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$2.75M for Nine Years in Prison on Wrongful Attempted Murder Conviction

Michael "Marcos" Poventud's has won a $2.75 million settlement from the city because of a police coverup resulting in an attempted murder conviction — and nine years in prison for a crime he says he did not commit, his lawyer said Thursday. His victory comes after a years-long fight for his right to sue. Poventud was found guilty of attempted murder in the 1997 Bronx shooting of a livery driver. Poventud's conviction was thrown out in 2005, when he learned that cops hid evidence. The hidden evidence came to light when his co-defendant, Robert Maldonado, won a new trial — and was acquitted. There were neither fingerprints nor DNA evidence in the case — just one witness' testimony. This witness originally picked Poventud's brother from a photo array. Poventud's sibling was locked up when the shooting happened. Police decided to pursue Poventund, however — and never told him the lone witness first implicated his brother. "If Poventud's lawyers had this material, this exculpatory evidence at his original trial, I'm confident he would have been acquitted," said his lawyer, Julia Kuan. Maldonado won a $2.5 million settlement from the city in 2012 regarding his wrongful conviction, said Kuan, who also represents him. When Bronx prosecutors said they would pursue a retrial unless Poventud copped to a lesser charge, Poventud pleaded guilty to attempted robbery so he could leave jail immediately. Poventud sued the city in 2007 — but a Manhattan federal court judge shot down the lawsuit in 2012. The judge claimed Poventud couldn't file suit because he had copped to the lesser charge. In January 2014, the U.S. Second Circuit Court of Appeals ruled against that decision — saying Poventud could sue despite his guilty plea, paving the way for Wednesday's settlement. "Nothing can give me back those years of my life that I lost, but I'm happy to put this behind me," Poventud told The News. "I'm going to live my life and take care of my health." After Poventud's release, he found out he had cancer. Poventud is in remission, but says he is going to live "day by day" and spend as much time with his sons, who are 20 and 23 years old, as possible. "There's a gap — nine years I was away," said Poventud, 45. "I've got a lot of making up to do. This case raised a novel legal issue concerning the resolution of the plaintiff's criminal charges and its effect on his civil claims," a city Law Department spokesman said Thursday. "Settlement of this matter was fair and in the best interest of the city."

MoJ Signals Interest in Specialist Courts for Domestic Abuse Cases

Hannah Lynes UK Human Rights Blog: The Ministry of Justice has signalled an interest in the potential of specialist courts for cases of domestic abuse. It has been considering a report published last week by the Centre for Justice Innovation, which recommends an integrated approach whereby criminal, family and civil matters would be heard under a 'one judge, one family' model. The report highlights evidence from the United States, Australia and New Zealand that integrated courts increase convictions and witness participation, lower re-offending, enforce protection orders more effectively and reduce case processing time. Victims would no longer find themselves "jumping from forum to forum" to resolve matters that are "all facets of the same underlying issue." Specialist domestic abuse courts could moreover use post-sentence judicial monitoring of perpetrators, and place a greater emphasis on the rehabilitation of offenders. In a speech to the Magistrates' Association, justice secretary Michael Gove said he had been "impressed" by the potential of problem-solving courts during a recent visit to the US, and was "keen to look more" at what could be done in this area. However, the proposals under examination are unlikely to allay fears that government cuts are putting women at risk. Under the ECHR, domestic authorities have a duty to "establish and apply effectively a system by which all forms of domestic violence [can] be punished," and ensure "sufficient safeguards" are provided for the victims [Opuz v Turkey]. Yet current safeguards are under considerable strain, with domestic abuse incidents reported to the police having increased by 34% since 2007/2008. Campaigners warn that austerity measures, which have led to Portsmouth City Council recently announcing a "sizeable reduction" of £180,000 to its domestic abuse service, are likely to put further pressure on authorities already at breaking point.

Surrey Police – Non-Disclosure of Documents

1.This is a claim for personal injury which arises against the background of the Defendant's employment of the Claimant as a prison guard at HMP Downview. 2. In short, in 2009 the Claimant complained about, and was the subject of a complaint of serious sexual assault by, a prisoner, Ms Garces-Rosero – who, it later transpired, was having an illegal affair with a Governor.

50. Now that all argument and consideration has been completed, and applying the principles to which I have made reference, I propose to grant the application that disclosure of certain material (to be set out in detail in the Closed Judgment) should be withheld on the ground of public interest immunity. There are, however, certain items as to which either the Defendant volunteered during the relevant hearing, or I ruled, that the public interest did not require non-disclosure. These will be identified by markings on the originals and must thereafter be disclosed.

51. For the pragmatic reasons touched on in argument, and taking into account concessions correctly made, in my view, by the Defendant as to transfers from Group B and Group A, I propose to order, on terms to be agreed or ruled upon, the disclosure of a list of those now ruled by me to be in Group A (whose details will not be redacted), but no more. I approve the non-disclosure of the personal details of those in Group B in accordance with the indications, specific and general, that I gave during the relevant ex parte hearings. It seems to me that given the minimal relevance, if any, of their roles and their Article 8 rights, that the redactions are strictly necessary and the best way of protecting their rights whilst not interfering with the right of the Claimant to a fair trial. That said, I did not approve of the redactions hitherto made in the sort of documents referred to in paragraph 41(2) above – i.e. those that are or have been in the Claimant's possession unredacted, his personnel records, records of his discipline proceedings, or those that deal with events in public such as the trial transcripts.

General Conclusions: 52. I repeat that I have proceeded upon the basis that the pleadings delineate the issues in the case and that both proportionality and the potential volume of material are relevant issues. However, having considered the rival arguments for the Claimant (summarised at paragraphs 38,39-41 & 49) and for the Defendant (summarised at paragraphs 42-45) I remain persuaded by the Defendant, for the reasons advanced by Mr Holloway, that its conduct of the general exercise has been in accordance with the law – albeit that it was overcautious in relation to the Claimants personnel records, transcript of his disciplinary proceedings etc. Hence I (still) reject the contentions advanced on the Claimant's behalf that there have been wholesale failures of approach by the Defendant to the whole disclosure exercise.

53. I also reject the contention that I should restrict disclosure to the items specified in paragraph 40 above. To do so would, in my view, involve the imposition of a wholly unjustified limitation.James Marsh V MOJ & Chief Constable Surrey Police Published on Bailii,

Dozens in Custody Freed by Mistake in 2014-15

Prisoners in custody for murder and other violent offences are among hundreds who have been released by mistake over the past decade. Forty-eight suspected or convicted criminals were freed in England and Wales because of blunders in 2014-15, figures obtained by the Press Association reveal. In the past decade, 505 prisoners have been let out in error – a rate of just under one a week. Critics described the findings as disturbing, while the prison service insisted that incidents are "very rare" and have been falling. In one episode, Martynas Kupstys was let out of HMP Lincoln while on remand for murder in August last year. He waited for three hours at a nearby bus stop before being found and returned to custody. Kupstys was later jailed after being convicted of the murder of Ivans Zdanovics, 24, who died in a house fire in January 2014. In another incident, a prisoner was freed from HMP Hewell in Worcestershire in July last year after an apparent mixup involving another inmate with the same surname. He was brought back to prison a day later.

The Conservative MP Philip Davies, a member of the Commons justice committee, said: "The first duty of the prison service should be protection of the public. These disturbing figures show that once a week the prison service release the wrong prisoner, and have done so for many years. This is nothing more than a shambles, which puts the public unnecessarily at risk." The shadow justice minister, Andy Slaughter, said the public would be "stunned" by the figures. "This is a further sign of the crisis in our prisons, where overcrowding and violence are rife." Lucy Hastings, director of charity Victim Support, said victims will be "alarmed and frustrated". "We know it can be distressing and worrying when offenders are released from custody – releases made in error can make this many times worse."

Statistics released by the Ministry of Justice following a freedom of information request show that 41 individuals were wrongly released from prison, and seven from court custody, in 2014-15. The number, which includes both prisoners who are serving sentences after being convicted and those on remand, was one fewer than the 49 mistakenly freed in the previous year. Just under a quarter of all those wrongly freed in the two years were serving sentences or charged with robbery or violent offences including assault and battery. One inmate was in custody on a firearms charge and another was being held for possessing an explosive substance. Two of those freed in error in 2014-15 had not been returned to custody as of the end of last month, including an alleged sex offender released from court. Six of those incorrectly released in the previous year had not been brought back to custody as of September.

In freedom of information responses, the ministry said the fact that a prisoner was released in error did not necessarily mean they would remain unlawfully at large if they were not brought back to custody, as there are circumstances where they would not have to return. The figures show there were three releases in error from HMP Manchester, one from HMP Belmarsh and one from HMP Woodhill over the two years. All three are categorised as high-security prisons. HMP Bullingdon in Oxfordshire had the highest number of erroneous releases, with a total of 10 between 2013 and 2015.

Figures dating back to 2005-6 show that the number of erroneous releases peaked at 68 in 2009-10, having more than doubled in two years, before falling to the current level. A prison service spokesman said: "Public protection is our top priority. These incidents are very rare but we are not complacent. The number of releases in error has fallen by almost a third since 2009 and the vast majority are returned to custody very quickly. The prison service investigates each incident and they are reported to the police for further action."

'Traditional Problems' Concerning Innocence and Death Row *Innocence Project USA*

The 2015 exonerations of six death row inmates have once again spotlighted the widespread problems affecting the administration of capital punishment across the United States. The numbers were highlighted in a new report released by the Death Penalty Information Center. According to the center's 2015 Year End Report, the "traditional problems" with the death penalty persisted throughout 2015 with innocence cases, in particular, underscoring issues involving racial bias, the manipulation of witnesses, inaccurate forensic testimony and incompetent defense. The precarious relationship between wrongful convictions and the death penalty is especially highlighted in the recent exonerations of Debra Milke (Arizona), Anthony Ray Hinton (Alabama), Willie Manning (Mississippi), Alfred Brown (Texas), Lawrence William Lee (Georgia), and Derral Hodgkins (Florida), who join the other 150 men and women from 26 states who have been exonerated from death row since 1973. In addition, the report's findings note that police and prosecutorial misconduct "continued to plague wrongful capital convictions, significantly contributing to at least 12 of the past 14 death-row exonerations." The intersection of wrongful conviction and capital punishment remains particularly concerning due to the worryingly high numbers of innocents on death row. Last year, a study published in the Proceedings of the National Academy of Sciences estimated that 4.1 percent of defendants who are sentenced to death in the United States are innocent, one in 25 or more than 300 death-sentenced defendants since 1973. Against that backdrop, the Death Penalty Information Center's latest report does acknowledge that executions in the United States have dropped to their lowest levels in 24 years and public opinion polls now reveal that a majority of Americans prefer sentences of life without parole to the death penalty. Meanwhile, it the report adds that opposition to capital punishment polled higher than any time since 1972.

Death Sentences for Men Denied Access to UK Police Report *Law Gazette*

Two Burmese men whose defence team unsuccessfully sought access to a UK police report into their murder trial earlier this year have been sentenced to death by a Thai court. Zaw Lin and Wai Phyo were found guilty today of the murder of British tourists David Miller and Hannah Witheridge on the island of Koh Tao in 2014. Three judges returned guilty verdicts after more than a year of proceedings which involved allegations of torture and missing evidence. Death sentences for men denied access to UK police report In August this year the case was the subject to a controversial High Court ruling in London when defence lawyers sought access to a Metropolitan Police report on the case commissioned by the prime minister on behalf of the victims' families. A precondition for Thai cooperation was that the report be kept confidential. Expressing 'very considerable unease', Mr Justice Green last summer denied an application under the Data Protection Act 1998 for access to the report. Ruling that the public interest arguments of the police were 'strong', the judge said: 'The disclosure of even a small portion of the report would have a serious chilling effect because even a minor release could be seen by foreign counterparties as reflecting a more systemic risk that the ability to enter into confidentiality arrangements would be subject to override by the courts.' As there was nothing in the data which would be of any real value to the claimants, he said the police arguments for confidentiality sufficed to outweigh the claimants' otherwise strong interest in access. Zaw Lin and Wai Phyo announced their intention to appeal. Press reports quoted defence lawyer Nakhon Chomphuchat as saying the case against the two was unjustified. 'The investigation and

charges were conducted improperly, without any lawyers or witnesses present. There was also no translator for the defendants and the gathering of DNA samples was done unwillingly.'

Controlling or Coercive Domestic Abuse Risks Five-Year Prison Term

Owen Bowcott, Guardian: Coercive or controlling domestic abuse becomes a crime punishable by up to five years in prison, even if it stops short of physical violence. The Crown Prosecution Service's new powers have been introduced as Citizens Advice reports a steep rise in the number of victims seeking help over the past year. The charity said it had supported more than 5,400 people suffering from domestic abuse in the 12 months to October 2015, including 3,000 cases of emotional abuse and 900 of financial abuse. The new legislation will enable the CPS to bring charges where there is evidence of repeated, or continuous, controlling or coercive behaviour within an intimate or family relationship. The CPS said abuse can include a pattern of threats, humiliation and intimidation, or behaviour such as stopping a partner socialising, controlling their social media accounts, surveillance through apps or dictating what they wear. Controlling or coercive behaviour is defined under section 76 of the Serious Crime Act 2015 as causing someone to fear that violence will be used against them on at least two occasions, or generating serious alarm or distress that has a substantial effect on their usual day-to-day activities.

The new law is likely to generate complex challenges over precisely what constitutes criminal behaviour. The director of public prosecutions, Alison Saunders, said: "Controlling or coercive behaviour can limit victims' basic human rights, such as their freedom of movement and their independence. This behaviour can be incredibly harmful in an abusive relationship where one person holds more power than the other, even if on the face of it, this behaviour might seem playful, innocuous or loving. Victims can be frightened of the repercussions of not abiding by someone else's rules. Often they fear that violence will be used against them, or suffer from extreme psychological and emotional abuse. Being subjected to repeated humiliation, intimidation or subordination can be as harmful as physical abuse, with many victims stating that trauma from psychological abuse had a more lasting impact than physical abuse." Cases can be heard in magistrates or crown courts, and the maximum sentence is five years imprisonment. Evidence can include emails, GPS tracking devices installed on mobile phones, bank records, witness statements from family and friends and evidence of isolation.

Polly Neate, the chief executive of Women's Aid, said: "Coercive control is at the heart of domestic abuse. Perpetrators will usually start abusing their victim by limiting her personal freedoms, monitoring her every move and stripping away her control of her life; physical violence often comes later. Women's Aid and other organisations campaigned to have this recognised in law, and we are thrilled that this has now happened. It is a landmark moment in the UK's approach to domestic abuse, and must be accompanied by comprehensive professional training and awareness raising among the public." Louisa Rolfe, the temporary deputy chief constable of Avon and Somerset police and the national police lead on domestic abuse, said: "We have seen a substantial increase in reporting nationally with greater understanding of all forms of abuse, not just physical violence. The new domestic abuse offence ... is another tool to help the police service and CPS prosecute perpetrators of domestic abuse and protect victims. It will provide more opportunities to evidence other forms of domestic abuse, beyond physical violence. Not only will this encourage more victims to report, we hope, but also the concerned family and friends of victims."

The College of Policing's head of crime and criminal justice, David Tucker, said: "The new offence of coercive control presents challenges. It demands much fuller understanding of events that led up to a call for assistance and this can make evidence gathering more complex. However, more importantly, it delivers greater opportunities to safeguard victims and achieve successful prosecutions."

According to Citizens Advice, 1,500 people sought help for domestic abuse between July and September 2015, a rise of 24% on the same period in the previous year. Gillian Guy, the organisation's chief executive, said: "Perpetrators are using coercive control to trap victims in abusive relationships. More and more people are coming to Citizens Advice because they are experiencing abuse by a partner or loved one, including restrictions on accessing their own money, forcing them to take on debts and spying on them online. The government's change in the law making coercive control a criminal offence is an important step forward in protecting victims of domestic abuse and helping them find a way out. It is also important that the government continues to consider whether victims of all forms of abuse are able to get the support they need, including through the justice system and legal aid." Figures from Her Majesty's Inspectorate of Constabulary show the number of domestic abuse cases reported to the police in England and Wales rose by 31% between 2013 and 2015.

Two-Thirds of all People Tasered Identified as 'Mentally Ill' *Justice Gap, 28/12/2015*

Two-thirds of all people Tasered by the police in England and Wales between 2010 and 2014 were identified as mentally ill. The figures were made available by the Homer Office following a Freedom of Information Act request by www.thejusticegap.com. The data reveals that in 45% of incidents where police used Tasers – this includes where the weapons were drawn and aimed – the subject was identified by officers as being mentally ill; and in instances where the police actually discharged the stun guns, 67% of subjects were identified as mentally ill.

Norman Lamb MP, the Liberal Democrat health spokesperson who launched the cross-party Equality for Mental Health campaign last month, described the numbers as 'clearly very worrying'. He said that it is 'crucial that police forces have proper guidance and training in place to ensure officers are able to act in a safe manner when working with someone with mental ill health'. Mike Penning MP, minister for policing told www.thejusticegap.com, that 'sensitive powers', such as Tasering, required 'proper accountability and transparency' and noted that the government is reviewing options for publishing figures on Taser use. The numbers also show that police in England & Wales' use of Tasers increased over the period. In 2010 there were 6,238 recorded Taser incidents. By 2014 that figure had risen to 9,196, an increase of nearly 50%. There was a corresponding increase in the number of Taser incidents involving mentally ill people, increasing from 2,737 in 2010 to 4,200 in 2014.

Prison Not So Much A Punishment, More a Way of Life

According to the International Centre for Prison Studies, there are currently 671,700 Russians serving sentences in penal establishments, of whom 59,000 are women. Only the USA and China have more female prisoners (over 200,000 and 100,000 respectively). According to human rights organisations, conditions in Russian prisons and prison camps are among the harshest in the world. The harsh climate is one obvious factor, but inadequate nutrition, physically demanding and low paid work, isolation in a punishment cell for the slightest misdemeanour, bullying, beatings, and other violence from prison staff are all also the norm. Russia's female prisoners are usually too frightened to complain to the legal authorities or human rights groups, as this might trigger immediate and severe punishment. And it is not just the camp administration that exercises power over its population; there are also the 'overseers' – prisoners who take charge of the others in the same barracks. Some of these overseers

work with the administration, but others refuse, preferring to observe their own 'criminal code.

'Overseers' collect 'tribute' from their fellow prisoners and are responsible for 'order'. But this 'order' has nothing in common with either the law of the land or the normal rules of human interaction. These are the rules of the criminal world, according to which it is shameful to work and honourable to thieve. Female criminals usually live in 'families'. Lesbian relationships are common, and young and attractive 'new girls' often become objects of sexual harassment from more hardened women prisoners. Most Russian prison camps are also breeding grounds for potentially fatal illnesses, with HIV/AIDS now added to the traditional TB. The prisoners most likely to contract HIV/AIDS are young women serving long sentences for drug-related crimes.

Unlike male prisoners, who often receive visits from their wives and children or even manage to initiate relationships through lonely-hearts columns, women prisoners are often abandoned by everybody from their previous lives. Their husbands divorce them. Their lovers don't want to wait for them. Their children are ashamed of them, and their friends forget them. These 'outcasts' are only ever visited by their mothers; and they find it very difficult to regain their previous job status after their release. Often they are unable to find any work at all.

All too often, the easiest road for these 'criminals' is straight back to prison. At least there everything is familiar, there is food to eat and somewhere to have a bath and sleep. A woman sent to a 'penal colony' for even a petty crime such as shoplifting or vandalism will most likely be unable to get back on the 'straight and narrow', and will become a hardened criminal – a 'repeat offender' as the courts call it. These women serve sentences of not just a year or two or even ten. They are prisoners for life.

Are Sex Offender Registries - Cruel and Unusual Punishment?

Phil Locke, Wrongful Convictions Blog: Are there people who commit heinous sex crimes? Of course, and there are also people who commit heinous murders; and while a murderer is a murderer is a murderer, I submit that the percentage of sex offenders who are truly profound, violent, serial offenders is a tiny fraction of the total number of casual, one-time, often non-violent, and even unknowing people who commit a sexual transgression. However, the laws get written and enforced assuming that any sex offender is a wild-eyed, crazed, unstoppable sex fiend. It's the way it is. The moral core of our society instills the belief that anything having to do with sex (outside the marital bedroom, in bed, at night, under the covers, with the lights out) is anathema; and combine this with the innate human predilection for revenge, and you wind up with our sex offender laws. Make no mistake – the people who are truly dangerous, violent, serial offenders need to be dealt with appropriately, and they need help. But why does some guy whose date lied to him about her age have to wind up on the sex offender registry for life, even after doing prison time? And the same applies when a vindictive spouse or ex-spouse gets the kids to lie about being molested; or when an angry ex-girlfriend makes a false claim of rape.

We've posted previously about the quagmire into which sex offenders, particularly those who are wrongfully convicted, are thrown by the justice system. The SOR's have an incredibly punitive and damaging effect not just on the person on the registry, but also on their families. Many on the registry are not even allowed to be with their own children. As for being "effective" — sex offender registries are nothing more than public shaming, that in many (most) cases is inflicted for a lifetime. They're no different than the "scarlet letter" of the 1600's Puritan times. And what is absolutely mind-blowing is that the SOR's have been proven not to work, and they cost the taxpayers gobs of money (see reference 'a' above). But now that they've become institutionalized in the justice system, they're a political football. Now we have lots of people whose livelihoods derive from the SOR's, and an entire industry has built up around the maintenance and support of SOR's (just like the prison system). To advocate sensible, logical approaches to the problem has become political suicide for the politicians and legislators.

And it's incredibly easy to be wrongfully convicted of a sex crime. All it takes is a false or mistaken accusation, and you are placed in the position of having to prove your innocence. The very existence of SOR's begs the question: why don't we have murderer's registries, or assault & battery registries, or manslaughter registries, or robbery registries, or kidnapping registries, or securities fraud registries? So are sex offender registries cruel and unusual punishment? Please see the probing and cogent article by Judith Levine here. The SOR's immediately became ironically counterproductive, as evidenced by this quote from the article: "Megan's Laws were supposed to protect children. But two decades of research show they don't improve anyone's safety, least of all children's. In fact, it may be minors themselves who are harmed most by the laws put in place to safeguard them." Such is the stupidity of the legislative and law enforcement process we endure today. The "justice system" will sanctimoniously declare, "The SOR's are in the best interest of public health and safety." But they're blindly ignoring a data-driven understanding of what they actually accomplish and the untold harm that they cause.

Patrick Hassett and Simon Price - Refusal of Oral Hearings

Justice McGowan: These are two claims which are being heard together for practical reasons. They arise out of the decisions of the Defendant, through the relevant Category A Review Team, ("CART"), to refuse to allow each of the Claimants an oral hearing to determine their continued need to be held in Category A, the highest security category during their substantial prison sentences.

Patrick Hassett was convicted, after trial in 1992, of the rape and murder of a 13 year old girl in 1978. He continues to deny his guilt. He was sentenced to a life sentence with a "tariff" period of 14 years. The tariff is that period which the sentencing judge orders must be served before the prisoner can be considered for release. Mr Hassett has therefore been eligible to be considered for release since 2006. Mr Hassett has also been convicted of a number of other violent sexual offences against women and children. He admits committing those offences. He has been designated a Category A prisoner. He seeks to challenge the decision of the Defendant of 19 September 2014, refusing him an oral hearing on the issue of his categorisation. In his case there has been another decision of 12 June 2015, which has in some respects improved his position. Nonetheless he seeks to pursue his challenge to the original challenge. The parties agreed that this was the better course. Simon Price was convicted of being concerned in the importation of £35m worth of cocaine. He continues to deny that he knew it was cocaine and claims only to have played a minor role. His sentence was reduced on appeal to a term of 25 years. He has recently been sentenced to an additional term of 10 years in default of meeting a confiscation order in the sum of £2.34m. He seeks to challenge the decision of the Defendant of 1 October 2014 refusing an oral hearing on the issue of his categorisation.

Background: The Secretary of State for Justice, as the Minister responsible for prisons, administers a scheme for the categorisation of all prisoners. There are grades which measure risk to the public of re-offending if at liberty. The grade will affect the conditions of a prisoner's detention in the broadest terms. Many of the matters raised in written and oral submissions are common to both Claimants and can be dealt with before dealing with the detail of each case separately. Some categorisation decisions are reached after an oral hearing many are not. In July 2014 a more detailed policy, PSI 08/2013, came into effect. It did apply to the decisions subject to this review. It is

accepted within the policy document that following the Osborn ruling, that there might well be a larger number of oral hearings in such categorisation cases in the future, particularly relating to Category A prisoners but it does not set out a policy that such hearings must take place.

It is not the function of this court to design or suggest policy to the Defendant, nor is it the courts function to audit policy except to the extent that any aspect of that policy arises on the facts of any particular cases. The court will review these decisions and can intervene only if these decisions have been shown to be unfair. These challenges are brought following the ruling of the Supreme Court in Osborn and Booth [2013] UKSC 61, [2013] 3 WLR 1020 which dealt with the circumstances in which the Parole Board must hold an oral hearing when considering the release from detention or the transfer to open conditions of prisoners. Lord Reed said; i) In order to comply with common law standards of procedural fairness, the board should hold an oral hearing before determining an application for release, or for a transfer to open conditions, whenever fairness to the prisoner requires such a hearing in the light of the facts of the case and the importance of what is at stake. By doing so the board will also fulfil its duty under section 6(1) of the Human Rights Act 1998 to act compatibly with article 5(4) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in circumstances where that article is engaged. ii) It is impossible to define exhaustively the circumstances in which an oral hearing will be necessary, but such circumstances will often include the following: a) Where facts which appear to the board to be important are in dispute, or where a significant explanation or mitigation is advanced which needs to be heard orally in order fairly to determine its credibility. The board should guard against any tendency to underestimate the importance of issues of fact which may be disputed or open to explanation or mitigation. b) Where the board cannot otherwise properly or fairly make an independent assessment of risk, or of the means by which it should be managed and addressed. That is likely to be the position in cases where such an assessment may depend upon the view formed by the board (including its members with expertise in psychology or psychiatry) of characteristics of the prisoner which can best be judged by seeing or questioning him in person, or where a psychological assessment produced by the Ministry of Justice is disputed on tenable grounds, or where the board may be materially assisted by hearing evidence, for example from a psychologist or psychiatrist. Cases concerning prisoners who have spent many years in custody are likely to fall into the first of these categories. c) Where it is maintained on tenable grounds that a face to face encounter with the board, or the questioning of those who have dealt with the prisoner, is necessary in order to enable him or his representatives to put their case effectively or to test the views of those who have dealt with him. d) Where, in the light of the representations made by or on behalf of the prisoner, it would be unfair for a "paper" decision made by a single member panel of the board to become final without allowing an oral hearing: for example, if the representations raise issues which place in serious question anything in the paper decision which may in practice have a significant impact on the prisoner's future management in prison or on future reviews.

iii) In order to act fairly, the board should consider whether its independent assessment of risk, and of the means by which it should be managed and addressed, may benefit from the closer examination which an oral hearing can provide. iv) The board should also bear in mind that the purpose of holding an oral hearing is not only to assist it in its decision-making, but also to reflect the prisoner's legitimate interest in being able to participate in a decision with important implications for him, where he has something useful to contribute. v) The question whether fairness requires a prisoner to be given an oral hearing is different from the question whether he has a particular likelihood of being released or transferred to open conditions, and cannot be answered by assessing that likelihood.

vi) When dealing with cases concerning recalled prisoners, the board should bear in mind that the prisoner has been deprived of his freedom, albeit conditional. When dealing with cases concerning post-tariff indeterminate sentence prisoners, it should scrutinise ever more anxiously whether the level of risk is unacceptable, the longer the time the prisoner has spent in prison following the expiry of his tariff. vii) The board must be, and appear to be, independent and impartial. It should not be predisposed to favour the official account of events, or official assessments of risk, over the case advanced by the prisoner. viii) The board should guard against any temptation to refuse oral hearings as a means of saving time, trouble and expense. ix) The board's decision, for the purposes of this guidance, is not confined to its determination of whether or not to recommend the prisoner's release or transfer to open conditions, but includes any other aspects of its decision (such as comments or advice in relation to the prisoner's treatment needs or the offending behaviour work which is required) which will in practice have a significant impact on his management in prison or on future reviews. x) "Paper" decisions made by single member panels of the board are provisional. The right of the prisoner to request an oral hearing is not correctly characterised as a right of appeal. In order to justify the holding of an oral hearing, the prisoner does not have to demonstrate that the paper decision was wrong, or even that it may have been wrong: what he has to persuade the board is that an oral hearing is appropriate. xi) In applying this guidance, it will be prudent for the board to allow an oral hearing if it is in doubt whether to do so or not. xii) The common law duty to act fairly, as it applies in this context, is influenced by the requirements of article 5(4) as interpreted by the European Court of Human Rights. Compliance with the common law duty should result in compliance also with the requirements of article 5(4) in relation to procedural fairness. xiii) A breach of the requirements of procedural fairness under article 5(4) will not normally result in an award of damages under section 8 of the Human Rights Act unless the prisoner has suffered a consequent deprivation of liberty.

The question raised by the Claimants, in its most simplistic formulation is; do any or all of the same requirements that apply to the Parole Board when considering release apply to an internal Prison Board, the CART, when considering conditions of detention? Rather than have his position considered by the CART in his absence, should the prisoner be allowed to attend an oral hearing? On the wider Osborn point it should be noted that there are significant differences in the function and status of the Parole Board and the CART. i) CART is an internal, administrative body. ii) It receives reports and submissions from the prison and the prisoner. iii) CART assesses and then decides whether to categorise the prisoner as Category A based on the risk to the public if the detained person were to escape from custody during the sentence. iv) The Parole Board deals with whether a person is released from custody or not. v) The Parole Board is therefore a court for Article 5 purposes. vi) The Parole Board is made up of persons from outside the prison service who are obliged to consider rehabilitation. The categorisation of a prisoner does not have a direct bearing on his release date but it may have an indirect effect on the release of someone serving an indeterminate sentence. It will be a piece of the evidence which the Parole Board would consider when reviewing the position. The lower the risk to the public the more likely they would be to grant release. Categorisation has no influence on the release date of a prisoner serving a determinate sentence. Categorisation does however have consequences for conditions of detention.

It must be noted that not having an oral hearing does not deny the prisoner any right to participate in the process. Reports are compiled by the prison staff on the basis of information gathered and following interviews with the prisoner. The report is served on the prisoner for his submissions by way of response, argument or correction. A prisoner is entitled to legal representation in the process. Once concluded the report goes to Governor level consideration by a Local

Advisory Panel which reaches a conclusion. That conclusion is then reviewed by the CART, the review team will also consider any submissions made by the prisoner or his representatives.

The point to be determined by this Court is much more limited than the Claimants seek to argue. The level of scrutiny that should be applied to the release of a prisoner, its importance to him and the wider public are factors which distinguish the function carried out by the Parole Board from the CART. The Supreme Court in Osborn did not recommend that the increase in the number of oral hearing in release cases should also extend to categorisation cases. It remains a matter for the Defendant to consider when deciding policy. There are no sufficient grounds for this court to interfere and extend the requirement to decisions which are at their heart matters of prison administration. That is not to under-estimate the importance to an individual and his desire to play a part in determining the conditions of his detention. There are however good reasons of practice and principle why it is not for this court to impose a requirement on the Defendant to ensure that each and every prisoner whose status is under consideration is entitled to an oral hearing. It is the purpose of this review to consider whether in each Claimant's case there should have been an oral review. Dealing with each in turn.

Patrick Hassett: The claim for review of the decision of 19 September 2014 to refuse an oral hearing is brought on two grounds. i) That the dispute of opinion between Ms Tock and Mr Matthews, expert psychologist witnesses, is sufficient to require an oral hearing to determine and ii) That the prisoner has served 30 years in Category A, was at the date of the decision more than 8 years past the end of the tariff period and has never previously had an oral hearing In his case there is a report dealing with the Claimant's contact with the Psychology Department compiled by Sharon Griffiths, that report is marked "this document is NOT A RISK ASSESSMENT and cannot be used to determine any reduction in risk". It is difficult to see what part that report should have played in the decision making process which is aimed only at deciding risk. Accordingly that cannot provide the support which the Claimant seeks. The Defendant had to consider the reports provided by Gemma Tock, who felt that Mr Hassett might, after further assessment, need to repeat some part of his SOTP (Sexual Offenders' Treatment Programme) and Rhys Matthews, instructed on behalf of the Claimant, who felt it was unnecessary as there was "no reason to suppose that further progress would be made".

The Claimant submits that this divergence or difference of opinion is enough to meet the test as is now set out in the new guidance at paragraph 4.7 (b). The test is whether "there is a real and live dispute on particular points of real importance to the decision". How wide the gap between the two experts actually is does not have to be determined by the court in this case. This is an expert panel who have experience of resolving these sorts of issues. The Claimant's position is protected by the instruction of his own expert and by the provision of submissions by specialist solicitors acting for him. It cannot be maintained that the refusal to allow him to actually participate in this process by his physical presence was unreasonable or that it operated to his disadvantage.

He also argues that the approach goes further than offering oral hearings in cases in which the Claimant can actively participate. It is said that paragraph 2(iv) of Lord Reed's speech has a bearing. "The board should also bear in mind that the purpose of holding an oral hearing is not only to assist it in its decision-making, but also to reflect the prisoner's legitimate interest in being able to participate in a decision with important implications for him, where he has something useful to contribute." On the facts of this case it is difficult to see what Mr Hassett could have contributed to the debate. He would no doubt have expressed a genuine willingness to co-operate fully in future work.

The issue to be determined was not his willingness to co-operate in the future but whether

he was currently less of a risk if at large. It must be remembered that this is someone who still denies having committed the index offences. In addition, it cannot be reasonable that every prisoner should be able to participate, in the sense of an oral hearing, in every decision which has consequences for the conditions of their imprisonment. It was not unreasonable in the circumstances of this review that Mr Hassett was, at that stage, refused an oral hearing. That remains the position even though Mr Hassett has served a very long time already and has long ago completed the tariff portion of his sentence. The longer a term an individual has served is an important factor but it cannot be determinative. Such cases are primarily fact specific. This is in no way to diminish the importance of his desire to be present but that alone, in these kinds of decisions, is not sufficient to render a decision to refuse unreasonable.

Simon Price: The claim for review of the decision of 1 October 2014 is based on the following grounds. i) That the level of dispute of opinion between the prison service psychologist experts and the psychologist experts instructed on behalf of the Claimant, is sufficient to require an oral hearing to determine, ii) The alleged lack of insight on Mr Price's part, which gives rise to that dispute, could be better explored at an oral hearing and iii) That because there is no way open to the Claimant to demonstrate a reduction in risk an impasse has arisen and therefore there should be a hearing. At the time of the claim he was likely to have been released in December 2016. The position has now changed and the additional sentence for the confiscation element of his offence now means he still has a considerable amount of time to serve.

As in the case of Mr Hassett, it is a significant feature of Mr Price's case that he continues to deny his true role on the jury's verdict. He denies playing a major role and having any knowledge that the product being imported was cocaine. Those are important features in assessing his attitude and the risk he might pose on escape. Unlike Mr Hassett there is a greater area of dispute between the experts. The issue in his case is whether that amounts to "a real and live dispute on particular points of real importance to the decision" sufficient to render the decision not to hold an oral hearing unfair. Both parties have gone through the reports and sought to demonstrate the width or narrowness of the gap by a line by line analysis. It remains the position that the panel that assessed the expert evidence are experts themselves; they apply experience and expertise in a way that this court cannot. Mr Price continues to deny his true involvement on the jury's verdict; both experts recognise that feature as important in assessing risk. The prison expert, Jo Elliott and the Claimant's expert, Professor David Crighton agree that this is a relevant feature. The Professor says that, "other than this, (the denial of knowledge of cocaine), there is little evidence that Mr Price is seeking to minimise his role or responsibility". The Defendant describes this as unanimity on the key point. Whether that description is wholly correct in anything more than a semantic sense, it does show substantial and significant agreement. The disagreement left between the experts is a matter eminently within the panel's remit. In any event this is not a matter, given his consistent denial of guilt to which Mr Price could make a useful contribution in the Osborn sense.

As to any contribution which could be made by the Claimant being cross-examined on his own lack of insight it is difficult to imagine what that contribution could be unless he were to suddenly admit responsibility. This is not a case in which any elucidation by him could help his cause. If there does come a time when what he has to say changes then that no doubt will be produced by way of further expert interview or even straight forward admissions to the authorities through his representatives. Neither this point nor the suggestion that the impasse it causes are factors which demonstrate an arguable unreasonableness in the Defendant's approach.

In each case nothing has been demonstrated which shows the reasoning used by

the Defendant in refusing to hold an oral hearing to be so flawed or lacking as to be wrong. Accordingly the claims must fail.

We Rocked the Court: Mumia Abu-Jamal Hearing

It was an amazing day in Scranton, PA, with more than 100 people inside and outside the courtroom. Folks joined us from all over the East coast. The Judge, Robert Mariani, began by reading an excerpt of the papers Mumia filed with the court, citing the life threatening conditions he suffered when he was hospitalized on March 30th, 2015. The Judge referred to those conditions as "serious," signaling to all in attendance that he meant business. However, even before the proceedings began, the DOC's attorney, Laura J. Neale, argued for dismissal of the case on a technicality. She argued that Mumia violated procedure in failing to exhausted his DOC administrative appeals process first, before filing a suit in court; and that, on that basis, the judge should dismiss. Our attorneys, Bret Grote and Bob Boyle, literally took out the demolition equipment and went to town. The judge disagreed with her too, citing precedents with which she was unfamiliar. The judge then asked her: are Abu-Jamal's claims legitimate? After much back and forth she was forced to concede that they were legitimate, but insisted that there was a violation of the process. Then judge asked her, "so do you mean to tell the court that you are upholding form over content?" Shortly thereafter, the court adjourned because the DOC's attorney asked the judge to register his decision in a formal ruling. He came back with a powerful opposition to her motion citing precedent. And p.s. he came back with fire in his belly.

First order after that was to hear Mumia. Although he was stoic, Mumia painted a picture of his tortured, Job-like biblical crisis, explaining among other things how he scratched himself bloody at night at the height of the crisis. The DOC's attorney argued that Mumia is better now because the DOC doctors administered the proper medicines. Mumia's testimony ended with a question. Mumia's attorney, Bret Grote: Would you accept Hepatitis C treatment? Mumia Abu-Jamal: Yes, with it I can live; without it I may die. Meanwhile, Pam Africa was managing the rotation of folks into the courtroom and intermittently leading the protest outside with the usual fire and power she brings to the struggle. The MOVE organization and many Philly supporters held it down in the cold, and at one point, a white man brandishing his gun with a press pass provoked the rally. Four police officers stood by, flanking him on both sides at times. Our side took pictures, proceeded to expose him as an apparently police-supported provocateur, and kept it moving.

Back inside the courtroom. Our good doctor, Dr. Joe Harris, took the stand as our expert witness. Movement attorney, Bob Boyle, painted a compelling portrait of the situation with a quick-fire, barrage of questions to Dr. Harris. Dr. Harris rocked the court, and argued that Mumia's skin problem (Necrolytic Acral Erythema), anemia, and low hemoglobin count are all consequences of his active Hep C; and that the only solution is treatment with the cure. He also explained that Mumia's skin condition hasn't cleared, despite the fact that he has been give the strongest topical medicines in the market, which Dr. Harris called "big guns," medication. That remains the case, he continued, because Mumia's skin condition is tied to the untreated Hep C. He also added that it is common for this kind of severe skin condition to come and go in Hep C patients; but that in the meantime, the Hep C virus continues to advance as indicated by signs of serious liver damage in Mumia's system.

At the conclusion of Dr. Harris' testimony, the Judge decided to adjourn. We return to Scranton on Tues, Dec 22 for cross examination of Dr. Harris and more witness and expert testimonies. It was a long day. A few snow flurries came down outside and it was freezing in the courtroom. But we got a sense of our power. Except for the DOC attorneys, all in the courtroom - including the Judge - were attentive to the moral weight of this life and death condition. The lives of the 10,000 PA prisoners with the Hep C virus were on the balance and in the air in

the courtroom. We left understanding that health crises like these illuminate much of what it means to be human. Then we heard from imprisoned MOVE 9 member Delbert African at SCI Dallas, only 30 minutes from Scranton, that he and all the brothers on the block saw us on the evening news. BOOM!!

The third and final day of the 3rd Circuit Federal District Court hearing on Mumia Abu-Jamal's lawsuit against the PA Dept. of Corrections ended with the jaw-dropping revelation that the lawyer representing the DOC (the defendant in this case) had knowingly introduced false evidence. The major shocker was a statement by the DOC's final witness, Dr. Paul Noel (Chief Medical Officer of the PA DOC) that an affidavit introduced by the defense attorney Laura Neal bearing Noel's signature was NOT his actual testimony. It quickly became evident that the DOC attorney had ignored Dr. Noel's repeated requests not to insert an erroneous paragraph into the document. As Mumia's lead attorney Robert Boyle was cross examining him, Dr. Noel stated under oath that the affidavit filed by the defense in this case with his signature was not his testimony. While the signature on the document was indeed his, this was not the document he had signed. In September this same altered affidavit was a key piece of "evidence" used by a PA Magistrate judge to deny Mumia's injunction against the DOC.

It became clear that attorney Neal had knowingly tampered with the evidence by including a paragraph in Noel's affidavit erroneously stating that hepatitis C viral load levels should determine treatment options for Mumia. Noel testified that he told Neal in September, in December and again just that morning outside the courtroom that the inserted paragraph was incorrect. As attorney Neal stumbled with excuses that the information was factually correct, Dr. Noel replied "but misleading and false in its conclusions." At this point, the trial Judge Robert Mariani cautioned Neal that she was at risk of "impeaching her own witness." As Boyle continued with his cross examination Dr. Noel acknowledged that another paragraph in the affidavit stating that Dr. Ramon Gadea, the only infectious disease specialist to examine Mumia, "ruled out Hepatitis C as a cause for Mumia's extreme skin eruptions" was also false. In fact, in his discharge papers for Mumia following a Sept. 9 consult, Dr. Gadea stated that he believed Hepatitis C could be a secondary cause of the skin rash and that Hep C should be treated after ruling out a rheumatoid condition (which has been done). Boyle also exposed that the liver CAT Scans and ultrasounds used by Dr. Noel to dismiss anti-viral treatment for Mumia were contrary to subsequent tests that showed possible liver damage. After initially stating that "It was anything but clear" that Mumia should get treatment, Noel finally was forced to agree with Boyle that Mumia's base line tests for key Hep C indicators were grounds for his receiving the anti-viral cure. Mumia has a 63% chance of having cirrhosis of his liver; already has significant fibrosis (scarring of the liver); "anemia of chronic disease;" and low blood platelets in addition to the severe extra hepatic skin condition.

Toward the end of the previous day's session Attorney Neal made another blunder when she attempted to insert evidence of a secret new Hep C "interim protocol" just developed by the DOC in December, but kept under wraps from public view. Noel expressed reluctance to even let Mumia's attorneys or Judge Mariani view the document unless they signed a confidentiality agreement not to disclose its contents. Before court started on the final day (Dec. 23) the DOC attorneys again tried to pressure Robert Boyle and Bret Grote to sign. Both refused, aware that Prison Radio had already filed a request for the document under PA's "Right to Know" policy.

It also came out in Dr. Noel's testimony that under the DOC's new protocols only 5 out of an estimated 5,000 prisoners with chronic Hep C were being treated with the new anti-viral drug beginning this fall – less than 1/10th of one percent. The number of prisoners treat-

ed dropped from around 20 under the 2013 treatment protocol using Interferon. During the 22 months while the new protocols were being developed no prisoner were treated for Hep C. Noel also testified to the number of hoops the new protocol force chronic Hep C inmates to undergo just to be considered for treatment. Yet nothing in the protocols appears to ever mandate use of the new life-saving anti-viral drugs.

One final hurdle in the protocol is that to get "consideration for treatment for Hep C" an endoscopy of the throat (EDG) is required. And even then the only inmates who might be treated must have an immediate risk of "blood vessels bursting in their throats." Under the protocols the DOC might consider patients "sick enough to treat for Hep C" if they demonstrate "esophageal-varices with a raised portal pressure" as proof of cirrhosis (in other words be near death). The court will provide transcripts in three weeks with final briefs due in six weeks. We will keep you posted. *Movement to Free Mumia and all Political Prisoners*

Government Accused of Undermining Transparency Laws *David Barrett, Telegraph*

Lord Lester of Herne Hill QC accused the Government of "obsessive secrecy" after only 14 files in total were released by the National Archives – compared with more than 500 last year. He said he had asked questions in the House of Lords – yet to be answered – demanding details of the subjects covered in files which have been withheld by the Government.

The sparsity of released documents appeared to contradict the Cabinet Office's claim earlier this week that it was "the most transparent government ever" which was releasing "an unprecedented amount of data". Files are being disclosed in two-year batches as Whitehall moves towards releasing material – in theory, at least – after 20 years rather than the previous "30 year rule". Lord Lester said: "My concern is that they seem to be undermining the 20 year rule that was hailed as a great step in freedom of information. They are still obsessively secretive about things that should be in the public domain." The QC added: "The fact that they have not come clean about what they are doing does not give me any great confidence. I think there is a convincing case for the Government to answer in relation to any justification for this."

A total of 58 files were made public in the latest tranche of releases by the National Archives, but the total included only 14 files for the years 1987 and 1988. Last year more than 500 were released. In his career at the Bar, Lord Lester successfully contested attempts by the Government to ban publication in the Press of extracts from Spycatcher, the autobiography of former MI5 assistant director Peter Wright in 1987 – one of the years covered in the latest release. He said: "The Spycatcher files should have been disclosed by now. I cannot imagine any justification for not releasing them, other than political embarrassment. It's ludicrous and I find it totally bizarre."

Lord Kerslake, the former head of the civil service, said a move towards monthly release of documents to the National Archives would lead many to conclude ministers were attempting to control its impact, by withholding material likely to have an impact on contemporary matters. "The suggestion is that there is going to be a move to monthly release of information and undoubtedly people will think this is to manage the impact of that information," he told BBC Radio Four's The World at One. It would help with engendering trust if the release can happen in a faster process and the annual process was something that people valued."

Lord Kerslake also expressed grave doubts about the Governments review of Freedom of Information laws, begun earlier this year, which he condemned as an "insider" job. Lord Tebbit, the former Conservative MP who was a member of Margaret Thatcher's Cabinet during part of the period covered by this week's release of files, said: "The Government should

release what it is required to release." He declined to speculate on whether the Spycatcher files should have been part of the latest batch, adding: "It was a rubbishy piece of trash and would have been better consigned to the bin anyway."

Kevan Thakrar: £1,000 Compensation After Prison Guard Squirts Shampoo on his CDs

It is the second time in as many years that Kevan Thakrar, who is serving three life sentences for killing drug dealers, has embarrassed the Government. The 27-year-old was awarded more than £800 by the same judge in April 2014 after items including his nose hair clippers were damaged in jail. Last week's ruling at Milton Keynes County Court is the result of a claim made by Thakrar in 2013, when he was a prisoner at HMP Woodhill. He complained that in the course of being moved prisons his stereo was broken, a number of CDs were damaged beyond repair and four books of his were lost. They included Dispatches from the Dark Side by human rights lawyer Gareth Pierce and A Life Inside: A Prisoner's Notebook by Erwin James. Thakrar further complained that a £31.81 canteen order, which he placed at Woodhill on 10 June 2013, was never fulfilled and that the money was never refunded to him.

In his judgment published on New Year's Eve, District Judge Neil Hickman said of Thakrar: "He appears to be intelligent and articulate and has been able to advance his claim in writing through the County Court. Indeed, some would say that the fact that a claim of this kind can be dealt with at modest cost through the County Court system is a good advertisement for the civil justice system of this country." But the judge criticised the Government Legal Department, acting on behalf of the MoJ. "I regret to say that I have found them of extremely limited assistance because they lacked objective discussion either of the law or of the evidence," he said. "I am satisfied that the damage to the CDs must have been caused by the deliberate act of one or more prison officers." He added: "In human terms it would be wholly understandable that in the light of what happened to their colleagues at HMP Frankland, other prison officers may have wanted to teach Mr Thakrar something of a lesson. But legally it cannot be any sort of justification." The judge said that the damage to the stereo and the disappearance of the books were "extremely suspicious", but it could not be proved that they were deliberate acts.

Thakrar, who did not rely on legal aid to bring the case, was awarded £1,000. A Prison Service spokesperson said: "We are currently considering this judgment and whether there are grounds to lodge an appeal. "We robustly defend claims made against the Prison Service where evidence allows, and have managed to successfully defend two thirds of prisoner claims over the last three years."Thakrar was jailed in 2008 after he and his brother Miran used a sub-machine gun to kill Keith Cowell, 52, his son Matthew, 17, and Tony Dulieu, 33, from Essex, at the Cowells' house in Bishop's Stortford, Hertfordshire, the previous year. The brothers were also sentenced for two attempted murders.

Source: Paul Gallagher, Guardian, 04/01/2016

Black Males Nine Times More Likely Than Other Americans To Be Killed By Police

Despite making up only 2% of the total US population, African American males between the ages of 15 and 34 comprised more than 15% of all deaths logged this year by an ongoing investigation into the use of deadly force by police. Their rate of police-involved deaths was five times higher than for white men of the same age. Paired with official government mortality data, this new finding indicates that about one in every 65 deaths of a young African American man in the US is a killing by police. "This epidemic is disproportionately affecting black people," said Brittany Packnett, an activist and member of the White House taskforce

on policing. “We are wasting so many promising young lives by continuing to allow this to happen.” Speaking in the same week that a police officer in Cleveland, Ohio, was cleared by a grand jury over the fatal shooting of Tamir Rice, a 12-year-old African American boy who was carrying a toy gun, Packnett said the criminal justice system was presenting “no deterrent” to the excessive use of deadly force by police. “Tamir didn’t even live to be 15,” she said.

Protests accusing law enforcement officers of being too quick to use lethal force against unarmed African Americans have spread across the country in the 16 months since dramatic unrest gripped Ferguson, Missouri, following the fatal police shooting of 18-year-old Michael Brown by a white officer. Overall in 2015, black people were killed at twice the rate of white, Hispanic and native Americans. About 25% of the African Americans killed were unarmed, compared with 17% of white people. This disparity has narrowed since the database was first published on 1 June, at which point black people killed were found to be twice as likely to not have a weapon. The Guardian’s investigation, titled The Counted, began in response to widespread concern about the federal government’s failure to keep any comprehensive record of people killed by police. Officials at the US Department of Justice have since begun testing a database that attempts to do so, directly drawing on The Counted’s data and methodology.

The FBI also announced plans to overhaul its own count of homicides by police, which has been discredited by its reliance on the voluntary submission of data from a fraction of the country’s 18,000 police departments. The Guardian’s total for 2015 was more than two and a half times greater than the 444 “justifiable homicides” logged by the FBI last year. The FBI director, James Comey, said in October it was “embarrassing and ridiculous” that the government did not hold comprehensive statistics, and that it was “unacceptable” the Guardian and the Washington Post, which began publishing a database of fatal police shootings on 1 July, held better records. The Counted will continue into 2016.Data collected by the Guardian this year highlighted the wide range of situations encountered by police officers across the US. Of the 1,134 people killed, about one in five were unarmed but another one in five fired shots of their own at officers before being killed. At least six innocent bystanders were killed by officers during violent incidents.

The Case for Open Borders *Joseph H. Carens, Open Democracy*

The discretionary control that states exercise over immigration is unjust. People should normally be free to cross borders and live wherever they choose. Borders have guards and the guards have guns. This is an obvious fact of political life but one that is easily hidden from view — at least from the view of those of us who are citizens of affluent democracies. If we see the guards at all, we find them reassuring because we think of them as there to protect us rather than to keep us out. To Africans in small, leaky vessels seeking to avoid patrol boats while they cross the Mediterranean to southern Europe, or to Mexicans willing to risk death from heat and exposure in the Arizona desert to evade the fences and border patrols, it is quite different. To these people, the borders, guards, and guns are all too apparent, their goal of exclusion all too real. What justifies the use of force against such people? Perhaps borders and guards can be justified as a way of keeping out terrorists, armed invaders, or criminals. But most of those trying to get in are not like that. They are ordinary, peaceful people, seeking only the opportunity to build decent, secure lives for themselves and their families. On what moral grounds can we deny entry to these sorts of people? What gives anyone the right to point guns at them?

To many people the answer to this question will seem obvious. The power to admit or exclude non-citizens is inherent in sovereignty and essential for any political community that seeks to

exercise self-determination. Every state has the legal and moral right to exercise control over admissions in pursuit of its own national interest and the common good of the members of its community, even if that means denying entry to peaceful, needy foreigners. States may choose to be generous in admitting immigrants, but, in most cases at least, they are under no moral obligation to do so. I want to challenge that view. In principle, borders should generally be open and people should normally be free to leave their country of origin and settle wherever they choose. This critique of exclusion has particular force with respect to restrictions on movement from developing states to Europe and North America, but it applies more generally.

In many ways, citizenship in Western democracies is the modern equivalent of feudal class privilege—an inherited status that greatly enhances one’s life chances. To be born a citizen of a rich state in Europe or North America is like being born into the nobility (even though many of us belong to the lesser nobility). To be born a citizen of a poor country in Asia or Africa is like being born into the peasantry in the Middle Ages (even if there are a few rich peasants and some peasants manage to gain entry to the nobility). Like feudal birthright privileges, contemporary social arrangements not only grant great advantages on the basis of birth but also entrench these advantages by legally restricting mobility, making it extremely difficult for those born into a socially disadvantaged position to overcome that disadvantage, no matter how talented they are or how hard they work. Like feudal practices, these contemporary social arrangements are hard to justify when one thinks about them closely. Reformers in the late Middle Ages objected to the way feudalism restricted freedom, including the freedom of individuals to move from one place to another in search of a better life—a constraint that was crucial to the maintenance of the feudal system. Modern practices of state control over borders tie people to the land of their birth almost as effectively. Limiting entry to rich democratic states is a crucial mechanism for protecting a birthright privilege. If the feudal practices protecting birthright privileges were wrong, what justifies the modern ones?

The Case for Open Borders: The analogy I have just drawn with feudalism is designed to give readers pause about the conventional view that restrictions on immigration by democratic states are normally justified. Now let me outline the positive case for open borders. I start from three basic interrelated assumptions. First, there is no natural social order. The institutions and practices that govern human beings are ones that human beings have created and can change, at least in principle. Second, in evaluating the moral status of alternative forms of political and social organisation, we must start from the premise that all human beings are of equal moral worth. Third, restrictions on the freedom of human beings require a moral justification. These three assumptions are not just my views. They undergird the claim to moral legitimacy of every contemporary democratic regime.

The assumption that all human beings are of equal moral worth does not mean that no legal distinctions can be drawn among different groups of people, nor does the requirement that restrictions on freedom be justified mean that coercion is never defensible. But these two assumptions, together with the assumption that the social order is not naturally given, mean that we have to give reasons for our institutions and practices and that those reasons must take a certain form. It is never enough to justify a set of social arrangements governing human beings by saying that these arrangements are good for us, whoever the ‘us’ may be, without regard for others. We have to appeal to principles and arguments that take everyone’s interests into account or that explain why the social arrangements are reasonable and fair to everyone who is subject to them.

Given these three assumptions there is at least a prima facie case that borders should be

open, for, again, three interrelated reasons. First, state control over immigration limits freedom of movement. The right to go where you want is an important human freedom in itself. It is precisely this freedom, and all that this freedom makes possible, that is taken away by imprisonment. Freedom of movement is also a prerequisite to many other freedoms. If people are to be free to live their lives as they choose, so long as this does not interfere with the legitimate claims of others, they have to be free to move where they want. Thus freedom of movement contributes to individual autonomy both directly and indirectly. Open borders would enhance this freedom.

Of course, freedom of movement cannot be an unqualified right, if only for reasons like traffic control and other requirements of public order, But restrictions require a moral justification, i.e., some argument as to why the restriction is in the interest of, and fair to, all those who are subject to it. Since state control over immigration restricts human freedom of movement, it requires a justification. This justification must take into account the interests of those excluded as well as the interests of those already inside. It must make the case that the restrictions on immigration are fair to all human beings. There are restrictions on border crossing that meet this standard of justification (e.g. limiting the entry of terrorists and invading armies), but granting states a right to exercise discretionary control over immigration does not. The second reason why borders should normally be open is that freedom of movement is essential for equality of opportunity. Within democratic states we all recognise, at least in principle, that access to social positions should be determined by an individual's actual talents and effort, and not on the basis of birth-related characteristics such as class, race, or gender that are not relevant to the capacity to perform well in the position. This ideal of equal opportunity is intimately linked to the view that all human beings are of equal moral worth, that there are no natural hierarchies of birth that entitle people to advantageous social positions. But you have to be able to move to where the opportunities are in order to take advantage of them. So, freedom of movement is an essential prerequisite for equality of opportunity. It is in the linkage between freedom of movement and equality of opportunity that the analogy with feudalism cuts most deeply. Under feudalism, there was no commitment to equal opportunity. The social circumstances of one's birth largely determined one's opportunities, and restrictions on freedom of movement were an essential element in maintaining the limitations on the opportunities of those with talent and motivation but the wrong class background. (Gender was another pervasive constraint.) In the modern world, we have created a social order in which there is a commitment to equality of opportunity for people within democratic states (at least to some extent), but no pretence of, or even aspiration to, equality of opportunity for people _across _states. Because of the state's discretionary control over immigration, the opportunities for people in one state are simply closed to those from another (for the most part). Since the range of opportunities varies so greatly among states, this means that in our world, as in feudalism, the social circumstances of one's birth largely determine one's opportunities. It also means that restrictions on freedom of movement are an essential element in maintaining this arrangement, i.e., in limiting the opportunities of people with talents and motivations but the wrong social circumstances of birth. Again, the challenge for those who would defend restrictions on immigration is to justify the resulting inequalities of opportunity. That is hard to do. A third, closely related point is that a commitment to equal moral worth entails some commitment to economic, social, and political equality, partly as a means of realising equal freedom and equal opportunity and partly as a desirable end in itself. Freedom of movement would contribute to a reduction of existing political, social, and economic inequalities. There are millions of people in poor states today who long for the freedom and economic opportunity they could find in Europe or North America. Many of them take great risks to come. If the borders were open, millions more would move. The exclusion of so many poor and desperate people seems hard to justify from a perspective that takes seriously the claims of all individuals as free and equal moral persons.

Guatemala Prison Riot Leaves Eight Inmates Dead

A riot at a prison in Guatemala has left at least eight inmates dead and more than 20 injured. The authorities said the inmates were drinking on New Year's Eve when a fight broke out. At least two prisoners were beheaded by fellow inmates. Rioters set fire to mattresses and bedsheets and cut power in the jail. The prison, in the port city of Puerto Barrios on the Caribbean coast, was built for 175 prisoners but now houses more than 900. Street gang members make up the bulk of Guatemala's prison population. Deadly gang warfare inside prison walls is not uncommon. Severe overcrowding makes it hard for guards to control the prisoners - who are often heavily armed with home-made weapons as well as firearms smuggled into the jail.

Family of Officer Shot by Raoul Moat Take Northumbria Police to High Court

Matthew Taylor, Guardian: The brother and sister of a policeman shot and blinded by Raoul Moat have said he could have escaped injury if the Northumbria force had passed on a warning that the gunman was on the rampage. PC David Rathband was shot twice in the face as he sat in his stationary car on a prominent junction above the A1 in Newcastle in July 2010. He was blinded and left in constant pain with no sense of smell or taste, and killed himself in February 2012. His twin brother, Darren, and sister Debbie Essery are taking a case to the high court claiming the police failed to pass on critical information that Moat was on the run and had threatened to "hunt" police officers. Moat had shot his ex-partner Samantha Stobbart and murdered her new lover Chris Brown in Birtley, Gateshead, on 3 July 2010 before going on the run. The former nightclub doorman spoke to a Northumbria police call handler for almost five minutes, saying he would kill any officer who came near him, that he would not be captured alive and, at one point, that he was hunting for officers. The claim states the call ended at 0.34am on 4 July and Rathband was shot at around 0.42am. It adds that approximately two minutes before the shooting, one police employee phoned a supervisor to ask if "something was going out over the air regarding the threats". The Rathband claim says no action was taken. His family say that before going on patrol, Rathband read through a log of "60 pages of random information" collated by Northumbria police on the manhunt. But they say he received no express instructions about the ongoing search. "Had the deceased been given any warning that Moat was out hunting for police officers, he would have immediately moved from his highly visible stationary position and would have followed such instructions as were given, but in any event would have kept his vehicle in motion".the family's legal team said. They added that in the minutes after Rathband was shot, senior officers ordered all unarmed police to return to their stations. Moat was on the run for seven days and was eventually tracked down to Rothbury, a rural town in Northumbria, in a huge manhunt.

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.