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"You Saw It with Your Own Eyes " - But Did You Really?

Jessica Schrader, Psychologytoday: Authoritative Studies continue to show that eyewitness testimony can be completely unreliable. Inaccurate eyewitness testimony has led to the false convictions of hundreds of individuals. Studies have shown that the memory recall process is malleable and highly susceptible to manipulation. In criminal investigations, detectives will sometimes drop small clues that witnesses will pick up on, even if only subconsciously. More insidiously, detectives and prosecutors can outright manipulate people into having false memories by providing them with suggestive clues. Tactful questioning by a lawyer during trial can also alter the testimony of a witness as pieces of their memory become combined with information included within the lawyer's questions.

Why Is Eyewitness Testimony Unreliable? Many people believe that human memory works like a video camera: We perceive an event, our brain records the experience, and then we later recall it in the same way that a film plays on a screen. But this isn't the case. Instead, memory recall is more akin to piecing a puzzle back together. As the pieces are reconstructed, one by one, our brains become highly susceptible to influence. In 2010, Aaron Scheerhoorn was stabbed to death outside of a Houston nightclub. The attack was merciless, with Scheerhoorn crying out "Help me! He's killing me!" as he was stabbed numerous times. A crowd witnessed the attack, and upon questioning by detectives, six different eyewitnesses identified Lydell Grant as the murderer. At trial, the six eyewitnesses testified that they had seen Grant murder Scheerhoorn. For violent crimes, any eyewitness is a luxury for the prosecution; six fingering the same defendant is extraordinarily rare. Despite having an alibi, and despite the prosecution having no physical evidence tying him to the crime (which was unusual given the bloody nature of the attack), Grant was quickly found guilty and ultimately sentenced to life in prison. As any lawyer knows, few things sway a jury like eyewitness testimony. Since the day he was arrested, Grant steadfastly maintained his innocence. From his maximum-security prison in Gatesville, Texas, he sent dozens of letters to defense attorneys in an attempt to have his case reevaluated, but most went unanswered. Years passed; soon Grant found himself imprisoned for nearly a decade. Everything changed in 2019 when a new DNA testing method analyzed samples from underneath Scheerhoorn's fingernails, clearing Grant and instead implicating another man, Jermarico Carter, who later confessed to the murder. A writ of habeas corpus was filed bringing to light the new DNA evidence, and Grant was quickly released from prison.

Unfortunately, Grant's story is not unique. Data from the Innocence Project (an organization committed to exonerating individuals wrongly convicted of crimes) show that more than 375 individuals have been exonerated with new DNA evidence. Twenty-one of those individuals had been sentenced to death and served time on death row. Importantly, the overwhelming majority of convictions overturned through DNA testing were originally based on eyewitness testimony. How did this happen? How did six different people all think they saw Grant murder Scheerhoorn? One might assume that Grant was the unlucky doppelgänger of Carter (the actual murderer), but as seen in their mugshots below, this isn't the case. The reality is that numerous studies (in addition to real-world cases) have pointed to the reality that eyewitness testimony is often unreliable. This is of grave concern, given that surveys show that eyewitness testimony is among the most convincing forms of evidence presented in criminal trials.

Beginning in the 1970s, psychologist Elizabeth Loftus discovered the once-surprising (but now accepted) fact that memory is malleable and subject to manipulation. Several experimental studies have shown that participants can be primed to believe that they have witnessed any number of things, even when they did not. For example, individuals have been primed to believe that they saw a Stop sign, when they actually saw a Yield sign (Loftus, Miller, & Burns, 1978). Another seminal study, conducted by Loftus & Pickrell (1995), provides an illustrative example of the ease of creating "false memories" in participants. Researchers gave participants written accounts of four different events, three of which they had actually experienced. The fourth story wasn't real, and involved the participant getting lost as a child in a public place (for example a mall or amusement park). A family member was used to provide realistic details for the false story. Around one-third of participants claimed to have remembered the false story. This change in memory recall that arises after manipulation has been termed the "misinformation effect."

In criminal investigations, detectives will sometimes drop small clues that witnesses will pick up on, even if only subconsciously. For example, while using the quintessential lineup tactic for suspect identification, a detective might smile, grunt, or nod when a suspect is chosen (e.g., Zimmerman et al., 2007). More insidiously, detectives and prosecutors can outright manipulate people into having false memories by providing them with suggestive clues. Tactful questioning by a lawyer during trial can also alter the testimony of a witness as pieces of their memory become combined with information included within the lawyer's questions. For example, imagine that a car accident has occurred on a cloudy day, but during the trial, a lawyer asks the following question to an eyewitness: "Given that the accident occurred just past noon, did the sunshine affect your ability to actually see the crash?" Such a witness might now recall that the crash occurred on a sunny day, even though that isn't true.

Indeed, returning to the topic of Lydell Grant, reports suggest that all of the eyewitnesses to Scheerhoorn's murder were manipulated in some way either before or after their identification of Grant. Three reported that the detective told them that they had picked the same person that other people had. Two other eyewitnesses discussed their selection with each another and confirmed each other's memory. The last eyewitness claimed that the detective stated "good job" following their identification of Grant. This type of manipulation can lead not only to incorrect identifications, but also more confidence in eyewitnesses that their memory is correct. Importantly, the more confident an eyewitness seems during trial (e.g., "I am 100% certain that is the man!"), the more persuasive they seem to jurors.

How Do We Make Eyewitness Testimony More Reliable? It's important to note that eyewitnesses can be reliable; in fact, one study has shown that, under the right circumstances, eyewitnesses can recall information correctly more than 90% of the time (Wixted et al., 2015). The key is to ensure that one's memory is not contaminated, much in the same way that fingerprints should not be disturbed. To study the most accurate methods of achieving accurate eyewitness memory recall, a committee of psychologists and criminologists was organized in 2014 by the U.S. National Research Council. Their seminal report, Identifying the Culprit: Assessing Eyewitness Identification, set out several important recommendations, including (1) "double blind" lineups, in which neither the administrator nor the eyewitness knows who the suspect is, (2) standardized instructions for eyewitnesses that ensure they are not primed to select a particular individual, (3) statements of confidence from eyewitnesses immediately after making an identification, where an eyewitness provides a statement, in their own words, that articulates the level of confidence they have in their identification, and (4) recording the identification process, preferably with both audio and video. As it stands today, 24 USA states have adopted these types of procedural reforms for law enforcement, including Texas in 2011—one year after Lydell Grant was convicted of murder.

Priti Patel – a New Champion of Criminal Records Reform?

For four long years the Home Office fought tooth and nail through the courts to thwart a challenge to the legality of DBS criminal records checks. Backed by campaign groups (including Unlock), some brave individuals took their cases all the way to the Supreme Court to try to stop mandatory disclosure of minor and historic convictions to prospective employers. The Home Office could have acknowledged the unfairness of the system in 2016 and agreed to reform. But they never did and, even after being defeated on most grounds in the Supreme Court in 2019, they took a year and a day to put forward legislation to comply with the judgment.

But this occurred mostly before Priti Patel became Home Secretary. She is renowned as a supporter of tougher justice and has called for those who commit crime to "literally feel terror". But she seems to have a much more liberal side when it comes to miscarriages of justice and some types of criminal records. The Home Secretary recently published a letter to Sir Richard Henriques about Operation Midland, supporting his concerns that more needed to be done to right the wrongs of that significant miscarriage of justice.

Recently, Priti has championed reform of another kind – she wants to restrict the records kept by the police about individuals. In particular, she is apparently unhappy that the police are formally recording incidents which are not crimes. "Government sources confirmed that the home secretary has told the College of Policing to drop guidance to forces that those accused of non-criminal incidents should have them recorded on police files". The Home Secretary's concern is shared by many who come into conflict with the police, but are not actually convicted or cautioned for a crime. The police can record whatever they think is relevant about an individual – this can include unverified allegations, non-crime incidents, acquittals or information about who the suspect lives with. Most people have no idea what information the police have on computer about them.

Such "intelligence" matters because the police have discretion to reveal it in an enhanced DBS check. This is the highest level of criminal records check and can be requested by employers for any prospective employee/volunteer who would be working with children or vulnerable adults. Employers make their own judgements about information revealed. Police intelligence which appears on DBS checks can be a barrier to getting a job – no smoke without fire is a strongly held belief.

The system is an unfair one – if you have been acquitted by a jury of a crime, why should an employer be informed of that acquittal twenty years later? Why should an employer know someone might be a member of a gang, if that information comes from a third party and is not verified? The Home Secretary has by no means prevented the police from disclosing all "intelligence" on DBS checks, but she understands the negative potential of such data.

Priti Patel was particularly concerned by cases where someone accuses someone else of committing a hate crime. Even if the police consider that the particular incident is not a crime, they can record it as a hate "incident". Harry Miller, a retired police officer, put out a tweet which was perceived to be transphobic by some. Humberside police recorded this as a non-crime hate incident – an action being challenged by Harry in court. 85 year old Douglas Kedge wrote a letter defending parents' right to have an abortion in the case of the foetus having downs syndrome. His letter was recorded as a hate crime incident by Thames Valley Police. Patel's concern about such cases may set her on a collision course with senior police officers. The College of Policing is fighting in the courts to continue to be allowed to record non-crime hate incidents since these "measure tensions effectively and…prevent serious hostility and violence".

Will Priti prevail over senior police? Will she move from seeing the unfairness of these police records to seeing the unfairness of the DBS checks in general? For every one bit of police intelligence revealed on a check, hundreds of irrelevant cautions and convictions are revealed on other DBS checks. The Supreme Court case achieved some progress is making criminal records checks fairer, but we still have a long way to go. Today, a 19-year-old who pushes someone and receives a caution for actual bodily harm will still have to disclose it 20 years later when applying to be a youth worker. So, here's hoping Priti Patel is a convert to radical criminal records reform. If you support reform of our unfair system, why not sign up to join the #FairChecks movement?

Female Political Prisoners in Iran Facing 'Psychological Torture'

Sarah Johnson, Guardian: Female human rights activists imprisoned in Iran face increased jail terms and transfers to prisons with "dangerous and alarming" conditions, hundreds of miles away from their families, according to campaigners. Warnings of the deteriorating treatment of female prisoners in Iran come days after Nazanin Zaghari-Ratcliffe, the British-Iranian national who has served a five-year prison sentence in Iran, was sentenced to a further year in jail and a year-long travel ban by the Iranian courts. Human rights campaigners said that in the past six months increasing numbers of Iranian women jailed for human rights and political activism had been moved from Evin prison in Tehran to prisons outside the capital city without warning. The women were locked up in the same area as criminals who had committed serious offences such as murder, in breach of Iranian law and international standards. Campaigners said that some had been raped by interrogators, attacked by fellow prisoners or denied medical treatment.

Shiva Mahbobi, spokesperson for the Campaign to Free Political Prisoners in Iran, described it as "a way of subjecting them to psychological torture". "It is really, really bad," she said. "[The guards] take away all their stuff; the family does not know where they are. There is a lack of drinking water, and lots of illnesses and contagious diseases. "The guards intentionally plan for non-political prisoners to attack them. Some families can't go and visit; if they can, it's difficult to do often." Nasrin Sotoudeh, a human rights lawyer imprisoned for her work defending women's rights and protesting against Iran's forced veiling laws, was transferred from Evin prison to Shahr-e Rey prison in Varamin, outside Tehran, in October last year. In January she was diagnosed with a myocardial bridge – symptoms include angina, chest pain and other heart complications. She was told by a doctor to avoid stress and that she should be held in a well-ventilated space.

But the conditions in Shahr-e Rey prison are "extremely poor", according to Nassim Papayianni, Amnesty International's Iran campaigner. It is a disused chicken farm that holds several hundred women convicted of violent offences in overcrowded and unhygienic conditions, without access to decent food, medicine and fresh air, she said. There are no windows, and prisoners have no access to safe, drinkable water. Reports from the facility indicate high levels of assault towards inmates by other inmates and prison staff, as well as rampant drug use and infectious diseases.

In December last year, Saba Kordafshari, a human rights defender, was also transferred from Evin to Shahr-e Rey prison. Zeynab Jalalian, a Kurdish Iranian woman, was moved to four different prisons between April and November last year including Yazd, Evin and Kermanshah. She has described prison transfers as a type of mental torture. She was not allowed to take her personal belongings, including clothes, with her and said she had been denied healthcare, which caused her more suffering, especially as she recovered from Covid-19. In January, Golrokh Ebrahimi Iraee was moved almost 120 miles (200km) from Shahr-e Rey to Amol prison in northern Iran without notice and deprived of her personal possessions. She had already served one sentence when she was imprisoned again in November 2019 for "insulting the supreme leader" and "spreading propaganda against the system". In an open letter, her husband wrote that guards had dragged her across the floor by her hair.

Atena Daemi, a women's rights activist, has been sentenced in two further cases for peacefully protesting while serving time for campaigning against the death penalty in Iran. She was transferred suddenly, and without notice, from Evin prison to Lakan prison in Gilan province, north-west of Tehran, last month. Also in March, Sepideh Gholian, a human rights defender, was transferred from Evin prison to Bushehr prison, which is nearly 300 miles from her family home. And Maryam Akbari Monfared was transferred from Evin prison to Semnan prison, east of Tehran. She is serving a 15-year sentence and has been in prison since 2009 without a single day of leave. Yasaman Aryani and Monireh Arabshahi were transferred in October last year from the women's ward of Evin prison to one in Karaj, Alborz province.

Papayianni said that all the women had been wrongfully convicted and should be released. "At Amnesty International, we believe that none of them should be in prison at all. We believe all their sentences are unjust and that they should be immediately released." She added that the situation for these women was deteriorating and that transferring women was commonly used to silence detainees, particularly when they had campaigned from behind bars. Mahbobi said that she suspected the increasing number of transfers were part of a political move to close Evin prison, where most political prisoners are traditionally held, in an effort to declare that Iran does not detain human rights defenders. "It's quite dangerous" she said. "It's really alarming. On one hand, they can send these prisoners to prisons that are really unimaginable and put their lives in danger, and then [the government] can claim they don't have any political prisoners." The Iranian government has been approached for comment.

No Statutory Requirement to Impose Consecutive Sentence on Proceeds of Crime Act 2002

Giovanni Di Stefano: Parere Pro Veritate – No Statutory Requirement to Impose Consecutive Sentence on Proceeds of Crime Act 2002 'Default' Orders. The Criminal Justice Act 1988 relinquished its statutory rights in favour of the Proceeds of Crime Act 2002 [POCA 2002] on the 24 March 2003 [S.I.2003 no.33] when the said provisions were brought into force albeit POCA 2002 received Royal Assent on 24 July 2002. POCA 2002 is divided into 12 parts consisting of over 460 sections and 12 schedules. Part 2 concerns confiscation orders in criminal proceedings. Contained within POCA 2002 there is not a single word of 'Hidden Assets' De Jure and De Facto For the purpose of this opinion, the relevant legislation for "default" sentences can be found in POCA 2002 s.38.

Since 2003 it had always been settled and accepted view that provisions about imprisonment or detention in default or discharging a valid confiscation order must always be consecutive to the Index Sentence served. The 'settled' and 'accepted' position is a fallacy, and there is no statutory duty to impose a consecutive sentence for reasons clearly set out in the Legislation. The governing section within POCA 2002 imposing duties for default sentences is found – as states – in s.38 and the relevant subsection is (2) which states: "In such a case the term of imprisonment or of detention under s.108 of the Powers of Criminal Courts (sentence) Act (detention of persons aged 18 to 20 for default) to be served in default of payment of the amount due not begin to run until after the term mentioned in subsection (1) (b)."

Practitioners for almost 20 years have erred in accepting that the word "after" to mean "consecutive". By taking such a wrong turn in the application of the law has – per se – failed not only the Statute but of nature justice itself. Had practitioners carefully scrutinised the legislation and supporting statutes it would have been properly directed and such clear-cut direction can be found in the Powers of the Criminal Courts (sentencing Act 2000 s.139 (5) [PCCS 2000]: "Where any person liable for the payment of a fine or a sum under recognizance to which this sentence applies is sentenced by the Court to, or is serving or otherwise liable to serve, a term of imprisonment or a term of detention under s.108, the court may order that detention in a young offender institution or a term of detention under s.108, the court may order that any term of imprisonment or detention shall not begin to run until after the first-mentioned term".

To use in the statute of the word "may" is discretionary, not mandatory. For far too long practitioners and the judiciary have taken a wrong turn in the application of the law. There has been a serious premature adjudication and interpretation presuming to impose a statutory duty to impose a consecutive sentence when clearly no such statutory duty exists It may well be the case that in the majority of cases a consecutive sentence is the correct approach. However, there remains the fact that such an approach remains a discretion and not a duty. Any detainee who has received a default sentence on the basis that the judiciary failed to consider the application of discretion, or where within the sentence remarks there is no mention of such discretion, should accordingly consider an appeal to the Court of Appeal Criminal Division.

Where a detainee is unable to pay a default, the sentence becomes arbitrary detention. The distinction between unable to pay and refusing to pay is to be distinguished A detainee who is unable to pay may well find some comfort in the 4th Protocol of the European Convention on Human Rights (Strasbourg, September 16, 1963, Art 1: "Prohibition of imprisonment for debt". "No one shall be deprived of his liberty merely on the grounds of inability to fulfil a contractual obligation". All countries within the Council of Europe (to be distinguished from the European Union) must abide by the ECHR and as founding members of the Council of Europe, the United Kingdom is bound by international law and Treaty to comply.

For all the above reasons there is, never has been, any statutory duty to impose a consecutive sentence for any default sentence within the confiscation regime and further, if upon discovery and enquiry a Court finds that any detainee with s.258 of the Criminal Justice Act 2003 is unable to pay a confiscation order as opposed to refusing/unwilling to pay any detention suffered and/or continuous becomes arbitrary and the most serious breach of law and duty.

Longer Jail Terms and Stricter Monitoring as New Terror Laws Become Law

The biggest shake-up of terrorist sentencing and monitoring in decades was granted Royal Assent on Thursday 29 April 2021 – giving the courts, police and security services greater powers. The new Counter-Terrorism and Sentencing Act (2021) completely ends the prospect of early release for anyone convicted of a serious terror offence and forces them to spend their whole term in jail. The most dangerous offenders – such as those found guilty of preparing or carrying out acts of terrorism where lives were lost or at risk – now face a minimum of 14 years in prison and up to 25 years on licence, with stricter supervision. Justice Secretary & Lord Chancellor, Rt Hon Robert Buckland QC MP, said: "Those who seek to kill and maim innocent people in the name of some warped ideology have no place in our society. This legislation will put terrorists behind bars for longer – protecting the public and helping to keep our streets safe".

The Act builds on emergency legislation passed in February 2020, following the terrorist atrocities at Fishmongers' Hall and in Streatham, which retrospectively ended automatic early release for terrorists serving standard determinate sentences. This forced them to spend a minimum two-thirds of their term behind bars before being considered for release by the Parole Board. The new laws go further and allow courts to consider whether a much wider range of offences have a terror connection - for example an offence involving the supply or possession of firearms with a proven link to terrorist activity - and hand down tougher punishments. This also ends the prospect of terror offenders being released automatically before the end of their sentence. Crucially, the new legislation also enhances the tools available to counter-terrorism police and the security services to manage the risk posed by terrorist offenders and individuals of concern outside of custody. This includes stronger Terrorism

Prevention and Investigation Measures and making it easier for the police to apply for a Serious Crime Prevention Order in terrorism cases. Additionally, it widens the list of those offences that can be classed as terror-connected and thus trigger Registered Terrorist Offender notification requirements – meaning more offenders will be required to provide the police with regular updates on changes to their circumstances, such as a new address or when they plan to travel abroad.

Home Secretary Priti Patel said: "The Counter-Terrorism and Sentencing Bill marks the largest overhaul of terrorist sentencing and monitoring in decades. This legislation will lengthen sentences for terrorists, improve monitoring of these dangerous offenders, and give the law enforcement agencies the powers to strengthen their ability to take action. Those who senselessly seek to damage and destroy lives need to know we will do everything possible to stop them. I will always take the strongest possible action to protect our national security".

Key measures include: a new 'Serious Terrorism Sentence' for dangerous offenders with a 14-year minimum jail term and up to 25 years spent on licence: ending early release for the most serious offenders who receive Extended Determinate Sentences – instead the whole time will be served in custody: increasing the maximum penalty from 10 to 14 years for a number of terror offences, including membership of a proscribed organisation: ensuring a minimum period of 12 months on licence for all terror offenders as well as requiring adult offenders to take polygraph tests: widening the offences that can be classed as terror-connected to ensure they carry tougher sentences and offenders are subject to the Registered Terrorist Offender notification requirements post-release.: boosting the disruption and risk management tools available to Counter-Terrorism Policing and the Security Service, by strengthening Terrorism Prevention and Investigation Measures and supporting the use of Serious Crime Prevention Orders in terrorism cases. These measures will come into force 2 months after Royal Assent except for the following which come into force immediately. Changes relating to currently serving prisoners in Northern Ireland, who will be subject to the same release arrangements as terrorists in England & Wales and Scotland, aligning the approach taken in the emergency legislation (Terrorist Offenders (Restriction of Early Release) Act 2020). Measures relating to the extension of the Sentence for Offenders of Particular Concern (SOPC) in England and Wales, and the creation of an equivalent sentence in Scotland and Northern Ireland. Removal of the statutory deadline for completion of the Independent Review of Prevent.

Police Without Good Reason - Baton/Taser Black Vulnerable Girl

Guardian: A police officer has been dismissed after hitting a vulnerable teenage girl with a baton "at least 30 times", the Independent Office for Police Conduct (IOPC) has said. Metropolitan Police officer Benjamin Kemp, based at north-east command, was dismissed without notice following a disciplinary hearing by the IOPC. During the hearing, the panel heard that in May 2019, a 17-year-old girl, who has learning disabilities, had run away from a group on an escorted walk in Newham after becoming distressed. The girl was close to a main road and concerned members of the public called the police. The girl also flagged down a passing police car. After the teenager told officers that she was a vulnerable child with mental health problems, she agreed to get in the police car, but later got out.

The IOPC said PC Kemp attempted to handcuff the teenager, but when this was unsuccessful, he used CS spray less than a metre from her face. "Within seconds he started using his baton and then struck her several times," it said. When another police unit arrived, the girl was immediately Tasered by an officer from that vehicle, and she was struck several times more with the baton by PC Kemp, handcuffed and put into a police van. In total, the teenager was struck at least 30 times, the IOPC said. An investigation followed after a complaint was made by NHS workers and the mother of the teenager, who is from east London. The watchdog noted that the girl was black, but there was no indication that racial discrimination played a factor in the case. IOPC regional director Sal Naseem said the force used by police "would be shocking to most people". He added: "The disciplinary panel also found PC Kemp had behaved in a manner which lacked self-control and did not take into account the vulnerable status of the teenager, who appeared very frightened.

The IOPC said the six-month investigation found the officer who used the Taser "had no case to answer for use of force", but there was a case for misconduct and he received "management action" in August last year. It said the officer had shown a lack of respect to the girl and her carer, who later arrived at the scene. Ch Supt Richard Tucker, borough commander of Waltham Forest, said the use of force by PC Kemp was "utterly inappropriate". He said: "He overreacted, used excessive force in a very disproportionate manner, and was unprofessional. For that he has been held to account, and has been rightly dismissed from the service. "I can assure you his actions are not representative of how we deal with situations like this in Newham. "On behalf of the Met, I apologise to the young woman and her family for how he behaved and to London's wider communities for the impact this case undoubtedly has on the trust and confidence they have in how we police London. "They and the people of London rightly expect the highest standards from their officers, and on that day PC Kemp let everyone down."

Police Officers Warned About Inappropriate Social Media Use

IOPC: Following a number of investigations into police officers posting or sharing offensive, material via social media, the Independent Office for Police Conduct (IOPC) today warned that such behaviour from serving police officers is unacceptable, and that individuals could face investigation for misconduct. IOPC Director General, Michael Lockwood, said a snapshot of investigations between 2018 and 2020, showed a number of examples of officers sharing offensive and inappropriate content on social media. "From racist, sexist, and other discriminatory comments to photographing crime scenes and using social media to contact victims of crime for sexual activity, it is concerning that a small number of police officers appear to think that this is acceptable behaviour. In the most serious examples we have seen grossly offensive images and messages which the public would be appalled by. Making discriminatory remarks, and the sharing of graphic and offensive memes and images, is unacceptable under any circumstances. Officers can face serious disciplinary or even criminal consequences if they do not uphold the standards of professional behaviour," he said.

Mr Lockwood has written to the National Police Chiefs Council, asking them to remind forces and officers of their obligations under the police Code of Ethics and Standards of Professional Behaviour. "We have a collective responsibility to challenge and root out this type of culture and behaviour in policing. Many forces take a forthright stance on these issues and have robust policies on use of social media, in line with the Code of Ethics. The vast majority of police officers are appalled by this kind of activity and I am encouraged that these matters have often come to light because police officers called out their colleagues and reported their concerns as they are duty bound to do. A whole police force can be judged by the community on one officer's inappropriate posting which significantly damages public confidence and brings the police into disrepute."

A snapshot of cases since the IOPC's establishment in 2018 include: In December 2020, several Metropolitan Police Service officers received final written warnings for gross misconduct after sharing text messages which contained offensive references to people with disabilities and jokes about rape, paedophilia, racism, and homophobia. In August 2018, following an IOPC investigation, an independent panel concluded a South Wales police officer had a case for

gross misconduct, with a sanction of a final written warning. The officer resigned prior to the hearing taking place. A member of the public reported a number of potentially offensive Facebook posts which they felt breached the rules of SWP in relation to social media. A police officer resigned from Cheshire Constabulary after our investigation, which concluded in November 2019, found they had contacted, via social media, three members of the public whom they had met during the course of their policing duties and proceeded to pursue a personal relationship with each of them. In May 2020, an IOPC investigation saw a misconduct hearing find that a Warwickshire PCSO would have been dismissed for gross misconduct had he not already resigned. The officer made inappropriate contact via social media with a burglary victim after he had visited her home to provide crime prevention advice. The incident came to light after the victim reported the conduct to the force's professional standards department. In August 2020, a Kent police officer who described searching women as 'good fun', mocked a dementia sufferer and posted crime scene photos on WhatsApp over eight months was sacked following a force investigation. The officer's messages were discovered when another member of the chat group had his phone searched as part of a separate criminal investigation. IOPC investigations continue into a number of inappropriate images and/or messages shared on social media.

Four Merseyside Police Officers Convicted After Assault and Cover-Up

Helen Pidd, Guardian: Four police officers have been convicted after one of them beat up a member of the public and the others helped him to cover it up. The Merseyside police officers all attended a domestic incident in Southport in June 2019, which ended with a member of the public being assaulted. PC Darren McIntyre punched Mark Bamber four times in the face and once in the ribs before arresting him at his home in Ainsdale. Midway through the assault, McIntyre's colleagues turned off their body-worn cameras and later lied about what had happened, the Liverpool Echo reported. None of them mentioned the punches when they later gave "inaccurate" statements about the arrest. Analysis of the bodycam footage revealed Bamber had not done anything wrong before he was attacked. McIntyre had denied the assault, saying Bamber had headbutted him first. But the video caught him raging at Bamber, saying "you better wind your fucking neck in" and threatening to arrest the 52-year-old and put him in a cell. The footage showed the officer grabbing Bamber, spinning him around, and punching him four times to the face and once to the ribs. Bamber ended up with blood pouring down his face from a cut to his cheek. The officers were conducting a welfare check after Bamber's partner had phoned 999 saying she felt suicidal. A jury was told that Bamber had previous convictions for domestic violence against her, and that the couple were known to be drinkers with mental health issues.

The four officers attended with the ambulance at about 3.30am, when Bamber tried to deny them entry, saying his partner did not want to see them. The court heard he eventually let them in, after filming McIntyre and requesting his collar number and name. The assault then took place in view of the other officers. But it was Bamber who ended up being arrested, on suspicion of assaulting McIntyre. He later complained of being attacked and was eventually told no further action would be taken against him. McIntyre was found guilty of actual bodily harm and perverting the course of justice after a four-week trial at a Nightingale court at the Hilton Hotel in Liverpool. Three other officers – police constables Garrie Burke, Laura Grant and Lauren Buchanan-Lloyd – were found guilty of perverting the course of justice.

A jury found all four officers guilty in a unanimous verdict. The charges were brought following an investigation by Merseyside police's professional standards department.

Sentencing has been adjourned until Thursday 27 May. A force spokeswoman said: "All of them will now face internal misconduct proceedings for breaches of the standards of professional behaviour connected to a criminal conviction, which could lead to their dismissal from the force and them being placed on the national barred list preventing them from being re-employed in policing in future." All four officers have been suspended.

Self-Defence Against the Police

Benjamin Bestgen, Scottish Legal News: It is settled law in the UK that anybody who is physically attacked or anticipates an immediate attack may use such force as they deem necessary and reasonable in the circumstances to defend themselves. There is no general duty to retreat, though if escape from attack was easily possible and a reasonable option, courts will take this into account. But what can you do if your attacker is a police officer, like PC Charlie Harrison, who was recently convicted of assaulting an innocent man in front of his children, likely motivated by racial prejudice? The short answer, unfortunately, is not much. The theory is that police will be law-abiding and only use their powers when justified, considering necessity, reasonability and proportionality. If police identify themselves as law enforcement to you and give you a lawful verbal order or use physical force to address whatever it is they need from you, you are expected to comply, even if you believe police made the wrong decision, apply force unnecessarily or act in bad faith.

A decision of "misuse of powers", "wrongful detention/arrest" or "unlawful use of force" is for a court to make when you complain about your treatment. This is because both you and the police are subject to the law and the decision whether the use of force was ultimately lawful is neither for you nor the police to determine. In practice, this is less than ideal, especially as the damage from the police action is already done. Pursuing a complaint is also costly and police officers are much better equipped to navigate the judicial process to their advantage than you are.

Policing has been a controversial occupation probably since its inception millennia ago: in ancient China, India, Egypt, Maya, Aztecs or Rome, certain people were tasked by the ruling powers, wealthy private parties or religious authorities with maintaining public order. The models varied, using military forces, private contractors, community magistrates, voluntary associations, trained slaves, bailiffs or professional watchmen, detectives and thief-catchers.

The individuals tasked with maintaining whatever passed for "law and order" in a society enjoyed various powers to fulfil their function: enter people's premises, conduct searches, confiscate property, use of physical force, carry weapons, detain people, issue and collect fines, evict people from premises and disperse crowds. Policing was based on authority, meaning law enforcement were "the long arm of the ruling powers" and only accountable to those who commanded them. Additionally, the persons acting as police were also not always a society's best and brightest, particularly well trained or well-remunerated for what is by all accounts a complex, dangerous and very stressful job. Therefore, accusations of corruption, abuse of power and unnecessary use of violence by police against other people are as old as policing itself. The idea that police forces are ultimately the witting or unwitting henchmen of the rich and powerful factions of society is likewise ancient and persistent.

Use of force by police: As noted previously, one of the main justifications for allowing a state and law enforcement to exist at all is that their purpose is to ensure that everybody within the territory is protected from harm. That includes protection against harmful actions by the state and its agents. Any use of force needs to be legally justifiable and the laws regulating such force have to be just, reasonable, fair and proportionate. In many countries around the

world, this is blatantly not the case: both laws and police forces often act as oppressors against various factions of society. Use of force may be regulated on paper but unchecked in practice and even law-abiding people have reason to fear contacts with law enforcement.

However, in Canada, Japan, Australia, New Zealand, most EU countries or the UK, the general idea is that police must be able to justify use of force against a person and be accountable. In the UK, the Code of Ethics published by the College of Policing states that a police officer using force has to account for it: officers must be able to explain, based on their honestly held belief, that the use of force was reasonable, proportionate and necessary in the circumstances where it was used. This was further discussed in R v Director General of the IOPC [2020] EWCA Civ 1301 (concerning the killing of Jermaine Baker by police in 2015), where it was also noted that subjective beliefs can be honestly held but be objectively unreasonable and therefore fail to justify the actions.

A counter-point from the US: It is maybe unsurprising that US courts have considerable experience with "excessive force" cases. In State v Mulvihill 57 N.J. 151 (1970), the Supreme Court of New Jersey discussed a case where a 20 year-old-man had struck a police officer but claimed self-defence. Allegedly the officer had unreasonably escalated a minor dispute with the youngster over suspicion of public alcohol consumption. Apparently, the young man refused to answer the officer's questions or let him smell his breath. The officer then swore at the man, shook him and hit him with his pistol. The two men grappled and in the scuffle the gun went off, harmlessly. However, fearing he would be shot, the young man punched the officer in the face. He was subdued by other officers and charged for this blow.

The court noted that citizens have a general obligation to submit to an arrest by police, even where the arrest is believed to be unlawful. The legal rights against unlawful arrest and having one's liberty interfered with can be restored in court after full analysis of the situation. But, the court reasoned, life and limb cannot be repaired in this fashion. Therefore, a citizen may resist an officer's excessive force and defend oneself from being brutalised, on two conditions: The citizen may not use greater force than is reasonably required in the circumstances. The citizen must also stop resisting if he knows that by submitting to the officer, the officer's excessive use of force would end. The second point is not meant to say that a person must suffer excessive treatment after all. It only applies the reasonableness principle: if giving up resistance seems to be a realistic option to make the officer's use of force stop, it should be taken.

Trust and perceptions: In many countries, policing remains grounded in the authority of the state and its laws. A common constitutional justification is that the state has a monopoly on the legitimate use of force. The police are its instrument to exercise such force where required. In the UK, policing is, theoretically at least, grounded in public consent. When Sir Robert Peel founded the Metropolitan Police in 1829, he stated that the legitimacy of a police force in the eyes of the public depends on public approval of its existence and behaviours. Trust and accountability, said Peel, are paramount for an effective authority figure. And while police should not pander to public opinion, they must always strive to maintain the respect and support of the people it serves in this country, regardless of people's wealth, background or social status.

When it comes to the use of force, the Independent Office for Police Conduct found in a report that there is a gap in understanding around the lawful use of force between the general public and police officers. Younger people and ethnic minorities were more inclined to find police authoritarian and unnecessarily aggressive. Police officers felt the public often only saw snapshots of incidents without having the full background. People also fail to appreciate how hostile members of the public can be, especially if they decide to resist a lawful order or arrest. Further, use of physical force is inherently messy and for most people not part of their daily lives. Police are much more regularly exposed to it. This likely contributes to strong differences of opinion what measures are reasonable and necessary when force is used to control a situation. Training and communication: Much is said and written about police work, police brutality and police failings. Negative news sells, while police doing well and serving the public in a friendly and proper manner doesn't make the headlines too often. On the other hand, it is a fact that successive governments in Britain have chipped away at police and justice funding, hurting both serving officers and the general public. Without investing in police training, thorough communications to the public about police work and building trust through transparent, impartial, courteous and honest policing, the legitimacy of police will weaken. The idea of policing by consent is a worthy concept. It should be strengthened and upheld for everybody's benefit. If the "consent" element is damaged or lost, policing becomes an authoritarian exercise – just take a look at the United States or Brazil to see where that can lead to.

FT Editors Attack Government Plans to Restrict Judicial Review

Aishah Hussain, Legal Cheek: March consultation 'yet more evidence of the Conservative government's contempt for the separation of powers'. The editorial board of the Financial Times (FT) has launched an attack on the government for its plans to reduce judicial review powers, stating that this will "weaken a vital check on executive power". In an opinion piece, 'The judiciary is not the UK government's enemy', the FT editors comment on the government's public consultation on reform of judicial review. The consultation was launched in March by Lord Chancellor Robert Buckland and the Ministry of Justice to address the recommendations put forward by an independent panel of experts who examined the judicial review process last year. The March consultation closed last week, and is "yet more evidence of the Conservative government's contempt for the separation of powers in general, and for the judiciary in particular", according to the FT editorial board.

A point of contention put forward by the editors is the government's proposal to increase the use of 'ouster clauses' — provisions in legislation that limit the courts' ability to scrutinise particular matters — despite the experts cautioning against widespread use of such devices. This sentiment was echoed by Law Society president I. Stephanie Boyce, who, in a statement last week, said the clauses should "only be used in rare, exceptional circumstances with strong justification". Boyce added: "The government seems to want carte blanche — it gives no vision for how or when or why it considers that ouster clauses would and would not be appropriate."

The expert panel, led by Lord Faulks QC, was set up last July after the 2019 Conservative party election manifesto promised to ensure that judicial review was not being misused.

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