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Chelsea Manning: In Prison, the Holiday Season is Grim – but I Won't Lose hope

The chasm between me and the outside world feels like it's getting wider and wider, and all I can do is let it happen. Having a birthday around the holidays was never easy and, with every successive year, it felt more and more as if celebrating my birthday got thrown into the December holiday mix as an afterthought But now, Decembers are becoming the hardest month of the year to endure. The most obvious reasons are physical: the temperature drops; here in Kansas, it rains and snows a lot more; the colors outside my window turn from the greens, yellows and blues of summer to the browns, grays and tans of winter, with the occasional white on the rare days that it snows. I spend more time indoors, trying to stay warm and dry. The hills and trees I can see seem still, silent and lifeless.

I feel myself becoming more distant and disconnected as the color leaches from the world outside these walls. The chasm between me and the outside world feels like it's getting wider and wider, and all I can do is let it happen. I realize that my friends and family are moving on with their lives even as I'm in an artificially imposed stasis. I don't go to my friends' graduation ceremonies, to their engagement parties, to their weddings, to their baby showers or their children's birthday parties. I miss everything – and what I'm missing gets more routine and middle-aged with each passing year. The changes that occur as I sit here can raise doubts about my very existence. I have no recent snapshots of myself and no current selfies, just old Facebook photos, grainy trial photos and mugshots to show for the last six years of my life. When everyone is obsessed with Twitter, Instagram, SnapChat and WhatsApp, it begins to feel like I don't exist in some very real, important way. Living in a society that says "Pics or it didn't happen", I wonder if I happened.

I sometimes feel less than empty; I feel non-existent. Still, I endure. I refuse to give up. I open the mail I receive – which spikes in December, as people send me birthday and then Christmas cards, but I get letters and well-wishing cards all year – and am happily reminded that I am real and that I do exist for people outside this prison. And I celebrate, too, this time of year, in my own little way: I make phone calls to family, I write letters, I treat myself with the processed foods and desserts I all but gave up during my gender transition. This holiday season is the first since I won the right to begin hormone therapy for that gender transition, which I began in February. The anti-androgen and estrogen I take is reflected in my external appearance, finally: I have softer skin, less angular facial features and a fuller figure. Even though I'm still not allowed to grow my hair to the female standard in prison – a battle I'll continue to fight with the ACLU in 2016 – I know that my struggles pale in comparison to those faced by many vulnerable queer and transgender people. Despite more mainstream visibility, identification and even celebration of queer and trans people, the reality for many is that they face at least as many, if not more, obstacles as I do in transitioning and living their lives with dignity.

And, however improbably, I have hope this holiday season. With my appeals attorneys, Nancy Hollander and Vince Ward, I expect to submit my first brief to the US army court of criminal appeals next year, in support of my appeal to the 2013 court-martial convictions and sentence. Whatever happens, it will certainly be a long path. There may well be other Decembers like this one, where I feel at times so far away from everyone and everything. But when faced with bleakness, I won't give up. And I'll try to remember all the people who haven't given up on me. Chelsea Manning, Fort Leavenworth, Kansas

Justice for, Jamie, Jon, Zoran, Dan and Scott *David Rose, Mail on Sunday*

Chart Proves Jailed 'Cocaine Crew' Cant be Guilty: Lobsterman Jamie Green gave the eulogy at his wife Nikki's funeral ten days ago – handcuffed to a prison officer, with two more guards hovering in the background. The crematorium chapel at Newport on the Isle of Wight was packed to bursting with Green's family, friends and local Channel fishermen, a gruff, sea-hardened bunch, not generally given to public displays of emotion. Almost all of them were openly weeping. It wasn't just that Nikki, a much-loved mother of three, died from cancer far too young, aged only 50. It was that everyone present was convinced that Jamie and his crewmen, convicted and jailed for between 14 and 24 years for a plot to smuggle cocaine worth £53 million, are innocent. Almost two years ago, The Mail on Sunday disclosed grave doubts about the prosecution case at Green's trial, which alleged that Green's lobster boat, the Galwad-y-Mor, picked up 11 sports bags containing a total of 560lb of cocaine tossed from the deck of a passing Brazilian container ship. Now, following months of further investigation, we can present overwhelming new evidence that the events described at the month-long hearing at Kingston Crown Court in 2011 simply never happened.

The MoS investigation has been conducted jointly with the Centre for Criminal Appeals, a new legal charity which specialises in representing victims of miscarriages of justice. It has revealed that: • Electronic navigation records show Green's boat was never where the prosecution claimed it was – cruising in the wake of the container ship Oriane in the Channel, to collect drugs thrown overboard • Analysis by a marine drift expert shows that currents would have carried the drugs, packed in floating holdalls, away from Green's boat • A drugs investigator who spent 41 years with Customs and Excise and Soca (the Serious Organised Crime Agency, that led the investigation into the alleged smugglers) found that observation records used to incriminate Green and his co-defendants appear to have been fabricated. • The Brazilian ship was not in the South American port on the day when the smuggling plot was allegedly hatched at a meeting of local conspirators and members of its crew.

A dossier setting out this evidence is now being examined by the Criminal Cases Review Commission (CCRC), which is set to rule on whether to grant a fresh appeal next year. Tragically, its decision will come too late for Nikki. Her husband was allowed one visit to her deathbed in a hospice, for which he was shackled. Heartbreakingly, a second visit that would have been their farewell was cancelled. To the Isle of Wight community, the case always seemed baffling. Green and his co-defendants – his lifelong friend Jonathan Beere, and deckhands Danny Payne and Scott Birtwistle – had no criminal history. They were all staunch family men, with modest lifestyles. Nikki, to whom Jamie was devoted, was already seriously ill: her cancer had spread from her breast to her liver and she was having chemotherapy. Beere – supposedly the plot's onshore co-ordinator – was a local scaffolder, married to a teacher for children with special needs: the couple had three young children.

However, the evidence persuaded the jury, which reached a majority verdict. Green, Beere and casual labourer Zoran Dresic were sentenced to 24 years; Payne and Birtwistle were given 18 and 14 years respectively. The Soca detectives heralded the result a triumph. According to the prosecution, Green and his crew, Dresic, Payne and Birtwistle, took the 39ft Galwad-y-Mor to the middle of the Channel on the stormy night of May 29, 2010, not to collect lobster pots, but the cocaine-packed sports bags tossed from the Oriane. The prosecution claimed that the records from the Galwad-y-Mor's electronic navigation system showed that, for a period of about two minutes, she slowly motored back and forth in Oriane's wake. Somehow, lashed by 20ft waves and buffeted by a Force 8 gale, the Galwad's crew had spent this time collecting the drugs bags from the water. This, say other Wight fishermen,

would have been an extraordinary feat in the calmest of seas in broad daylight.

For most of the next day, the jury was told, Green and his crew went back to looking for crabs and lobsters. Then, many hours later, they headed towards the shallower waters of Freshwater Bay on the Isle of Wight. Two Hampshire policemen had been stationed by Soca at the top of the towering cliffs overlooking the Bay. They said they saw the bags being jettisoned back into the water – presumably being left for someone to retrieve. The officers reported this by radio, but then left their lookout post, leaving the bags unattended. The bags, tied together with rope and fixed to the sea bed with a pig-iron anchor, were found there next morning by another local fisherman. There was no evidence that drugs were ever on board the fishing boat. Soca's high-tech equipment could not detect a single cocaine molecule anywhere on the Galwad, although the bags leaked so that whole packets of cocaine were damp and salty by the time they were found.

The claim that the Galwad crossed the wake of the Oriane was critical. Determined to produce the most accurate chart of the two vessels' movements, this newspaper obtained all the raw data from the Oriane's AIS satellite tracking system from a specialist Dutch company. Recently, it has emerged that the prosecution expert had his own copy of this information before the trial – but it was not disclosed to the defence. With this data at hand, it was possible to see that a crucial 'mark' for the Oriane – a record of its position when it was almost at its closest to the Galwad-y-Mor – was, unaccountably, omitted from the chart the prosecution showed the jury.

Emily Bolton, Green's solicitor from the Centre for Criminal Appeals, engaged an expert to compare the AIS records with those of the Olex tracking system on the Galwad. The conclusions reached by the expert, Dr James Allen, technical director of Precision Marine Survey Ltd, are devastating. Rather than crossing the Oriane's wake, the closest the Galwad-y-Mor got to the wake was about 170ft. And at the brief instant the Galwad was in this position, the Oriane was more than a mile and a half away. Could the bags have drifted from the ship towards Green's boat? Not according to another team of experts, from the Plymouth Marine Laboratory. Their report says that on the night in question, at the relevant point in the Channel, anything thrown from the Oriane would have drifted east-north-east – away from the course plotted by the Galwad-y-Mor. The AIS data contains a further bombshell. According to the Crown, plotters based in Brazil met members of the Oriane crew and figured out how to get the drugs on board when the ship docked at the port of Navegantes. Infact, the data shows the Oriane was not there at all on the date in question.

And there is still further fresh evidence. After the trial, doubts began to emerge about the observations made by the two Hampshire policemen posted on the hill over the bay, and their assertion that they saw the Galwad crew throwing the drugs bags overboard. Their story had kept on changing, and an inquiry by the Independent Police Complaints Commission found it contained significant 'discrepancies'. The MoS approached drugs investigator Don Dewar to review all the evidence. Recently retired, Dewar won awards and commendations, during a long career in charge of some of the biggest drug cases in British history, first with Customs and Excise, then with Soca. He was in charge of the seizure of what, until last year, was the UK's record cocaine haul: a ton found sealed inside lead ingots in 1990. He also led the UK-end of the transatlantic operation that saw the arrest of the cannabis smuggler turned writer, Howard Marks.Dewar has analysed the case thoroughly. In a statement included in the CCRC dossier, he says that some crucial observation records were not set down in the usual, tightly controlled and monitored official Soca logs, but in a Marathon Products logbook that was not Soca issue. Damningly, crucial observations were recorded out of sequence – suggesting they were tampered with or fabricated. For instance, according to the records, the Galwad docked at a jetty before she entered her home port at Yarmouth harbour – an obvious impossibility. Dewar's statement also points to crucial, unexplained gaps in the documents Soca provided to the defence – including 21 pages of the 'Surveillance Management Record', which should have contained a detailed account of the movements and observations of all officers deployed on the island that day.

Green and the others have already lost one appeal, in 2012. At that stage, none of the fresh evidence had come to light. But a member of the jury wrote to Green's trial defence lawyer, Julian Christopher QC. He said that Soca officers had discussed the case with a fellow juror at a health club, making allegations that were never aired in court, and urging the jury to convict. Another juror knew a former police community support officer who sat in the public gallery throughout the trial, and was thus privy to legal argument which took place when the jury was absent. Usually, evidence of this kind would persuade the Appeal Court to order a retrial, but in this case, it declined. That left the CCRC as the only recourse. Bolton submitted a preliminary dossier in October last year. In February the commission appointed a 'case review manager' to oversee its inquiries. Bolton filed further evidence in March and November. As Nikki Green's condition deteriorated, her husband, who is being held at Erlestoke prison in Wiltshire, was granted one brief visit, which he spent cuffed to an officer. When Nikki developed an infection, doctors warned she was unlikely to survive more than days. Jamie was told he would be taken to see her again on November 8. But as he was getting ready in his cell, the trip was suddenly cancelled.

Nikki died on November 30. Bolton said: 'Nikki died without her husband at her side because the CCRC has not been given enough funding to be able to identify miscarriages of justice promptly. 'We have presented enough evidence to convince the Court of Appeal to reverse these convictions, but the Commission does not have the resources it needs to process this evidence swiftly. Last Thursday's service wasn't just a funeral for Nikki, but for British justice.' Green's sister, Nicky, said the family felt 'betrayed', adding: 'Not only did the system make a terrible mistake in charging my brother with this crime, the process of correcting it has been drawn out for so long that Jamie has been robbed of his brave, courageous wife and his right to a family life.'

According to a CCRC spokesman, it currently receives nearly 1,500 applications a year, which creates a huge backlog. Normally, he said, a prisoner would have to wait six months before a Commission inquiry could even begin, and for Green, this had indeed been 'expedited'. But he added: 'Once it starts, it takes as long as it takes, and this is a complex case.' The best that Green and his co-defendants can hope for is that the CCRC will refer them back to the Court of Appeal next year. After that, it is likely to take many months before their case is reheard. The guilty verdicts that have ruined their lives and those of their families may be overturned some time in 2017. By then they will have spent seven years behind bars.

ECtHR: Mironovas v Lithuania

The case concerned the complaints of 7 Lithuanian nationals that the conditions of their detention in various correctional facilities had fallen short of standards compatible with article 3 of the Convention. In particular, it was submitted that they were held in overcrowded dormitory-type rooms. Some of the applicants further maintained that they were detained in conditions that violated basic hygiene requirements, and that they lacked access to appropriate sanitary facilities. The Court found that the compensatory remedies made available by the Lithuanian authorities had been insufficient. It held that there had been a violation of article 3 (prohibition of inhuman or degrading treatment)

in respect of four of the applicants, and made awards of pecuniary compensation accordingly.

Wang Yam Gets Shafted by Supreme Court

R (application of Wang Yam) (Appellant) v Central Criminal Court and Anor: Background to the Appeal: Wang Yam was charged with the murder of Allen Chappellow and associated offences in 2007. He denied the murder charge and alleged that he had been given the deceased's cheques, credit cards and banking information by various gangsters. The Crown applied for an order that part of the trial relating to evidence which Wang Yam wished to submit in his defence take place in camera (i.e. in a closed court) in the interests of national security and to protect the identity of a witness or other person. This order was granted in January 2008 by Ouseley J. At trial, because of the Wang Yam's difficulty in keeping distinct the sensitive and non-sensitive aspects of his evidence, the entire defence case was heard in camera in the presence of Wang Yam and his representatives. In January 2009 Wang Yam was convicted of murder and burglary and sentenced to life imprisonment.

In April 2011 Wang Yam lodged an application with the European Court of Human Rights (ECtHR) against the UK, complaining that his trial and conviction were unfair and therefore violated article 6.1 of the European Convention on Human Rights (ECHR). The UK submitted that the application should be declared manifestly ill-founded and inadmissible, or alternatively dismissed on the merits. Wang Yam argued that he should be permitted to refer to the in camera material in his response to the UK's observations before the ECtHR. In February 2014 Ouseley J ruled that Wang Yam should not be able to disclose the in camera material to the ECtHR. Wang Yam applied for and was granted judicial review of that decision, but the application was dismissed on its merits. The Divisional Court allowed a 'leapfrog' appeal direct to the Supreme Court on the following questions: "Is there a power… to prevent an individual from placing material before the European Court of Human Rights? If so, can the power be exercised where the domestic court is satisfied that it is not in the interests of state for the material to be made public even to the Strasbourg court?"

Reasons for the Judgment: In a purely domestic context the English courts have a discretion to refuse to permit disclosure of material deployed in camera. The issue before the Supreme Court is whether this power ceases to be exercisable once an applicant to the ECtHR decides that he wishes to disclose the material to that court in the context of a complaint that the in camera proceedings made his trial unfair [1-2]. Wang Yam's case depends on the proposition that the courts below have discretion to prevent the disclosure of in camera material to the ECtHR [20]. This proposition depends in turn on the submission that such discretion would involve the UK in a breach of the international obligations under article 34 ECHR, which provides that: "The Court may receive applications from any person… claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right".

Refusal to permit disclosure to the ECtHR does not constitute a breach of international law [22, 24-34]. The English courts have repeatedly found that it was both necessary and fair to hold part of the trial in camera. The in camera material formed part of Wang Yam's own defence and has been seen by both him and his legal representatives. The suggestion that its publication would have advanced this defence has been rejected as implausible. If any court is to reach the conclusion that the UK is in breach of article 34 it must be the ECtHR and not the English courts [25].

On Wang Yam's case he would be the sole judge of what is necessary at this stage for the effective presentation of his case to the ECtHR. Wang Yam relied on article 34, rather than article 38 ECHR, which provides that: "The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities".

The ECtHR is able to decide under article 38 whether any further material should be requested from the UK to enable it to consider Wang Yam's case [27]. The case law of the ECtHR indicates that it will not act as a fourth-instance appeal court re-determining issues of national security, but rather it will review the domestic adjudication on the issues involved and, if satisfied of its fairness and thoroughness, may accept the outcome without insisting on automatic disclosure to itself of secret material [28-33]. This reason alone is sufficient to dismiss the appeal [34].

Even if refusal to permit disclosure to the ECtHR breached an international obligation, English courts would not be obliged automatically to give effect to such obligation. The UK takes a dualist approach to international law. The starting point when considering a general discretionary common law power is that domestic and international law considerations are separate. The decision-maker may take international law obligations into account but is not bound to do so [35]. In R (Hurst) v London Northern District Coroner [2007] 2 AC 189 even the minority who suggested that a domestic decision-maker should at least give consideration to international rights which can properly be regarded as fundamental went no further. In any event, given that an appeal lies to the ECtHR under article 38 ECHR, any obligation on the UK at this stage under article 34 could not be regarded as fundamental [36]. In this context, Ouseley J took an orthodox approach to his general discretion and therefore the appeal must also fail on the second ground [37-38].

Judges Duties on Hearing Appeals

Emphasised: That, fundamentally, each of the grounds of appeal is, properly, to be viewed and evaluated through the prism of each party's inalienable right to a fair hearing. Bearing in mind the context of this appeal, it is appropriate to formulate some general rules, or principles. It is important to emphasise that these are general in nature, given the unavoidable contextual and fact sensitive nature of every case. (i) Independent judicial research is inappropriate. It is not for the judge to assemble evidence. Rather, it is the duty of the judge to decide each case on the basis of the evidence presented by the parties, duly infused, where appropriate, by the doctrine of judicial notice. (ii) If a judge is cognisant of certain evidence which does not form part of either party's case, for example as a result of having adjudicated in another case or cases, or having been alerted to something in the news media, the judge must proactively bring this evidence to the attention of the parties at the earliest possible stage, unless satisfied that it has no conceivable bearing on any of the issues to be decided. If the matter is borderline, disclosure should be made. This duty may extend beyond the date of hearing, in certain contexts. (iii) The assiduous judge who has invested time and effort in reading all of the documentary materials in advance of the hearing is entitled to form provisional views. Provided that such views are provisional only and the judge conscientiously maintains an open mind, no unfairness arises. (iv) Footnotes to decisions of the Secretary of State are an integral part of the decision and, hence, may legitimately be considered and accessed by Tribunals. (v) If a judge has concerns or reservations about the evidence adduced by either party which have not been ventilated by the parties or their representatives, these may require to be ventilated in fulfilment of the " audi alteram partem" duty, namely the obligation to ensure that each party has a reasonable opportunity to put its case fully. This duty may extend beyond the date of hearing, in certain contexts. In this respect, the decision in Secretary for the Home Department v Maheshwaran [2002] EWCA Civ 173, at [3] - [5] especially, on which the Secretary of State relied in argument, does not purport to be either prescriptive or exhaustive of the requirements of a procedurally fair hearing. Furthermore, it contains no

acknowledgement of the public law dimension and the absence of any lis inter-partes.

Unlawfully Detained for a Period of 13 Months

West, R (On the Application Of) v SSHD [2015] EWHC 3627 (Admin) (15 December 2015)1. The Claimant says that he is Paul West (or Paul Ricky West) and that he was born on 28 May 1979 in Ghana to a Ghanaian father and a Jamaican mother. He says he was taken to Jamaica at the age of 3 months and raised there by his mother, and later his aunt. He says that he arrived in the UK at the age of 16 in 1995 on a visit visa to join his mother who was resident here. He says that he stayed, working in various jobs, until his arrest for drugs offences on 24 November 2005. He was sentenced to a term of imprisonment and recommended for deportation.2. There is no particular reason to doubt this account, save for some inconsistencies in its telling, but there is also no supporting evidence at all prior to his arrest in 2005. That total lack of any documents is at the heart of the difficulties which faced the Defendant in trying to deport him to Jamaica or to Ghana. The question in these proceedings is whether she took too long in those attempts, while the Claimant remained in immigration detention.3. That detention lasted from 27 August 2007, when the custodial term of his prison sentence expired, until 14 January 2010, when he was released on immigration bail. That is a period of over 2 years 4 months, substantially longer than the period of imprisonment he actually served for his offences.4. Permission was granted to apply for judicial review at an oral hearing on 4 February 2011. The substantive hearing has been postponed on two occasions to await decisions of the Court of Appeal in other cases. The latest of these was R (Francis) v SSHD [2015] 1 WLR 567 in relation to the effect of the "mandatory" detention provisions in paragraph 2(1) of Schedule 3 to the Immigration Act 1971. It is now established and accepted (subject to the result of an appeal to the Supreme Court in a similar case) that the Hardial Singh principles apply to such detention as they do to detention under paragraph 2(2) of Schedule 3.5. Directions were given in this case which allowed both sides to call witnesses of fact, and to cross-examine them, but it was agreed that none would be called and I have been invited to decide the issues on the witness statements and documents. Accordingly I am unable to express any view about the Claimant's credibility, or whether he is who he says he is. In any event, that is not the decision I am called upon to make.

Analysis: In my judgment there was no unlawful delay at the start of the Claimant's detention. Of course things might have moved a little faster if the Defendant had been aware of the Claimant's successful appeal against his sentence, but the delay of about three weeks before the Defendant became aware is not enough to turn an administrative failing into illegality. Thereafter things progressed reasonably well, albeit with a hiccup because the JHC appears to have lost the initial ETD application. In my judgment it was reasonable for the Defendant to wait initially before making more detailed enquiries into the Claimant's background. By April 2008 it was apparent that some evidence of identity would be required before an ETD could be granted, but there was still a reasonable expectation that the Jamaican authorities would carry out the investigations which were needed in Jamaica, and indeed they would be best placed to do so. By 11 June 2008 the difficulties appeared to have grown, and many months had passed without result. The note saying that no timescale for return could be given unless supporting evidence was obtained should, in my judgment, have prompted the Defendant to follow up the various leads obtained in interview and correspondence, and to seek to obtain such evidence. I do not think it was reasonable for the Defendant merely to sit back and wait for the Jamaican authorities, especially in the light of the comments from the Immigration Judge on 4 July 2008.

When the enquiries were finally started by the Defendant, on 10 February 2009, they took until 11 June 2009 to be proved fruitless. That is a period of four months. If those enquiries had been started in July 2008, after the bail application, they should have reached the same stage by mid-November 2008. If this had happened, as I find that it should if the Defendant had acted with due diligence and expedition, the position would have come up for consideration at the monthly detention review started on 20 November 2008. It was at this review that the CCD Director commented that they were at an impasse. That word would have been even more apt if all the enquiries had by then been completed with nil response. At that stage it would have been unreasonable to continue detention. Release under a strict Contact Management regime, as suggested the previous month by the Deputy Director, would have been appropriate. That decision should have been taken in principle by 27 November 2008, when the Director wrote his comments. It would no doubt have taken a short time to set up that regime, which would have included finding a suitable address for the Claimant where he could stay as a condition of his bail, and from which he could report on a regular basis. His release would have taken place in the early part of December 2008. By that time he had already been in immigration detention for over 15 months. Instead of this, the Claimant was not released until 14 January 2010, some 13 months later. I find that this was a period of unlawful detention under the Hardial Singh principles, not because all hope of deportation was gone, but because the prospect was only uncertain and in the distant future. Had the Defendant acted with reasonable diligence and expedition, and made her own enquiries earlier, she would have realised that deportation could not be effected within a reasonable period, and also realised that further detention was not reasonable in all the circumstances. I have not overlooked the period in late 2009 and early 2010 when an approach was made to the Ghanaian authorities, and thereafter further enquiries carried out. In all those two periods amount to about two months. I have considered whether these should be added to the period of lawful detention, so as to reduce the unlawful detention to 11 months.

I have concluded that this would not be the right approach. Contact with Ghana could not sensibly have taken place without giving up on Jamaica, which was always the best chance of deportation. A final decision from the Jamaican authorities was not forthcoming until September 2009, so that this additional activity could never have taken place at the end of 2008, when otherwise the Claimant should have been released. In my judgment these additional enquiries would have had to take place after the Claimant's release on bail, so should not be added to the period of lawful detention.

Conclusion: It follows that the Claimant is entitled to a declaration that he was unlawfully detained for a period of 13 months. He has a claim for damages, as yet unquantified. I will give the parties time to agree these if possible.

Police Integrity Reform *House of Commons: 15 Dec 2015 : Column 73WS*

Theresa May: The Government take policing integrity very seriously. It is at the heart of public confidence in the police and underpins the model of policing by consent. It is what gives rank and file officers the legitimacy to do their jobs effectively. The Home Office has responded to public confidence in police integrity by introducing a programme of measures to improve standards of conduct in the police. This follows various high-profile cases on police failures both current and historic, as well as numerous HMIC inspections and IPCC reports relating to corruption. We are already expanding the IPCC to deal with all sensitive and serious cases involving the police. We have introduced legislation to prevent officers from escaping dismissal by retiring or resigning; we have introduced the holding of disciplinary hearings in public; and we are introducing legally qualified chairs in disciplinary hearings. The college has produced the code of ethics; laid in Parliament (July 2014) as a statutory code of practice. In 2016 we will go further with an important programme of reform including primary legislation in the upcoming Bill. We will make the police complaints system more independent of the police through an expanded role for PCCs. We will change the definition of a complaint and simplify the system, making it easier for the public. We will introduce a system of super-complaints to enable systemic issues to be raised. The “Improving police

integrity" consultation, and the previous Government's response to it in March 2015, set out several proposals to strengthen the IPCC. We will bring forward legislation to implement these proposals. They include the following measures: ending managed and supervised investigations; providing the IPCC with the power of initiative to instigate investigations; clarifying the ability of the IPCC to make determinations; giving the IPCC the power of remedy; and ensuring the IPCC can present its case at disciplinary hearings following an IPCC investigation. The measures the Government have implemented and the further reforms announced will ensure that local communities continue to trust the police to uphold the highest standards of integrity—but that where they do not, the public are able to hold the police to account.

Prominent Barrister Condemned Over 'Ill-Judged' and 'Patronising' Behaviour

Owen Bowcott, Guardian: A prominent criminal defence barrister has been publicly criticised by the lord chief justice for "patronising" and "ill-judged" behaviour during a murder trial involving a lap-dancer whose body has never been found. In a highly unusual court of appeal judgment, Lord Thomas of Cwmgiedd referred Michael Wolking QC – whose website describes him as the "UK's top barrister" – to the professional disciplinary organisation, the Bar Standard Board. The barrister, who was eventually sacked by his client, was said to have been "half-listening" to evidence during cross-examination while sending emails relating to other cases. Wolkind missed part of the trial judge's summing-up speech and his diary later showed that he had arranged a meeting in another case for the afternoon, the lord chief justice said. At one stage, Wolkind's junior counsel received an email from him confessing: "A man who worked till after 2am and restarted at 6 will be a little late arriving."

Wolkind's client Robert Ekaireb – a multimillionaire property developer and jeweller – is serving 22 years for the murder of his pregnant wife, Li Hua Cao, 27, who disappeared in October 2006. The judge at the time described it as a case of "extreme domestic violence". Singling out Wolkind as an example of a trend of defence barristers launching into "personal criticism" of prosecutors in front of a jury, the lord chief justice called on judges to ensure that the practice ceases immediately. His strongly worded comments came at the end of an appeal by Ekaireb, who lived in Hampstead, north London, against his conviction and sentence. The court of appeal said it did not doubt the safety of the conviction and upheld the sentence.

Ekaireb met his wife in November 2005 in a lap-dancing club in Dublin where she worked. They married the following summer. Her brother notified police in February 2007 that she was missing and none of the family had heard from her. Cao's body was never found and there was no forensic evidence of place or cause of death, but her husband was eventually convicted of her murder based on circumstantial evidence. She had never used her email, bank accounts or mobile phone after 23 October 2006. Ekaireb was said to be a controlling man, told lies, sent text messages pretending to be his wife and the couple had had arguments about whether she continued working as a lap-dancer after they started going out.

The defence, led by Wolkind, had argued that Cao was not necessarily dead – and, if she were, Ekaireb was not responsible. They said she had left an unhappy marriage in which "she was bored by his lifestyle in London" and did not want their baby. Later text messages, the defence argued, had been sent by her. One of the challenges pursued at the court of appeal by Ekaireb – who was represented there by another barrister, Orlando Pownall QC – was that Wolkind's conduct "was incompetent to a degree that rendered the conviction unsafe". Three appeal court judges, led by the lord chief justice, said his closing speech had "not reached a level of incompetence that called into question the safety of the conviction or the fairness of the trial". Wolkind's closing speech, the judgment said, was "ill-

judged, patronising and contained inappropriate attempts at humour".

It was also critical of the fact that he was carrying out other work during the trial and was eventually dismissed by Ekaireb. The appeal court said it was "surprised at the content and tone of Wolkind's website" and directed the Bar Standards Board to consider whether it is "within the bounds of professional conduct for a member of the bar". Thomas added: "There is one feature of the conduct of this case which judges must ensure ceases immediately and not be repeated in any case. That conduct is making in an address to the jury personal criticism of opposing advocates in contradistinction to criticism of the prosecution case. "We were told that the practice of making personal criticism of prosecution advocates has become a feature of some addresses to the jury made by defence advocates. In this case the personal criticism should not have been made in his addresses to the jury." Wolkind became a barrister in 1976 and Queen's counsel in 1999. He has specialised in defending in high profile criminal cases and overturning convictions. He represented the Norfolk farmer, Tony Martin, in a successful appeal against his murder conviction. He is described in the latest edition of The Legal 500 as "brilliant at cross-examination and one of the best jury advocates". He did not respond to requests for comment.

INQUEST's Online Skills Toolkit

The toolkit is an interactive, user led resource for family and friends going through the inquest process. Whether it be getting paperwork organised, speaking in public for the first time, attending meetings or asking for support, the toolkit acts as a guide for families facing the daunting investigation and inquest process. Families have the opportunity to practice existing skills, or try out new ones like dealing with the press and media, contacting their MP, or working with other families to campaign for a fairer system. The toolkit was devised with families and reflects their guidance, knowledge and insight. It was written by consultant to the project, Chris Tully. It's easy to use and, with input from the Family Reference Group, adds up to a practical resource that reflects the experience of people who have been through the process.

"We were involved with so many agencies during Kevin's life, from which we struggled to get the help we needed. Through the toolkit, INQUEST are passing on invaluable advice and skills to enhance all families to get the answers they need and much more." Lee Jarman, brother of Kevin Scarlett who died at HMP Woodhill The toolkit has a simple and easy format that is extremely informative, and gives a clear honest outline of the lengthy legal process, obstacles and practical tips during what will be an emotive and difficult time for all the family." Marcia Rigg, sister of Sean Rigg who died at Brixton Police Station.

The toolkit has been developed in collaboration with families who have direct experience of the inquest and investigation process. It is a truly unique and user-led resource, which provides families with the skills to take on the challenges they face. We thank the Big Lottery Fund for making this project possible." Deborah Coles, Co-director of INQUEST

Easy to use layout: To help families absorb the often complex and high quantity of information during an inquest, the site is composed of a clean and simple layout. The home page provides a clear overview of the site, with four drop-down boxes signposting the main chapters of the site. This encourages users to dip in and out of the toolkit and to quickly find the information they need. Interactive tools: Rather than simply provide information in the form of text, families told us that they felt it was more constructive for a user to actively participate in understanding what is being said.

Based on this feedback we have included many interactive features throughout the resource. In the section 'Existing Skills', for example, a checklist is provided on the skills individuals may use during

the inquest process. In answering, not only can they see the types of skills they don't have, but they will also be offered further information on how they would "like to improve" in a particular area. Accompanying audio: INQUEST's Family Reference Group told us that large amounts of visual information can be tiring. To counter this, we have provided an audio accompaniment, which include the voices of some of the family members we work with: Tony Herbert, father of James Herbert who died at Yeovil Police Station, and Marcia Rigg, sister of Sean Rigg who died at Brixton Police Station. The audio function accompanies each page on the site.

Access the Skills Online Toolkit http://info.inquest.org.uk/toolkit/

Sobko v. Ukraine - Violation of Article 6 § 1 taken together with Article 6 § 3 (c)

The applicant, Oleksandr Sobko, is a Ukrainian national who was born in 1981 and is currently in prison. The case concerned his complaint that the criminal proceedings against him had been unfair, in particular on account of not having had access to a lawyer during his questioning by the police. After his four-year old stepson was found dead on 3 October 2008, Mr Sobko was questioned by the police in the absence of a lawyer, following which he wrote a statement in which he explained that he had strangled the boy. When questioned as an accused two days later in the presence of a legal aid lawyer, he maintained his confession. Being represented by a different lawyer, he retracted his confession when questioned as an accused in February 2009, claiming his innocence. He maintained that he had incriminated himself under physical and psychological coercion by the police. The prosecutor subsequently refused to open a criminal case in respect of the allegation that Mr Sobko had been coerced by the police, finding that there was no indication of a criminal offence. In May 2009 Mr Sobko was convicted of murder of the child and sentenced to 12 years' imprisonment. The trial court relied in particular on his statement of 3 October 2008 and the subsequent confessions he had maintained until February 2009. On appeal by Mr Sobko, the Supreme Court held a hearing in his and his lawyer's absence. It upheld the judgment of the first-instance court.

Relying on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of one's own choosing) of the European Convention, Mr Sobko complained that the lack of access to a lawyer during his initial police questioning and the fact that the appeal hearing had taken place in his and his lawyer's absence had made his trial unfair. Violation of Article 6 § 1 taken together with Article 6 § 3 (c) – on account of the initial restriction on the right to legal defence No violation of Article 6 – on account of the inability to participate in the hearing before the Supreme Court Just satisfaction: EUR 1,000 (non-pecuniary damage)

Kristiansen v. Norway (application no. 1176/10) Violation of Article 6 § 1

The applicant, Jørgen Kristiansen, is a Norwegian national who was born in 1984 and lives in Borgenhaugen (Norway). The case concerned his complaint that criminal proceedings against him had been unfair due to the participation of a juror who lacked impartiality. In September 2008 Mr Kristiansen was convicted of attempted rape. The judgment was upheld on appeal by judgment of a High Court, which sentenced him to one year's imprisonment on account of this and other offences. It also ordered him to pay the victim the equivalent of 7,500 euros in compensation for damages. The courts found that Mr Kristiansen, aged 23 at the time, had attempted to rape a 17-year old girl, with whom he had left a party, in a car parked at a petrol station. During the proceedings before the High Court one of the jurors informed the presiding judge that she had previously had contacts with the victim. Mr Kristiansen's counsel thus requested that the juror be disqualified from taking part in the proceedings for lack of impartiality. After deliberations the court decided that the juror ought not to withdraw. It pointed out that a member of the

jury might be disqualified especially if he or she had particular reasons for identifying with the victim. It observed, however, that the juror in Mr Kristiansen's case had been in contact with the victim only sporadically many years ago, concluding that her impression of the victim was not capable of influencing the assessment in the criminal case. Consequently the juror continued to take part in the trial before the High Court. Mr Kristiansen's appeal against the High Court's judgment, complaining about the juror's participation, was rejected by the Supreme Court in June 2009.

Relying on Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights, Mr Kristiansen complained that the juror's participation had made his trial unfair. Violation of Article 6 § 1 Just satisfaction: 4,000 euros (EUR) (non-pecuniary damage) and EUR 2,500 (costs and expenses)

R (Application of Roberts) v Commissioner of Police of the Metropolis and Anor

Background to the Appeal: This appeal involves a challenge to the compatibility of the police power contained in s 60 Criminal Justice and Public Order Act 1994 ('s 60'), with the right to respect for private life protected by article 8 of the European Convention on Human Rights ('ECHR'). S 60 permits a police officer to stop and search any person or vehicle for offensive weapons or dangerous instruments, whether or not he has any grounds for suspecting that the person or vehicle is carrying them, when an authorisation from a senior police officer, which must be limited in time and place, is in force.

On 9 September 2010, in response to a period of gang related violence in Haringey, Superintendent Barclay authorised the carrying out of searches under s 60 for 17 hours in parts of the borough, concluding that it was a proportionate response to protect members of the public from serious violence. That day, Police Constable Jacqui Reid was called to an incident in Tottenham involving a passenger who had not paid her fare on the No. 149 bus. The passenger was the appellant, Mrs Roberts. She had denied having identification with her and kept a tight hold on her bag. PC Reid used the power under s 60 to search her bag, which enabled Mrs Roberts' name to be established from a bank card.

Mrs Roberts brought judicial review proceedings against the police alleging breaches of a number of her rights under the ECHR. Both the High Court and Court of Appeal rejected her claims. The only claim pursued in her appeal to the Supreme Court was the alleged breach of article 8. She sought a declaration of incompatibility under s 4 Human Rights Act 1998 on the ground that the power is not 'in accordance with the law'. Article 8 requires the law to be sufficiently accessible and foreseeable for an individual to regulate his conduct accordingly and to have sufficient safeguards against the risk that it will be used in an arbitrary or discriminatory manner.

Judgment: The Supreme Court unanimously dismisses Mrs Roberts' appeal, holding that the safeguards attending the use of the s 60 power, in particular the requirements to give reasons both for the authorisation and for the stop and search, make it possible to judge whether the power has been exercised lawfully. Both the power and the particular search of Mrs Roberts were in accordance with the law. Lady Hale and Lord Reed give the only substantive judgment with which the other justices agree.

Reasons For The Judgment: The power found in s 60 is one of the few instances where Parliament has decided that stop and search powers without reasonable grounds to suspect the commission of an offence are necessary for the protection of the public from terrorism or serious crime. It was common ground in the appeal that the power interferes with the right to respect for private life but that it pursues a legitimate aim which is capable of justification under article 8(2). The issue was whether it also satisfied article 8(2) by being 'in accordance with the law' [3].

S 60 is directed towards the risk of violence involving knives and other offensive weapons in a particular locality. It depends on an authorisation by an officer of the rank of inspector or above, who reasonably believes that incidents involving serious violence may take place in any locality in his police area, and that an authorisation of up to 24 hours (renewable once) is expedient to prevent their occurrence by allowing stops and searches in order to discover offensive weapons. The exercise of the powers is subject to numerous safeguards and restrictions in the Police and Criminal Evidence Act 1984, the Code of Practice and the Standard Operating Procedures of the Metropolitan Police. Failure to comply with these safeguards renders the exercise of compulsory powers which interfere with individual freedom unlawful [7, 28-37].

The authorisation made on 9 September 2010 followed police intelligence reports indicating a risk of further violence in connection with rival gangs. When PC Reid attended the incident she considered that the appellant was holding her bag in a suspicious manner, and her experience was that it was not uncommon for women of a similar age to carry weapons for other people. She therefore conducted a search of the appellant's bag exercising the s 60 power, and provided the appellant with a form explaining these reasons [10-13].

This is the first challenge to the s 60 power to come before the court. Previous case-law concerning similar stop and search powers establishes that some but not every 'suspicion-less' power would fail the requirement of lawfulness under the ECHR. It is often important to the effectiveness of the powers that they be exercised randomly and unpredictably. The question is whether the legal framework permits the court to examine the propriety of the exercise of the power [15-26]. Whatever the scope of the power, it must be operated in a manner which is compatible with the ECHR rights of any individual and be free of discrimination [42]. These constraints, together with disciplinary sanctions against police officers, guard against the risk that the s 60 power will be exercised when the officer does not in fact have good reasons for the decision [43]. The requirements attaching to the authorisation [44], the operation [45] and the actual encounter on the street [46], in particular the requirement to give reasons, should make it possible to judge whether the action was 'necessary in a democratic society for the prevention of disorder or crime'. The law itself is not incompatible with article 8 [47]. Accordingly, a declaration under the Human Rights Act should not be made. Nor should there be a declaration that the guidance current at the time was inadequate or that the particular search of the appellant was not in accordance with the law [48].

Substance Misuse in Prisons

New psychoactive substances such as 'Spice' and 'Mamba' are now the most serious threat to the safety and security of jails, said Nick Hardwick, Chief Inspector of Prisons. As he published a major study on the changing patterns of substance misuse in adult prisons. The report examines the changing extent and patterns of drug misuse in adult prisons and assessed the effectiveness of the response to it. It draws on evidence of 61 adult prison inspections published between April 2014 and August 2015, the 10,702 survey responses from individual prisoners that were collected as part of those inspections, and detailed field work conducted in eight prisons between June and November 2014. As this report was being prepared, there was an acceleration in the use and availability of new psychoactive substances (NPS). Changing patterns of drug use in the community provide a useful context for understanding drug misuse in prisons. Drug use appears to be reducing and the 2014-15 Crime Survey for England and Wales found that 8-9% of adults reported illicit drug use over the pervious year, down from 12% in 2003-04. Cannabis remains the most widely used drug.

However, there are important differences between drug misuse in prisons and the community: • a declining number of prisoners needing treatment for opiate misuse reflects trends in the community, although many of those requiring opiate treatment in prison have complex dependence, social, physical and mental health issues; • prisoners are more likely to use depressants than stimulants to counter the boredom and stress of prison life; • the use of synthetic cannabis and diverted medication reflects a response to comparative weaknesses in security measures; and• often the price of drugs is higher and the quality poorer in prison, reflecting greater difficulty of supply.

At present, some synthetic cannabis is legal to possess in the community but all forms are banned in prison. It is cheap to buy or manufacture in large quantities in the community. The difference between the price in the community and that in prison is much greater than for drugs such as opiates or cannabis, which are illegal in both settings. Despite the high mark-up, it is still relatively cheap in prisons. Current testing methods cannot detect synthetic cannabis and its composition may change from batch to batch. New tests are being developed and drug dogs are being trained to identify it, but neither of these measures are yet available in most prisons. This means that the risks involved in supply are low and large profits can be made by supplying it in bulk. Low risks, high profits and large-scale supply mean that distribution to and within prisons may be linked to organised crime.

The report describes the consequences of drug misuse in prisons: • the health consequences of synthetic cannabis use have been particularly severe because of its inconsistent composition and unknown effects; • some prisons have required so many ambulance attendances that community resources were depleted; • inspectors heard credible accounts of prisoners being used as so-called 'spice pigs' to test new batches of drugs; • debts are sometimes enforced on prisoners' friends or cell mates in prison, or their friends and families outside; and • drug misuse damages rehabilitation. Individual prisons need a whole-prison response to drug misuse based on a thorough needs analysis. A whole-prison approach will include measures to reduce supply and measures to reduce demand through effective treatment, psychosocial support and education. The National Offender Management Service (NOMS) has made considerable efforts to reduce the supply of and demand for drugs in prisons. New legislation is being introduced, detection of NPS is being improved by the introduction of new tests and the training of drug dogs, and a wide range of good education and information material has been produced. Despite these efforts, the Prison Service and other relevant bodies have found it difficult to keep pace with and respond to the unprecedented and rapid growth of NPS use in adult male prisons.

Nick Hardwick said: “No-one should be in any doubt about the harm that drug misuse does in prisons. It damages prisoners' health and sometimes causes deaths. Debt associated with synthetic cannabis use sometimes leads to violence and prisoners seeking refuge in the segregation unit or refusing to leave their cells. Profits from drug supply may be used to fund organised criminal activity in the community. The emergence of NPS as the main drug of choice in adult male prisons is just the most recent change in a long history of drug misuse in prisons. As responses to this new challenge become more effective, new substances or types of use will emerge to replace it. Drug misuse, of whatever type, does serious harm in prisons and in the wider community. Lessons should be learnt from the emergence of NPS at a national and local level to ensure that a dynamic, responsive and well-coordinated strategy is in place, both to reduce the harm of current use and respond effectively to future needs.”

IPCC Justified in Re-Opening Investigation After Stating 'No Case To Answer'

Police Oracle: The IPCC was right to re-open queries into an allegation it had previously said there was no case to answer for - because of a lack of "robustness" in its own first investi-

gation, courts have ruled. The body is also drawing up new guidance on where it will re-open a previously closed case, despite the Met launching a legal challenge to stop the practice. Last week the Court of Appeal rejected the argument put forward by the force that the body needed to "get it right first time" in order to maintain public confidence. During proceedings Lord Justice Vos revealed the watchdog had adopted new guidelines on such cases. He said: "The [new] guidance provides that the IPCC will re-open an investigation if it is satisfied that the original investigation or conclusions were flawed in a manner which had a material impact on subsequent decisions, or there was significant new information and a real possibility that that information would have led to different decisions."

In October 2012 the IPCC issued a "final report" to the force saying there was "insufficient evidence" to connect PC Joseph Harrington to the alleged strangling of Mauro Demetrio in August 2011. Other complaints made by Mr Demetrio were still being handled by the watchdog, and PC Harrington did have a case to answer, they said, regarding a failure to challenge colleagues' alleged racial abuse. In 2014 an IPCC commissioner wrote to the force stating she had "become increasingly concerned about the robustness" of the body's investigation and felt the matter should be re-opened. In November last year the Met's attempt to block this was quashed with a court ruling the body was in fact able to reopen the case. The IPCC investigation was reopened at that point, but the force nevertheless appealed the decision. In the latest ruling Lord Justice Vos said: "I would make clear that in my judgement the IPCC was entitled in the circumstances of this case to review its decision made under paragraph 23(8)(b) of schedule 3 to the [Police Reform] Act 2002 [...] not to make any recommendation under paragraph 27(3) to bring proceedings against PC Harrington in respect of the strangling allegation."

The new guidance adopted by the IPCC is again subject to review however because the judge noted that complaints in this case had not been fully resolved at the time it decided to re-open the strangling investigation. A spokesman said the re-investigation into the specific incident is now complete. "The report has now been seen by the [IPCC] commissioner and she is in the process of making a decision on whether matters will be referred to the CPS. "We will relay this decision to the force; the CPS, if appropriate; and Mr Demetrio prior to any details being made public," she said. PC Harrington was acquitted in court of committing ABH in March 2013 in relation to an incident in a cell in August 2011, but the IPCC still recommended he face a gross misconduct proceedings. The Met had not responded to a request for comment before this article went live.

Statement – The Isolation of Gavin Colye *Republican Prisoners, Roe 4, HMP Maghaberry*

Republican Prisoners, Roe 4, Maghaberry Jail wish to highlight the continued forced isolation of Gavin Coyle. Gavin was due to be released in early 2016 after being held for nearly 5 years in atrocious conditions in Maghaberry's punishment block. This has now been scuppered after Gavin was arrested, charged and interned by remand on new charges. Gavin has been held in the punishment block for almost 5 years this is despite the average stay there being 3 weeks. The block was described in the November 2015, HMIP/CJINI report as old and shabby with cells being in a poor state of disrepair and the environment oppressive. The report further stated that prisoners remained locked in their cells for at least 22 hours each day in a regime which is too basic. These are the conditions which Gavin has endured for 5 years whilst constantly being threatened and harassed by drug fuelled prisoners being held in segregation throughout the night.

Gavin has been held in isolation at the behest of NIO/MI5 claiming he is under threat on the Republican landings. The reality is that Gavin is not and never has been under threat on

the Republican landings and his isolation, similar to that of a number of other cases, is a means of physiological torment designed to weaken resolve and make him susceptible to pressure and numerous approaches by MI5. These approaches have been facilitated by Maghaberry Governors under the control of MI5.

We wish to reiterate that Gavin should be on the Republican Wing and that he should be moved to Roe 4 immediately. There are countless bodies, individuals and organisations, including those within the Jail, who have accepted in private that no threat exists from Republicans. This was demonstrated by a 48 hour fast conducted last year by all prisoners on Roe 3 and Roe 4 in solidarity with Gavin. It is now time that all of those who have accepted the realities of Gavin's isolation privately now state publically including the constitutional Nationalist parties and the Catholic Church rather than play politics with a man's life.

Hugely Disproportionate Number of Traveller/Gypsy Children in Youth Custody

Significant Changes in Backgrounds and Needs of Children in Custody. HM Inspectorate of Prisons has published an annual summary of survey responses in young offender institutions (YOIs) since 2001-02 and the demographics and circumstances of the boys held have changed over that period. The proportion who said they were from a minority ethnic group has almost doubled between 2001-02 and 2014-15 from 23% to 42%. The number of Muslim boys has risen from 16% in 2010-11 to 21% in 2014-15. There is some evidence to support the suggestion that as the number of boys in custody has fallen, those who remain are a more concentrated mix with more challenging behaviour and complex needs. The proportions of children who consider themselves to have a disability and who have been in local authority care have both risen sharply over the past five years.

In April 2012, HM Inspectorate of Prisons, Ofsted and the Care Quality Commission began joint inspections of Secure Training Centres (STCs). This report includes the third annual summary of children and young people's experience of STCs. The demographics of STCs and YOIs have some significant differences. YOIs do not hold girls and 16% of the children who responded to surveys in STCs were girls. STCs held a greater proportion of children under 16 than YOIs. Both STCs and YOIs continued to hold a hugely disproportionate number of children who described themselves as being from a Traveller or Gypsy background. In STCs, 11% of children said this, a hundred times greater than the 0.1% which is the proportion in the population as a whole. "We have repeatedly raised our concerns about the hugely disproportionate number of children in custody from a Traveller or Gypsy background. Withy any other group, such huge disproportionality would have led to more formal inquiry and investigation." Children in STCs generally reported more positively than those in YOIs, and overall, in both types of establishment, about four in five children said staff treated them with respect. Nevertheless, a significant minority of children in both STCs and YOIs described being frightened and unhappy. The report also found that: - although around four in five children described feeling safe on their first night, almost a third said they had felt unsafe at some time; - two out of five children said they had been physically restrained; - only slightly more than half the children felt they had done anything in custody to make them less likely to offend in future; and Fewer boys in YOIs reported being involved in any kind of purposeful activity than at the time of any inspection reports in the past five years.

Nick Hardwick said: "In the period we have been conducting these surveys, the number of children in custody has fallen sharply, the shape of the estate has changed and policy initiatives have come and gone. As a new round of reform beings, the voices of children in custody – describing what for them has changed and what remains consistent – is an important source of evidence that can help us understand where efforts and change should be focused. We have repeatedly raised our concerns about the

hugely disproportionate number of children in custody from a Traveller or Gypsy background. Withy any other group, such huge disproportionality would have led to more formal inquiry and investigation."

Paul Macklin: Failure to Disclose Evidence did not Breach Article 6!

Macklin v Her Majesty's Advocate [2015] UKSC 77, 16th December 2015 – The Supreme Court has unanimously dismissed an appeal against a decision of Scotland's High Court of Justiciary in which it refused to overturn a criminal conviction on the basis that the non-disclosure of evidence breached the appellant's right to a fair trial under Article 6 of the ECtHR.

The Facts: On 26th September 2003, Paul Macklin was convicted of possessing a handgun in contravention of section 17 of the Firearms Act 1968 and of assaulting two police officers by repeatedly presenting the handgun at them. At trial, the key issue was the identification of the gunman, with both police officers identifying the appellant in the dock. Two witnesses testified that the man in the dock was not the gunman, however, their evidence was undermined for various reasons including discrepancies in police statements and unreliable alibis. Several years later, following a change in practice regarding the disclosure of evidence, the Crown disclosed the fact that a fingerprint from another individual with a serious criminal record had been found in a car abandoned at the scene of the crime. The Crown also disclosed statements from six further individuals who had seen the incident.

The High Court's Decision: Macklin appealed against his conviction on the grounds that the Crown had failed to disclose material evidence, and that by leading and relying on dock identifications without having disclosed that evidence and without an identification parade, the Lord Advocate had infringed his rights under Article 6 ECHR. The Appeal Court of the High Court of Justiciary dismissed his appeal. The court held that the fingerprint evidence and three of the undisclosed statements neither materially weakened the Crown case nor materially strengthened the defence. Whilst the other three statements should have been disclosed, there was not a real possibility of a different verdict had there been disclosure. Finally, leading dock identifications from the two police officers without an identification parade did not infringe Article 6.

The Supreme Court first dealt with the issue of its jurisdiction. Under section 124(2) of the Criminal Procedure Scotland Act 1995, every interlocutor (decision) and sentence of the High Court of Justiciary is final, conclusive, and not subject to review by any court. However, under section 288ZB of the 1995 Act, as inserted by section 35 of the Scotland Act 2012, the Supreme Court has jurisdiction to hear an appeal concerning the question of whether a public authority has acted compatibly with the ECHR. As the question raised by the appellant was whether the conduct of the prosecution was compatible with Article 6 the Supreme Court had jurisdiction to hear the matter.

As the European Court of Human Rights explained in Edwards v United Kingdom the question of whether a failure of disclosure breached Article 6 had to be considered in light of the proceedings as a whole. Translating the Strasbourg approach into domestic law in McInnes v HM Advocate (available here), Lord Hope set out two stages to the analysis. First, should the material which had been withheld from the defence have been disclosed? The test here was whether the undisclosed evidence might have materially weakened the Crown case or materially strengthened the defence. Second, taking into account all of the circumstances, was there a real possibility that the jury would have arrived at a different verdict in the event of disclosure?

The appellant challenged the High Court's conclusion that some of the undisclosed material did not have to be disclosed under Article 6 on the basis that under current Crown practice the evidence would be disclosed. The Supreme Court dismissed this argument. For Lord Reed the argument was a "non sequitur" and Lord Gill described it as "specious". The fact that the evidence would now be disclosed did not mean that non-disclosure breached Article 6.

Regarding the evidence which should have been disclosed, the appellant argued that the High Court had failed to apply the second part of the test from McInnes. The Supreme Court also rejected this argument. As it was confined to compatibility issues, the Supreme Court could only ask whether the High Court had applied the correct test, not whether it had applied the test correctly. The Crown's submission to the High Court was expressly founded on the McInnes test and, by reciting the words of the test, the court made clear that it had applied it. The appellant tried to argue that the High Court's conclusions on the second part of the McInnes test were so manifestly wrong that it had not in reality applied that test. However, this was essentially an argument that the High Court had applied the test incorrectly and the Supreme Court was not prepared to entertain it. The High Court had applied the correct tests for the purposes of Article 6 and found that the appellant's trial was fair.

In the end, the role of the Supreme Court was limited. As Lord Reed made clear, the court was not sitting as a criminal appeal court exercising a general power of review. The Article 6 issues had been authoritatively determined by the High Court of Justiciary when it dismissed Macklin's appeal against his conviction. All the Supreme Court could do was ensure that in exercising its appellate function, the High Court had applied the appropriate Article 6 tests as set out in McInnes.

Appeal Dismissed Against Coroner's Ruling - Anonymity/Screening of Witnesses

The Court of Appeal on Wednesday 16th December 2015 upheld a decision which dismissed judicial review proceedings challenging decisions taken by the Senior Coroner in connection with the anonymity and screening of Prison Service witnesses who gave evidence at the inquest touching the death of James McDonnell. James McDonnell ("the deceased") died in HMP Maghaberry on 30 March 1996 after suffering a heart attack. A short time earlier he had been subject to a control and restraint procedure by prison officers. An inquest into his death commenced on 17 April 2013. The principal issue for the jury was what role, if any, the control and restraint procedures played in the death. The coroner decided to call as witnesses those prison officers involved in the control and restraint procedure. Most applied for anonymity and screening at the inquest. Threat assessments were obtained from the Security Service which stated that each witness was assessed to be at moderate threat from Northern Ireland related terrorism but should the witness deliver his evidence without the benefit of screening/anonymity, it could not rule out the possibility that the level of threat would rise to substantial.

On the basis of the threat assessments the coroner concluded that there was evidence of real and immediate risk to life and therefore the threshold for engagement of Article 2 of the ECHR had been met. He decided that anonymity and screening should be granted to those who applied but allowed the family to see the witnesses giving their evidence. On 16 May 2013 the jury returned its verdict. It concluded that the control and restraint procedure was not carried out correctly and that it was probable that the deceased during his initial restraint was grabbed by the neck and sustained neck injuries and a bruise to his lumbar region. The jury identified the initial restraint, neck compression, the control and restraint procedure, the deceased's underlying heart condition and emotional stress as contributory factors to the deceased's fatal heart attack. It concluded that the Prison Service had not explained how the deceased sustained all of the injuries found at autopsy and that excessive force, lack of training in aspects of control and restraint and failures in the duty of care to prisoners had caused or contributed to the death of the deceased. On 22 May 2013, solicitors acting for Elizabeth McDonnell ("the appellant") wrote to the coroner requesting him to reconsider his ruling on anonymity for the prison officers who gave evidence. It was submitted that one or more prison officers had been found, on the balance of probabilities, to have used excessive force on the deceased and that "the jury finding had shifted the balance against anonymity and in favour of identi-

fication". The coroner replied on 15 August 2013 to say that he was functus officio in this inquest and therefore unable to revisit his ruling which he considered to be an integral part of the substantive inquest. The appellant challenged the coroner's decision by way of judicial review. She questioned the coroner's decision to grant anonymity and screening to all of the Prison Service witnesses who applied for it and the determination by the coroner that he was functus officio in respect of the application made by letter dated 22 May 2013 after the inquest verdict had been delivered to review whether the anonymity decisions should remain in place. The trial judge held that there was no basis for the conclusion that there was a breach of the investigative duty under Article 2 in this case as all of the witnesses were seen and heard by the next of kin and were subject to cross examination by their representatives. He considered that the requirements of accountability and transparency were met and he dismissed the judicial review proceedings. The appellant appealed to the Court of Appeal. The Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 (as amended) provide detailed procedures for the conduct of inquests. Rule 4 provides that every inquest shall be opened, adjourned and closed in a formal manner. Once the inquest is closed the coroner no longer has power to take any steps in relation to the conduct of the inquest and has become functus officio. Rule 11 provides the coroner with wide powers to adjourn an inquest and makes specific provision that if he adjourns the inquest after the jury has been sworn he may discharge the jury. The Court of Appeal said it therefore follows that if the coroner has not closed the inquest and an issue arises as to whether or not anonymity should be reconsidered, it would be open to the coroner to take the verdict, discharge the jury and adjourn the inquest to receive further submissions if he felt that such a course was necessary in order to vindicate any rights under Article 2 or to satisfy the requirements of open justice. The first question for the appeal was whether the inquest was closed by the time the appellant wrote to the coroner on 22 May 2013. The Court of Appeal looked at the transcript of the proceedings on 16 May 2013 and concluded that, while the coroner made no express statement as to whether the inquest was closed on that date, there was ample material to demonstrate that it was and that the coroner was therefore functus officio by the time the application was made to him by letter dated 22 May 2013. The second issue was whether the coroner erred in failing to review the question of anonymity once the verdict had been given. The Court of Appeal referred to case law which acknowledged that coroner's rulings on anonymity and screening are subject to review and alteration in the course of the inquest and must be kept under review. It said that where there has been some material change to the circumstances affecting the question of anonymity the coroner has an obligation to reconsider. The question in this case was whether or not there was such a trigger. The Court noted that the inquest verdict contained a finding that there had been excessive use of force by prison officers which had caused or contributed to the death of the deceased but did not, however, identify any particular prison officer or group of prison officers as persons who had engaged in the unlawful act. Secondly, the coroner's conclusion at the beginning of the inquest was that the level of risk pertaining to each individual applicant set out in their risk assessment was sufficient by itself for him to conclude that the Article 2 threshold had been met by all the applicants. The Court considered that there was no reason for the coroner to conclude there was any likelihood of a difference in the risk assessment as a result of the verdict: "Where there has been a finding of unlawful conduct on the part of an individual contributing to a death we recognise that it may be necessary to conduct a balancing exercise [into the risk of giving evidence without anonymity] even where the Article 2 threshold in relation to that individual has been met. We are satisfied, however, that no such countervailing considerations arise in this case where the Article 2 threshold in respect of the witnesses has been reached and no individual or group of individuals has been identified as personally responsible for any wrongdoing. We conclude, therefore, that there was no change of circumstances in this case which required the coroner to review his earlier decisions on anonymity."

Ex-Prison Officer Jailed for Smuggling Drugs Into Husband Inmate

A woman who quit her prison job to marry an armed robber has been jailed for a year after being caught trying to smuggle drugs to him. Alison McGuire, 45, stashed a mobile phone and a haul of drugs down her underwear when visiting her husband James in prison. She formed a friendship with armed robber McGuire while working as a risk co-ordinator at HMP Addiewell. She resigned from her job in order to continue the relationship and later wed the convict in a ceremony behind bars. But after he was moved to Shotts maximum security prison in Lanarkshire where he is serving an eight-years, he pressured his new wife to bring him drugs to help pay off drug debts. She hid a mobile phone, 50 grams of cannabis resin and several banned steroids, but was caught by a sniffer dog and police officers who saw her walking abnormally. The mum-of-two, of Carluke, Lanarkshire, admitted five charges of bringing banned items into the prison on July 4 this year and was jailed for 12 months.

HMP Rye Hill – Performing Very Well In Most Areas

HMP Rye Hill had some real strengths, but needed to improve health care for prisoners, said Nick Hardwick, Chief Inspector of Prisons. As he published the report of an unannounced inspection of the training prison in Northamptonshire. HMP Rye Hill is a category B training prison which, at the time of its inspection, held just over 600 men, all of whom, after a change of role in summer 2014, were convicted sex offenders. The population was a complex mix of serious offenders and some frail older men who needed significant levels of care. In most areas the prison was performing very well. It had strong leadership and different parts of the prison worked effectively together. Inspectors were concerned to find that: Progress from the last report: 14 recommendations had not been achieved and 15 only partly achieved • the prison was not sufficiently alert to the risk of prisoner-on-prisoner sexual grooming; • prisoners from black and minority ethnic backgrounds and Muslim prisoners reported more negatively than the population as a whole and although many of these concerns were not well founded, the prison needed to do more to engage with these prisoners; and • health care services had not sufficiently adapted to meet the needs of the new population, and there were staff shortages and long waiting times for most clinics. Inspectors made 63 recommendations Nick Hardwick said: "This was a positive inspection and HMP Rye Hill has some real strengths. Its purposeful activities, and offender management, both vital for this population, are better than we normally see and there is much that other prisons can learn from this. Nevertheless, in some other areas, particularly health care, the prison was not meeting the needs of its population and these areas now needed to be brought up to the same standards as the rest of the prison."

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.