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Open Justice Initiative: MP Raises Lack of Trial Transcript Access

All Crown Court proceedings in England and Wales are digitally audio recorded, however accessing these recordings often proves difficult. At present, obtaining trial transcripts can be prohibitively expensive, running in tens of thousands of pounds which legal aid is unlikely to cover the cost of. Moreover, current retention policies mean that the digital audio recordings on which transcripts are based are destroyed after just 7 years.

Lucy Powell MP has raised in the House of Commons the issue of the lack of access to trial transcripts, which currently inhibits miscarriage of justice enquiries. Powell asked Justice Secretary David Lidington to "look at making the courts more transparent" and "particularly allowing defendants and those that have been sentenced to get transcripts and copies of the judge's direction to the jury". Powell told the Commons "in potential miscarriage of justice cases this can be incredibly difficult to get".

This hampers investigations into potential miscarriages of justice as without a full transcript, it is not possible to work out exactly what happened at a trial - including what precisely witnesses said and whether the trial was fair. More freely available transcript access was one of the reforms called for by the Centre for Criminal Appeals in the Open Justice Charter, which it developed in conjunction with academics and journalists. Lidington said he would be providing a written response to Powell's question.

US: Secret Evidence Erodes Fair Trial Rights

Human Rights Watch: Evidence suggests US authorities deliberately conceal the facts about how they found information in a criminal case and may be doing so regularly, Human Rights Watch said in a report released today. Withholding these facts to cover up investigative practices, including potentially illegal ones, harms defendants' rights and impedes justice for human rights violations.

Secret Origins of Evidence in US Criminal Cases: The 77-page report "Dark Side: Secret Origins of Evidence in US Criminal Cases," documents the use of alternative explanations for how evidence was found, a practice known as "parallel construction." This practice could prevent courts from scrutinizing the legality of questionable investigative methods, including surveillance. Such scrutiny can deter misconduct, since judges normally bar illegally obtained evidence from trial. "Covering up how evidence was originally found deliberately hoodwinks defendants and judges, severely weakening constitutional fair trial rights," said Sarah St.Vincent, researcher on US surveillance at Human Rights Watch. "If the government is allowed to violate the US Constitution's protections and then cover its tracks, this could undermine human rights for people whose liberty is at stake, or anyone else subjected to illegal government surveillance or other unlawful procedures."

The report is based on records from 95 US federal and state criminal cases, analyses of executive branch documents, and 24 interviews with defense attorneys, current and former US officials, and other people with specialized knowledge about the potential deliberate concealment of investigative methods in this manner and the consequences for rights. Human Rights Watch identified evidence suggesting that US authorities use a range of tactics to create a new story about how an investigation began in order to avoid revealing how information was originally found. The most widely known is commonly described by law enforcement as a "wall stop" or "whisper stop." Under this practice, a law enforcement or intelligence agency, possibly using information obtained by various forms of surveillance, asks state or local police to find a pretext – often a minor traffic violation – to stop a suspect and then develop a reason to search their vehicle.

The Special Operations Division of the Drug Enforcement Administration may be extensively involved in passing tips to law enforcement entities, which may then engage in the practice of parallel construction to prevent those tips or the other sources underlying them from being revealed in court. The Special Operations Division and other federal bodies could be using parallel construction techniques frequently and routinely, Human Rights Watch found.

These concealment methods could be used to prevent the disclosure of techniques such as warrantless surveillance under intelligence authorities such as Section 702 of the Foreign Intelligence Surveillance Act and Executive Order 12333. The government uses Section 702 and the executive order to sweep up massive amounts of data on people outside and inside the US. By concealing how evidence is collected, the government prevents the US Congress and the public from understanding the consequences of this and other controversial laws. Section 702 is currently the subject of a major reform battle in Congress, adding urgency to the issue.

Parallel construction "flies in the face of everything that our justice system stands for," a Virginia-based defense attorney who has represented a client in a case raising concerns about possible parallel construction said in an interview with Human Rights Watch.

In the US criminal justice system, judges typically bar the prosecution from introducing evidence the government obtained through illegal activities, a doctrine known as "fruit of the poisonous tree." By dodging this rule, the concealment of investigative practices

When defense attorneys attempt to find out whether such concealment has occurred in a case, they face stiff opposition from prosecutors, Human Rights Watch found. An inability to compel prosecutors to reveal original sources of information can put fair-trial rights in jeopardy, as well as the human right to be notified of any government interferences with privacy.

Congress should adopt laws requiring the government to disclose complete information to defendants about the origins of the investigations in their cases, Human Rights Watch said. Judges should also consider directing the government to disclose any previously unrevealed investigative methods when the circumstances of the case suggest that parallel construction may have occurred. "Justice cannot rest on secret evidence, and the shadows are where abuses flourish," St.Vincent said. "Congress, the courts, the Justice Department, and the intelligence agencies should end parallel construction now."

Battling For The Truth: The Rights Of Bereaved Families

Daniel Machover and Kate Maynard: Like no one else, the bereaved search for answers. The inquest process hinders them at every turn. Patchy legal rights, funding and coronial guidance prevent families from fully participating in the inquests of their next of kin. Where the death occurred in police or prison custody, shining a light on all the circumstances surrounding the death can be especially difficult.

Coroners, who oversee inquests, have a duty to 'ensure the relevant facts are exposed to public scrutiny, particularly if there is evidence of foul play, abuse or inhumanity' (R v HM Coroner for North Humberside and Scunthorpe (ex parte Jamieson) [1995] QB 1 at 26). A

reported rise in the number of deaths in state detention make the performance of this duty more important than ever (see Chief Coroner's report 30, November 2017 upward trend in deaths in state detention since 2014- there was a 26% rise over 2015.

Article 2 of the European Convention on Human Rights obliges state agencies such as the police and prison service to put in place systems to protect life or to take steps to protect the life of vulnerable individuals at immediate risk of death. When a state agency may be implicated in a death by failing to meet these obligations, an 'enhanced' inquest will take place. These require exposure of any Article 2 violations. The participation of bereaved families' is crucial to this process, as the European Court of Human Rights has recognised.

The Investigation Stage: In the immediate aftermath of a death in police custody, the IPCC gathers evidence, deciding whether any officers may have committed a crime or should face disciplinary proceedings. Although the family is entitled to comment on the scope of the IPCC's investigation and to seek assurances that evidence is being preserved, legal advice is needed to fully exert these rights. Most families must apply for funding for legal advice, which can take weeks. The wait can leave families to navigate important early stages of the investigation alone, missing opportunities to have their own expert attend the first post-mortem or to ask for a second post-mortem. Second post-mortems have been instrumental in providing evidence pointing to possible unlawful killings in a number of cases. The IPCC's long-standing inadequacy in holding the police to account makes it vital that families have their voices heard at this stage, which routinely takes up to a year.

The inquest: Once the IPCC has sent its findings to the coroner, at least one pre-inquest hearing will be held, followed by the inquest itself. At the hearings, both the family and the relevant police force may act as 'interested persons'. Interested persons have the right to make applications on a range of matters that the coroner will decide on, such as the scope of the inquest. Making persuasive applications depends on access to expert legal advice and representation. The police will instruct senior lawyers, at public expense. By contrast, bereaved families must undergo an invasive process to obtain exceptional public funding, occasionally going unrepresented. Every member of the deceased's family is required to provide details of their financial situation. Any family member not wishing to participate must produce evidence to prove this. The process can take weeks, causing delay, upset to the family and anxiety.

Improving Guidance: None of the Chief Coroner's guidance focuses on the treatment of bereaved relatives, leaving families dependent on the inclinations of the coroner they are assigned. For example, there is no legal right to produce a pen portrait of the deceased, in which a relative reads a short statement about the deceased's life. The Right Reverend James Jones' report, which looked into lessons to be learnt from the Hillsborough inquests, argues that pen portraits should be as of right. The possibility of reputational damage, future criminal charges and civil claims can make public bodies defensive. Routinely, they close ranks, displaying a lack of transparency and unwillingness to make full and timely disclosure of evidence. The result is a drawn-out process, expensive and draining for bereaved relatives. The Hillsborough inquests illustrate the wasted public money and additional pain caused by institutional defensiveness.

In increasingly adversarial inquests, families must be protected from intimidation tactics. Coroners can fail to intervene to protect the recently bereaved from traumatising experiences. Lawyers acting for the public body can seek to blame family members for the death, bullying them in cross-examination. The need to reign in these tactics goes beyond humanising the process. Inflicting additional pain on the recently bereaved may prevent them from participating in the inquest in a meaningful way, reducing opportunities for key questions to be

asked.

Coronial guidance should also emphasise the need to deal robustly with witnesses who appear to be lying, holding back relevant evidence or otherwise obstructing the inquest process. This is especially important where witnesses are employees of the public body where the death occurred and may feel constrained in giving evidence.

Defensive attitudes all too often spill over into the area of lesson learning. Preventing Future Deaths reports are made when a coroner believes that action should be taken to prevent future fatalities. The reports identify the coroner's concerns about a public authority's behaviour, recommending areas where action may be required. Public authorities often fight the reports tooth and nail. As a matter of public interest, public bodies should not argue against the production of these reports. Families who have been through the inquest process testify that a sensitive and engaged coroner makes the process less traumatic and alienating. The breathtaking thoughtlessness and lack of empathy police officers can display when dealing with the bereaved is well documented. It must be countered by coronial guidance that stresses the need to engage with families in a sensitive manner.

Making change:In his recent report, the Chief Coroner signalled a move towards making bereaved families central to the coronial process. He suggests that where public bodies use public funding for representation, families should also be funded. This does not go far enough. In practice, most families whose loved one has died in custody eventually obtain funding. It is the demeaning and slow application process that must be abandoned. Instead of paying public servants to process the applications, non-means tested funding should be granted as of right. The earlier families obtain advice, the better they will engage in the process. Additionally, as Revered Jones' report recommends, there must be an 'end to public bodies spending limitless sums providing themselves with representation which surpasses that available to families'.

There is enormous public interest in throwing light on cases involving deaths in custody. In part, this is due to anxiety over institutional racism as a possible contributory factor in the disproportionate number of BAME individuals who die as a result of force or restraint by the police. Drawing on the disquiet caused by these deaths, Dame Elish Angiolini QC's independent review calls for deaths in custody to be investigated with the same urgency of murder inquiries. The review suggests a specialist Deaths and Serious Injuries Unit be created, indicating that 'fundamental change in how such cases are investigated, supervised and resourced' is necessary. The review's recommendation that the Unit be staffed by officers from a non-police background is telling.

Holding misconduct hearings: Despite a number of inquests delivering 'unlawful killing' verdicts or highly critical narrative conclusions, few officers face suspension or dismissal when they have been involved in a death in custody. Achieving accountability requires dramatic reform of the police misconduct hearings system. In police misconduct hearings, the odds are stacked in favour of officers. Officers routinely have the opportunity to confer with one another prior to giving their first account of events. Only very recently has there been a change in the law requiring that misconduct hearing chairs be legally qualified and independent of the police. The family of the deceased do not have party status in misconduct hearings, their role is as observer. They are unable to effectively question officers involved in the death. If they wish to ask a question, they must submit it to the chair, who will give the police an opportunity to argue that the question should not be asked. Follow up questions cannot be asked without this process being repeated. Clearly, officers have ample opportunity to craft answers in advance.

Families' lack of status at misconduct hearings means they are not entitled to see the evi-

dence. Applications for the disclosure of evidence to families are regularly refused by the police. This hinders families' ability to ask informed questions or follow the evidence, limiting the process of holding officers to account.

For a culture change, knowledge of the aftermath of a death in custody from the viewpoint of the bereaved family, needs to seep through the police profession. For this to happen, the voices of bereaved families must be heard at misconduct hearings. Relatives of the deceased should be entitled to see evidence and be given reasonable time to cross-examine officers without interruption. They must be given publicly funded legal advice and representation in connection with all gross misconduct hearings. Where there has been a death in custody, police misconduct hearings are unlike any other disciplinary procedure. Deaths in custody involve serious public policy values including the protection of the vulnerable and checks on abuses of power. There are strong public interest grounds for ensuring that lesson learning permeates the police profession; lives are at stake.

Independent Office For Police Conduct - New Name, Same Pigsty

The cops' pet watchdog, the Independent Police Complaints Commission (IPCC), has been replaced by the Independent Office for Police Conduct. The IPCC's flaw was simple. It was not independent of the police. That flaw remains. Its job was to protect the cops, not to bring justice. That hasn't changed either. The IPCC was formed after the Macpherson inquiry into the failed police investigation into the murder of black teenager Stephen Lawrence in 1993. The IPCC was a suitably New Labour body with a commission of people and warm rhetoric. It failed to uncover the truth or bring justice in thousands of cases. And it kept files from the national police computer of family members of people who died in custody. In the case of Mark Duggan it was the IPCC that was responsible for putting out the falsehood that Mark had shot at police first. It repeatedly let cops draft statements collectively. It often let former cops investigate their previous forces. The new body will continue this sterling work. What's new is that it can initiate the cover ups on its own behalf. It is not in the state's interest for the police to be punished. That is why cops don't go to jail for the people they kill, regardless of what the watchdog is called. It doesn't need a new name. It needs putting down for good.

Therapeutic Measure Applied To Prisoner, Extending Period Of Detention, Unlawful

In judgment in the case of Kadusic v. Switzerland (application no. 43977/13) the European Court of Human Rights held, unanimously, that there had been: a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights, no violation of Article 7 (no punishment without law), and no violation of Article 4 of Protocol No. 7 (right not to be tried or punished twice). The case concerned an institutional therapeutic measure ordered in the case of a convicted prisoner suffering from a mental disorder, a few months before his expected release, as a result of which he remained in prison.

The Court found that the therapeutic measure – which constituted a deprivation of liberty – had been ordered a few months before the applicant's expected release, on the basis of psychiatric reports that had not been sufficiently recent, and observed that the applicant had still not been transferred to an institution appropriate to his mental disorder. It followed that his detention following the application of the therapeutic measure had been incompatible with the purpose of the original conviction. However, the Court found that there had been no retroactive application of a heavier penalty than the one laid down by the law in force at the time the offences had been committed. Lastly, the Court noted that the domestic authorities, who had regarded the re-assessment of Mr Kadusic's mental state as a newly discovered circumstance, had amended the original judgment "in accordance with the law and penal procedure of the State".

Principal facts: The applicant, Mihret Kadusic, is a Swiss national who was born in 1982. He is currently detained in Bostadel Prison (Menzingen, Switzerland). In May 2005 the applicant was sentenced to eight years' imprisonment for offences committed between 2000 and 2004, and was transferred to Bostadel Prison. In addition, the court declared enforceable a 12-month custodial sentence that had been suspended when handed down in 2001. The appeals lodged by the applicant were dismissed by the Court of Appeal and the Federal Court respectively in January and May 2007. Reports written by the prison governor and psychiatric assessments carried out in 2008 and 2010 stressed the prisoner's dangerousness and the high risk of his re-offending. In particular, he was diagnosed with paranoid and narcissistic personality disorders of medium severity, an inability to develop empathy and a refusal to reflect and change his attitude towards the offences he had committed.

Following one psychiatric report the sentence execution authority asked the Court of Appeal, in July 2010, to ascertain whether the conditions for post-sentence preventive detention or an institutional therapeutic measure were met. At the end of the proceedings, in a judgment of 22 August 2012, that court ordered an institutional therapeutic measure and suspended the portion of the sentence still to be served. An appeal by the applicant was dismissed by the Federal Court in May 2013 and he continued to be detained in Bostadel Prison.

Decision of the Court - Article 5 § 1: It was not disputed that the judgment of 27 May 2005 sentencing Mr Kadusic to eight years' imprisonment had made no provision for a therapeutic measure. Therapeutic measures could be regarded as a correction of the original judgment following the discovery of new circumstances in the context of revision proceedings.

The Court observed that the measure complained of had been taken more than seven years after Mr Kadusic's original conviction and shortly before he was due to be released. Furthermore, it considered that the period that had elapsed between the psychiatric reports and the ordering of the measure had been excessive. The Court also noted that, although the psychiatric expert questioned during the proceedings had mentioned several prisons with therapy centres that should be taken into consideration, Mr Kadusic had continued to be detained in Bostadel Prison. Pointing to Article 62 (c) of the Criminal Code, which stipulated that the measure in question should be lifted if no appropriate institution could be found, the Court held that Mr Kadusic was not being treated in a setting appropriate to his mental disorder.

The Court concluded that the measure complained of, which had been ordered only when the original sentence was close to completion and which remained in force to date, had been based on expert assessments that were not sufficiently recent, and that Mr Kadusic, more than four and a half years after the expiry of his initial prison sentence, was being held in an institution that was manifestly unsuitable in view of the disorder from which he suffered. His detention following the judgment of 22 August 2012 was incompatible with the aims of his original conviction.

There had therefore been a violation of Article 5 § 1.

Article 7: The Court observed that in the period between 2000 and 2004, when Mr Kadusic had committed the offences leading to his conviction in 2005, the judge could have ordered "measures concerning offenders with mental disorders", in particular on the basis of Article 43 § 1, sub-paragraph 2a, of the Criminal Code as in force at that time. The Federal Court had stated that, although institutional therapeutic measures were to be regarded as a penalty,

the ordering of such a measure in Mr Kadusic's case did not result in a heavier penalty than that laid down by the law applicable at the time the offences had been committed. The Government maintained that the institutional therapeutic measure ordered by the court had been no more severe than the measure that could have been ordered even at the time of the original judgment. The Court noted that Mr Kadusic had not advanced any convincing arguments capable of casting doubt on that assertion. The Court concluded that there had been no retroactive imposition of a heavier penalty and hence no violation of Article 7.

Article 4 of Protocol No. 7: The domestic authorities had viewed the re-assessment of Mr Kadusic's mental state as a newly disclosed circumstance and had amended the original judgment by applying the rules on revision by analogy. The Court noted that the applicant had not explained in what sense the reopening of the case had not taken place "in accordance with the law and penal procedure of the State concerned". There had therefore been no violation of Article 4 of Protocol No. 7. Just satisfaction (Article 41): The Court held that Switzerland was to pay the applicant 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 12,000 in respect of costs and expenses.

NI Blog: PSNI Body Cams – A New Era Of Victimless Prosecutions?

Charlene Dempsey , associate solicitor at Higgins Hollywood Deazley Solicitors in Belfast, writes on a recent court decision concerning a prosecution based on police body camera footage in which no statement of complaint was ever filed. In November 2016 the PSNI spent £700,000 on Police Body Worn Cameras - the third highest outlay of all UK forces. It has a total of 2,100 cameras, according to research by Big Brother Watch.

In the unreported Belfast Magistrates' Court decision of R v Nesbitt (January 2018), HHD Solicitors were instructed on behalf of the defendant charged with the offence of common assault. The prosecution sought to rely on body cam footage recorded by the officer who attended the scene of a domestic incident. The defence were served with body cam footage showing the female complainant describing to the officer how she had allegedly been assaulted by the defendant only minutes before. The complainant makes it clear to the officer that she does not wish to provide a written statement of complaint even if the police were to make contact with her over the following days. The defence were also served with a recording of the 999 call made by the complainant requesting police assistance and outlining the fact that the defendant whom she named, had just assaulted her.

The complainant in this case never provided a statement of complaint to police nor any statement indicating why she was unwilling to do so or in fact unwilling to attend court i.e through fear. The prosecution sought to rely solely on the body cam footage, the 999 audio recording and evidence of the police officers who attended the scene noting injuries to the complainant. This was a highly unusual case in that no Statement of Complaint had ever been provided. The defendant therefore, could have been convicted solely on the basis of hearsay evidence in circumstances where the complainant had, from the outset, indicated her unwillingness to co-operate with the criminal process.

The prosecution applied to admit the hearsay evidence under article 22 of the Criminal Justice (Evidence) (NI) Order 2004 (the Res Gestae exception). The prosecution relied upon article 22 4 (a) that "the statement was made by a person so emotionally over-powered by an event that the possibility of concoction or distortion can be disregarded".The Northern Ireland decision of Gerard McGuinness v The PPS (2017) NICA 30 provided useful guidance on the admissibility of Res

Gestae evidence. However, the distinction could be made between the McGuinness Case (and those referred to therein) and the present case in that statements of complaint had been provided but subsequently withdrawn and the reasons for the withdrawal notified to the Defence.

We lodged an objection to the prosecution application to adduce the hearsay evidence. We submitted that there were 'special features' in the case which related to the possibility of concoction and or distortion. The Court was referred to the fact that the complainant was noted to be intoxicated during her dealings with the PSNI and the telephone call to the PSNI operator. The Court was asked to consider how reliable her account might therefore be. During oral submissions, the Court was referred to Article 18 (2) of the 2004 order which essentially acts as a legislative 'check list' for the Court when deciding whether a hearsay statement should be admitted. This check list can be summarised as follows: How much value the statement has; What other evidence has been or can be given; How important the matter evidence is; The circumstances in which the statement was made e) how reliable the maker of the statement appears to be; How reliable the maker of the statement appears to be; How reliable the evidence of the making of the statement appears to be; Whether oral evidence of the matter stated can be given, if not, why?; The amount of difficulty involved in challenging the statement, and The extent to which that difficulty would be likely to prejudice the party facing it.

It was noted that during the body cam account the complainant alleged she was "hit" and "punched". During the 999 recording, the account differed to an allegation of being "pushed". The Court ultimately decided that the hearsay evidence did meet the criteria for admission under the Res Gestae exception. The Court was then obliged to consider whether the evidence might be excluded under the following: Article 30 of the Criminal Justice (Evidence) NI Order 2004 - where the case for excluding it outweighs the case for admitting it and/or; Article 76 of the Police and Criminal Evidence (NI) Order 1989 where the admission of the evidence would have such an adverse effect on the fairness of the proceedings the Court ought not to admit it.

Ultimately, the Court decided that the evidence should be excluded due to the unfairness faced by the defendant in challenging the following: The level of intoxication of the complainant; And the reliability of her account given the different allegations made by her to Police who attended at the scene and to Police during the 999 call.

There appears to be ample case law in England and Wales regarding the admissibility of body cam footage. In Northern Ireland, the admissibility of body cam evidence was upheld by the High Court in the case stated decision of McGuinness. These cases show that the prosecution will pursue prosecutions in circumstances where a complainant has made a statement of complaint but subsequently withdraws it. What was unique in his case was that the prosecution were willing to go further, and pursue a prosecution based solely on hearsay evidence even when no statement of complaint had ever been made.

In Nesbitt the District Judge considered whether it might have been open for the prosecution to apply to admit the body cam footage under article 20 (e) of the 2004 Order on the basis that the witness was in 'fear'. However, in those circumstances the prosecution would have to adduce evidence from the witness (or some other third party) of the fear as well as demonstrate that the provision of special measures (e.g screens/video link) would not address the victim's fears with respect to giving evidence. The complainant in this case was not co-operating and this is therefore likely to be the reason this avenue was not explored further by the prosecution.

This case of course raises concerns regarding the unfairness the admission this type of evidence can have upon a defendant accused of a criminal offence and who is then unable

to cross-examine their accuser in court. Of further concern is the potential for "re-victimisation". For example, a victim of domestic violence may contact police to have the offender removed from their home. The victim may make it clear to the police at the time that they do not wish to pursue a formal criminal complaint nor co-operate with any court proceedings. It appears that the views of such victims are likely to be ignored by prosecutors who proceed to have the victims discussions with police admitted as a statement at a subsequent trial. In this particular case, no evidence was put before the Court regarding the victim's wishes or how she felt about the case proceeding, albeit in her absence. The concern is that victims will be reluctant to call police to have a violent partner removed for fear that a prosecution process will continue without their input. The legislation regarding the admissibility of this evidence does not demand that the Court consider these public interest issues. On the basis that the evidence was excluded, the defendant was acquitted of the offence of common assault.

Chicago City to Pay James Kluppelberg $9.3M for Wrongful Conviction

Jason Meisner, Chicago Tribune: Chicago officials have agreed to pay $9.3 million to a man wrongfully convicted of setting a 1984 fire that killed a mother and her five children, a crime he confessed to only after he was allegedly beaten by detectives working under disgraced Chicago police Cmdr. Jon Burge. The proposed settlement in the federal lawsuit brought by James Kluppelberg marks the latest in a string of massive payouts by the city involving cases of alleged police misconduct. It also adds to the ever-mounting costs of the torture scandal involving Burge and his “midnight crew” of detectives, which has stained the city’s reputation and so far cost taxpayers at least $115 million in lawsuit settlements, judgments and other compensation to victims. The $9.3 million deal, reached as the trial over Kluppelberg’s lawsuit was set to go to trial in August, will be considered by the City Council’s Finance Committee at its meeting Friday. If approved , the full City Council will vote on the proposal next week. Neither Kluppelberg nor his attorney could be reached for comment Wednesday. A spokesman for the city’s Law Department had no comment.

Kluppelberg, 52, spent nearly 25 years in prison for setting the fatal blaze that killed Elva Lupercio, 28, and her five children, ages 3 to 10, in their home in the 4400 block of South Hermitage Avenue. The building was destroyed. Testing did not find any signs of accelerants. Fire investigators originally labeled the cause undetermined and said it appeared to have been an accident. But the case was reopened more than four years later when a man arrested on burglary charges told police that Kluppelberg had set the fire. The man's girlfriend had left him for Kluppelberg a few weeks after the fire, Kluppelberg's attorney told the Tribune after his conviction.

Kluppelberg was arrested and later confessed to the arson. The lawsuit filed by Kluppelberg in May 2013 alleged that he confessed only after being beaten so badly by Chicago police detectives working under Burge that he urinated blood. Doctors found signs of trauma to his back and kidneys, and a trial judge later threw out Kluppelberg's confession but not the underlying charges. Kluppelberg's attorneys at the law firm of Winston & Strawn and the Exoneration Project at the University of Chicago Law School had argued that the fire was not intentionally set, citing their expert, who found that it might have been accidental. The man who first implicated Kluppelberg recanted and said in a sworn statement that he had lied to get leniency in his burglary case. And Kluppelberg's attorneys alleged that authorities had concealed information about a woman who admitted setting a fire to a home on the same night about a block away. The woman, who was convicted of that arson, told officials she had been too drunk to remember whether she had set the fire blamed on Kluppelberg.

It wasn't until 2012 that Cook County prosecutors dismissed the charges against Kluppelberg, saying they no longer could meet their burden of proof. Kluppelberg left prison that year with $14.17 in the pocket of his gray sweatpants. He moved to Indiana to be close to his son and daughter-in-law, who supported him while he unsuccessfully looked for work. He later told the Tribune he felt “lost,” struggling to adjust to life on the outside and sleeping only three or four hours a night. “I thought my life would be moving forward by now," Kluppelberg said in the 2013 interview. "In a way, I feel like I'm still locked up." Records show Kluppelberg has a home repair business with his son in Crown Point. Calls to the business were not returned Wednesday. If approved, the $9.3 million settlement in Kluppelberg’s lawsuit would mark yet another massive payout for the city in a police misconduct case. In the past three months alone, more than $100 million in judgments and legal fees have been assessed against the city for police-related cases, including a record $44.7 million jury verdict in October for a man who was shot by his childhood friend, Officer Patrick Kelly, in an off-duty incident.

In December, the City Council approved a $31 million payout for the “Englewood Four,” who each spent some 15 years in prison for a 1994 rape and murder before DNA linked the crime to a convicted killer. And earlier this month, a federal judge ordered the city to pay at least $5.6 million in legal fees to attorneys for a former El Rukn gang member who won a $22 million jury verdict on claims he was framed by Chicago police for an infamous 1984 double murder. Meanwhile, Kluppelberg’s lawsuit was one of the last pending cases involving alleged torture by Burge and his crew — a scandal that came to light three decades ago when former Mayor Richard Daley was the Cook County state’s attorney. Burge was fired from the department in 1993 after it was determined he tortured murder suspect Andrew Wilson. In 2010, Burge was convicted in federal court of perjury and obstruction of justice after jurors found he lied under oath in a deposition for a civil suit when he denied witnessing torture or abusing suspects. While Burge was not charged with torture, prosecutors had to prove up allegations of abuse to support the other counts. Burge spent 4 1/2 years in prison and on home confinement and now lives in Florida, where he still collects a police pension. After years of fighting the torture claims, the city did an about-face May 2015 when a $5.5 million reparations package was approved to acknowledge those victimized by Burge.

Mistaken Identity Case Reveals Racial Bias In Policing

Calum McCrae, ‘The Justice Gap’: The police watchdog has upheld a complaint following a case of mistaken identity in which a black man was arrested for an offence despite officers being told the suspect was white. Andrew Okorodudu had been arrested on suspicion of stealing a bicycle in Leather Lane, central London in February 2016. The officers threw Okorodudu to the ground. Medical attention was required at the scene and nearly two years after the incident, Okorodudu complains of ongoing difficulties with his knees The newly-branded Independent Office for Police Conduct (formerly the IPCC) has upheld his complaint for an unreasonable arrest. Okorodudu has received a four-figure settlement and an apology, which his lawyer Joanna Bennett of Hodge Jones & Allen, described as ‘half-hearted’

Okorodudu took issue with the police ignoring the ethnicity of the suspect given to them. The suspect had been described over the radio as a white man wearing a light green jacket and blue jeans. The stolen bike was also described as white. According to the man’s lawyers Hodge Jones & Allen, the real suspect was standing, with the stolen bike, close to a group of cycle

couriers. Okorodudu, who is black, approached the group on his silver bike wearing a grey jacket. Whilst the four officers made their arrest of the wrong man, thief made his exit on the stolen bike. The Independent Office for Police Conduct (IOPC) twice overruled a recommendation that a review was not required in their case. 'This isn't the first time I've been wrongly targeted by the police,' Okorodudu commented. 'I've lived in London my whole life and it's simply become a regular thing that I'm looked at suspiciously by the police for simply going about my business. I'd like to think that telling my story will impact change, but I'm not that hopeful,' he added.

During the probe into Okorodudu's complaint, the watchdog found that the officers, who denied hearing the ethnicity of the suspect, had in fact noted that the suspect was a white male. The IOPC also held, by reviewing CCTV footage of the incident, that the officers' excuse of bad lighting was not well-founded. Further, they disagreed with the officers' report that Okorodudu had acted aggressively towards them and resisted arrest. It held that the police had allowed the situation to quickly become uncontrollable and that excessive force was used. The arrest was also held to be unreasonable. The IOPC found that the misconduct by one officer was down to unconscious bias.

HMYOI Cookham Wood – Cumbersome Security Keeps Boys Locked Up

Education and therapy for boys at Cookham Wood young offender institution (YOI) was undermined by a custody regime which kept them locked in cells while skilled and enthusiastic professionals waited for them in empty rooms, prisons inspectors found. Difficulties in getting the 15-18-year-olds out of cells to attend the wide range of group-based services available led to a "significant waste" of resources, a report by HM Inspectorate of Prisons (HMIP) said. 31 recommendations from the last report have not been achieved.

The report, following an unannounced visit to the YOI near Rochester in Kent, in August 2017, concluded that Cookham Wood had "many redeeming features," including some enthusiastic staff. It assessed that "the vast majority of teaching, learning and assessment was good and boys achieved very well." Cancelled education sessions had reduced in the two months before the inspection. However, the report noted: "Individual work was complemented by a range of focused group sessions, including art therapy and managing emotions and resilience groups. Difficulties remained in getting boys to group sessions, largely because of the lack of escort officers. Between April and June 2017, about 40% of planned groups had been cancelled, which was a considerable waste of this valuable resource." The report added: "The poor regime and delays in movements affected access to all services and represented a significant waste of resources as professionals waited in empty rooms for boys to arrive." Inspectors found Cookham Wood, holding 161 boys, to be less safe and more violent than at the previous inspection in 2016, with little evidence of an effective strategy to reduce violence.

Peter Clarke, HM Chief Inspector of Prisons said: "While we did not underestimate the risks presented by some of the boys at the establishment and the need to manage their movements carefully, some of the unlock procedures were unnecessarily cumbersome and created further delays to an already curtailed regime." Mr Clarke added: "The main prison regime was also poor and unpredictable. The lack of time out of cell restricted access to education, interventions and meaningful interaction with staff and other boys. What was perhaps most unforgivable was that there were many skilled staff and partners who were keen to work with boys to help them progress but their efforts were frustrated by the failure to unlock boys on time, if at all. We were told by numerous professionals that this was not uncommon." The report noted that the YOI estimated the average time out of cell over the previous six months before the inspection to be about 4.5 hours a day. However, a significant number of boys received far less. Strengths at Cookham Wood included work with boys in their early days in custody, when they were well supported in reception and on the induction unit. Boys with potentially life-threatening medical conditions were encouraged to wear a medical alert wristband to help custody staff to ensure their safety, which was good practice. Inspectors made 61 recommendations.

Overall, Mr Clarke said: "A new governor had been appointed just weeks before our visit. We were encouraged by his optimism and plans to address the issues we have highlighted in our report. Cookham Wood retains many redeeming features, not least an extended team of enthusiastic staff with a wide range of skills. They now need to focus on ensuring that boys can access the services they need to progress."

London Mayor Calls For An Increase in the Use of Stop And Search

The London mayor has announced that there will be an increase in the use of stop and search powers despite home office data showing they are not effective. Sadiq Khan called more intelligence-led stop and search a 'vital tool' in keeping communities safe and promised an increase in its use. The mayour noted that on New Years Eve four young Londoners died in knife attacks. Between 2014 and 2015, he pointed out that knife crime in the capital rose by five per cent but in 2016 it increased by 11% in London and 14% across England and Wales. Kerry Spence, a criminal defence lawyer at Hodge Jones & Allen, argued that the statistics for the year 2016-17 show that the percentage of arrests arising from stop and search was 'shockingly low' and proves that the procedure does not work. Michael Ackah, a trustee of the charity Stop and Search Legal Project and also a lawyer at Hodge Jones & Allen, said that Khan's statement made a 'good soundbite' but was not supported by the facts. In the 12 months preceding October 2017, there were more than 300,000 stops and searches and just 17% resulted in arrest. Since 2001 the percentage of arrests made as a result of the use of stop and search has been declining, and hit its lowest in 2011/12 at 9%. In 2014 the then Home Secretary Theresa May changed police guidelines to reduce the use of stop and search, following widespread rioting. Following this levels of stop and search powers decreased dramatically from over a million a year between 2006 to 2013 to the current levels. The amount of stop and searches taking place has decreased by nearly two thirds, but the effectiveness of the searches has only increased to 17% with a reduction from 122,425 at its highest to 51,813 arrests in the most recent figures. The number of Black and minority ethnic subjects targeted as part of stops and searches remains disproportionately high. People from a BAME background are four times more likely to be stopped compared with those who are white. In particular, those who are Black (or Black British) are eight times more likely to be stopped than those who are white. Although the amount of stops and searches have fallen overall the stops of white individuals have fallen more than other groups.

Hostages: 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, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, John Twomey, 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, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan.