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MOJUK: Newsletter 'Inside Out' No 734 (27/03/2019) - Cost £1

Dwayne Edgar, Robert Lainsbury, Jake Whelan - Original Conviction Quashed

'If a defendant has not had the benefit of a fair trial to which he is entitled, then the strength of the case for the prosecution is irrelevant. If the trial has not been fair, then there has been no real trial at all and a conviction cannot be sustained by reference to the strength of a case against an accused'.

Dwayne, Robert and Jake, were convicted of murder in 2016, in July 2017, these convictions were quashed and a retrial ordered. Reporting restrictions on the quashing of the convictions was withheld until the retrial. This took place in a one-day hearing on the 18th March 2019, all three were found guilty. They were sentenced to life imprisonment with Whelan's minimum term set at 32 years, Lainsbury's at 30 years, and Edgar's at 28 years.

The original convictions were quashed because of a police officer's long-term relationship with a female member of the jury There was considerable contact between the two, throughout the trial. The police officer will not be prosecuted but will face a disciplinary hearing.

Transcript of the appeal July 2018: On 20 December 2016, in the Crown Court at Cardiff, these appellants were convicted of murder. They were subsequently sentenced and in due course an appeal against the length of sentence was allowed in each case. They now appeal against their convictions with leave of the single judge. The grounds of appeal common to all assert that the integrity of the trial was fatally compromised by bias on behalf of a juror, Lauren Jones. In those circumstances, the verdicts are said to be unsafe. In the circumstances of this case it is not necessary for us to set out the facts underlying the convictions in any great detail. If a defendant has not had the benefit of a fair trial to which he is entitled, then the strength of the case for the prosecution is irrelevant. If the trial has not been fair, then there has been no real trial at all and a conviction cannot be sustained by reference to the strength of a case against an accused.

Lynford Brewster was stabbed to death on the evening of 12 June 2016 in broad daylight in a residential part of Cardiff in front of a number of local residents. He had been involved in an argument with Whelan on the morning of 12 June and on that evening a number of witnesses saw three men chasing the deceased down an alleyway, where he received his fatal stab wounds. Whelan was seen getting into his car after the stabbing and the two men ran away through some woods. A knife and its sheath were recovered. Bloodstains on the knife matched the DNA profile of the deceased and the DNA of both Whelan and Edgar was recovered from the sheath. Lainsbury's DNA was recovered from the hand of the deceased. There was other evidence available to the Crown so that on its face the case was a strong one.

Several weeks after the trial an appellant's solicitor received information that a police officer providing family liaison, Detective Constable Bryant, who had attended court during the trial to provide support to the deceased's family, had a close relationship with a member of the jury. That officer's son was in a long-term relationship with the juror. The CPS was notified and an investigation was undertaken. An investigation by Detective Inspector Hathaway revealed considerable contact between the officer and Ms Jones prior to and during the course of the trial. There was recovered from the officer's phone a series of texts which the pair had exchanged at that time which are highly material in this appeal. It is clear that the officer initially lied about having any relationship with Ms Jones, although she subsequently admitted contacts with her in interview. Consideration has been given as to whether there should be a prosecution but we understand that there is to be none. There are, however, pending disciplinary proceedings against the officer.

As far as the juror is concerned, she did not respond to invitations to assist the inquiry and at an earlier hearing in this court it was decided that since there was no dispute about the facts which had come to light, there was little purpose in prolonging matters with a view to ascertaining whether any bias on the part the juror was actual and subjective as opposed to objective. The court was concerned that the interests of justice would be better served by a prompt hearing of this appeal when the essential facts were already known rather than incur further delay.

An application for the court to receive fresh evidence in the form of DI Hathway's report, the schedule of text messages received and transcripts of interviews conducted with the police officer was not resisted by the Crown. This is fresh evidence which is reliable and bears upon the integrity of the trial. We are entirely satisfied that the interests of justice require us to receive the evidence under section 23 of the Criminal Appeal Act 1968. In addition, at our request, we have been provided with a copy of the transcripts of instructions provided to the jury pool on two occasions when it was necessary for the jury to be sworn in in this case. The juror, Ms Jones, was part of the panel sworn in on each occasion. At the heart of the appeal is the contention that bias on the part of the juror is established incontrovertibly by the fresh evidence.

The approach of this court to the question of bias is not controversial. Bias may be actual or subjective on the one hand; on the other hand, it may be apparent to a fair-minded observer, or objective. The question will be whether a fair-minded and informed observer would conclude that there was a real possibility or real danger that the juror was biased. We have considered In Re Medicaments and Related Classes of Goods (No 2) [2001] 1 WLR 700 and Porter v Magill v Weeks [2001] UKHL 67. It is agreed that if only one member of the jury panel was biased in the way described, that would be sufficient to taint the whole panel. The Crown has not in the circumstances sought to sustain the safety of these convictions but has correctly recognised, following R v McIlkenny & Ors [1991] 93 Cr App R 287 at page 310, that the safety of the convictions is a matter for the court.

The evidence before us shows that at the relevant time Lauren Jones had been the girlfriend of the police officer's son for some months prior to the start of the trial on which she served as juror. The son lived at home with his mother, the police officer. The officer had almost 30 years' service and had been assigned to assist the bereaved family in June 2016. She had also taken a witness statement from the deceased's partner. The officer and the juror were clearly on friendly terms in the months prior to the trial, regularly exchanging texts demonstrating this. The officer became aware that the juror had been summoned to perform jury service at the time when this trial was due to take place. There is an exchange of texts on 11 October 2016 explicitly referring to this.

In the days immediately preceding the start of the trial they exchanged a number of texts referring to the trial. They include the following:(i) On 27 November 2016 there was a message from the officer to the juror: "The Murder trial is put back til 1st. Not that that matters cos they'll hold u til then if they need to. Remember what I sed though, as long as you don't know any of the witnesses that's fine. But u could say ur a teacher in llanederyn but you don't know or have any dealings with any of them. If u do know any of them though ul have to say but say how u know them. I won't be there hardly and I'm not a witness anyway so that ok u don't need to worry bout that. Don't tell any of them who u r to me tho in case they think I've told u about it although u know I haven't xxx".

(ii) Within 2 minutes the juror replied: "Ooh is it, I'll just be honest. I don't know them personally. But I do see one member of the family regularly at school so not sure what will happen there. Looking forward to whatever I'm selected for though! Will be a good experience xxx".

(iii) About 10 minutes later the juror sent a further message: "I don't know her but I see her almost every day. I've never spoken to her I just see her when she drops the little boy off and picks him up. So it's difficult really because she would 100% know who I was as soon as I saw her".

(iv) The officer in further exchanges asked if the person whom the juror knew in her capacity as a teaching assistant was the victim's sister. The juror confirmed this. The juror concluded these late night exchanges by saying: "I'll just be honest, I wouldn't mind really cause I'd wanna do that trial but it's just seeing her everyday afterwards if the result isn't in their favour xxx".

(v) On the following day, the officer sent a message to the juror saying: "If ur on the murder ul be finished same time as me most days u can have a lift to mine afterwards if u wanted x". There was an immediate reply from the juror saying: "Fab thanks! The bus is a nightmare x".

Those exchanges immediately prior to the trial clearly showed the officer's awareness that the juror might well be involved in the trial and both parties' knowledge that the officer would be concerned with the trial, as well as the important fact that both were aware that the juror knew the victim's sister. She saw her regularly at school collecting her young son, who attended the nursery where Ms Jones worked. The exchanges also reveal that the juror was concerned about her position if there was not a conviction.

The trial was due to start on 1 December. On that morning, the first phase of two jury empanelments involving the juror took place. Later that day there was an exchange of messages which showed that the officer had been in the courtroom at that time and had seen the juror looking nervous in the courtroom. Despite the juror's close connection with the officer and her knowledge that she was involved in the case, she said nothing about that or about her connection to the sister of the deceased. At one point she did say something to the effect that she was a teacher at the school but went no further than that. She appears to have followed the advice given in the first text mentioned. The police officer also failed to say anything to anybody although she was aware that the juror was sitting on the murder trial. On the following day, 2 December, the first jury was empanelled. The jury was given an information sheet showing names of witnesses in the case, including two members of the deceased's family. During the process of swearing the jury another juror reported in the presence of Ms Jones that she knew the brother of the deceased. A second juror was excused since he knew a witness who was a friend of one of the accused. Both those jurors were excused by the judge, who made plain that it was impossible for them to serve in the circumstances. Ms Jones must have witnessed those exchanges, yet she failed to declare her close connection with the case. The case was then opened but that jury had to be discharged because of timetable problems for two jurors.

On the same day, the officer phoned Ms Jones and a 51-second conversation took place. We do no know what was said between them. On the following day, a Saturday, both the officer and the juror attended a family party for members of the officer's family. On Monday, 5 December, a second jury was empanelled. It included Ms Jones. Again this jury had been provided with the case information sheet and the judge asked whether any of them knew the people involved in the case or those who might be giving evidence. Again nothing was said by Ms Jones to alert anyone to her connections with this case. That evening she and the officer exchanged texts, which clearly suggest that the juror was well aware that DC Bryant had been at court that day and would probably be attending on the following day.

On 8 December, the judge announced a non-sitting day for later in the trial and this

change potentially interfered with plans the juror had for a hair appointment and a day out with the officer. The officer advised the juror to tell the usher that she had an appointment for the day in question which could not be changed. Her advice was not to say that it related to a hair appointment, merely to say that it was an appointment that had already been changed once. The juror replied, accepting that advice. These exchanges emphasise the close relationship between the pair and show that each of them was prepared to connive in giving misleading or incomplete information to the court in order to suit their own personal convenience.

A little later on the evening of 8 December the juror spoke to the officer by phone in a call lasting more than 11 minutes. We do not know what was said on this occasion. On 9 December, the juror text the officer apparently with a view to visiting her home that evening. On 13 December, there is a further message in which the officer refers to checking whether the juror needed a lift to court. By this stage defence evidence was being called.

The totality of the messages shows a close familiarity between the pair, with each fully aware of the other's connection with the case. The officer was a family liaison officer or acting as such during the trial. She provided support at court to the deceased's mother and sister, both of whom attended significant parts of the trial. She had been in court at the time of at least one of the jury empanelments and was present during evidence given by each of the accused. At no stage did she report the matter to anyone; nor did the juror. Instead, they maintained contact during the trial, with the officer offering to drive the juror on occasions, an offer which one message shows the juror accepted with enthusiasm. They met at a family party between the two jury empanelments and colluded in a plan to mislead the court in order to preserve a previously arranged day out. In addition, there were telephone calls between them during the trial whose contents are unknown to us.

The police inquiry's dealings with the officer reveal that she lied in the initial stages to two officers about having had any relationship with the juror, leading to the inference that she realised that her connections with the juror were improper in the circumstances. It also appears that she was not truthful about the point at which she knew that the juror was involved in this murder trial.

This material reveals a shocking state of affairs. We have no hesitation in holding that the clearest case of bias on the part of the juror is established. Any fair-minded and informed observer would conclude from the facts that there was a real possibility or danger that the juror was biased. Despite ample opportunity, she failed to declare either her connection with an officer whom she knew was closely connected with the victim's family or her connection with the deceased's sister or her concerns about how that person might react if they met following a not guilty verdict. Moreover, the juror had shown herself willing to participate in a deception of the court in order to pursue relatively trivial arrangements for her own private satisfaction. Both parties failed utterly in their civic duty as citizens and both of them must have known that at the time.

Since the officer's disciplinary proceedings have yet to take place, we say nothing further as to the outcome of them. However, it is crystal clear that this juror should never have sat on this trial and that the assertion of objective bias is fully made out. In the circumstances, this trial was fatally flawed and the safety of the convictions is totally undermined. The folly of the juror and the police officer have wasted vast amounts of time and cost the public a great deal of money. Moreover, the agony for the victim's family is inevitably prolonged. We very much regret that fact.

However, there has not been a fair and proper trial because of the conduct of the officer and the juror and in those circumstances it is our duty to act. We allow the appeal. We quash each of these convictions. It is plainly in the interests of justice that in this serious matter there should be a retrial and we so order.

Lawyers For Bloody Sunday Victim's Make Contempt Complaint Against Gavin Williamson

Scottish Legal News: Lawyers for the family of a Bloody Sunday victim have contacted the Attorney General for Northern Ireland to complain about comments made by Defence Secretary Gavin Williamson. Mr Williamson, speaking after prosecutors announced that one former British soldier would face trial in connection with Bloody Sunday, had praised "those soldiers who served with courage and distinction to bring peace to Northern Ireland". He also promised "full legal and pastoral support to the individual affected by today's decision" and said the Ministry of Defence (MoD) would continue "working across government to drive through a new package of safeguards to ensure our armed forces are not unfairly treated". "Soldier F" is facing trial for the murder of James Wray and William McKinney, and the attempted murders of Joseph Friel, Michael Quinn, Joe Mahon and Patrick O'Donnell.

Belfast firm Phoenix Law has now written to the Attorney General on behalf of Kate Nash, whose brother William Nash was shot and killed by soldiers on Bloody Sunday. In a statement, the firm said their client believed Mr Williamson, given his public position, had seriously and significantly jeopardised the chances of a fair and proper trial of "Soldier F", and therefore may be in contempt of court. Solicitor Darragh Mackin said: "Not only has the Secretary of State threatened the fairness of the judicial process, he has also shown a blatant disregard for our client and the other families affected by the events of Bloody Sunday. "Mr Williamson seems to have forgotten that as an MP he has responsibilities to all citizens and not just the armed forces. Many lives in Derry were destroyed on Bloody Sunday and he would do well to be mindful of that. It is vital the legal process be allowed to function without attempts to influence it."

Police Legacy Unit 'Lacks Independence' to Probe 1972 Belfast Killing

Belfast Telegraph: Northern Ireland's Chief Constable has not shown that a legacy unit within his force has the practical independence for a new probe into the suspected military killing of a woman in west Belfast 47 years ago, the Court of Appeal has ruled. Senior judges also declared that George Hamilton is under an obligation to further investigate the death of Jean Smyth in a way which meets human rights requirements. The 24-year-old mother of one was killed by a single shot to the head as she sat in a car on the Glen Road in June 1972. At the time the Royal Ulster Constabulary informed her family that it was probably an IRA gunman who opened fire.

But records uncovered at the National Archives in Kew, London in 2014 suggest the British army's Military Reaction Force (MRF) fired shots in the area and were allegedly involved in her killing. During court hearings it was stressed that Mrs Smyth was a wholly innocent person in the wrong place at the wrong time. Counsel for the family had argued that fresh evidence links the British state's own agents to the killing of an innocent citizen. It was claimed that uncovered material points to MRF involvement in a systematic abuse of force, with the truth concealed in the past by both army and police officers.

The findings of two previous probes into the death were flawed and undermined public confidence in the PSNI conducting an impartial investigation, the barrister contended. Lawyers representing the Chief Constable had countered that the PSNI is "institutionally distinct" from its RUC predecessor and has the independence required for a new investigation. In 2017 a High Court judge found that the family of Mrs Smyth have been let down for decades by the criminal investigation system. He concluded that the PSNI's Legacy Investigation Branch (LIB) lacked the required independence to carry out further investigations into her death.

Ruling on an appeal against that judgement, Lord Justice Stephens set out how 27 of 55

members of staff had formerly served in the RUC. He also pointed out: "It would have been obvious in 1972 that members of the army were on the Glen Road at the time of the deceased's death and their activity should have been but was not investigated by the RUC." Material available to the now-defunct Historical Enquiries Team (HET) in 2006-2008 should have led to an investigation of potential MOD involvement in the killing, the court found.

Without any available statement on planned arrangements to be put in place, Lord Justice Stephens said: "We conclude that at this time the Chief Constable has not demonstrated practical independence on the part of the LIB so that it has the capacity to carry out an investigation into the death of the deceased." The court granted a declaration that the Chief Constable is obliged to conduct the further investigations into Mrs Smyth's death in a way which satisfies the State's procedural obligation under Article 2 of the European Convention on Human Rights. It further declared that the Chief Constable is bound to promptly take steps to secure the practical independence of the investigators so that they have the capacity to carry out an Article 2-compliant, effective investigation into the killing. Outside court the family's solicitor, Niall O Murchu, claimed the decision shows PSNI officers cannot oversee any further probe. He added: "We also expect that the Chief Constable will not appeal this to the Supreme Court."

Changes to Police Bail Has Led to Further Delays and More Uncertainty

A landmark legal move introduced to prevent suspects spending months languishing on police bail, has backfired with people now spending even longer in limbo, official data has revealed. Two years ago the Government changed the rules meaning police forces could only keep a suspect on pre-charge bail for a maximum of 28 days, unless there were exceptional circumstances. It followed controversy over a number of high profile cases in which people were forced to live under a cloud of suspicion for long periods - sometimes years - before eventually being exonerated.

Instead of being bailed, suspects are now usually 'released under investigation', a status that is intended to carry less stigma and ought to help speed up the legal process. More than 80 per cent of criminal suspects are now released under investigation rather than on police bail. But data obtained under the Freedom of Information Act, has revealed that in many police forces, suspects are spending even longer in limbo waiting for their case to be resolved.

According to the figures, the average length of time someone was held on police bail before being charged or released used to be 90 days. But that has now increased to 139 days - almost five months - for those who are released under investigation. In the worst performing areas, suspects are now spending as much as three times as long waiting for their cases to be decided.

Legal experts argue that waiting for a decision carries the same level of stress whether a person is on bail or has been released under investigation. But they warn that suspects are even more in the dark under the new process because the police are not obliged to give them regular updates.

In 2016 suspects in Surrey spent an average of 74 days on pre-charge bail awaiting a decision on their case. But when the new system of releasing suspects under investigation was brought in, that increased to an average of 228 days. In the Cambridgeshire force region, the length of time it takes to come to a decision, went up from an average of 57 to 155 days and in Suffolk it rose from 54 days to 137.

Commenting on the findings, Jenny Wiltshire, Head of General Crime at Hickman & Rose solicitors, said: "The changes to the police bail regulations were meant to end the injustice of people being kept in legal limbo for months on end as they waited for police to decide what to do. This shows the problem hasn't gone away. In fact it's got worse. Whereas criminal suspects were previously kept waiting for far too long on bail; now they are kept waiting for even longer while 'un-

der investigation'. In one way this new 'under investigation' status is even worse than bail as police are not obliged provide updates on how the case is progressing nor when it may end. People, who may be innocent of any crime, are forced to put their whole lives on hold - and live under a cloud of suspicion - as they wait for the police to make up their minds without any idea of when this might happen. That this problem would occur under the new bail regime was obvious when these changes were first mooted. If the government want to achieve speedier resolution of crimes they need to do more than impose unrealistic deadlines on already pressed police forces. They need to provide funding that would enable the police to do their job properly."

The changes to the bail regime were introduced following a number of notorious high profile cases. Broadcaster, Paul Gambaccini, spent more than a year on police bail after being arrested in connection with historic sex allegations. Unable to work throughout that period, he was never charged with any offence, and later won a payout from the Crown Prosecution Service over his treatment.

A number of journalists arrested during the Met's Operation Elveden investigation also spent lengthy periods on bail. Former Sun reporter Jamie Pyatt was on bail for three years and nine months after being arrested on suspicion of bribing a police officer. He was subsequently cleared of any wrongdoing after being found not guilty of all charges at trial.

Concerns about the new 'under investigation' status are not limited to its length. There are fears criminal suspects may also be taking advantage of the fact that, unlike bail, no conditions can be attached to being released under investigation. Recent figures suggested that one in every seven suspects released under investigation is re-arrested for allegedly committing another offence.

Domestic abuse campaigners have also expressed serious concern over the fact suspects are being released under investigation without conditions preventing them from approaching their alleged victims.

Inquest into the Death of Annabella Landsberg in HMP Peterborough

Source: INQUEST: Opened Monday 18 March – expected to last up to 4 weeks. Annabella Landsberg died after she was found unresponsive on the floor of a segregation cell of HMP Peterborough on 6 December 2017. She was 42 years old. Evidence shows Annabella had been lying on the floor for 21 hours, after being restrained by prison officers. She was diabetic, and the inquest will consider questions around the treatment of her condition and cause of death. The inquest opened today at 10.30am and the jury will arrive from 1pm. Annabella was born in Harare, Zimbabwe and lived in Worthing in West Sussex. Known to her family as Bella, she was described by them as being very caring and intelligent. She was much loved by her siblings and her children. She fled from persecution in Zimbabwe and arrived in the UK in 2002.

Annabella had many health issues. In 2007 she was diagnosed with HIV and soon after was further diagnosed with Type 2 diabetes. She also suffered a brain injury as a result of meningoencephalitis (an infection of the brain and surrounding membranes). Her family said her behaviour became challenging after 2007. She became withdrawn and acted in a way which made them question her mental health. She started to get into conflict with law mostly involving anti-social behaviour. In February 2016, she was remanded in custody in HMP Bronzefield and later sentenced to four years' imprisonment for committing offences whilst subject to a suspended sentence. In May 2017, after spending some time in HMP Bronzefield and then HMP Send, she was transferred to HMP Peterborough. The staff there described Annabella's behaviour challenging and she was often placed in the segregation unit.

On 2 September, Annabella was restrained by the disciplinary staff and then left lying on the cell floor in the segregation unit for 21 hours. She died in hospital on 6 September 2017

from multi organ failure; on arrival at hospital she was found to be severely dehydrated. It would appear that many of the healthcare staff were unaware that she was diabetic.

Annabella's family hope the following areas will be explored at her inquest: The cause of her death; The use of Anti-Social Behaviour programmes and the decision to segregate her; The use of force on the evening of 2 September, including any post use of force assessments; Observations from evening of 2 September to the morning of the 3 September; Events of the 3 September, with a particular focus on the responses on the part of both discipline and medical staff to Annabella remaining on the floor of her cell for some 21 hours; Management of her Type 2 diabetes, including issues around her medication. The inquest will also consider issues around information sharing in the prison, and Annabella's transfer to and treatment at Peterborough City Hospital.

Human Rights Obligations Owed by the State to Prisoner in a Private Prison

LW, KT, MC & F v Sodexo & Secretary of State for Justice

The High Court 13/03/2019, handed down judgment on the human rights obligations owed by the State to persons serving a prison sentence in a private prison. The judgment makes clear that the State cannot outsource its human rights obligations. It will have significant implications for private government contracts in all fields. The case arose out of the illegal strip searching of four Claimants at HMP Peterborough, a prison for male, female and transgender prisoners that is run by Sodexo Ltd. The First Claimant is a transgender prisoner who was born female but is in the process of transitioning to male. The other three claimants are female. Sodexo conceded that the strip searches of the Claimants were unlawful and that there had been systemic failings at the prison. However, the Claimants maintained their claim against the Secretary of State, on the basis that the Secretary of State had failed to put in place adequate and effective safeguards to protect the Claimants against a violation of Articles 3 and 8 ECHR. The High Court accepted the Claimants' arguments in respect of Article 8 and held that: (1) the failings were serious, systemic and widespread and the legal framework relied on by the Secretary of State was ineffective to ensure that Sodexo had adequate systems in place; (2) it was not sufficient for the Secretary of State to rely on an ex post facto identification of breaches as its safeguarding measure, particularly in the context of strip searching prisoners, many of whom had been subject to sexual, physical or psychological abuse; as a result (3) the measures put in place by the Secretary of State to protect against systemic or widespread mistakes were not effective and amounted to a breach of Article 8.

David Gauke in Retreat Over Abolition of Short Sentences

Tom Harper and Caroline Wheeler, The Times: David Gauke, the justice secretary, has been forced to water down prison reforms after it emerged that plans to abolish short sentences would see about 4,000 knife-wielding criminals a year avoid jail. Gauke is examining whether to exempt knife attackers from his proposals to ban jail terms of under six months. Downing Street officials expressed concern about the consequences of his attempts to cut the prison population. Ministry of Justice figures show that 59% of all knife criminals in England and Wales received jail terms of six months or less last year — 4,300 offenders.

No 10 said this weekend victims "need to know that no option is being taken off the table. It is self-evident that as Britain is facing rising levels of knife crime, the criminal justice system needs at its disposal long and short sentences to combat this scourge. People need to have faith in the criminal justice system." A spate of killings has heaped intense political pressure on the government and,

in particular, Theresa May, who oversaw 20% cuts to police budgets when she was home secretary. She faced criticism last week when she denied a direct link between soaring violent crime and the loss of more than 20,000 police officers since 2010. Sajid Javid, the home secretary, later called for more police funds to tackle knife crime. The number of fatal stabbings is at its highest annual level since records began in 1946. Police have described it as a "national emergency". The number of suspended sentences for criminals who threatened victims with knives has rocketed by more than 900% in the past five years.

Richard Garside, director of the Centre for Crime and Justice Studies, said: "Over the past decade, sentences have already got a lot tougher. Those calling for even tougher sentences need to explain why they think this will work."

Hijab Protest Lawyer Gets 33 Years After Secret Trial

Law Gazette: New details have emerged of a secret trial in which a prominent Iranian human rights lawyer was sentenced to 33 years in prison and 148 lashes. Nasrin Sotoudeh, who is already serving a five-year sentence, was informed earlier this month of a court ruling issued after a one-day hearing in December, the League for the Defence of Human Rights in Iran said. Sotoudeh has been held in Tehran's Evin prison since June last year after agreeing to defend women charged with removing their hijab head-coverings in public. According to rights campaigners, Sotoudeh has been found guilty on seven charges: 'gathering and collusion against national security'; 'spreading propaganda against the system'; 'effective membership of illegal and anti-security splinter groups'; 'encouraging people to commit corruption and prostitution, and providing the means for it'; 'appearing without the sharia-sanctioned hijab at the premises of the magistrate's office'; 'disrupting public order and calm'; and 'spreading falsehoods with intent to disturb the public opinion'. The indictment includes charges that Sotoudeh 'removed her hijab during family visits in Evin prison'; 'was a prominent, active and organised member of Defenders of Human Rights Centre'; 'received €50,000 [disguised as the] Sakharov prize for her subversive actions'; and 'was involved in a call for a referendum'. Judge Mohammad Moqisseh sentenced Sotoudeh to the maximum on every charge, adding up to 29 years. The judge then added four more years under a provision covering multiple offenders. Sotoudeh was unrepresented in court. She has 20 days to appeal the ruling. The sentence attracted widespread condemnation. Amnesty International described Sotoudeh's treatment as an 'outrageous injustice'. The Paris bar last week unanimously elected her an honorary member.

R (Youngsam) v The Parole Board [2018] EWCA Civ 229.

The case concerned a prisoner serving a determinate sentence who had been released on licence but then recalled to prison. He complained that there had been a delay in convening a Parole Board hearing concerning his detention, and that this breached his rights under article 5(4) of the European Convention on Human Rights (ECHR).

The principal issue on appeal was whether article 5(4) of the ECHR applies at all to recalled determinate sentence prisoners. This in turn raised the question of what was the ratio decidendi of the Supreme Court's decision in Whiston v Secretary of State for Justice [2015] AC 176. In a judgment backed by the majority in Whiston, Lord Neuberger had opined that article 5(4) did not apply at all to this class of prisoners (save perhaps in unusual circumstances). But in a partly dissenting judgment, Baroness Hale had stated that – since the case could and should be determined on a narrower basis – the majority's remarks to that effect were obiter dicta.

The Court of Appeal unanimously held that the majority's view in Whiston about the scope of article 5(4) formed part of the binding ratio in that case and therefore had to be followed by all lower courts. Nicola Davies LJ gave the lead judgment, explaining that Lord Neuberger had expressed this view after carefully analysing the previous case law, and had stated that he wished to "confront squarely" and "grasp the nettle" regarding the difficulties in those cases. Since this analysis clearly formed a core part of the reasons treated by the Supreme Court as necessary for its decision, it formed part of the ratio and should be followed. It was important to recognise that Baroness Hale's remarks had themselves been obiter. Further, the Supreme Court had subsequently affirmed and applied the majority's reasoning in Whiston in Brown v Parole Board for Scotland [2018] 1 AC 1. Haddon-Cave LJ agreed.

Leggatt LJ concurred, but took the opportunity to discuss and consider a range of judicial and academic statements about the doctrine of precedent, and what parts of a decision are to be treated as part of its ratio. His insightful analysis emphasised the importance of the reasoning given in the precedent case in identifying its ratio. But he concluded that, in cases where there was room for argument, finding the ratio involved a multi-factorial assessment that took account of the "wider legal context". This process admitted of a degree of "flexibility", making it "impossible" to provide a simple definition or test for what constitutes the ratio, of the kind some academics had proposed. However, he sought to give guidance on the kinds of factors that could be relevant in discerning between ratio and obiter in precedent cases.

'Crisis Management and Firefighting': Court Workers Speak Out About Closures

Justice Gap: Four out of five court workers felt that the court reform programme would have a detrimental impact and two thirds believed that court users would receive a worse service, according to a survey of court staff by the Public and Commercial Service Union (PSU). The results of the research were revealed at a meeting called by Justice Alliance and Transform Justice, in response to a new House of Commons' Justice Committee inquiry into the implications of the £1.1 billion programme of reforms underway in our courts.

A PSU representative, who did not want to be identified because she was also a court service worker, argued that the reforms were driven by the target 40% Ministry of Justice budget reduction in the ten years ending 2020, 'rather than any genuine desire to improve access to justice or service'. Life in the courts was one of 'workarounds, crisis management and firefighting', she said. A survey of the union's members last year fund that only 21% thought that where changes were being made within HMCTS they were for the better, and only 33% agreed that reform will mean people using the service will receive a better service. The PSU member described the court service's engagement with its members regarding court reform has been 'at best poor and at worst non-existent'.

The programme of reforms, which started in 2014 under the then Justice Secretary Chris Grayling, and has since expanded, aims to create services that are digital by default and design, including digitising paper-based services, moving cases online, introducing virtual hearings, and centralising customer services. It also involves court closures. According to the PSU, by March 2023, the HM Courts and Tribunal Service (HMCTS) aims to employ 6,500 fewer full-time equivalent staff, spend £2.4 million less on physical courtrooms and reduce annual spending by £265 million.

Campaigners were concerned that the court reform being rolled without proper research and data into the impact of the reform on access to justice. There was 'tons' of user research that was not in the public domain, said Penelope Gibbs, founder of Transform Justice, and there had been no public consultations on 'swathes' of the programme so far and 'very little' parliamentary scrutiny.

Rhona Friedman, a criminal defence solicitor and co-founder of the Justice Alliance, said that

whilst there were advantages to working digitally, there were 'huge concerns' about some of the impacts of it, 'none of which have been openly consulted on'. 'Often the tech doesn't work' at video hearings, Friedman pointed out, and you have 'physically disenfranchised people sitting in a video booth in a prison who just think that the process that they're involved in, in which they are the defendant and on which their life depends, to some extent, is going on around them in an often farcical way'.

Penelope Gibbs highlighted that no research or data had actually been collected on the impact of video hearings in the criminal courts since their introduction in 2000, making the idea of introducing them into the civil courts without research 'odd'. Citing the 'massive' increase in video links being used by the US Immigration under the Trump administration, which has coincided with a drop in the legitimacy that's prescribed to those processes, Friedman said that her 'fear' is that we are going to experience that same legitimacy issue here in the UK.

Friedman described her concerns around the security of the digital processes. She said she had accidentally dialled into a supposedly secure link between a probation officer and high security prison, whilst trying to connect to a client in the prison, and could hear everything. 'It doesn't give me a lot of confidence in terms of malign interventions in my, what should be legally professionally secure conversations with my clients, sometimes in very difficult and controversial cases', she said.

Sue James, supervising solicitor at the Hammersmith and Fulham Law Centre, raised concerns about the impact of court closures on access to justice. So far the government has closed 258 courts since 2010 and couldclosemanymore. James stated that following three court closures in Hammersmith, her work was moved to Wandsworth, and it is now proposed that her work will be moved to Clerkenwell County Court, which is operating with reduced staff and has already been sent work from Bow County Court and Lambeth County Court following their closures. James said it was a 'long way for my clients to go', approximately 70% of whom have protected characteristics such as mental and physical disabilities with very little money for travel, which of course 'has repercussions for access to justice'. There had been 'no analysis' about what impact moving across the river had on clients, James argued. 'We don't know how many people have not made it [to court] to save their home.' She highlighted findings from research conducted by Dr Olumide Adisa on the impact of magistrates' court closures in Suffolk. The research found that Suffolk clients were having to travel 40 miles to get to court, which resulted in defendants simply not turning up for their hearings. This led to a 10% increase in arrest warrants in that area of Suffolk as the police were having to go and arrest defendants for failure to show and deliver them to the court, effectively acting as a 'taxi service' for HMCTS.

HMCTS has publicly committed to 'using insights from external research and academia to validate and challenge' their approach to evaluating the impact of the reform programme. The Legal Education Foundation (TLEF), together with academics from UCL and the University of Oxford, organised expert workshops to help produce a set of recommendations to inform the development of 'a robust evaluation framework' and have subsequently produced a draft report of the same.

Dr Natalie Byrom, the TLEF's director of research, stated that it had been made clear from the workshops that in order to understand the impact of court reform on the fairness of the justice system, HMCTS needed to commit to collecting data on the outcomes and protected characteristics under the Equality Act 2010. The workshops also highlighted the existence of an 'irreducible minimum standard of access to justice' and argued that this standard should be adopted as the 'basis for any evaluation' of the reform programme. The irreducible minimum standard includes access to the formal legal system; access to an effective hearing; access to a decision in accordance with substantive law and access to remedy. 'The current reform programme is fundamentally altering the processes through which justice is delivered, and as such, it is incumbent on reform leaders to demonstrate (or create the data that enables others to demonstrate) that new systems do not impede access to justice', the group argued. 'We are going into this huge new change on an evidence basis which is incredibly thin with indications that it might prejudice access to justice in many ways,' said Transform Justice's Penelope Gibbs.

US Threatens International Criminal Court

(Washington, DC, March 15, 2019) – The United States decision to impose visa bans on International Criminal Court (ICC) staff will imperil accountability for grave international crimes, Human Rights Watch said today. US Secretary of State Michael Pompeo on March 15, 2019 announced that the bans will apply to ICC personnel involved in the court's potential investigation of US citizens and may possibly be used to deter ICC investigations against citizens of US allies.

The US action appears to have been spurred by a possible ICC investigation in Afghanistan that could examine conduct by US personnel and by a possible investigation in Palestine that would likely include conduct by Israeli officials. ICC judges will determine whether an Afghanistan investigation will be opened. The ICC prosecutor will decide whether to proceed with a Palestine investigation. "The US decision to put visa bans on ICC staff is an outrageous effort to bully the court and deter scrutiny of US conduct," said Richard Dicker, international justice director at Human Rights Watch. "ICC member countries should publicly make clear that they will remain undaunted in their support for the ICC and will not tolerate US obstruction."

The ICC is the permanent international court in The Hague with a mandate to try those responsible for genocide, war crimes, crimes against humanity, and the crime of aggression. The international community created the ICC to fight impunity for these crimes, following the horrors of genocide in the mid-1990s in Rwanda and in the former Yugoslavia. The ICC is a court of last resort and will only open investigations if national authorities are unwilling or unable to conduct genuine national proceedings in these cases. ICC judges have yet to rule on the ICC prosecutor's November 2017 request to investigate certain crimes committed in the context of the armed conflict in Afghanistan since May 2003. In addition to grave crimes by the Taliban and Afghan government forces, the court could also investigate alleged crimes by foreign forces – notably those by the US military and Central Intelligence Agency (CIA) – most of which are alleged to have been committed between 2003 and 2004. Pompeo also announced that the same policy may be used to deter ICC investigations of allied personnel, including Israelis. The ICC prosecutor is examining alleged crimes by Israelis and Palestinians in Gaza and the West Bank. Palestine is an ICC member country.

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.