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Lock 'em Up And Throw Away The Key – That'll Make Britain Great Again

Kevin McKenna , Observer: As Charles Dickens showed so memorably, fairness and compassion are things we can do without in UK jails. 'Many people seemed to be troubled last week by reports that several of our jails are operating like speakeasies run by Al Capone.' Britain has a history of excellence in penal innovation stretching back several centuries. During this period, we have successfully resisted the sort of fashionable but foolish fads that are the hallmark of woolly liberal and European thinking. There have been several milestones along the way of which the nation is rightfully proud. Perhaps the most outstanding is our visionary and enlightened attitudes to prisoners. Who knew that when we pioneered the concentration camp during the Boer War that it would be taken up so enthusiastically and refined by such leading specialists in confinement as Adolf Hitler and Joseph Stalin?

We should also be proud of our record during the Industrial Revolution of debtors' jails and workhouses, memorably and sympathetically portrayed by Charles Dickens in novels such as Little Dorrit and Oliver Twist. Mr Dickens knew that our Industrial Revolution wouldn't have been half as successful if we were allowing people to run around the country willy and nilly without paying back what they owed at a reasonable rate of interest. I like to think that in his novels he got the balance just right between applying unstinting discipline and rigour in our treatment of miscreants and the need for a degree of compassion. I've always modelled myself on the complex and deeply misunderstood character of Mr Bumble myself.

Hopefully, once we've left the EU, we can begin to apply some traditionally British rectitude and moral backbone to the prisons system. Britain locks up more of its citizens than just about any other western European country. Even the bloody Jocks lock up more women, including expectant mothers, than almost any other nation in northern Europe. These are records of which we should be justly proud: we shouldn't give them up without a fight. What better way of showing our little ones that crime doesn't pay than by having them born into captivity? Rather than reduce the number of women in our prisons, we need to increase it. Exponentially, that would mean more babies being born in prison, especially if we were to encourage much more intimacy during conjugal visits. Thus, many more children would be born who had learned tough but necessary lessons about the nature of crime and punishment.

Britain has an unblemished record away from home in military conflict, apart from an early reversal against the Americans and a score draw with the Irish Republican Army. We wouldn't have achieved such excellence in the field of human conflict if we'd treated our prisoners with a light touch. After all, we've always required them to be ship-shape and Bristol fashion to feed our relentless war machine. And once we start sending in the gunboats to reinforce our interests with the more truculent of the World Trade Organisation states, we'll need our sovereign ruffians even more, gawd bless 'em all.

Many people seemed to be troubled last week by reports that several of our jails are operating like speakeasies run by Al Capone during the prohibition era. I think they all need to see the bigger picture. G4S security was chosen specifically to ensure a smooth handover in power from the prison officers to the prisoners. Everyone knows that G4S couldn't be trusted to walk your granny across the road without losing her somewhere along the way.

Deployment of G4S followed a study of the methods of the US penal reform society from its award-winning promotional video, entitled Escape From New York. This seemed to offer a progressive and enlightened solution to prison overcrowding and sensitive issues around electrocuting innocent people that had led to some boisterousness in wider society. It all seemed to be rooted in the visionary, controversial but deeply misunderstood concept of locking 'em up and throwing away the key. Handing over the prison contract fully to G4S would ensure that the prisoners would be running the jails before you could say: "Would you like a £10 wrap with your porridge today, sir." Soon after, we would simply withdraw all staff and let the inmates get on with it.

Of course, we would keep an eye on them with CCTV to ensure that those displaying a special aptitude for organisation and leadership in such demanding circumstances would be earmarked for high office with our security services or for deployment in our Moscow embassy. Chaps and ladies displaying unusually high levels of psychopathic tendencies have always thrived in these environments. Those exhibiting rare prowess in chib-to-head combat would be fast-tracked for action in some of the dirty little wars in which we always seem to be engaged here and there. If anyone is getting squeamish about this, I'd remind them that we used just such an approach in various Irish wars against the rebel scum when we sent in the Black and Tans early last century. I need hardly remind you that these were the torch bearers for our policy in Northern Ireland during the Troubles in the 70s. Eventually, with the help of our flexible friends at G4S, we would create walled penitentiaries around cities that have always resisted our forced civilisation initiatives, such as Manchester and Glasgow. All of our most violent criminals (and possible SAS recruits) would be thrown in there and the rules of the free market would apply to ensure the survival of the fittest. What's not to like?

New Open Justice Rule Could Disadvantage Litigants In Person

Nick Hilborne, Litigant Futures: A new rule putting the parties under an explicit obligation to disclose to the other side communications with the court could disadvantage litigants in person (LiPs), the Bar Council has warned. The Ministry of Justice (MoJ) is consulting on a series of changes to part 39 of the Civil Procedure Rules, designed to promote open justice. The MoJ said: "It is a fundamental rule of the administration of justice that none of the parties may communicate with the court without simultaneously alerting the other parties to that fact. "The concern is particularly acute where a represented party communicates with the court, without notifying the unrepresented opposing party."

The proposed new rule states that "any communication between a party to proceedings and the court must be disclosed to, and if in writing (whether in paper or electronic format), copied to, the other party or parties or their representatives". The rule would not apply to communications that were "purely routine, uncontentious and administrative", or where there was a "compelling reason" not to disclose. The Bar Council said the proposed new rule appeared to address "substantive communications without imposing unnecessary limitations on run-of-the-mill correspondence with the court". However, it queried "whether instances of representing parties failing to notify unrepresented parties are as prevalent as suggested in this paper. "We would expect that such provisions are more likely to negatively impact litigants in person, who are likely to be unfamiliar with Civil Procedure Rules and therefore communicate with the court without notifying represented parties."

The Bar Council was more positive about a new rule giving judges the power to order lawyers to share notes of hearings with LiPs. "The current draft of the provision suggests that the requirement to assist in the preparation of a note will be only if directed by the judge. This seems appropriate. Depending on its content, the sharing of a note of proceedings or liais-

ing with the opposing party as to the content of the note could minimise disputes going forward and ultimately result in proceedings running more smoothly."

Responding to a question from the MoJ as to whether, apart from judicial review applications under the Aarhus Convention, there were "any other reasons" why a hearing should be held in private, the Bar Council set out the full list from CPR 39.2(3). The list includes claims by a mortgagee or landlord for possession, applications for charging or attachment of earnings orders, applications for administration or receivership orders, and proceedings under the Consumer Credit Act 1974, the Inheritance (Provision for Family and Dependants) Act 1975 or the Protection from Harassment Act 1977. The Bar Council concluded: "Many of the changes appear to reflect the current practice in the High Court and County Court. However, the more prescriptive nature of these changes may reduce instances of confusion as to procedures." The Civil Procedure Rule Committee set up an open justice subcommittee in June 2017 to review the rules so that they reflected "more properly" the principles of open justice.

Guildford Pub Bombings 1974

KRW Law represent the family of Ann Hamilton, one of the victims of The Guildford Pub Bombings 1974. KRW also represent a survivor of the bombing. Earlier this year the Senior Coroner for Surrey directed that he would receive written submissions and hear oral argument on whether he has the jurisdiction, power, authority and reason to resume the inquest concerning the deaths of those killed in The Guildford Pub Bombings 1974. That hearing will take place on the 21st September at the Coroner's Court in Woking, Surrey. In addition to those represented by KRW, there will be representatives on behalf of family members of The Guildford Four (wrongfully convicted of the bombings) and the Surrey Police. The hearing will be open to the public. The hearing is an initial hearing for the Senior Coroner to hear opening arguments and submissions regarding the resumption of the original inquest which was suspended due to the conviction of The Guildford Four. KRW will be seeking disclosure of all available material pertaining to the pub bombings, some of which remains closed after over 40 years including material relating to the Avon and Somerset Police investigation of the Surrey Police investigation and the Inquiry conducted by Sir John May under the direction of the then Home Secretary, the Right Honourable Douglas Hurd MP, into the miscarriage of justice.

ECtHR Rules Murderers Have No Right to be Forgotten

Michael Cross, 'The Register': Two half-brothers convicted 25 years ago of the murder of a well known German actor have no right to require the media to delete their names from online reports of the case, the European Court of Human Rights has ruled. The judgment, in ML and WW v Germany, is the latest clash between articles 8 and 10 of the European Convention on Human Rights (ECHR) over the so-called 'right to be forgotten'. It appears to tilt the balance more towards freedom of expression four years after the Court of Justice of the European Union's landmark ruling in Google Spain.

ML is the culmination in 10 years of proceedings begun by Wolfgang Werlé and Manfred Lauber as they approached the date of their release from a life sentence for the 1990 murder of Walter Sedlmayr, a nationally known stage, TV and film actor. His killing and the subsequent trial attracted widespread media coverage. Citing their privacy rights under article 8 of the ECHR, Werlé and Lauber brought proceedings against media organisations, including Wikipedia Germany, requesting that archive documents be anonymised. Germany's

Federal Court of Justice ruled in favour of the media, while acknowledging that the pair had 'a considerable interest in no longer being confronted with their conviction'.

The ECHR was asked to decide whether this ruling took into account the power of web search engines. It ruled that the question of what information should be published in a news report was a matter for journalists, so long as these decisions corresponded with ethical and regulatory norms. Any obligation to assess the lawfulness of reports at a later stage following a request from the individual would create a risk of the press failing to preserve archives, or omitting identifying elements from the outset. The judgment also noted that the disputed texts described a judicial decision in an objective manner. While they contained details about the murders' lives, this information constituted material that would have surfaced during public hearings. 'Furthermore these articles did not reflect an intention to present the applicants in a disparaging way or to harm their reputation.' The court unanimously ruled that no violation of article 8 had occured.

The Victim Vanishes

Simon Warr: In recent months I have gained the distinct impression that the tide has started to turn against those who make false allegations – especially those of a sexual nature. There is still a long way to go, but there does appear to be a greater public awareness of the fact that false accusations are not as rare as some vocal campaigners would like us to believe.

Indeed, there is a greater willingness in the media to report on cases where malicious allegations have been made, as well as giving a voice to innocent victims whose lives have been devastated or to the grieving families of those who have committed suicide because they were unable to cope with the intense pressure and utter misery of being falsely accused of sexual abuse.

The way in which the police and the Crown Prosecution Service (CPS) deal with allegations of sexual misconduct is also coming under intense scrutiny, with questions being raised in Parliament and in the courts. Urgent reviews of thousands of current cases have led to hundreds of these prosecutions being dropped owing to relevant evidence either having not been disclosed to the defence or new material (especially electronic communications, such as text messages) being produced belatedly which casts significant doubt on claims made by the complainant.

The recent collapse of certain high-profile prosecutions – including that of former pop mogul Jonathan King – raises yet more questions about the conduct, methods and even probity of some police investigations. All of this controversy has led to an official call to abandon the ludicrous dogma of 'you will be believed' – which applied specifically to allegations of a sexual nature, no matter how bizarre or fantastical the claims being made might be. (I still can't believe that someone in such a prominent legal position - Keir Starmer, then Director of Public Prosecutions (DPP) - could have uttered such a pathetically puerile, preposterous statement). The utter fiasco of the Metropolitan Police's Operation Midland (2014-2016) alone – at a cost to the taxpayer of £2.5 million, plus substantial compensation payments made to victims such as Lord Bramall and Lady Brittan, should have been proof enough that suspending disbelief and simply accepting that every bizarre tale told to police was 'credible and true' was the road to ruin. And so it has turned out to be.

Pressure is also mounting for a review of older sexual convictions, where dubious police practices and highly skewed methods of investigating (such as failing to check any of the allegations being made against relevant facts, or refusing to interview relevant witnesses whose testimony might assist the defence in any way) might well have led to miscarriages of justice. Although there remains a marked reluctance on the part of the authorities – especially the Criminal Cases Review Commission (CCRC) and the Court of Appeal – to acknowledge the potential scale

of these possible wrongful convictions, more and more scrutiny by the media and campaigning groups will make a policy of obstinate refusal much more difficult to sustain.

Hundreds, perhaps thousands, of unjustly convicted people and their families are now demanding effective redress, starting with the urgent review of cases where prisoners and ex-prisoners are maintaining their innocence. Once the floodgates have been opened in a few high profile convictions, the flow through the CCRC and the Court of Appeal may prove difficult to ignore.

However, while there are some positive developments ongoing, the plight of the innocent victims of malicious false accusations – whether prosecuted and acquitted or not – remains largely unaddressed. Moreover, until vindictive liars, compensation-grubbing fraudsters and attention-seeking fantasists are routinely prosecuted and brought to justice for their crimes, the risks of making a bogus complaint to the police will remain extremely low.

And the damage that these malicious false accusations inflict also needs to be recognised and addressed. One of the rarely acknowledged by-products of the false sexual accusation industry is that of the innocent victim who becomes a 'non-person' as a result of the negative publicity generated by these allegations. I'll explain what I mean by this. Most successful professional people, who are often the target for compensation-hunting liars, have a wide social network, including a significant social media 'footprint'. Such folk are often active in their local communities – making a positive contribution to a wide range of organisations and causes, such as charities or clubs. Their names – and reputations – are well-known and, thus, very vulnerable to any kind of scandal.

All of this good work is undone overnight as soon as a false accusation of a sexual nature has been made. This can also be true, of course, following a bogus claim of other forms of misconduct, including embezzlement, fraud or violence, but it needs to be recognised that alleged sexual offences are the crimen exceptum of our age: crimes considered so exceptionally terrible that the normal rules of evidence and justice need not be followed. This perverse doctrine was established during the Middle Ages when superstitious panics about witches led to appalling injustices, including torture and judicial murder following shockingly unfair show trials where the only 'evidence' was the demented or malicious ravings of the accusers.

Such medieval attitudes were revived during the so-called 'satanic panics' of the 1980s and 1990s, when reason seemed to go out of the window and mob rule – encouraged by the most irresponsible and sensationalist reporting by the media – led to literal 20th century witch hunts, under the banner of what is still called 'satanic ritual abuse'. From there it was a short step to suspending rational investigation when it came to any accusation of sexual misconduct, especially if children (or adults claiming to have been sexually abused when they were minors) were involved.

The logical conclusion of all this nonsense was the idiotic dogma of 'you will be believed', promulgated, as mentioned above, by the then DPP Keir Starmer (now a Labour MP and shadow minister) and followed by the present incumbent of that office, Alison Saunders. Although this policy has now been utterly discredited, it remains to be seen how long it takes to filter down to police attitudes and practices at the front line.

Yet, in many cases, it doesn't even require a prosecution to wreck the lives of innocent victims of false accusations. Reputations that have taken years to build up can be shattered in seconds by malicious gossip, especially when such allegations are broadcast via social media. One popular tweet on Twitter, or a post on Facebook, can incite mobs – both online and on the street – to target people who have never even been arrested or interviewed by the police, let alone charged or prosecuted.

Businesses, lives and careers can be destroyed overnight, professionals suspended pending further enquiries, homes targeted and families (including children of victims) bullied and intimidated. I

have been dealing, in recent years, with a number of fathers who are not even allowed to live in the same house as their own children. Others are so afraid for their safety and that of loved ones that they have to flee their homes and go into hiding, or to seek refuge with friends'. And, on top of all this, the names of the accused can suddenly be 'wiped out': organisations and institutions that were once proud to be associated with him or her immediately drop the accused like the proverbial 'hot potato'.

This is particularly noticeable when teachers have been accused of any form of misconduct: suspension from work is always immediate. And within a matter of days, or even hours, the very existence of such a person is often erased from websites and official records, as if they had never worked there. Even group photographs can be doctored to remove the pariah. It is strongly reminiscent of the concept of an 'unperson' during the Stalinist purges in the 1930s, when every trace of the accused person had to be removed until it seemed that he or she never even existed.

Since I was the victim of malicious false accusations in 2012, made by two vile lying fraudsters intent on cashing in on the institutional insurance gravy train, I have lost count of the number of social events and school functions – including colleagues' retirement parties, school sports days and the like – to which I have not been invited, despite my 35 year career as, if I say so myself, a highly dedicated, hard working teacher. The fact that at trial I was acquitted in a few minutes by a unanimous jury counted for nothing. The damage was done by the mere existence of pretty absurd sexual allegations, regardless of the fact it was patently clear by the end of the trial that the pair of low lives who accused me had made the whole story up.

I say it again - why have they not been arrested? I had my life turned upside down on account of obvious lies: but when the truth emerged, nothing was done to the accusers and I am seemingly still persona non grata at the school where I worked for 30 years. How on earth does this stack up? We live in an era of foolish credulity, despite our many technological and scientific advances. Nowadays, the surest way to destroy another human being is to smear him or her with a malicious false accusation, especially if it involves the sexual abuse of a child. Whispering (or tweeting) that someone is 'a paedo' is the modern equivalent of screaming 'burn the witch'. And until liars, fraudsters and fantasists are held accountable for their evil actions, and are brought to justice, every single man, woman and child remains at risk from such false allegations and the perverted mentality of the mindless mob.

Cabral v. the Netherlands Violation of Article 6 §§ 1 and 3 (d)

The applicant, Euclides Cabral, is a Netherlands national who was born in 1987 and lives in Rotterdam. The case concerned the applicant's complaint that he had been tried and convicted of a supermarket robbery without being able to examine a key witness. Mr Cabral was convicted in August 2006 of, among other crimes, a supermarket hold-up. A key piece of evidence for the conviction was the testimony of an accomplice, which had also incriminated Mr Cabral. The accomplice later withdrew his statement, but was not believed by the court. Relying on his own privilege against self-incrimination, the accomplice refused to answer any questions put by the defence in the appeal proceedings, which ended in March 2008 by upholding the first-instance judgment. The Supreme Court dismissed an appeal on points of law by the applicant in January 2010. Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses), Mr Cabral complained that he had been convicted "solely or to a decisive extent" on the basis of statements made to the police by a witness who had been allowed to refuse to give evidence under cross-examination by the defence. Violation of Article 6 §§ 1 and 3 (d) Just satisfaction: The Court held that the finding of a violation constitued in itself sufficient just satisfaction for any non-pecuniary damage sustained by Mr Cabral. It awarded him EUR 94 for costs and expenses.

On-The-Run Killer Appeals Against Conviction

A man found guilty of killing his date in a speedboat crash has appealed against his conviction, despite being on the run. Jack Shepherd was sentenced to six years in July for the manslaughter of 24-year-old Charlotte Brown. The Court of Appeal has confirmed Shepherd, who left the country prior to his trial, has lodged appeals against his conviction and sentence.

The Met Police found out that Shepherd, of Paddington, would not appear at his trial three days before it was due to begin, although he was present at previous hearings. Despite being absent it came out during the trial that Shepherd was in regular contact with his legal team.

Scotland Yard said it was following "intelligence and leads to addresses and where he's last been seen and where he's known". "We work with a number of agencies, including the National Crime Agency, and we're open to worldwide inquiries," a spokesman said.

Shepherd's trial heard he had entertained up to 10 women on the vessel and had previously been warned by police about speeding on the river. In court, the web designer's barrister, Stephen Vullo QC, said Shepherd was not trying to avoid justice but "could not have faced the Brown family". "It's cowardice," he said. Mr Vullo also revealed his client married a childhood friend shortly after the crash, and has a two-year-old child, but the relationship has since broken down.

Judge Wrong to Jail Unrepresented Woman for Contempt

A judge was wrong to jail an unrepresented woman for contempt of court without giving her more time to find a lawyer, the Court of Appeal has ruled. Lord Justice Bean said it was “unrealistic” to expect the woman, locked in a battle with her sister about their deceased father’s pension money, to be able to find a lawyer within one and a half days while in prison. He said that not only was Naomi James guilty of “burying her head in the sand”, but her “devious” behaviour in claiming to have documents in a plastic bag in her cell and then refusing to hand them over was “deplorable”. However, His Honour Judge Gerald was wrong to “impose a sentence of immediate custody on an unrepresented appellant”. Bean LJ went on: “I would hope that with sensible advice from her experienced counsel and solicitors, she will even now see sense. “Indeed that is one of the reasons, in my judgment, why there is such heavy emphasis in the rules and practice directions on the court seeking to ensure that a contemnor has legal representation, because it is possible that advice from lawyers can persuade even as difficult and obstructive a litigant as the appellant to see sense.”

The Court of Appeal heard in James v James [2018] EWCA Civ 1982 that Steven Mark James died intestate in 2016 while employed by the NHS. His estate, apart from £100 in cash, consisted of two pensions. His Standard Life pension of around £10,800 was split between his daughters, Naomi and Hannah, without the need for a grant of representation. NHS Pensions asked for a grant of representation before paying his daughters a “death in work benefit lump sum” of almost £65,000. Naomi obtained a grant of representation in July 2017, but texted her sister in October to say that she had decided not to claim the pension. Hannah issued a claim in the Chancery Division for an account for payment of the sums due to her and an order to replace Naomi as administrator, which was granted in March 2018. NHS Pensions wrote to Hannah’s solicitor the same month to say that it had paid almost £65,000 to Naomi in November 2017.

HHJ Gerald ordered Naomi to attend court on 8 June 2018 with a witness statement explaining her administration of her father’s estate, including confirmation of into which account the NHS pension had been paid. Bean LJ said Naomi did not attend the 8 June hearing and did not comply with the order – “indeed she has not complied with the order to this day”. Nor did Naomi attend the hearing of the committal application on 6 July, which was heard in her absence, with counsel representing Hannah. HHJ Gerald ordered her committal for contempt, and she was arrested on 10 July and imprisoned until she complied with the order. Naomi was produced in court for sentencing on 11 July, again unrepresented, but the case was adjourned until 13 July to allow her to seek legal representation.

At that hearing, HHJ Gerald refused her application for an adjournment to obtain legal representation and sentenced her to six months in prison. Bean LJ recounted: “The judge asked himself whether it was appropriate in this case to proceed to sentence in the circumstances where the defendant does not have legal representation. “He said that all that needed to be done was for the defendant to answer the simple questions: Where is the £66,000? Where has the money gone? Where is it now? and a witness statement with any relevant documents was to be disclosed. “He took into account that the defendant appeared to be a clever and articulate lady who fully understood the nature of the proceedings.” Bean LJ said he found it “particularly startling” that Naomi did not apply to the court to purge her contempt. Having obtained a representation order by 18 July, she appealed against HHJ Gerald’s ruling on 3 August. Bean LJ said there was nothing to suggest “any basis” to overturn the finding of contempt by HHJ Gerald on 6 July.

However, the order for committal was defective because the Contempt of Court Act 1981 required it to be for a fixed term. Naomi should also not have been the subject of an order for committal on 13 July because she had no “proper opportunity to have a solicitor or barrister make representations on her behalf to the court”. Bean LJ set aside the orders for committal and remitted the case to Central London County Court for another circuit judge to determine the committal application. Lord Justice David Richards agreed.

Man Jailed For £53m UK Heist Will Not Have to Repay Share of Proceeds

Owen Bowcott, Guardian: A cage fighter convicted of taking part in a £53m armed robbery has been excused from paying back his alleged share of the stolen cash after a secret court hearing. The Crown Prosecution Service has confirmed that Paul Allen, from Chatham in Kent, has been let off repaying more than £1.23m said to have been proceeds of the 2006 Securitas raid in Tonbridge. The cash heist, the largest in British criminal history, involved a large gang, some posing as police officers. The manager of the depot, Colin Dixon, and his family were kidnapped at gunpoint. The raiders left behind £153m because they could not fit any more into their getaway lorry. Police later recovered £21m of the missing cash; the remainder has never been found. Four days after the robbery Allen fled to Morocco where he was planning to live off his share of the loot. However, he was tracked down, arrested and flown back to the UK under police guard in January 2008. At Woolwich crown court the following year he pleaded guilty to three charges linked to the robbery and was sentenced to 18 years in prison.

Those Wrongly Accused of Committing A Crime Must Refer to Themselves as 'victims'

Mind Your Language!: Words are extremely powerful, and changing the way people use them can make the difference between success and failure in whatever they do. For example, if you didn't commit the crime, you are 'innocent'. You are not 'in denial'. Janet accuses Peter of assaulting her. Immediately, Janet is referred to as the 'victim' and Peter is the 'suspect'. The police may then publicise Peter's name in the hope that other 'victims' might come forward to accuse him too, to bolster their case. When people come forward, they are considered to be 'brave' victims. Peter insists he is innocent, but is then said to be 'in denial'. (Safari)

But Peter didn't assault Janet at all. She's lying to try and get 'compensation' money. So

actually Janet is the 'perpetrator' and Peter is the 'victim'. Those additional people who came forward in the hope of 'compensation' money themselves are also perpetrators who are perverting the course of justice to obtain money by deception, and they wouldn't have done that had the police not advertised for them. This shows how these words - when misused - can lead to terrible miscarriages of justice. Once convicted, whether actually innocent or not, Peter becomes the 'offender.' What do you think when you read that a 'rapist' has been found guilty and sentenced to ten years in prison? I used to think 'thank goodness they caught him'. Now I think 'I wonder if he was really guilty.' This is very sad but the British legal system, while mostly excellent, has some serious flaws, which are allowing hundreds and possibly thousands of people to be convicted of crimes that never happened. One thing is clear: those wrongly accused of committing a crime must refer to themselves as 'victims'. And be unyielding about this! (Safari)

In Issue 121, Safari Published An Article about private investigation companies and how they can help you obtain evidence in the early stages of an investigation. Some readers questioned whether the cost of such investigations was worth it, especially bearing in mind that the case may be dropped even before charge. It's up to you to decide whether or not a private investigator is warranted. The critical issue here is whether there might be evidence out there which could help prove your innocence should it be needed, and, if so, whether you have the knowledge and ability to obtain it before it could disappear. (Safari)

Inequity Of Arms? When an innocent person can be convicted on another person's word alone, and while police officers fail to "pursue all reasonable lines of enquiry, whether they point towards or away from their suspect" (as required by PACE - the Police and Criminal Evidence Act), SAFARI feels that legal aid should cover the cost of defendants using private investigation services to gather proof of their innocence. Otherwise the accuser gets the full backing (and funding) of the state while the defendant gets nothing. (Safari)

The Crown Prosecution Service (CPS) has produced guidelines for reviewing previously finalised cases. 'Triggers' for taking a new look at past convictions include where the competence and/or credibility of an expert witness or the methodology the expert witness has used is in doubt; where a nonexpert witness is discredited, for example a police officer or other witness who regularly gives prosecution evidence; where a new scientific breakthrough raises questions over the safety of earlier convictions; where technical defects are discovered in the construction or application of investigative equipment; where the law or the public interest is systemically misapplied by prosecutors; where systemic failings in the disclosure process are discovered; where a flaw has occurred in the trial process, for example, proceedings based on defective indictments; and more. (Safari)

Criminal Cases Review Commission (CCRC) Writes For Safari

Last time we looked in some detail at one example of an apparent factual discrepancy in the account of a complainant and discussed how the potential impact depended entirely on the context of the case. This time SAFARI has asked us to look at some other scenarios and consider what they might mean in relation to potential grounds of appeal or points for an application to the CCRC.

The first of these SAFARI scenarios was: "What if the Police withheld some evidence which showed the complainant had a conviction for making a false allegation in the past which suggests they are prone to making false allegations?" Clearly, this type of information could be highly significant. In the case of an undisclosed actual conviction for making a false allegation in the SAFARI question, assuming that it is relevantly similar to the circumstance of the

case in hand, and other things being equal (i.e. in the absence of virtually incontrovertible evidence of guilt), it is easy to see how the newly emerged evidence provides a pretty compelling ground of appeal. However, such examples as convictions for making similar false accusations are very rare, and appeal issues relating to complainant credibility tend to be much less clear-cut. They may relate to charges that were "dropped" by the police, cases where police NFA (No Further Action) a case following an investigation and so on.

Nevertheless, the Court of Appeal has over the years quashed convictions on the ground of complainant credibility in many CCRC referrals and other cases. It is however worth bearing in mind that, particularly in recent years, an increasing proportion of the CCRC referrals made on such grounds have resulted in convictions being upheld.

As always, and as we discussed last time in relation to discrepancies in the account of a complainant, the relevance for a case of questions about witness/complainant credibility will always depend on the specific facts of the individual case, and general lessons are hard to draw. That said, here are some observations about complainant credibility and how the CCRC approaches the issue that we hope will be relevant. The underlying legal position is that it is the duty of the prosecution to disclose any information held which may affect the assessment of a witness's credibility. Also, the Crown is obliged to make reasonable enquiries whenever they are aware that such information might exist. Unfortunately, it can and does happen that relevant information is missed during the investigation, or the trial and appeal process. It can also be the case that information relevant to the assessment of witness credibility becomes available only after a conviction, and after an appeal has been lost.

It is generally recognised that, because many sexual offences and allegations of sexual offences relate to incidents taking place in private, there are often no witnesses other than the complainant and the accused. This means that sex offences are a category where witness credibility can often be of particular significance. The CCRC has the legal powers to access material which could be relevant to the issue of credibility and which the applicant or their representatives would struggle to obtain. Our far-reaching powers mean we have access to the Police National Computer and the Police National Database, to Criminal Injury Compensation Authority files, medical records, Police child protection and to Social Services files and so on.

We will, if we think it is necessary and reasonable, use those powers to check for any undisclosed or new information relating to a witness's credibility. In deciding whether or not to go digging for information relating to the credibility of a witness, we will make enquiries only where those enquiries are reasonable, proportionate, strictly limited to what is required and in no way arbitrary. We will routinely ask ourselves the question about the possible need for credibility checks in sexual offence cases, but we will only use our powers in cases where we think that the results of checks, even taken at their highest, could potentially affect the safety of the conviction in our applicant's case.

As we said before, many CCRC referrals have been based on the idea that if relevant information about the credibility of a complainant had been available at the time of the trial, (perhaps that the complainant had made similar allegations where there were compelling reasons to think they were false) it could have provided a plausible, powerful line of defence or might even have persuaded the jury to acquit. To reach that decision, we will consider a range of relevant factors including but not limited to: how old, how similar and how relevant the other allegations are; how the new information stacks up in relation to the other evidence in the case and to the defendant's account; whether the credibility relates to one complainant among several and if so whether or not it could affect the conviction (or sentence) overall.

The Commission's general approach to credibility is dealt with in some detail in the

CCRC Casework Policy document on Witness Credibility. This is one of a number of Casework Policy documents on the CCRC website setting out how you can expect the CCRC to approach a range of procedural and casework matters such as witness credibility, accessing telecommunications material, disclosure and so on. These Casework Policy documents can be found on the CCRC site here: https://tinyurl.com/SAFARI-53.

Clearly, the question from SAFARI is about witness credibility and about the effect that new evidence about false allegations, or at least other unsubstantiated allegations, may have on a case. However, it also relates very clearly to the issue of non-disclosure which has been in the news on and off for almost a year now. The CCRC wrote specifically about non-disclosure in the March edition of the SAFARI newsletter. What was said then was relevant to the SAFARI question dealt with here. To recap, the central issue about non-disclosure as a potential ground of appeal is not just that there was information which was not disclosed to the defence. It is always about the importance and potential impact of the information that was not disclosed. That holds true for the SAFARI example dealt with above - the non-disclosure suggested was clearly bad and a contributory factor, but if it happened as SAFARI set it out, it would, first and foremost, be the fact of the conviction for making false allegations that would create the most promising ground for an appeal. If you are interested in developments in non-disclosure, the CCRC published a brief update on the issue in July. It can be seen here: https://tinyurl.com/SAFARI-54.

CCRC's website at www.ccrc.gov.uk contains questions and answers for potential applicants (the direct link to this is https://tinyurl.com/SAFARI-62). The website also contains information about how to appeal directly to the courts if you have not already done so. You will need form NG (https://tinyurl.com/SAFARI-59) to do this. Here also are further links that may be of some use. This first one is to the .gov website with information about criminal appeals: https://tinyurl.com/SAFARI-52. The Court of Appeal's Form NG (Notice and Grounds of appeal, with guidance) can be found at https://tinyurl.com/SAFARI-59. The web page of the charity Justice can be found at https://justice.org.uk, and their book called 'How to Appeal' can be found at https://tinyurl.com/SAFARI-60.

Finally, SAFARI posed another question that is related in part to questions of witness credibility. It was this: "Are there grounds of appeal if you can produce a new witness who says they with [you] miles away from the scene of the alleged crime at the right time?" Clearly, this is potential dynamite as a ground of appeal - if it can be relied upon. That, however, is a pretty big if. Several things come into play here. Even before we get to questions about the credibility of the new witness, the situation begs a number of obvious questions such as: "Why is it only now at the appeal, or at the CCRC application stage, that such an important witness is being raised?" Surely if such a person existed, or if such strong alibi was available, it would have been a feature of the trial? If there is are compelling answers to such questions, then clearly you could be in business. For instance, if the witness and the alibi they potentially provide was always part of your account, but until now, and for some plausible reason, the person could not be traced and the alibi was uncorroborated, it could be a strong ground of appeal (bearing in mind what we said last time about always weighing new points against the other evidence in the case).

However, if this potential alibi was not raised at the time, or if the version of events to which it relates differs from the account you gave in your defence (for example the defence at trial was consent, but now you wish to raise alibi as ground of appeal) it is easy to see how problematic the appearance of a miraculous new alibi witness might be. According to section 23 of the Criminal Appeal Act 1968, the Court of Appeal will only accept evidence that it considers to be "capable of belief', and if there is a "reasonable explanation for the failure to adduce the evidence" at the time of conviction. The CCRC must have regard to what the Court of Appeal will deem admissible, but we will also in our own right need to persuade ourselves of the reasons it was not raised before, the plausibility of the appearance of the new witness, the credibility of the individual concerned and the veracity and significance of the alibi they seem to be offering. Remarkable things can and do happen, but it must surely be very rare indeed to have a witness appear sometime after conviction and provide an ironclad alibi.

More often new witnesses tend to be less central, and the impact of their new evidence tends to be more nuanced than an alibi, but they can and do turn up to shed new light on a case and lead to a successful appeal. We are most grateful, again, to the CCRC for addressing the issues we put to them. It helps both the applicant and the CCRC if the applicant can understand better what kind of new evidence is required to increase the chances of a referral to the Court of Appeal.

Seychell v. Malta - Violation of Article 7

The applicant, Anthony Seychell, is a Maltese national who was born in 1961 and is detained at the Corradino Correctional Facility (Paola, Malta). The case concerned Mr Seychell's complaint about the discretion of the Attorney General to decide in which court to try someone accused of drugs offences, which had an impact on which punishment bracket would apply. The applicant was arrested in 2004 and tried in 2008 for the cultivation and possession of cannabis which was not for his sole use. He was tried in the Criminal Court and he was sentenced to 12 years' imprisonment and a fine of 25,000 euros, which was confirmed on appeal in March 2009. In November 2010 he filed a constitutional complaint under Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights about, among other things, the discretion of the Attorney General as public prosecutor to decide in which court to try an accused. Following the Strasbourg Court's judgment in Camilleri v. Malta of January 2013, which found a violation owing to that discretion, the applicant asked to add a complaint under Article 7 (no punishment without law) of the Convention to his earlier application. In February and March 2013 the Civil Court (First Hall) in its constitutional competence first rejected his application to add a complaint under Article 7 and then rejected his other claims, also considering that it was not necessary to determine the complaint concerning the Attorney General's discretion under Article 6. The Constitutional Court rejected an appeal by the applicant in December 2013. Relying on Article 7, the applicant complained about the Attorney General's discretion to determine the trial court, which could lead to heavier penalties for the accused if the trial took place in the Criminal Court. Violation of Article 7 Just satisfaction: 1,000 euros (EUR) (non-pecuniary damage) and EUR 1,700 (costs and expenses)

Hostages: Sally Challen, 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, Robert Knapp, 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.