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MOJUK: Newsletter 'Inside Out' No 852 (23/06/2021) - Cost £1

Tyburn Jiggery Pokery - Crime and Punishment

Raymond Smith, Inside Time: I am a passionate believer in education for all, and not just a means to get employment but as a way of improving self-confidence and appreciation of the world in which we live. A particular interest of mine is history and, of course, the evolution of prison and justice reform. I read a lot about changes that have been made over centuries that are still relevant to our thinking today. The piece below is not relevant at all, but just makes me smile in a slightly twisted way. History can be fascinating in its own right. Nothing wrong with that. I never knew that over 300 years ago many Londoners were vigorously campaigning against Capital Punishment. To be more accurate they were campaigning against executions being staged in their local areas and pushing for them to take place somewhere else; not that they should be stopped altogether. They were more akin to those annoying neighbours who organise petitions to stop you converting your garage into a flat for Granny or seek to ban a festival from the local park than to the heroic fighters to abolish state killings altogether, but they were campaigning nevertheless.

Road To Tyburn Tree - I saw a report on research done by Anna Cusack of Birkbeck, University of London, into crime in Georgian times and it is compelling in a rather creepy way. Ms Cusack has studied contemporary accounts of some condemned people, and there were a wide range of offences for which the death penalty was given. For instance, counterfeiting resulted in death as did the practice whereby people would get a gold or silver coin and by carefully trimming the edges clip off some precious metal whilst leaving a perfectly round coin to be used again. Sir Isaac Newton, he of the apple on the head and discovery of gravity, when made Master of the Royal Mint, spent a lot of time in bars in London with women of the night tracking down forgers and coin clippers and seeing the culprits prosecuted. Anyway, that is why he said he was there, but the offence when proven ended in execution and one such criminal, Ms Cusack records, was 23-year-old Barbara Spencer who died exactly 300 years ago.

Barbara was to be burnt at the stake but was told not to worry because she would be strangled first and then fried. Some small comfort I suppose, and her execution was relocated by public pressure from Smithfield in the heart of the City of London where she had committed her crimes, to Tyburn which was on what is now Marble Arch. I have to admire her spirit, not any ghostly apparition that might still be stalking the streets but her personal strength, as it is recorded that she complained about some of the crowd throwing dust and stones at her and that the Priest had rambled on too long and was boring. I would have thought that under the circumstances they would have been the last things that worried her. In fact, I suppose they were indeed the last things that worried her. The gallows at Tyburn were known as Tyburn Tree, and the twitching legs after the convicted was left to dangle the Tyburn Jig. There should be a much larger memorial to this dark period on that site. At present there is just a small plaque.

Crime and Punishment: The 1720s were interesting times for crime and punishment. Before any sort of organised and trusted police force, if such a thing has ever existed outside Dixon of Dock Green, the leading thief hunters were in fact the leading thieves. Line of Duty's Ted Hastings would have felt right at home. One such Thief/Taker was Jonathan Wild who was simultaneously leader of an Organised Crime Gang, ran prisons and was the leading retriever of stolen goods for victims to claim rewards and top catcher of thieves, mainly because his gang had stolen them in the first place and the crooks he handed in were ones with whom he had recently fallen out. He was hung in 1727 when his luck ran out and his execution was probably one of the most popular ever. By coincidence In the same year his main rival Thief Taker/Criminal Gang Leader also died. This was a certain Charles Hitchen against whom the public had turned, was sent to Newgate, put in the Pillory, and badly stoned by an angry mob and died shortly after being released from exhaustion and injury in the sad knowledge that his profitable double life had been exposed.

Jack Sheppard's Picked His Locks By Night: Jonathan Wild's most famous quarry had been Jack Sheppard, a prolific petty thief with an incredible talent for escaping from prisons that these days would make him to me a dead cert winner on something like Britain's Got Talent. Wild would buy stuff Sheppard had stolen, then have him arrested, but "Honest Jack" would escape. Sheppard's fascinating partner, Elizabeth Lyon aka Edgeworth Bess because she came from Edgware in Middlesex, I know that does not make much sense, but I am just retelling a true (ish) story, was locked up with him. Sheppard picked the locks in Newgate, tied sheets together and he and Elizabeth climbed down to freedom. He was rearrested; escaped again. Then apparently Jonathan Wild went for a drink and coincidentally met Elizabeth who had a few too many and told him where Sheppard was hiding, who this time was sent to the Gallows. His plan to escape from the noose was that his friends would cut down his body and warm it up by wrapping it in a blanket and he would revive. Spoiler alert, it did not work.

Elizabeth was not rearrested and evaded punishment living quietly for the rest of her life. I am not a suspicious person, but it does seem a little unlikely to me that an experienced villain such as her would bump into the man who had a record of imprisoning her and her partner, share a drink or several, accidentally blurt out where he was, then walk away. By coincidence, a lot of men who fell for Elizabeth, in the biblical sense, would give her presents such as silver trinkets which she would sell on, only to find to her shock they had been stolen but of course she had no idea at all. Right. It was in fact Wild's having been fooled so many times by Sheppard that got the public to question his actions and that led to his fate. And unlike when Sheppard was executed, none in the giant crowd were cheering for him; everyone there treated him like we treat our favourite football teams when they lose games, we expect them to win. Contempt and jeering.

Nothing to do for fun These Days but Hangings: There were a lot of executions in Georgian Britain, and I assume it was a bit like football on TV, that after a while there are so many that the public get bored and only want to watch the Premier League big name performers and not the Second Division. But for those Deaths of the Day you had to buy tickets for a prime spot, and I wonder if many who lived near the proposed execution sites got fed up when their neighbours had the event moved. Just think of the groats that could be earned from selling space in your bedroom for a bird's eye view, or the potential sales of 18th Century equivalent of hot dogs, burgers, and popcorn. Then there were souvenir printed story sheets about the condemned people, full of fake news, badly printed, cheap, so clearly the immediate forerunners of today's tabloid press. However, the Not In My Back Yard brigade tended to win out and still do. One such example was in 1729 when James Cluff, a barman at the Green Lettice Tavern in Holborn, was sent to hang at Tyburn. It was not for misspelling the name of the salad vegetable but for murdering a colleague, Mary Green, on the premises. His sentence meant he should have been hung at the entrance of the Tavern itself, but neighbours forced it to be carried out in Marble Arch. Just think how much the Landlord could have expected to make from selling drink to a huge crowd but lost out. Cluff was allowed to stop there to down a pint of wine on his way to the Gallows, so I suppose there was a sort of happy hour with a few people

about; probably not so happy for Cluff.

Restorative Justice, Militant Style: There is a link to Criminal Justice today as there was a form of restorative justice involved. Once found guilty of an offence and sentenced to die, if you failed to fully repent you would be executed without any hesitation and sent to eternal damnation. If you did show true remorse you were executed anyway but with the chance of forgiveness from the Almighty. One man, James Allen in 1837 in prison in the USA requested that his death bed confession was made into a book to be bound in his own skin as a demonstration of his remorse and sent to his victim. For me that seems a little over the top. 6 months of gardening on a Community Service programme should surely suffice plus repayment of any money stolen under the Proceeds of Crime Act. So, as you will agree, nothing to see here that will give us lessons for today, but three of the characters I have mentioned still leave their mark. Jonathan Wild was dug up after his burial, dissected, and his skeleton can be seen today in the Museum of the Royal College of Surgeons in Lincoln's Inn Fields. Jack Sheppard was recorded in a lot of literature from Daniel Defoe, helping establish his reputation as a storyteller, and the character Macheath (Mac the Knife) from the Threepenny Opera is apparently based on him. Though his name was not Mac, and he did not have a knife. But it is a great story. And the fascinating Elizabeth Lyon, Edgeworth Bess? Well, she lives on in my imagination as someone I would really like to have met in the Green Lettice in Holborn for a couple of drinks though not I think to give her presents of gold or silver trinkets or with whom to share tales of my wrongdoing because I am pretty sure that after a riotous and wild night I would end up doing the Tyburn Jig in the shade of what is now Marble Arch. And she would go home.

Wrongly Jailed Ex-Fire Chief Slams 'diabolical' Compensation Delay

Jon Waller, Lymington Times: A Retired fire chief who was wrongly imprisoned for nearly three years after being accused of a historical rape, has branded 20-month delays to decide his compensation claim "diabolical". David Bryant (69), who lives in Christchurch, was declared innocent and set free from jail in early 2016 after the man who accused him was exposed as a liar. Danny Day had alleged Mr Bryant and a now deceased colleague, Dennis Goodman, jointly raped him at the town's fire station in the mid-1970s. Mr Bryant was later jailed for more than eight years but the case fell apart when it was revealed Mr Day admitted previously to medics he had an "extensive history" of lying. A High Court judge blasted Dorset Police for the way it investigated the claims by Mr Day – saying it should have been clear to them at the outset he was motivated by money. After his release in 2016 and the death of his devoted wife Lynn – who did much to expose Mr Day's lies – Mr Bryant launched a claim for compensation with the Ministry of Justice (MoJ) for the time he wrongly spent in jail.

Police Probe Suspect Drugs Tests Used in Criminal and Family Cases

John Hyde, Law Gazette: Police are investigating thousands of suspect drug testing reports from one laboratory that may have been used in criminal, coronial, family and employment cases, it has emerged. A judgment in Greater Manchester Police v Zuniga & Ors details how Greater Manchester Police has uncovered 27,000 reports which appear to have been affected by alleged data manipulation. Seven suspects are alleged to have provided services between police forces to identify drug use through forensic analysis of hair, blood and urine. The results provided, some of which were falsified, were used in an unidentified number of court cases. The court heard that the alleged activity occurred at the same Manchester testing centre, the Hexagon Tower. Two companies were primarily involved: Trimega Laboratories which operated at

the site from 2009, and Ingemino Group, which bought TL in 2012 but ceased trading two years later.

The suspects are said to have manipulated data to ensure rapid accreditation by the regulator to gain a commercial advantage over competitors and increase the value of the company. The court heard that results and quality assurance data were copied from one sample and pasted into another, quality controls and suitability tests were manipulated, and drugs and validation data were falsely identified. As well as criminal cases, data anomalies are being investigated in relation to two family court cases from 2012. In one, a woman challenged a positive drugs test where her children were removed from her care on the basis of drugs use. The test was later contradicted by newly instructed forensics experts.

In the present case, the police applied for access to materials relating to the alleged data manipulation for use in an ongoing criminal investigation. The respondents, all suspects in the case, did not contest the application. Sir Andrew McFarlane, president of the family division, said: 'There are likely to be criminal, family, coronial and employment cases, previously decided, which parties may wish to revisit on the basis of faulty data. The importance of this is hard to overstate. It concerns miscarriages of justice which may have occurred in reliance on what are now known to be erroneous drugs testing results.' He granted the order sought by the police, to be reviewed every 12 months.

Prisoners: Mental Illness

Janet Daby: To ask the Secretary of State for Justice, what specialist training is given to staff in prisons to handle individuals in custody who are experiencing mental health crises; what the procedure is for assessing the need for use of physical force on those individuals; and whether expertopinions from mental health professionals are sought in dealing with those cases.

Alex Chalk for the Government:This government takes the mental health needs of prisoners very seriously and to keep them safe and well, prison officers must have the skills, knowledge and confidence to offer support, alongside healthcare professionals.Improved mental health awareness training has been developed as part of Prison Officer Entry Level Training and refresher training for existing staff. We are currently developing an improved modular safety training package. This includes an enhanced mental health training module, building on the introductory module for staff supporting individuals with complex needs. Resources also include a suicide and self-harm learning tool, developed in partnership with Samaritans, and a range of guidance relating to known risk factors.Any use of force must be necessary, reasonable and proportionate to the seriousness of the circumstances. A clinical assessment must take place to determine whether the prisoner has capacity. If the prisoner has been assessed as not having capacity, then the Mental Capacity Act 2005 makes provision for the person to be treated and, if necessary, for force or restraint to be used. When considering the options, healthcare/clinicalstaff will make the decision and liaise closely with prison staff on the level and type of restraint that might be used.

Female Miscarriages of Justice Have a Different Overall Profile From Those In Men

Beth Mann, Evidence Based Justice Lab: Our Miscarriages of Justice Registry suggests that the most common causes of miscarriages of justice in men are false or misleading witness evidence from a non-complainant and false or misleading confessions, but the most common causes of miscarriages of justice in women are inadequate disclosure and false or misleading forensic science. One striking feature of miscarriages of justice in women is that approximately 25% of the identified cases (13/53) involve women who have been wrongly convicted of harming a child in their care. A similar theme can be seen in the United States National Registry of Exonerations. In a 2014 report, that Registry noted that 40% of female exonerees were

exonerated of crimes with child victims. One such case was the case of Sabrina Butler.

Sabrina Butler a Black American woman, who has survived a tragic miscarriage of justice. In 1990 she was sent to Death Row, later becoming known as the first female to be exonerated; but not before spending 6 years in prison for a crime she did not commit. On April the 12th 1989 when she was just 17, Sabrina's nine-month-old son died of a hereditary kidney condition. Almost a year later, Sabrina was sentenced to death, falsely accused of taking her own child's life. Butler has now shared her story, highlighting the pitfalls of the American criminal justice system. From being prevented from attending her baby son's funeral, to coerced false confessions, she experienced a significant failure of justice. So, if her son died of a hereditary kidney condition, how did Butler end up being the prime suspect in a murder investigation?

When Sabrina first realised her son was not breathing, she attempted to resuscitate him. Later on, she gave various accounts of what happened, from a fictional babysitter, to jogging with and without the baby. But crucially, she signed a statement confessing that she had punched the baby in the abdomen in response to his consistent crying. This statement was focused on by the prosecution focused upon in her trial. Her defence team called no witnesses, and instead relied on cross-examinations of the prosecution witnesses. Many reading this may question why on earth an innocent mother would confess to such actions against their own child. But, when reading Butler's recollections of her interrogation by law enforcement officers, the pressures become clearer; "I was alone with no lawyer or parent with me. I told him I tried to save my baby. He wrote down what I said and threw it in the garbage. He yelled at me for three hours. No matter what I said, he screamed over and over that I had killed my baby. I was terrified. I was put in jail and not allowed to attend Walter's funeral. Ambitious men questioned, demoralized and intimidated me. In that state of mind, I signed the lies they wrote on a piece of paper. I signed my name in tiny letters in the margin to show some form of resistance to the power they had over me."

There has been significant research into why innocent people falsely confess to a crime they did not do. In summary, false confessions most likely occur due to three factors (see here for more information): custodial and interrogative pressure, defendant psychological vulnerabilities (see here for more information) and a lack of transparency regarding evidence. From this list we can clearly see that Sabrina's case involved at least 2, if not all 3 of these elements. Most concerningly, Sabrina's accounts describe dangerous levels of police interrogation pressure. Combined with her being a young female and a recent mother who had just lost her baby son, there is no doubt over her psychological vulnerabilities at the time of experiencing this pressure.

Portrayal of a 'She-Devil'? Many of the miscarriages of justice involving women do not even involve a false confession. Potentially, women in these situations are susceptible to being judged more harshly and to having unreliable evidence against them more generally interpreted as reliable or even conclusive, due to gender stereotypes. In a 2019 report, Appeal, a charity fighting miscarriages of justice, have noted the risk that gender-stereotypes play out against women in these types of case (see here). Women who are accused of a crime against a child, especially their own child, are judged negatively and harshly for allegedly violating social stereotypes.

In England and Wales, the majority of miscarriages of justice involving women in cases of this type involve false or misleading forensic evidence. In many cases, this evidence came from a now discredited paediatric pathologist, Dr. Roy Meadow. The below are some examples of women in England and Wales whose stories are detailed in our registry, who were wrongly convicted, and later acquitted, of harming children in their care. Their stories can help us to understand how evidence may be misinterpreted in such cases, how this might lead to miscarriages of justice, and the influence those miscarriages of justice have on victims who

are already grieving for the loss of a child.

Sally Clark – A mother wrongfully convicted of killing her two baby sons, who died just a couple of years apart. She was sentenced to life imprisonment in 1999 but acquitted in 2003 when it was shown that expert evidence presented against her was unreliable. Sadly, Sally struggled to cope after her conviction was overturned and died in 2007.

Angela Cannings – A mother wrongly convicted of killing two of her three babies who had died as a result of sudden infant death syndrome. She was imprisoned in 2002 but acquitted a year later. She continues to suffer a complicated relationship with her surviving child as a result of her experience.

Suzanne Holdsworth – A babysitter accused of murdering her neighbours 2-year-old son. She was sentenced to life in prison in 2005 but was found not guilty at a retrial in 2008 when new evidence suggested the child may have died of a seizure.

Donna Anthony – A mother falsely accused of killing her two babies, convicted in 1998 and acquitted 6 years later when it was shown that expert evidence presented against her was unreliable.

These cases combine devastating circumstances relating to the loss of a child with vulnerable women who are susceptible to judgment and stereotypes prior to their conviction. These are just some of the cases we are now aware of, sadly, it is likely that many have slipped under the radar. As more potential miscarriages of justice, it is important to consider the evidence that is introduced in such cases and how the system can ensure it is effectively scrutinised to an extent that meets relevant scientific standards. By creating an awareness of the problem, we can work with legal and medical professionals to develop solutions.

Drill Music as Bad Character Evidence

Sasha Wass QC, Lyndon Harris, 6KBW: The past decade has seen the emergence of 'drill music' content increasingly used by the prosecution in criminal trials involving young, black, male defendants accused of gang-related offences. The drill genre, which is seen as a breakaway from hip hop and rap music, originated in Chicago in 2012 and was swiftly embraced in the UK, in South London in particular. Drill music is defined by its subject matter, embracing the use of drugs and weapons as part of the narrative of everyday urban street life. The development and increased availability of music and video production technology has enabled amateur drill artists to produce and disseminate their work, posting material on a variety of social media platforms. Such material is freely accessible to police and prosecutors when investigating criminal offences.

Police forces have for some time routinely interrogated the mobile phones of those accused of crime in order to establish association or motive. However, it has now become commonplace for police in cases of gang-related crime to extract drill music videos found on the electronic devices of those under investigation to prove bad character. When relied on by the prosecution, the argument advanced in support of its admission is that where a suspect accused of murder (for example) is found in possession of music videos which glorify the use of guns, knives, or drugs, this could amount to cogent evidence supportive of guilt.

Discussion: How, then, does the law permit the admission of drill music in the prosecution of gang-related crime? As with any evidence, for a drill track to be properly placed before a jury, it must be both relevant and admissible to the offence charged. Let us consider the case where a suspect is accused of murder committed against a background of gang membership and drug dealing. In this example, drill music videos are found by the police on the suspect's mobile phone. The content of the video, and any involvement by the suspect in the video, will be critical to the question of relevance. In the first example, the suspect in question appears in person perform-

ing in the drill music clip, delivering lyrics which refer to the killing in question and his knowledge of details of the case. In the second example, the suspect again appears in the drill music clip, delivering lyrics which describe the use of drugs, guns or violence in the first person. However, in this example, there is no direct link with the murder in question. In the third example, the suspect does not appear in the clip. The lyrics which glamorise the use of drugs, guns and violence are delivered by a third party not connected to the case in any way.

In example one, the prosecution need not engage the bad character provisions of the Criminal Justice Act 2003 as the drill material will be admissible by virtue of section 98 of that Act. That is to say the content of the drill material "has to do with the alleged facts of the offence with which the defendant is charged or is evidence of misconduct in connection with the investigation or prosecution of that offence." In example one, the suspect himself is narrating information about the offence and may include material that only someone involved in the offence would be privy to. It would be challenging to argue that the material in question is not relevant or admissible.

In example two, the drill music video is further removed from the facts of the offence but there nevertheless exists a link between the suspect and the type of offence in question. The prosecution might try to avail itself of section 98 and, depending on the circumstances of the case, a judge might well rule that section 98 was engaged. However, the argument for ruling the drill evidence to be inadmissible would be considerably stronger than in example one. The fact that a suspect embraces a genre of music which is menacing in its content is far from necessarily "to do with the offence charged."

It is example three above which has proved the most controversial. There can be no proper argument that a drill video with contents related to drugs and killings "has to do with the alleged facts of the offence." The material may relate to a type of offence similar to that charged, but that would be insufficient to engage section 98. In such circumstances, the prosecution would need to avail itself of the bad character provisions of the 2003 Act. Admissibility would be dependent on the material satisfying one of the gateways of section 101. The most likely gateways relied on would be either section 101(1)(c) "that it is important explanatory evidence"; or 101(1)(d) "that the material is relevant to an important matter in issue between the defendant and the prosecution." Section 101(1)(d) permits what is often referred to in shorthand as propensity evidence. The prosecution argues that a defendant listening to music about the stabbing of rival gang members, unrelated to the case, is more likely to involve himself in gang-related violence. Such an argument may offend against racial stereotyping and often fails to understand the social backdrop to life in urban estates. The same is not routinely said, for example, of those who watch violent films, or play violent video games.

Applications to adduce the content of drill music videos feature disproportionately in criminal trials involving young, black, male defendants. A legitimate concern arises in relation to the proper application of the general principles of the law of evidence regarding the use to which drill music is put. Drill music is essentially a genre embraced by those who are expressing the difficulties of being excluded from parts of modern society. Historically, the attraction of contemporary music to the young has always been its ability to shock others. Difficult though it is to believe now, Cliff Richard in his heyday was once banned from had having one of his singles broadcast on the radio. More recently, the punk movement was seen as dangerous and subversive in the late 1970s. Drill music is a logical extension of a music genre whose appeal is its shocking content. That is very different from assuming that those who enjoy the music are themselves advocating the use of drugs, guns and violence. Whether the possession of the track constitutes reprehensible conduct on the part of the defendant is perhaps a point that is occasionally overlooked in such applications. *Further, taking the content of the material literally may be both simplistic and unfair.*

There is, however, a growing body of academic work on this topic. Most recently, at the CBA Assize Seminar on 14 May 2021, Dr Abenaa Owusu-Bempah (Assistant Professor of Law, LSE, University of London) presented "The Irrelevance of Rap", drawing upon her academic research and analysis of 30 criminal cases in which rap music was sought to be relied upon by the prosecution. The video of her presentation is available here. In her Assize presentation, Dr Owusu-Bempah made reference to academic work that suggests that rap music cannot be "taken at face value" (see e.g. Dennis, 2007). Dr Eithne Quinn (University of Manchester), who has acted as an expert witness providing evidence related to rap music, shares concerns regarding such evidence being adduced absent the proper context or being used (deliberately or otherwise) to bolster an otherwise weak case.

Dr Owusu-Bempah also made reference to the recent case of R v Soloman [2019] EWCA Crim 1356 (a case in which the title of a rap track was held to be relevant to the defendant's state of mind). The court held that although it was relevant it was perhaps of limited weight, commenting that "…the lyrics of songs that people choose to record on their phones will often or perhaps typically have no connection to the factual reality of their own lives." The court went on to state: "…lyrics of a song do not necessarily or perhaps commonly bear a connection with actual real life events." The guidance from the Court of Appeal (Criminal Division) is that a nuanced approach to such evidence ought to be taken. The Court in Soloman found that the judge had erred in not directing the jury on the issue of taking the lyrics literally, but ultimately held that this did not render the conviction unsafe. Gang involvement and gang culture can be a topic in respect of which expert evidence may provide assistance to a jury. The context and interpretation of rap music lyrics often requires an understanding of matters which are outside the scope of a juror's day-to-day experience. This should not be overlooked either by the prosecution or the defence.

Conclusion: Applications to adduce bad character evidence will inevitably be fact specific. In respect of drill music evidence, it is suggested that the following points merit consideration whether one is instructed by the defence or the prosecution. *Firstly,* a proper interrogation of the material and its context must be undertaken. Whether the content is readily understandable or whether it requires analysis by an expert will depend on the material in question. *Secondly,* the basis for the admission of the material must be clearly articulated and understood; propensity may be the 'obvious' basis for the prosecution to rely upon, but the more tenuous the link between the drill track and the defendant and the offence in question, the more difficult it will be to satisfy the court that the evidence meets the requisite threshold. If it is not propensity that is being relied on, then what is the important matter in issue to which the evidence is relevant? *Thirdly,* it is critically important to avoid inadvertent reliance upon stereotypes and in particular eliding drill music with criminal activity. While involvement with drill music may provide some evidence relevant to criminal activity, it will not do so automatically, and caution should be exercised when considering an application to adduce such material.

This continues to be an area in which the law is developing its understanding. Lawyers and judges need to understand the context of drill music and its origins. For a defendant to show an interest in or perform music which describes the culture of urban life and its challenges must never of itself be mistaken for admissible evidence that a defendant is guilty of committing an offence. Such an approach has the capacity to unfairly disadvantage young black defendants. It is only by educating and training those involved in dealing with such

material that this unfairness can be avoided.

Inmate Considering Legal Challenge over HMP Maghaberry Book Ban

The banning of literature by the Prison Service may be subject to a judicial review after a remand inmate was denied access to a critically acclaimed book by a local author. Officials have refused to allow 6,000 Days by Jim 'Jaz' McCann into Maghaberry after it was posted to the man by his wife. The jail also initially banned The Hitmen by Co Down journalist Stephen Breen and fellow crime reporter Owen Conlon, but later reversed that decision. The inmate, who is not charged with any paramilitary-linked offence, is in the enhanced level regime, meaning he is considered a model prisoner. Solicitor Ciaran Shiels of Madden & Finucane said his client, who was born in England, was "never adjudicated upon, (and has a) totally clear record in terms of adverse reports or offences against the prison rules, had passed all drug tests and would be trusted enough to be a cook in the kitchen for all prisoners. He would be an avid reader and now is in his early 50s."

Maghaberry has deemed the book by Mr McCann, a former IRA prisoner who is now a school principal, "inappropriate", but has given no other explanation for censoring the recently published work. The paperback is an account of the 6,000 days the Belfast man spent in the notorious Long Kesh/Maze, which was shut more than two decades ago. Convicted for a gun attack and sentenced to 25 years, Mr McCann's incarceration coincided with the Government's withdrawal of political status and the commencement of the dirty protest by republican inmates and the hunger strikes that resulted in the deaths of 10 prisoners. The book, which gives a graphic and unvarnished version of life behind bars, has received critical acclaim since being released earlier this year.

Meanwhile, The Hitmen is an account of the Wilsons, a family of gangland killers who acted as guns for hire for criminal cartels across Ireland for over a decade. It climbed to number one in the Irish bestseller list, and has remained in the top 10 since publication. Author Mr Breen said the book was a "factual account of a period in Irish criminal history, fully documented and sourced". He added: "While I am pleased that the book was finally allowed into Maghaberry, I remain concerned at any ongoing literary censorship by the Prison Service." Mr Shiels said: "We have sent the governor of the prison initial correspondence asking for the prison administration's full written reasons and legal authority that grounds the decision to refuse the prisoner permission to read 6000 Days. At first instance it seems to be wholly lacking in rationality or reasonableness. The decision contrasts very poorly with the access he has been permitted to read The Hitmen. Both books are of very significant historical interest and have attracted national acclaim and widespread commendation. Both books educate and inform the public of recent historical events. We have put Maghaberry Prison on notice that unless the decision is reviewed and rescinded as a matter of urgency, we will be advising the prisoner to challenge this decision by way of judicial review in the High Court." The Prison Service was contacted for a comment but none was forthcomming!

"Extraordinary" Romanian Conviction a "Flagrant Denial of Justice"

On 11 June 2021, the High Court (Holroyde LJ and Jay J) handed down judgment quashing an order for the extradition to Romania of Mr Gabriel Popoviciu; a high-profile, successful Romanian businessman. The Court described Mr Popoviciu's case as "extraordinary". The Court found that there was credible evidence to show that the trial judge who convicted Mr Popoviciu in Romania - whilst holding judicial office, and over a number of years - corruptly assisted "underworld" businessmen with their legal matters. In particular, the trial judge had provided "improper and corrupt assistance" to the complainant, and chief prosecution witness in Mr Popoviciu's case, including the soliciting and receiving of bribes. The trial judge's failure to disclose his pre-existing corrupt relationship with the complainant - and the Romanian authorities' failure properly to investigate this link - were of central, damning importance. The Court therefore concluded that Mr Popoviciu was not tried by an impartial tribunal and that he had "suffered a complete denial" of his fair trial rights as protected by Article 6 of the European Convention on Human Rights. The Court further concluded that the serving of a prison sentence based on an improper conviction would be "arbitrary" and that extraditing Mr Popoviciu would consequently represent a "flagrant denial" of his right to liberty as protected by Article 5 of the European Convention. The Court accordingly quashed the order for extradition and allowed the appeal. This is the first time that the High Court has concluded that extradition to an EU Member State represents a real risk of a "flagrant denial" of a requested person's Convention rights. Mr Gabriel Popoviciu was represented by Edward Fitzgerald QC, Peter Caldwell and Graeme Hall at Doughty Street Chambers; instructed by Anand Doobay and Christina Russell of Boutique Law.

Ill-Treatment in Police Custody Violation of Article 3: Barovov v. Russia

The applicant, Vadim Kurbanovich Barovov, is a Russian national who was born in 1968 and lives in Irkutsk (Russia). The case concerns the alleged lack of an effective investigation into the applicant's ill-treatment in police custody during questioning for allegedly handling a counterfeit banknote. The injuries suffered by the applicant included rupture of the spleen, internal bleeding, rib fractures, brain injury, concussion and severe bruising. After almost 12 years, a preliminary investigation and criminal proceedings by the authorities ended with the conviction of two police officers for having subjected the applicant to ill-treatment. However, they were exempted from serving their sentences under one applicable provision of the Criminal Code due to expiration of the ten-year statutory time-limit, and received suspended terms of imprisonment under another applicable provision of the Criminal Code. No disciplinary measures were taken against them. Relying on Article 3 (prohibition of torture) and Article 13 (right to an effective remedy), the applicant complains that the investigation into his ill-treatment in police custody was not effective, and that he did not have an effective criminal-law remedy in regard to his allegations of torture by the police. He alleges that the police officers' punishment was not commensurate to the suffering he had endured as a result of his ill-treatment.

Old and White Prisoners Most Likely to be Treated With Respect

Jon Robins, Justice Gap: Only six out of 10 black prisoners aged under 30 years of age felt they were being treated with respect by prison staff compared to more than nine out of 10 for those aged 70 years or over, according to a new study that finds Black, Asian and Minority Ethnic prisoners were less likely than white to report that they were treated with respect and younger prisoners were less likely than older. The research undertaken by Anthony Quinn, Nick Hardwick and Rose Meek from Royal Holloway (published in the Howard Journal) draws on more than 60,000 prisoner surveys conducted between 2010 and 2019 collected by HM Inspectorate of Prisons (HMIP). The inspectorate's prison survey features the question 'Do most staff here treat you with respect?'

The authors described as 'striking' that only just over six out of 10 black prisoners aged 21 to 29 years (62%) stated that staff treated them with respect; compared to more than nine out of 10 for prisoners aged 70 years or over (94%). Only 62% of those from a Traveller community under 21 years of age reported that staff treated them with respect compared to 82% in the 60–69 age group. According to the study, the research period (2010 to 2019) took place 'against a backdrop of turbulence' in the prison service which represented 'a significant deterioration' in the prisoners' conditions leading to the House of Commons' justice committee calling it an 'enduring crisis'. Self-harm incidents per 1,000 prisoners rose by 164% from 289 in 2009 to 764 in 2019. Over the same period there were 'sharp falls' in prison staff levels particularly among those with experience. The

authors also identify changes to prison policies and procedures including the Incentives and Earned Privileges Scheme in 2013 which restricted access to privileges as eroding staff-prisoner relationships. 'Overall, higher percentages of older prisoners reported that most staff treat them with respect,' the authors said. 'The smallest percentages of staff respect were identified among young adults under the age of 21 years and the highest percentages were within the 60 years or over age cohort.' They continued to note white prisoners were 'more likely to report that most staff treat them with respect, than were BAME prisoners'. The authors stressed that their main conclusion was that to make generalisations about the experience of prisoners based on broad categories of age or ethnicity 'overlooks significant variation within these groups'. The new study contextualises its findings and notes, for example, that the 2017 Lammy Review highlighted that BAME prisoners were less likely than white prisoners to report positive relationships with prison staff in a context where BAME prisoners formed a disproportionate part of the prison population ('comprising 25% of prisoners although constituting only 14% of the population as a whole').

The study also looks at the twin issues of an ageing prison population and that prison sentences are becoming longer. A 2014 HM Inspectorate of Prisons report on older prisoners was titled 'No Problems – Old and Quiet'. 'Older prisoners are relatively compliant,' stated a 2018 HMIP report. 'In an increasingly pressurised prison system, their needs are therefore likely to be overlooked unless there is specific provision – yet the issues they pose are likely to become more acute, as an increasing number of long-sentenced prisoners grow old and frail in prison.' By contrast, the 2015 Harris Review into self-inflicted deaths in custody of 18- to 24-year-olds underlined the importance of staff prisoner relationships but found that they were 'mixed and often poor' in young offender institutions

Daniel Morgan: Met Accused of 'Institutional Corruption'

Jon Robins, Justice Gap: The Metropolitan Police has been accused of 'institutional corruption' over its 34 year cover-up of the murder of private investigator Daniel Morgan after an independent panel reveals a seven year refusal to allow access to its database. Last week Daniel Morgan's brother Alastair talked to the Justice Gap about his expectations of a report by an independent panel (here). He told Calum McCrae that he did not believe there will ever be any prosecutions because the case had been 'so messed up legally, evidentially and in every way possible way'. □'But it' is equally important to me that the public knows,' he continued. 'Daniel's murder effects me, his children and my family but the police effect everyone. They are a central part of our democracy and we need to keep an eye on them.'

Speaking on the 15th June, 2021, the panel's chairman Baroness Nuala O'Loan said the force's primary objective had been to 'protect itself' for its own failings. So far there have been five police inquiries and an inquest, but no convictions for the 1987 murder. Last month Priti Patel was accused by the family of interfering with the independence of a panel set up by a predecessor, Theresa May, in 2013 and charged with investigating what the former prime minister called 'one of the country's most notorious unsolved murders'. It has emerged that the senior officers at Met stalled for seven years refusing access for the panel team to the police HOLMES IT system. The 1,200 page report, which draws on some 110,000 documents amounting to more than a million pages, was published yesterday unredacted. The panel found that the Met 'concealed' from the family and the public 'the failings in the first murder investigation and the role of corrupt officers'. 'That lack of candour, over so many years, has been a barrier to proper accountability,' O'Loan said. 'In 2011 the Metropolitan Police said publicly, for the first time, that police corruption had been a factor in the failure of the first police investigation. However it was unable to explain, satisfactorily, what that corruption was or how it affected the investigation.' The panel heard evidence from serving and retired officers that fellow officers who have sought to report wrongdoing were 'ostracised, transferred to a different unit, encouraged to resign, or have faced disciplinary proceedings'. The family had 'suffered grievously' as a consequence of the failure to bring those responsible to justice as well as the 'unwarranted assurances' given, 'misinformation… put into the public domain', and the 'denial of the failings in investigation including failing to acknowledge professional incompetence, individuals' venal behaviour, and managerial and organisational failures'.

'We believe that concealing or denying failings, for the sake of an organisation's public image is dishonesty on the part of the organisation for reputational benefit, and constitutes a form of institutional corruption. We recommend the creation of a statutory duty of candour, to be owed by all law enforcement agencies to those whom they serve, subject to protection of national security and relevant data protection legislation.' Nuala O'Loan

The family's lawyer Raju Bhtt said: 'We welcome the recognition that we – and the public at large – have been failed over the decades by a culture of corruption and cover up in the Metropolitan Police, an institutionalised corruption that has permeated successive regimes in the Metropolitan Police and beyond to this day.' The panel revealed that the police initial investigation was flawed, the murder scene not searched and left unguarded, the forensics were considered 'pathetic' and no alibis were sought for suspects. 'From the beginning, there were allegations that police officers were involved in the murder, and that corruption by police officers played a part in protecting the murderer(s) from being brought to justice,' the panel reported. The family has called for the current Metropolitan Police Commissioner Dame Cressida Dick to resign. The panel revealed that she had refuse to allow it access to the HOLMES police data system which was cited as evidence of the force's 'lack of candour'. The panel said that 'very senior Metropolitan Police officers' for seven years refused access to the HOLMES accounts to panel staff. The work of the panel has cost the taxpayer 'around £16 million' and identified 'the excessive length of time' taken by the Met top also access as a major factor.

PA reported that Alastair Morgan said Dick should 'absolutely' be considering her position. 'You heard from the panel that the institutionalised corruption that they found is a current problem in the present tense,' said Raju Bhatt. 'The current leadership in the Met has to take responsibility for that continuing.' Speaking about the report, Priti Patel called the case 'one of the most devastating episodes in the history of the Metropolitan Police'. The panel described the Home Secretary's last minute decision to review the report of an 'independent' panel as 'very much a surprise;' and 'regrettable'. O'Loan said she was not going to 'rehearse the discussions which subsequently took place, other to say how disappointed we were that the Home Secretary chose to adopt this stance when she did'. 'We are unaware of any such intervention previously.'

Serving Prisoners Supported by MOJUK: Derek Patterson, Walib Habid, Giovanni Di Stefano, Naweed Ali, Khobaib Hussain, Mohibur Rahman, Tahir Aziz, Roger Khan, Wang Yam, Andrew Malkinson, Michael Ross, Mark Alexander, Anis Sardar, Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan & Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Robert Knapp, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Peter Hannigan.