - some comment was made. As ever, there was one exception when an officer coming across me interviewing his supervisor scribbling furiously complained jokingly that I did not take notes when talking to him! A major concern seemed to be over the legal status of any notes I took on a case and whether they would have to be disclosed to the defence (virtually all material from an investigation has to be given to the defence team of an eventual defendant under the

rules of disclosure). No one seemed to know for sure, but when one of the detectives mentioned it to the trial judge of a case I had partially observed, he said they should be. This case however was discontinued so the matter was dropped. Other respondents were keen for their comments to go into “my report”. Generally I wrote up my notes in the evenings with a summary of the key events at the top of the page to remind me of the highlights. These would not necessarily be observations but could be insights or thoughts. This note taking I also used to try and begin the process of distancing myself from the action of the fieldwork.

### **Coding**

My fieldnotes, interview notes and all other data were initially coded to identify themes and subject areas of interest. I did not intentionally identify codes in advance but nevertheless I felt that some areas were pre-given - either from the literature or from my previous work with the English police - as being of an importance and significance that would not have been coded so definitively, or possibly even noted (Davis, 1971), in the French setting if it had been read in a vacuum. So, for example, I have categories for “Relations with the public”, “Relations with the family” “Statistics” which *are* mentioned in the French fieldwork, but I wonder if they would have been highlighted if these issues were not of such paramount importance in Britain. Did I actually only notice such references because I was sensitised to them coming from the English culture? Was the only reason I made a note of references made in France to these issues because I was attuned to English thinking (because obviously one does not note everything that happens and there is an element of choice about what to note and what to accept as banal). Did I lead the conversation in these directions? Did French detectives talk about these things more, knowing – those who had visited England, that these things were important here? This influence also worked in a more explicit fashion in the opposite direction. Having heard and been amazed by the system of ‘primes; or cash rewards that were given to French officers who had worked well, I asked on my return if such a system existed here. So certain was I that it did not that I had never even thought to ask, but it did.

Even allowing for this infection of ideas, it became apparent from my initial coding process that my original scheme of writing up chapters on themes (Dogan and Kazancigil, 1994) from the French and English point of view would not work – for what is important in one culture is not necessarily important in another or important in a different way or in a different context. For example, the effect on the two systems of the media coverage of their cases and the use made of the media were very different and fitted into different stages of the justice process. I was also concerned that culturally-skewed themes could force my data into patterns that did not really exist. I was particularly concerned to be seen to be comparing like with like and not to be falsely equating roles and procedures which actually had different functions and status.

### **Similar case analysis**

I have already mentioned that coincidentally two quite similar cases - involving the discovery of the bodies of young woman in travel bags washed up on river banks - occurred within the observation period at the French and English research sites. I decided to take advantage of the similarities in these cases to use them as a descriptive vehicle for a direct comparison of investigative practices and decision-making in the two countries. This would have been much more difficult with cases involving a wider range of circumstances. In effect, I am using the relative *sameness* of case detail to control for *differences* in the environment in which the cases were investigated. Initially, I was concerned that I would be unable to describe these cases in sufficient detail to make a useful analysis because of the danger of identification. However, it appeared that such cases are more common than I originally thought and indeed there have been a surprising number of other cases involving bodies in travel bags that I have been told about and read about since I did my observations on these two.<sup>7</sup> Some details have nevertheless been altered in order to make definitive recognition more difficult. Detailed descriptions of the dynamics of model cases have been used effectively in other

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<sup>7</sup> Neither the Homicide Index for England and Wales nor official French statistics are able to provide information relating to the disposal of bodies but on an anecdotal level the team who investigated the English case subsequently investigated another one involving a body in a bag, they were asked to advise on two other similar cases occurring in other parts of the country and a further case involving a body in a bag in a canal occurred at my other French research site. This is in addition to the stories I read in newspaper searches.

research (for example, by McConville and Mirsky (2003) examining guilty plea court operation) and I felt the method was an ideal means for depicting the key stages of the processes within each national context rather than artificially trying to equate a process in one system with a roughly equivalent process in another, while also demonstrating the “choreography” of detective lives (Rock, 1993).

Initially I analyzed the data on both cases using the case node of Nvivo software. I then identified stages within the cases to help structure what could otherwise be a loose morass of information – similar in fact to what faces a murder investigation team. This was easier in the French case where there are legal categories within which the various investigative acts can be divided – the initial stages forming the investigation *en flagrant délit* under the direction of the Prosecutor, immediately after the crime has occurred; progressing to the *enquête préliminaire* for crimes older than eight days<sup>8</sup>; then through to the investigation under *Commission Rogatoire* once the Prosecutor has nominated a *Juge*, and so on. *For the English cases*, the stages are something of an artificial means of dividing the process in that they are not based on legal definitions. Indeed, such legal definitions as there are within the English investigative and trial process fall within or encompass my stages.<sup>9</sup> But even in England, the stages - Up to and including charge, and Post-charge - would be recognised to some extent by the actors involved and, as will be detailed in the discussion sections following the description of each stage, similar divisions have been designated by other researchers.

Many commentators also distinguish between the Pre-trial and Trial phases of criminal justice proceedings in analyses, suggesting that the pre-trial stage is more important in the French proceedings and the trial pre-eminent in the English system, and so I have also adopted this stance and separated the pre-trial and trial sections of the proceedings into different chapters. The description of the trial stage of the English case is even longer compared to the French one than one would have expected because of the

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<sup>8</sup> At the time of the research. This has subsequently been changed to 15 days.

<sup>9</sup> For example, a case becomes *sub judice*, legally active (a state which limits what can be published about a case and the defendant) when someone is charged – here towards the end of my first stage – and ceases to be active following a (definitive) trial – at the very end of my account.

differing lengths of time trials take in the two countries. This is because it includes two trials - in that the jury at the first trial were unable to determine guilt and a second trial occurred and involved a certain amount of extra investigation. While this is not standard within the English criminal justice process, they are more common with murder trials than with cases involving 'volume' crime and provides an interesting comparison with France where such things were until recently impossible.

I have included some analysis specifically about the investigation and trial processes in these chapters. This has allowed me to comment on issues and themes which are important in one process but not necessarily in the other. It has also allowed me to include data from other cases and scenarios I witnessed during fieldwork that provide either supportive or conflicting evidence to what I described of these cases. I have thus attempted to take the analysis beyond two case histories by comparing these two exemplars with other data from mine and other's fieldwork.

In the following chapter I have taken two events in the crime investigation process of the two countries that seem to me to be exemplifications of the essence of each system and how it works in order to step back from the practicalities of particular investigations into the theoretical underpinnings of the criminal justice structure. For France, the event I have chosen is the "*reconstitution*" or "reconstruction" when the *juge d'instruction* directs a re-enactment of the events just prior to trial. Here important themes such as the notion of "Searching for the truth", the physical confrontation of witnesses, and the power of the Juge d'instruction and the reduced role of police will be discussed. For England, it is the case conference which is used to exemplify themes of the management and evaluation of evidence and the symbiotic relationship of barristers and police detectives. This chapter will be a process a bit like the opening of Manning's (1997) *Police Work* where he uses the depiction of the funeral of a police officer as an analytical starting point from which to delve into the social world of the police.

## **Epistemological reflexivity**

As Atkinson (1990) demonstrates, this account of my experience will necessarily be a subjective construct and will include and exclude as evidence aspects of investigation work in the two countries that other researchers would have ignored or highlighted. Fieldwork is inevitably mediated many times over - by the research questions asked, by the settings chosen, by the negotiations held to access these settings, by the observations made, by the notes written, by the understandings of the researcher, the research community and the researched, by the presence of the fieldworker, and finally, by the writing up of the fieldworker. The latter was visually brought home to me by the mass of my fieldnotes which have not, through lack of space, been used.

But as van Maanen (1988; p 93) reminds us “too acute a self consciousness can bring on paralysis”, and as Becker (1967) concludes - “We can I think satisfy the demands of science by always making clear the limits of what we have studied, making the boundaries beyond which our findings cannot be safely applied” - and this is what I have sought to do here.

### **Chapter 3: England - The case of the body in a suitcase**

This chapter describes the police investigation of an English case following the discovery of a woman's body in a suitcase washed up in an estuary. The chapter is subdivided in two stages: stage 1 describes the investigation from the discovery of the body to the charging of the suspect; stage 2 describes police activity post-charge but pre-trial. The reasons for these subdivisions have been explained in Chapter 2 ('Similar case analysis').

I have deliberately adopted a detailed narrative approach in this chapter in order to capture subtleties which might otherwise be lost. This same approach has been used in my description of the French murder case outlined in Chapter 4. In doing so, I hope to create a clearer comparison between the two countries' investigative practices, and the differing perspectives of the detectives involved. Read in conjunction the descriptions in this chapter and the next provide a unique insight into the differences between French and English murder investigation. In order to avoid distractions to the narratives I have kept my reflections until the end of the stages.

Many of the studies reviewed in Chapter 1 focused on specific features of investigation, without necessarily identifying how they fit in to the criminal justice system as a whole. While this method is perfectly valid in research relating to just one site it can cause problems in comparative studies where selected features may not be found analogously from one system to another.

#### **Stage 1. From discovery of the body to charging of the suspect - "A good proper job"**

Day 1 - A suitcase with what looked like a human hand protruding from its opening was reported to the police in the early evening by a walker strolling on the foreshore. Within 20 minutes, the uniformed officers the man had flagged down on the nearby road confirmed the accuracy of the report and the police control room summoned the on-call Major Investigation Team (M.I.T.) to the scene. Local officers cordoned off the site before the team started to arrive and put into place the crime scene standard procedures

from the 'Murder Manual'<sup>1</sup>. The Senior Investigating Officer (S.I.O.) from the MIT extended the cordons to include possible entrance and exit routes. One of the early considerations for the SIO was the potential for local CCTV to have captured how the suitcase came to be at the water's edge. House-to-house enquiries asking nearby residents if they had noticed anything abnormal were also started. The SIO, in consultation with the Crime Scene Manager (C.S.M.), decided to examine, photograph and open the suitcase *in situ*. The primary reason was to find out if there were any identifying marks on the body that seemed to be inside the suitcase. The SIO was also concerned about preserving the best evidence should the body be decomposed, and ridding the suitcase of any vermin before it was taken into police buildings. Officers checked that the body could not be seen by any members of the public, or the press, who had begun to gather, before the suitcase was opened. Once opened, the CSM together with two Exhibits Officers photographed and removed the suitcase and a woman's body, having previously sawn off the suitcase handle for separate scientific examination. The SIO telephoned the Press Office and issued a short statement about the recovery of a body "of Hispanic or Latin" appearance. The case received widespread coverage in print and broadcast media, local and national. It was linked with another case involving a body in the water some years previously. The case was initially categorized as Category A<sup>2</sup> - of grave public concern where the identity of the offender is not apparent or ample evidence has yet to be secured.

Day 2 - At 10am the following morning the Detective Inspector from the on-call MIT had a "handover meeting" at which the case was re-assigned to the "in-frame"<sup>3</sup> MIT SIO who was to conduct the investigation. The Superintendent who would be reviewing the case after seven days was at the meeting. Details of what had been done were passed on – the discovery, witnesses found at the scene, the storage of the suitcase and where the body had been sent. The In-frame SIO then briefed his own officers. In addition there were individual briefings between the Exhibits Officers in each team.

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<sup>1</sup> The Murder Investigation Manual (ACPO, 1999) was published by the Association of Chief Police Officers Crime Committee in a bid to standardize the procedures of murder investigation nationally.

<sup>2</sup> See Glossary for explanation of Categories.

<sup>3</sup> As described in Chapter 2, at any one time a number of teams were "in the frame" to take on the next case. The SIO in charge of the team had informed management that the team had the capacity to take on another case.



Officers were assigned to House-to-House enquiries, CCTV and Outside Enquiries. Two Family Liaison Officers, or FLOs, were appointed in anticipation of the period after the victim had been identified. A Case Officer and Investigating Officer (I.O.) were nominated. These appointments were in the main merely confirming what had already been decided while the team were waiting for the next new case, the officers in question being the next in line to take that role.

A number of activities then occurred concurrently. The SIO from the new team said: “The first thing we have to do is identify the body. If we can do that our inquiries can spiral out from there. We look close at hand, before widening the net” (E409)<sup>4</sup>. The SIO visited the scene “to decide parameters of strategies and identify any opportunities available to this investigation”<sup>5</sup> and conducted a press briefing appealing for anyone who was either missing someone matching the description of the victim or had seen suspicious activity around the deposition site to contact the police. Between 12.50pm and 16.20pm together with the Crime Scene Manager, two Exhibits Officers and a Photographer and two observers from the on-call team who had been there the previous night, the SIO attended the post-mortem. The pathologist said to me: “Sometimes pathologists are called to the scene. I would have quite liked to have gone to this one as it’s quite unusual and also to see the body *in situ* in the case” (E581). There was no form of identification in the woman’s clothing but the investigative team were able to note details of height, weight, hair and eye colour and release these to the press, with a quote from the SIO “to ensure media interest and coverage is maintained maximising potential for witnesses”. They were now able to see that the victim was in fact Asian but it had been difficult to ascertain when her body was scrunched up inside the case. The woman had been strangled but there was little evidence of a struggle or restraint. She was clothed but, despite being winter, she was not wearing any coat or shoes. The usual samples were taken from her body – including stomach contents, fingernail scrapings, head hair, mouth swab, vaginal swab, blood, organs – for potential subsequent analysis. There was an update of the Police National Computer broadcast

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<sup>4</sup> The numbers refer to the pages of my fieldnotes.

<sup>5</sup> This explanation is taken from the SIO Decision Log, a contemporaneous account of the reasoning-in-use of the officer throughout the investigation which can be used in review and inspection procedures.

sent to all police forces in the country in an effort to link the body to a reported missing person. Arrangements were made with an orthodontist to make impressions of the victim's teeth in order to use these to help identification.

Meanwhile other officers were seizing CCTV and other security tapes – by the end of the case there were over a hundred tapes seized – and neighbourhood enquiries in the area of the deposition site were continuing. One young woman came forward who had seen a man acting suspiciously in the area of the deposition site the night previous to the discovery of the body and arrangements were made to audio tape her statement. The Murder Incident Room staff from the MIT had set up a computer software HOLMES log for the new case ready for the inputting and systematizing of the expected data. The system automatically generated some routine tasks. A HOLMES decision log was established to stipulate how officers planned to use HOLMES for this case. Some of the office staff were still working on documents relating to other cases from their in-trays and had not attended the briefing for the new case. Specialized search officers – not from the MIT itself – were searching the deposition site and its environs. There was an air of excitement in the team. The case followed a period where no new cases had been taken on. Although the team had six active cases ongoing at various stages of the investigative process, including a long-running “whodunit”, activity on these cases was intermittent and involved only a limited number of officers. Now most of the team were around and talking about the new case – “a good proper job, not rubbish” (E444). One officer said: “Too many Cat Cs can be demoralising. The work's got to be done but it doesn't use our abilities. I like the ones where we don't know a Scooby” (E363). A meeting was held in the MIR in the early evening to update everyone on what was happening.

Just as the Investigating Officer was saying to me that he hated all the waiting around for officers to return with information, a call came in from a neighbouring police force saying they had seen the press release on teletext and that they thought the body may have been a woman who had been reported missing in their area three days previously. A Detective Sergeant and Detective Constable<sup>6</sup> were dispatched to the neighbouring

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<sup>6</sup> The two lowest ranks of detective.

force while the missing woman's Pakistani passport, which contained her fingerprints, was couriered up to the MIT. Things now moved very quickly. The DC who was conducting the missing person's enquiry told the MIT he was suspicious of the husband of the missing woman. He claimed his wife had disappeared during a hairdressing and shopping trip on the afternoon of their wedding anniversary but he had failed to report his wife's disappearance for several hours and no trace could be found of a hair appointment at her usual salons. His brother-in-law told police that, when he had seen the report of the dead woman in the suitcase on teletext, the husband had immediately assumed it was his Asian wife although the report falsely reported that the body found was Hispanic or Latin as had originally been thought. In the house that the couple had recently moved into, their property was still stored in boxes and a number of suitcases, similar to the one the victim had been found in. Her anniversary card to him was unwritten in the spare room, along with her wedding rings, watch and a wet duvet cover. His card to her referred to problems they had but he had been reluctant to admit tensions between his mother and his wife which had resulted in a break of contact between the two; and the sister-in-law had noticed an odd scratch on his neck. The husband also matched the description of the man acting suspiciously seen by the MIT team's young key witness. When the fingerprints of the missing woman were confirmed a match with the body found in the suitcase, the SIO and IO considered there was "reasonable suspicion" – "informed gut instinct" (E693) "something not right" (E487) - for arrest and the SIO travelled to the neighbouring area to arrange an "arrest strategy". The arresting officer said: "It was all getting a bit volatile, with some of the in-laws with the suspect in his house suspecting him and we decided we had to move" (E451). The MIT arranged with the local force to transfer the husband to the police station and arrest him there. The FLOs were transported to the house to be with the members of the victim's family present and also to provide support to the defendant's family if viable.

Day 3 - The husband was eventually arrested in the early hours of the following day. The decision to arrest was noted in the SIO's Decision Log. Early advice was sought from the local specialized branch of the Crown Prosecution Service (CPS) with whom the team worked constantly. Because of the late hour of the arrest, some officers, called in to attend the handover briefing at the beginning of the day, worked 36 hours without a

sleep break. The SIO and IO were among these but were keen to ensure that some other officers went home in order for there to be fresh staff for the days to come.

Around 30 officers gathered for the office meeting at 10am. Now that not only had the victim been identified but a potential suspect too, there were many tasks or “actions” to be given to the Outside Enquiry Officers. The background of the victim and the suspect needed to be looked at. Two FLOs and another officer were with the victim’s family virtually continuously (indeed one missed the meeting being with the victim’s brother-in-law at the morgue for him to formally identify her body) but other detectives needed to speak to work colleagues – both victim and suspect worked at the city airport - and friends. A thorough search of the victim’s and suspect’s home looking for both forensic evidence and background information on their lives – passports, receipts, mobile telephones and mobile telephone paperwork, financial paperwork, photographs, letters - was likely to last several days. House-to-house enquiries in the area around where the suspect and his wife had lived needed to be undertaken. Intelligence officers were starting to look at the victim’s and suspect’s use of telephones and bank accounts, and other documentary data such as employment history, any receipt of benefits, immigration status and contact with the criminal justice system. This involved much filling in of lengthy authorization forms for obtaining the relevant data and contact with other state agencies. Other officers were to try to establish the provenance of the suitcase with the telescopic handle in which the victim was found. The CCTV officer was widening his remit from the deposition site to the victim’s address and routes between there and the shopping centre where the suspect said he had taken his wife. The arrest was widely, though again briefly, covered in the media.

Two dedicated interviewing officers were chosen - “Basically they were about at the time and had no other core role” said the SIO (E692) - and the arrested man was interviewed for the first time at 18.30 later in the day of his arrest. He had been fingerprinted and had had samples of blood, nail scrapings and hair combings taken while at his local force station and, since transferring to the city force, had had several meetings with a family solicitor. Two rings and a watch were taken from him. The officers spent time going through the missing person report and discussing interview

strategy with the SIO and IO. The SIO said: “We agreed an interview strategy beforehand. We looked at what we had, what were the discrepancies between what he was saying and what other witnesses were saying. We looked at what we wanted to cover and what we wanted to disclose to the defence about our case at each stage. The purpose is to give the suspect an opportunity to explain why he is in this situation and to come back against any witness statement” (E692). One interviewing officer said: “We aimed to put all possible defence angles to him to cut him off. We raise all possible scenarios so he can’t later” (E107). “If you just ask him about the events what he says is just admission; if you ask him all the lines of defence, it’s evidence.” But another officer insisted: “The interview isn’t about getting evidence, it’s about the truth, from which evidence comes” (E100).

During the next four days the suspect’s custody record showed he was interviewed 17 times with interviews varying in length from 10 minutes to a maximum of 45 – a total of almost eight hours. Before and after interviews the arrested man met with his solicitor, who was also present in all of the interviews, which were tape recorded – it was this tape recording which fixed the maximum length of interview at 45 minutes. A number of interview sessions were continuations of an on-going interview with only short breaks in between for either the tape to be changed, comfort breaks or for the defendant to speak to his lawyer in private. A more accurate portrayal of the interview programme would show the police instigating seven interviews with the suspect as their enquiries progressed. The interviews all took place in an official interview room. At the beginning of every interview, even if they continued within ten minutes of each other while the tapes were changed, the officers explained a suspect’s rights specifically to free and independent legal advice and the right to remain silent with the proviso that “it may harm your defence if you do not mention when questioned something you may later rely on in court”. They also enquired about the suspect’s need for food or drink and his health.

From the first interview, the suspect’s lawyer explained that his advice to the suspect was not to answer any questions because he felt the police had not provided him with any information as to why his client was suspected. The first of eight Prepared

Statements<sup>7</sup> by the defence solicitor during the course of questioning reiterated this complaint about the lack of disclosure. One of the officers explained why they would not want to give the detail of their evidence to a potential suspect as it would give him the opportunity to fit his story to it, giving an example of asking about any food a murder victim has had to eat. The officers suggested to the suspect that his lawyer's advice was just advice and it was up to him whether to follow it for each question. There was some confrontation with the defence lawyer during the interviews – one of the officers felt he was sniffing and coughing and winking at the suspect and that he was intervening and stopping the suspect from saying things.

In the initial interview the officers asked about the suspect's response to his wife's disappearance, how and when he had reported it to the local police, and specifically why he had waited so long before reporting it. To all questions, the suspect took his lawyer's advice and replied: "No Comment".

A very busy office meeting took place towards the end of the day, officers had been working 16 hours. The SIO summarized the case and called on various officers to give more detail on what they had been doing. At this stage, although statements (running to more than 20 pages) were not taken until a few days later, the FLOs were able to report from their contact with the victim's family that there had been considerable animosity between the victim and her mother-in-law, that the latter had not thought the former good enough for her son and it was because of clashes between the two that the young couple had recently moved out of the suspect's family home into their own house. The victim's brother-in-law, who had been staying with the suspect following the victim's disappearance, had found the suspect's mobile telephone in his child's bag when he returned to his own home. He had said that when he and his wife had first arrived following the disappearance, the suspect had said to him that his marriage was rubbish and that he practically had to force him to report his missing wife to the police. Records from the victim's mobile telephone company suggested the suspect had only called his wife's mobile twice following her disappearance. The last call from the victim's mobile

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<sup>7</sup> In lieu of answering questions directly the lawyer wrote up a statement from the defendant addressing police points revealed in their disclosure documents.

telephone was to her sister at 9pm on the evening before her husband said she disappeared. The search team in the victim and suspect's house had found all the victim's clothes in suitcases in the spare room, all the wardrobe space taken up by the suspect's clothing. Officers had seized the suspect's car. They had also seized cheque books, bank cards, an address book, a photograph album, a laptop computer and financial correspondence. Uniformed officers conducting the house-to-house enquiry around the victim and suspect's neighbourhood had been told by the next door neighbour that she had heard a loud and long argument between the couple the night before the husband said his wife had disappeared, and one of the officers had taken a statement from this woman, whose boyfriend had also witnessed a previous argument between the couple. The statement was taken at the woman's home at a time to suit her. The officer first asked the woman what she remembered while the officer took notes. The officer then wrote up the statement and the witness read it and signed it. Another neighbour reported seeing an Asian man in his 50s hanging around in the road looking worried. Another had seen a taxi picking up a Dirty Den<sup>8</sup> lookalike from outside the victim and suspect's house. Yet another had seen an Asian man dumping two bags of women's clothing in the communal bin area. A search of this area had resulted in finding two bags full of Asian traditional dresses together with an empty soft drink can of a brand also found in the suspect's home. One of the detectives dealing with this line of enquiry suggested that the defendant could have emptied the saris out of the large suitcase in order to put the body of his wife inside. Officers at the deposition scene, which was still cordoned off, had interviewed a witness describing a Turkish looking man standing by a car looking "furtive", another who had seen a black man "scratching himself" as he looked out at the water and three adolescents who had seen a taxi speeding along the nearby road two days before the body was found. All the information collected was 'inputted' into the HOLMES computer system and in due course re-read, indexed and analysed to ensure all cross references were picked up and desirable follow-up actions identified, prioritized and assigned. Timelines of either an individual's activity or witness sightings could also be plotted.

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<sup>8</sup> A character from English television soap opera *Eastenders*.

Day 4 - The IO held a video conference with a company specializing in forensic science, which was used regularly by the force since the privatization of the forensic science remit, to identify the best opportunities for evidence. They agreed to examine the suitcase handle and zip for DNA and fingerprints, the suitcase outside and inside for pollen and fibres, the bin bags for fingerprints and DNA, the carpets from the suspect's car boot for fibres and the nail clippings and blood taken from the victim at the post mortem to test for DNA and any stupefying drug. A number of items – including duvet covers and a sample of the carpet - from the suspect's house were to be examined for comparison. The SIO also completed a community concern assessment – considering the impact to be low risk due to the apparently domestic nature of the case. The first interview of the day with the suspect took place at 10.00am. In this interview the officers asked about the personal circumstances of the suspect - where he lived, how long he had lived there, who had keys or access to the house, whether he had a mobile telephone and where he thought it was, and what bank accounts he had. One of the officers said: “We hadn't had the time to read all the paperwork, all the information and we were basing what we knew on what we heard orally in the office meetings and from the IO and other officers individually. Sometimes it was difficult to remember where we had heard what.” The officers then went back to asking about his version of the events of the afternoon he said his wife disappeared – what had he done during the afternoon, what route had he driven his wife to her shopping trip, what had she been wearing, what did he do when she did not ring him, had he ever been to the waterfront where she was found? A second Prepared Statement in response to police disclosure relating to the witness who had heard an argument from the suspect's house gave the suspect's account of events that evening denying there had been any sort of argument. To all verbal questions the suspect continued to reply “No Comment”.

At this point in the day there was much excitement in the SIO's office over another witness found in the neighbourhood search who had seen an Asian man struggling to put what looked like a very heavy suitcase into a black car around lunchtime the day the suspect said his wife disappeared. The man was described as wearing what looked like an air steward's uniform. Arrangements were made for a DS to interview this man as a Significant Witness, as someone who had witnessed events closely connected with a



serious offence. In interview 3 with the suspect, the police were interested in asking about the suspect's vehicles, telephones and his wife's friends. At midday, the suspect was taken to the Magistrates' court for the police officers to apply for an extension to his custody on the grounds of needing to obtain further evidence, which was granted. Both interviewing officers and the IO went to court. During the last interview of the day, the interviewing officers concentrated again on why the suspect had not tried to telephone his wife following her disappearance, suggesting a number of options such as that she had never had her telephone on, that it was always at the bottom of her handbag, did he not think she had it with her? and asking if his wife had any enemies – how did she get on with his mother for example?

Day 5 - At the office meeting in the morning, there was again a plethora of information. Shortly before the meeting there had been a call into the Incident Room from an anonymous man saying he had been at his brother-in-law's house at the weekend when he had received a call from a friend who said he had just killed his wife after an argument and he needed his help. The witness knew this caller worked for one of the airlines. An officer attached to the FLO team had by now had lengthy conversations with the victim's sister who had been with the defendant since he had told her her sister was missing. She had talked about the suspect's reluctance to go to the police and the scratch she had noticed on her brother-in-law's neck, which he told her had been caused shaving. Subsequently he had worn a high neck top. She said that she thought the dresses found in the bins could be her sister's. One officer had been trying to match the clothing found with clothing worn by the victim in photographs seized from the couple's home. A work colleague of the victim had said she had had a bruise on her chin on the day before she was reported missing. Another said the couple had appeared happy. CCTV officers had been busy locating and seizing hundreds of tapes and stills from cameras around the deposition site, the couple's home, the route into the shopping centre the suspect said he took his wife to, and the shopping centre itself. An initial viewing had not shown a sighting of the victim shopping. Appeal boards had been put up in the town centre for anybody who might have seen the victim and also at the deposition site for anyone who had seen the suitcase being dumped or in the water.

The interviews with the suspect that day covered the argument heard in the victim's and suspect's house by the neighbour, the suitcase and the question of whether the suspect recognized it, the scratch on the suspect's neck, who it was who had insisted on reporting the victim missing, the bruises on the victim's chin the day before she disappeared (did she do any sport, could it have been that that had been the cause, could she have been assaulted and if assaulted one day could that be connected to her murder the next?), the Asian man seen looking around outside the victim's house, the Asian male with a heavy suitcase outside the suspect's house, what the victim was like as a person and who the Asian man might have been whom the suspect had seen the victim talking to at their workplace. In response to another Prepared Statement from the defence lawyer saying the victim had had a brown mark on her chin from laser treatment, the detectives wanted detail of where she had this done. At midday, the suspect was again taken to the Magistrates' court for the police officers to apply for an extension to his custody, which was granted. Both interviewing officers and the IO went to court. A female officer was dispatched to the victim's sister to find out where the victim went for beauty treatments and to see if she was ever bruised as a result of them.

Officers were constantly coming into the office which the SIO and three IOs from the team shared, with information and to discuss the case (and sometimes others of the team's ongoing cases). The SIO was keen to trace the anonymous caller and all four discussed how this could be done. A press release was issued asking for this man to call again. The FLO reported that the brother-in-law of the victim had said that, while they were all at the suspect's house waiting for news of the then missing woman, the suspect's father had said that the victim had ruined the suspect's and his entire family's lives. Officers were having trouble tracking down the source of the suitcase in which the victim had been found. Contact with retailers and manufacturers had proved vain. Preliminary cell site analysis<sup>9</sup> on the use of the suspect's mobile telephone suggested that he was not at the shopping centre he said he had dropped his wife off at when he telephoned her sister as he had said to her but rather nearer the deposition site. The

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<sup>9</sup> Technology which enables telephone companies to locate – to the nearest mobile phone mast – where a mobile telephone call has been made or received.

suspect had telephoned the airport very early on the morning after he said his wife had disappeared. The IOs discussed whether this was a work related call or whether he could have been looking for a flight. The CSM at the suspect's house discussed with the IO what sort and how many textile items to seize from the house. He said: "The CSM job is like a street cleaner, you pick up everything but write down very carefully where you found it" (E157).

Day 6 – Six days after the body was found, three after the arrest, the office meeting followed the usual format. The IO gave a summary of the case so far and then called on the relevant officers to fill in the detail. Officers were given follow-up tasks – to produce a map of the road where the victim and suspect lived <sup>10</sup>, to seize the suspect's computer, to show the video of the shopping centre to the victim's mother and sister to see if they could spot her, and to search the suspect's mother's house for suitcases matching the one the victim was found in. There was some speculation about possible scenarios that might explain why the victim had been killed, and whether the suspect could have had help perhaps from his family in either the killing or disposal of his wife's body. Somebody mentioned a Bollywood film about a man who had killed his wife and then disposed of the body in a suitcase. One of the officers said: "Speculation is the fun part; but it is not detection" (E 173).

In the interview room, the officers asked questions about where the victim's clothes had been kept in their home, and if the suspect had ever moved them or knew if she had thrown any out, where he had been when he had telephoned his wife's sister to say she was missing, if he wore a uniform to work and whether he had been due at work the day after he reported his wife missing, if he had ever said to anyone even in the heat of the moment that there was no future in his marriage, or if he had ever made admissions to anyone on the telephone about his responsibility for his wife's murder, where he would expect his mobile telephone to be, if there was any significance to the throwing away of traditional ethnic dresses, and whether he had ever seen a Bollywood film in which a

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<sup>10</sup> To assess potential for house-to-house enquiries but also to help explain the location to office staff, lawyers and an eventual jury.

husband strangled his wife and disposes of her body in a suitcase. The suspect maintained his right to remain silent.

The last three interviews became more confrontational. The officers told the suspect there was no trace of his wife on the CCTV footage of the shopping centre he claimed to have taken her to in the afternoon she disappeared. She last had an electrolysis appointment a month before the bruise was spotted. They suggested the couple had a row (“could she have provoked you, did she attack you, did you lose control?”), that he had put her body in a suitcase, and in broad daylight dragged that heavy suitcase to his car to drop it into the water. They asked him if he could think of any reason why there would be a forensic link between him and his home address and the suitcase in which his wife was found – if he ever handled suitcases at the airport, for example. In the very last interview, one of the officers showed him a photograph of the victim as she was found, asking whether he had help to fit her into the suitcase. The SIO said: “The only thing we didn’t discuss was the showing of the photo. It wasn’t a stunt I’d have pulled and I warned Mark<sup>11</sup> to be prepared for a roasting in the witness box” (E695). The officer wanted to provoke the suspect into saying something but he ran the risk of creating sympathy for the suspect and a rationale for why he had failed to answer police questions.

The SIO now sought the agreement of the CPS to charge the husband based on 12 key points: –

1. The lack of evidence of anyone else besides the suspect contacting the victim before her death
2. The colleagues who had noticed bruising to her chin which the suspect denied seeing
3. The neighbour who had heard arguments
4. The saris in the bin bags identified by the victim’s family as being very similar to hers.
5. The neighbour who had seen an Asian man loading a heavy suitcase into a car

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<sup>11</sup> Not his real name.

6. The neighbour who had seen an Asian man dumping bin bags
7. The defendant's scratch which he refused to explain
8. The suspect telling his wife's family his marriage was rubbish
9. The suspect was reluctant to report his wife missing
10. His account could not be supported by CCTV
11. The victim's mobile phone was not used after the Friday night
12. The suspect's no comments in interview.

Shortly after this the suspect was charged with the murder of his wife, to which he replied "I'm innocent".

## **Discussion**

### **Stage 1 – “initial response” and “information collection”/“secondary activity”**

This stage covers the busy period of the investigation until a suspect was charged. It can be recognised in the labelling of other researchers – Innes describes the “initial response” and “information collection” stages of a self solver, lacking the “information burst” associated with well-publicised whodunits; Stelfox (2006) also the “initial response” followed by “secondary activity”, which Maguire (2003, p 370) describes as the “production of knowledge” and Osterburg and Ward (1997, p 370) the “discovery” stage. Both McConville, Sanders and Leng (1991; p 181) and Maguire and Norris (1992; p 62) suggest that the early stages of a murder investigation come closest within English detective work to a model of inquisitorial truth finding in that the Incident Room procedures are designed, and resources are allocated, to “secure” and “check” facts. If this is so, this is the area in the two investigations described in this chapter and the next where one would expect to see the greatest similarities of activity and focus. It is to be noted that for a number of reasons there was in the English scenario an early arrest of the suspect, without waiting for further corroborative evidence. This owes something to the effects of the report following the murder of teenager Stephen Lawrence described in Chapter 1 (see Foster, 2008; p 12) which evoked very real concerns about the loss of forensic evidence and early accounts by suspects should investigators opt for the alternative approach, taken by the French in the chapter that follows, to attempt to collect background information before arrest.

## Detectives' evaluation of the case

The detectives on the team welcomed the new case. Initially it was classified as a Category A “serious crime”, a proper “whodunit”, where they “didn’t know Scooby”. Even when it began to look more akin to a “self solver”, in that a relative of the victim appeared likely to be the offender, the case remained “a good proper job” for the investigators where their talents could be properly used in the cause of a blameless victim. By contrast, another case the detectives took was deemed “crap”, where nothing much differentiated between the moral careers of the victim and the offender and inebriated witnesses were unlikely to be able to remember anything or be willing to testify if they did. These sorts of differentiation between the ideal and the actual daily work tasks of workers are common in many professions. Becker *et al* (1977) remarked on a similar evaluation of client groups in his study of student medics who welcomed cases which involved “some possibility of saving a life or restoring health through skilful practice (or losing them though ineptness)” (my brackets) i.e. something to allow the physician to experience some of the “essence of physicianhood”, as opposed to “crocks” - patients who present but are not really physically ill so there is little that can be done (p 317). Similar demarcations have been described by other researchers in the criminal justice field (Chapter 1) – for example Sanders’ (1977) detectives referred to “righteous” crime – that which not only merits investigation but which is not based on lies - and Wilson’s (1978) differentiated between “real work” and “garbage work”. In my case study, it was not only the negation of any self-image of the proper work of a murder detective that made such cases undesirable, but the thankless nature of the work that was necessary in bringing these cases to any sort of conclusion. Officers were surrounded by distrust on all sides and efforts to implement measures to engage with the people involved met with suspicion and disinterest. As I describe in the following chapter, the French detectives also value an interesting job, a “*belle affaire*”, though in their case, the designation is usually reserved until the end of the case when the investigators are able to link the thread of their investigations to the events of the crime – for them it is their investigation which creates the value of a case. Until it has been solved, a case can only be described as a good murder - a “*beau meurtre*”.

The English case was officially labelled “Operation Edgebaston”. This operational name has no relevance to the facts or people involved in the case and was merely the next name in a list kept by the police. In France, cases are referred to by the names of the people involved, quite often the name of the victim – as in *l’affaire Caroline Dickinson*.

### **The detectives at work – and play**

The detectives I observed worked in teams of around 30, which included civilian staff. They worked mainly out of two large offices with the higher ranks – the IOs and SIO – housed in a separate room on a different floor. The two main offices were split between the Major Incident Room staff continuously working at their computers in one room and the Outside Enquiry team based in the other. As their name implies, much of the work of the Outside Enquiry staff took them from the office and often this room was empty. Interviews with suspects and witnesses took place elsewhere – in a bespoke interview room or their own home or workplace respectively. The official mode of communication within the English team was typified by the calling together of a meeting and the distribution of paper.

The pre-trial investigation described in this chapter includes references to numerous meetings between and beyond the team – starting with the “handover” meeting between the on-call SIO and the investigating SIO from this initial stage, and continuing with meetings between members of the team and the forensic scientists, the meeting between FLOs, SIO and members of the victim’s family, meetings between the CPS, Counsel and members of the team, and meetings between the port authority and members of the team. The SIOs also regularly met together with one of the Superintendents. Within the team, there were meetings with selected members of the group about new legislation, new regulation and case progression. There were also office meetings involving everybody. These meetings were of two types, one the generalised one probably familiar to many British workers where management inform and discuss new ideas and procedures; the other specific to the murder investigation teams where they examined the state of the case they were working on. This is both a retrospective and prospective

view on what has been discovered and what needs to be progressed. The minutes of these meetings demonstrate the changing nature of how detectives “defined the situation” (McHugh, 1968) – from ‘unknown woman’s body in suitcase’, to ‘missing wife’ to ‘husband charged’. As McHugh suggests, the process of defining a situation can be pictured as a harlequin design depicting the demands of emerging data against the information already in the system and the detectives’ expertise. The possibility of team definition relies on shared beliefs and reasoning.

There was also much communication via paper or computer print-out. Outside Enquiry Officers were assigned tasks via the HOLMES software and returned the results of the task in the same way. Management officers read statements taken by officers and interrogated the computers. The effect of all this was a formal communication process, with people distanced from one another but of which there was a paper trail.

While the macho culture of detectives redolent of Hobbs’ 1988 ethnography is rescinding (Maguire and Norris, 1992), much social activity between officers took place in the public houses around where they worked. Officers went for drinks in two or threes socially, or to discuss aspects of the case as described above. They also went for large team celebrations – leaving “dos” and following successful court cases.

## **Stage 2. Post-charge and pre-trial activity – “The work starts here”**

As he came out of the custody suite, the interviewing officer said: “The work starts here” (E179). Another officer agreed: “The management have the notion that once someone is charged, the job is done. In fact the job is just beginning. But we’ll still be in line for another case” (E706).

Two weeks later, the team did take another case, a stabbing. The full-time commitment of 25 officers on the suitcase case gradually dwindled and, even within the work of what came to be the core team dealing with aspects of the case, actions relating to other cases, newer and older, intervened. During the time he was on this case, the Case Officer, for example, had five other cases for which he was Case Officer. Judging from the date on statements, activity on Operation Edgebaston became clustered around key events –



such as submissions to the Crown Prosecution Service and Case Conferences with the CPS and Counsel – the barrister who would present the case in court.

A full application for bail was made by a barrister acting for the defendant two days after he was charged. This was successful, despite the prosecution saying the defendant posed a high risk of absconding, there was a significant risk of his interfering with witnesses and he would be safer in custody as feelings within the victim's family were running high. The IO said the CPS representative in Magistrates' Court had not known anything about the case and the defence barrister had claimed the suspect was mistreated by police citing the showing of the photograph of his dead wife. A day later the head of the local CPS office appealed the decision in a private hearing before a judge and the defendant was remanded in custody. The solicitors acting for the defence were unusually active in investigation. They identified an alternative suspect – the victim's brother-in-law who had been with the suspect following the disappearance and had told the investigators about the defendant's strange behaviour. The defence claimed this brother-in-law had a motive – involving alleged credit card fraud which the victim knew about - and opportunity, and demanded the police investigate. They said his car matched the one spotted by the witness who had seen a man loading a heavy suitcase into a car. On one occasion the solicitors turned up at the brother-in-law's place of work asking for his attendance records. The police investigators seized the brother-in-law's car for forensic testing and checked out his movements the weekend of the death, creating a matrix of his activity.

Despite this, the investigators and the family of the victim remained on very good terms. The SIO first visited the family with one of the FLOs the day after the charging of the defendant – six days after the discovery of the body, four after it had been identified. "The women in the family said 'you've got it wrong, he's<sup>12</sup> lovely' and I thought at first we'd got an anti-family<sup>13</sup>" (E691). The family's main point of contact with the investigation team was a woman officer in the team in addition to the FLOs. She had spent a lot of time with the family taking repeated statements from the victim's mother,

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<sup>12</sup> Referring to the suspect.

<sup>13</sup> This is police shorthand for the family of a victim who are not pro-police.

two sisters, best friend, her sister and the brother-in-law, answering their questions and listening to their concerns about the impact of the case on their reputation within their community, the rumours and indirect comments. She gave her personal mobile telephone number to family members – she did not have a work one – and they made good use of it. She, the official FLO and IO attended the victim's funeral and, later on, a memorial service.

A Preliminary Hearing for the case was held at court a week after the charge. By this time, the forensic company had taken possession of the suitcase and a sample of carpet from the home address of the suspect, being asked to report on "whether or not there is any scientific support for the proposition that the suitcase was in contact with the carpets at the defendant's home address". Provisional decisions were made about all the items seized at the deposition site - every cigarette end, and piece of litter - focusing on whether to have them scientifically examined. On the advice of the forensic company, the victim's hair was washed to elicit any pollen residue which might aid identification of where she had been before her death. Paving and gravel from near the defendant's home address were seized. The case was then up for further mention at court at the request of the defence who were still complaining about the lack of disclosure from the police. The IO wrote a report to the court listing what had been sent to the defence and the Judge said it seemed to be satisfactory.

Following the media appeal, police finally traced the anonymous caller who claimed he had overheard a call from a man who had killed his wife: "It was totally unconnected, a windup-basically on somebody, it just came to the fore at the wrong time – a classic red herring," commented the SIO (E691 but statements still had to be taken to clarify what had happened.

Officers searched the defendant's work locker and spoke to his colleagues. Other officers drove along the routes that the defendant said he had driven his wife the day of the disappearance, timing themselves and looking for signs of CCTV coverage. Still others were taking statements from the suspect's neighbours asking them if they had thrown away bags of women's clothing, or loaded a heavy suitcase into a car. One said she had seen a large suitcase thrown away about a week before but she could not say it

was the same type as had been used to dispose of the victim's body. An Asian neighbour said he had loaded a heavy suitcase into his car but that he had been with his wife and daughters at the time. A new witness came to light who thought he had seen someone throwing a suitcase into the water. But the location was wrong. The IO had the idea of sending the anniversary card written by the defendant to a handwriting expert to see if it was possible to assess his psychological state from it - to consider if he could have written it after he killed her. They also wanted to check his handwriting against his supposed signature on documents found in the house.

Two weeks after the body was found, a witness came forward saying she had seen the suitcase in the water early in the day that the defendant had reported his wife missing. This put the investigation team's thinking on the timing of the disposal of the body into disarray. If the new witness's account was accurate, the defendant had to be lying about his wife's hairdressing and shopping trip as her body was already in the estuary. But it also meant that the witness report of a man struggling with a heavy suitcase the day the victim was reported missing could not relate to the defendant either. The woman had been jogging when she saw the suitcase. Although she regularly jogged in the location she had missed a weekend because she had been away for her son's birthday and had only realized the significance of what she had seen when she returned to jogging the following weekend and saw the appeal boards. She said that she remembered the suitcase because it had looked full, rather than an empty one left out for rubbish. The woman was sure of the date because she only jogged at the weekend because of work commitments, and it had to be Saturday because on Sunday she had taught at her local church. "She's the perfect witness," said one of the officers, "responsible and upstanding. We've got him" (E436).

Four weeks after the discovery of the body, an "anniversary appeal" was held at the deposition site. Officers attended the scene over the weekend, distributing appeal posters and asking passers-by if they were in the area frequently and if so, if they had been there during the weekend when the suitcase was found, and had they seen the suitcase or anything suspicious. The family of the victim attended briefly and laid flowers on the foreshore where the suitcase had been found. 53 people were stopped, 12 having been

in the area on the relevant weekend. Statements were taken from a number of witnesses who had seen the suitcase up to 24 hours before it was eventually reported. One witness said he had been looking for driftwood on the foreshore the morning of the day the defendant said his wife disappeared - an hour later than the jogger witness - and he had not seen the suitcase. The IO suggested “statementing” – taking a statement from - all those who had not seen the suitcase at various times even though it had definitely been there.

The week following the anniversary appeal, the first of 13 batches of papers was submitted to the Crown Prosecution Service and through them to Junior Treasury Counsel<sup>14</sup>. Following this submission, the first case conference<sup>15</sup> was held, attended by the IO and Case Officer, the Case Worker and Clerk from the CPS and Junior Treasury Counsel. In all, there were ten case conferences, an above average number. Counsel said:

“The extent of my involvement in suggesting investigative leads varies from nothing with terrorism teams who’ve thought of everything to enquiring whether they’ve thought of house-to-house [inquiries] on borough. This case is fairly typical. I suggested things that the team had thought of but they weren’t planning to pursue or weren’t going to pursue unless there were good reasons for doing so. So for example, I suggested DNAing the collars and cuffs of the clothes found discarded in the bin bags outside the defendant’s house. We had the sister saying they were probably the victim’s but some things we need to know for sure as the defence will question it and also it was a way of testing out the sister as a witness – is she reliable or will she say anything in an effort to be helpful? I asked them to treat the jogger’s activity as a defence alibi and check out every thing she said she did. I asked them to find out how many times the tide would have risen in the timeframe and whether the suitcase would have floated with the body inside. With the hairdressers that the defendant said his wife was due to go to the day he said she disappeared, the police had been to some central ones. I’ve got them to go to them all. It’s typical of police to do some but not all. They said it was an action somewhere in the system. But in an adversarial system it is no use if you don’t finish it, sometimes you need to do that bit more to make what you have already done useable” (E500).

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<sup>14</sup> Treasury Counsel are an elite group of barristers who liaise with CPS to prosecute the most serious criminal cases.

<sup>15</sup> Case Conferences are discussed in detail in Chapter 5 which compares the structure of the criminal investigation process in the two countries by looking at key events in the progress of a case. A case conference from this case is used to illustrate the argument.

Two days later, the police had a meeting with staff of the forensic science company who were examining the suitcase for trace evidence which might link it to the defendant's home address. A number of duvets and sheets seized from this address had been sent to the laboratory and there was a discussion about how many of these to try to match. "The public purse is not limitless so we looked for fibres that would 1, be the most likely to shred, that is transfer, and 2, would have most evidential value," said the fibre expert (E606). Scientists from the company were also to examine a sample of the victim's hair to see if it had recently been cut, the defendant's rings for traces of blood or suitcase fibres, and the clothes and bottle top found in the bins for the victim's and defendant's DNA. One of the officers on the team rather despondently told me: "It's all about science, not us. The scientists and scenes of crime officers are the detectives now. Since we cannot get them in and get them to talk any which way, it is them that do detection" (E379).

Another long-running but ultimately fruitless witness trail emerged with a rumour circulating around the Asian community that the victim's family knew before the body was found who was responsible for her death. This resulted in several long-winded statements from witnesses who were again treated as significant because they appeared to be giving evidence about who the murderer was. These witnesses were related to the family-in-law of the man with whom the victim's brother-in-law had had a meeting about a mortgage on the day after she disappeared. Officers also checked out what turned out to be a false sighting of the victim at the hairdressers the day her husband said he had taken his wife to town. They eventually located the woman who the witnesses had mistakenly believed was the victim. More statements were taken from the jogger's husband – who could not remember his wife mentioning a suitcase nor having read or heard anything about the case in the news; more suitcase sightings, one in response to a neighbour having told the witness about the appeal; and a childhood friend of the defendant's who could not believe he was guilty. This friend also mentioned being contacted by the press who were knocking on doors near the defendant's family home. A statement was also taken from the man who sold the couple's new home to them, talking about the tension between the two of them when the victim had teased her husband. The SIO decided in consultation with the CPS to broadcast an appeal on

Crimewatch<sup>16</sup> to try and trace the origins of the suitcase in which the victim had been found. This resulted in contact with the distributors who said that that type of suitcase had been imported only a month previously and was sold as a set of three in a limited number of stores. Officers began to contact these retailers to find out to whom they had sold sets. One of the companies was already in the HOLMES system. A receipt from the shop had been found in the couple's records. It could not be for the case however as it was dated before the cases were imported into this country. The investigations conducted by the officer looking at the couple's financial affairs suggested that the couple had lived on a tight budget since moving into their new house. When the defendant had applied for the mortgages for this and two rented-out properties, he had claimed to be a self-employed plumber on a much higher income.

Just over two months after the death, a written post mortem report was filed by the investigation team, just before the Plea and Directions hearing at court. A not-unexpected not guilty plea was formally registered. Another case conference was held three weeks after that. High priority actions at this point were to draw a plan of the defendant's neighbourhood; create a timeline of the victim's brother-in-law's movements; write a statement concerning the "continuity" of exhibits from the defendant's home address – detailing the movement of the exhibits from being seized to arriving at the laboratory, who had handled them and where they had been stored; applying for authorization for telephone data; submitting photographs of injuries to the defendant's neck, obtaining a translation of the letters from the victim to her husband found at their house, finding out whether laser hair removal could ever cause bruising and firming up the jogger's account. The officer who had taken the jogger's original statement was "tasked"<sup>17</sup> with locating e-mail records, Sunday school programmes and restaurant receipts for the relevant weekend. The officer was not happy about this, saying "We shoot ourselves in the foot sometimes, appearing to doubt good witnesses like her by providing an alibi, when we don't for others, like for the guy who didn't see the case"(E441). The CCTV officer also met with the jogger so that she could provide

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<sup>16</sup> A TV programme which broadcasts details of usually serious crime in conjunction with the investigating officers to encourage witnesses to come forward.

<sup>17</sup> HOLMES software terminology for "given the job of ..."

a photograph of her wearing jogging kit which he subsequently matched to CCTV footage at various points in her route on the relevant day. He also watched the following day to see if she could be seen then.

Primary disclosure of the evidence forming the prosecution case was sent to the defence team approximately three months after charge. The disclosure officer said: "I look at the case differently as disclosure officer. The team as a whole might ask why should they be given everything? I think the defence are entitled to have all this information" (E520). The SIO had asked the forensic science company for a preliminary report on findings so far. At this stage, the scientist had identified one fibre on the suitcase as being microscopically identical to the fibre of the carpet and investigations were still ongoing. The primary disclosure was very quickly followed by an application to dismiss by the defence on the grounds there was insufficient evidence to justify continuation and that the defendant should not have been charged. They claimed to have found a witness who said the victim had told her she was going to have her hair set on the day she disappeared and suggested that the victim's brother-in-law had had his car cleaned while "frantically looking for his sister-in-law". They pointed out the witness statement giving details of an Asian man loading a heavy suitcase into a car which was so important at the original hearings was now sidelined and listed in the unused material. They claimed the jogger was unreliable as a witness as the timings on her e-mails did not correspond exactly to her statement. Only one fibre had been found linking the suitcase to the defendant and they suggested that there had been a high risk of contamination with a suitcase which had been constantly moving around. The application was not successful but after a further hearing the defence submitted another long list of requests for information including telephone billing for the victim's brother-in-law, a list of witnesses who had a criminal record plus the home address of the witness who did not see the suitcase. The CCTV officer visited the defence team in order to explain the CCTV footage to them. He had offered viewing in the police offices but the defence team had hired their own equipment. At the next hearing the defence asked for the IO to go into the dock to explain his investigation. The Judge ruled that the defence could have access to the defendant's home address and the notes

relating to this from the prosecution case. At the next hearing, a trial date was set for four months time – 11 months after the offence.

Six months into the investigation, the Exhibits Officer received a note from the scientist dealing with the fibres on the suitcase saying that he had found 13 fibres on the suitcase that were microscopically indistinguishable from those of one of the duvets seized from the defendant's home address. A few days later, the scientist confirmed that five of these fibres were chemically indistinguishable. This was evidentially significant but he could not yet say how strongly significant. A week later, the other 6 of the 13 fibres were confirmed as chemically indistinguishable from the duvet as well. Another scientist working for the same company reported that the DNA on the handle of the suitcase did not exclude the defendant but there was definitely no DNA there belonging to either the finder of the case or the victim's brother-in-law. There was a positive match for the defendant's DNA under the victim's fingernail but no semen in her vagina. There was no victim or defendant DNA on the bottle found on the clothing bag in the dustbins. All these developments were passed between the core team – IO, Case Officer, Exhibits, FLOs, CCTV, Disclosure – by a series of meetings organized by the IO. "He was very good, sometimes time isn't made for this with all the cases on the go at once and you end up being Disclosure Officer on a case you don't know what it is about" said one of the officers (E686).

The CCTV officer had had to recruit a retired police officer to assist in the viewing of tapes seized. "We've been watching these tapes now for 10 hours a day for 10 months," the retired officer said. "People don't realise that to watch say one hour of security video can take several hours or even days if you are trying to check if someone is there. You have to rewind, freeze frames, enlarge, enhance, check people from different angles, or even get relatives to have a look" (E597/668). The officers had found no footage of either the victim shopping in the shopping centre on the day her husband said she had disappeared or of the defendant or his car driving into the shopping centre on any of the available footage. The problem was that the cameras were rotating and did not cover all angles all the time. The officers decided to undertake a number of experiments to assess the likelihood of driving either of the routes mentioned by the



defendant without getting captured on CCTV. The IO said: “I wasn’t sure the prosecution would go for it but he did” (E445). The CCTV officer drove the route four times in his car with a white piece of paper in the window and the retired officer seized yet more tapes to see if he could spot him. In three of the four journeys he did.

At this point the defendant changed his solicitors. The new defence team applied for a delay in the prospective trial date in order to receive instructions, saying the original solicitors were not co-operating by sending all the paperwork. The IO and Case officer speculated about how this change in legal team might open other lines of defence, blaming the defendant’s silent interviews on bad legal advice for example.

During the next week the IO met the local Port Authority surveyor to discuss tide heights. A flotation test to assess whether the suitcase might have been dropped into the water elsewhere and floated to where it was found was quoted as costing around £20,000. Subsequently, the surveyors worked with the computer mapping department of the police force to plot tide heights against projected visibility of the suitcase at various times, based on a number of site visits, with a view to ascertaining if it was possible for the jogger witness to have seen what she described. At a meeting with the detectives – the IO, Case Officer, CCTV officer and the officer who interviewed the jogger - almost ten months after the case had begun, there was discussion with the Port Authority about how accurate their modelling was, based as it was on aggregates, and whether it would be better to input more real data into the model and extrapolate from actual measurements. The Ports Authority was interested in how to achieve the most accurate data; the IO which approach left less room for the defence to attack; and the Case Officer which method favoured their case! The interviewing officer asked if there were any other experts except those in the room who the defence could approach.

The case conference described in Chapter 5 occurred at around this point in the investigation - about a year after the murder. The fibre expert had by now matched 21 fibres from the suitcase with 5 different textiles from the defendant’s home address and said there was “extremely strong scientific support” for the proposition that the suitcase had been there: “The suitcase was in recent contact with the interior of the house, or the suitcase was in recent contact with several items that happen, coincidentally, to be made

of the same textile fibres as the carpet, door mat and items of bed clothing”. he said (E545). Shortly after the meeting, the Case Officer raised an action<sup>18</sup> on the HOLMES system to have all the hairdressers visited and Community Support Officers were used to call on the 42 hairdressers in the shopping centre area to check if the victim had been in any of them. Another statement was taken from the victim’s sister saying her sister only took off her rings in the bath or when she applied cream in the evenings. She also mentioned the defendant receiving a call from another woman. An officer spent a morning looking at photographs of the victim to try to assess how often she wore her wedding rings.

A low key anniversary appeal took place a year after the discovery of the body. Appeal posters were put up at the deposition site and officers attended the following day to see if there was any response. Shortly after this, on a day and time when the tide was expected to be exactly the same as those of the weekend of the murder, the Exhibits Officer and the CCTV Officer undertook a “flotation test” at the deposition site - placing two weighted suitcases on the foreshore and monitoring their movements in accordance with the rise and fall of the tide. The event was filmed by two photographers. One suitcase was placed where the jogger witness said she saw it and the other was dropped into the water from the edge of the road. Neither suitcase moved although the first one was submerged and the second fell over backwards. The idea for the flotation test was first mooted during a discussion between the two officers in the pub. “It didn’t tell us much of what we wanted in the end,” one of the officers said. “Except if the case that the jogger saw was one of the other ones. They were sold in sets of three remember. If the defendant had bought a set of three and had put the victim’s mobile and other personal things that are missing in one of the others ...” The officer said that when he had suggested this to Counsel, he backed away and said “Whoah” (E554).

The new trial date was now fast approaching – 15 months after the murder. In the weeks before the start date, a number of statements were still being taken. One was from the victim’s best friend’s husband describing how the defendant had shown him a

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<sup>18</sup> Inputted the task onto the computer software with sufficient priority to have it assigned to an officer.

route to his parents' address which took him past the deposition site. Another, from a doctor, described the scratch on the defendant's neck at the time of his arrest as being the result of a "single, gripping static action from a sharp, probably small, fingernail". Another was from a hairdresser who said that although the victim had not been at his salon the weekend of her disappearance, he thought she had had her hair cut there two days previously. The final touches were being put to a number of graphics asked for by Counsel to assist the jury. These included the location of the house of the neighbour who had heard the couple arguing compared to theirs showing which rooms adjoined which, and the siting of all the relevant CCTV cameras, the suitcase visibility at various tide heights and the addresses of all the hairdressers contacted. A change of senior Counsel occurred two weeks before the trial was due to start and two meetings took place between the police and the replacement barrister. The Friday before the trial was due to start, a Defence Statement was finally received - "such as it is" commented the new CPS caseworker (E516). The Statement confirmed that the defendant denied murdering his wife, that the last time he saw her was when he dropped her off at the shopping centre, and that he took issue with "Any/all evidence tending to show that the defendant is guilty". Secondary disclosure of evidence tending to undermine the prosecution case or strengthen the defence's was requested; some of which had already been sent to the previous solicitors. The police team had one final meeting to check if everything had been done - to see if "we are match fit" (E690). The Holmes computer file on the case revealed that during the investigation, 1047 actions had been raised, 258 statements taken, 1409 separate documents filed and 539 exhibits stored. One of the MIR office staff said: "it's a case with lots of thin threads but this can make a strong case as it is difficult to burn them all" (E36).

## **Discussion**

### **Stage two – "production of evidence" to "construct" a "case"**

The detectives Innes spent time with use strikingly similar terms to the investigators on this case to describe the "real work" that starts "once you've got them" (Innes, 2002b, p 672). Stage two sees what former police detective Stelfox (2006, p 169) describes as "evidence gathering" which other researchers rather less neutrally describe as "evidence

production” and “case construction” (Maguire and Norris, 1992, p 7), something not sitting there waiting to be collected but moulded by the detectives. Innes suggests that the use of the word “case” itself is redolent of how an incident is viewed by the adversarial system “it represents the bounding of reality and the ordering of understanding and events that occurs through interactions with legal discourse (Innes, 2003: p 57).<sup>19</sup> While the concept of case construction does not necessarily have to have pejorative overtones as “being a feature of any criminal justice system” (McConville, Sanders and Leng, 1991: p 11), the “legalisation” of the facts of the case for the adversarial system is seen as particularly partisan, with the “gladiatorial”-style trial (see Cooper 1991, p 371) having a considerable “anticipatory structuring effect” on detective activity and way of working (Innes 2003, p 69). Even in the very early stages of the case described here when for example interviewing the suspect, the detectives’ desire to put all potential defence angles to the interviewee suggests the interview was being conducted with a view to the presentation of the case in court. Investigators were keen to stress that speculation was merely fun, anything that could not be translated into evidence allowable in court was irrelevant and not part of the real work of detection as they saw it. Data were collected which could be presented in court to support the prosecution view of events – the family background, the overhearing of arguments, the lack of hair appointment, the suspect’s knowledge of the deposition site. The constructed nature of evidence can perhaps best be seen in this case by the CCTV “tests”. That this was a slightly unusual form of data was suggested by the enquiry team not being sure the prosecutor “would go for it”. The danger was that it laid the way open for being read in the opposite way to that intended – proving that it was possible for a car to pass through unnoticed rather than suggesting it was unlikely, but also exposed detectives to criticism for other tests they did not do – such as for example, tests showing the likelihood of the victim being spotted in the town centre cameras shopping, which was not undertaken for the first trial, but was for the second.

The prosecution also felt the need to protect itself from attack from the defence. In this they were working blind in that they did not know what that defence would be but could

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<sup>19</sup> Does this perhaps explain why at first I found it difficult to use the word “case” as a translation of the French *affaire* described in the next chapter?

only guess from the kinds of things the defence asked for.<sup>20</sup> There were however, common areas for attack. The integrity of the police officers themselves, the investigation and the manner in which exhibits had been kept were all potential areas of attack, with or without justification. Civilian witnesses were assessed not just on what they had to say and how trustworthy the police themselves thought they were, but how they could look in court. The defence were expected, for example, to ask for a list of witnesses with criminal records, as this would give them an easy way to attack their evidence on the basis that if their integrity had already been impugned, they could be accused of lying more easily. In contrast the prosecution jogger witness was seen as a perfect package for court – religious, respectable, married, healthy. It is unsurprising that the police in the adversarial system of which they are a part saw the forthcoming trial as a “match” – which they would either win or lose. So it was this perfect prosecution witness – whose evidence denounced the defendant as a liar, though what she saw was only circumstantial – that seemed to the detectives that they had “got him” – found a piece of evidence he could not refute.

In a case such as this based on numerous “threads” - pieces of unconnected evidence - the police were unendingly worried about the defence “burning”<sup>21</sup> – casting into doubt – each one, and instigating further uncertainty by criticising aspects of the police investigation. It is for this reason that the detectives were continuing to conduct enquiries and routine activities long after their case would appear to be solid. For example, officers conducted an anniversary appeal a year after the murder. By this time, the original trial date had passed and nothing new came out of the appeal but officers could have been attacked, it being quite common for such anniversary appeals to take place, if they had not conducted one.

While the investigation could be viewed as the police reaching early conclusions and then constructing a case – the *modus operandi* leading to a number of the miscarriages of justice relating to Irish bombings cases in the 1970s, and indeed that the evidence gathering was essentially verificatory – checking that the victim had not been to the

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<sup>20</sup> See also Bennett (2006, p. 421)

<sup>21</sup> The use of the word “burning” suggests how fragile the detectives saw their case as being. It was made of flammable paper that could be reduced to dust, not cast in stone.

hairdressers, expecting that she would not have been - there was still a level of uncertainty in many of the key personnel involved with the case especially in the early weeks. The woman officer who spent a lot of time with the family, for example, maintained doubts about the guilt of the suspect, and even the IO in meeting with Counsel suggested his case would be blown if officers found a hairdressers that the victim had attended, and still continued to check them. Indeed it was only the defendant's eventual performance in the witness box which convinced the victim's family and some officers of his guilt, when he made allegations relating to behaviour of which they had first-hand knowledge. While they may have been searching for evidence rather than truth, the police believed they had the right man in what Innes calls a "pragmatic" "good enough" truth or "legal" truth where there is deemed sufficient evidence to convince a jury (Innes, 2002b; p 685 ). This is something less than the "unquestioned proof" the goal of Osterburg and Ward (1997, p 370) and certainly less than the broad conception of "the truth" the French talk about. It suggests a managerial model of sufficiency of proof – enough to do the job and convince a jury of guilt.

### **The nature of the investigation and the records made of it**

Innes (2003: p 238) describes the process of an English murder investigation as "ordered and structured", a series of "systems, rules, routines and procedures and conventions" emanating from police experience of murder investigation. Officers on a murder investigation are assigned specific tasks - sometimes routine ones are generated by computer - and carry them out and record them following standardised procedures. Each task is only a small part of the investigation. On a murder squad there is a clear division of labour and the teams work as the supervised "pieceworkers" of bureaucracy rather than as the more entrepreneurial detectives often found on TV and crime literature (Maguire and Norris, 1992).<sup>22</sup> Even the interviewing officers in the case described here - who from such fictional accounts would be particularly charismatic performers – were chosen from a managerial standpoint of availability. Officers had correspondingly

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<sup>22</sup> Is it perhaps down to the piecework nature of many of the actions that some tasks are performed in what the general public – including the eventual jury - with an image of a fast-moving television investigation might think a tardy fashion. Some statements relating to this case were completed more than 12 months after the incident.

limited expectations of the interview process aiming to achieve a record of the defendant's early response to information they had.<sup>23</sup> Officers on the team commented "Murder team officers don't do any thinking, all actions are generated by Holmes and the SIO" (E44-5). Whether this is actually true or not – many suggestions were made to senior officers by outside enquiry staff and those in the incident room – this is a common enough perception to affect morale.

Every piece of data connected to the investigation is logged onto the Holmes system – the messages, actions, statements and documents together with the decision logs compiled by a number of key personnel such as the SIO and FLO document the performance of a succession of sometimes drab and often routine tasks and actions each teamed with a correspondingly routine justification. The HOLMES system acts as both an internal icon of the scale and effort of the investigation - one officer said: "Sometimes people say they've got 3,000 actions or 150 statements as if that's the be all and end all" (E121) - and an external auditing system (see Stelfox, 2006) which the team will be able to use to defend itself against any hostile review later.<sup>24</sup> This leads to a perceived need to justify everything that is and is not done which sometimes seems excessive. Even the decision to record the investigation on a HOLMES computer database has to be justified. On this case, because the woman officer who liaised with the family was not the official FLO, special arrangements had to be made to record her contact within the message system on the computer rather than in a FLO logbook. Students on the Senior Investigators' course I attended were told that "Most of what you do is covering your arse". This is a comment repeated often enough to demonstrate the essential defensiveness felt by English investigators about their work, also commented on by Foster (2008), the effect of the public and media reaction to a number of failed cases, described in Chapter 1. "It's all arse covering so if there's another Lawrence we can say we did all we could" (E277). Similar feelings were expressed by American detectives to Sanders (1977) more than 30 years ago.

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<sup>23</sup> This is in stark contrast to twenty years ago when the "aim of interrogation was 'getting a cough'" (Rose, 1996, p.316).

<sup>24</sup> It is also intended to ensure that all necessary checking of facts is conducted. That the mechanism sometimes fails is demonstrated later in this case when a new fact comes to light about the important jogger witness.

### **How officers viewed their work**

In contrast to even the most gritty portrayal of murder investigation on the small screen, my research notes are littered with the negative comments of English officers concerning their work in the murder squad. Some of these remarks relate to the mundane nature of the work undertaken by lower ranking officers - “The work is just glorified statement taking” (E291) and “The MITs are ok if you like holding a clipboard” (E45). Several officers criticised the nightshift on-call system where two officers stayed in the office to screen calls attending any suspicious deaths: “It’s not really cost effective us highly trained officers stuck in the office like this. It’s not what I imagine most people think of murder detectives doing”, said one (E341). A detective from another team said: “I think as an officer you become deskilled in the murder squads (E688). A colleague added: “When I came here I was hoping there would be a wealth of experience and I would gain all the know-how and advance so much. I have to say I have been disappointed” (E690). Of course every job has its repetitious and tedious side but other comments demonstrate a loss of faith in the very ethos of the job. One officer in the case study felt his role had been entirely emasculated by science – “The scientists and scenes of crime officers are the detectives now” and that detectives were treated with little respect “We run around all day and get treated like shit”. Others felt that the legal process annihilated the basis on which they acted “It’s all about whether you followed police procedure or not, not whether he did it or not (E377).<sup>25</sup> One summed up: “Glamorous? Murder investigation? You’re dealing with shits and there are far more ways for people to shoot you down in court” (E110). When asked why they continued to do the work, many officers immediately replied: “Overtime” and management did express concern that at times of reduced resources placing overtime payments at risk they would lose staff to units with more money. Officers of all ranks complained about “management” who continued to believe that once a defendant was charged, the bulk of the work relating to a case was complete, thus overloading them with more cases while they were still working on the previous ones. Detectives also talked to me about the effect of the job on their private lives. On a basic level the long

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<sup>25</sup> Or more jovially: “We send in two trained detectives and get no comment someone offers him a fag in a cell and he coughs” (E).



unpredictable hours impinged on family commitments and the nature of the work affected them even at leisure. “It’s difficult to switch off and sometimes you wake up in the middle of the night thinking of things you have to do,” said one (E685). “I don’t think anybody would say it didn’t affect you. If it doesn’t, it’s probably time to stop doing it anymore,” said another (E695). “It makes you suspicious all the time, you don’t believe anything, even in your home life; suspicion is what you’re paid for” (E700).

In the following chapter, I describe another case involving a body in a river that was investigated by French murder detectives. The French officers depicted appeared to be more positive about their working life for a number of reasons that will be explored. However, both sets of officers shared a belief in the necessity for their job: for killers to be caught. Officers on both sides of the channel were adamant, despite the differences in legal procedure that in fact governed this issue,<sup>26</sup> that they would never give up on finding a murderer. When a case was solved, they shared a pride in a “job well done”, although what constituted this designation differed. For the English “the best moment” was the “sense of achievement when you get a conviction at court” “when the family of the victim thanks you for all your work” and “you feel that justice has been done”. For the French officer, perhaps because of the lesser involvement (see Chapters 4 and 7) of the murder squad in a defendant’s case once someone has left police custody, this moment came earlier - “the moment when you’re doing the research or interrogation which gives you the piece of information which is the turning point of the case, the ‘Bingo’” (F805), “before the arrest, when you know everything, you know who it is.” An English officer said to me: “The ultimate honour any investigator can be given is to be charged with finding the killers of a family member” echoing the similar pride, but slightly different perspective, of a French officer who commented: “The *Brigade Criminelle* represents the pinnacle of investigation, to locate the killer of a man and work out what happened”.

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<sup>26</sup> Under the French law of prescription, a case is closed after ten years of investigative inactivity.

## Chapter 4: France - *L'affaire “X-femme”*

This chapter will describe the French police enquiries and *Juge instruction* following the discovery of a woman's body in a travel bag at the edge of a riverbank. The case will be described up until the trial, which will be discussed in Chapter 7. I have divided the description into four stages, following French legal categories. These are:

1. The police investigation *en flagrant délit* under the direction of the Prosecutor, immediately after the crime has occurred;
2. The *enquête préliminaire* for crimes older than eight days<sup>1</sup>;
3. The investigation under *Commission Rogatoire* once the Prosecutor has nominated a *Juge*, and
4. The investigation by the *Juge* once someone was *Mis en examen*<sup>2</sup>.

As in Chapter 3, I have used “thick description” (Geertz, 1973) in order to clarify comparison between the English and French cases, and capture the detail of the investigative procedure and rationale.

### Stage 1. Investigation *en flagrant délit* – “*transport sur les lieux*”

A jogger first noticed a travel bag floating at the river's edge as he ran past. Discovering what appeared to be a body inside, he called the emergency services. The fire brigade, who have a wider medical role in dealing with emergency calls in France than in Britain, arrived first, followed by the local on-call detective and the Prosecutor, *le Procureur*, who had requested the presence of an observer from the specialised murder team - *la Brigade Criminelle*. The fire brigade officers pulled the bag to the shore and confirmed the presence of a body. As there seemed to be no leads apparent as to either the identity of the victim or how the body had come to be there (« *Aucun élément* ») and after discussion with the observing officer, the *Procureur* decided to assign the investigation to the specialised murder team. The on-call *Commissaire* and the rest of the on-call team, including the *procédurier*, responsible for the completion of

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<sup>1</sup> At the time of the research. This has subsequently been changed to 15 days.

<sup>2</sup> This is more than ‘helping with enquiries’ as the person in question can often be remanded in custody, but certainly not yet charged.

all the paperwork - *la procédure*, joined their colleague at the scene. Their journey there was later reported in a form headed *Transport sur les lieux* – transport to the scene. “It’s important for all the team to go out to the scene. You can sense the ambience, see things, hear things, that can never be recaptured afterwards,” one of them said (F530). The *Commissaire* said: “I always go to scenes of crime. I’m here to ensure that the link is kept with the *magistrat* and deal with other administrative and political matters. This leaves the *Chef de Groupe* to get on with the investigation in peace” (F214). The *procédurier* almost immediately began his observations – *constatations* - at the scene together with three officers from the *Identité Judiciaire* (*IJ*- nearest equivalent, scenes of crime officers) – one to take photographs, one to take samples, and one to draw a plan of the area. The *procédurier* was accompanied by one of the other officers from the group, the one next below him in rank, and as he worked he explained what he was doing to this officer. Not all groups at the *Brigade* were equally receptive to the assistance of the technicians. One told me: “The *Brigade* can have a bit of the archaic about it, considering that their traditional ways will solve all crime without us. We have one group who ban us from scenes until they have done their investigative search” (F202).

The *procédurier* seized two exhibits - a lock and chain that had been hanging unfastened around the travel bag - and sealed them in bags – the French word for exhibit is literally “sealed” - *scellé*. The observations took just under an hour and a half. Another officer was assigned the *enquête de voisinage*, the enquiries around the neighbourhood. “It’s very important, I need to speak to everyone around here to pick up what they know. You have to be the right sort of person to do this and to get on with people” (F808). Not that there was much to work with as the area was a business zone, with virtually no housing or pedestrian traffic. The scene was regarded as a focal point for the officers returning from tasks to talk to the *Commissaire* and *Chef de Groupe* who remained there. The *Commissaire* said: “We also get involved in dialogue with the whole group at the scene to try and start to understand what has gone on from the things that are there – why was that padlock left like that, why was the body left here, is the bag the victim’s or the offender’s, how long has it been here?” (F233).

Back at the office, the *procédurier* wrote up his observations in a five-page report for the file. This report included not only what he had seen and seized at the scene relating to the incident but more general information about the area in which the body was found, including both the social make up of the district and historical detail going back to the middle ages. One of the officers on the investigating team said this was a "special *Brigade* touch" (F801) for the *Juge* but a *procédurier* from another team told me that he thought you only put that sort of thing in if you didn't have much else to say. The body was removed from the scene by local uniformed officers three-and-a-half hours after it was first reported to police. Police divers searched the river but found nothing of interest. The *procédurier* was in the office the following day - a Sunday - receiving the statements – *procès- verbaux* - taken by the local detective from the jogger and putting together the exhibits list so far.

At 08.15 the following morning the *procédurier* attended the autopsy which was performed by the head pathologist and a colleague. The body was removed from the bag at this point and the detectives were able to confirm for the first time that it was a woman's body, European, 25 to 30 years of age with brown curly hair. The body was clothed and the clothes were taken by the *procédurier* to be dried at his offices. The clothes included a mini-skirt, boots and a G-string. Three unmarked plastic bags had been put over the victim's head and tied with tape. These bags, together with a broken pendant found in the travel bag, and a ring that the victim was wearing, were taken as exhibits and sealed in exhibit bags. The pathologist told the police that the body had been in the water between three and eight days, that she had died by suffocation but that she had been beaten, she had been hit three times around the head with a blunt object and had two fractures of the collarbone and other cuts and abrasions. There was no sign of any sexual attack or defence wounds. The pathologist noted that she had had some expensive cosmetic dental work done recently. The fingerprints would have to be extracted by an expert as they were damp from exposure to the water. The usual samples – organs, stomach contents, blood – had been taken for later analysis.

Back at the office, the rest of the group had gathered briefly for their usual morning coffee but had quickly got to work and were starting to take or literally "hear"

(“*entend*”) the first statements – “*auditions*” - of the firemen first on the scene, and contacting local police stations to see if they could match their body to a missing person. Two stations had possible matches; one was eliminated after a few hours when she was identified elsewhere; the paperwork on the other was to be faxed over to the group. Immediately following the *procédurier*’s return from the autopsy, the group’s *Commissaire* telephoned the *Procureur* to inform her that the experts thought the body had been in the water between three and eight days before being found and that he therefore requested her advice as to whether the crime should be pursued as an *enquête préliminaire*.

The group came together at lunch to discuss their new case. The group speculated that the woman might have been a prostitute - “The way she was dressed, a string, practically no knickers, and boots,...” (F197) and possibly from Eastern Europe – “She doesn’t appear to have been missed anywhere, she is not reported missing”. “But her teeth, perhaps she is English” (f198). One officer said: “We discuss cases all day, at coffee, at meals, all the time. We read all the others’ reports as well but you’ve got to talk to each other about things, say what you have found, what you think” (F801). The *Chef de groupe* said: “I don’t decide things on my own but within the group, they have a wealth of experience. But until we identify her it is very difficult to progress on this one” (F197).

## **Discussion**

### **Manner of working**

In the detection typology first coined by Repetto (1978) and most recently addressed by Tong and Bowling (2006), the nature of investigative work is deemed an “art”, a “craft” or a “science”. For the French detectives of the *Brigade Criminelle*, the initial impression was that they were practising an art, using their talent as detectives to read and imbibe the significance of the behaviour of those who had committed the crime at the scene, considering motivation and discussing scenario.<sup>3</sup> Some of their colleagues

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<sup>3</sup> This is in stark contrast to the English SIO visiting his scene “to decide parameters of strategies and identify any opportunities available to this investigation” – see Chapter 3.

were even said to eschew the assistance of the scientific altogether and officers often spoke to me disparagingly of those who thought advances in science would do away with the need for the human detective.<sup>4</sup> Certainly there is a different level of concern about the dangers of forensic contamination between the French and the English. The search for contact evidence by technicians would always precede that by the detectives for information in England regardless of how the SIO felt about science. In France, as noted by two former investigators, to visit the scene, see the locale, smell the atmosphere was deemed a huge advantage to the gifted investigator in his bid to understand what had happened and why (Diaz, Fontanaud and Desfarges, 1994; p 153). Although in many ways low-status work associated with minimal success (Burrows and Tarling, 1987), even the *enquête de voisinage* is somehow translated by the French into an art, requiring the personality and verve of “seduction” (Diaz. Fontanaud and Desfarges, 1994, p 161).

A more craft-like element is apparent in the manner the detectives worked together as a group, with professional training being passed on from the most experienced to the more junior in discussion and by shadowing. Wulleumier (2000: p 35n) suggests in her study of the treatment of volume crime in France that those in more specialized elite teams enjoy a more egalitarian spirit where interesting work is done by all ranks. The group brings together a cocktail of personalities and opinions on what has happened are mooted and considered by the others. Nevertheless the scientific is a serious consideration. The *Procédurier* is an important and senior member of the group and his observations at the scene form an important part of the written file – the *Procédure* – the quality of which, we will see, the investigators value highly.

### **The relationship between police and *magistrat***

Mouhanna (2001) opens his book on the relationship between *magistrat* – be that prosecutor or *Juge d’instruction* – and police by ironically suggesting that the manner in which they – as legal professionals - worked would be exactly as stated in the several

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<sup>4</sup> And it seems they would be right. Mucchielli (2005) notes from his study of homicide dossiers that the traditional human arts of the detective – finding and talking to witnesses – are a far more important factor in identifying a suspect than what is sent to the laboratory from the scene of the crime.

rules in the relevant articles of the *Code de Procédure Pénale* - the *magistrat* has authority over the officers of the judicial police and directs their activity. On the basis of empirical study, Mouhanna himself, together with other commentators, suggest the relationship between *magistrat* and police is not as clear cut as the legal statement suggests. Hodgson (2001) and Monjardet (1996) argue that the *magistrat* is reliant on officers for information about events and for any further investigations to be made. It would not be in a prosecutor's interest to alienate a detective officer. But equally the officers need prosecutors with whom to work and Mouhanna suggests that a relationship of trust builds up between officers and *magistrats* who often work together, which is stronger than that between the personnel involved and their own institutional managers. This camaraderie should not be overstated. Bui Trong, a retired police officer, argued that *magistrats* feel hostility to police, demonstrated in what they say to the press and in union communication (Bui Trong, 2003: p 41). Hodgson (2002b: p 243n) commented there were frequent misunderstandings between officers and *magistrats* with the former puzzled at how little the latter knew about their cases and the *magistrats* in turn complaining that the paperwork they received was useless. In another work reporting an attitude survey, Hodgson (2005: p 155n) noted that most prosecutors and police did not see themselves as colleagues and would not mix socially. Most prosecutors saw police – even senior ranks – as inferior whereas most police did not see prosecutors as their superiors, more as an “authority” or “specialist”. Police and *magistrats* live in different worlds with differing ethos (Wuilleumier, *op cit*, p 60). In my study site, this was made graphically apparent by the physical conditions under which the two worked. Although their offices were actually separated only by a wall and it was possible to go between the two without leaving the building, the police worked from a warren of cramped offices with an almost homely atmosphere, while the *magistrats* had more spacious accommodation with newer paint and larger desks which they rarely left except for lunch. In the site I observed there was respect for the specialized team, the *Brigade Criminelle*, from the prosecutors. The out-of-town prosecutor in this case had called for an observer from the *Brigade*, worried about the capacity of her local detectives but respecting the prowess of these officers. Prosecutors in the city said they knew some of the officers and “They know what to do. That’s why they are there. We can discuss the

cases as intelligent people can discuss anything but we don't have to tell them how to do their investigation" (F434). A similar faith was shown in the detectives of the *Brigade* by the *Juge d'instruction* later assigned to the case. One *commissaire* in the squad I observed described the relationship between *magistrat* and *police judiciaire* as another one – like that between detective and house-to-house witness described above – requiring “the skills of seduction” (F230).

### **The language of French criminal justice**

The words used to describe various parts of the French justice system appeared to me to be very illuminating. The French equivalent of “detective”, for example, is “*officier de la police judiciaire*”. This is an accreditation, giving holders specific rights in relation to criminal investigation such as arrest and search. The *OPJ* is a representative of the justice department, part of the “judicial police” as opposed to the administrative police or other branches of the policing enterprise. The designation “*Officier de la police judiciaire*” is also given to the Mayor of towns. This shared title suggested a different concept of the work of criminal investigation than that conjured up by the word “detective” in English with its image of Sherlock Holmes and tracking down clues. By contrast, the French detective is an officer of the state with significant powers.

A number of commentators have argued that the French criminal justice system – along with many parts of French administration more generally – values what is written down above all else and that the written record of the pre-trial stage of any enquiry is dominant (for example, McKillop, 1997), unlike the adversarial system where the orality of the trial stage is paramount. However, many of the words used by the French to describe elements of their process suggest the opposite. The officers “hear” – “entend” – their witnesses and suspects. Witness statements are taken during an “audition”<sup>5</sup> and written down in a “procès-verbal” – literally “verbal item towards the process”. The importance of this process is emphasized by the number of times one hears officers refer to *le procès* (the case) and *la procédure* (the file). “Exhibits” are not referred to by their function within the eventual trial as in the Anglo-Saxon system, but by what happens to

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<sup>5</sup> During initial police investigations. The word “*deposition*” is used once the police are investigating under the supervision of a *Juge*.



them within the process – they are “sealed” – “*scellé*”. The statements and reports in the file are prefaced by lines of archaic legal language in the first person plural (Diaz, Fontanaud and Desfarges, 1994; p 167)<sup>6</sup>. This places the activities in the prescribed role of law and serves a similar justificatory effect to the expressions used by the prosecutors in Hodgson’s 2002b study who repeatedly declare that they are “obliged by the law to ...” or “required to “ perform certain acts which they have decided on. Most importantly it presents the document in an acceptable form for the *procès*. One of the main reasons for evidence not to be accepted in court in the French system is if they are in an incorrect form – Sesmat (2006) describes how failure to amend a requisition to a handwriting expert in l’affaire Grégory<sup>7</sup> who could link the original accused to the anonymous letters that had been circulating among the victim’s family prior to the child’s murder meant that her subsequent report was not included in the dossier.

## **Stage 2. The *enquête préliminaire* – « X-femme »**

The *procédurier* sent the bags that had been wrapped around the victim’s head to the *Identité Judiciaire* to ascertain if there were any fingerprints or other trace evidence on them. He also registered the death of the unknown woman at the town hall. Photographs of the victim’s jewellery and clothing were taken and exhibited. There was still one possible match of a missing person from one of the local stations contacted. The *Préfecture* were sending over fingerprints from her identity card.<sup>8</sup> The deputy head of the group requested the IJ to check the national offenders’ fingerprint database, which had records for anyone convicted of a criminal offence in France, but with no result. Two days after this case the team were all involved in carrying out a reconstruction on a previous case. One officer also interviewed a good friend of a man who had been found shot in a car park a month before and over whose death a question

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<sup>6</sup> -“*Ou étant, nous trouvons en présence de M X le quel nous declare ...*” (Being there, we found ourselves in the presence of Mr. X, who declared to us”) and “*Vu l’article 53 et suivants du Code de Procédure Pénale nous transportons au domicile de ...*” Seeing the provisions of article 53 and following of the CPP we went to the house of ...”

<sup>7</sup> The case concerning the drowning of a little boy in the Vologne river in the Vosges, North East France in 1984.

<sup>8</sup> Although copies of the fingerprints of all French national identity card holders are held at their local *Préfecture*, this is a paper file so, although useful in checking a possible identity, it cannot be searched nationally for matches. It is also not obligatory to hold a card at all.

mark still rested as to whether it was a murder or suicide. Work was also continuing on an ongoing 'whodunit' involving the killing of an elderly immigrant couple found bound and gagged in their own home. The new case was referred to as « *l'affaire X-femme* » - the Jane Doe case, and this appellation was to continue for the five months until the victim's identity was established.

A week after the discovery of the body, the deputy head of the group was busy assembling the file of the *enquête préliminaire* to take over to the *Procureur* so that the case could be assigned to a *Juge d'instruction* and proceeded with in "a more appropriate judicial cadre" – *commission rogatoire*. "Because the pathologist said the body had been in the water for between three and eight days it was too old to work in *flagrant délit* but we have far fewer powers under *enquête préliminaire*<sup>9</sup> so we wanted a *C.R.*<sup>10</sup>, " he explained (F198). The file was quite slim and he quipped: "That's because we're not interested in women » (F267). The head of the group was sitting on the office sofa drinking whisky with a long standing acquaintance of his whom I was told "worked a lot" in the prostitute milieu and who could be very helpful to the police (F196). The two had met when the head of the group had seen him driving prostitutes around. The man was saying how he had built up a lot of trust with the head of the group, though the latter was keen to stress he could talk to any of his team. The man took a photograph of the victim's face and the clothing the victim had been wearing.

## Discussion

### The French working life : The "family" group and attitudes to work

As other writers, such as van Geirt (1995) have commented, a French detective officer's life is centred around the 7-member *groupe* he or she is part of - "it's like a little family, but more than family because you get all sorts as family, it is working with really close friends", an officer said to me (F805). The team I observed were even known by the surname of the *chef de groupe* – *les Vignerons*<sup>11</sup> - like his blood relatives.

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<sup>9</sup> During an *enquête préliminaire* for example police cannot search premises or seize objects without the owner's written consent.

<sup>10</sup> *Commission Rogatoire*

<sup>11</sup> Not the real name of course.

Each member of the team I observed, when speaking about what was good about their work, mentioned their group and the easy relationships between them. They bonded in team activity outside work – often taking their long lunch breaks<sup>12</sup> together – having a meal, playing sports or going to the cinema. They said their *chef de groupe* fostered a “festive spirit” within the group, arranged social outings for his group after particularly long stretches of work; they spent a week together on holiday at his cottage in the country<sup>13</sup> and supported his quite frequent appearances on the stage as a member of a band made up of other police detectives – whose posters appeared on the wall of the office. The group were often teasing each other (and me), shouting comments from room to office – the dossier was thin because the victim was a woman, the *chef de groupe* didn’t do much interviewing because he was lazy. In another case the *chef de groupe* dressed up in a wig borrowed from the victim’s wardrobe at the scene, telling me part of his role was to maintain the ambience. Other commentators have dwelt much on the use of humour by detectives as a means to “suppress the horror“ of their jobs (Jouve, 2004 : p301; Manning and van Mannen: 1978) and maintain sanity. Balland (2003 : p 234) quotes an officer as saying : “we laugh at death, because it’s so near us, we need to de-stress “. <sup>14</sup> Although the group did have times of jollity, they were also often to be found having serious discussions and showing genuine interest in each other’s lives.

While group family was important, an officer’s real family life was also considered. The long lunch break in France allows for workers to return home for lunch, as one of the officers in the group I observed regularly did. The school summer holidays in July and August - *les grandes vacances* – are reflected to a greater extent in work patterns in France than in England. In common with many French workers, half of the *Brigade* officers took July off work, the other half August. When I asked what would happen if a number of murders occurred with limited staff, an officer quipped: “There won’t be - everybody else is on holiday too”. <sup>15</sup>

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<sup>12</sup> In common with many workers in France, the teams generally were away from the office between 12 noon and 3pm unless on call or at the very beginning of a case.

<sup>13</sup> To have a holiday home like this has not been in the past such a luxury as it would be here as prices have been quite reasonable.

<sup>14</sup> “*Il nous arrive de rire de la mort, parce qu’on la côtoie, on passe près, il faut décompresser.*”

<sup>15</sup> Followed by the often repeated comment “We’d cope”. However, during the heat wave that took place in July and August 2003. the French medical profession, depleted by numbers taking their annual holiday, struggled to cope as hundreds died in the cities.

French detectives tended to minimise the deleterious effect of the work on their lives. While they did talk about the long hours causing some friction at home, they also spoke about the positive consequences of undertaking murder enquiries. “It allows me to put life in general into perspective. I have friends who think they have problems, but which on a grand scale are not that important and I can see that,” said one (F805). Another said: “I like my work enormously. Of course some tasks are more interesting than others<sup>16</sup> but in general it works well,” (F811). “I’m paid for satisfying my own curiosity”. Most spoke of the inherent interest of the work, and used words like “enjoyment” and even “laugh” when describing how they viewed their jobs. Part of this satisfaction could be connected to the high regard in which the *Brigade Criminelles* are held by professional colleagues. One young officer said that the *Brigade* officers were known as “*les seigneurs*” (“stars”, “heavyweights”) – “some of my colleagues who work in other units are very jealous of me, they say I don’t work in the real world like them.” (F807). *Magistrats* told me they thought the *Brigade* was “*performant*”, a word which can be translated as “efficient” but which I had only heard previously in the context of high performance cars. Paradoxically, in some ways detectives in France enjoy less esteem from the general public – perhaps because of the low profile they keep, they are not routinely sought as experts by the media for example, and often appear as shady figures in drama (the television series *La Crim*’ or the film *36* for example).<sup>17</sup> The basic contentment the officers felt could also be linked to the manner in which the detectives appraised their own work, less as a comparison against an ideal image of investigation and more compared to other public service appointments. When talking about long hours, one officer said: “We expect to work different hours from other civil servants” and when I asked others if they liked their work they said “Of course, otherwise we would do something else”. “If you don’t like being on call, you could go and join another unit”. Although criticism was made of some of the physical deficiencies in their work life – in terms of equipment, cars, mobile telephones and

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<sup>16</sup> Such as the hours spent examining the telephone records of victims, witnesses and suspects.

<sup>17</sup> This state of affairs is complained of by some of the older officers who told me it used to be different, but now it is the *Juges d’instruction* whose names are known

computer accessories – the attitude of the officers was that they still managed well – “*On arrive bien quand meme*”.

### **The contents of the dossier**

According to the myth of the primacy of the written word in the French criminal procedure, every aspect of the investigation would appear in the dossier, in order for the truth to be revealed to the reader. “French law is a written law, only the written is valued. In investigation everything thought is done, everything done is written, you write up everything,”<sup>18</sup> Balland quotes a *procédurier* as saying (p 107). Another insists : “A policeman’s job is primarily a writer’s <sup>19</sup> ». But the gendarme Sesmat (2006 : p 200), in his recapitulation of the *Grégory* case, says that no dossier “a fixed and formal image <sup>20</sup>” could capture the full scale and movement of an investigation, which is why he criticises the police officers who later took over his case for not coming to speak to the original investigators relying on gleaning all they needed to know from the dossier. For Hodgson (2005: p 161n), the dossier is a record of events that simplifies reality, eliminates doubt and avoids future complications and Mouhanna (2001: p 122) makes the same point in his study, saying there are many things that are difficult to insert formally into a dossier, not least because witnesses are often aware that an eventual suspect will have access to all documents through their lawyer. Officers involved in other cases told me that they sometimes delayed documents going into the dossier knowing that the defendant would have access to it. In the case I am focusing on here, there was no record in the dossier of the meeting between *chef de groupe* and his informal contact, which did not in any case prove fruitful.

### **Stage 3. *Commission Rogatoire* - “You become an intimate of someone who the day before was completely unknown”**

The *Commission Rogatoire* from the *Juge* asked the detectives to continue their investigation - to proceed to all witness interviews, demands for information, searches

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<sup>18</sup> *Le droit français est un droit écrit, seul l’écrit prévaut. Credo – en police judiciaire ce qui se dit se fait, tout ce qui se fait s’écrit on écrit n’importe quel acte*”

<sup>19</sup> *Le boulot de policier est d’abord un travail d’écrivain*

<sup>20</sup> *Une image figée et formelle*

or seizures useful to the revelation of the truth<sup>21</sup>, specifically to identify the victim. She also asked to be kept informed of all developments. The Juge said :

With important cases like this, there is a need for haste in instructing the investigators. There are two types of *Juge*, those who issue very general *commission rogatoires*, a *carte blanche* to investigate, and those who give more detail. I like to do the latter and sometimes even with the *Brigade* I suggest a particular person or surveillance that might be useful but there was nothing particularly valuable I could add to the investigators here at this stage. I felt the *groupe* knew more than me about this case and thought of everything. I am respectful of this police service and their expertise. They have things to do, leads to follow, and will keep me informed and solicit when necessary (F720).

The possible match of the missing woman from one of the local stations proved negative and the trawl was widened over the next few days to stations and departments further afield, beyond the urban territory of the *police nationale* to the more rural terrain of the *gendarmerie*, and to units such as those dealing with refugees, asylum seekers, immigrants and vice. This was painstaking work involving often long conversations with people unwilling to give details. On one occasion I walked into the office and an exasperated officer was excitedly remonstrating with his interlocutor saying “But we are not the local *commissariat*, we are the *Brigade Criminelle* and we are investigating a murder, a dead body” (F186). The team also contacted all the consulates. Hundreds of initial phone calls were made and fingerprints were checked for any women matching the age range and description of the victim. Subsequent to this, telegrams from other services relating to new “worrying disappearances” (*disparitions inquiétantes*.) of women were monitored. The officers consulted the dental expert at the morgue who gave them a description of the ceramic crowns and treatment to overlapping incisors that the victim had had completed shortly before her death. The group contacted more than 100 dentists in the area of where the body was found to try to identify their victim through dental records, but with no result. An advertisement was also put in an international professional orthodontic journal asking for help in the identification of the body. Officers returned at various times of the day and night to the deposition site to try to identify witnesses who regularly visited the area but found nobody. “The area has no

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<sup>21</sup> “Il y devra procéder à toutes auditions de témoins ...requisitions, perquisitions et saisies utiles à la manifestation de la vérité » (F675).

houses and no businesses. There is not even very much traffic at night, not even any homeless people,” one said (F705). One officer traced the distributors of the travel bag in which the victim had been found. He was told there was one retailer in the area in which the body had been found but when officers visited the shop, staff there could not trace its sales. Meanwhile, another officer was tracing other incidents of bodies found in waterways, and talking to investigating officers about suspects. One suspect’s telephone use was checked to ascertain if it had ever been used around the area where the body was found but again with no result. The *chef de groupe* regularly telephoned the *Juge* to keep her informed of the investigative activities.

The officers decided to investigate the “prostitute milieu” and club scene. There was discussion over coffee one morning about how best to present what the victim looked like to potential witnesses. The *Chef de groupe* asked the *Juge*’s advice over whether to photograph the victim’s clothes on her corpse to show people. The *Juge* thought it would be better to use a mannequin in view of the decomposition that the body had undergone. Over several nights the men of the team visited the various vice and club area patrol squads circulating the victim’s description. In company with vice officers, they also cruised around city central red light districts asking prostitutes about her. They visited numerous strip and swingers’ clubs, *bouchon* bars<sup>22</sup>, and cabarets asking if anyone recognised their victim or her clothes. They were told by many that the victim’s clothes were on a par with the type of outfit being worn by both employees and female clientele in their establishments around the time of her death. They added that most of the employees of the bars were young and lived in quite restricted circumstances where their disappearance would be noted.

Five months after the discovery of the body, as the team returned from *les grandes vacances*, they received a call from a *Gendarme* in the south of the country who had taken a report of a missing woman six weeks previously from her mother who had been informed by her bank that there had been no activity on the account for the last few

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<sup>22</sup> So called because the hostesses are paid according to the number of “*bouchons*”, or corks, their clients pay to have opened.

months. Her mother said the last addresses she had for her daughter had been in the city where the *X-femme* body had been found. The *gendarmes* had asked uniformed police in the city to check the addresses out but the officers could find no trace of her name on the letterboxes and could not find a *concierger*. The *gendarmes* spoke to her friends in her home area who said she worked in clubs. They contacted her last known employer who suggested she could be aggressive and difficult and no longer worked for him. He said she had spoken of going to work overseas and the *gendarmes* checked with the travel agency her mother said she usually used to see if she had bought a flight. Her half brother was her only relative in the city and at first denied he knew her due to an incident when she had thrown his family out of her house. The *gendarmes* requisitioned the *Caisse Primaire d'Assurance Maladie* – the national health insurance scheme in France – to find out when and where she had last required medical assistance. This had been five months previously in the same city. As the last bank transactions had occurred in the city too, the *gendarmes* contacted the city morgue who directed them to the *Bureau d'Enquête sur les Atteintes aux Personnes* (office co-ordinating investigation into violence against people) who put them in touch with the “*X-femme* detectives”.

Two of the group then travelled down to the mother of the disappeared woman's home to interview her and take a saliva sample for a DNA comparison. The *Chef de groupe* telephoned the *Juge* to tell her what had happened. The mother told police her daughter had had some kind of falling out with a dentist because she was not satisfied with the quality of the work on her teeth. Her ex-boyfriend, whom she had seen for many years, had returned to the West Indies to work. The missing woman's parents had divorced and a second saliva sample was taken from her natural father who lived elsewhere in the country. He had very little knowledge of his daughter's life.

The team set about trying to find out as much about this woman as possible. The *Chef de groupe* said: “Maigret says that at the start of every investigation you enter a world about which you knew nothing. In the process of an *affaire*, you are taken over by someone else's life; you become an intimate of someone who the day before was completely unknown” (F303). As a starting point, one officer began researching the



victim's contact with the various government departments and agencies – she had a driving licence but no car, had no previous convictions but had reported a theft and indecent assault against her. This officer travelled to the police station nearest to the address where her mother said she lived but there was no reference to the victim in the “*main courant*” – a paper record kept at all front desks of all callers to the police station. Two other officers visited the two addresses given by her mother as contact points. One turned out to be a business address where someone matching the victim's description used to collect post for a man she claimed was her brother. The receptionist, giving the police the details of this person, said she suspected the pair were in fact lovers. At the other address neither the *gardien*<sup>23</sup> nor the letting agent had any knowledge of the victim but a fellow resident did recognise her as having once been a regular visitor to one of the flats. When they eventually made contact with the tenant of this flat, he said that the victim had indeed lived there but she had left after they could not reach agreement over how to manage living costs. He gave the police a second mobile telephone number that the victim had used. Detectives added this to the number given by the victim's mother to the requisition for the mobile telephone companies asking for details of calls made and received including the location from which the calls had been made. The house sharer also mentioned an incident when the victim had complained about being “touched up” by the manager of the bar in which she worked. Each witness interview - or “*deposition*” now the enquiry was under *Commission Rogatoire* – followed the same format with officers asking questions, hearing the answer, and then typing up their questions and a summary of what has been said by the witness, often reading aloud what is typed for confirmation purposes. Although many words actually used by the witness do appear in the typed version, it is not verbatim. Around this time the group received the toxicology report on the victim's body – it said she had recently taken alcohol, cannabis and cocaine.

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<sup>23</sup> Many buildings divided into flats have a *gardien* or *gardienne*, who often lives in a ground-floor flat and is responsible for the provision of various services such as rubbish disposal and lighting. They can provide valuable information to police on the occupants of the building though other police researchers have suggested they are more likely to warn villains than help the police (Wuilleumier, 2000; p70).

Two officers meanwhile followed up the three dentists to whom the missing woman's health insurance had paid money in the months leading up to her disappearance. "We have had a very odd contact with one," one of the officers said (F671). "I 'phoned him and the call was abruptly ended. I 'phoned again and it went straight to answer machine. When I eventually got through to him and said we were trying to identify a dead woman, who we suspected it was, and that we hoped her dental records might help us ascertain her identity, he asked me first why we were looking for her with him and then how we knew who it was. Then he said he couldn't talk now as he wasn't at his office and he would arrange an appointment later". As the dentist subsequently failed to respond to a number of messages left on his telephone, investigators went to his office. He was not there but the *gardien* of the building told officers he had been earlier. When officers telephoned him again he said he could not attend the police station that day as it would take too long to get there and that a friend of his said that he did not have to give details of the work he performed anyway. He asked again how they knew who the dead woman was. He said he had a low battery and cut the connection. The officer told the rest of the team: "This man is behaving very oddly. I think we might have something here."

The man was eventually located, brought into the offices of the detectives and his telephone records requisitioned. Officers checked his passport, identity card and contact with agencies. The man claimed he had been unaware that the team had been so desperate to get hold of him as he had not checked his answering machine. The man eventually recognised his dental work on the victim. He said he met her in a bar and his last contact with her had been at least eight months ago. He denied there had ever been any sexual relationship between them or that he had ever been to her home.

When officers traced the man for whom the victim had collected mail – a very close friend whom she regarded as a brother – he told police that he had accompanied the victim to this dentist's offices to complain about the work he had performed on her teeth and that the dentist had called the police. No trace of this call was found in the local station's records. The *gardien* of the dentist's building did not recognize a photograph

of the victim nor could she ever remember having seen the travel bag in which the victim's body was found. The friend also said he had last seen the victim when he had helped her move out of a previous flat and she had stayed with him for a few nights. He also gave the police the details of a man who was said to be deeply in love with the victim but whom she had cold shouldered. The friend said he had tried to contact her repeatedly a few months previously but, receiving no answer, he assumed she had finally gone to America as she had constantly been talking about doing. Police traced the man who had supposedly been in love with her and had at one point made a number of very short calls to her, in prison, where he had been for some months when the victim had been killed. When they traced the flat owner, he had said the victim had left after she had broken the toilet and had not wanted to pay for its repair but that they had parted on reasonably friendly terms – he had carried her portable television down to the door.

Five days later the identity of the woman was confirmed by DNA. Officers from the murder squad revisited the family and searched the old bedroom of the victim. There, her stepfather pointed out a suitcase of the same make as the travel bag in which she was found. He told police that he knew the travel bag well as he had often carried it for his daughter to the station when she left for the city. Officers also seized the numerous business cards that littered the room. They interviewed childhood friends of the victim, one of whom said he had repeatedly tried to get hold of her earlier in the year and, when he could not, had thought she must have gone to work abroad, as she had been thinking about doing. He said that when he had last seen her, about a month before her body was found, she had adopted a “prostitute look” – of short skirt and boots, that was apparently fashionable in the city at the time.

The telephone records from the dentist arrived at the detectives' offices. From these they were able to see that he had consulted his answering machine on several occasions during the day when the team were trying to contact him, that he had had quite substantial contact with the victim in the months before her death, that he had telephoned a lawyer shortly after telling the police that his battery was low and he could not talk further, and that he had in fact been very near the police station when he told

detectives it would take too long for him to get to them for interview that day. The dentist was called in again and confronted with this information. He said he had at first thought their calls were part of another stunt by the victim to get him back for the work on her teeth that she had not been satisfied with and then he had been concerned that if he told them about what had happened between them, they would think he was her murderer.

By this time, the detectives' attention had been attracted towards another man, believed to have been sharing a flat with the victim before she died. When members of the group visited the club where she was last known to have worked, two of her colleagues gave police two new mobile numbers that had been used by the victim. From all the telephone records, detectives were able to piece together the small circle of friends and much larger group of acquaintances with whom the victim spent time, and the hours she kept. Investigations were complicated by the numbers of SIM cards apparently lent out, abandoned and used by people who were not the subscribers, but, eventually, numerous individuals who had met her briefly in bars or in the late night club scene were spoken to, as well as more intimate friends. As more and more interviews were conducted and "little pieces" came together, the group discussed the young woman's psychology. "She was angry", one said. "Uncomfortable in her life, and because she was disturbed, she disturbed others. She had problems with people. One of these problems was to prove fatal "(F816).

Friends had spoken of her moving to a new flat on the outskirts of the city where she had had trouble with her landlord, who was apparently very mean and asked for more rent from her than he paid himself to rent the flat from his employer. Drivers at the club where she had worked took police to the outside of a block of flats on the outskirts of the city where they had dropped her off after work. One friend related a call he had received a few days before her body was found in which she had asked him to come and collect her as she wanted to move out. He had refused because she said she wanted to have it out with her landlord before leaving and her friend did not want trouble. She said she had trashed the place as her landlord had been so mean that he had hidden the

bath plug so she could not take a bath. Usually a prolific user of her mobile phone, especially in the evenings, this call was the last she made. It was sited in the area in which her new flat share was situated. The calls and texts made and received shortly before this time were listed to a man who lived in this block of flats. His calls that night were sited in the same cell site as her last calls. Among her friends, this man's name was the only one who nobody recognised. "It seems likely she was killed in the apartment in which she was living just before her death. It seems suspicious also that her landlord did not report her disappearance," one of the officers said (F676).

The team launched another probe into a stranger's life. Their suspect worked for the railways. An officer visited his employer and was told he was usually quiet and industrious but given to fits of rage if faced with setbacks when he could be violent against inanimate objects. He had lived with a partner and had two children but they had recently separated. He had been on a rare sick absence from work at the time when the detectives believed their victim was killed following an incident at work when he crashed a vehicle. Another officer visited his bank and noticed a large withdrawal of cash the night the victim last used her telephone from the bank branch near his home, and also two payments to the local DIY store following her death. These payments were followed up at the store and it was discovered they related to the purchase of new carpets, paint, shower and futon. "These could be to repair the damage that the victim said she had caused to her friend, or to mask the signs of a struggle or blood at the flat. Either way, it is necessary to hear this man<sup>24</sup>," the *Commissaire* said (F677). The *Juge* was told of the imminent arrest. The *Chef de groupe* and *Juge* discussed a request by a television company, who had been filming the various aspects of the city's specialised crime teams for a documentary, to film the arrest interviews. The *Juge* said: "I never have any contact with the media. Zero. They deform everything – it's how they do their job. My priority is the *procédure*. Filming anything to do with this is a risk, it's not worth it when it's only for entertainment. So I said no to filming the questioning"

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<sup>24</sup> This is a literal translation of what was said. In view of the fact that the French call witness interviews *auditions* and say they will "*entend*" witnesses, a less dramatic translation would be "We need to interview him".

(F728).<sup>25</sup> Four officers from the team – including the *Chef de groupe*, the *procédurier* and the two who were to interview him – went to his place of work to arrest the suspect in the middle of the afternoon. He was told he was being arrested – placed in *Garde à vue* – and that this could initially last 24 hours but could be prolonged for a further 24 hours with the authorisation of a *magistrat*. He could see a doctor and a lawyer. One of the other officers from the team returned to the office carrying five baguettes and some olives. “We’ll all be working all night. Once someone is arrested we only have 48 hours to get the *GAV*<sup>26</sup> interviewed and the whole of the procedure put together for the *Juge*,” he said. “They’ll be no time for lunch” (F233). The first interview – “*interrogatoire*” – with the arrested man began an hour and a half after the team had gone to his workplace. He was seated in one of the two offices used by the team but the door between the two, which was usually open, was kept shut. A middle-ranking Lieutenant and a brigadier formed the interviewing team. The brigadier particularly was noted in the team as being “very gifted” (F162) at interviewing. “By the time you come to arrest someone at the *Brigade*, you have often been researching them for months and know something of them and how they might react. With the interview, it is very important to choose the person in your team who will get on best with the person being interviewed, and will benefit the case. Patrick is very good at establishing trust and creating the right atmosphere for talk;” the deputy head of the group commented (F77). “We also kept the woman officer in the group away, for fear he would clam up, we thought he was a *frustré* with women.” One of the interviewing officers said: “We create the conditions to make it easier for him to talk. We don’t have all the technology you have in England, the cameras and databases, so we rely more on psychology and talk, to get the detail, to get the truth” (F804). He added: “Hitting was not always effective. It could be on your yobbo witness but not with your average *GAV*. Violence can actually block a confession” (F690). Although it was only these two interviewing officers whose names appear on the written records of these interviews, in fact the *Chef de groupe* and the *procédurier* also came into the room at various times and asked questions. The first interview lasted half an hour and concentrated “*sur son identité*” –

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<sup>25</sup> The film crew did film in the outside office while interviewing was taking place. The *Juge* said that the police hierarchy had given clear orders to the group to do this.

<sup>26</sup> *Gardée A Vue* – the acronym *GAV* is used of both the process and the person undergoing that process.

his name, address, age, parents, educational history, military service, work, residential history, driving licence, vehicle. All these details were given and afterwards the suspect saw an on-call lawyer for half an hour, following which it was noted on the file that the lawyer had made no remark. Meanwhile two other officers were conducting enquiries in the block of flats in which the suspect lived – one neighbour had seen him with two children, another had seen a young woman with a portable TV in her hands, another had heard a loud noise about three months previously but could not tell from which flat it had emanated.

In the early evening the suspect was interviewed again this time “*sur les faits*” – on what happened. Initially told they were investigating the death of his lodger and asked “What have you got to say?”, the suspect told them she had replied to an advertisement for a room to let that he had posted on the internet and that he had helped her move. She had had a TV, ironing board and a sports bag. He said they had got on ok at first but that the victim had become disagreeable. She said she was unhappy in the city and wanted to travel. She didn’t want to have a common pot for expenses but stole his and the other lodger’s belongings. She had borrowed this other girl’s double bed when she had brought a male friend home. The suspect said he decided he would not want her in the flat when he brought his children there. He said she had said she was leaving and going to live in America. He could not remember when exactly she left but he could remember the day of the week because she had telephoned him when he was at his martial arts club saying that she was going to leave and shouting obscenities at him about his hiding the bath plug. He had wanted her gone and had withdrawn her deposit to return to her but when he had returned to the flat, he had heard her ‘bad mouthing’ him on the telephone to one of her friends. He had left, had been absent an hour or so while he ate a *crêpe* from a stand, and, when he returned, she had gone, although he had noticed she had kicked one of the doors in. He denied having had anything to do with her death. One of the interviewing officers said: “He’s calculating what’s in his best interests and how he can get out of it” (F817). The *procédurier* likened the interview to a bridge game– “It’s intense waiting for him to reveal a little before we lay our cards on the table.”

While this interview had been going on, the female officer on the team had been interviewing the suspect's ex-partner. She told the officer that the suspect was always making things up. He had told her he had a dead elder brother, that he was Jewish, that he had been abandoned by his mother, that he had cancer. He had never been physically violent but could not take frustration. She knew nothing about his taking lodgers and did not recognize the victim. Nor had she received any gifts from him since they split up. Another officer interviewed this woman's sister who said the suspect had harassed her sister after the separation calling her repeatedly in the middle of the night.

The suspect was taken back down to the cells while the officers had a break. They gathered around the sofas, some sitting, some standing, discussing events excitedly. The *procédurier* said: "We need to go over with him carefully what he did at various points of the day, how he spent each minute, get him to explain things he's told us about. He's said that he came home to find the flat trashed. Why did he think she had done this, that's our motive". The interviewing officer said: "He's showing unmistakable signs of stress. He's got a tick in his eye, and he keeps clearing his throat. He's drinking all the time" (F818). The suspect complained he felt unwell and had to be taken outside. One of the officers who had been involved in the neighbourhood enquiries in the area where the body had been found said: "Maybe his conscience is pricking him, but then the administration gave him something to eat which wasn't hot, maybe it is that that is making him sick."

Just before midnight - "the suspect has no rights to sleep, this isn't England" (F302), said one of the officers – a third interview started with the suspect. One of the officers read the statement from the last interview to him and asked him if he had anything to add. Didn't he find it odd that he could remember all the detail about the night his lodger left but could not tell them what week it was or even what month she had moved into his flat? Why had he done so much DIY since she had left? What exactly happened when he had confronted his lodger with the bath plug and she had shouted at him?



The *Chef de groupe* came out of the room and said the suspect was very close to cracking - "He's pacing the room like a wild animal." At this point the suspect stopped still, and said he was going to tell them exactly what had happened, which he had not told them before. He said that when he had returned to the flat the victim had become hysterical and started to hit him. He had tried to defend himself and remembered hitting her once to fend her off. Then he had fainted and when he had come to she had been lying on the floor with blood coming from her head. He said he panicked and thought he had to get rid of the body or he would never see his children again. He packed her belongings in bin bags and disposed of them around the public bins in the area. He explained that he had fastened plastic bags on her head to keep the blood from dripping everywhere and he had put her body into her large travel bag which had wheels. He had part carried part wheeled this bag to the water's edge, about 15 minutes away. He had not driven because he had been subjected to a temporary ban due to the accident at work. He told detectives that since that time he had suffered nightmares about the incident in which the victim appeared as a ghost. He said he regretted what happened and was ready now to accept responsibility. Outside the interview room, the interviewing officer, smoking a cigarette, said: "He's crying now, talking about his father, his family. This happens a lot. In the end they are relieved to have told the truth" (F819).

The *GAV* was interviewed for just over six hours resulting in three *procès-verbaux* totaling eight pages, signed by the prisoner. Although some of the interviewing officers' questions appear, the confession itself is typed up as an uninterrupted monologue.

The following morning the *Chef de groupe* was alone in his office almost continuously speaking on the telephone, often updating and receiving information from one of the other members of the team, one of whom was on his way to the south-west of France to interview the other woman who had formerly shared the suspect's flat with the victim; the other three had taken the defendant to the flat at 730am in order to conduct a search there. The *Chef de groupe* had asked the *magistrat* for a prolongation of the *GAV* in

order for the search to take place. The *Juge*, he told them, was delighted with events. She told me that if it had not been the *Brigade* who had been investigating the case, it probably would not have been solved. “They have the time and perseverance,” she said (F722). The officers engaged in the search reported that the technicians with them might have found traces of blood on the carpet in the flat – something had reacted with Bluestar<sup>27</sup>. They had seized tape and cleaning equipment from the flat.

The woman officer was interviewing the mother of the suspect in the other office. She told her that she had not had very good relations with her son, who had chosen to live with his father after their divorce. She did see him occasionally and had warned him against taking lodgers saying it was not easy living with strangers and her son himself was not easy to live with. She thought however that he would have had to have been pushed quite severely to have resorted to violence.

The head of the service came into the other office to congratulate the *Chef de groupe*; they both agreed it was a “*belle affaire*” (F301). Discussing the case in more detail with the former head of the group, the current *Chef* commented that the suspect “felt a psychological need to confess” (F302). They laughed at the suspect explaining that he had had to wheel the dead body of his murder victim to the river’s edge because he was banned from driving. The *Chef de groupe* called the mother of the victim to tell her what had happened. He gave brief details of the suspect saying he was in his thirties and worked for the railways. He told her not to hesitate to contact him should she need to but advised her that it would be better for her to liaise with the *Juge* as, as *Parties Civiles*, they would have access to the file. He told the woman officer who had just finished her interview and the officer travelling to the south of France that the mother was pleased with the news, and relieved.

Once the team arrived back from the search at around 2pm, the *procédurier* immediately began writing up his report on the search and putting together the file which needed to

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<sup>27</sup> Bluestar is the trade name for an immunochromatographic chemical test which confirms the presence of human blood, turning it blue.

be completed before the suspect could be referred to the *Juge*. He did not have time to speak but one of the others said: “For us, the important thing is that the *procédure* is well done. It is this which has kudos for us, it is what leads to the judgement”(F803).

The woman officer was now interviewing the father of the suspect. He said he had had no contact with his son for the last few months; he had completely retreated into himself. The other former lodger meanwhile had mentioned to the officer in the south-west of France that the suspect had had a German girlfriend whose father no longer heard from her. A file of 514 pages was sent to the *Juge* 48 hours after the arrest bringing the suspect’s *GAV* to a close.

## Discussion

### The investigations - and the curious incident of the use of the media

The investigations undertaken by the police to identify the victim and attacker were meticulous. This was the kind of case at which the *Brigade* was supposed to excel – that which would take the time that other, more reactive, units could not devote. Their “ant-like” work (van Geirt, 1995; p 14) was aimed at gathering every small piece of information about the scenario presented and about the personalities involved, what had happened and why. Officers discussed how the murder might have occurred, what kind of person the victim was, how best to handle the suspect. Once the victim was identified, their investigations were concerned to get to know her, to understand how the murder fitted into the pattern of her life and therefore who could have committed it. As well as a network of human witnesses, they used telephone records, bank records, diaries, letters, address books and business cards.<sup>28</sup> This stage of the enquiry is described as a “*travail d’assimilation*” by Diaz, Fontanaud and Desferges (1994; p 155), the aim of which is “to know everything and penetrate the intimate life of the victim, from which might appear the link which will lead to an arrest”<sup>29</sup> (van Geirt, 1995; p 11). At the end of a good enquiry the investigators would know their victims better than they knew themselves (*op cit*; p 168). Detectives were also keen to understand the suspect.

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<sup>28</sup> The police were able to access these acting under the considerable powers of the *Juge d’instruction* that she had delegated to them under the *Commission Rogatoire* that they had requested, a not uncommon procedure for this reason (Hodgson, 2001, p350)

<sup>29</sup> “*Tout savoir et pénétrer dans l’intimité de celle-ci ... C’est ainsi qu’apparaît parfois le fil tenu qui permet de parvenir à l’arrestation.*”

To do this, they undertook interviews not just with him, his work colleagues and professional contacts, but his friends and close family.

This contrasts in many respects to the methodology of their English counterparts, discussed in Chapter 3, who were often concerned less with uncovering the truth in all its detail than with ensuring that the prosecution account was watertight, covering all angles that the defence might pursue, or covering themselves from any attack on their professionalism later. While this might be an over simplification, it was noticeable that when English officers speculated about what had happened they conjectured in a particular way – suggesting possible storylines and producing a storyboard of actions that could account for the evidence. One example of this was the suggestion that the saris found in the bin bags near the defendant's home could have been thrown out when the suitcase in which they had been stored was used to dispose of the body. When the case was outlined at team meetings, new pieces of information were slotted into existing storylines. In contrast, the French detectives were more interested in discussing why something might have happened, what events in both lives led to the defendant killing the victim.

One tool of investigation not utilised, and not even considered, in France, was using the media as a method of communication with the general public. As a former police Press Officer, this appeared to me to be a major absence in the enquiry and I could not resist asking people about it. On this topic *magistrat* and police were unanimous. “We don't trust journalists,” said one officer (F206). “We've not gone to the press, it's not the French way,” confirmed another (F454). The *Juge* agreed: “In this case we didn't have the means, the clothes were nothing out of the ordinary and we couldn't show the body. Culturally we don't do it in France. In Anglo-Saxon countries I know they have posters asking for witnesses. There is a different civic sense here and I feel if you were to ask the press for help they would want things in return and they would deform everything”. To my mind, a simple appeal for witnesses citing the clothes the victim had been found in in a city publication at the time of the discovery of her body would have struck a chord with some of her friends, who had not been concerned at her absence thinking she

had gone abroad, leading to a far earlier identification. One of the other *chef de groupes* agreed with me, saying he would always find a way to get information to the press even if he could not get official approval (F236). “Once it was the names of the police officers that the public knew, now it is the *Juge's*. We are bound by the secret of the *instruction* but it is broken everyday.”<sup>30</sup> But details of some cases investigated by the *Brigade*, not this one, did appear in the press. Witnesses for the on-going “whodunit” the *groupe* were also investigating at the time of this case frequently mentioned having read about their case in the newspapers. Exceptionally, in another case the *groupe* had worked on, a direct appeal had been made in the media to locate a named suspect. Interestingly, one of the prosecutors, who do have rights to speak to the press “in the interests of justice”, had been doing a *stage* at the *Brigade* at the time. The media were also present at the scene of another case taking pictures. As the officer was making the second of the two comments quoted above he was leafing through a copy of a book written by a journalist who had been given access to the detectives’ work some months previously and a TV crew were filming in the offices at the time of this case. Many *Juges* and prosecutors were more ready to talk to the press than the ones involved in this case and leaks from the defence were also frequent if they felt they had something to gain from this.<sup>31</sup>

### ***Garde à vue, Interrogatoire and confession***

The French system of custody (*garde à vue*), suspect interview (evocatively called *interrogatoire*) and the frequency of subsequent confession has an infamous reputation, not least because of the violence often said to be associated with it. The most notorious case concerned Ahmed Selmouni who took France to the Court of European Human Rights alleging he was both physically and seriously sexually assaulted while in police custody.<sup>32</sup> Some researchers have likened the whole custody process to a “ceremony of

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<sup>30</sup> There are restrictions in France relating to what information can be released to the media during an *instruction*, which is supposed to be secret. (C.P.P s.11)

<sup>31</sup> A case being investigated by the *Section de Recherche* of the *gendarmerie* I spent time with was frequently in the newspapers and a support group (*Comité de soutien*) had been created to back the defendant. The *gendarmerie*, are beginning to appoint officers to deal specifically with media issues (see Matelly, p168), but this innovation was criticised by the *Juge* in this case.

<sup>32</sup> I witnessed no physical violence directed at prisoners at any time during my research but the detectives I observed quite often talked about hitting offenders, always distanced in some way from current activities

degradation<sup>33</sup>” (Jobard, 2002, p 80), where the prisoner is isolated, deprived of habitual freedoms such as choosing when to sleep and what to eat, being restrained by handcuffs, searched and disempowered in conversation. A stark contrast is revealed in the attitudes of many of the professionals working in this field - both police and *magistrat* - who are quoted as accepting even an “*interrogatoire musclé*” (le Taillanter, 2001; p 196) as part of the pressure of the police station where “there are no innocents” and a slap across the face was not “shocking” (Hodgson, 2001; p 354). The character of the French interview in this case was certainly different in terms of atmosphere, location, personnel and tempo to that in England.

Although there were bespoke interview rooms for prisoners in the police building, the suspect was interviewed in the offices of the detectives, to enable the interviewing officers to manipulate the atmosphere. The doors to the office in which the interview was conducted were unusually shut to the casual passer-by coming in to say “Bonjour”, but officers besides the interviewing officers did go into the room during the interview precluding the sterile seclusion of much of the English procedure. In the case described in this chapter, a film crew were outside. The defendant was interviewed alone against two detectives. Since the beginning of 2001, the prisoner in France has a right to see a lawyer at the beginning and at the 20<sup>th</sup> hour of custody. However, this visit is limited in its scope to English eyes – the lawyer has no access to the dossier at this stage and is expected merely to check that the defendant is being treated satisfactorily and make a note to that effect, which he did in this case. The French detectives would not have welcomed the introduction of a lawyer into the room. The *chef de groupe* said: “In England you give too many rights to the suspect and then you have to spend more on policing to make up for it” (F302). The whole group concurred: “We rely on creating the right conditions to make it easier for him to talk, to tell the truth. As soon as you have a defendant with a lawyer, you have a strategy, and not the truth” (F804). “There’s

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either referring to the past as in “We don’t hit them anymore” (F138) or said in a joking way – “We couldn’t record interrogations, you would see the ...*mimed hitting action*”(F298) – but which had a disturbing effect nevertheless. Such comments at the least suggest how widespread and accepted such practices once were and could be imagined to have a substantial influence on how particularly inexperienced prisoners might perceive their new environment.

<sup>33</sup> *Cérémonial de dégradation*”.

too much about proof for us in the English system, it industrialises the process. We rest human. English police are only interested in covering themselves not the passion to find the murderer”(F304). “The English system operates like a machine, not justice”. “One needs to engage with murderers. Often they are not the easiest of people or in the best frame of mind, and this is not going to be improved with a tape recorder, an empty grey room and a solicitor advising them to stay *stum*”(F604). The English officers, in turn, regarded some of the procedures of the French police, as regards the interview and the type of records make of it, as akin to what they themselves used to do in the past and thus, retrograde “I don’t think we could go backwards, to that again,” said one (E705). “Taping is a safeguard for us as much as anybody else, it’s a true record, and it can show for example if the solicitor’s been obstructive,” another agreed (E687). A senior officer added: “But sometimes it would be good if they were obliged to talk. It’s very frustrating on occasions to the point of nausea when they say nothing and are not even considering saying anything” (E699).

Before interviewing him, the officers discussed not only their prisoner’s character and how best to treat him to encourage him to talk to them, but also how best to match him with one of the team, recognizing the forthcoming encounter as “a complex confrontation between two personalities” (Diaz, Fontanud and Desfarges, 1994; p 174). While this could be viewed as a strategy in itself, the officers treated the suspect as a fellow human being, often explaining what they were doing and chatting. Officers spoke on another case about the need not to make a particular suspect feel in any way slighted or inferior as they felt his violence had stemmed from his not believing others took him seriously enough. Other writers have spoken about officers talking to prisoners freely between interviews, even sharing sandwiches if sufficient rapport had been built up (Diaz et al, *op cit*, p 174). There was shouting and cajoling.

Little of this is reflected in the sedate *procès-verbal* that is produced. Unlike an English interview, which is tape-recorded and can be transcribed word-for-word later, the French interview process proceeds in two-time (Levy, 1987; p 81). The question is asked, a reply received, and then the two are repeated aloud - inevitably in paraphrase -

before being typed<sup>34</sup>. This procedure was speeded up to some extent at the *Brigade* during an interrogation when two officers would conduct the interview; one asking the questions, the other typing. Once he started to confess, the defendant's words were written up as a monologue. This is in part procedural because legally the French police are not allowed to continue to question someone who has confessed. It also gives a more voluntary feel to the confession.

This confession remains pivotal, at least in the culture of the French investigation. Described variously as the “queen of proofs” (Dawant and Huercano-Hidalgo, 2005; p 63) and “the obsession of police officers” (van Geirt, 1995; p 51) the “religion of the confession” (Bell, 2001; p 113) is presented as a battle between investigator and suspect “a fight without mercy” (van Geirt, 1995; p 51). Officers here presented more of a rounded picture. “Confession is important but not obligatory. Usually at the *Brigade* you have been looking at a suspect for several months. You have several material proofs. It would be a mistake not to have these; otherwise if he goes back on his confession the case could be confounded,” said one (F809); “The best moment for us is before the arrest, when you know everything and you know who the killer is. The confession too, but that comes almost as a relief,” said another (F807).

For the French officers, the *interrogatoire* is a central but not by any means the sole element of importance during the 48-hour period of the *GAV*. As Diaz rather poetically puts it: “Long moments of perspective for the suspect, but a very short period of time for the detectives who have to use its strictly delimited hours to undertake searches, witness interviews, verifications, and write up reports on it all”<sup>35</sup> (p 174). In this case, it was this period of time which saw the officers completing almost the longest shifts they had spent on the *affaire*, working throughout the night. The case was skewed in this regard because of the slow start to the enquiry. While the victim remained unidentified,

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<sup>34</sup> This process is described in detail by the *Gendarme* Sesmat in relation to the testimony of a key, young witness in the *Affaire Grégory* whose hesitant answers and vernacular speech had to be tidied up to make it “intelligible” (Ssmat. 2006;p102).

<sup>35</sup> “*De longs moments en perspective pour le suspect, mais un délai bien court pour les inspecteurs qui doivent en utiliser la stricte durée pour faire des perquisitions, des auditions, des vérifications, et reporter tout cela par écrit*”.



work on the case had been sporadic and the long hours associated with new cases occurred more when the possible identity for the victim was eventually forthcoming from the *gendarmes* in the south west of France. Then the *chef de groupe* took on his traditional role of guiding events from behind his desk, almost constantly on the telephone, receiving and passing on information from members of his team and others.

### **The French working life : Communication and supervision**

The group were housed in the close confines of two interlinking offices of quite modest proportions. The officers worked on top of each other, constantly in touch by chatting, exclaiming and wandering from office to office. When pursuing enquiries outside the office, officers were in regular contact via the telephone. There were limited formal meetings – one weekly between the head of the Brigade and the *Commissaires* – but most of the communication was done informally one-on-one or within the group. The *Commissaires* would visit their groups in their offices and also members of other groups would drop by. “We don’t have official meetings, if someone wants to say something they’d do it over coffee or an aperitif or during the day, we are only in two rooms,” one of the detectives explained (F30).

The French officer’s supervision is on two levels – the written and the physical, administrative and judicial. As in the English case, the murder detective is probably more heavily supervised than officers working less serious crime with their own caseload. An officer explained: “At the *Brigade Criminelle*, the *Chef de groupe*, the *Commissaire* and the head of the *Brigade* reads everything, as does the *Juge*. The *Juge* is the ultimate authority, it is their investigation. All this is supervision by reading but the *Chef de groupe* also watches over everything not in the file. He is in the same office, can listen to my interviews and read what I have written afterwards. There is also the threat of sanctions, denunciations and complaints.” A *Commissaire* added: “There is a strong hierarchy in the police. If I went mad, the boss would notice. If I asked one of my groups to do something stupid they would not do it. The *Chef de Groups* are men with 20 years experience and know what’s what” (F235). The French officers believed they were working on behalf of the state, for the good of people in

general, and that people should accept this. “We have respect of the life of the individual but if they have nothing to hide, then what is the problem,” said one. They did not see the need to communicate what they were doing to the public - “Police work is work very well done in secret, there is no need for everyone to know about it,” said another.

### **The French working life : Women**

The impression from reading the literature was that the world of police in France was very much a male world and that what women there were were regarded as in some ways second rate for aspects of the detective trade, treated in a subordinate fashion. While it is true that women are not well represented within the French *Police Nationale* as a whole— figures from the *Ministère de l’Intérieur* put the proportion at just over 13% (in 2005), the dual entry appointment system operating in the French police means the level of women in management positions is actually higher – at around 16%. I was proudly informed that there was at least one woman in most teams at the *Brigade*. While it initially seemed to me that the woman officer in the team was assigned some of the more routine tasks within the case history, she was also the most junior and inexperienced in terms of service history. However, there were no female *Chefs de groupe* at the *Brigade* at the time of my research and at least one *chef* had refused to have women in his team saying it would be distracting for the men.<sup>36</sup> Male officers had no qualms about stating as a fact to me that women could not only not intervene successfully in an arrest situation but would also be unable to exert the necessary man-to-man pressure to confess in the interrogation. One of the women officers said to me: “I have never had any problems but there are those who think women have nothing to do with the police. It is true that there are things I can’t do, I have less power than my male colleagues but there is little need for that in the murder team, and there are some things women are better at. We are different, we work from different sides of our brains, but it

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<sup>36</sup> Shortly afterwards the last team also took on a woman - “a man disguised as a woman, in order to make herself fit in she has had to make herself as man-like as possible”, one of the other women officers commented (F808). For similar adaptational strategies among English police officers see Holdaway and Parker (1998).

is ridiculous to suggest we can't do interviews. If a man MEX<sup>37</sup> doesn't like women, it could be an advantage or a disadvantage to have a woman there".

### **The French working life : Visitors**

The group shared their limited space with members of the public. These were witnesses called in in the course of an enquiry, suspects and family members of victims and suspects. Although witnesses could no longer be held against their will, it was a regular occurrence for them to be summonsed to attend the police station rather than be visited at home or work. They would then be interviewed or "heard" in the communal office by one officer while their colleagues busied themselves with other tasks at their desks or joined in the interview. Witnesses sometimes brought their children with them, and spare officers sometimes played with them while the interview went on. Family members of both victims and suspects also regularly attended the offices. Although French detectives are used to sharing their working environment with others and in some ways the sharing of space can be seen as inclusive in that suspects, witnesses and victims of crime are not separated off from the rest of life interviewed in separate space, visitors are differentiated as outsiders – they are stopped at the entrance and their identities checked; they remain uneasy in their new surroundings. Ironically, it is the suspects who can often build up more of a rapport with their environment and the detectives, due to the length of time they remain there.

### **Stage 4. *Mis en examen* and further investigation by the *Juge* and police**

Shortly after leaving the police, the defendant made his first appearance before the *Juge*, repeated his story and officially became a suspect - *mis en examen*. He was sent before another *magistrat* – the *Juge des libertés et de la détentions* – who remanded him in custody - *détention provisoire*. In the coming months, the *Juge d'instruction* interviewed the defendant several times, going over his version of events and also asking questions more generally about his life – his *curriculum vitae* – and his response to the various expert reports on him that she had commissioned. The *Juge* said: "The defendant had a strange personality. He was very respectful 'Yes, Madame le *Juge*, no,

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<sup>37</sup> Arrestee.

Madam le *Juge*’ all the time, but you could see the tension. He was very tensed, physical, very much ‘I am a man’. I was always frightened that at any moment he would explode. He liked to keep up his image of the respectful military man, but that was all a lie. His ex-girlfriend called him the great story teller, living far from reality” (F724).

The defendant was accompanied to the interviews by his lawyer and had access to the entire dossier through his legal representative. This representative borrowed documents from the dossier from the *Juge*’s clerk and photocopied them or had them photocopied. During the interviews, after each question and response, the *Juge* dictated to her *greffier* what had been said, and a note was taken of this, printed out at the end of the interview and signed by all parties. The suspect told the *Juge* that his victim had threatened his children just before he had hit her.

The *Juge* asked the detectives to pursue things that arose in the interviews, and also undertake inquiries and interviews that the defence lawyer petitioned. The *Juge* said:

At this point I would send a *soit transmis*, an official communication, to the detectives, asking them to do specific things, to make things clear, especially if they are things that benefit the suspect, or help better describe him and his environment. The police have a tendency once they have a confession to leave it there, to think it is all done. The *Juge*’s perspective on the *jugement* means they are more precise in their requirements. Defence lawyers can be very demanding and ask for lots of things to be done, and sometimes you think ‘Why?’ but he didn’t in this case. He asked for the suspect’s father to be given access to some things that had been left in the suspect’s car. In the main he followed me. (F722).

The officers from the murder squad had followed up a few of their own loose ends – tracking down the missing German girlfriend and her father, interviewing a man who had been about to become the new lodger of the suspect at the time of his arrest, walking the route outlined by the suspect during his *GAV* to verify that it was feasible and checking public rubbish bin emptying schedules. On the request of the *Juge*, they interviewed four friends of the suspect mentioned by him during interview, his work supervisor and a work colleague who spoke about the suspect “wrecking” his office when he returned to work after his sick break during which it was believed he killed the

victim, as well as a former boss and the ex-boyfriend of the victim. They also obtained the suspect's work record, his military record and the details of previous criminal proceedings against him. The friends said the suspect had been in "a very bad way" since the time of the murder. One, who had visited him in prison, said he was very depressed. He was asked if during prison visits, the defendant ever talked about what happened. Another mentioned medication that the suspect was taking but the detectives could find no trace of this in hospital records. His work manager said he had written to him from prison and displayed a strong sense of guilt towards the victim's family and his work colleagues. The *Juge* requisitioned four experts, two psychologists and two psychiatrists, to report on the defendant's personality in general, his state of mind at the time of the crime and what the psychological prognosis was for the defendant's future. The *Juge* also tried to construct a more detailed picture of the victim. She summoned friends and family to talk to her, but not everybody attended. "I had very little contact with the *parties civiles* in this case, I only met them once. I did a review with the nearest ones, got them to talk about her, give me photographs and mementoes, try to make her into a person rather than just a name" (F728). "She was not a victim with a lot of friends feeling her loss and her family were quite distant. They were of fairly modest means and the distance between us too far."

Just over a year after the finding of the body in the river, the *reconstitution* or reconstruction of the murder took place. It was during the planning of the reconstruction that the *Juge* realized that she was not in fact geographically entitled to direct the case – cases should be investigated by the *Juge* covering the area where either the crime took place or the defendant lived rather than, as in this case, where the body had been found. "It was because it was towards the end of the instruction that we eventually found out where the crime had occurred. If I had been 'deassigned', the instruction might have had to start again with the *MEX* all the time in prison. Instead the file was transmitted to a colleague in the correct jurisdiction," said the *Juge*.<sup>38</sup> The reconstruction was attended by the entire police investigative team including the

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<sup>38</sup> This incident is indicative of the level of bureaucracy that continues to shape the French codified system.

supervising *Commissaire* together with a photographer from the *IJ*. “This was the only time I met the *Chef de groupe* in person,” said the *Juge*.<sup>39</sup> “Some *magistrats* adore to meet with detectives and discuss cases but I am too busy to meet all the time unless there is a need. Socially, I think relations would always be a little strained – each has his place in life. Maybe the *Brigade*, being such a fine service, would think themselves a little above a *Juge* from out of town” (F726).

Uniformed officers were stationed at both sites involved in the reconstruction – the defendant’s flat, which was still under seal, and the river’s edge where the bag had been found. Two detectives from the team went to the remand centre to pick up the defendant, who had agreed to take part in the event. A representative from the Prosecutor’s office was there, the defendant’s lawyer and the lawyer of the victim’s mother, though she herself did not attend. The *Juge* directed events and anything that was said was noted in summary form by her clerk. The *Juge* said:

My aim was twofold. Firstly, thinking ahead to the hearing, I wanted photographs taken. It’s like taking photographs for grandma on holiday so she can physically see the place. All the jury see the photos that are taken of every action which is described by each person, so it’s like a picture board. In this case, they see the bedroom where the defendant says he killed the victim, the bathroom where he said he cleaned up and the deposition site where the body was found so they can see how unpopulated it is there. It gives another facet to records of interrogations and interviews. Secondly, it is a chance to check that things are materially possible, to see if things that have been claimed, could be true, if, for example, in this case, was the route he took possible in the time carrying a heavy bag? (F722).

The woman officer played the role of the victim and one of the interviewing officers the role of her attacker when the defendant refused to act out certain actions. One of the detectives said:

The suspect was very nervous doing the re-enactions. He did each one very quickly, saying it was tedious to do it. He did the minimum, like a child who doesn’t want to do what you have told them to do. As a result, the photographs were a bit stilted. He felt he had already told the *Juge* everything and he was irritable at having to do it again. It’s not easy to relive, to mime, a murder in front of everybody – his lawyer, the victim’s family’s lawyer, the Prosecutor, the *Juge*, her *greffier*<sup>40</sup>, lots of police officers. Lots of *MEX*<sup>41</sup> are a bit like that. If they

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<sup>39</sup> Although she had met his deputy when he came to her office briefly to request a *Commission Rogatoire*.

<sup>40</sup> *Juge*’s clerk.

have already acknowledged things, they don't see the point of doing it again (F799).

At the water's edge, the defendant was asked to mime his throwing of the bag into the river. He questioned the detectives what would happen if he jumped into the river, and then began to walk swiftly toward the bank. The group jumped *en masse* towards him but he stopped of his own accord before he got to the edge. Afterwards, he said he had had a bet with another inmate at the prison to do this. The whole reconstruction took four-and-a-half hours. "There were no big revelations in this case but it was useful. Eighty percent of a *Juge's* work is to check things, not to discover things no-one else has thought of. You want to check that everything has been done and that the case has solid foundations" (F724), the *Juge* commented.

After the reconstruction, the *Juge* submitted the complete dossier to the Prosecutor for his recommendation as to whether to charge, *mise en accusation*. The dossier was made up of four parts or *côtes*. The first contained formal documents such as requisitions for information, the *Commission Rogatoire* sent by the *Juge* to the police, notes of the breaking of seals and the record of the suspect's *garde à vue*. The second consisted of information about the suspects' *personnalité* – details of his life history, the reports of the psychologists and psychiatrists, and interviews conducted by the police with people who knew him. The third – thin in this case – related to the suspect's pre-trial detention and any applications for bail. The fourth – the largest and made up mainly of the dossier of 514 pages sent by the police to the *Juge* at the end of the suspect's *garde à vue* but also the *Juge's* own interviews – detailed the investigation. The Prosecutor agreed with the *Juge* that the case should be sent for trial and he forwarded the dossier to the *Cours d'assises* for a listing – the defendant was finally *mise en accusation* or charged. The detectives of the *Brigade* invited the *Juge* to attend a jazz evening where two of them were playing in their band but she had family commitments.

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<sup>41</sup>*Mis en examen* (defendant).

## Discussion

### The end of the pre-trial phase

The *instruction* and pre-trial phase were now closed.<sup>42</sup> This marked a key point in the process and the end of the major involvement of the police and *Juge* in the case. It was not even certain that the police would be called on to give evidence at the eventual hearing. A number of researchers have remarked on the importance of the pre-trial phase compared to the trial itself in the French process. Leigh and Zedner (1992; p 16), for example, argue that, due to the multipartite input into the investigation – involving defence and victim – the issues are all forecast pre-trial (see also Greilsamer and Schneidermann (2002; p 16) and Hodgson (2005; p 116): the reverse of the situation in adversarial systems such as England's. Along with this goes a parallel weight attached to the dossier, the written record of the pre-trial phase (McKillop, 1997; p 71). This written record of the investigation controls the subsequent phases of the process. A large proportion of the written record in this case was the 514 pages (plus further interviews requested specifically by the *Juge* after the defendant's being *mis en examen*) produced by the police. It would therefore appear that the detectives have considerable power to influence the account of the case that is put before a court. However, it should be remembered that the *Juge* was behind the scenes checking the dossier, a presence less noticeable in this particular case where the defendant maintained his confessions and appeared keen to help the investigation. We shall also see in the next section what view the trial jury took of the police position that the defendant was sincere in his inability to describe exactly what he did to his victim.

One other major distinction between the inquisitorial and adversarial systems is the absence in the former of any plea-taking ceremony with the defendant. The logic of the French system is that a criminal offence has to be fully investigated so that the truth can be manifested regardless of any admissions. In reality, however, both for volume crime and for the more serious interpersonal crime with which we are concerned here, a confession is a major element of a solid dossier. A culture of confession looms large

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<sup>42</sup> Twelve months had passed since the murder, meaning that the instruction was shorter than the average quoted by Bell (2001;p111) of 16.2 months.



in totalitarian societies, such as China, and shame-based communities, such as Japan. Legal theorists have suggested that the confession in France has less of a symbolic significance and is merely a practical equivalent of the guilty plea in Anglo-American systems. However, I think the confession in France is also seen as psychologically beneficial to the accused (if guilty) and to the wider society, in terms of reintegration and explanation.

### **The treatment of the victim's family**

Once an *instruction* is begun, the family of a victim of murder, in common with victims of other serious crime, can constitute themselves as *parties civiles*. This means they are able, through a lawyer, to have access to the full dossier, have opportunities to speak to the *juge* in the case directly, are kept informed of developments and can petition the *juge* for ancillary investigations to be carried out. They can also be represented in the court hearings, both in relation to the criminal charges and the civil hearing regarding damages that follows immediately after a guilty verdict.<sup>43</sup> In France too interest groups and associations can also constitute themselves *parties civiles* in trials relating to their area of concern. All this has the effect of widening the remit of the trial and the issues that might be covered and sounds as though the victim has a more precise and valued place in the French criminal justice system than in England.

However, one of the prosecutors in my study told me that in fact the treatment of victims in France was at best average. Most crimes are not looked at by a *juge* at all and the treatment of the victims of such crime was often “bad” and even victims of serious crime found it difficult to find a lawyer. “With murder, it’s ok, the police treat the families of victims very well” she said (F439), though also citing a case where the brother of the victim had been shooed away unceremoniously from a crime scene – “the needs of the investigation are paramount”. The officers in the group dealing with this case said that although it was mainly the *chef de groupe* who spoke to the family, “we always have time for family” (F 32). This time is however limited. In one case, I heard

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<sup>43</sup> Though this adhesion of criminal and civil has concerned some commentators who fear the pecuniary motive might discredit the victim as a disinterested witness.

an officer say to the dead man's daughter that she was welcome to ring him but "not too often" (F182). However, in other cases, for example those described in the next chapter, I saw detectives showing much care and consideration for victims. In a crowded working environment where privacy was rare, officers tried to find empty offices to interview family members but did not always succeed.<sup>44</sup> In the case this chapter is concerned with, most of the contact between family and detectives - because of the distance between where the family lived and where the victim was killed - took place via the telephone and relations were therefore quite formal. Jouve, in his study of the Parisian murder squad, suggests a closer, more emotional relationship, between police and family in some cases, notably those involving the killing of children. As *parties civiles*, the family of the victim in this case also did not partake fully of the opportunities offered them, though whether this was because of lack of confidence and knowledge of the system, or because they were content with what had already happened is uncertain. Nevertheless the *Juge's* work in trying to make the victim "a person rather than a name", including information about her in the dossier, realigns the focus of the trial, as will be seen in chapter 7.

### **The treatment of the *Mis en examen***

The defendant spent the 18 months<sup>45</sup> between being *Mis en examen* and his trial on remand – in common with many accused of serious crime in France. Leigh and Zedner (1992) stated that France had one of the highest rates of pre-trial detention in Western Europe when their report was written in the 1990s and nothing much has changed since. On several occasions the defendant was transferred from his prison to the offices of the *Juge d'instruction* to be interviewed. Here there was a contrast in atmosphere to that he had experienced at the police station. The ambience was more formal. The *Juge* had her own private office and the interviews were attended by both her clerk and usually his lawyer. Hodgson (2005) compares the atmosphere of the *Juge's* office to a "consulting room" (p 219) where the defendant is treated with more respect than by the

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<sup>44</sup> The parents of an English lawyer found dead in his apartment were dismayed to have their statements taken in the middle of the group office.

<sup>45</sup> 25 months passed between offence and eventual trial date, the average cited in Bell (2001;p112) is 49.8 months.

“intimidating” (p 220) police officers. The *Juge* did confront the defendant with inconsistencies between his account and other witnesses – for example, the pathologist’s view that the victim, whom the defendant admitted hitting once, had been badly beaten – but in a fairly deadpan way, putting it to him and noting his response. The defendant spent time with professional mental health experts, whose reports he was asked to comment upon. A large amount of attention was paid to him and his *personnalité* – the French word encompassing both the English homonym and also his psychological state and life events and circumstances. There is a far greater attempt to understand the offender than is usual or possible in the contemporary English system and is reminiscent of the attitudes detected by Reiner, Livingstone and Allen (2003) in 1950s British media coverage of offenders where “there was often a measure of concern for offenders both to understand and, if possible, rehabilitate them”. The psychologists and psychiatrists were called on not just to assess his psychological state at the time of the crime in order to assign legal culpability but any potential for recovery or rehabilitation in the future.

### **French working life: Coffee**

The work ambience of the French detective is symbolised for me by the taking of the “*petit café du matin*” – a ritual whose communicative potential was demonstrated by Zaubermann’s work on Gendarme detectives (1997). While not all groups had sofas, all groups in the *Brigade* had some provision for coffee making and the first thing an officer would do on arrival at work was put on the coffee or be offered coffee – even in the very early days of new cases. This was also the case for the groups of *Police Judiciaire* from the *Police Nationale* in local police stations I observed and the *Gendarmes* in the *Section de Recherches*. There would be some kind of space, even in small offices, for taking coffee. Within the *Brigade*, one group had a breakfast bar, another a corner table, all had a coffee jug or machine. Conversation at coffee could be about domestic issues – taking a daughter to school before work, traffic; it could be about resources, seizing the opportunity of the head of the *Brigade* dropping by to talk about needing more mobile telephones. It could be about ongoing or past cases. There could be shouting, teasing, laughter, quiet talk. On occasions, an officer would bring in croissant, biscuits or fruit. The ability to take coffee was part of the culture of the work.

One *chef de groupe* was felt to be “a bit lacklustre” as a manager – he often took a back seat, going off on his own to pursue searches leaving his second-in-command to organise the rest of the team. He was also said to “only go through the motions of coffee”– it was a quick and quiet affair with not much talk or spirit – a “dry ritual” (F274). He found it difficult to involve others in the decision-making process and did not encourage discussion. By contrast, the team I observed “discuss all day, at *le petit cafe de matin* and after”. Their coffee break was a popular affair often attended by many others, quickly creating a crowd and standing room only. The taking of “*le petit cafe de matin*” represents the *joie de vivre* of the French officer in his life and work and the place that that work takes in his life.

## **Chapter 5: The *reconstitution* and the case conference, searching after truth versus constructing crime?**

This chapter examines in detail an event from the pre-trial phase of each country that seems to me to embody the essence of that criminal justice system. The aim is to step back from the day-to-day realities of murder investigation to illustrate the key features of each process, who performs the key roles, and the epistemological and sociological assumptions behind the procedures as a whole.

The two events are the *reconstitution* in France and the case conference in England. These events have not been randomly selected; they have been identified because they provide a stark contrast, reflecting the principles and rationale behind inquisitorial and adversarial legal thinking. I begin by describing the formal properties of each event as stipulated in law and custom and then illustrate some of the practical aspects of the procedures by using case histories from my fieldwork. Because of the relative dearth of literature on these aspects of procedure, coupled with the substantially secret nature of this part of the process in both countries, few readers will have much knowledge of them, and so the examples are described in some detail.

### **The *reconstitution***

“*Reconstitution*” is usually translated into English as “reconstruction”, “to form again”. In French criminal law, the *reconstitution* is a reconstruction of all or part of a crime involving the accused and or witnesses and takes place at the scene of the crime. It generally occurs towards the end of the investigation once all the evidence and statements are known and the crux of the debate has been established. Occasionally, it takes place much earlier if a scene visit could bring matters to a close in the early stages of an investigation, when, for example, the defence suggest that what is said against the suspect could not physically have occurred in the manner suggested at the stated place. The *reconstitution* is the last and largest of a series of “*confrontations*” between witness’ accounts which take place in the *Juge*’s office throughout the instruction (see Chapter 2). The *reconstitution* is organised by the office of the *Juge d’Instruction*, who

officiates at it. Police officers merely assist the *Juge*. The lawyers representing the various parties are present as well as the Prosecutor and the pathologist. The family of the victim, legally constituted under French law as '*parties civiles*' to the case with rights of representation and access to the dossier, can be represented by their lawyer if not present themselves. The *Juge* is accompanied by his or her *greffier*, or clerk.

Although there are various forms of *reconstitution*, generally the participants are asked to re-enact their version of events and photographs are taken. The *reconstitution* itself can aid the *Juge* in assessing the credibility of differing accounts. The photographs give an eventual jury a feel of the scene of the crime and, equally importantly, assist them in assessing the thoroughness of the investigation. *Reconstitutions* are not an obligatory part of the French criminal justice process though they are far more common in homicide cases, where the exact acts and motivation of the accused are more important to ascertain. French legal commentators suggest that *reconstitutions* are becoming less common if not judged essential, because an acceptable confession<sup>1</sup> has been made, or if it would be difficult, such as in vice cases, to get the victim and offender to act out their roles (Chambon and Guery, 2004). In my own research, *Juges* said they would only organize a reconstitution if it was absolutely necessary – “I would not close a busy road for a whole day when the same verifications could be done elsewhere”, said one (F414). “It costs a lot of money to hold a reconstruction, and as long as the dossier is watertight (literally concreted down) then I will not do it”, said another (F413). This is not to say that *reconstructions*, especially in homicide cases, are not done just to be sure, and the majority of the cases I observed did have a *reconstitution*, even when the evidence seemed relatively clear cut.

Although most parts of French criminal procedure are prescribed in the *Code de Procédure Pénale* (C.P.P.), there are few explicit mentions of *reconstitutions*. What there is, comes under the general section of “*Transport sur le lieux*” - scene visits. These can be at the time of the initial discovery of the crime or later visits to explore the environment, verify distances, visibility, and so on. Law relating to *reconstitutions* is

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<sup>1</sup> Detailed and supported by other evidence.

also found in sections of the Code dealing with other parts of the legal procedure which bear some resemblance to aspects of reconstructions, such as interrogations and confrontations. Thus, the legal provisions relate heavily to the rights of third parties to be kept informed, invited or summoned and particularly to the records that must be kept rather than to exact formulations as to what a reconstruction is for, and how it should be conducted. As is the case for the entire process of the investigation, the *reconstitution* is subject to a code of secrecy in that parties to the investigation should not divulge information relating to the case to third parties, including the media, except in some restricted circumstances. There appeared to be some debate about whether this restriction applies to defence lawyers. My police informants said that, strictly speaking, the ‘secret of the instruction’ applies to the defence, but breaches are not policed. However Bell (2001; p 124) suggests that defence lawyers are not restricted by the secret of the instruction and indeed a key role of the defence is to air the case in the media during the investigation in order to put the defence case across. This would imply a rather different mentality in operation as regards the notion of contaminating knowledge to England where Contempt of Court laws exist to prevent the publication of this sort of information in order to ensure the jury’s understanding of the case is limited to the evidence they hear in court.

The power to hold a *reconstitution* comes under the general rubric directing that “A *Juge d’instruction* proceeds, in accordance with the law, to all investigatory acts which he judges useful to make the truth manifest<sup>2</sup>” (*C.P.P. (2004 version) art 81*). Law relating to general interrogations – in that the accused’s solicitor must be informed at least five working days before the event and must have access to the latest version of the dossier at least four working days before the event - apply. The law relating to all scene visits also applies - the Prosecutor must be informed and can attend. The reconstruction can take place without the suspect if they refuse to take part. The suspect can also limit their participation. For example, they can refuse to act out other witnesses’ versions of what took place and only act out their own. A useful reconstruction can also take place

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<sup>2</sup> *Le juge d’instruction procède, conformément à la loi, à tous actes d’information qu’il juge utiles à la manifestation de la vérité (L n. 2000-516 du 15 juin 2000 art 2).*

without the suspect if there are previous declarations of the suspect – made to either the police or the *Juge* - that can be tested against the accounts of other witnesses.

The main strictures relating to *reconstitutions* concern any failure of the *Juge's* office to make a proper record of the reconstruction. For this reason it is obligatory that the *Juge's greffier* is present at the scene. A *Juge* should never be in contact with suspects or witnesses without a *greffier*. Generally each *greffier* works with a particular *Juge*, and is being responsible for typing the '*process-verbaux*', or statements, made by people interviewed by the *Juge*. Their role at a reconstruction is to record, under the dictation of the *Juge*, the words of the *Juge* and others present in order to have a legally acceptable statement of what happened. If any form of interrogation or confrontation takes place, a separate statement is taken and signed by those concerned. Otherwise a statement signed by the *Juge* and his or her *greffier* is sufficient for the court file. Should the correct form of record not be kept, it has the potential to nullify the reconstruction, resulting in any information relating to what took place and what was said excluded from the dossier.

Other than the limited references to reconstitutions in the *C.P.P.*, the few other mentions of the process I have come across are in practical manuals for *Juges* – for example Chambon and Guery's "*Droit et Pratique de l'instruction preparatoire*", McKillop's (1997) examination of a French murder dossier; and accounts of famous cases.

Chambon and Guery (2004), confirms that there is little mention of the *reconstitution* in the law and relevant Codes – "*la reconstitution n'est pas codifiée*" p 475) - and because of this, different magistrates use differing techniques.

Generally, there is some element of interrogation or questioning at the scene of a reconstruction, but it can be organized solely in order for the parties to better understand the nature of the scene and the conditions pertaining to it. It is especially important in these cases for the conditions during the reconstruction to be as close as possible to those when the original act occurred. This can create organizational problems when



the scene is a very small room or a very dark street in ensuring visibility for all the parties. Chambon advises checking that a by pass has not been built over the scene of the crime if outside or that keys are available and the electricity switched on if inside. The *Juge* can also organize the reconstruction so that all the participants do at the scene is to make observations of distance and space and take photographs with questioning taking place afterwards at their office.

Should the more usual methods of questioning at the scene take place, the *reconstitution* can be organized by reconstructing events chronologically or version by version. The former - in attempting to show a linear progression of acts confronting everybody at each stage – rests on the belief that a consensus can be reached for each stage of the deeds, and it is very difficult to accomplish in practice. Much more common is the reconstruction method where the events are presented several times, version by version –so the accused and witness will act out the witness’ version of events, then they will both act out the accused’s version of events, and so on.. The order in which different versions are enacted can be important if the *Juge* wishes to confront the accused with contradictions between their story and others already presented. Should anybody refuse to act out another’s version, a police officer or mannequin can be used instead.

While the victim of a crime who is also a witness is an essential participant, Chambon advises against the invitation to a reconstruction of a dead victim’s family which, he says, could “lead to public order problems or risk to the suspect”. Nothing constrains the *Juge* to summon the family to the reconstruction even if they have been legally constituted as *partie civiles* to the case and “it is better in general to avoid it”.<sup>3</sup> The advocate for the *partie civile* should however be invited to preserve the equilibrium between the parties.

The presence of experts – the pathologist or perhaps a ballistics professional - is encouraged. Such experts can be asked if the various versions of the witnesses are

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<sup>3</sup> *La présence de la partie civile peut alors entraîner des troubles à l’ordre public, voire constituer un danger pour la sécurité du ou des personnes mise en examen. Rien ne contraint le juge à la convoquer sur les lieux et il vaut mieux, en général, de l’éviter.* (p476).

compatible with their own observations but Chambon and Guery warn that such assistance should be spelled out in a formal “*mission d’expertise*” to ensure that the paperwork is in order. If conducted properly such an expert’s opinions could provoke a proper debate – “*une veritable discussion contradictoire*” (p 476).

Similarly, Chambon and Guery say it is useful to have the first officers at the scene present, so they can confirm the exact state of the site when they arrived; some uniformed officers for security, especially in sensitive areas where the reconstruction is taking place outside; photographers to take the records; and plain clothes officers to play the part of the victim or accused if they refuse to take part. They can also arrange exhibits or props.

Chambon and Guery also discuss the recent innovation of videoing reconstructions. This procedure has not developed very fast for a number of reasons. Firstly, it is easier to cajole civilian participants into miming a discrete gesture than continuous fluid actions. Secondly, there are procedural problems over the sound, where some comments by some participants can be heard and not others. Thirdly and probably most importantly, there is little utility for such a record as many French courtrooms do not have the facilities to watch videos.

McKillop describes what he translates as the “re-enactment” of a murder case involving the assault of a wife and the killing of her new boyfriend, that he observed at trial. Taking his information from the record in the dossier he describes the presence of the *Juge*, her *greffier*, the prosecutor, the defendant’s lawyer, the defendant’s wife’s lawyer, and “many” gendarmes. Seventy-nine photographs of differing accounts were taken and the defendant was confronted with the differences between his version of events and those of other people, which also varied in some details. He was also confronted about his motivation, as to why he had done certain actions – namely shot into the door of his wife’s house. When the *Juge* had finished asking the questions to which she wanted answers, she asked the wife and the defendant if they had further enquiries they wished her to make. The *Juge’s greffier* wrote up a statement of the re-enactment by hand at

the scene which was typed later. As a result of the reenactment a third ballistics report was commissioned, asking the expert to consider which if any of the versions told were consistent with his observations. When the photographs of the reenactment had been developed, the defendant was given an opportunity to comment on them. The photographs were shown to the jury at the trial.

Somewhat less neutral descriptions of reconstructions are found in, for example, the account of the reconstruction of the murder of Bernard Laroche, the original accused in the case of *le petit Grégory* (see Chapter 1 and glossary) in the memoirs of the police chief investigating the case. The reconstruction, which necessitated a massive security operation in case one of the dead man's relatives tried to retaliate against his attacker, merely corroborated already detailed admissions. In general, the author of the book writes of reconstructions - "the lie is added to the other lies, declarations become fixed, gestures take on a theatrical turn"<sup>4</sup>. In other words, the reconstruction adds nothing to the truth finding process because those who have lied to the police and *Juge* will carry on lying in the reconstruction. In other judicial memoirs police chiefs Diaz and Desfarges and *Juge* Fontenau describe *reconstitutions* as a rare public part of the *instruction*, where the *Juge* leaves the office and ventures into the field. They can sometimes incite extreme emotion and violence directed not just at the accused but the justice personnel, deemed too detached and unemotional in dealing with the event by families and communities (Diaz et al, 1994; p 225).

The following two case histories are from my fieldwork. In total, I observed four reconstructions. Although this figure is small, I also had the opportunity to discuss both these reconstructions and reconstructions in general with police officers and *magistrats*. I have included two *reconstitutions* to demonstrate the differences of approach taken by the two *Juges* involved.

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<sup>4</sup> "Le mensonge s'ajoute aux mensonges; les déclarations se figent, les gestes prennent un tour theatrical" (Corazzi, 2004; p, 220).

### Case history - Reconstitution 1

The case concerned a teenage girl who was battered to death on wasteland on the outskirts of a small town. When her body was found her trousers and underwear had been pulled down, and at first it was thought she had been raped, although this proved not to be the case at post mortem. The brother of her ex-boyfriend was arrested some months after her death and he confessed to police and later the *Juge d'instruction* that he had been drinking with her the night of her death near to the scene where her body was found. His DNA had been traced on drink cartons nearby and his previous statements to the police had left gaps and contradictions in his alibi. He admitted a verbal and physical argument had developed but said he hit the victim just once. She had fallen over, he said, and he had panicked and tampered with her clothing in a bid to make it look like a sexual attack committed by a stranger. He insisted that when he left her she was still alive. The detectives dealing with the case were not satisfied with this account as the state of the body did not seem to be consistent with the small number of blows described.

The reconstruction took place just over a year after the discovery of the body and six months after the arrest of the suspect. There was a new *Juge d'instruction* at this time, the original one having moved region. There had been uncertainty right until the last minute as to whether the reconstruction would actually take place as the suspect had changed his lawyer. The detectives spent the morning of the reconstruction at the scene ensuring that it looked as far as possible as it had at the time of the death. The two scenes of crime officers who had attended initially used the photographs and measurements taken at the time to help with this. Some branches were lopped and concrete boulders moved. Props had been brought including bottles and silver coloured polystyrene shapes to represent boulders. The original exhibits were also brought to the scene. The detective in charge was warned that members of the media had been spotted near the scene. He was also worried about the reaction of the family, who he said had been manipulated by the media in previous months to comment on various aspects of the case.

The reconstruction started at two pm. The *Juge* had arrived with her *greffier* and a representative from the Prosecutor's office. Both the *Juge* and the *greffier* were accompanied by a *stagiare* – someone who is shadowing them as part of a training course.

The *Juge* was smoking before the start of the reconstruction. When the parents of the victim arrived, they stood apart from everybody else. The police officers went to say "hello" to them as did their lawyer but nobody stayed to chat. The suspect's lawyer was talking to the pathologist as the group waited for the arrival of the suspect from prison. A helicopter flew overhead - there were about 50 police officers present, some from the local and regional stations, and the specialised squad, all of whom had undertaken enquiries on the investigation; but the majority of officers were there to provide security at the scene and at access routes to it.

When the prison van arrived, the accused wore a bullet proof vest and had his legs tied loosely together with a rope that was carried by one of his guards. The central group of detectives, lawyers, magistrates, pathologist, and the suspect and his guards, stopped by the entrance to the wasteland and the *Juge* asked the suspect a question about what he had been doing there. Two police officers used a blanket to try to shield the accused from outside eyes. A photograph was taken by the police photographer.

The group walked to the wasteland, with the victim's family bringing up the rear. At the concrete platform overlooking the bank where the body was found, the *Juge* asked the accused what had happened there. A bottle from an exhibits bag was given to the suspect to hold. He demonstrated where he had been standing and a photograph was taken. The group then moved to the bank and again the *Juge* asked the suspect what happened. The pathologist was asked if his account tallied with the medical evidence. He said it was inconsistent as the large amount of injuries he had found on the victim's body suggested a more sustained attack. The *Juge* put the discrepancies between the two versions to the suspect who repeated his story. Photographs were taken of where the suspect said he was at various points of his narrative. The photographs were not very realistic and the participants looked like they were taking part in a stylised mime. The parents of the victim stood some distance away and could not have heard what was going on even if the *Juge* had been less softly spoken. Each time the *Juge* questioned a witness, she dictated a summary to the *greffier* to note down

There was a ten-minute break during which the *Juge* smoked and spoke to the lead investigating officer; his immediate superior, the head of the specialised crime team; the *stagiaires* and the family's lawyer. The suspect's lawyer borrowed a cigarette from the *Juge* for his client. The suspect's lawyer and the family lawyer shared a joke, immediately after which the family lawyer went over to the parents to have a brief talk with them.

A trainee police officer played the part of the victim and lay down – on the blanket used before to shield the suspect – on the ground. The suspect's lawyer looked for a long time at the photographs of the dead girl's injuries and then had a discussion with the pathologist about whether the injuries to the back of the head could have been caused by her lying on her back with a concrete boulder as a pillow and being hit onto it.

The only real confrontation occurred when the lawyer for the family said that the suspect's story of having lowered the victim's trousers to make it look like a sexual aggression made no sense if he had genuinely thought she was still alive when he left her, because, if she had been found alive, she would have been able to say exactly what had happened herself. The accused did not respond. A photograph was taken at the end with the suspect picking up the actual blood-soaked stone used in the crime, which had been taken out of the exhibit bag after the seals had been broken. He lifted this about a foot off the ground but did not wield it. At some point the

victim's family had wandered well away from the scene and a police officer was sent after them to check they were alright.

At the end of the reconstruction, the suspect signed the *greffier's* record of events – without reading it – as did the pathologist. The suspect's lawyer said goodbye to his client and shook his hand, as did the Juge. The *Juge* had no contact with the family directly. The police chief seemed relieved the reconstruction had passed without mishap. Other officers were more critical of the *Juge's* behaviour. One said the reconstruction had been “useless” (*nulle*) (F646); another that it had not been very “animated” (F645), the *Juge* had failed to confront disparate versions and should have taken a more directing role. The representative of the prosecutor had also taken a very limited role; usually it was the *Procureur* him- or herself who attended. It had been merely a “discussion between experts”, complained another detective (F650). The head of the murder squad said that he had the impression that no-one but the Juge was actually familiar with the dossier. The detectives were concerned that the confrontation left the case “unhealthy” (F650) for court as the suspect's version had been left unchallenged. Although the suspect had admitted hitting the victim, this lack of confrontation over the details of his version left the case open to the defence suggesting someone else had come along and killed the victim after the suspect's blow had been struck or that he had been provoked.

The following day an article appeared in the regional newspaper describing the reconstruction. The source was perhaps suggested by the lengthy quotes from the defence lawyer. He told the reporter that his client “was very upset by the affair. He was incapable of re-enacting the action with the stone, he had tears in his eyes.”<sup>5</sup> The family, we are told in the story, were at centre stage “both fearing and needing this confrontation.”<sup>6 7</sup>

### **Case history - Reconstitution 2**

This case concerned an illegal immigrant whose body was found cut up in bin bags dumped by the side of the communal garage to a block of flats on the edge of a city. The person under investigation was a man who had allowed the victim to stay in his studio flat to escape an overprotective sister. Suspicion had originally fallen on the employers and landlords of this man who owned the restaurant on the ground floor of the same building as the flat, where both the dead man and his host worked. The landlords/employers had originally denied all knowledge of the death, but eventually named the current suspect insisting they themselves had had nothing to do with it.

The suspect was later arrested on his return to France from his home country. He admitted that he had hit his lodger over the head with a piece of wood and then stabbed him after an argument with the victim who he said had lied to him about his

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<sup>5</sup> “Il est très perturbé par cette affaire (...) Il a été incapable de refaire le geste armé du parpaing. Il avait les larmes aux yeux ».

<sup>6</sup> “...appréhendant et désirant cette confrontation tout à la fois ».

<sup>7</sup> In the event, the officers' fears were unfounded. Two years later, a court sentenced him to 20 years' imprisonment, apparently not accepting the defendant's attempt to minimise his role.

status in France. He said that the dead man had no papers but refused to listen to his landlord and irritated him by dancing around with headphones on when he was trying to talk to him. After the attack, the suspect claimed that his landlords from the restaurant three flights downstairs had come knocking on his door enquiring what the noise was about. They told him to dispose of the body, clean up, and leave France, which he did.

The body was not found until the following spring. Although decomposed, it was not as decomposed as might be expected if it had been out in the open for the full seven months between the death and the discovery of the body. Both the *Juge* and the lead investigating officer thought the body must have been in the restaurant freezer for some time while the fuss died down and links between the restaurant and the dead man were still remembered.

The reconstruction took place just over two years after the murder, 18 months from the discovery of the body and eight months after the arrest of the suspect. The detectives felt the reconstruction was particularly important in pinning down details as it was a case where there were a number of quite different versions of events from different witnesses. The waiters from the restaurant told different stories from the managers.

From the start the *Juge* took a more authoritative stance than in the other *reconstitution*. The interpreter for the suspect was late and so the *Juge* altered the order of events to deal with aspects not involving the suspect. The reconstruction started in the restaurant where the owners said they were when they were told by the suspect that he had assaulted his fellow waiter. The owners of the restaurant were still under investigation for being involved in the disposal of the body and they were both accompanied by lawyers. The main suspect had a lawyer and two police guards. The group of seven detectives who had dealt with the investigation were all present. Three members of the victim's family were also there with another lawyer. The *Juge*, with a *stagiare*, her *greffier* and the prosecutor, as well as the pathologist, were all in attendance. There were three or four uniformed police officers for security.

The owners of the restaurant were very loath to act out and be photographed enacting the versions of other people but the *Juge* insisted. The police officers from the investigative team were asked to play the various roles - including the victim - of people not present. The group first enacted sitting around in a circle talking before they heard a knock on the door, then stood near the door while one of them came out of the kitchen to answer the knock and finally left the restaurant to go three flights up to the flat. In each version, first the *Juge* read from the statement the witness account, then she clarified it with the witness, and then the re-enactment took place.

The witnesses did not deviate from their stories but the *Juge* confronted them with apparent inadequacies or inconsistencies. She asked one of the waiters:

J: "So someone comes downstairs and tells you a man has been badly assaulted and you just go straight home and spend the night with your family?"

W: “But my wife was pregnant”.

J: “There had been a fight and you just leave?”

W: “I didn’t know he was dead”.

J: “You knew he had been badly attacked, hit with a piece of wood and stabbed. Why did you leave?”

One of the owners was skulking in the out room of the restaurant. From the smell and his general demeanour, it appeared he had found some kind of alcoholic beverage to pass his time. He became more and more excitable when asked to “act out” the accounts of other witnesses. The head of the detective group and the *Juge* conferred regularly as to what the witnesses were saying.

The interpreter then arrived. The *Juge* reprimanded him for his lateness and the reconstruction was moved upstairs to an extremely compact studio flat where the victim and suspect had lived together prior to the victim’s death. The present occupier of the flat let the group in. The flat consisted of just two rooms - a bedroom and a kitchen/diner with shower cubicle - of roughly the same size.

The apartment was too small to accommodate all the reconstruction group, and during the scenes occurring around the toilet cubicle the main door had to be shut in order for the toilet door to be opened. During this time the family of the victim were left outside. They were talking to the current owner of the flat in what I assumed was their native language. Suddenly the flat door was flung open and the *Juge* appeared telling the flat occupant that he should not still be there, that the instruction was secret and that he should go somewhere else; he need not worry his flat would be looked after.

The father of the victim began to cry. He had taken no direct role in the events although the lawyer representing the family had asked a few questions. The lawyer for the suspect left after about an hour in the flat. The entire group then came out of the flat and tests were made to see what could be seen of the restaurant, particularly the kitchen, from the landing and what noise from the flat could be heard in the restaurant. The suspect was then asked to carry bags – which had been filled with weights to approximate the weight of the body parts found in the deposition site - down the stairs to see if he could manage this on his own. He was reluctant to try this until the family’s lawyer picked one up and said, “Come on, get on with it, it’s not difficult”.

On the way back downstairs the head of the detective group spoke to the victim’s sister saying he hoped she was not finding it too painful, and telling her that they had to re-enact all versions in order to try and ascertain who was telling the truth. Downstairs the suspect was asked to wheel the bags in a supermarket trolley down to the flat complex garages as he said he had in his statement. He was then watched as he flung them over a wall by the garages, and continued down the road with the bag containing what was supposed to be the victim’s head which he disposed of in the wasteland under the by pass. The group was partly blocking the pavement but none



of the local residents appeared to take much notice. The *Juge* checked with the head detective that they had gone through everything and then she said the *reconstitution* was finished.

It had taken five hours – but everyone said they thought it would take longer. The *Juge* told the head of the police investigation that she was still convinced the restaurant owners had helped dispose of the body. It had been this which she had wanted the reconstruction to clarify. Although it was a less serious matter than the murder itself, if the two had lied, then their lies had substantially delayed the enquiry.

### **The case conference**

Case conferences in English criminal justice procedure are meetings between the Crown Prosecution Service (CPS) caseworker; the Prosecuting Advocate, Counsel, or his or her Junior; and representatives from the detective team who investigated the case. A number of such meetings take place from shortly after the charge of a suspect once instructions have been received by the barrister from the CPS, until the trial. The meetings usually take place in a CPS building, their Crown Court offices, or at barristers' chambers - all places to which the general public have no access - it is a secret meeting, not listed on any public court diary. The aim of the case conference is to discuss the case, the evidence and how to present it in court to make it as strong as possible.

There is even less literature on case conferences in the English criminal justice process than on the French *reconstitution*. There is however research and practice summaries of case conferences in other fields such as healthcare and child protection, which examine the processes and apparent effectiveness of such working groups (Birtis et al, 2004) and explore the linguistic and discursive elements suggesting the power differential within them (Gear *et al*, 2005).

Statutorily the case conference within the criminal justice process is referred to in two guideline documents for prosecuting advocates published by the CPS (Crown Prosecution Service 2005a and 2005b). one referring to such a conference as a given – saying that matters of disclosure should be discussed at ‘a case conference’; and one suggesting a case conference should be called by Counsel if the matter is in any way

sensitive. What both documents do, is suggest that, as the case goes towards Crown Court trial, it is the barrister who is in charge of the decision making process, albeit in consultation with the CPS.

The status of Counsel is also explored in McConville *et al's* (1994) study of the defence process which includes description of the defence version of a case conference. In the chapter describing case preparation for Crown Court, the authors present a dispiriting picture of the role of the defence barrister but one in which Counsel is always in charge, leading the meeting. This is not surprising given that, in many cases described, the other conference attendees are the defendant and an unqualified clerk from the instructed solicitors' office. Solicitors themselves rarely attend such meetings or prepare files for them, resulting in case conferences acting as substitutes for the basic evidence preparation process. While some barristers are described by McConville *et al* as professionally trying to establish an appropriate plea through an oral review of the facts, the authors say that many seemed more keen to process the case as quickly as possible, negotiating a plea in order to legitimate their part in the process or in helping the defendant to elaborate his or her story. It should be noted that the majority of the cases referred to involved routine volume crimes and that the solicitors interviewed suggested it would be different for a murder case, but nevertheless the power dynamics of the meetings are interesting.

There are brief mentions of case conferences in relation to the investigation of serial murderers Fred and Rosemary West in an account written by the Senior Investigating Officer on the case (Bennett, 2006: p 356). For the first conference relating to such a major enquiry, both Senior and Junior Counsel were present together with three representatives from the CPS, the Senior and Investigating Officers and the equivalent of the Case Officer from the case history I described earlier. The police appeared to take a dual briefing and persuading role at the conference – in that they needed to both summarise the ample evidence against Frederick West while convincing the prosecution team that there was sufficient evidence against Rosemary to result in a successful conviction.

I have used one of the case conferences from the investigation described in chapter 3 as my case study. I have done this partly to save space by taking away the need to describe the background detail but also because I believe this conference was representative of the meetings I observed. In total, I observed five case conferences. Although this figure is relatively small, I also had the opportunity to discuss aspects of case conferences with participants and observe other meetings between CPS, police and Counsel.

### **Case history - Case conference**

This case conference took place about a year after the arrest of the defendant. It was the fourth the police and CPS had had with Junior Counsel. It was attended by the Investigating Officer (IO), the Case Officer, the de facto Family Liaison Officer (FLO) and the CCTV Co-ordinator from the police, and the CPS caseworker and clerk.

Counsel led the meeting, initially asking if there was anything the police wanted to raise in addition to his agenda. Throughout the meeting, he made an effort to remember everyone's name including the retired officer who had been viewing the CCTV footage.

The IO explained that the Family Liaison Officer present was not the one first appointed but a detective who had developed a good rapport with the family subsequently. The mother of the victim was living abroad and was described as not keen to come to England for the trial, regarding England as a bad place for her family. Both the FLO and the barrister thought her evidence would make a good opening and the barrister suggested looking into a video link. The FLO also raised the issue of identifying the victim's usual clothes from those found at the flat. The barrister suggested looking at video from the victim's workplace but he was told she wore a uniform. The barrister also asked what was happening with awarding compensation to the victim's brother-in-law for damage to his car sustained during forensic testing.

The barrister then talked about the CCTV evidence. The barrister was pushing to firm up this evidence and make it as tight as possible. He explained he had met the fibre expert separately earlier that week and so they did not need to discuss the presentation of this evidence. He and the detectives agreed it was strong evidence if presented in the right way. They also discussed the evidence concerning the couple's overstretched financial arrangements and the family tensions involved in their marriage which had led them to move out of the defendant's parents' house. "We don't want to let him ... present the relationship as hunky dory," said the barrister (E412). Evidence relating to tides and the date of the flotation test were also briefly mentioned.

The barrister gently reminded the Case Officer that he still needed to have officers visit all the hairdressers in the vicinity to check that the victim did not have an appointment that day. He wanted this information provided as soon as possible in order to be able to pass it onto the defence in good time as disclosure. He told the police officers he knew they were busy and he was not saying they had not done a “fine job” (E412), but that he did not want to be seen to have “bounced” the defence with information at the last minute, particularly when the prosecution objected to the delay in trial date. He suggested a map might eventually be produced to show the jury the number and location of hairdressers in the area in order to give them a visual reminder they could take into the jury deliberation room. “It’s just a matter of checking that none of them had an appointment with the victim,” the barrister said about the hairdresser visits. “Unless we find one that does, and then you won’t see us again,” quipped the IO (E412).<sup>8</sup>

The CPS’s only comment during the meeting was to note that the Defence had asked for the evidence of continuity of the body’s care between discovery and the second autopsy conducted by the defence. The group discussed the possible significance of this and spent some time trying to fit the request into possible defence lines. It seemed likely that the police were to be attacked for in some way having contaminated the evidence. The Investigating Officer asked if they still had the same Senior Counsel and was reassured that this was the case as everyone agreed he was very good.

The police left and went for a drink at a nearby public house. They were happy with the meeting and said that the Junior was good and friendly. Some Counsel were aloof and would keep asking for things even in a tight case.

The trial for this case is described in its entirety in chapter 6.

## Discussion

Within the French criminal justice system, the *reconstitution* can be seen physically and symbolically to epitomize the culture and ways of thinking lying behind the whole criminal justice process.

The *reconstitution* is directed by the myth-shrouded – Hodgson (2005: p 5) would say fetishistic -figure of the *Juge d’instruction* who, in the inquisitorial ideal, upholds the seeking after truth impartially gathering information from all parties to the event – the police, the suspect, the victims or their representatives, society as a whole. Balzac declared the *Juge d’instruction* the most powerful man in France and, despite repeated

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<sup>8</sup> Because this would support the defendant’s account .

calls within France for the role to be abolished, Garapon (1995: p 497) is still able to say of him - “His glory does not stem from his legal competence but from an integrity that verges on heroism”. Indeed, on celluloid, the *Juge* is often seen suffering, even dying, in his pursuit of the truth. Such is deemed the power of the *Juge d’instruction* in French society that in important cases defence lawyers are said to research the private life of the *Juge* in the case as a way to attack the integrity of the dossier against their client (Greilsamer and Schneidermann, 2002: p 254). During the reconstruction, the police play the minor role supposed by many who eulogise the inquisitorial system, they are subservient to the *Juge*’s command. As I discussed in chapter 1 and 4, *officiers de la police judiciaire* are often far more influential in their activity and the *Juge*’s role at the reconstruction is therefore as much about displaying inquisitorial authority as fact finding.

The reconstruction also presents quite visibly the roles of Prosecutor, the lawyer for the suspect and the lawyer for the family or victim, the suspect and the victim’s family, and the media. The legally constituted role for the victim’s family of *partie civile* is distinctive in the French system. Their right of access to information regarding the enquiry is visually symbolized by their presence, or at least representation, at the reconstruction and their right to have questions asked. The lawyer for the family and the lawyer for the suspect have more in common in terms of legal status and career background than the *magistrats* – *Juge* and *Procureur* - who share the same professional standing and training. The suspect is treated with consideration and is invited to take part in the dialogue. The media are kept at a distance and spoken of with contempt by the police. They are not considered part of the truth-finding team though they later report their own version of events.

Finally, the reconstitution brings together all the witnesses to the crime event that the investigation has unearthed. Of all the sources of information that Osterburg and Ward (1997) identify to assist in “Reconstructing the Past”, French justice relies heavily on the “*témoignage*”, or witness statements, of human subjects, with forensic criminalistics playing a secondary role.

Procedurally, the reconstitution reflects many of the basic tenets of the French criminal system. Historically, the French criminal justice system was inquisitorial – its investigations secret and often based on physical confrontation of witnesses. The *reconstitution* is one of the few occasions where the secret instruction leaves the privacy of the *Juge's* bureau but the aura of confidentiality remains – officials will protect the scene from prying eyes but few people appear desirous of piercing the protection. Witnesses are brought together to confront each other verbally with their accounts of what happened. This confrontation takes place in private and is not viewed by the general public directly though it is obligatory to take down an account of what occurred during the reconstruction which can be read in the later public hearing. There are powerful internal forces within the French nation – partly borne of the educational and cultural systems, and partly from the manner in which the modern democracy was fledged following the Revolution – which have led to a seeming acceptance of a citizen's duty to cooperate with a legal procedure that requires their subjugation to processes deemed to result in the discovery of the truth. The submission by the citizen is seen as a necessity in support of the State, the sum part of all its citizens, and includes being summoned to interviews and confrontation with other witnesses.

The French legal process is also based on the written word (Bell, 2001), on what is contained in the all-important dossier, or case file. The reconstruction forms a physical manifestation of all the statements in the dossier. The decision to hold a reconstruction or not is taken on whether or not it would add to the dossier – “You have to be certain that the lack of a reconstruction won't hinder the file”, a *Juge* commented (F465) - not to whether it would assist theatrical presentation of the case court. It is notable that the only restrictions placed on the nature and conduct of *reconstitutions* are the records that must be kept.

This basic link between the ethos of the dossier and the reconstruction was evident in the words of one *Juge* - “The dossier itself is a *reconstitution des faits* – a reconstruction of events. It is only when you cannot make sense of these in your head that you need a physical reconstruction” (F466). The act of reconstruction is used to mirror the way the

human mind works, by recreating, it seeks to understand. A police detective - who played regularly with colleagues in a band – said:

The statements in the file are like the scores for different instruments to play in the orchestra. They can be rehearsed on their own and each has its own tune to be heard, but it is only when they are all brought together in one room that you can see what they sound like together and where the problems are – and what needs to be looked at to make it harmonise so you can understand (F121).

It is this desire to understand which unifies the process. The confrontation between witnesses to understand the detail of what happened and get to the bottom of differences in opinion is part of the same process that examines the *personnalité* of the accused to try and understand what happened and why. In a similar vein, Bell argues that the questioning of the *Juge d'instruction* (and the *Président* of the eventual court - see chapter 7) towards an accused is more focused on explanation than a mere checking of the facts. The consequences for any suspect of maintaining silence in the face of this desire to understand are far more detrimental than the accused failing to take the stand in a common law system (McKillop, 1997).

The existence and practices of the *reconstitution* emphasise the primacy of the investigation in the French criminal process over the trial (McKillop, 1997). As I shall examine in more detail in Chapters 6 and 7, which describe the trials of the cases described in Chapters 3 and 4, McKillop argues that in an adversarial system the pivotal moment of the process is the trial whereas for the Continental system the investigation stage is more important. In the French system it is during the reconstitution – part of the investigation not a trial – that confrontation takes place, and other acts, seen only at trial in the common law system, such as breaking the seals on exhibits, occur. The photographs of the reconstruction form part of the evidence presented at court – the act of seeking to understand is transformed into evidence. In a common law system these photographs might be admitted as evidence of confession by a suspect who had agreed to take part, but in France they are taken as confirmation that such actions as depicted could have taken place. This suggests the role in the process that the reconstruction has, partly forming what the English system labels evidence gathering and partly forming

what the English system sees as trial. The reconstruction photographs are also very staged and, for many commentators, the French trial is also a staged event.

Symbolically, the reconstitution can be seen as a working manifestation – a *tableau vivant* – of the rationality of the French system. The *Juge*'s legal right to enact a reconstruction comes under his or her right to do anything which will make manifest the truth. When explaining the reconstruction *Juges* are liberal with their use of the word “truth”. “We push each participant to a re-enactment in order to make the truth emerge” (F466). “We go to the scene of the murder and make the truth live again” (F477). Similar to Hodgson's (2001) observations on prosecutors, the magistrates I spoke to expressed themselves in strikingly similar terms. However, where prosecutors used expressions invoking the law – “I am obliged by the law to ...” – serving to present the law – and by implication their actions – as objective, the *Juges* constantly referred to the truth and the need to make it visible or manifest. This suggests a belief that the truth is somewhere ‘out there’ to be found, that the instruction has gathered enough facts to manifest it, and that lastly the court's verdict will be fair because it is true. This accords with a verisimilitude theory of the truth whereby the final account offered by the dossier can be deduced to be true if it corresponds to the facts.

Garapon (1995: p 502) suggests the French psyche insists on the “indivisibility” of the truth where the law, codified conceptually at the time of French rationalists such as Descartes as “written reason” (David and de Vries. 1958: p 14), can become transcendent. Descartes based his idea of truth on intuition, on the pure light of reason which reveals most fundamentally that we are thinking beings. This together with a phobia of conflict – “an opponent is considered a bad Frenchman” – results in a criminal system aiming at a synthesis in the general interest. This acknowledgement of the interests of all parties is mirrored in aspects of French contract law whereby signatories have to be seen to have taken account of each other's interests (in terms of information and rights) or risk having the contract rescinded.



By contrast to the *reconstitution*, the case conference is concerned with the management and evaluation of evidence within the process identified by McConville (1993) and others of “constructing” a case for court, pointing towards the pivotal importance of the public trial for the English process, the end point at which all activity is directed.

From day one of an investigation, each witness is evaluated according to how well he or she will perform in the public arena of court, each exhibit as to how it will present in court and all actions are completed in anticipation of subjecting accounts to an antagonistic process where they will be challenged. In the case study, every aspect of the key witness’s story and background was investigated to ensure she could create a good impression in court and, more importantly, had few aspects that could be attacked by the defence. If the witness had not been a church-going, well-to-do intelligent woman she may not have formed such a large part of the case – and other dimensions of this witness which became apparent during the trial stage of the process, which will be described in the next chapter, put into question whether she should remain so. In another case I observed during my research, the Investigating Officer held up the photographs of the murder weapon and the smaller matching knife found at the accused’s home at a very early team meeting and said “this will look good in court”.

At case conferences, the process of including certain evidence and issues and excluding others, is laid bare. The police and Counsel together want to make a case against “their” suspect, they do not want to confuse the jury with too many excess details by presenting ‘the whole truth’. Truth is instead conceived more as an attribute which must be created and sustained defensively, a conception from which it is easy to see where miscarriages of justice stemming from a closed mind set arise.

Any confrontation between divergent versions of events is virtual at the case conference – with prosecution imagining what the defence may say – looking forward to the trial where confrontation again is not direct between those involved but played out via counsel in what many consider a ‘game’ atmosphere divorced from reality. The family is talked about, often with sympathy, but is not present. The defence is there only in the

thoughts of the others (but can have its own separate case conferences elsewhere discussing the same case but from a different perspective). Within this process “truth is mysteriously hidden, covered over by the evasions and half truths of competing contentions” (Rock, 1993, p 35).

The epistemological consideration is not of seeking the truth but of demonstrating procedural fairness – Counsel in the case history was more concerned that any new information regarding police visits to hairdressers should be seen to be passed in good time to the defence than about the substance of that information – indeed it was rather assumed it would be in the prosecution’s favour. As I describe in the next chapter, “truth” in the English trial procedure, is ritualistically referred to in speeches and oaths, but the concept of truth is somewhat different to the almost Aristotelian belief in “what is” or at least what was found in the French investigative procedure, having more in common with a Lockean empiricism proportioning agreement to a fact to the evidence for it. Rather than working towards a holistic truth of correspondence to the facts taken as a whole, the English system pragmatically accepts a coherence or consensus theory of truth – using selected facts to create a coherent account, they hope to achieve consensus in at least a majority of 12 citizens. Working from details – the facts of the case the prosecution has to prove – they use induction to persuade the jury of their account, in what Goutal (1996) argues is a precisely opposite way to the French trial process which works deductively from concept to case presented.

Just as it is possible, in today’s gallic criminal justice system, to see the French post-revolutionary desire to leave the unpredictable justice of the regional *Parlements* behind with their new system of predictable Codes enacted through bureaucrats, one can also see the influence of history in the current English processes. It could be said that the pragmatic English mindset never lost its ideal of the medieval ordeal by battle as a method of settling disputes. A system of courts was in place in this country prior to the Norman Conquest (the Hundreds courts) and the influence of the Royal Courts continued afterwards. The early involvement of a civilian jury in serious cases meant that rules of evidence – including that banning mere hearsay – had to be quickly

introduced to protect the jury from being deceived (David and de Vries, 1958) and the formation of a criminal Bar in the Georgian period reinforced this in a way that never happened in France (Baker, 2002: p 510)

However, the disparity between the English and French systems can be over-emphasised. Perhaps I am myself guilty of constructing a case rather than searching for the truth. I deliberately chose to isolate a process in one country that does not exist in the other. This was done in part to exemplify the complexities of comparison. To compare quasi-equivalents – for example roles that have the same label - can result in a misleading comparison if they do not have the same function and status in the process or in the eyes of society or if part of the role in one country is performed by someone else in another. For example the prosecutor or *Procureur* in the French system has a slightly different role and certainly a different status from the CPS prosecutor in this country (see Chapter 2). But to compare such divergent events can be equally misleading, making out extreme divergence when convergence can be found.

There are some similarities between the French *reconstitution* and the English case conference. They take place at a stage in the process after a suspect has been identified and the police have lost some power over the case –while this is greater in France where detectives act almost entirely in a support role, I will argue in the next chapter that the English police have also lost their power of “narrative control” to the prosecuting barrister by the time the case conferences begins. While the prosecution is reliant on the police for their initial information, they can construct their own case to an extent – by both excluding and highlighting information given to them by the police and asking for additional verifications to be made to bolster their view of how the murder scenario should be portrayed.

In both events, too, despite any rhetoric that might exist honouring the rights and position of the victim, it is the suspect and his or her defence team, who are centre stage – who are asked questions first at the reconstruction and the basis of all decisions and thoughts at the case conference. Both events take place in secrecy shielded from the

media if possible (this is more possible for case conferences which take place in the secret recesses of the court [Rock, 1993] and involve fewer participants who could or would want to give information to the media). The extent of this secrecy suggests an interesting anomaly in that in France, where the secrecy under which the investigation is undertaken is stipulated in statute, the events of the *reconstitution* do eventually come to light *via* the written record which is kept of the investigation, whereas in England, where events are seemingly more transparent and justice must be seen to be done, the proceedings of the case conference remain secret, even, or especially at, trial stage.

Some reconstruction-like events do take place in England. The *Murder Manual* includes a section on the use of reconstructions as part of the investigation. Although the *Manual* suggests the use of reconstructions to test witness accounts, the main purpose of most reconstructions in this country is related to seeking publicity to locate witnesses. “Anniversary appeals” – a re-enactment of the last movements of the victim on an anniversary, often seven-day, of the attack primarily to attract media coverage to reach witnesses – are common; there are also isolated tests to see if particular aspects of the case add up scientifically – for example, in the case described in Chapter 3, a flotation test was used to assess how far a suitcase could have travelled given the prevailing tides and weather conditions. Reconstruction rooms exist in some crime scene offices where there is a capability to reconstruct incidents and video the reconstruction as an aid for juries. A more French-like reconstruction aiming at assessing the compatibility of witness statements was held during the investigation into the killing of American artist Margaret Muller in London in 2003 (BBC website, 2003). Early in the enquiry, more than 100 witnesses were brought back to the scene of the crime by the police and asked to retrace their precise movements, and their accounts were subsequently mapped onto computer software. Through this exercise, detectives were able to establish several missing individuals who had yet to come forward. These examples suggest that investigators use the reconstruction process to some degree either to better understand themselves, to assess the true situation or assist the jury in its understanding. There are also occasional crime scene visits by the jury during the trial (see Chapter 6); but all lack the confrontational aspect of a French reconstruction where different interpretations are tested.

As regards English style case conferences, cases are of course discussed in private in France by the detectives and their hierarchy, between the detectives and the prosecutor, between the detectives and the *Juge* and by the *Juge* and *Avocat Général*<sup>9</sup> “to get their take on things, to get the context” (F397), though some AG are reluctant to admit this. But what is lacking is a discussion of which facts from the case can be transformed into useful evidence in court; instead they talk of what ‘really’ happened and ‘the truth’. This again suggests a refusal to designate crime as merely a legal construct provable by the production of certain pieces of evidence, as in England, and has implications for the nature of the data the French collect about an offence and an alleged offender. Because French officials talk about the crime event as part of a social reality, as opposed to legal reality, the French dossier contains information about, and the trial hears details of, all parties’ intimate and social existence. Very little appears inappropriate.

Not all reconstitutions and case conferences live up to their inquisitorial or adversarial ideals. Some reconstructions are not needed in order to confront witnesses and are done by the *Juge* – who after all is just a civil servant not a legal saviour – only to bolster the case and ensure the dossier cannot be criticised at court. Sometimes the rhetoric of victim participation is not borne out in reality when families are left out in the cold – literally in the second case described above – not really following what is going on. Sometimes there is doubt expressed even in case conferences by one of the parties about the guilt of a particular accused. While this can be unnerving in that it implies the case being made is not clear-cut, it does at least suggest that the construction of the case in team investigations is not quite as inflexible as McConville *et al* (1994) argue and that alternative viewpoints are allowed to be heard. The element of doubt also suggests a somewhat more Popperean model of scientific investigation via conjectures and refutations. Some element of construction is also apparent in the French process of *reconstitution* because if confrontation does not work and witnesses do not converge their statements in line with each others’, ‘the truth’ – far from springing genie-like onto the scene as might be imagined from the words of some of the *Juges* I spoke to – has to be collated in some sort of reconciliation of conflicting versions. Even holistic

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<sup>9</sup> The *Avocat général* is the title given to the *Procureur* in the higher courts.

understanding cannot always be achieved in the event of vastly different perspectives, and often it is the balance of probabilities that allows the *Juge* to send off the dossier to the tribunal process, and an eventual jury to reach a decision on the possible guilt of an offender. In this case, the event of the reconstruction, when the truth was supposed to be revealed, forms merely one more piece of evidence and the reasoning process at work is actually akin to one of inference, similar to what Atkinson (1978: p 111) imputed to coroners in assigning a suicide verdict. Atkinson argued that coroners carry out what in America are dubbed “psychological autopsies” based on the evidence of the dead person’s life history, their psychiatric record and what they had said to other people. These “cues” are then used to “infer” a verdict of either suicide or accident. The nature of the cues used – in terms of witness testimony – are identical to those which go into a French dossier.

In the final analysis, the question that needs to be answered is this – do the processes of *reconstitution* and case conference make a difference? Does the *Juge* considering all sides of the story make a difference to the way in which the detectives think about what they do and their attitudes towards the suspects? Is the information that detectives provide for the *Juge* and Counsel essentially the same? Does it have an impact on the outcome of the trial? The answer is both “yes”; and “no”. It is undoubtedly true that the French dossier contains information that would not be found in an English case file. Detectives, though not necessarily those who were involved in the suspect identification phase of the investigation, are often required by the *Juge* to interview witnesses and locate documentation exculpatory to the defendant often at the behest of the suspect’s lawyer. French detectives and *Juges* ask, and expect to receive answers to, questions about a suspect’s personal background and motivation. A suspect will be confronted in public about his or her possible participation in the event. There is a belief that the truth is out there and will manifest itself, set against a tradition of suspect confession. French detectives therefore are far less concerned than their English counterparts about the outcome of the trial process. It will be a verdict not just of their investigatory prowess but of the whole context of the *affaire*. In England, detectives and prosecutors almost

never talk about ‘truth’<sup>10</sup> – they talk about ‘the case’ and evidence and factors that might undermine ‘the case’. The consequences of this has to be a narrower focus, and a more beleaguered atmosphere. It is impossible to know for sure how much difference this makes to the final outcome, whether the numbers of guilty suspects being found innocent or vice versa is greater or lesser in either system. This is because statistics for the various parts of the systems are not comparable - although more French suspects are convicted at crown court, a substantial number are ‘cleared’ earlier in the process<sup>11</sup> – and there is no way of truly knowing who is really guilty.

The following chapters consider the trial processes of the two cases the investigations of which were described in Chapters 3 and 4. A comparison can then be made of the information that is available pre-trial, that which is presented in the trial and what use is made of it.

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<sup>10</sup> As always there is an exception – one officer told me for him the interview process was about truth, not evidence.(E145).

<sup>11</sup> Figures from the *Annuaire Statistique* 2004 published by the *Ministère de la Justice* (2004) suggest an acquittal rate at the equivalent of Crown Court of around 5% compared to almost 20% (2006 Ministry of Justice figures) in the English court but it has to be borne in mind that the figures relate to different offences the two roughly equivalent courts deal with. 10% of the cases involving serious crime that are assigned to a *Juge* are discontinued.

## **Chapter 6: The English trial and re-trial**

This chapter describes the trial stage of the English case, the investigation of which was detailed in chapter 3. This case had two trials because the jury were unable to reach a unanimous verdict after the first. The two trials are described below. A discussion section concludes the chapter.

### **The first trial – “match fit?”**

Week 1 - The Case Officer, IO, SIO, the official and the unofficial FLOs – one of whom also looked after the witnesses in general, Exhibits Officer, Disclosure Officer, arresting officer and interviewing officer attended the Crown Court for the first day. The Case Officer, Exhibits Officer and FLOs were present daily for the following four-and-a-half weeks of the trial, with regular visits from other officers from the team who were either giving evidence in this case or in another of the team’s cases. The IO was there at some point most days. The Exhibits Officer and FLOS were busy rushing around fetching exhibits, checking facts, locating statements, and shuttling people for most of the duration of the prosecution case.

The case was delayed for a morning because of the late arrival of a defence forensic report on the suitcase which the prosecution wanted to consider. This expert had not himself examined the suitcase but based his evidence on the working notes, reports and tapings and samples of the prosecution fibre expert. The officers discussed how they thought the case would proceed. The Exhibits Officer expected to be attacked by the defence on the quality of the “continuity” of exhibits – the potential contamination that could have been caused by the way they were handled and stored - as a way of excluding evidence. He was packing 30 boxes of papers and exhibits into the store cupboard outside the court room allocated to the case. He had to move these boxes twice more during the first two days when the case was transferred from court to court. A total of 70 prosecution witnesses had been warned that they might have to give evidence. One of the victim’s sisters who had flown in from abroad had only arrived that morning due to a problem with her visa which the FLO/Witness Officer had had to



resolve. The Case Officer was twitchy and could not sit still. The CPS caseworker told the police team that she had been told by the defence that they had advised their client to plead guilty. The witness officer told me that she was more certain now than when the defendant was charged that he was guilty – what had made her certain was his reaction when his house was returned to his family, he had refused to let the victim's relatives have personal items back. This had led her to think he was not the devoted husband he declared himself to be.

The Jury was selected after lunch. There was quite a large panel of prospective jurors as the trial was listed for six weeks and some of the panel presented reasons why they could not be away from their normal activities for such a long period. The CPS caseworker was pleased when three women were chosen first as she felt they would be less understanding of the defendant than men, but the final jury was 6 men and 6 women. The Case Officer was satisfied there were no young Asian men who might empathise with the suspect.

The following morning the new jury was introduced to the court by the judge who told them they were “fact- finders” who must find the truth from the evidence put before them (E423). The IO had to go to a meeting relating to another case and missed the opening speech of the prosecution, but the Case Officer told him it was very good and stuck closely to the written version that Counsel had given to them the previous day. The victim's brother, who had been given special permission by the judge to sit in the well of the court with Counsel, solicitors and police, was not so impressed and asked the IO if “that was all they had” (E424). I think he thought it was the prosecution case in its entirety. Reports of the prosecution opening of the case appeared in many local and national newspapers and broadcast media.

The first two prosecution witnesses were the victim's best friend and her husband, with whom the victim had gone to stay after she had left her husband's family home before the couple had bought their new house. The following days saw a procession of witnesses - what seemed a very large number of fellow students from a course the

victim had recently attended; a man who stayed in the house next door to the couple during the week; a work colleague who had seen the couple arguing; the woman neighbour who heard an argument; her boyfriend; and the man from whom the couple had bought their house. Each witness gave evidence-in-chief, replicating to a large extent the evidence in their statement under questions from the prosecuting Counsel. They were then cross-examined by the Defence Counsel. Defence Counsel said: “Basically, when trying a murder case you look at what the key features of the prosecution case are and then you prepare a mirror image to deal with those features based on the instructions you receive from your client” (E490). The Senior Prosecution Counsel was coming in for some criticism from the police team with his constant demands and changing of witness order, which was discussed at the end of each day’s court session together with which exhibits would be required. Counsel wanted all the victim’s outer clothing from her home to be identified by her family so that he could say that no outer clothing was missing. Because of this, the Exhibits Officer had to re-search the house and the FLO repeatedly had to get the sister to look through the clothes and write up statements. The Court rose at 4pm but the Exhibits Officer did not leave work till after midnight. The IO did not see the need to identify all the clothing because he said one could never say for certain she had not been out to buy a new coat the day before her murder and was wearing that. He asked the others if they agreed with him.

The next witness - the defendant’s mortgage advisor - failed to repeat in court what he had said in his statement about the defendant telling him he felt responsible for this wife’s death. The defence Counsel said “Ouch” *sotto voce* in court and laughed at the prosecuting Counsel. Prosecution Counsel was still asking about the victim’s outer clothing and got angry with the police team because one of the witnesses arrived late at the court as he had been reading his statement. Counsel said that that morning had been very bad for the prosecution.

Family members then gave evidence – the victim’s sister and her husband, who took a long time to grasp the concept of hearsay evidence and kept trying to tell the jury about conversations that had happened out of the defendant’s hearing, which is not allowed.

They both spoke about how the couple had met and the problems they had had before they moved into their new house. The sister said that the victim would never leave the house in winter without some form of outer clothing, she was always reminding others to take a coat outside. Towards the end of the first week the judge asked Prosecution Counsel to try to keep the family background evidence tighter. Counsel then decided not to call the victim's mother. This action annoyed the witness officer who had had the mother flown from overseas to be a witness, and then had had to tell her she could not be in court because she was a witness, and now she was not going to be called. The prosecution then called the victim's other sister who had to be escorted out of court twice when she broke down in tears – once during her evidence-in-chief and once while being cross-examined. The FLO said her outbreak was because she had not started facing up and dealing with what had happened yet. She talked about two things which she had not mentioned before. She said she and her sister had been in the habit of leaving almonds soaking in water overnight to eat for breakfast and that when she had arrived at the couple's home the day after the disappearance she had found a bowl of almonds in the kitchen, which had struck her as odd as, according to her brother-in-law's version of events, her sister should have eaten them for breakfast. She also said her sister took her rings off when she had had an argument with her husband. The prosecution barrister said to the IO that the evidence of this sister had been “devastating” to the defence.

The court then adjourned for legal argument relating to one of the next witnesses – the detective from the neighbouring force who had rung the murder team to identify the body as his missing person. Since that time, he had been involved in an off-duty incident which had resulted in a criminal damage charge being brought against him. The defence wanted to tell the jury about this but the judge said that as it had not been adjudicated upon it should not go in. The judge had also received the first of what was to become an avalanche of questions from the jury. Previous to this, the two Counsel had thought that the jury looked indifferent. The jury question asked what the defendant and the victim had been doing the morning of the day he said she disappeared – “Presumably they meant what did the defendant say they were doing”, mused

Prosecution Counsel. The police discussed the implications of this question for how the jury were thinking. An increasing number of notes were also being passed between the defendant and his team. Defence Counsel told me: “Some defendants get obsessed with detail but it isn’t very helpful for me as I cross-examine” (E490).

The final witnesses for that week were the work supervisor and friend of the defendant who had visited him after his wife had been reported missing. Although the prosecution called him, only the defence asked him questions. Prosecution Counsel explained to me:

There are two reasons for calling what might seem a peripheral witness like this. One is that it is the role of the prosecution to give a fair overview of what the two sides know. Properly, the prosecution has to present a balance. Also, tactically, with a wide focus case like this, you don’t know what the defence will be so you have to cover all the angles, put all the nails in. Efforts are made to focus issues before the trial so that the trial can be a well thought-out, ordered process but it’s often the case like this where you get a late defence statement and the defendant did not answer questions and you get very little narrowing of issues (E498).

Once they had given evidence, the family of the victim – her mother, sisters and brother-in-law - joined her brother in court to listen. Occasionally they had to be reminded by the officers not to nod when evidence was given that they obviously agreed with as, although sitting at right angles to them, it was possible for the jury to see them. They did not attend every day and quite often arrived a little late as they had to cross the city. The victim’s mother was staying at a hotel paid for by the CPS as she was originally a witness. Many days the woman officer acting as a FLO tried to greet the family at the court entrance and saw them out of the building at the end of the day. They chatted to her and hugged and kissed her saying she made “everything so much easier for them” (E439). The FLO said that the victim’s mother had called him her “adopted son” and had invited him to visit her in Pakistan. Senior Counsel spoke to the family as soon as they had all given evidence. “Prosecution never meet their witnesses beforehand. The first you see of them is in court. The reason for this is so you can’t be accused of coaching them,” Counsel said (E499). He spoke briefly to the family on a number of occasions as the trial progressed.

Week 2 - At the beginning of the second week of trial, the jury were taken on a visit to the scene where the suitcase had been found. The judge had pressed for this; and also for the prosecution and defence expert witnesses to meet. The latter never happened and Defence Counsel told me: “ You’re almost compelled to have these kinds of meeting between experts to establish common ground in civil jurisdiction<sup>1</sup> but they are only starting to be encouraged in criminal. It’s also very rare to have a scene visit. Usually because of logistics and how often things go wrong” (E490). The judge, court clerk and shorthand writer, Counsel and jury walked over the scene as the prosecuting Counsel talked them through where the witnesses they were about to hear had been to assess what they could have seen. The defendant attended the visit but kept his distance from the jury as did the police officers.

When the parties returned to court, the jogger witness gave evidence. One officer described her evidence as “pivotal”. “If they believe her, they convict”, she said (E436). Defence Counsel, a “veteran” QC according to newspapers and “quite a nice bloke” according to one of the police officers, “pleasanter than ours” (E438), spotted that she was wearing glasses in court and asked if she had been wearing them jogging. She protested they were very weak and that she wouldn’t need to do so. The IO sitting in court said that it was down to interviewing officers to check that sort of thing.

The following morning the hearing began late because one of the jurors had had a car accident. This was explained to the waiting witnesses and the judge apologized to them when court started. A series of suitcase witnesses then gave evidence – the man who had not seen the case, the man who had eventually reported it, and a number of witnesses in between, whose statements were read<sup>2</sup> to the court. The man who had reported the case mentioned that he had walked past it once without seeing it. The IO asked me if this “had come out” (E440) – if the jury had understood from this witness’s evidence that it was possible not to notice the suitcase even if it were there. The

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<sup>1</sup> There was speculation that the Judge was keen for such a meeting in this case because he himself had a background in such civil cases.

<sup>2</sup> The statements of witnesses whose evidence is accepted by both sides can be read to the court.

statements of the first officers on the scene and the on-call MIT were also read to the court.

The officer from the neighbouring force who had dealt with the original missing person enquiry was the next witness. The defendant had accused this officer of being racist during one of his earlier court hearings saying this was why he had failed to co-operate with the police later. The MIT had deliberately kept this information from the officer in order to get a believable natural reaction when he was accused in court. The evidence of other officers from the neighbouring force was also heard live and read from statements. The pathologist came to court in person and, after being led through his qualifications and report in detail by the prosecution, the defence had no questions for him. The judge asked why, if this was the case, his evidence could not have been read. The pathologist told me: “This was a relatively straightforward case. I never heard anything from the defence expert so I imagine he found the same as me. In some cases, opinions differ, usually in interpretation. Sometimes you get asked by detectives if a particular interpretation of theirs fits in with the physical signs or my views on the differing ways it could be interpreted by the defence. But not in this case” (E585).

The Prosecution Counsel’s performance was constantly appraised by the police officers. The IO said he was quite subtle in his questioning but that he would bring it all together in closing. There was further legal argument about whether the victim’s correspondence with the defendant over the years of their relationship could be included, the defence claiming it was more prejudicial than probative – it would create a bad impression of the defendant without assisting the jury to decide on the facts of the case. The prosecution said it was good evidence for the state of the relationship and had been partly compiled in answer to defence requests for copies of any letters seized in the couple’s house. The judge ruled that the letters should be heard on the test that if he were a juror he would have been surprised if he had not been shown them. The IO was keen to have mentioned in court a letter written by the defendant’s solicitors claiming that the victim was murdered because of credit card fraud within her family, but Counsel was against this saying he did not want to suggest an alternative suspect. “Basically it’s down to

Counsel who they call, we provide discrete facts, the odd supposition, evidence even, but it's the barrister who authors the story, it's he who decides what to present in court," said the SIO (E596). Another officer on the case agreed: "They ask for things, you give it." (E690).

The IO said the next day was an important one for the police – a heavy day of police evidence. The CCTV Officer described his observations and experiments, showing the jury bits of footage from the relevant cameras. The defence picked up on three cars that could not be definitively eliminated as the defendant's and suggested looking for a petite Asian woman dressed in dark clothing shopping in a city centre on a Saturday was like looking for a needle in a haystack. He asked if looking for a single woman also discounted the possibility she had met up with somebody else. He questioned if it was not easier to spot the officers' car, which was bigger than the defendant's and had a white piece of paper stuck in the windscreen. The jury asked if there was CCTV footage of a visit to the shopping centre they had been told about, made by the defendant and his sister-in-law to ask shop staff if they had seen the victim. The Exhibits Officer then gave lengthy evidence, mainly confirmative, regarding the provenance, storage and labelling of each exhibit which, if not already used in evidence by other witnesses, he produced to the court. Defence Counsel, who had been in daily contact with this police officer over his own need for statements and exhibits, was very respectful of his expertise. Another officer, the original FLO, who had been warned that he might have to give evidence and had given up a course in order to wait at court, was not called.

The next set of witnesses were the hairdressers. Their evidence took some time because many of them needed interpreters and one was deaf. No-one had appointments for the victim the day in question but some did not have appointment books either. One said she had had her premises broken into during a dispute with her landlord and lost her records but had previously told police her records were at her home address.

More police then gave evidence – the arresting officer and the interviewing officer who had shown the defendant the photograph of his wife. He was attacked about this by the defence but he said it was a tactic to try to talk about how difficult it must have been for one person to get her into the suitcase. The prosecution read all the prepared statements the defendant's solicitors had prepared, and the interviewing officers' repeated warnings to the suspect that following his lawyer's advice and not answering any questions might not be the best course to adopt.

A representative from the mapping unit with the graphic from the riverbank was the next witness giving very technical evidence on how the mapping was produced with extrapolated data. Everyone in court laughed when the defence said he had no questions. A statement from the distributor of the suitcases was read to the court – he could no longer be found but the defence had agreed to the statement being read out as efforts had been made to find him.

A police officer gave evidence of the defendant's financial situation but no mention was made of the false details he had entered on his mortgage applications. The officer said: "It's not the truth which comes out here. A deal has been done with the defence over this so the prosecution can suppress something else" (E453). But Counsel said: "You have to ask how this information would have helped. In this case it was probably more prejudicial than probative and you have to have an eye for the Court of Appeal."<sup>3</sup> Financial issues were not at the core of the case. Although with this judge's rather unusual test of 'would the jury have expected to know?', we probably should have included it." (E502).

Week 3 - The police expert on cell site analysis was the first witness of the new week, followed by a representative from the mobile telephone company used by the defendant about what records did and did not show. He said that if a call was made to a telephone and was abandoned before either somebody answered it or it went to answerphone there

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<sup>3</sup> Defendants can be given permission to appeal against conviction or sentence at the Court of Appeal on certain grounds including the inclusion of evidence that they judge should not have been allowed to go before the jury.



would be no record of it. There was another small drama because the defence appeared to have data which suggested the defendant had made more calls than the police had said had been the case following the disappearance of his wife. The IO and the Exhibits Officer had to check this out with the office but no further mention was made of it.

The IO said the next day was another important day for “us” – the fibre expert was to give evidence. The team as a whole were “on call” this week and over the bank holiday weekend when most court staff had four days off, the team had been in work for three days having taken a “crap” new case (E456) . Some officers were also doing further work on this case – the Exhibits Officer was compiling a summary of all continuity evidence. This followed a question to the fibre expert from the defence asking him if his evidence was predicated on there having been no contamination of any exhibits before they reached his laboratory and if he was satisfied with the standards as had been outlined and the expert saying he had no knowledge of what had happened to the exhibits before they got to him. The fibre expert was the last witness for the prosecution.

Twelve days into trial, the defence case started with the defendant giving evidence. There was a lot of interest among the police officers in the testimony, in finding out what the defendant was going to say. Three or four officers were in court at any one time with two taking permanent roles, one taking notes and the other coming in and out of court answering queries raised by Prosecuting Counsel and other team members. The Case Officer did not go into court, he told me he was superstitious but he was also working on another case which was due to start trial the following week. Some of the officers were critical of the judge for being too conciliatory of the defendant’s comfort always saying ‘Good Morning’ to him and smiling at him, which they thought might create the wrong impression with the jury. The defendant was giving evidence on the date of his wife’s birthday and he was crying. The judge apologized to him for not remembering the date and thanked him for giving evidence. The jury continued to ask questions as Defence Counsel steered his client through his version of what had happened. In addition to the account of the shopping trip, he told the jury that the

couple had spent most of the morning of the disappearance in the bath with some toiletry products she had bought. They lunched on the remains of the meatballs they had eaten the night before. Conveniently the police officers, who were discussing every last detail of what the defendant said, thought, matching his account to her stomach contents at autopsy.<sup>4</sup> The scratch mark on his neck had been caused during love making, he said. He said his sister-in-law had invented her story about him saying he had done it shaving. When he had driven his wife to her hairdressing and shopping trip, the defendant mentioned for the first time that she was wearing a shawl over the black trousers and black top that he had described to the missing person enquiry officers. He had placed the almonds in the bowl after he had returned from dropping his wife off ready for the following day. He had rung his wife many times but hung up before it went to answer machine. He had gone to the shopping centre and visited her usual hairdressers although by this time they were shut. The first jury question related to the police officer from a neighbouring force whom the defendant had accused of being racist. The jury asked why the defendant had telephoned this particular officer about the identity of the body found in the river if he had previously made racist comments. The defendant answered that that was the only number he had and one of the officers left court to check from the statements of the uniformed officers who had taken the original missing persons report if they had left a number. She discovered they had but this was not subsequently mentioned in court. The defendant said his sister-in-law had brought a number of duvets and sheets to his flat for her and her children to sleep in. He denied there had been any really bad blood between his mother and his wife, just two women in the same house not always seeing eye-to-eye. The victim's family were now convinced of the defendant's guilt and said he appeared to be a broken man.

Cross examination began and Prosecuting Counsel started by asking the defendant what might have happened to his wife. How likely was it she had been abducted in the middle of a shopping centre on a Saturday without anyone noticing? Had she met someone, did he think? He went through all the letters the victim had written to the

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<sup>4</sup> If the victim had eaten exactly the same for Saturday lunch as for Friday dinner, the contents of her stomach would not help time her death.

defendant, which referred to problems in the relationship and the defendant's inability to stand up for his wife to his mother. Counsel repeatedly accused him of having killed his wife - "There was no point in ringing her, was there, because you had already strangled her?" The police mood was ebullient. Even the Case Officer had cheered up. The officers had written a number of notes to Counsel relating to various points made by the defendant. At lunchtime they carried on discussing the case suggesting things they could do to disprove what he was saying, for example checking if the victim had had sex to show the true state of their relationship. The IO said the defendant's answers were not a proper account but merely lines to fit round the prosecution case. The cross-examination continued into another day with Counsel confronting the defendant with the evidence of the prosecution witnesses who must have been mistaken if his account were to be true – the next-door neighbour and her boyfriend, the sisters-in-law, the brother-in-law, the officers from his home force, the cell site expert, the telephone expert, the jogger, his wife's best friend and her husband.

Another drama erupted with the news that the detective from the neighbouring force who was facing charges relating to a drunken incident had been found guilty of criminal damage and resigned from his force. The defence wanted the witness to be recalled. The police speculated how the defence found out so quickly, although it had been in the local press. In fact, Prosecution Counsel had told the defence: "If we hadn't told them, again it could have been a Court of Appeal point" (E502). The judge ruled that the jury should be told as they had been "keen to take part in the questioning and this should be encouraged by giving them all the relevant facts".

The Witness Officer was not impressed by being told to do more photocopying for Counsel. A number of witnesses relating to the continuity of exhibits were called by the prosecution for the defence in order for the defence fibre expert to assess the adequacies of their methods. There was further drama when it was realized that the Exhibits Officer from the original on-call team who had responded to the finding of the suitcase had denied in court removing the case from the scene when, according to her statement, she had in fact done so. This was not noticed except by the Exhibits Officer from the

investigating team until after she had left the building and she was then not answering her telephone. The defence implied none of her evidence was worth anything if there were such discrepancies.

There followed two rather lacklustre character witnesses for the defendant, his work manager and childhood friend, neither of whom seemed to know him very well. The defence fibre expert, who had sat in court during the prosecution expert's evidence, made the point that "chemically indistinguishable" was not the same as "identical" and that the fibres on the suitcase might have been distinguished from those in the defendant's home if other tests, not currently available, were used. He added that the doormat and carpet fibres were very common and that there could conceivably be other homes with the same assortment of duvet and sheet fibres as this one. He could not, however, suggest how many without a database which did not currently exist. Nevertheless, he said the fibre matches found by the prosecution expert were "very suggestive" of the suitcase having been in the defendant's house and, asked by the judge how "very suggestive" equated with the prosecution categories of scientific significance, he used the words "strong" or the "very strong" that the prosecution expert had himself used. There was an adjournment for the expert to report back on secondary transfer which he had not mentioned in his report. This was the suggestion that fibres could have transferred from the body of the victim, which of course had also been inside her home address, to the outside of the suitcase where the fibres were found when they were either stored together or because of sloppy handling by the officers involved. Eventually he came back and said that the likelihood of this happening was very slight but that there could possibly have been transfer when the body was put in the suitcase by the murderer.

The team were very happy and were planning in the break to send a card with a newspaper cutting about the conviction to the original defence lawyers who had caused them "so much grief". The IO wanted to check how many hours had been spent viewing CCTV (750 in fact) for the conviction press release. But they soon came back

down to earth reminding themselves that juries “can do anything”. The Case Officer said he thought juries always made up their minds very early on.

Week 4 - The defence’s last witness was a pollen expert who said that the victim’s hair was so clean there was very little that could be gleaned from an examination of the pollen there, although the type of pollen prevalent in her home address was absent. The IO, listening in court to this witness, was impressed with the way she gave evidence and sent the Exhibits Officer out to obtain her contact details.

There was further legal argument about the inference to be drawn by the defendant’s “no comment” interviews. The prosecution sought to draw negative inference from this silence on just two areas of questioning – one, that he had never previously mentioned his wife was wearing a shawl when asked repeatedly what his wife was wearing when she disappeared knowing that any description he gave would be the one used by the police to find witnesses who might have seen his wife; and two, that he had never previously explained the scratch mark on his neck though again repeatedly asked to do so. Judge and Counsel also agreed that it was “safer” to offer the jury an alternative charge of manslaughter to murder “even though it is 100 miles from the defendant’s story” (Prosecuting Counsel).

Following the four days of defence case, the prosecution began three-and-a-half hours of closing speech, spread over an afternoon and morning, with breaks. Prosecution Counsel exhorted the jury to make their decision on the evidence presented and not any sympathetic feelings they might have for any of the people involved. He split his speech into three parts - the ‘true’ state of the relationship between the couple, circumstantial evidence pointing to the defendant’s guilt (from the sighting of the suitcase containing the body by the jogger to the muted response of the defendant when his wife disappeared and the lack of any CCTV or bank evidence backing up the defendant’s account of a shopping and hairdressing trip) and the fibre evidence linking the suitcase in which the victim was found with the home address of the defendant. In cases like this he said there would always be questions left unanswered – such as what happened to the

victim's purse and mobile telephone – but the jury did not need to answer them all. Outside court, Prosecution Counsel thanked the Witness Officer for all her hard work. She and the IO translated this into an apology for all the pain he had caused changing witness order and wanting items of clothing identified. Counsel said every time he approached the Case Office his face fell.

The defence closing speech began in the afternoon session. Counsel told the jury that the police had speculated that the defendant was guilty and then “worked backwards to find points, however trivial, to back it up”. There were big gaps in the prosecution case, he said, and much of the rest was “tittle tattle” and “flim flam” made up by a brother-in-law who was jealous of the younger male in the family and barely remembered by witnesses who made statements 12 months after the event. As for the fibre evidence, experts do get it wrong, he said, and, even at its worst, it only linked the suitcase to the couple's home address not to the defendant himself. Defence Counsel maintained that the evidence fell short of the standard required for a conviction for murder. The defence speech finished the following morning.

The Judge then began summing-up, urging the jury to come up with a “true verdict”. The judge referred to his summing up as “the third dimension” to the Prosecution and Defence closing speeches. The Exhibits Officer started to clear out the exhibits from the case from the cupboard attached to the court room in order to make room for the next trial. Prosecuting Counsel said this was bad luck. A juror fell sick and there was a day's adjournment. The judge's summing up took a day in total. Two journalists who regularly covered criminal cases came into the court during the summing-up but left quickly when they realized the jury had not yet been sent out. The judge sent the jury out at 10.23am on the 19<sup>th</sup> day of trial – a Friday. The time was noted by officers who were running a betting ‘book’ between themselves on verdict and length of time the jury was out. Prosecution Counsel checked that the judge had told the jury to elect a foreman: “It is part of the prosecution role to ensure all the formalities are completed” (E497). The IO had lunch with the victim's family. The victim's brother-in-law had been very upset when he heard what the defence barrister had said about him in court

and had wanted to be recalled to address the issue. At 2.30pm the jury asked to see the photographs of the couple together, which provoked much discussion about what it was they were debating. Junior Counsel refused to be drawn on how he thought the verdict would go: “It’s a mug’s game to second guess a jury” he said (E502). One of the officers said the jury would come back later that day – “to avoid having to come back to court on Monday” (E494). But the end of the day passed and the jury were sent home for the weekend.

Week 5 - The following Monday the jury were sent out again and at the beginning of the afternoon they sent a note to the judge saying that they had reached an *impasse*. The judge then said he would accept a majority verdict. There was much speculation among the officers, who were mingling with other members of the team who were dealing with a case in another courtroom, about what was going on. The Case Officer on the other case, a case generally deemed to be quite weak, said it would be funny if he got a result and this one did not. The Case Officer said he felt sick. The IO said to me it would be devastating for the family and the team, who had put “loads of work” into it and really cared about it. Senior Prosecuting Counsel talked to the family and the IO warned them about the possibility of a hung jury. The CPS caseworker was horrified the IO thought this was a possibility and said she did not want her first murder case to be hung but she was worried about the fibre evidence as Counsel had said to her they had been lucky defence had not pressed harder on the secondary transfer aspect.

The next day the jury was sent out again. The Case Officer was now quite cheerful, possibly because he had accepted the prospect of a re-trial. He said prosecuting Counsel looked awful. He came out of court convinced the jury was hung and saying it was bad news for everyone. – “you, the family, my career”. He was speculating that the jogger evidence was the weak link, putting too much weight on a fleeting recollection. After lunch, the jury sent another note asking if 9-3 would ever be sufficient. They were called back in and discharged, the judge telling them they had done their duty and not to feel bad.

The IO was quite philosophical about the verdict saying that the retrial will be “an opportunity to re look at the evidence” (E506). He said retrials were often shorter. Prosecuting Counsel was the worst hit, apologizing to the family. The victim’s brother-in-law said it was not his fault but Counsel refused to be comforted, saying that it was all judged on results and he had not succeeded in getting one. Counsel were trying to arrange a new trial date when both barristers might be free, which would be six months away. Bail was discussed in court. Prosecuting Counsel opposed it, saying there was a strong case against the defendant, to which the judge replied “not that strong”. The bail decision was delayed until the end of the week when defence would have more information on sureties.

Outside court, the IO said ‘shall we go to our meeting?’ and the police officers retired to the pub. The atmosphere was reasonably upbeat. The officers discussed the case and speculated on who “the three” were, assuming the nine were in their favour. The FLO said he saw the foreman and two of the older women walking off separately and these three were in the frame. The officers discussed how difficult it might be to get witnesses to return for a retrial and what could be sharpened up. The IO didn’t think the hairdressers added very much. The officers discussed re-searching the flat. The IO suggested that looking at the video taken by the original missing person enquiry officers might be more useful to see how the flat actually looked when the couple were there and in particular to see if the almonds of the victim’s sister’s testimony could be seen. Gradually other topics of conversation arose but every so often somebody would mention a new thought about the case.

### **Activity between the first trial and the second – “an opportunity to re-look at the evidence”**

Two days after the trial ended the police team held a ‘debrief meeting’ to discuss the strengths and weaknesses of the case and what could be looked at again. Following a similar meeting with CPS and Counsel, the police held a strategy meeting to see how the case could be ‘progressed’. Senior Counsel had made a list of 80 points to follow up, some very minor, such as taking further statements from existing witnesses about details



in their accounts, for example the jogger witness and the extent of her short-sightedness; others more significant, relating to forensics and issues of the defendant's character and motivation that Counsel wanted to strengthen.

The fibre expert examined more of the fibres on the suitcase and matched further samples with items from the flat. He was eventually able to say that 27 fibres of 8 different types were microscopically and chemically indistinguishable from 6 different sources at the home address of the defendant. He added that one of the carpet fibres was in the wheel of the suitcase, where you would expect it to be if the suitcase had been wheeled over the carpet rather than if the fibre had been secondarily transferred from carpet to victim to suitcase. He explicitly ruled out secondary transfer in general on the grounds that it is unusual for more than 2 or 3 fibres to be transferred secondarily.

The evidence relating to telephone use was strengthened with more definite boundaries established for where calls were made and the numbers of calls made – the Case Officer said: “There's a gold service for cell site analysis, and a platinum. With the defendant's evidence about phoning his wife several times and getting an answer machine, we've gone back and now we have evidence that he just rang a couple of times and firmer evidence on the siting of the phone call Saturday night” (E600). Detectives were disappointed that they were unable to get authorizations to go on “a fishing expedition” delving into the telephone records of other members of the defendant's family to try to establish if he had had help in disposing of his wife's body.

The police obtained a transcript of the whole case from the court and created a grid from the defendant's testimony, highlighting inconsistencies and issues the victim's family disputed. Although the police did not consider the victim's family to be a problem, weekly contact was maintained with them through the woman officer to explain what was going on. The family were concerned about anonymous warnings they had received threatening them with death if they continued to give evidence. The IO compiled a list of matters that Counsel wanted to check, including clarification of which clothes were missing: “Counsel was very keen on that”. Further statements were

taken from the family, garnering more detail on the background to the relationship between the victim and her in-laws, particularly her mother-in-law. As the second trial approached, the FLO arranged tickets for the members of the family who lived overseas to travel to the hearing.

The CCTV officers decided to study all the relevant tapes again, taking into account the other possibilities suggested by the defence in trial – that the victim for example had met up with somebody else in the shopping centre and that therefore they should look for her among groups - and conducted a further set of experiments, this time walking through the shopping centre the defendant had said he had taken his wife to to assess the likelihood of her not being spotted on the various CCTV cameras there. The IO spoke to the Exhibits Officer from the on-call team who had contradicted her statement in court to ensure that next time she remembered what she had done.

One of the officers said: “It was 9-3 last time, we don’t have to do much in the second leg”.

### **The second trial – the “second-leg” “scrap”**

The re-trial started just over six months after the first trial. The two Senior Counsel for the defence and the prosecution were the same but both had new Juniors. One officer said he had been told that the defence barrister had been rated the best last year based on results, but the officers did not think he was that “sharp”. A number of officers from the police team - one of the interviewing officers, the Exhibits Officer and the IO - had moved from the team, but the Exhibits Officer and, to a lesser extent, IO were still at court for much of the time. The Case Officer sat in court and took notes. He said the IO had asked him to be present – “it’s important to have someone to listen”. Prosecuting Counsel had agreed: “I’m presenting your case and I need someone in there”. The CPS caseworker and the SIO both said that none of their colleagues could believe there had not been a guilty verdict last time – it was “bizarre”. Another officer said: “Although I like the idea of a jury of 12 everyday people making the decision,

sometimes they can be a bit perverse and you just can't understand why they've done what they have done" (E694).

Before the jury was chosen, there was legal argument between Counsel and Judge about whether or not to tell the new jury that this was a re-trial. Defence was in favour, saying it was best to be honest rather than using innuendo; prosecution and the judge were against telling them unless the need arose. The Exhibits Officer was chatting to the Prosecuting Counsel outside court about the case and said "it's going to be a right scrap, isn't it?" (E418) and Counsel agreed.

The prosecution opening speech was longer than in the first trial, and "sharper" said the Exhibits Officer. "That's because this time he knows the case," quipped the Case Officer (E569). Counsel made less of the jogger witness than he had the previous time. He said if she was right then the defendant's story was "a pack of lies" but she could be wrong and he would still be guilty. The IO said he was not putting "all his eggs in one basket".

The first witnesses were the best friend of the victim and her husband, following the order of the first trial. The Exhibits Officer kept saying that it was all "cleaner" than last time, as if reassuring himself. The Witness Officer got very excited when the victim's work supervisor mentioned a life assurance policy that the victim had. Investigation suggested the policy was not significant and, in any case, the Case Officer said that angle would not fit in with the Counsel's motivational theory involving family tensions between the victim and her mother-in-law. This aspect was explored in far more detail during the evidence of the victim's sister and her husband than it had been in the first trial. The defendant's mother had objected to the victim's sister's wedding because it was paid for by her husband-to-be and not by her stepfather as she felt it should have been and she kept insisting this was not going to happen with her son. She also objected that they had not met the victim's stepfather because he worked for long periods offshore. The defendant had asked his future wife and her sister not to tell his mother that their natural parents were divorced. After the couple had married and moved into the

defendant's family's home, the mother-in-law had criticised the victim for her way of life and she was left out of family events and decisions. After his wife left, the defendant visited her but kept this from his family. The victim's brother-in-law was asked if he thought the police were ever racist towards him. He said no, that in fact he was applying to join the police.

A number of witnesses referred to 'last year' or 'last time I was here' in their evidence, and it was not long before a question arrived from the jury asking if this was a re-trial. The question sparked speculation among the team about whether there was a police officer or someone with legal knowledge on the jury. The jury were told there had been a previous hearing relating to the case in which evidence was heard but that it did not end in a determination of guilt through no fault of either the defence or the prosecution. The form of words was agreed by all parties.

The pathologist again gave evidence in person and was pressed by the prosecution on matters such as how long the pressure would need to be maintained around the neck before death occurred (a minimum of 15-20 seconds) and what the murderer would have been able to see of the victim as he had his hands to her neck.

The arresting officer was accused by the defence of treating the defendant roughly and making racist remarks, injuring the suspect when he took his rings off and saying 'your type don't deserve these'. The officer denied this, saying he had remembered the defendant as being one of the most compliant he had ever encountered. He added that the suspect had made a "crying action". Defence Counsel misheard and said: "Crying act, why do you say 'act'?", to which the officer replied 'I didn't, I said 'action'". The officer said to me: "They shot themselves in the foot there. It really gets up my craw that I can get accused of being a racist thug but if I say to Counsel 'you liar' it would be Contempt of Court." (E604).

The victim's sister was having trouble getting leave from her job overseas to come to give evidence and the unofficial FLO spent a lot of time telephoning and faxing people

in order to obtain correct authorisations. The FLO said that she found this witness' evidence about her sister's rings and the soaking almonds the most telling. When she eventually gave evidence, two of the detectives told me that two women jurors were crying, and one of the men "had something in his eye". Defence had challenged the victim's sister about why she had left the country immediately after her sibling's death without making a statement to police. At this point she had broken down sobbing, saying "you don't know what he had done to my family, to go and identify your sister's decomposing body, and know that him (points at defendant) and his family are responsible".

The evidence from the man who had sold the flat to the couple was read and his description of the tensions he saw between them was consequently less vivid. The statement of the Exhibits Officer who had forgotten that it had been she who had removed the suitcase from the deposition site was also read.

There were fewer hairdresser witnesses called, but one added to his statement of last time that, although his salon was shut, he had been easily visible in the back of his shop doing accounts at the time the defendant said at the first trial he had been outside and no-one had knocked on the window or tried to catch his attention.

The officer from the neighbouring force who had been accused of being racist told the court he had an Afro-Caribbean girlfriend. When challenged by the defence on why he had not said this before, he said that he had had to ask her if she would mind him mentioning her in this context. A reporter appeared in court for this former officer's evidence. When he asked one of the team officers what the former officer's first name was, he was told "I don't know". The police suspected the reporter had been tipped off by the defence but were not going to make his job easy for him.

The fibre expert gave his supplemented evidence emphasizing that the chances of all the fibres being the result of secondary transfer was extremely remote: "I consider it much more likely that the suitcase was in direct and frequent contact with the defendant's

home address”. He said that fibres from the victim’s jumper had not transferred to the suitcase so the chances of other fibres transferring via the jumper from the home address to the suitcase was “extremely low”. Because the trouser fibres were made of a material that did not shred, he could not categorically say the same of them but thought the possibility unlikely. The Case Officer was happy, saying “We’re winning”.

Outside court, the officers were discussing what the defendant could have had as a defence to cover himself - one of them suggested that he should have said his wife had left him taking the suitcase from their flat. The Case Officer expressed surprise that the victim’s family had not been in court. The FLO said that she had been helping the victim’s sister and brother-in-law and their children find council accommodation as they had been asked to leave his brother’s house because of all the “trouble” of the trial – the telephone threats and the notoriety that the case had caused within the local Asian community.

The following Monday Defence Counsel reported sick. The court reconvened two days later by which time he was still not back. The officers speculated that there might have to be another re-trial because, if the Junior took over, that could be grounds for an appeal but the Judge ruled that the Junior Counsel was eminently capable of carrying on for the rest of the prosecution case but that he would order a re-trial, despite the distress of the family at giving evidence again, if there was any risk of unfairness to the defendant.

The trial resumed with the continuation of the CCTV evidence. Defence asked the CCTV officer if he had assumed that the victim had gone into town when she was dropped off at the back of one of the shops or had considered the possibility of her going the other way towards the residential area where there was no CCTV. There was a long discussion of the differences of camera angle between the time of the murder and that when the experiments took place and what differences it would have made to what was captured by the CCTV. The officer was sent away to write up a report on this matter.

The following Monday when the defendant was due to give his evidence, Senior Counsel was still not well and it was now clear he would not recover to finish the trial. A new QC was instructed and his first speech was a bid on behalf of the defendant to have the trial stopped on the basis that it would be unfair to him to continue with a new Defence Counsel. The new Counsel spoke of the rapport that could be built up during a trial between counsel and jury and that it would be lacking if he took on the case at this late stage. He would also be at a disadvantage not knowing the case in querying Prosecution Counsel's lines of questioning. The Judge ruled however that it was in the best tradition of the bar for a new Counsel to take over a case from another and that he himself would be alert to any irregularities. The case was adjourned until the following Monday for the new Counsel to get 'up to speed'. Although the officers were glad the case would continue and not go to re-trial, they were quite annoyed that they were not going to "crack on", or that the Junior Counsel was not going to step in. "It's not like even Juniors don't get paid enough," said one. The Prosecution Junior said that if her Senior had fallen ill, she would have had to step into the breach. One of the officers said the new Counsel "couldn't give a toss about this case, has already annoyed the judge and has an annoying laugh".

When the defence began the following week, the Defence Counsel made a short speech about how he saw the case, outlining how no one disputed that the defendant had loved his wife and that he had made the decision to get away from his family and move into their own home – "Was he the one just ten weeks later who killed her? With enough determination to hold his hands around her neck for upwards of 15 seconds?" The CPS caseworker said this speech had upset Prosecuting Counsel who had felt wrong footed in that it was unusual for defence to have an opening speech though she did not want me to tell the detectives in case it made them nervous. Prosecuting Counsel also claimed that the defence was leading their witness with questions such as "Your brother-in-law said he would talk to the police because he had had dealings with the police before, is that right?"

This time the defendant accepted that he had been weak in not protecting his wife from his mother, caught between two people he loved, but that he had ended his relationship with his mother and moved out. He did not remember his sister-in-law asking about the scratch mark, and said that if she had he would not have told her it was done while making love. It had been his solicitor's suggestion not to answer questions during his police interviews because of the lack of information coming from the police and that he had been too tired after three nights of no sleep since his wife's disappearance to think straight.

The prosecution cross-examination was less directly attacking than the previous time. Counsel told the defendant he was merely testing his account although still challenging him with not having the courage to face up to what he had done, to which the defendant replied flatly "I don't think so somehow" and "I have faced up to what I haven't done". Counsel asked the police to check out a number of things from the defendant's account – including whether a film that the defendant said he and his wife had been watching on the television the night the couple's next-door neighbour heard arguing involved a female and male shouting and crying. The CCTV Officer volunteered to rent the film and watch it that night - on overtime. When Counsel asked the defendant if his wife had had any enemies, he replied "my mother". "Has it ever crossed your mind that your mother may have been responsible for her death?" was the rejoinder from Counsel. "Possibly," said the defendant. "Possibly? Has it ever crossed your mind or not?" In the break Counsel asked police to find out if the defendant received visits from his mother in prison, which he then raised as an inconsistency in cross-examination. The IO did not value this line of questioning because he thought that even if the defendant did think his mother killed his wife they could have made it up afterwards. Prosecution Counsel was pleased with how the trial was going. There was another break for legal argument – this time Judge and Counsel agreed there was no need in a case of flat denial to raise manslaughter as an alternative to murder for the jury to consider.

The defence called a CCTV expert to give evidence on the police observation and experiments and a medical expert to testify about the scratch on the defendant's neck. The CCTV expert said that the test date camera shot cycle would increase the chances of



a car being spotted because the rotation of views was faster. Prosecution Counsel was said to be looking forward to asking a question suggested by the Witness Officer which was: - “Did you yourself manage to spot either the defendant’s car or the victim in the footage you were given”, to which the answer was “I wasn’t asked to”. The medical expert said that, judging from the photographs of the scratch which he had seen, it was a minor abrasion and “not the sort of mark associated with a severe fight”. A fingernail could have been pressed into the skin but with no dragging. The IO had asked for someone to arrange for the prosecution expert to sit in on this evidence but on the morning of the evidence, no-one knew if this had been done. Prosecution Counsel asked if the expert had been tasked by the defence to comment on whether the mark was consistent with a violent struggle, and when he said “yes”, said it was not part of the prosecution case to suggest there was a violent struggle; indeed the prosecution expert’s report read that the injury was probably caused by “pressure on the neck by a fingernail static and not being dragged”.

Prosecution Counsel opened his closing speech reminding the jury to decide on the evidence, not on sympathy. Although he said it was not necessary for the prosecution to prove a motive, he painted a picture of a young man who crumbled under the pressure of the tensions between his family and his wife. The jury should not be put off, he counselled, by the circumstantial nature of the evidence or by being told that circumstantial cases are weak as most murder case evidence is, by the very nature of the offence – often personal and conducted in private, without the luxury of a direct witness.

The Defence closing speech started the following morning. Counsel said the defendant had been arrested without evidence. He told the jury they needed to look for evidence that “would allow them to sleep in their beds at night”, evidence to determine not who it could have been if not the defendant, but whether it was the defendant who had killed his wife. He attacked prosecution “star witnesses” such as the neighbour who had supposedly heard an argument between the couple the night before she was reported missing, but who had not heard any noise or crying from the house when the whole family was gathered there waiting for news. He also attacked the jogger witness,

saying in a contest between her and the witness who had not seen the suitcase around the same time, the latter was the clear winner. She had had only a fleeting glimpse of the foreshore while he had been on the foreshore searching the ground for driftwood. He said that the witnesses found by the police to say they had not seen the suitcase the following day even though it was there had not given statements until 15 months after the incident and were therefore very vague. The jury was sent out at this point and Prosecution complained about a number of the points being made – that the defendant was arrested without evidence and that in fact these two witnesses who had not seen the suitcase were identified at exactly the same time as the man who had not seen the suitcase when the jogger had done so.

The defence went on to attack the fibre evidence. Having first warned the jury about putting too much weight on the word of experts, whom recent cases had shown can be wrong, he went on to suggest that the large number of different types of fibre found on the suitcase actually militated against the prosecution case as suitcases do not move around a house, people do. He suggested that it was more likely the fibres from the suitcase had been transferred via the victim's trousers. There were large numbers of unidentified fibres on the case and no evidence linking the case to the defendant's car or the defendant's car to the deposition site. At this point the judge sent the jury out again as he was not certain the point about the secondary transfer of fibres from the trousers had ever been made in evidence. There was lengthy argument about this before Counsel was allowed to continue.

The following day and a half the judge summed up, dividing the material into 9 "chapters". The jury was sent out at 12.57pm, five-and-a-half weeks after the beginning of the trial. The officers were pleased with the summing-up, commenting on the points that the judge had emphasized in their favour – for example, that the victim had appeared to go out shopping on a winter's day with no watch, purse, rings, or outer clothing. The judge had also allowed that inferences could be drawn from the defendant's silence during police interview on what exactly his wife had been wearing and how he had got the scratch mark on his neck. There was a question from the jury

about an hour after they had been sent out asking about the trial's re-trial status which the judge had promised to address them on in summing up and had not done so, which was quickly cleared up. The jury were out all the following day, putting no questions. The officers were again speculating what was going on in the jury room, surmising that they had to go through each of the judge's chapters, maybe an hour on each. The FLO was compiling an Impact Statement on behalf of the victim's mother, detailing how the murder of her daughter had affected her. She said although there was always a lot of waiting around at court, the majority of the time "I learn things – legal arguments, how barristers view things" (E691). Counsel was edgy but told the waiting family the jury had a lot to go through. The officers talked about the possibilities of another re-trial though the CPS caseworker said this would not happen.

The jury eventually came back at the end of the following day with a guilty verdict. Sentencing was adjourned until the following week. Outside the courtroom, the officers and Counsel were extremely pleased and immediately a group text was sent out to let everyone in the wider team know. The victim's extended family thanked every one and joined the officers in the nearby pub. The officers later went to the pub nearest their offices and were joined by other officers from their team. The atmosphere in the pub was happy but not jubilant – one officer said "as police officers we've won, as human beings it's still a sad story" (E394).

The following week the defendant was sentenced to a mandatory life imprisonment for murder with a minimum of 15 years to be served before parole could be considered. The Judge said "I regard your callous and calculated actions, even if they were in panic, in trying to dispose of the body, as a significant aggravating feature which wipes out any mitigation to be found in the lack of premeditation". One of the jurors, who had come to the hearing to hear the sentencing, spoke to one of the officers. She said the key things for them were the fibre evidence, the CCTV and the defendant's demeanour in the dock. The jury had not felt they could come back too early when there were so many points to consider. They had put all the information on a whiteboard to discuss it. They had indeed had a police officer on the jury. The police officers went out on a big

celebration that night to mark the result. Three weeks later the family of the victim invited the team out to a traditional meal in a private function room of a restaurant. Eighteen months later the family were still in contact with the police. The unmarried sister who had broken down in court invited officers to her wedding and the brother-in-law asked for some help with some immigration papers he had filled in wrongly while his mind had been distracted by the trial. There have been no appeal proceedings.

## **Discussion**

### **The trial - The test of truth?**

The report into the investigation and first failed prosecution relating to the death of 10-year-old Damilola Taylor in London in 2003 stated that the overriding objective in questioning witnesses at court was to “establish the truth” (Sentamu, Blakey and Nove, 2002: p 38). However, a number of researchers have questioned the adversary trial’s ability to do this, suggesting that it is only a partial tale that is told “concentrating on certain issues and certain evidence” (McConville, Sanders and Leng, 1991, p 105) and legally unable to present others; and that this is something accepted by all parties; Rock quotes a jury member who told him he and his fellow members accepted the “obscure silences and mysteriously unput questions” (1993, p 76).<sup>5</sup> Of course, some information is not available – in this case, police were unable to find out what happened to the victim’s mobile phone and keys, for example. Some gaps it was not legally possible to fill. I could not understand why a statement had not been taken from the mother of the defendant but officers said: “We couldn’t get near her”(E445) – it was never part of a provable case that she had any direct involvement in her daughter-in-law’s death and therefore the police had no legal right to interview her. Other information is excluded – for example, the false mortgage application details in this case. Although some police officers saw this exclusion as part of a conspiracy between defence and prosecution, it is probably more accurate to see it as redolent of the professional mindset of being seen to maintain procedural fairness. The decision to include or not a piece of evidence is not so much about discovering the truth but

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<sup>5</sup> Although one officer in my research wanted the process far more transparent - “Sometimes I think even the legal argument should also be done in public, to make everyone aware of all the circumstances “ (E494).

evidential probity, relevant evidence produced in an acceptable way. This acceptable way precludes most spontaneous narrative and also displays of emotion. Crying by witnesses brought the court to a standstill.

That this trial was not expected to reveal the “truth” of the case, what really happened, was demonstrated by the language the officers used to describe what went on in the courthouse. This courthouse was the “house of lies” and officers plainly said “it’s not about the truth”. The officers spoke about the trial process in terms of fighting and gaming – the trial was a “scrap”, a “second leg” which they could be “winning” and get “a result” or lose and face a debrief meeting. This equating of the court process to a game played by the “professional contestants” was noticed by Carlen (1976, p 90) in her study of magistrates’ courts. That for the officers this talking of games and winning was a front is suggested by the fact that while Counsel appeared happy talking about late defence statements and “equality of arms” and were disappointed if they did not win primarily on a personal careerist level, officers expressed anger and frustration if procedural irregularities released a defendant they believed was guilty.

The defence role was not seen by anybody as an opportunity to unveil the truth. They were there to attack the prosecution case. So the defence were not thought to be interested in finding out what could actually have happened to the victim if she had gone on a shopping trip after being dropped off by her husband, but only in pointing out gaps in the prosecution evidence suggesting such a trip never took place. In the first trial they attacked the CCTV officer for not having looked for the victim among groups of Asian women shopping, in the second for not considering the possibility that the victim had walked away from the shopping centre. In either event the defence expert had not looked for her at all, his remit was to attack the quality of the prosecution evidence that the defendant was guilty not to prove him innocent. Because of the limited nature of the defence responsibility, the trial is conducted around the limited set of data presented by the prosecution and a wider picture of the situation in which the crime took place is not required.

What the description of the pre-trial and trial stage of this case demonstrates above all is the untidiness and uncertainty of the criminal investigation process and that in eliminating some of the uncertainty one is not necessarily moving nearer the truth. A number of people read my account of this case in draft form and each came up with different questions about it. Many questions related to pieces of detail I had included that readers could not see the significance of. Some of these had seemed very significant at the time I made my notes but as the case evolved they lost some of their importance. Some of the questions I could answer, some I could not. Like me, officers were constantly checking things that might or might not be used in the final account. Within the particularities of this case, the work the investigators undertook between trials on the detail of the case suggests that sometimes an accumulation of information moved the case not in effect further towards the truth, but skewed the story more toward the prosecuting view.

### **The trial - “The true test”**

The trial was not only the end point but the lynchpin towards which all activity was geared – the “true test” of the investigation as the SIO from the Cromwell Road killings commented (Bennett, 2006, p 417<sup>6</sup>). A huge amount of officer time was spent facilitating the trial before but also during it – from photocopying to locating missing witnesses to writing new statements.<sup>7</sup> Everything depended on what was said during trial. This resulted in a potential for huge backstage dramas throughout the trial’s process – when someone did not say what they should have, or a person like the defence counsel fell ill. The trial had a dynamic feel - new pieces of information were still coming to light when witnesses gave evidence in court – in this case, for example, the almonds introduced by the victim’s sister during the first trial – and officers were still investigating matters that came up – identifying clothes, enquiring whether the defendant’s mother visited him in prison, checking whether a particular film contained crying scenes. Anything could happen with a jury, it was said. Within the oral tradition

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<sup>6</sup> See Glossary for details of the case.

<sup>7</sup> Not surprisingly some English officers liked the idea of “washing their hands of” the case when it came to the trial stage, when I explained what happened in the French system to them.

of the English justice system, some part of the proceedings depends on personality. The new QC in the retrial wanted another retrial because he claimed that he had not had the opportunity to build the necessary rapport with the jury; officers discussed the sympathetic reaction of the jury to the sister of the victim when she broke down in sobs. The aura of the trial as an event built up folklore and superstition – the case officer had heard somewhere that the jury make up their minds in the first five minutes; the prosecuting Counsel thought it was bad luck to empty the exhibits store before the jury had come back.

### **The relationship between police and the media - “The media as investigative resource”**

Innes (1999b) devoted an entire article to the use made by murder investigation teams in England of the media both instrumentally – appealing for witnesses to come forward or provoking offenders to make themselves known – and symbolically – helping to create the myth in the minds of the general public of a dynamic police force by depicting an active investigation into the most signal of crimes. The Murder Manual, published by ACPO in 2000, also devotes sections to the use of the media, impressing on SIOs the need to effect a “media strategy” to both use the media as a tool to help identify victim, offender or potential witnesses and also manage their demands in an effort to avoid the kind of shadow interviewing of witnesses that can threaten an eventual court case as occurred in the investigation into the deaths at Cromwell Road, Gloucester, in 1994 (Bennett, 2005). Here, detectives attempting to identify the skeletal remains of ten women felt the continual presence of reporters using cheque book journalism to buy up witness accounts, potentially invalidating them for court use. Like Innes, the Manual guidance recognises the add-on function of image management in any communication with the media by finishing with an admonishment to “Win the hearts and minds of the public.”

In the case documented here, an early action by the on-call SIO was to issue a “holding press statement” giving brief details of what had happened to a media already in part aware of something going on. Once a more accurate description of the victim was available, the investigative SIO issued another press release appealing for witnesses of

either a missing person or suspicious activity by the deposition site to come forward. This same SIO used the media again to try to re-contact an anonymous caller who apparently had information about the murder and again, in a more focussed fashion, to attempt to locate the wholesaler of the suitcase in which the victim was found. Near the end of the first trial the IO was thinking about a press release to celebrate the intricacies of the investigation. These activities represent an almost textbook utilisation of the media, involving management of their demands, utilisation of their resources for the investigation's needs and image construction.<sup>8</sup>

This use of the media is in total contrast with the use of the media by the French detectives. This is also the case with another recommendation to English murder investigation SIOs emanating from the Manual and ACPO guidance suggesting the need not just to use the media to help the investigation and the police image but also to survey the impact of a murder investigation on the community where the death occurred, advising a Community Impact Assessment form should be filled out in tandem with local officers and perhaps lay advisors in order to address concerns, as happened in this case. This involvement of the local community can extend to the creation of a Gold Group offering a review and advisory facility to the SIO in sensitive cases, though this initiative has been heavily criticised by some families of victims.<sup>9</sup> This idea met with incredulity when suggested to a number of French interviewees. "I cannot see the point of trying to reassure the community in this way. After all, you cannot say it is safe if there are murders" (F467), one *Juge* commented. The expectation that the English SIO will deal with these wider issues on top of the sometimes heavy demands of the investigation itself has been criticised by Maguire and Norris (1992, p 97) as adding to the pressure chief officers operate under, creating a potential weakness in the integrity of the system.

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<sup>8</sup> Though this case also demonstrates the continued existence of the traditional suspicion by detectives of media personnel – during the trial one officer denied knowing the first name of another officer about whom a story might be written, presumably to put that reporter off writing up that story. As we have seen, this suspicion is also present in French detectives.

<sup>9</sup> For example, the father of murdered schoolgirl Holly Wells who felt that such lay advisors were being given more information about the case than him (Wells, 2005).



### **The relationship between police and the family of the victim**

The provision of dedicated, trained Family Liaison Officers in part to support the family of the victim of a homicide was recommended in the Macpherson Report (1999), which heavily criticised the activities of the less considered family liaison offered to the Lawrence family in London in 1993. Since that time most county forces in England use FLOs within homicide and other serious and fatal crime investigations, such as traffic incidents, and the Metropolitan force was praised for the apparent improvement in its provision of family support during the investigation into the death of another young black boy Damilola Taylor in London in 2000 (Sentamu, Blakey and Nove, 2002). Even before this, some families of murder victims had expressed feelings of gratitude to the police officers who had been supporting them, many officers keeping contact well above the requirements of duty (see Rock, 1998, p 63 and also the personal accounts of Sara Payne (2004), campaigning mother of murdered schoolgirl Sarah Payne, and Kevin Wells (2005), father of Holly Wells killed by unknown recidivist Ian Huntley). ACPO guidelines even stipulate that – “One of the most important considerations throughout a homicide investigation is providing support to the family of the deceased. Families should be considered as partners in an investigation and this concept is central to its success”. Sometimes though, relationships between police and the families of victims can be uneasy. The FLO role is investigative as well as supportive and often FLOs have unpleasant questions they are required to ask as well as difficult information to impart.

In the case described here, an exceptionally good relationship was maintained throughout. Although two FLOs were initially assigned to the family, a third – female – officer gradually took over from one of the official links. This was not because of any disagreement between the family and this officer but merely because the woman built an extremely good rapport with the family fulfilling the difficult dual role of support and investigative officer. Although this particular FLO was at times criticised by fellow officers for going “over the top” in the assistance she offered to the family, “sucking up their grief” (E506), the team all admitted she had done a good job in keeping them “on board” for such a long time. The officer had given members of the family her personal mobile telephone number and was ready to answer their queries and advise on problems

at all times. When the victim's sister and brother-in-law and their family were about to become homeless, she worked with their local council to find alternative accommodation. She was always friendly and willing to spend time with them in court. The family in turn praised her and thanked her regularly for her help. She said: "I don't think there would have been a trial without me keeping the family together. I'm not sure everyone would have done things like sorting their housing but I felt it was my responsibility to assist with that" (E682).<sup>10</sup>

This level of involvement took its toll on her and she told me that she felt responsible for the family and their emotions when they became upset in court, particularly when the victim's younger sister broke down in tears. "She came here because of me and I felt it was my fault". In some ways this case was unusual in the strength of the relationship that was built up between the family and the police due in some part to the receptive and accepting nature of the family as well as the extraordinary efforts made by the woman officer. Other FLOs told me they maintained a far clearer demarcation line between their relationship with families and their own personal lives – limiting contact to office hours for example. In some cases too, the FLO found it difficult to establish any connection with the family of the victim. Other FLOs described the role, to their colleagues and me, in terms that would come as no surprise to a student of police culture – "it's all too pink and fluffy for me" (321), "the job is to keep the families from the guv'nor"<sup>11</sup> (E50) – though in both these cases the officer appeared to have established some degree of trust and understanding with the families involved. The IO in the case this chapter is concerned with was quite open with the victim's family about what was going on and what the investigators were doing and thus avoided some of the tensions reported between families and police in Rock where families felt they were not given enough information.

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<sup>10</sup> On occasion too English investigators also offer support to the families of defendants, should they be receptive. This was in the plan here though not required and was taken up by the family of a defendant in another case being investigated by a different team during my fieldwork.

<sup>11</sup> The SIO.

Although the police are making efforts to improve their treatment of the families of murder victims, their status in the court process was condemned by some of the members of “survivors’ groups” that Rock (1998) researched. They were calling for similar rights to be given to them as to the defendant - to have legal representation in court allowing them to present character witnesses for their relative. Officers in my research site also lamented the circumstances of the victims of the cases they dealt with. “Nothing ever seems to be in favour of the victim” (E687). In the personal account by Kevin Wells he criticised the way he was treated in the court process – kept in the dark by Counsel and not allowed to sit in the well of the court. As we shall see, such rights are given to the families of victims in a Crown Court case in France, where it is common for them to employ a solicitor, although the level of support at the police investigative stage is less. Interestingly, when the Lawrence family employed a solicitor to represent them in the criminal process, this was said to upset the family liaison with the police (Cathcart, 1999). This is a reminder of the difficulties of *ad hoc* transference of processes and roles from one system into another without due thought to how they fit into the whole (Hodgson, 2000, p 153).

### **The relationship between police and Counsel**

Researchers on both sides of the Atlantic have argued persuasively that it is the investigating detective(s) who dictate the “narrative” of the case (Innes, 2003, p 163) that is put before the court, who have information control over the rest of the judicial system in the investigations they do or do not undertake, the questions they do or not ask and the interpretations they do or do not give to the answers (Ericson, 1981, p viii). However, it appears from my research that any “narration” the police have power over is done in the early stages of the investigation – when officers speculate on story lines in office meetings and, more formally, when they write up the form (called MG5) asking the CPS to agree to the police charging a suspect. In the case described here it was noticeable how different the “story” was at the charge stage to how it later appeared at trial. Four of the twelve points submitted to the prosecutors related to bruising on the victim’s chin suggesting a cycle of domestic aggression rather than a one-off incident; the witness seeing a man loading a suitcase into his car suggesting a killer blatantly

disposing of his wife's body in broad daylight; and the dumping and finding of the bags of female clothing near the suspect's house suggesting a cold hearted killer emptying out the contents of a large suitcase in order to put his wife's body inside, none of which were ever mentioned at the court hearing.

It has already been noted that detectives frequently comment on the large proportion of their work which is done after someone is charged and it seems to me that the balance of power in "writing the story" shifted in this case at this stage as Counsel became involved and the police danced to their tune. Counsel began to order lines of enquiry to be followed, "suggested" checking out the jogger witness like a defence alibi, suggested checking all 42 hairdressers, suggested how many fibres to check on the suitcase. The officers' work was heavily supervised by Counsel in the sense that they were told what to do to make good evidence and were told when it had to be done by. The SIO remarked that he and his team only provided "discrete facts" to the Counsel who would put them together, "author the story", and decide what to present in court, even if the evidence necessary was not really available, as in the case of the disagreement over the need to locate all the victim's outer clothing. The effects of barrister authoring can be dramatic in retrials where a different Counsel is employed. Although the case outline did not alter as dramatically in this case because the same barrister was used, there were significant shifts in perspective. When the jogger witness first came forward in the investigation, there was huge excitement and a feeling that this witness nailed down the case against the defendant. Between the trials it was discussed whether or not to include the jogger witness at all in the second run if she was not strong enough to carry all the weight of conviction. It was Counsel's motivational theory that the cause of the attack had been familial tension which held sway at second trial.

The reason for the dominance of the barrister was the pivotal place of the Counsel's workplace, the trial, in the process. Relations between barristers and the police – particularly lower ranking investigators – were not always harmonious when barristers were felt to be treating officers with little respect. Although police officers accepted that sometimes crabby counsel were under pressure themselves, they complained – in

this and other trials – about their “snobbiness” (E370), about the expectation that they would be “running around looking after Counsel’s every whim” (for example, undertaking administrative tasks such as photocopying) yet being “treated like shit” (E366-368). There could be an element of class in this in that barristers have tended to be drawn from the upper middle class of English society and be educated to degree level whereas police officers have come from the lower middle class and working class and have no higher education, though this is changing.<sup>12</sup> Many detectives said that Counsel did not stick up for them in court when they were under attack. When things went wrong, the case very quickly became “your (the police’s) case”. But equally there were other officers and Counsel who appeared to have a very friendly, cordial relationship.

### **The role of experts**

In this case, the experts called by the prosecution and defence – concerning mainly fibre transfer in the first trial and the CCTV tests and scratch mark in the second – were specifically called to support conflicting positions. Because of this, they were subject to sometimes harsh cross-examination in order to undermine their findings. It was then down to the jury members – usually unschooled in the subject matter - to decide which viewpoint they gave more credence. As with so many areas of the British criminal justice system, there have been problems in recent years concerning the reliability of experts – alluded to by both defence Counsel in their closing speeches - culminating in a number of miscarriage of justice cases involving mothers convicted of having killed children found dead in their cots on the evidence of medical experts quoting statistics suggesting more than one such death in a family was extremely unlikely (Batt, 2004). The role of experts is tackled differently in France where a second expert opinion can be requested by the defence through the *Juge d’instruction* and any major difference of viewpoint is confronted before trial.<sup>13</sup>

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<sup>12</sup> The class distinction could also explain the differential in the treatment of some witnesses. Police witnesses were almost invariably kept waiting for the court’s convenience, but witnesses of the same social class as the barrister – the jogger and her husband for example, were brought on at a specific time ahead of other witnesses – workers at the airport – who had already been waiting.

<sup>13</sup> Here, as highlighted in the report relating to the investigation into the death of Damilola Taylor (Sentamu, Blakey and Nove, 2002: p 35), the reports of experts commissioned by the defence do not have to be disclosed to the prosecution unless they are relied on at trial.

This is one of a number of differences that will be explored in the next chapter which examines the trial of the French case described in Chapter 4. Chief among these will be the different conception of the trial and its relation to truth and the status of the actors in the court. The role of the family of the victim is also markedly different.

## Chapter 7: French trial - *Les débats et le jugement*

This chapter examines the trial of the French case, the investigation of which was the subject of Chapter 4.

### *Les débats*

The trial began on a Tuesday morning, just over a year after the reconstruction had taken place, in a windowless courtroom on the ground floor of the *Palais de Justice* in the city. The President of the court<sup>1</sup> sat on a raised dais with two *assesseurs* (senior *Juges*); with the court clerk to one side and the Prosecutor - the *Avocat Général* - on the other. On the left as one looked at the President was the defendant within a glass-walled dock, the doors of which led down to the cells. On benches in front of this sat the defence solicitors and opposite them the lawyers of the *parties civiles*, one representing the mother and step-father of the victim, the other her two sisters. The family of the victim sat in the public benches on the right, the family of the defendant on the left.

The public benches were initially crowded with potential jurors. The court clerk read out their names to check all were present in court and then produced a draw machine full of numbered balls which she used to select the nine members of the jury and two understudies. The defence lawyer - who had had a list of the jurors' names and details including occupations before the trial - objected to two of them, one almost as he was about to sit down on the dais. The Prosecutor rejected one more.<sup>2</sup> The President spoke to the jury about their role – that they could not speak to anyone outside the jury about the matter, that the deliberations would remain secret, that any doubt should go in the defendant's favour.

After this, all the witnesses were called into court and stood in the well as the President decided on which day each would be heard. He then asked the clerk to read the committal report written by the *Juge d'instruction* to the court. The *greffier* read - at some speed - a chronological history of the case, starting with the discovery of the body, the autopsy, the police investigation to try and identify both the victim and her attacker,

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<sup>1</sup> A senior *magistrat*.

<sup>2</sup> I do not know the reasons for the rejection in this particular case but on another occasion the *Avocat General* told me he liked to have “a good balance of society” on each jury.

details of the defendant's arrest, and finally his account of events and life history. The clerk finished by reading the charge that the accused had murdered the victim (*homicide volontaire*). The President then asked the defendant to stand and asked him three questions – You acknowledge the killing? Yes; You admit hitting her? Yes; Did you intend to kill her? No. The defendant was then invited to sit down.

The President reminded the jury they could ask questions of any witness through him and the first witness was then called – the finder of the body. The *Chef de Groupe* gave evidence next, although the *Commissaire* had originally been called – the officers in the team said it was better for the *Chef* to appear as he knew the case, and also there was a new *Commissaire* then in post who had not been at the *Brigade* when the investigation was undertaken. The President initiated the *Chef de Groupe's* evidence, as he did all other witnesses, by posing a general question about his involvement in the case - “How did your group come to be assigned to the case and what was the result?” - and then asking more detailed questions later. The day before the case started the *Chef de Groupe* had written a speech and memorised all the dates - “You can take notes in but then you look like an idiot”, he said (F731).<sup>3</sup> The *Chef de Groupe* detailed the investigation chronologically, talking about how the investigators had seen the case at each stage. He talked about the false lead of the dentist argument and the difficulties of establishing the various facets of the victim's social circle. The President asked why it had taken so long for anyone to report the victim missing and asked if the victim's way of life, involving drink and drugs, had contributed to her death. He asked if the detectives had been able to establish if the defendant's DIY had been undertaken routinely or to hide the evidence of his murder. He also asked him why the decision had been taken to arrest the defendant at work to which the *Chef de Groupe* replied that they had felt he would react better, would be less likely to lose control. “And in fact the GAV went very well,” he said (F738). One of the jurors asked if the wounds on the victim's face were consistent with the defendant's account of his having hit her only once (Answer: they could be a result of either a higher level of violence or this level of violence inflicted by someone very strong). The Prosecutor asked about the defendant's

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<sup>3</sup> This is in contrast to the English detective, whose reading from a contemporaneously-made up notebook seems to vouch for the veracity of the evidence.



previous convictions and violent incidents at work. The defence lawyer asked if the police had investigated the victim's drugs suppliers and whether there had been any violence in the victim's dispute with her dentist. He asked for confirmation that none of the defendant's earlier offences had involved violence and there was no history of violence against women. He asked about the disputes that the victim had had with at least two of her previous house sharers. The lawyer for the *parties civiles* was keen to establish that the level of drugs found in the victim's body at death was consistent with occasional rather than problem use and that she had not been known to local drug squads as a user. Afterwards, in a ten minute adjournment, the *Chef de Groupe* said to me: "The defence guy was quite aggressive with me. It's like psychological violence. I don't know what he gained by that. We often get attacked in court by the defence, perhaps for not following certain leads away from the defendant, and sometimes by the *Avocat Général* for not pursuing enough to show his guilt! I think a great difference between here and England is that you in England present one case and the mention of other possibilities is seen as a weakness whereas here when I talk about all the facts, and facets and false leads, it demonstrates the depth and complexity of the investigation" (F754).

The next witness was one of the interviewing officers, who had been expecting to be called as "having been the one to receive his confession" (F690). The President asked if he had any reason to doubt the confession and queried if the defendant had made any attempt to check that the victim had in fact been dead before he put her head in the plastic bags. He commented that the defendant had seemed keen to return to his flat rapidly the night of the murder, taking a taxi back. "Did you ask him why? Did you ask him about his relationship with the victim, probe further as to why he thought she should leave his flat". The lawyer for the *parties civiles* asked if there had been any mention at this stage of a threat to his children having sparked off the defendant's attack and whether a weapon could have been used. The defence asked if the officer thought the accused was sincere in saying he could not remember the details of the attack. The detective replied: "Yes. It's not easy to confess to these sorts of things and generally with prisoners it's rare to get details." The defence lawyer commented that that there was only a brief account of events in the statement taken from the *Garde à Vue* and

suggested to the officer that he had not insisted on details once the confession was received. In response to this, the Prosecutor suggested that the questioners had in fact given their *Garde à Vue* a free rein to say what he wanted: –

You let him express himself, relieve himself without interruption?

Yes.

If he had mentioned anything about his children you would have noticed? (F745).

The President asked the accused if he had any questions and the case was adjourned for lunch. The President proclaimed: “The dossier is suspended. We will take it up at 2.05”. Outside the court, the *Chef de Groupe* commented that “each of the lawyers has a strategy and do everything to that strategy” (F751).

The first witness after lunch was the pathologist. The President asked her if her findings were consistent with the accused’s explanation that he had hit the victim only once. Could the other injuries to her head and body apparent at *post mortem* have been caused during the journey between the flat and the water’s edge when the victim’s body had been wheeled in a suitcase for quarter of an hour? The President also asked if the victim would still have been breathing when her head was placed in the plastic bags and if this breathing would have been apparent to anyone near her. He reminded the doctor of the defendant’s justification for the bags being that he wanted to protect his carpets from her bleeding head but the pathologist stated that there would not have been much blood at all from such a wound. Again the accused was asked if he had any questions for the witness. When he said no, the President asked him to remain standing saying he would like to know his version of events. He said he would like to know what the relationship between the victim and him had been like from the moment he met her, how the flat sharing had worked, what exactly each person’s bath use had been. “Was it you who had hidden the plug?” The President said: “You are a young man, living with two young women, was there any sexual relationship?” “If there had been no disputes in the past, as you say, why were you so keen for her to leave?” (F746). “You say you hit her once. Explain to us how she got seven wounds to her head”. The defendant’s voice was very quiet, and at this point he began to cry, and say something about “his kids”. The

Prosecutor said he could not marry the description of the one blow that the defendant had admitted with the pattern of blows on the body. The lawyer for the *parties civiles* asked the defendant how he could have turned the room in which he admitted he had killed the victim into his children's bedroom. The Prosecutor asked about the defendant's practice of sports and the level of mastery of the self this required. There was then a quarter of an hour's break.

After the adjournment, the next witness was a friend of the victim who talked about her plans and projects, how she was impulsive but not violent. The defence asked about the argument she had with her half brother when she had thrown his family out of her holiday accommodation. The next witness was the defendant's other lodger who had been away from the flat at the time of the killing. The President asked her if the defendant had specifically advertised for women lodgers. She said she had got on fine with the victim and had been unaware of any rationing of water. The President asked the defendant why he had told this witness that his mother wanted to kill him.

The next witness was the defendant's ex-girlfriend, the mother of his two children. The President asked one of his general opening questions – "Can you tell us how you met the defendant, the nature of your relationship and how you broke up?" She told the court that she was frightened of the defendant, not because he was physically violent towards her, but because of the way he could react to anything; he was handicapped affectively, she said. In a highly emotionally-charged session, the President asked the defendant to stand up and respond. "It's your trial," he said. "Tell us all the truth. Don't miss this occasion to explain yourself to your family, your son, your daughter, your Judge" F750). The defendant and the witness had a lengthy emotional exchange about their life and his behaviour towards her. The defendant was crying but told his ex-partner she was not the victim. The penultimate witness of the day was the friend of the victim's who she was speaking to on the telephone shortly before her death. He was quite taciturn. The defence asked if he thought the defendant had returned to the apartment while he was still speaking to the victim; his answer was noncommittal.

The final witness of the day was a psychiatrist who had assessed the defendant while he was on remand. The prisoner had proved compliant in that he had "a great need to talk"

(F751). He suffered from mythomania, being a serial liar, but was not suffering from mental illness. The court finished at 7.20pm.

The session reopened at 9.50 the following morning. When the President called the first witness, no-one appeared. None of the people in court appeared unduly concerned by this and the second witness – a psychologist – took his place. She spoke at length about the defendant's materially-comfortable but emotionally-deprived childhood, brought up by a cold, alcoholic mother who gave him sleeping tablets to keep him quiet. The defendant found out during adolescence that his mother had been raped as a child herself and had been forced to give up the resultant son. In her opinion, the psychologist surmised that the mother had seen her lost son in the defendant and transferred to him all the tension she felt about her past. By the time he was ten years old, the defendant had built a shell around his emotional self. His personality was well adapted for work and he invested heavily in this aspect of life. He had a normal personality, intelligent with a good level of vocabulary and not pathologically violent. The President asked the expert what the defendant had said about the murder. He talked about the victim using her first name, she said. He said the two of them had opposite personalities. She invaded others' privacy and took things, was dishonest. The psychologist said that at the time of the murder the defendant's main emotional support – his work – had been removed as he was on sick leave following an incident in which his supervisor had refused to back him up. He was insulted by the victim and he said she threatened his children. Then he had a "lapse" of time. He told her the *Juge* had said to him that he had hit the victim more than once, that she had died of suffocation. He told the psychologist he felt huge regret for her and her family. He found it difficult to eat or sleep. The President asked if the psychologist thought the "lapse" of time was a defence mechanism and how she would explain all his lies. She said he was a mixture of the strong and the weak. "He can't admit the weakness inherent in himself so he invents stories to be able to justify the suffering he feels" (F754). The President called on the defendant to stand up again. "You have heard the expert, what do you have to say?" (F754). The defendant replied that he thought it was a good expertise. "Would it be fair to say that the violence exercised against the victim has some relationship with your mother?" probed the President. The defendant again started to cry. "How do you see your future?" pressed

the President. “Don’t know”. “How long do you expect to spend in prison?” “Ten, twenty years”. “What is important in your life?” “My kids”, the defendant said, before collapsing into sobbing. The lawyer for the *partie civiles* stood up and asked if all the information for the psychologist’s analysis had come from the accused himself and if facts had been checked, and also how long she had actually spent with him. The psychologist said it did not really matter to her whether what he said was true as even lies would tell her something about the subject’s state of mind. He had spoken of projects he could undertake in prison to improve himself.

The next witness was another psychiatrist. This one said she had met the defendant twice and had verified a number of statements he had made by telephone in between. For example, he had told her he had been rejected by the Fire Brigade for a career but she had found no record of this. The President said it annoyed him that the defendant even appeared to lie during his psychiatric assessment and was unimpressed when the defendant assured him he was sincere now – “You would say that, wouldn’t you?” (F755). The President said he did not believe the accused’s complaint to the head of the remand centre that he had been threatened by friends of the victim. The defence lawyer asked the psychiatrist if she had checked out other facts told her by the defendant and how she could say he had told her lies. She repeated she had not said this, merely that she could find no other record of things he had stated. The President intervened stipulating that, in any case, the role of the psychiatrist was to assess what psychological hope there was for the future, not to verify facts.

The missing witness turned out to be the dentist, who was next in court. The *greffier* had to be sent to find him. In the afternoon, three friends of the defendant gave evidence. The first – one of those interviewed by the police - was questioned by the Prosecutor about the defendant’s level of sports prowess and the mastery of the self required for his favoured martial arts. The witness told the court he knew his friend lied, but only to make himself more interesting. The friend who had visited the accused in prison was asked if he had told him about the threat supposedly issued by a friend of the victim’s, which he said he had and he had believed him. The final witness of this set was a family friend of the defendant’s who was a pastor. He said he had been struck by

the accused's manner in prison, respectful of the needs of other cell mates and intent on trying to maintain his own spirit. He told the court that the defendant needed to be given something to hold onto, a project. "It is awful to face a sentence without hope," he said (F758).

The defendant's father was called next. The President warned him that if his questions appeared harsh, it was in an effort to understand all the truth. He criticised the defendant's sister for not attending court. The father insisted that he thought his son's attack had been an aberration rather than symptomatic of a deeper personality disorder. He said he had a miserable childhood. But he added that he knew his son had applied to the Fire Brigade because he had accompanied him to the examination, and the reason he had not been accepted had been because of "the morality of his grandfather" in that he had been in the German army.<sup>4</sup> The President asked the defendant if he wanted to ask anything of his father, even if it was hard. There was a minute or two's silence in court before the defendant spoke, saying that although his action had caused a lot of sadness and shame, it had made him realise that his parents did love him.

The defendant's mother appeared next. She spoke of the rape that had happened to her when she was 13 and the President asked her when it had come to light. She said her adopted son had come looking for her and she felt that after that relations within her family improved. However, she still only spoke of banalities and family news with her son. Again the President asked the defendant if he had any questions for his mother. The accused commented that he again now realised how much he had missed out on, but he added that he accepted he was not the victim. His mother said she had been taken to a home for young pregnant women and her child was taken from her. "I did what I was told but I still did wrong," she said (F760).

There was a brief break following this witness and then the dossier was taken up again with three family members of the victim's – her uncle, aunt and cousin. They said she was curious, courageous in going to work abroad, and laughed a lot. She had a great sense of injustice and, although she seized opportunities, was prudent. The lawyer for

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<sup>4</sup> The suggestion of collaboration in the German army is still a sensitive issue in France.

the *parties civiles* asked if she liked children. The President commented that they were hearing new facets of her personality but that a family could often see a different side to their relative than others could. The victim's mother then spoke to the court. The President asked her if some of the information in the witness statements had been news to her. She said she found the descriptions of her daughter as being aggressive and taking drink and drugs alien to her. "It's terrible to lose a child but especially in these circumstances. I would have preferred a car accident or illness then at least I could have held her in my arms. I need to know the truth and there are things here I don't believe. Not all that over a bath plug" (F762). The father of the victim then spoke. He said he had been surprised by the number of blows inflicted on his daughter's body. The President asked the accused if he had anything to say to him. The accused said he understood his anger but the father shook his hand at him. The step father was visibly more shaken and told the court he had felt a terrible rage when he saw the photographs of his daughter's injuries. "He should never be allowed out, never," he said (F763). The victim's sister was the last to give evidence. She said she had looked up to her older sibling and there would always be a loss.

The President then asked the lawyers "at the end of the examination of this *affaire*" (F763) if they had any further questions for the defendant. His defence lawyer asked him to state one last time if he knew what happened after the first blow. The Prosecutor asked him for the truth. The President asked him if he had anything else to add. "Everything is ruined for nothing. I have only to ask for forgiveness which I know will never be given, for reasons I understand perfectly. My only hope is that the prison sentence will alleviate my sadness" (F764).

The lawyers for the *parties civiles* made the first addresses to the court. One reminded the jury the victim had been 25-years-old.

She was executed, her face wiped out by blows; her body humiliated, squashed into her travelling bag, thrown into the river; her image and reputation debased. The defendant's attitude is one of cynicism, all designed to hide the true extent of his crime. His story doesn't hang together – why was he so keen for her to leave if they had never argued before, why would she get angry being asked to leave if she had already packed to go, why are there no signs of defence wounds on her if the two got involved in a fight, why is her body so covered in bruises and wounds if

he only hit her once? I have seen the tears, heard the demands for forgiveness. It's all to mask what happened. It's not a matter of hate, it's wanting justice done and the truth to appear. He killed her, got rid of her body, did works in his house, installed his children in the room in which he murdered, and told lies to everybody (F765).

The second family lawyer began by evoking the image of the defendant's parents visiting their son in prison and the new found knowledge of each other they had achieved.

Then let me paint you another picture, of a mother going to a graveside with gardening tools to tend the burial place of her daughter. We have no psychological and psychiatric reports on her but she had a hard childhood too. She had separated parents who divorced. She was largely brought up by her grandmother but spent time in a children's home. She strove to get the better of a harsh life in the city. She left behind her two young sisters crying, you can see them, they wanted the truth. It is in the power of the defendant to give it (F766).

Court adjourned at 6.15 on this, the second day of the hearing.

Day Three began with the demand - *réquisitoire* - of the *Avocat General*. "It's necessary to get as close to the truth as you can," he said to the jury (F767).

It's a dramatic case – two chaotic lives colliding which led to tragedy But you must decide on the legal categories away from intense emotion. Did he voluntarily kill the victim? This can be suggested by the number of blows, their force, their siting - on the head not on the leg, and the sure means, the plastic bags. The defendant does kick boxing and martial arts - he knows the power of violence and he can recognise the vital signs of life. He would be able to see she still breathed when he put her head in the bags. When something goes wrong in his life, he plays the victim. When his wife could not tolerate him any more, he made himself the victim by telling friends and colleagues she had cheated on him. He is posing as the victim now saying he is being threatened in prison by the victim's friends. He killed the victim because he could not tolerate something that disturbed him. He killed her in a fit of temper like he might have broken his computer (F769-770).

The Prosecutor asked for the defendant's sentence to be 20 years in prison.

In his address (*plaidoirie*), the lawyer for the defendant said his client had been living on his nerves at the time of the crime, recently separated from his wife and children, on sick leave from work. He was abused by the victim, she threatened his children and he hit



her. The lawyer said that this was credible as two minutes before the attack the victim had been on the telephone to her friend and had mentioned to him how much her landlord missed his children. The idea of his children was in the victim's head and she knew how to hurt him. The record of the *garde à vue* did not mention the victim saying anything about the defendant's children but the lawyer pointed out that the scenario was summarised in two lines and "the investigators wanted their confession, not the rest" (F772). "For the police, his sincerity is evident". The lawyer said the jury had a choice – judge the monster or accept the psychiatrists' view of the defendant, that he was full of remorse and capable of reconstruction.

The President then announced that the hearing was closed and the dossier was given to the clerk. The jury – the President, the two *assesseurs* and the nine members of the public – retired to consider their verdict on both the facts of the case and any sentence the accused should receive. Within three hours they returned to court and the President again asked the defendant to stand. The President said that the jury had considered what they had heard about the killing, had considered the level of penal responsibility attached to the defendant and any mitigating or aggravating circumstance. They believed that he had intended to kill his victim (*préméditation retenue*). His sentence was 14 years<sup>5</sup> in prison (*réclusion criminelle*). Neither the *Juge d'instruction* or anybody from the police investigating team attended the judgement. "No one had time," said one of the officers (F793). They found out what had happened when the Prosecutor telephoned them the following day. The Juge said: "*Juges* are very rarely called to give evidence. The only time I can think of was for *Outreau*. It should all be written down in the dossier" (F731).

## Discussion

### The lawyers

Within the court, the President, the two *assesseurs* and the Prosecutor all had the same higher educational backgrounds, which they share with the *Juge d'instruction*. They are all graduates of the *Ecole Nationale de la Magistrature* and are *magistrats*. In court, the

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<sup>5</sup> Very similar to the "life sentence" of 15 years to be served before parole could be considered in the English case.

President and Prosecutor wore similar red gowns and were seated with the *assesseurs* on a raised dais. The lawyers for the *parties civiles* and the defendant stood on a lower level and wore black. Unlike in England, lawyers in France are mainly generalists, and many lawyers who appear in criminal courts do so as a not particularly lucrative sideline to civil work (Field and West, 2003). Their status is lower than in England (Hodgson, 2002a, p 789) and, in a system predicated on the manifestation of the truth, their involvement is seen by some as partisan and untrustworthy – an adversarial input into an inquisitorial system. Police officers have accused them of destroying evidence and tipping off accomplices (Hodgson, 2002c). Allegiances are therefore different than in the English court – during adjournments the President and the two *assesseurs* leave together through the back door of the courtroom leading to the inner recesses of the building followed by the civilian jury members. The Prosecutor leaves by the same door back to his own office. In court, the Prosecutor can criticise the police on their investigation without weakening his own case because they are only one part of his account. There is no contact between Prosecutor and police outside court, and indeed no need for it. Instead, the police officers on the day they attended the trial, spoke to a reporter from a true crime magazine during the break. The family of the victim spent the time with their own lawyer.

In court, the President is very much in charge of what happens, like a “conductor”<sup>6</sup> (Diaz, Fontanud and Desfarges, 1994; p 248). Although Bell (2001, p 113) suggests that the French Prosecutor is not the adversary of the accused that he is in the English system being at the same level as the President and representing an impersonal law and State, in this case he could be seen to have a clear “strategy”, to prove legal intention to kill by stressing the defendant’s prior mastery of self in his pursuit of martial arts, the relevance of which had not received such an emphasis in the dossier. Although they asked sporadic questions of many witnesses, the strategies of the lawyers for neither *partie civiles* or defence were entirely clear until their end addresses which many see as their key role, whether this is connected to the French innate love of “speechifying”, or because “their role is limited to comment” (Johnston, 1992; p 249) there being no point

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<sup>6</sup> “*Chef d’orchestre*”

in cross-examination, the definitive version of each witness contribution having already been embalmed in the dossier. The speech by the lawyer for the *parties civiles* plays an role that has until recently been completely lacking in the English system (see Rock, forthcoming) – that of airing the affect of the crime on the family of the victim, letting the victim have a voice in the trial but also asking for pecuniary compensation.

### **The dynamics of *le procès/ les débats***

The trial stage is considerably shorter in France than in England – just three days for this case. Part of the reason for this is that so much of the work is deemed to have been done pre-trial and everything of importance should be in the dossier, which is mentioned frequently during the audience as the basis for the case and is symbolically opened and shut at the start and end of sessions. The dossier thus attains a kind of evidential authority above conflict. Missing witnesses therefore are not such a source of drama in the French system as their evidence is already safely recorded in the dossier. Interestingly the dossier does not retire with the jury and the jury have no direct access to it at any time only hearing what the President chooses to read out to them. The trial is often referred to as the “audit of the dossier” (McKillop, 2004), an expression which reflects the subservience of the former to the latter. This view of the hearing is reflected in the use of the word *procès* to refer to the trial. The public trial or hearing – like us the French also use *l’audience* to refer to the public airing of the case - is merely a part, and not the most important, of a long process, a procedure which has already been established elsewhere. In contrast, in England we use the word “trial” to describe the ordeal of the “defendant” who has to protect himself from attack. In France, they also refer to the trial as “the debates”, which suggests a wider focus as to the issues in question concerning the person “*mise en accusation*” – “being accused” than in England. The forensic and mitigating evidence being heard together in the main trial has a similar effect. There is a high conviction rate (Bell, 2001, p.105, quotes 4.6% acquitted in 1998 at the equivalent of Crown Court) partly attributed to the presence of the presiding judge in the jury deliberation room, but also to the quality of the file supervised by the independent *Juge*. In the French criminal justice system, the trial can be seen less as the slow deliberation of fact of an English trial – that has already been done to some extent pre-trial by the *Juge* - and is more about sentencing outcome.

There is no record taken of the court hearing. The *greffier* only makes a note of which witnesses appeared and would only write further if a witness significantly differed from what he or she had said previously. Because of this the hearing is far less stilted and proceeds at a far faster, more conversational pace than in an English courtroom where everything has to be captured by a shorthand writer. This is particularly noticeable to a foreign speaker during the *greffier*'s opening summation of the case to the court but also during questioning.

English lawyer Johnston (1992) reports being “unspeakably shocked” (p 249) observing a French court, to hear not only the previous conviction s of the defendant read out but also him being barracked by a series of questions by the President of the court “in which the laws of evidence did not apply”. Others have seen the questioning of the President of the court in a softer light, Bell (2001, p 152) seeing a “pedagogical function” in the manner and language of the judge seeking to ensure that the person in the dock understood why his actions were wrong. Hodgson (2005) similarly suggests that defendants are held to account as “erring citizens” (p 21), a member of the same society which the *magistrat* also plays a part (p 240). They are the subject of the “their” trial and not the marginalised object of an English case, who can quite easily get away with sitting back and saying nothing during pre-trial and trial process. Certainly the questioning of the President in this case seemed to cover a wide range of concerns, sounding almost at times like the kind of notes and queries one would write down the side of a file as one read. The effect of this questioning, and the President's allowing of others also to question the defendant, was of a thorough exploration of a wider range of aspects of the case than would be common in English cases. However, this is not always the case. Other writers have said that defendants often say very little for fear of losing any jury sympathy (Diaz, Fontanaud and Desfarges, 1994; p 256) and accounts of trials of *causes célèbres* suggest the same (for example, Hémon and Tanneau, 2005, on the trial of Francisco Arce Montes eventually accused of killing English schoolgirl Caroline Dickinson). I witnessed an incest case trial in another research site where the defendant refused to come up from the cells to attend many sessions of his trial and remained silent in the face of all questioning. And the result of this questioning is not always the clear-cut revelation of “the truth” one might expect from the rhetoric. The

first query is “the truth about what?” McKillop (1997) suggests the French trial is more about *personnalité* than “*les faits*” – “the events” (p 49), and Bell (2001; p 113) that explanation is more important than facts. Certainly the end speeches do not encompass a long re-reading of the facts – or evidence - just heard by the jury from each “side”, nor does the President consider it necessary to go through an even longer summary of said evidence, although the reasons for this could be the considerably shorter length of time the jury has to hold the information in their heads, and the fact that the civilian members of the jury will be accompanied by the President and his memory of the case into the deliberation room. While the task for the English jury can be said to be choosing between two stories in competition with each other, the job for the jury in the French trial appears more to be a problem –solving exercise, assimilating all the information to reach a plausible scenario. But is this the truth? In this trial, I felt the rather narcissistic defendant understood himself and his family a little better than he had before but had he really revealed all he could remember about what happened between him and the victim the night she died?

## Chapter 8: Conclusions

I set out to undertake a comparison of the way in which murder investigation was carried out in two countries – France and England. The investigation of serious crime in England had been unfavourably compared to the situation in France (Mansfield and Wardle, 1993; Rose, 1996), but there were few relevant empirical studies. I eventually spent more than a year intermittently in the field observing detectives and their judicial colleagues and talking to them. In the early stages of this fieldwork I can remember feeling disappointed that murder investigation in France and England was not more different. Many of the tasks undertaken following the discovery of a body in mysterious circumstances initially appeared similar – from attendance at the scene, taking of exhibits, going to the post mortem examination, searching premises and locating and speaking to witnesses, to questioning of an eventual suspect and compiling of records, with the possible culmination of a public trial. Perhaps John Bell (1995) was right when he suggested that English Law and French Law were “not so different?” The combined effect of globalization in general and the two countries’ shared membership of the European Union involving an increasing number of legal norms had brought about the “Gradual Convergence” discussed in comparative lawyer Markesinis’s 1994 book.

However, as my fieldwork progressed, I noticed that even superficially similar activities were given different importance in France and England and that activity was undertaken with a different emphasis and within a different ethos. The detailed descriptions contained in this thesis of the two similar cases that fortuitously occurred during my fieldwork in the French and English sites present many examples of such variation. One has only to conjure up the image of the scene of the first attendance of detectives following the discovery of the bags in the water to appreciate this. At one, the French detective group who were going to investigate the crime were pictured at the water’s edge considering motivation and discussing scenario, “sensing the ambience”, a State prosecutor nearby; at the other an English Senior Investigating Officer was going through the Murder Manual standard operating procedures prior to handing over the case to another team. The French saw detection as an art, the English as more of a

science. Although there were mundane, routine tasks to be performed in both countries, the division of labour between the large team in England resulted in a piecemeal Taylorised work load where the significance of activity and the big picture could be lost. This, together with a feeling of defensiveness arising from a number of scandals affecting the police in general, led to a marked difference in attitude among the French and English police with the English often failing to value their profession, lamenting that most of their work was not about discovering “who did it” but undertaking repetitive tasks to “cover” themselves. By contrast, the French detectives, though probably not more valued in society generally, coped better in their working lives largely because of the professional esteem in which they were held by their colleagues, their obvious delight in the job itself and their small working group. Their working environment was shared with witnesses, the families of victims and offenders - a stark contrast to the sterile atmosphere of detective offices in England. Like their compatriots the French detectives took long summer holidays, enjoyed a lengthy lunchbreak often spending time with family or colleagues and made time in every working day to pause, take coffee and discuss.

In my description of subsequent phases of the investigations, I discussed other disparities between England and France, both structural and attitudinal. One major difference, which influenced the way I structured chapters, was what could be viewed as the pivotal stage of the criminal justice procedure in each country. For the French, the pre-trial stage is critical; for the English the trial itself is the end point to which all other activity is geared. This explains the particular pressure points under which French and English detectives operate. Both sets of detectives are of course under pressure in the ‘golden hours’ immediately after the discovery of the body when officers put in long hours to ensure all the tasks that need to be done are completed. But it is while a suspect is in French police custody - *garde à vue* - that the police have to put their file together in order to dispatch it with the accused to the *Juge d’instruction* and this is a critical stage in the enquiry. For the French officers, this is the end point of any large scale involvement in the case. For the English, in contrast, although the arrest of a suspect is obviously important, it is the weeks and days leading up to the trial and the trial itself that are the lynch pin of the whole process and it is for this reason that English

detectives are present in large numbers at this point. Interestingly, all of the material that the French police put in their file at the time of *garde à vue* goes into the trial process and forms part of the dossier that goes before the President of the Court. In the English case a large amount of the information that has been gathered by detectives and goes into the HOLMES system is never seen by the eventual court and it is the work that goes on pre-trial which will determine which information that is. The French trial has a wider focus than the English one, it is about the investigation and the people involved in it; the English one is about “the case”. As the officer in charge of the French investigation said: “ I think a great difference between here and England is that you in England present one case and the mention of other possibilities is seen as a weakness whereas here when I talk about all the facts, and facets and false leads, it demonstrates the depth and complexity of the investigation”. This difference can be seen as a reflection of the different epistemologies of the two criminal justice systems – one embracing truth-seeking in a broad sense; the other intent on forensic efficacy, assembling the ‘facts of the case’ for the purpose of a successful prosecution

French and English police and judicial colleagues also had a markedly different relationship with the various branches of the media. While the French detectives knew journalists and, in the recent widening of access to the police services to the media by the French *Ministère de l’intérieur*, had hosted a number of lengthy observational visits, they did not maintain the constant contact with members of the fourth estate that their English counterparts did and “media relations” were never discussed. While to some extent this was because of the different nature of the media in France which does not have the large numbers of tabloid titles eager to fill their pages with crime news that Britain has (see Green’s (2008) analysis of Britain’s and Norway’s coverage of child killings in this regard), the lack of communication with the press by official sources did leave a lacuna for the media which was sometimes filled by defence lawyers talking about their side of the investigation. This led to media coverage that was to some extent less tied to a possible sensationalist crime angle and more focused on the human issues relating to the defence such as mitigation and background material. It also meant, to my mind as a former police press officer, that some investigative opportunities were lost by the French. Media pressure to solve high-profile crime quickly has



however been identified as one of the key stresses for senior officers in Britain (Maguire and Norris, 1992). That stress is removed from French officers.

There were two other major differences between the systems in terms of the ways in which the offender and the family of the victim were treated. Although there are some suspects who remain silent, the French system is built around the expectation that the accused person will offer an account of their involvement, if any, in the crime being investigated. While Anglocentric eyes might see this as denial of a person's right to remain silent, the French would see it as an opportunity to be heard. In England, the "no comment" interview, as depicted in my case history, is common. Under the Police and Criminal Evidence Act (PACE) (1984), the English defendant is allowed access to a lawyer, who can be present in police interview, from the beginning of the custody process. The English officers regarded some of the procedures of the French police, particularly as regards the interview and the type of records made of it, as akin to what they themselves used to do in the past (pre-PACE) and thus, retrograde, though not denying that their own methods sometimes left them frustrated – "on occasions to the point of nausea when they say nothing and are not even considering saying anything".

Lawyer involvement in the French process is extremely limited unless the suspect is officially *mise en examen* by the *Juge* – after the end of the *garde à vue*. Confessions – and detailed confessions – are common, often delivered with a sense of relief to "human" (see Chapter 4) detectives using every psychological advantage they possess. Once the English defendant is charged, often without having said very much, the state mechanisms cannot talk to them again. In France an independent *Juge d'instruction* goes back through not only the information already gathered but any subsequent information. Psychiatric and psychological reports are prepared on the accused well in advance of trial. The defendant is directly addressed during "their" trial and encouraged to face the issues. In England, the accused – who is not expected to say anything, and is often referred to rather than being directly addressed - can more easily remain silent. These differences reflect the different traditions of the adversarial and inquisitorial systems; one focused on procedure and fairness to all parties the other on ascertaining what happened and why.

The position of the victim in the two countries is more complicated. In France, in the kind of cases I observed, the victims family can be legally construed a “*partie civile*” as soon as a *Juge* has been instructed. They will then have all the rights of the defence to see the dossier and request investigative acts. Families are given the opportunity to present a picture of the victim to the court, can be represented in court and have questions asked of the accused and witnesses, and demand compensation. This has the effect of widening the remit of the trial and the issues that might be covered. In France too interest groups and associations can also constitute themselves *parties civiles* in trials relating to their area of concern and this participation can further widen the issues under consideration in a court hearing making them more relevant to French society as a whole. The trial is not conducted in a criminal vacuum but attempts to relate the crime event to social life more widely. However, there is no system of Family Liaison with police officers as exists in England, where emotional and practical support is provided. The family in my English case study valued the help and trust they had in the police officers; their French equivalent did not expect this.<sup>1</sup>

As well as discovering differences between the two countries as my own investigations progressed, I also unearthed more similarities, sometimes where I had not expected to find them. While the focus of this thesis has been on the work of detectives in the process of murder investigation, their work involves relationships with others in the judicial system, such as prosecutors and *Juges d’instruction*. The nature of these relationships reflects important differences in the roles of police and judicial officials in the two countries, though the divergence is not so extensive as is sometimes assumed. The French detectives work both under their police hierarchy and also to the Prosecutor and *Juge d’instruction*. The relationships I observed between these parties were unusual in that there appeared to be a large amount of mutual respect for the prowess of the other which some writers have suggested does not exist to the same degree in relation to less specialized police squads (see for example, Hodgson, 2002b). Nevertheless, the worlds of *magistrat* and police detective are far removed spiritually if not physically one from the other and the two do not socialize, for example, together. In the past, the two

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<sup>1</sup> There are victim support agencies (*associations d’aide aux victimes*) in France but most were established by private citizens and are distributed unevenly through the country.

professions would have had different educational paths – one going through higher education and the competition to a professional college, the other being trained on the job - and for this reason would have been socially distinct. There did not appear to be the detailed supervision and direction of the police enquiry by either Prosecutor or *Juge d'instruction* supposed by many outside observers. In the particular examples outlined in this thesis, this was because of the supposed expertise of the specialized squad but the situation does seem to reflect the general picture presented by other empirical commentators. In fact, in some ways the English police's relationship to the Counsel who represented "their" case in court often seemed to me to be more akin to the supervisory and directing role expected of a *Juge* though with the important proviso that, despite talking about presenting a "fair overview" of a case to court, prosecuting Counsel presented one account. Relations between Counsel and the English police did not always appear cordial, with many, particularly lower-ranking officers, feeling they were treated in a disparaging fashion. Again traditionally, police and Counsel would have been of differing educational achievement and additionally social class, although this is changing (NRS, 2008).

In Chapter 5, I stepped back from the daily realities of murder investigation to consider the wider epistemological and sociological assumptions behind the judicial processes of the two countries. I examined two events that seemed to me to exemplify the two country's methods of pursuing criminal cases – the reconstitution and the mythical search for truth, versus the case conference and case construction. I suggested that both the procedures put into place and the rhetoric used to support the judicial ethos were borne partly out of the historical processes that brought them into being. On the face of it, one would think that the "search for truth" option would create better conditions for justice and fewer errors – as Leigh and Zedner argued in their report for the Royal Commission in 1991. However, the theory did not always equate with reality. "Manifesting the truth" was a phrase often heard on the lips of officials in France when I asked them about the aim of their judicial processes but I suggested in this thesis that the procedures in place would not inevitably have this result. The reasoning process at work in the French system is actually akin to one of inference, very similar to what Atkinson many years ago imputed to coroners in assigning a suicide verdict (Atkinson,

1978). Atkinson argued that coroners carry out what in America are dubbed “psychological autopsies” based on the evidence of the dead person’s life history, their psychiatric record and what they had said to other people. This sounds very like what goes into a French murder file and is used by *Juges* in France to assess guilt. Yet despite utilizing similar reasoning processes, Atkinson’s coroners did not claim the ability to know ‘what really happened’ in the way the French *magistrats* do (although interestingly, the Coroner’s Court is the closest to inquisitorial in the court system in England).

Other academic researchers have commented that in France – perhaps because of the lack of an empirical tradition in research meaning that professionals have very little experience of explaining why they do what they do – when officials are asked what happens in their system they describe what is written in the Code i.e. what should happen rather than what does happen. In other words, when they talk about manifesting the truth, all they are actually doing is quoting the Code. I think this is right, although maybe not in quite the way that other researchers have seen it – that *magistrats* do not understand the difference between the theory of criminal process and the practice.

What is important to recognize when French officials talk about “the truth” is that they are not betraying an old fashioned naivety about the practicalities of unearthing and recognizing truth in the epistemological sense but their absolute belief in the capacity of the State - Durkheim’s “organ of social thought” (see Giddens, 1986: p 54) - to ascertain State truth on the citizen’s behalf. So when they quote the Code – the State’s voice as it were – the theory and practice are one. This ethos of belief has an effect on the attitude and work of French murder detectives who see themselves as part of the State mechanism for truth finding and therefore gifted with prowess. The English nation by contrast has delegated the truth-finding mechanism to two highly-paid but privately-employed legal experts who engage in a story-telling competition - one telling ‘the story’ – the prosecution account - and the other haggling at the back. There is very little talk of truth. The dynamics of the English court scene reflect the empirical tradition of knowledge generation in England epitomized in the work of Mill (1865).

The language used to describe aspects of the criminal justice processes of the two countries is an important theme in my work. I was initially sensitized to the different terms used in the two countries by the need to work in a foreign language. I noted many interesting nuances between how the French and English describe roughly the same process or person which made me consider more closely than I might otherwise have done the meaning and practice behind them. The French “hear” (*entend*) their witnesses initially and what they hear will be written up in an “*audition*” which suggested to me an open process of listening and including information. The English “statement” by contrast signified a more bald legal entity detailing what was known. A wider variety of facts and surmises concerning the subject at hand seemed to be included in “auditions”, such as background information about the situation and persons involved.

To be able to undertake “detective” tasks in France, one has to be an accredited “*officier de la police judiciaire*” – one has to be representative of the justice department, the “judicial police” as opposed to the administrative police or other branches of the policing enterprise. The designation “*officier de la police judiciaire*” is also given to the Mayor of towns. This shared title suggested a different concept of the work of criminal investigation than that conjured up by the word “detective” in English with its image of Sherlock Holmes and tracking down clues. By contrast, the French detective is an officer of the state with significant powers. I suggest that this differing ideal of what the world of detection was about in part explained the English detectives’ apparent malaise – if one’s image of one’s job is a television detective single-handedly tracking down criminals the reality of report writing and memo filling is bound to disappoint, whereas if, on the other hand, the role of “*officier de police judiciaire*” was a civil servant who located suspects as part of the state’s criminal justice machine, the report writing and other mundane activity would simply be expected and accepted.

As I also argued in Chapter 7, in England we use the word “trial” to describe the ordeal of the “defendant” who has to protect himself from attack; in France they describe the public hearing as either “the process” or “the debates”, which suggests again a wider

focus as to the issues in question concerning the person “*mise en accusation*” – “being accused”.

Overall, there was a different “style” - “ambience” to use the French detectives’ term – or, to use a word with less superficial overtones - a different mentality demonstrated during the investigation of murder in the two countries. Why was this? The reasons I believe are linked to how the investigation of murder and all the groups of people involved - the detectives, the judicial and legal officers, the offenders, the victims and their families - fit into their wider society.

In France, the concept of State and citizenship is quite different from England. The modern State was created at the time of the Revolution and the philosophical ideas of the Enlightenment in relation to how the ideal state should run were reflected in the procedures and structures put into place, including the judicial processes. For the French rationalists of the time the original penal codes were being written, finding the truth was not an impossible goal. Frenchman Durkheim years later could still insist that the State had an “infinite capacity for ascertaining truth” (Lehmann, 1993: p225; Durkheim, 1957: p 92). After the Revolution, the new French State wanted to be seen to be inclusive, to distance itself from the corrupt *ancient regime* (Lacey, 2008). For this reason, I would argue, the new codes viewed those citizens who transgressed the law not as some alien other but as citizens who had erred, who would have to be punished but could later be integrated.

In France, the word criminal is an adjective, not a noun. An activity can be criminal but the person that committed the act remains a person. Durkheim famously saw the criminal playing “a normal role in social life” (Durkheim, 1982: p 102). Nowadays lawyers such as Hodgson (2005) and Bell (2001) can still see a pedagogical, if rather patronizing, tone in many *Juges* and prosecutors as they address their fellow felon citizens in French offices and courts. Hodgson says of the accused’s first interview with the prosecutor – “the primary purpose ... is to deliver a form of moralizing lecture to the accused, to point out the error of her ways, and to encourage her to be a more responsible member of society” (Hodgson, 2005: p 248). It is interesting too that the French, who do not view the criminal as something apart from the rest of society, can

more easily deal with issues such as medical malpractice in the criminal rather than the civil courts.

The police are seen as an organ of the State – they do not have a personal contract with the citizens of the country but with the State and thus a citizen accepts the police role as a mechanism of State without really having closely to question their activity. When there are grounds for complaint, the process for grievance is also codified. It is understood that some activities of the police will be accomplished in secret because that is what they need to do under the limits set by State. Equally many citizens do not particularly like the police but they accept their role to investigate, albeit as a “necessary evil” (Horton, 1995: p 8), and equally the role the citizen has to play in various State mechanisms. They will attend police offices to be interviewed when summoned; they will witness the search of a neighbour’s property. Within this model, the process of the investigation of murder is seen as part of everyday life, an unusual part certainly, but a part with a place coded by an inclusive State and its officials. The French penal codes also stipulate a place in the processes for both victims and offenders.

When French detectives undertake murder investigation, they do not set this work apart from their everyday lives as French citizens –they work hard but they maintain the flow of French life – the summer break, the family lunch, the *pause café*. In diagrammatic form, the processes of murder investigation can be depicted as occurring *within* the circle of French society as a whole, with only some secret processes outside of the societal purview.



**Figure 1** Graphic representation of the place of murder investigation in French Society

In England by contrast, the criminal is seen as someone outside of society, with little in common with it, and this attitude to criminality affects all those who deal with it – including murder investigators.

One has only to think of the number of times the neighbours of suspected criminals are interviewed on the television saying: “He was so normal, you’d never have thought he was a criminal” for evidence of this view of the “otherness” of criminals. The idea has been argued persuasively by a number of British criminologists. Garland for example suggests that other than a brief foray into what he collectively calls the “criminologies of everyday life” (Garland, 2001: p 135), which attempted to “normalize” criminals by presenting them as rational opportunists, Anglo-American media-saturated society has seen the criminal – certainly the homicidal criminal – as “alien”, “beyond all human understanding”, “profoundly anti-social” (Garland, 2001: p 135). Young describes what he sees as a modern identification of a criminal “outgroup”, “held at bay and excluded” (Young, 1999: p 20). Reiner, Livingstone and Allen also identify a change in attitude to the offender in Britain - visible in media coverage - from a post-war desire to understand and if possible rehabilitate those who break the criminal code (similar to that exhibited in contemporary France as discussed in Chapter 4), to the depiction of perpetrators as “one-dimensionally villainous”. It is perhaps because English culture



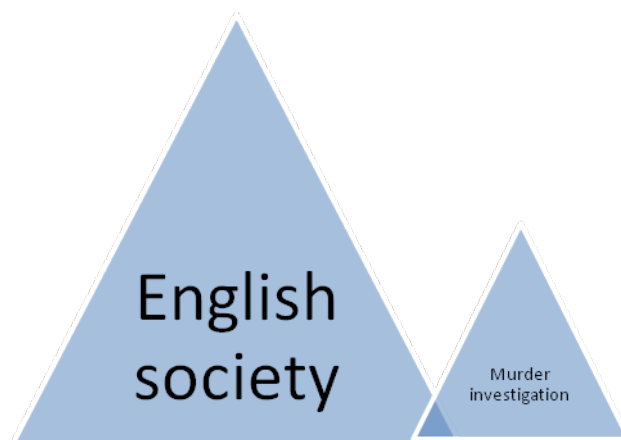
regards the criminal as an other, that it is more ready to accept a game or battle atmosphere in its official settlement of disputes: the criminal other merits no more.

Reiner *et al* in part attribute this change in societal attitudes towards defendants to an increasing focus on the victims of crime and the suffering they underwent - in such a climate, compassion for an offender was represented as “callous and unjust to victims” (Reiner, Livingstone and Allen, 2003: p 32). However, although Rock argues there were “significant increases in support for victims” (Rock, 2004: p 34) following the election of the new Labour administration in Britain in 1997, victims have remained to many legal officials “alleged victims” (p 17) and the body representing solicitors, The Law Society, were still of the opinion that prosecution took place in the public interest and “victim rights formed no part of that interest” (p 13).

The victim of crime in England is still struggling to find an allotted place in the criminal process (see Rock’s (forthcoming) research on the pilot implementation of victim impact statements in some courts) and, in some ways, is left further out in the cold than the criminal. In my case study, the family of the murder victim had no real voice in the substance of the trial or investigation; and were mainly referred to as something to be dealt with and get information from; to be supported certainly but not a major link in the chain of justice. In the tightly prescribed environment of an English court, justice personnel seek to avoid the “emotional contagion” (Rock, *op cit*) that victims’ families can inject.

The English investigators are also set apart from society. While paradoxically the English police were formed (in deliberate contradistinction with the French model) with a closer link to the people they policed than in France – in that they were marketed as the people’s police, acting as legal guardians for the population (Stead, 1985) with “a complete legitimacy which was unknown elsewhere in the world” (Emsley 1989: p 23) - murder investigators have become something separate from the rest of society. They work long unsociable hours dealing with aspects of life that made them uneasy in everyday society. They feel that they are under attack and that no-one tries to understand the conditions in which they operate. This feeling reached a culmination in some of the opinions expressed by officers about the atmosphere of the Macpherson

inquiry reported in Foster (2008). Officers were described as being pilloried, felt like they were “put in the stocks” (Foster, 2008: p 6). In England, I argue there is only a brief area of overlap between the processes of murder investigation and the wider



**Figure 2** Graphic representation of the place of murder investigation in English Society

society at the stage of a successful culmination of an investigation and subsequent trial where the criminal other is officially put apart from society as a whole.

Because of the embeddedness of the murder investigation process within not just the current legal culture of the two countries but within the wider structure of society as a whole and the historical processes that got them there, it is perhaps not surprising that it is generally deemed difficult to borrow parts of one legal system – however efficient and beneficial some may look – and transfer them to another. However, it is important to ask whether there is any potential for adaptation of processes or methods from one country to another. This question presupposes that some processes or methods in one country are ‘better’ than the alternatives in the other. Throughout my fieldwork I was constantly asked which system I thought was better, which detectives were the best?<sup>2</sup> I

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<sup>2</sup> In terms of detection and conviction rates, the English detectives appeared, from figures relating to the months of my observation, to have a more than 100% detection rate. This is because the force statistics unit produced the detection rate from the number of detections that month divided by the number of murders. The detected cases were not necessarily those that had occurred that month. In the French observation site where I tracked individual cases after a year, the detection rate was 71% (although all cases were what the English would term ‘whodunits’ or at least sensitive in some way). Of those cases

usually managed to stave off such queries by denying that my study was about effectiveness as such. However one of the English officers demonstrated his ability in questioning which makes detectives such difficult research subjects when he probed further “Ok then, which team would you want investigating a murder in your family?” (E383). This immediately honed my mind into considering how I would feel experiencing the two systems and I began to list some of the positives and negatives I saw. Immediately I liked the French idea of, as part of the family of a victim, having access to the investigation dossier, having the rights to have questions asked especially of the offender as well as having a place in Court. But I would also like the support that police Family Liaison Officers offer to families in England.

My comparative research also galvanized me to ask questions about taken for granted aspects of investigation in both countries. Why is it necessary in England for six police officers to baby-sit a highly qualified, well-paid barrister through three weeks of a trial of one person? Why could the French not use the media to locate witnesses? Is it really oppressive to suggest that “No comment” is not an acceptable answer from a suspect within a criminal investigation? Could not the French detective, who claims to be more “human” to the defendant in actually talking to him like a fellow person and not a legal entity (see chapter 4), not be more human toward the family of the victim, regardless of their legal status?

My choice of the French as a comparator to the English in the process of murder investigation was motivated to a large extent by the positive press the role of the *Juge d’instruction*, the independent director of enquiries in France, was receiving in some quarters in Britain. Interestingly, this admiration was not replicated unanimously in France itself where there have been repeated calls for the abolition of the independent but unsupervised *Juge*. French lawyer Delmas Marty, President of the Commission who

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detected in the year I did my observation in England 90% resulted in conviction. In France this figure was 99% - one suspect died in prison.

wrote the French equivalent of the Leigh and Zedner report on criminal justice system reform (*Commission Justice Pénale et droits de l'homme* (1991), argued in her article “*Juge d’instruction* - Do the English really need him?”, that we certainly did not. What we needed, she argued, was a “properly organised pre-trial phase” (p 52). However, Delmas-Marty appeared to base this suggestion on her premise that “nothing much of real importance happens between when the police charge a suspect and when he eventually comes to trial”. As I have described in this thesis, a great deal of activity takes place at the post-charge phase of the English procedure but that activity is pursued by two separate sides – the Prosecution and the Defence, one creating an evidentially watertight accusation and the other attempting to drench it. A figure – the barrister for the State prosecution – already exists to undertake this “properly organised pre-trial stage” that Delmas-Marty talks about; all it would take is a slightly different mindset, but perhaps not that difficult to adopt in view of the fact that in England barristers already in theory undertake both defence and prosecution work at various times of their careers. Although Leigh and Zedner suggested that the English would never tolerate a French style *garde à vue* where interrogation takes place in secret with no independent support for the suspect, the acceptance of no comment interviews as the norm hardly seems beneficial to justice. The “obscure silences and mysteriously unput questions” detected by jury members who spoke to Rock (1993, p 76) are an embarrassment to any idea that the court process in England can create closure for the victim. Equally I believe the French could quite easily introduce some liaison with the media without creating an imbalance of power within the relationship between press and police or prosecutor.

Judicial process has altered over the years as new ideas and alliances have been formed and it is perhaps time – in view also of the differing challenges not just of homicide investigation but of many new kinds of crime in the 21<sup>st</sup> century - to have a long look at the procedure as a whole to see how it fits together and to think again about what people want the system to achieve. Throughout my PhD, I have noticed that people I have spoken to outside the criminal justice system often have a fairly vague idea of what their

own national system does and wholesale changes could perhaps be accepted more easily than might be expected.

As is the perennial refrain of much research in this and other domains, more work would need to be done before any changes in criminal justice procedures could be formally contemplated. This study was exploratory and represents a broad overview of what is a lengthy and complicated process of criminal investigation and prosecution in two different contexts. Inevitably, I have not been able to investigate and analyse every aspect in as much detail as I would have liked and there are numerous areas that are worthy of further research. The two I would highlight are a quantitative and qualitative study of the effectiveness of current systems of murder investigation in France and England including looking at the occurrence and aftermath of miscarriages of justice; and the role and rights of the families of murder victims in the justice process. It would also be extremely interesting to undertake ‘action research’ into the implementation of any changes that are undertaken in either system, monitoring the intricacies of implementation, the attitude of participants and the immediate effects of any such variation.

Murder detectives are traditionally credited with a higher detection rate than investigators of volume crime. This is partly ascribed to the personal relationship that often exists between the victim and attacker and the high level of resources that are assigned to murder investigations. However, a study of a large representative sample of cases and their outcomes in the two countries considering the characteristics of each case, if or how a suspect is located and if this results in a conviction would provide some measure of relative effectiveness. Such a study might also examine cases where a miscarriage of justice or “*erreur judiciaire*”, has been alleged, examining how they occurred, how they came to light and what happened as a result of them.

The role and rights of the family of victims in homicide cases is edging its way onto the political agenda in this and other European countries (Rock, 2004). While studies exist

outlining the legal rights of victims and the existence or otherwise of support groups and financial assistance for them in various countries (Brienen and Hoegen, 2000), it would be useful, if difficult, to undertake a comparative qualitative study addressing how families actually view the service they receive and the support they are able to garner. It might also be constructive to offer a further comparative dimension to the study and investigate the situation in other countries in addition to England and France. As I discussed in Chapter 2, such comparisons provide impetus to see something beyond the normal processes and procedures one is familiar with, extending knowledge of alternative possibilities; thus developing more powerful insights into human behaviour; and increasing the likelihood of successful reform.

The research outlined in this thesis is the first ethnographic comparison of how France and England, often contrasted as instances of the archetypal inquisitorial and adversarial criminal justice systems, respond in practice to criminal homicide. In so doing, my research has built on work about murder investigation which concentrated on England (prior to my study, there were no equivalent studies relating to France) and also legal commentary that explores systematic differences in French and English criminal justice processes on a more general level. The use of detailed description as part of my analysis has helped me avoid some of the pitfalls of comparative research identified by Killias (1989), Nelken (2000) and others: readers can not only see the evidence on which I base my conclusions but can appreciate the intricacies of each system and the various motivations of the people involved.

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## Appendix 1 – Criminal procedure in France and England

### France

France's criminal procedure, in common with many other parts of public life since Napoleonic times, is codified - in the *Code de Procédure Pénale* (or *C.P.P.*).

It is one of the few European countries to maintain the iconic position of the *Juge d'Instruction* who statutorily supervises serious criminal investigation (Hodgson, 2001). The *Juge d'instruction* is trained as what the French call a *magistrat* at the *Ecole Nationale de la Magistrature* and this is why one sometimes sees the term *Juge d'instruction* translated as “examining magistrate” although they are not magistrates in the sense the English use the term.

Another *magistrat* – trained at the same institution as the *Juge d'instruction* and with interchangeable career paths – represents the office of the prosecutor – the *Procureur de la République* – in criminal cases. It is the prosecutor who liaises with the police in the first instance and who assigns serious or sensitive cases to a *Juge*. The *Juge d'instruction*, though as emblematic of the French judicial system as the adversarial trial is of the English, supervises only around 5% of cases (Hodgson, 2005). The prosecutor's office will continue to monitor the case.

The investigation - or “*instruction*” – is supposed to take place in secret and, in the past, the *Juge* was solely responsible for the neutrality of the enquiry, taking note of incriminating and exculpatory information relating to the citizen being investigated or “examined” (“*mis en examen*”).

More recently, in 1993 and 2000, following legislation influenced in part by the work of the influential Delmas-Marty Commission (*Commission Justice Pénale et droits de l'homme*, 1991) and the need to incorporate the European Court of Human Rights (Field and West, 1995) – the role of the defence lawyer in the pre-trial phase has been extended with increased rights of access to the suspect in police custody (*garde à vue*) and subsequently to see the file (“*dossier*”) in its entirety, and the formal power to request investigatory acts of the *Juge* during the instruction. These changes have been seen, positively or negatively depending on the viewpoint of the commentator, as the

introduction of adversarial tools into the inquisitorial model and the French system is now judged to have moved away from the pure inquisitorial model many assume towards a mixed system.

In any event, *Juges d'instruction* rarely undertake actual investigatory acts themselves. They delegate this work under a “*commission rogatoire*” to authorised career detective officers – the judicial police (“*Officiers de la Police Judiciaire*” or “*OPJ*”) - of one of France’s two main police services – the civilian *Police Nationale* operating in the cities and the military *Gendarmerie Nationale* in rural and increasingly suburban areas. As their titles suggest, both forces are organised nationally and are seen to act in the interests of the State (Horton, 1995), a ‘cultural phenomenon of primordial importance’ (Bell, 2001, p. 48) in France, embodying the concept of the cohesion of society through general interest. As in other parts of the country’s administration system, there is a multi-level entry system into both services with civil servants and army personnel having the option either to join at the lower ranks and work their way up, or join at management level following a university degree.

The cases of all defendants accused of serious crime are considered during “*les débats*” – the equivalent of “trial” but literally “debates” – at court by a panel of three judges led by the President of the court (who, like the *Juge d'instruction*, are *magistrats* and trained in the same state institution) and nine members of the community who decide on both guilt and sentence. During this hearing, the prosecutor and the lawyer for the defence can ask witnesses questions through the President of the court, there is no cross-examination as such. The victim or victims of the offence, their families and any association with an interest in the nature of the crime (for example, one fighting racial prejudice could intervene in a case alleging racism) can declare themselves *parties civiles* in the case, employ a lawyer, and have the same rights of access to the dossier pre-trial and questioning in court, as the defence. In theory, it is the duty of a French citizen – including the defendant - to co-operate with the judicial system and answer questions in order “to make manifest the truth” – “*la manifestation de la vérité*”.

The epistemological basis of the system is ostensibly truth-seeking.

## England

In contrast to the French system, the English police were sold to the nation as the “people’s police”, professionals who would preserve the peace and act as legal guardians for the population (Stead, 1985). The police are organised regionally – there are 39 local forces in England - and are in part responsible to their local communities – via partly elected Police Authorities - in how they operate.

Although recent Acts of Parliament cover some parts of criminal procedure, the process as a whole is not written in statute. Officers investigating serious crime are mainly the plain clothes investigators of the Criminal Investigation Department (C.I.D.) of each force, but this affiliation is not permanent and it is common for officers, especially if they wish to rise through the ranks from the level of “Constable” at which they all join, to transfer between uniform and detective roles.

In the past, the police forces not only investigated crime but prosecuted offenders but now this role falls to the Crown Prosecution Service, created in 1985 and, following further reform, the decision to “charge” is theirs.

Once a case goes to trial, the system is adversarial. In principle, the prosecution and the defence contest each other in court as equal parties before an impartial judge and jury. In reality, the strength of the prosecution, which is backed by the state machinery, outweighs that of the defence. This imbalance is tempered in part by rules of disclosure (contained in the Criminal Procedure and Investigations Act, 1996) obliging the prosecution to reveal their evidence to the defence during the pre-trial stages. In addition, the prosecution has to present its case so as to prove “beyond reasonable doubt” the defendant’s guilt. The defence does not have to prove its own version of reality or even to attack the truth of what is said. It is there to attack the prosecution case and suggest the inadequacy of the evidence against their client (McConville, Sanders and Leng, 1991). Less than ten per cent of cases go to Crown Court trial and involve prosecuting counsel (McConville, Sanders and Leng, 1991).

The system aims at procedural fairness without commitment to the discovery of truth.

It will be noted, even in this brief summary, how difficult it is to create entirely symmetrical descriptions of the two criminal justice systems. For whereas the description of murder investigation in England can quite happily centre on the work of police detectives, in France the head of the enquiry – both statutorily and spiritually, if not entirely practically – remains the *Juge d'instruction*, a description of whose role therefore precedes that of the police.

## Glossary of terms

### France

**Avocat Général** Prosecutor of serious criminal offences in *cours d'assises* (Crown Court).

**Brigade Criminelle** Murder squad

**Chef de groupe** Head of investigative group

**Code de Procédure Pénale (C.P.P)** *Regulations* of criminal investigation and court procedure

**Commissaire** French management level police officer, roughly equivalent to English superintendent

**Commission rogatoire** Authority to undertake investigatory tasks often given by *Juges d'instruction* to detective officers

**Cours d'assises** Court in which cases involving serious offences are heard. Equivalent of Crown Court

**Crime** Murder or other very serious offence

**Enquête de flagrance** Police investigation following immediately after occurrence of offence

**Enquête préliminaire** Initial police investigation

**Garde à vue (G.A.V.)** Police custody

**Gendarmerie** One of three police forces in France, the *Gendarmerie* undertake all policing functions in the rural areas. The *Gendarmerie* is part of the French military force.

**Greffier** Court clerk

**Juge d'instruction** Judicial official who supervises criminal investigation

**Magistrat** Judicial official – either *Juge d'instruction* or *procureur* - educated at the *Ecole Nationale de la Magistrature*

**Mis en Examen (M.E.X)** Charging/person charged

**Officier de la police judiciaire** Detective; police officer authorised to undertake certain investigatory tasks such as arrest, and search

**Partie civile** Civil party to a criminal case, often the victim, who can seek financial damages

**Police nationale** One of France's two national police forces. Civilian operation under the auspices of the *Ministère de l'intérieur* (Home Office)

**Procédurier** Detective who is responsible for ensuring a case report – *la procédure* – is written up and correctly presented

**Président de la Cour** *Magistrat* who leads the proceedings in *Cours d'assises*

**Procureur de la République** Prosecutor . Each region has a prosecutor's office headed by a *Procureur de la République*, who has a team of *substituts* who undertake the *procureur* function in individual cases. The prosecutor who appears in the *Cours d'assises* is called the *avocat général*.

**Secret de l'instruction** Under s. 11 of the C.P.P., a criminal investigation (*instruction*) is proceeded with in secrecy and no party should divulge the details to third parties prior to trial

## England

**Case Officer** Usually of Detective Sergeant/Inspector rank, the Case Officer will be responsible for the day-to-day administration of the case right through to any court trial. S/he will have the most detailed knowledge of the case.

**Category A, B and C** Homicides have been categorised by the Association of Chief Police Officers (ACPO) as **Category A** – a murder of high public interest; **Category B** – where the offender is not known; and **Category C** – where the offender is known.

**Counsel** Barristers at Crown Court

**Crown Prosecution Service (C.P.S.)** Civil service body created in 1985 charged with prosecution of offenders

**Disclosure** Under the Criminal Procedure and Investigations Act 1996. the prosecution is obliged to disclose to the defence both the contents of its own case, under primary disclosure, and anything which could assist the defence case, under secondary disclosure



**Family Liaison Officer (F.L.O.)** Police officer designated to manage the police relationship with the family of the murder victim

**Investigating Officer (I.O.)** Officer usually of Detective Inspector rank who will have day-to-day responsibility for the way a case is investigated and will attend meetings with outside bodies

**PACE** Police and Criminal Evidence Act 1984. This Act was the outcome of the Royal Commission on Criminal Procedure 1981. It controls the way in which the police deal with suspected offenders during arrest, detention, questioning and the obtaining of samples and also related activity such as search and seizure of property.

**Senior Investigating Officer (S.I.O.)** Managerial officer, usually of Detective Chief Inspector rank, who has responsibility for the workload of the team in general and strategically leads each investigation

**Treasury Counsel** Specialised barristers who prosecute serious criminal cases at Crown Court.

### ***Causes célèbres***

**Stephen Lawrence** Black teenager Stephen Lawrence was stabbed to death in a London street in 1993. Although five white men were arrested by the police, no-one was ever convicted of the killing. A subsequent inquiry led by Lord Macpherson found the Metropolitan Police were guilty of “institutional racism” in the way they had conducted their investigation. A number of changes into murder investigation were introduced nationally following the Macpherson inquiry including the widespread use of Family Liaison Officers. See Macpherson (1999) and Cathcart (1999).

**Yorkshire Ripper** Peter Sutcliffe, dubbed the “Yorkshire Ripper”, was convicted in 1981 for killing 13 women and attacking several others. A subsequent report by Lord Byford, the details of which have never been fully published, identified a number of problems with the investigation notably a paper-based incident room overwhelmed with information from the long-running enquiry. The SIO also credited a tape featuring a caller with a Sunderland accent purporting to be from the killer as genuine; thus initially falsely eliminating Sutcliffe, who had a Yorkshire accent, from the investigation. In addition. Sutcliffe’s name was given to the enquiry by an associate, but not acted upon.

The problems associated with this enquiry accelerated the introduction of computer software HOLMES into major incident rooms in England and Wales and forced a re-look into the role of the SIO and others in the investigative teams. See Doney (1990) and Yallop (1993).

**Le Petit Grégory** Four-year-old Grégory Villemin was found tied up and drowned in a river near his home in rural north-eastern France in 1984. The enquiry was originally undertaken by the local *Gendarmerie* and they arrested Bernard Laroche, a cousin of the dead boy's father Jean-Marie Villemin. Laroche was released from custody because of lack of evidence and then killed by Jean Marie. The *Police Nationale* took over the investigation and arrested the boy's mother Christine who was also subsequently cleared. The killing remains undetected. The *Gendarmes* were criticised for the clumsiness with which they collected forensic evidence from the scene of the crime and the dead boy's home. The inexperienced Juge was also held responsible for some of the inadequacies in the investigation. As a result of the *petit Grégory* case, the *Gendarmerie* have vastly increased their investment in crime scene examination and child murders are invariably assigned to the *Police Nationale*. See Villemin (1986), Lambert (1987), Corazzi (2004) and Sesmat (2006).

**Affaire Outreau** Eighteen people living in a poor suburb of North France were accused of paedophilia and incest following teachers and social workers noticing "strange sexual behaviour" from four children in a local school. Psychologists believed the children to be credible witnesses but doctors found no evidence of sexual abuse. The eighteen defendants were held in custody for between one and three years. Four of them ultimately admitted they were guilty and were convicted in the first trial. Seven denied involvement and were acquitted in the first trial; and six of those who denied the charges were convicted and given light sentences in the first trial. These six appealed their convictions. On the first day of the appeal hearing, all the prosecution's claims were destroyed, and all six were finally acquitted. Another defendant had committed suicide in prison while awaiting trial. Again, the role of an inexperienced *Juge d'instruction* was questioned, as well as the undue weight given to children's words and to psychiatric expertise, both of which were revealed to have been wrong. An unprecedented

parliamentary review was undertaken following this case and discussed numerous reforms including a more collegiate working of *Juges*, whereby inexperienced *juges* worked in tandem with more senior colleagues, and better pay and working conditions for experts. See Dawent and Huercano-Hidalgo (2005).