Cole Family Truth Campaign

In the early hours of the morning on Sunday 6th May 2013, Julian and some of his friends who were enjoying a night-out at Elements Nightclub on Mill Street in Bedford were asked to leave. Initially they walked away but then Julian, seemingly intent on requesting a refund, returned alone to the club On returning to the venue, Julian was seized by security who immediately passed him over to several police officers present outside the club. Much of what took place is caught on CCTV but the crucial moments of what happened when the police officers took hold of Julian is not captured on CCTV. Witnesses saw Julian dragged unconscious across the road by officers in the direction of a police van. By this stage his neck had been broken; he had suffered a serious spinal injury and was unresponsive. Julian was lifted into the police van and driven to Greyfriar's Police Station. He remained unresponsive and an ambulance was called. Julian suffered a severe brain injury due to a lack of oxygen reaching his brain and had a cardiac arrest. Initially Julian was transferred to Bedford Hospital but he was then transferred to a hospital in Cambridge specialising in head injuries. Julian had suffered a spinal injury called a 'hangman's fracture'. This kind of injury, as the name suggests, is associated with the sudden and violent pulling backwards of the head, usually when there is a counter force against the body. Julian is now paralysed and has brain damage. He is resident in a care home because he needs 24 hour nursing care.

About The Cole Family Truth Campaign: Julian's family have now decided to speak out about what has happened to Julian, and their attempts to get to the truth, because they feel the IPCC investigation stalled and ground to a halt about a year ago. The IPCC investigation is approaching its second anniversary and Julian's family who visit Julian every day and live with the heartbreak of seeing their athletic 21 year old lying impassive, need answers:

Find out what happened to Julian on 6th May 2013 after he was seized by officers of the Bedfordshire Police Constabulary. Find out who in particular was responsible for using the force on Julian that caused him to suffer a broken neck.

See the individual responsible for breaking Julian's neck held to account in the criminal court.

To see the officers who failed to take basic first aid measures to immobilise Julian's neck at the scene, or call for an ambulance held to account in the criminal court.

To see the officers who dragged Julian and bundled him unconscious/paralysed handcuffed with his neck unsupported into the back of a police van held to account in the criminal courts.

To see the officer who diverted an ambulance at the scene away rather than calling on the paramedics inside for assistance to be held to account in the criminal court.

To see the officers who attempted to cover up what had happened by falsely alleging that Julian was 'chatty' in the police van, and that he had consumed a lot of alcohol, held to account in the criminal court.

Contact the Cole Family Truth Campaign: colefamilytruthcampaign@gmail.com

Hostages: 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 Romero Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan, Ihsan Ulhaque, Richard Roy Allan, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Ray Gilbert, Ishtiaq Ahmed.

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Court of Appeal in 'Dereliction of Duty' over Reluctance to Review Jury Decisions?

Laurie elks, Justice Gap: I would like to comment on the issues raised by the triangular dialogue between the House of Commons Justice Committee, Lord Judge and Professor Michael Zander. My analysis is based mostly on my experience as a member of the Criminal Cases Review Commission (CCRC) from 1997-2006. I am not aware (but may stand corrected) that there have been any significant developments of law or practice subsequently which would affect my conclusions. I will raise – and attempt to answer – eight questions directly engaged by the current debate; and then add two further questions which seem to me to have some bearing on the issues.

1. Does the existing statutory safety test for appeals sufficiently encompass 'lurking doubt' cases? In my opinion the existing appeal test is perfectly fit for the purpose of resolving lurking doubt cases. It is no doubt unnecessary to remind readers of Justice Gap that the current test propounded by Section 2(1) of the Criminal Appeal Act provides that the Court shall allow an appeal against conviction if they think that the conviction is unsafe – replacing but not substantively changing the wordier test contained in the corresponding section of the 1968 Act (On this point, see the persuasive article by the late Professor Smith, The Criminal Appeal Acr 1995: Appeals Against Conviction [1995] Crim L R 920). The word 'unsafe' embraces any manner of doubt, concern or (tautologically) want of safety be it trial irregularity, misdirection, the impact of new evidence, anxiety about the trial verdict or any combination of the above. The words of the statute give no comfort to those who would seek to exclude, on policy or other grounds, any particular category of concern.

This was judicially confirmed in R v Criminal Cases Review Commission ex parte Pearson (2000) 1 Cr.App.R. 141 the first case in which the Divisional Court considered a substantive challenge to the CCRC's exercise of its powers and very much treated on all sides as a test case. Lord Bingham stated: 'The expression "unsafe" in section 2(1)(a) of the 1968 Act does not lend itself to precise definition. In some cases unsafety will be obvious, as (for example) where it appears that someone other than the appellant committed the crime and the appellant did not, or where the appellant has been convicted of an act that was not in law a crime, or where a conviction is shown to be vitiated by serious unfairness in the conduct of the trial or significant legal misdirection, or where the jury verdict, in the context of other verdicts, defies any rational explanation. Cases however arise in which unsafety is much less obvious: cases in which the Court, although by no means persuaded of an appellant's innocence, is subject to some lurking doubt or uneasiness whether an injustice has been done (Cooper [1969] 1 QB 267). If, on consideration of all the facts and circumstances of the case before it, the Court entertains real doubts whether the appellant was guilty of the offence of which he has been convicted, the Court will consider the conviction unsafe. In these less obvious cases the ultimate decision of the Court of Appeal will very much depend on its assessment of all the facts and circumstances.'

2. Is an amendment of the current test likely to prove helpful? In my opinion it is unlikely that the Justice Committee's proposal for the Law Commission to review the current test will be acted upon and if the Law Commission were called upon, I do not believe that they would recommend any change of the test. The present test gives the Court of Appeal broad and flexible power to act upon miscarriages of justice and does not need to be changed.

3. Does Professor Zander's charge that the Court of Criminal Appeal has acted in 'dereliction of its duty' by being 'overly reluctant to review jury decisions' stand up to analysis?

In research carried out in 1990 for the Runciman Commission, Kate Malleson found that the principle of lurking doubt as stated in Cooper [1969] 1 QB 271 was hanging on albeit being applied "very sparingly". She found that in 300 appeals considered in that year lurking doubt was referred to in eight cases and in six 'the Court found that there was a lurking doubt sufficient to render the conviction unsafe and unsatisfactory'.

I am not aware that there has been any quantitative research subsequently but in preparation of my book Righting Miscarriages of Justice?: 10 years of the Criminal Cases Review Commission 2008 (published by JUSTICE) I scoured the Lexis data base for appeal decisions in which the phrase was referred to in the years 2004-6. This limited research exercise threw up a substantial number of cases in which the phrase was used but the Court in each case concluded, almost formulaically, that whilst the principle of lurking doubt was acknowledged, it had no lurking doubt in the instant case.

Such quantitative analysis, even if done more comprehensively than my own limited exercise, does not put the matter beyond doubt. Appeals resembling cases disposed of yesteryear under the lurking doubt principle may now being settled under different 'categories' but with the same result – see point 6 of my analysis below. A refusal to acknowledge lurking doubt in terms does not of itself prove a dereliction of duty.

However, speaking only for myself, my readiness to give the Court the benefit of the doubt was dissipated by its shameful disposal of the CCRC's second referral of the case of Tony Stock (Stock [2008] Crim EWCA 1862 – see also The First Miscarriage of Justice: The 'Amazing and Unreported' Case of Tony Stock, Jon Robins Waterside Press 2014 for a full analysis of the case). For reasons of brevity, I will not go into the details of the case but it suffices to say that dispassionate analysis of all the information now available shows that there is absolutely no evidence worth its salt that Mr Stock committed the offence of armed robbery of which he was convicted. My last act as a Commission member was to persuade two reluctant colleagues that the conviction should be referred a second time. I argued that the case was a manifest miscarriage of justice and that the Commission's Statement of Reasons could be drafted to leave the court in no doubt of this fact. My colleagues were concerned that, be that as it may, the Court having previously decided against Mr Stock, would be loath to change its position now, however persuasively the facts were placed before them. We were of course all correct and the Court chose to uphold the conviction.

Of course, one anecdotal example proves nothing of its own. However, I am now personally convinced that the Court has developed a morbid distrust of convicted persons who persist in asserting their innocence. Moreover, it does not trust the CCRC not to act as "post-box" on behalf of persistent applicants and campaign groups acting on their behalf. Whilst I would not necessarily agree with Professor Zander or others about the scale of the problem this represents, I think that the phrase "dereliction of duty" is indeed apt.

4. What difference does the decision in Pope make? In Pope v R [2012] EWCA Crim 2241 Lord Judge set out the Court's stall as clearly as he could, no doubt with the intention to décourager les autres: 'As a matter of principle, in the administration of justice when there is trial by jury, the constitutional primacy and public responsibility for the verdict rests not with the judge, nor indeed with this court, but with the jury. If, therefore, there is a case to answer and, after proper directions, the jury has convicted, it is not open to the court to set aside the

the Supreme Court defined it as one in 1991. "Our system remains imperfect, and wrongful failure to disclose is not a mere hypothetical – it can, and does, happen, sometimes taking an extraordinary human toll and resulting in serious harm to the administration of justice," Justice Moldaver said in the ruling.

Joseph Arvay, a lawyer who represented Mr. Henry, now in his late 60s, said his client is pleased with the ruling. "It gives him everything he needs to succeed at trial," he said referring to the lawsuit. The federal attorney-general and British Columbia attorney-general had opposed weakening of the malice standard, and both said on Friday they are reviewing the ruling. Mr. Henry was jailed indefinitely as a dangerous offender in a series of sexual assaults in which a man had pulled a pillow case over victims' heads, making identification difficult. His case is notorious among wrongful convictions because he was shown in a photo lineup to an eyewitness while in a police headlock. He represented himself at his trial. When similar sexual assaults continued after he was incarcerated, prosecutors took another look at his claims of innocence. The suspect who had lived down the street was eventually convicted of sexually assaulting three women, and sentenced to five years in jail.

Probation 'Staffing Crisis' Leaves Public at Risk From Violent Criminals *Hannah Fearn,*

A "staffing crisis" in the probation service due to cuts and reforms is leaving the public at danger from violent criminals – with women who have suffered from domestic violence among the most vulnerable, unions and campaigners have warned. At least 1,200 staff will have left the probation service by the end of this year and the skills shortage means lower-grade employees are being asked to pick up the slack, taking on complex cases involving sexual and domestic violence. Rules to make sure only the most-experienced officers work on domestic-abuse cases are being disregarded as the service fights to stay on top of rising workloads. The losses are a result of planned redundancies and hundreds of staff retiring or changing careers due to disillusionment.

Frances Cook, chief executive of the Howard League for Penal Reform, said the rapid loss of experience could have a devastating impact on women. "There are only 9,000 probation officers to start with, and I think domestic violence is a particular worry. If somebody has already killed someone you know you need to treat them very carefully, but we know that domestic violence can escalate very quickly. Two women a week are killed by their partners."

Around 500 probation officers have chosen to take early retirement or leave the service since the Government split it into two, outsourcing the least-complex work to privately run groups known as community rehabilitation companies (CRCs). Ministry of Justice figures confirm that more than 200 had already departed by late 2014. An additional 700 redundancies have been announced by Sodexo – one of the largest private companies to win a contract to manage offenders, and which is now operating six of the 21 CRCs across England and Wales. Many of the employees transferred from the public sector to private firms as part of the reforms are also considering leaving.

Napo reports 375 probation vacancies in London which are being covered by agency workers, but agencies are struggling to find sufficiently experienced staff. New staff being recruited into probation will not be fully trained for at least another 15 months. To keep on top of the workload, jobs that should be carried out by highly experienced officers – those holding a degree and earning up to £37,000 a year – are being passed on to "probation service officers", an entry-level job which pays as little as £20,000. "We have already got a staffing crisis. With the redundancies as well there are significant staff shortages around the country," said Tania Bassett, head of press, parliament and campaigns at the probation officers' union, Napo. Ms Bassett said the situation was not only dangerous for the public but damaging for staff too. "If you haven't got the training to work with sex offenders it can have a very emotional impact on individuals."

racist" by Sir William Macpherson in 1999 following his report on the failings that led the killers of Stephen Lawrence to escape justice. The force, which has around 31,000 officers, has been dogged by the same claims ever since, most recently in the case of former firearms officer Carol Howard. She was awarded £37,000 at an employment tribunal last year having been targeted in a "malicious" and "vindictive" campaign of race and sex discrimination.

A spokeswoman for the Met said the "vast majority" of its officers carry out their duties "with professionalism and courtesy". She said: "The MPS treats each occasion when an allegation is made about a member of its staff extremely seriously and will fully investigate each incident. Where the conduct of staff is proven to have fallen below the standards of behaviour expected, the MPS will take robust action to ensure that its staff are appropriately disciplined and that lessons are learnt." But the spokeswoman added: "The Commissioner has recognised that there remains a risk that the MPS is still institutionally racist in some of what it does because there remain elements of disproportionality, despite significant progress over many years."

Problems also exist beyond the capital. The Bedfordshire PCs Christopher Pitts and Christopher Thomas have been suspended on full pay since March last year over their detention of Faruk Ali, a 33-year-old man with learning difficulties. The pair were cleared of criminal charges but remain subject to an Independent Police Complaints Commission investigation. The Independent obtained the figures after sending Freedom of Information requests to all 45 UK police forces. Of the forces that responded at least 3,082 officers are being investigated. West Midlands Police declined to comment.

Canada: Rights For Wrongfully Convicted To Sue Prosecutors *Sean Fine, Globe & Mail*

The Supreme Court of Canada has made it easier for wrongly convicted people to sue prosecutors for violating their rights in ruling on the case of a man who served 27 years in prison for a series of sexual assaults and was not told police suspected one of his neighbours. Since 1989, prosecutors in Canada have had immunity from lawsuits, except when a person could prove they acted maliciously. But confronted with the wrongful conviction of Ivan Henry of Vancouver, who was not told about 30 witness statements with inconsistencies, or sperm found at crime scenes that might, if tested, have exonerated him, or the suspect down the street, the Supreme Court made it easier to sue prosecutors who do not disclose information that could help the defence. The ruling from four of the six judges who heard the case sets a new threshold for lawsuits against prosecutors, allowing such legal actions if the prosecutor intended to withhold relevant evidence. Intent can be shown by proving possession of the evidence, and a failure to disclose it. The two other judges, including Chief Justice Beverley McLachlin, wanted to set the bar even lower, creating a no-fault scheme in which a prosecutor's failure to disclose relevant information could open them to a lawsuit.

The court was careful to move slowly in an emerging area of law known as "Charter damages" – compensation for violations of Charter rights by police, prosecutors and others – built on a ruling five years ago involving a 2002 strip search of Vancouver lawyer Cameron Ward. He was wrongly suspected of planning to throw a pie at prime minister Jean Chrétien. He sued corrections workers and was awarded $5,000. Mr. Ward was one of Mr. Henry's lawyers in his appeal to the Supreme Court of a lower court ruling denying him the right to sue unless he could show malice.

Justice Michael Moldaver, a former criminal lawyer who is the court's toughest voice on prosecuting crime, said it was important to set a high bar and not open the "floodgates" of civil action against prosecutors. Writing for the group of four judges, he said it was also important to deter wrongdoing, noting that full disclosure of the Crown's case against a defendant has been an obligation since

verdict on the basis of some collective, subjective judicial hunch that the conviction is or may be unsafe. Where it arises for consideration at all, the application of the "lurking doubt" concept requires reasoned analysis of the evidence or the trial process, or both, which leads to the inexorable conclusion that the conviction is unsafe. It can therefore only be in the most exceptional circumstances that a conviction will be quashed on this ground alone, and even more exceptional if the attention of the court is confined to a re-examination of the material before the jury.'

At one level, the pronouncement seems to me to be unexceptionable. Who can gainsay that a finding of 'lurking doubt' should rest, not on some 'judicial hunch' but rather on 'reasoned analysis of the evidence or the trial process' leading to the conclusion that the verdict is unsafe. It is the adjectives: inexorable conclusion; most exceptional circumstances which express the true intention. The process of reasoned analysis is the correct one but the bar has been set impossibly high.

Furthermore, it seems to me that the 'constitutional principle' gets in the way of reasoned analysis. I return to the case of Stock. Had the Court got to the point of conducting reasoned analysis of all the evidence, it could not have failed to conclude that there was lurking, indeed thundering, doubt. Instead the Court elected to treat the verdicts of the trial jury, and previous divisions of the Court itself, as somehow representing distilled wisdom on the case picking away in the most disdainful way at the new matters raised by the referral, like an anorexic with a Sunday roast, and declining to carry out the holistic 'reasoned analysis' of the case as a whole. I have described this elsewhere as the 'atomistic' approach and this remains a formidable obstacle to the consideration of referrals where there is even a hint of lurking doubt in the ether (Elks L: Miscarriages of Justice: a challenging view Justice Journal 2010 Volume 7 Number 1).

5. Was the Justice Committee right to be confused by Lord Judge's submission?

The Justice Committee was perplexed by the statement in the submission of Lord Judge that 'if having examined the evidence, the court is left in doubt about the safety of the conviction it must and will be quashed'. The Committee observed that: 'In the short time available to us at the end of the inquiry we were unfortunately unable to explore how this statement could be reconciled with the judgment in Pope, which we were told by the Court of Appeal represents a "very clear indication of what will be this Court's approach" in relation to "lurking doubt".' The Committee were right to be perplexed. Whilst there is nothing semantically inconsistent between the statement and the judgment in Pope the rhetorical adjectives in Pope give the game away.

6. How does the CCRC deal with lurking doubt cases? Thus far my analysis marches in step with that of Professor Zander but I feel that he does not do justice to the way the CCRC approaches applications which are characterisable as lurking doubt cases. The CCRC has been set up to investigate alleged miscarriages of justice and has been provided (at any rate up to a point) with the staff, resources and powers requisite for its investigative task. It is rare in practice that a lurking doubt case does not include some evidential chink which is susceptible to further investigation. Three cases, all as it happens involving sexual allegations, will illustrate this point.

In H [2005] Crim EWCA 1828 the complainant was convicted of sexual offences against his daughter and in G the same complainant's instrumental music teacher was convicted of a very similar catalogue of offences. Without going into details, the cases reeked of suspicion of false memory and indeed that would certainly have been clearer had the two cases (and the suspiciously similar allegations) been considered together. The Commission could perhaps have referred these convictions on the basis of lurking doubt simpliciter but decided to commission a report from a memory expert. His very clear evidence was that the complainant's detailed-sequential account of things said to have been done to her when she was three to four years

old was inconsistent with scientific understanding about the formation of memory of events in early childhood. Her account must have been based on later confected memories and the conviction was quashed. In Smith (Shane) [2003] EWCA Crim 927 the offence was attempted rape. The complainant had not seen her attacker (which took place at night) but stated that he had, for a man, an unusually high-pitched voice. S was a near neighbour picked up in house-to-house enquiries on account of his high-pitched voice. He was never exposed for voice identification by the complainant but interrogated at length to the point of confession. The police repeatedly put to S details of the offence (such as the layout of the house) and browbeat him into adopting the details put to him as his own account. The interviews were then edited so it appeared that S's confession account could be relied upon since it was informed by special knowledge. The Commission's Statement of Reasons contained ample material to quash the conviction on the basis of lurking doubt but also contained expert evidence of a forensic psychologist that S was both vulnerable and suggestible and therefore prone to making a false confession. The Court gave lurking doubt a wide berth but adopted the expert evidence as basis for quashing the conviction.

In G (G) [2005] EWCA Crim 1795 the applicant had also been convicted of a catalogue of sexual offences against his daughter the complaint being made 20 years after the last alleged offence. There were many concerning aspects of the complainant's evidence and the Commission made painstaking but unsuccessful attempts to seek out additional evidence (such as records of long-ago adolescent counselling). It established some small slivers of new evidence but referred principally on the basis of various trial irregularities and some case law including Bell [2003] EWCA Crim 619 which appeared briefly to provide a specific lurking doubt gateway for defendants like G who had no practical means of defending themselves against allegations of sexual offences in the distant past. In that case, the Court upheld the conviction applying the mantra of the finality of the jury verdict. I could cite many further cases but I trust that these three cases sufficiently illustrate why and how the Commission seeks to establish additional and specific bases of referral in lurking doubt cases.

7. How surprising is it that the CCRC has never used Section 13(2) which allows a referral in the absence of new evidence or argument in exceptional circumstances? I hope that these cases will demonstrate that the CCRC has by no means been perverse in failing to apply the exceptional circumstance provision of Section 13(2) of the Criminal Appeal Act 1995 which empowers the Commission to refer on the basis of lurking doubt – absent any new evidence or point of law.

I believe (and hope) that the CCRC would never exclude – as a matter of principle – any lurking doubt referral even if no point of law or new evidence can be identified. However, I believe in practice that it is almost inconceivable that the CCRC would not have the resourcefulness to identify and develop some new issue going beyond the matters canvassed at trial. That is why I think this part of Professor Zander's analysis is a distraction from the central issue.

8. Has the Court of Criminal Appeal moved the goalposts in lurking doubt cases?

It seems to me that in the early days of the CCRC the Court was more disposed to act on historic cases which carried the whiff of (dread words) miscarriages of justice. Cooper and McMahon [2003] EWCA Crim 2257 and Mills and Poole [2003] EWCA Crim 1753 are cases in point. Less well known than either of those cases was Brannan and Murphy [2002] EWCA Crim 120, a case which involved a Manchester gangland murder and a gallery of unprepossessing witnesses. The CCRC referred on the basis of very limited new witness evidence but the Court was prepared to consider this evidence and decided that it might have 'tipped the balance' of the jury's assessment of witnesses seen at trial. In all three cases, although

Court Gives Dead Man Six-Month Suspended Jail Sentence

A Greek court has convicted a dead man of stealing electricity from a power utility, giving him a six-month suspended jail sentence. His defence lawyer, Christos Bakelas, told the Thessaloniki court that his client was dead. He asked to have the trial deferred until he could deliver a death certificate. But the court refused, and on Tuesday convicted the man in absentia. Thessaloniki police records show the 46-year-old unemployed father of three died on 8 April, but Bakelas was not told until the eve of the trial. The man was charged last year after activists reconnected his power supply that had been cut by the electricity company for unpaid bills. Bakelas said he was astonished by the court's decision and had not experienced anything like it in his 25 years as a lawyer.

3,082 Police Officers Being Investigated for Alleged Assault *Paul Gallagher, Indpendent*

More than 3,000 police officers are being investigated for alleged assault – with black and Asian people significantly more likely than white people to complain of police brutality, according to an Independent investigation. Almost all of the officers under investigation for alleged violence against members of the public are still on the beat, with just 2 per cent suspended or put on restricted duties. Campaigners said the figures exposed a culture of brutality and racism in the way some officers deal with ethnic minorities. While British police have generally enjoyed a better reputation than their counterparts in the US, where allegations of racism have led to violent protests in Baltimore and Ferguson, there are concerns that some UK communities are losing trust in local officers.

According to figures obtained under Freedom of Information requests by The Independent, the Metropolitan Police and West Midlands Police – forces responsible for policing the most ethnically diverse parts of the UK – account for almost half the 3,082 officers under investigation for alleged assault around the country. Black and minority ethnic people make up one in three of London's population but represent 55 per cent of alleged victims of brutality by Met officers. The disparity is even worse in the West Midlands where nearly half of assault complaints against police come from black or Asian people – though just 14 per cent of the population is black or ethnic minority. This means black and Asian people are 3.5 times more likely to allege assault by officers.

Desmond Jaddoo, founder of Birmingham Empowerment Forum, said the relationship between police and the black community was one of "oppressor and oppressed". He said: "Trust and confidence in the police is still at its lowest. I'm not anti-police. The problem is some officers are abusing their power." Of the 146 ongoing police assault investigations in the West Midlands where ethnicity is recorded, 71 complainants are white (49 per cent) and 69 black or Asian (47.5 per cent). In six cases the ethnicity is labelled "other". Another 83 cases are being investigated where ethnicity is not recorded. The figures represent further embarrassment for a force which recruited just one black officer last month among 162 new recruits. In total 450 West Midlands Police officers are being investigated and five have been suspended. Tippa Naphtali, a community activist in Birmingham, said: "Some officers have it in their heads that any black person, regardless of size, is going to be violent and their response coincides with that in terms of levels of brutality or restraint they use."

The Met currently has 1,185 officers on full duty even though they are under investigation regarding 714 alleged assault cases. Ethnicity of the complainant has been recorded in 443 cases. Of these 191 (43 per cent) alleged victims are white and 243 (55 per cent) black or Asian. In 33 additional cases, 28 Met officers are on restricted duties and five more suspended following assault allegations. In 10 cases the ethnicity was not recorded and of the remaining 23 cases white complainants account for 10 (43.5 per cent) and black and Asian 13 (56.5 per cent). The figures raise further questions for the Met, which was branded "institutionally

application has a conviction for an offence which resulted in: (a) a sentence excluded from rehabilitation; (b) a custodial sentence; (c) a sentence of service detention; (d) removal from Her Majesty's service; (e) a community order; (f) a youth rehabilitation order; or (g) a sentence equivalent to a sentence under sub-paragraphs (a) to (f) imposed under the law of Northern Ireland or a member State of the European Union, or such a sentence properly imposed in a country outside the European Union."

I know this because in May 2004, a prisoner attacked me attempting to slash my throat in an unprovoked and random attack. I needed twenty-eight stitches to sew up the wound in the back and side of my neck. The C.I.C.B. refused my application for compensation, in effect stating that it was my own fault for being in jail with violent prisoners. As I was serving a term of imprisonment I was barred from receiving compensation for the injury I sustained. The fact that I shouldn't have been in prison in the first place was ignored by the CICB. The media were happy that prisoners were barred from compensation and the public seemingly satisfied that prisoners deserved to be scalded, slashed, stabbed and harmed because they were in prison, with their attitude being it's their fault they are in there so it's right that they won't be given any compensation from the C.I.C.B. I believe this to be wrong. A prisoner who suffers a loss because of another's criminal act should be properly compensated.

Going back to the issue of compensation for miscarriages of justice, I am speculating that the Ministry of Justice has simply and informally harmonized their rules regarding compensation for prisoners and ex-prisoners. So by analogy, the State would appear to have decided that anyone who has served a term of imprisonment should be barred from receiving compensation for a miscarriage of justice. This might explain how it is that the State has evaded paying out compensation to these latest miscarriages of justice cases. It suggests to me that what the police and prosecuting authorities have done in pursuing someone for a certain crime was justified because they had already been convicted of a crime before. It would appear to be the case that the statutory compensation system for criminal injuries and for miscarriages of justice are now administered using the same rules. If you have served a term of imprisonment then statutory compensation for a miscarriage of justice is not automatic. It is not barred completely but any claim has to be justified. Analogously then, both Victor Nealon and Barry George were unable to justify compensation for their miscarriage of justice because of their previous convictions.

To be labelled 'not innocent enough' when being denied compensation for a miscarriage of justice is, it would seem, the way the courts justify these wrongful imprisonments. Not paying compensation for a miscarriage of justice is a human rights issue but sadly the media appear to demonize people previously convicted of crime who in their eyes deserve little sympathy even when released from wrongful imprisonment. I know there will always be hard cases that cause concern where someone with a previous conviction is given compensation for an overturned conviction, but in the cases of Barry George and Victor Nealon they should be compensated for the miscarriage of justice they suffered, just as any victims of crime should be compensated for any loss they suffered.

Just because a person is in prison, or has served a term of imprisonment, it should not mean they are forever marginalised and excluded from any benefits available to the rest of society. A conviction should not automatically demonise that person for life so that, in effect, their punishment is never ending. A miscarriage of justice is wrong, and compensation should always be paid by the State when it caused the wrongful conviction by prosecuting a person when they should not have done.

Jeremy Bamber: A5352AC, HMP Full Sutton, Stamford Bridge, YO41 1PS

there was some new evidence to support the referrals they were in reality cases in which the Court was prepared to act against possible miscarriages of justice.

I have argued elsewhere that the Court's attitude changed as part of the row back from the House of Lords' decision in Pendleton. As the Court takes a so much more restricted view of jury impact in any new evidence case, this restrictive approach must affect its approach to 'slender' new evidence cases, such as the ones referred to above, still more no new evidence cases. I think it most unlikely that the Court would entertain a case like Brannan and Murphy in its present mood.

The two further points I would like to comment on are as follows.

9. How do the activities of campaigning organisations affect the current debate? I have already commented that I think the Court fears that to entertain appeals on the basis of miscarriage of justice or lurking doubt will encourage the CCRC to allow itself to be used as a tool of campaigning organisations. I think that suspicion, if it exists, was grossly unfair in my period as Commission Member and – I am sure – still is. It was a slightly vexing aspect of the job to be exposed from time to time to personal vilification from some campaigning groups but it was part of the job. I do, however, feel some concern when I see campaigning groups presenting cases as conclusive miscarriages of justice even where there is formidable evidence against the convicted person. Virulent campaign groups can add colour to the Court's apprehension – however unfounded – that any concession to lurking doubt will open a floodgate of appeals.

10. Does the CCRC remain equipped to do its investigative job? I have suggested above that in the past, cases which might have been referred on the basis of lurking doubt, were in fact referred on the basis of new investigation and information. I am not aware that there has been any acknowledgement in the CCRC literature of the very major role played in many referrals by the CCRC's investigation officers, Ralph Barrington and Clive Harding, both formerly very senior detectives. The investigative experience of these officers greatly assisted the CCRC to direct the use of its powers to generate the case for referrals. I am very concerned that these posts were allowed to lapse when the holders retired. I may be wrong but I have a real concern that without the 'nous' of highly experienced investigation officers, the work needed to convert lurking doubt cases into solid referrals may be missed in some cases.

Wrong in Principle, Pointless in Practice: Grayling'S New Criminal Court Charge

'This policy not only offends the values of fairness, proportionality and justice, but will, in reality, amount to nothing more than a fruitless exercise in debt creation – it is therefore both wrong in principle and pointless in practice.'

Tom Smith, Justice Gap: Shortly before the dissolution of Parliament for the General Election, justice secretary Chris Grayling announced that new fees for criminal court proceedings would shortly be introduced and the bill handed to those defendants convicted of offences. The timeline for the change has been remarkably speedy. On 12th February 2015, the Criminal Justice and Courts Act was granted royal assent. Six weeks later, the policy – enabled by Section 54 of the statute – was announced and laid before Parliament. Just over a fortnight later, the charge was enacted by statutory instrument. The policy introduces a substantial shift in the burden of costs. Any convicted offender over the age of 18 has to pay a fixed, non-discretionary fee. This ranges from £150 for a guilty plea to a summary offence in the Magistrates' Court, up to £1200 for conviction after a trial in the Crown Court. The fee is not means-tested. Potentially, failure to pay can result in 'a term of imprisonment… as a last resort' (here, PDF). The Government argued that the policy is justified on the basis that 'adult offenders who use our criminal courts should pay towards the cost of running them… reducing the burden on taxpayers'.

Unfair, Unjust and Disproportionate: The policy introduces a very substantial change to the structure of court fees which will effect millions of people: defendants, lawyers, magistrates, judges, legal advisers, court staff. Whilst the Government undoubtedly has the prerogative to introduce any policy it likes, this one was finalised and implemented without any form of consultation with representative groups such as the Law Society and Magistrates Association (here). Such groups might have provided the Justice Secretary with an 'on-the-ground' perspective of the impact the new charge might have. Presumably, the policy was not subjected to such scrutiny because a variety of critical arguments would have been raised, posing a barrier to a swift introduction. The timing of the announcement causes one to speculate whether the Justice Secretary foresaw this and sought to circumvent such obstacles. As stated above, the policy was unveiled on virtually the last day of the Government's term, with the fees introduced during election purdah. Moreover, the announcement came in the wake of the legal profession's unsuccessful judicial review of the Justice Secretary's legal aid reforms. Perhaps the Justice Secretary figured that the demoralisation of this recent defeat might hobble open opposition to the new court charge. Several commentators have therefore concluded this change was ushered in through 'the back door'.

The court service is a public service. Like schools, the NHS, or the structures of Government, it is paid for by the taxpayer and run for the benefit of all. Not everyone has a child, but we accept that educating children has essential social benefits. Similarly, justice is a public good. It is necessary to thoroughly and fairly consider accusations of criminal behaviour. The court fees in question relate not to the provision of lawyers for the prosecution or defence, but for the running of courts, payment of court staff (including the judiciary) and the general administration of the justice process. Whether someone is innocent or guilty of an offence, these processes are essential. They must exist and have done for centuries. They do not simply benefit defendants; they benefit victims, witnesses and the public at large. Compelling guilty defendants to shoulder a substantial burden of the cost suggests that they are the only financial drain on the court system and the only beneficiary of its functions. Any experienced practitioner will explain how much time is wasted by a variety of parties, particularly by the Crown Prosecution Service: a chronic problem resulting from – unsurprisingly – the underfunding of this crucial arm of the justice system. Time is also consumed by witnesses, securing of interpreters, the transfer of prisoners, and defence representatives too. The point being that defendants, alone, are not the creators of court costs.

Some might argue that by committing a crime, defendants have initiated the process. Without their actions, no costs would have been created. Whilst one can see some validity in this argument, there are a number of arguments one could explore about why people commit crime (no, not because they are 'evil') and the root causes of illegal behaviour which cast doubt on the pantomime villain role usually assigned to offenders. A comparison of the justice system with the NHS also raises doubts.

If someone causes their own injury or illness – plays with matches, performs a dangerous stunt, or attempts suicide – the NHS does not say: 'You created your own problems; once we've finished treatment, you must pay an extra fee.' That would clearly be punitive. The fundamental idea is that the NHS is a public institution which treats all those who need it, regardless of the source of the problem – or their means. The court system is no different and recent evidence suggests that the public consider it to be as vital an institution as the health service.

Moreover, many if not most defendants will have already made their contribution through

Compensation for a Miscarriage of Justice: Not Innocent Enough?

I wanted to write something about an issue that is causing me and many others concern regarding the paying of compensation to those who have suffered a miscarriage of justice. This is one of those subjects that seems to be reported in the media in a way that can be so easily misunderstood, certainly by me. I couldn't understand that if someone was freed on appeal, and therefore proven innocent, he or she could be deemed 'not innocent enough' to be granted compensation for having suffered a miscarriage of justice. Such a pronouncement by the State seemed quite odd to me.

How could one court hand down a judgement 'that a person was innocent' one week, and another court would then make the decision that they were not entitled to compensation the following week. It is drawing the conclusion that the individual who had been cleared was not sufficiently innocent to deserve compensation. The Judges appear to have gone quite mad by giving incomprehensible and seemingly incongruous rulings in such cases. Often the reasons given by the Ministry of Justice are that no one else has been convicted of the crime that the person was wrongly convicted of or that the person cannot prove their innocence sufficiently. Surely being proven 'not guilty' means innocent? It does to any reasonable person, as it does to me, but it doesn't mean that to the Ministry of Justice.

The compensation claims of Victor Nealon and Barry George are two important cases that spring to mind. There are no doubts that both of these men did not and could not have committed the crimes they were wrongly convicted of and both were rightly freed by the Court of Appeal. They were 100% innocent of the offences they had spent years in jail for and they should have been compensated by the State for having suffered so long in jail. The system got it wrong so the system should give them money to help make amends. Nevertheless both Nealon and George have previous convictions and have served terms of imprisonment for offences other than those they were wrongly convicted of. This, it would appear, makes a difference to them receiving compensation, but should it? Regardless of their previous convictions, I couldn't understand how someone 'could not be innocent enough,' so I did some research to understand how this principle might be applied informally across all parts of the justice system. I took a look at the rules of compensation more widely within the Ministry of Justice guidelines. There are clear and concise rules about giving compensation to anyone with previous convictions where they have served a term of imprisonment.

The current position with regard to compensation for a miscarriage of justice, would appear to have its roots in a change of the rules that took place about fifteen years ago regarding how the Criminal Injuries Compensation Board (C.I.C.B) paid out compensation. This organisation was set up in 1964 to oversee and regularize payments to all victims of crime where they had suffered personal injury or some loss or hardship. For instance, if a citizen had their arm broken during a robbery they would receive a set amount of money from the C.I.C.B. This led to The Ministry of Justice being heavily criticized in the media because prisoners were also able to receive pay-outs for injuries inflicted upon them whilst they were serving a term of imprisonment. An example might be where someone could have been attacked and injured by another prisoner, they would have received an automatic pay out from the Criminal Injuries Compensation. The media was outraged that criminals should be given money in the same way that members of the public were given money for their injuries. The knee jerk reaction by the State to this media frenzy was to rule that there would be no more compensation for any injuries suffered by a serving prisoner who had been a victim of a crime whilst serving a term of imprisonment .[1] "3. An award will not be made to an applicant who on the date of their

us a fantastic first step in any examination and a really powerful tool to use. “It’s simple, it’s quick, it’s accurate, it’s precise and it is easy to manipulate the data. And I think it is useful for court because everyone I’ve shown it to who isn’t medical has just been fascinated by these images.”

CT scanners use X-rays and computers to produce three dimensional images of the inside of a body, and, depending on the level of radiation applied, can produce clear and detailed representations of bone and soft tissue. During his talk Dr Shepherd showed radiology images of bullet contact damage to bone and others showing wound tracts and wound patterns. With the use of a CT scanner, knowledge about these and other kinds of violent injures can be gleaned without even breaking the seal on a body bag, let alone lifting a scalpel. “There are now specialist commercial companies who will sell people the option of a CT scan prior to a post-mortem examination on the basis that if they fail to establish a natural cause of death, they will refund the money if the person has to have a post-mortem,” said Dr Shepherd. He added: “This is driven by religious requirements. The Muslim and Jewish communities both dislike post-mortem examinations and need a very rapid turnaround in the result.” In parts of Australia such scanners have been used routinely in post-mortem examinations for years – but this is still a relatively novel concept in the UK.

High levels of radiation that would not be used on a living person because of health risks can be utilised to achieve high quality pictures. This also reduces the risk of forensic contamination and can provide “powerful” evidence in court that can then be retained as a record to clear up any "doubts" or controversy that may emerge later, Dr Shepherd said. He added: ”The other thing I’ve recently had a chance to play with is what I call a CT autopsy table where you actually have a whole series of screens, and by altering them, a bit like a magician you can actually go from skin through to bone and you can tip it, you can cut it and you can slice it whichever way you want simply by manipulating all those touch screens.”

The scanners remain prohibitively expensive, however - and in many cases decisions about postmortems ultimately rest with coroners. Peter Stelfox, who edits The Journal of Homicide and Major Incident Investigation, told PoliceOracle.com: “I’m sure Dick Shepherd is absolutely right. They [CT scanners] probably are the way to go but I’m not sure they are going to be the panacea. "My view would be it’s a great thing if we can afford it and provided you’ve got the ability to do a standard post mortem in those instances where you need it.” He added: “There would have to be a process by which the SIO and the pathologist had a discussion about whether a CT scan would be appropriate in a particular case, and if it wasn’t, you would definitely need the ability to say ‘We are going to go for a more conventional postmortem.’"

Deaths/Self-Harm/Assaults in Prison Custody

In the 12 months to March 2015 there were 239 deaths in prison custody – an increase of 14 compared to the 12 months ending March 2014. These deaths comprise of:

76 apparent self-inflicted deaths, down from 88 on the same period in 2014

144 deaths due to natural causes, up from 130 on the same period in 2014

4 apparent homicides, up from 3 on the same period in 2014;

15 other deaths, 11 of which are yet to be classified - awaiting further information.

Self-harm: 25,775 incidents of self-harm, up by 2,545 incidents (11%) from 2013

Assaults: 16,196 assault incidents, up 10% from 14,664 incidents in 2013

3,637 assaults on staff, up 11% from 3,266 incidents in 2013

2,145 serious assaults up 35% from 1,588 in 2013.

477 serious assaults on staff up 33% from 359 in 2013.

the tax system, as all citizens do for public services. Again, regarding the NHS, we do not say: ‘You’ve paid like everyone else, but because you are now using the system you must pay an extra fee.’ For those who might argue that unemployed defendants have not contributed, again, I would raise the example of the NHS: we do not insist that the unemployed pay an additional charge because they are not a part of the tax system.

In the 12 months ending March 2014, 1.16m defendants were convicted of offences in English and Welsh courts. The new charge is arguably tantamount to an additional tax on this very large group. Like the age-old argument about speed cameras, the policy is an easy way for the Government to make money (and from a group demonised by the general public). Moreover, with the numbers of court convictions falling (around 400,000 less than in March 2004), expanded use of technology in courts, and a plethora of efficiency initiatives aimed at criminal proceedings, one wonders whether a charge is even necessary for a shrinking court system.

The court system is not simply a mechanism for determining guilt and doling out punishment. Any time spent in court highlights that, more often than not, it deals with people struggling with serious social, physical, financial and emotional problems. It has a strong social service dimension. The court system exists not only to punish offending but to address it – and addressing it almost always requires addressing these problems. The court system is therefore a force for positive social change.

It has the legal power to direct offenders to undertake programmes aimed at tackling these problems. Its operation is of benefit to the wider public, not just the defendant. A key objective is to assist offenders in changing their behaviour, whether that be through drug or alcohol treatment, counselling, community service or, as a last resort, custody. Criminal activity is often the tip of the iceberg of a chaos existing in the lives of people across the country. Not all ‘criminals’ are inherently wicked and malicious people.

Many are desperate and under-privileged, trapped in lives that make crime more viable than lawfulness. The court system is an arbiter of social change. It deals with millions of troubled lives every year. To hand a large bill to such people is to de-emphasise the socially beneficial role the courts play and, more importantly, is likely to deepen the problems the court is seeking to address along with its partner agencies.

Punishment is a central part of the criminal justice system – and it should be. The additional fees demanded of convicted defendants are undoubtedly a punishment for offending. But, lest we forget, there already exists a system of punishment, commonly known as ‘sentencing’. Offenders are sentenced for crimes committed – fines, community orders, rehabilitative treatments, custody and other forms. Magistrates and Judges have more than adequate sentencing powers to deal with all the offenders before them.

The new charge is equivalent to a ‘top-up’ punishment – an extra clip round the ear, once the caning is over. A key feature of sentencing is judicial discretion, representing an inherent part of the separation of powers and the rule of law. The new court charge is mandatory. The judiciary MUST impose it on convicted defendants. This is no less than the executive tying the hands of the judiciary, offending the separation of powers and undermining the rule of law.

Defendants are currently eligible to pay prosecution costs of at least £85 (which is almost routinely imposed), must pay a victim surcharge (usually around £15) and contribute to their legally aided defence. They are already bearing fairly substantial costs, alongside their sentence. To add court fees that could be more than ten times these figures is a startling and unprecedented increase, especially since they are not clearly related to a specific ele-

ment of the court service. How they have been costed is unclear. The Justice Secretary may argue it is a fair apportioning of costs, but many would say this is disproportionate, punitive and populist – a method of super-taxing an unpopular section of society who are already being punished via a sentence, already pay costs, and are not the only beneficiaries of a functional and properly funded criminal justice system. For those who are guilty it might be argued that the new charge will act as an incentive not to waste court time. Whilst this has some merit, there are several issues with the argument.

First, it is not the role of the defendant to 'help' secure a speedy conviction. That burden belongs to the prosecution. *Second*, a defendant may not believe themselves to be guilty, despite the opinion of others. This can only be determined once the issues and evidence have been considered. This is the raison d'etre for the criminal justice system and a long history of miscarriages of justice has taught us that preconceptions of guilt and innocence can be very wrong. 'Guilt' is not always a black and white issue prior to a trial. Defendants do not always 'know' that they are 'bang to rights'. Equally, defence lawyers should not be tasked with the job of determining guilt or persuading their clients to plead. This would create, as Richard Wasserstrom termed it, an 'oligarchy of lawyers', interpreting justice behind closed doors (Wasserstrom R. (1975) Lawyers As Professionals: Some Moral Issues – 5 Human Rights, 6). A plea is a defendant's decision and their view is no less valid than that of the court, the prosecution, the defence lawyer or the public at large. *Third,* every citizen is presumed innocent until proven guilty and should be given the opportunity to test a prosecution case before a court of law. This is also of public benefit. It ensures that justice is open and that prosecutions are robust, legitimate and appropriate. Yes, it costs money: but that is money well spent if it means that criminal justice remains effective and fair. *Fourth,* if a prosecution case is water-tight, the majority of guilty defendants will plead as such and accept their punishment, regardless of the new charge. The change in policy will most acutely effect those defendants who genuinely have a viable case of innocence. Prosecutions which lack a strong evidential basis or are speculative should be tested, even when a defendant is guilty. The CPS must not be encouraged to run weak cases. If guilty and innocent defendants alike fold prior to a trial for fear of incurring large costs, then the prosecution will have fewer incentives to construct robust and reasonable cases. They will be able to 'get away' with flimsy prosecutions, which will inevitably lead to both the conviction of the innocent and the acquittal of the guilty. These are the ultimate distortions of justice, caused not by the testing of the evidence but by the testing of a defendant's finances.

One of the most objectionable implications of the new charge is therefore the influence it may have on choices of plea. A defendant who pleads guilty will pay, generally, a much smaller charge than a defendant convicted after a trial. This will act as an incentive to plead guilty early (which is clearly the intended effect). However, the desire to avoid large charges will likely impact on both the guilty and innocent, distorting decision-making and causing injustice. It is reminiscent of the system used for car parking charge notices: pay the smaller fee immediately or challenge the decision and risk the consequences of a bigger bill. This practice has been routinely abused and frequently criticised – most notably by the Justice Secretary's cabinet colleague, Eric Pickles. Moreover, a major criticism has been that such fees are used as an excessive punishment, rather than compensatory – as argued above.

For the innocent, the risk of incurring a large fee may persuade them to plead guilty. They may fear that they won't be believed, that they do not have enough evidence of their innocence (even though this is not required of them), or that they do not trust magistrates or

play a role in opinions on solitary confinement. As illustrated in an infographic distributed by CAIC, African Americans are even more over-represented in solitary confinement than they are in the prison population. In addition, while a majority of incarcerated people come from New York City, most prisons are located upstate, and most prison staff are white. Political support for solitary confinement is still large around the state, especially in those counties where the local economy relies heavily of the business of correction facilities, and where correctional officer unions have powerful connections inside the state legislature. Even in a liberal stronghold like New York City, where Mayor Bill de Blasio pledged to fix a correction system plagued by violence and dysfunction, reforms have taken place amid a climate of caution and sometimes skepticism.

"I don't think it is cruel and unusual," said Correction Department Commissioner Joseph Ponte in regard of solitary confinement, during a hearing at City Council last month. But people who have done time in "the bing," the nickname for the Rikers Island's Central Punitive Segregation Unit, see it differently. "Once you go into solitary confinement, all privileges are gone," said Hallie West, who has twice been in solitary confinement at Rikers. "Privileges mean: telephone calls, food commissary, your books, your music and all that extra stuff. They take it away from you, and they put it on the side. You might get your clothing if you're lucky." Since she first ended up in a SHU on Rikers Island in 1993, West said, things have gotten worse. Today, she said, people held in solitary confinement are never allowed out of the cell for any reason. Visits are heavily restricted, and inmates are denied the chance to make phone calls for several days at the time.

In March, De Blasio and Ponte co-announced a 14-point anti-violence agenda that includes a set limit of 60 days as the maximum amount of time that a person can spend in solitary confinement within any six-month period, and a ban on isolation for all inmates who are 21 or younger. Despite being a step forward towards a more humane approach to incarceration, it is not yet clear how significantly the agenda will actually reduce the use of solitary confinement. For opponents of solitary across the state, April 22 gave cause for encouragement, but also served as a reminder of the long road ahead. "Many don't believe as we believe, and it's our job to convince them that they're wrong," said Jeffrion Aubry, the democrat from Queens who first introduced the HALT Solitary Confinement Act in the Assembly. "They may not agree with us at the moment," Aubry said about those legislators that are unconvinced about the bill. "But information and right ultimately win out."

CT Scanners 'the Future' of Forensic Pathology *Josh Loeb - Police Oracle*

Post-Mortems to establish cause of death can now be done digitally, and experts believe such techniques will become increasingly commonplace. Increasingly sophisticated digital post-mortems will herald major changes in forensic pathology that could have ramifications for homicide investigations, experts believe.

Dr Richard Shepherd, described as the country's leading forensic pathologist, said CT scanning allowed cause of death to be determined before a body bag was even unzipped – but he warned that hospitals remained "guarded" about allowing their scanners to be put to such a use. "The difficulty we face with [this] post-mortem technology is that we have to be very nice to the radiology department in the hospital to let us push dead bodies through their outpatient waiting rooms," he told delegates at a conference taking place as part of the Forensics Europe Expo, adding: "They are very sensitive about having body bags sitting in the row of people having their arms and legs scanned." But he added: "Forensic pathology has changed. The addition of CT scanning is coming in this country – slowly and through commercial companies first off. "I would really like to be able to get hold of it and use it for all the forensic cases we have because I think it just gives

Harlem. “The encouraging news is that legislators, advocates, and the public have finally come together.” The HALT Solitary Confinement Act does more than simply reducing the use of solitary confinement. It also seeks to create alternative Residential Rehabilitation Units (RRU), which would substitute the isolation and deprivation of the SHU with treatment and programs of rehabilitation that would help incarcerated people prepare for their transition back into the general population and the outside world. On April 22, advocates for the bill met with legislators and staffs throughout the day. Organized in teams of four or five, activists spelled out the key features of the bill to Assembly members and state senators, some of whom were not yet familiar with the issue of solitary confinement. In some of the meetings, activists directly affected by incarceration system were able to share their life stories with the legislators.

Tama Bell, the mother of a 23-year old man who’s currently in jail, told Assembly Member David Weprin her son ended up in solitary confinement despite a long history of mental illness and after being diagnosed with a serious form of bipolar disorder. After only month locked up in a cell alone the size of an elevator, Bell said, her son began talking about suicide. She reached out to the elected officials in her district, and contacted both the state’s Department of Correction and the Office of Mental Health to let the officials know about her son’s situation. Finally, her son’s solitary confinement sentenced was reduced from 18 months to three. “I can’t even imagine him making it through beyond the three months,” Bell said, adding how lucky she feels that his son is still alive. Were the HALT Solitary Confinement Act in place, her son would have never walked inside an isolation cell in the first place. While her intervention helped improving the condition of her son, there are large numbers of less fortunate children whose families have no means to get them out of isolation.

Weprin was among the first Assembly members last week to add his name to the list of those who sponsor the legislation. By the end of day last Wednesday, six more Assembly members had decided to co-sponsor the bill, a sign that advocates have been effective in getting the attention of the elected officials on the issue of solitary confinement. “So many people did so much to make this day a success,” Scott Paltrowitz, Associate Director of the Prison Visiting Project at the Correctional Association of New York and an organizer of day’s events. “I feel honored, inspired, blessed, humbled and excited to be part of a movement that is challenging such horrific practices with such fierce advocacy, passion, dedication, energy, and love,” Paltrowitz wrote in an email to the activists who took part in the lobby day.

The dozens of activists coming from all across the state, organized by the Campaign for Alternatives to Isolated Confinement (CAIC), included a heterogeneous mix of people from different walks of life. While individuals cited different motives for taking part in the day, all of them share the belief that solitary confinement is inhumane and degrading. “I’m here just because I don’t want to live in a country where we treat anybody like this,” said Shirley Ripullone, who lives in Columbia County. “As an American who believes in the stated values of our country, I hate to see us acting [in a way] that if it were happening anywhere else we would be wary and self-righteous about it,” said Kenneth Stahl, a man who had no direct experience with solitary confinement but decided to mobilize in favor of the bill out of his own moral principles. Social workers, lawyers, members of religious communities, and people from the general public were joined by formerly incarcerated people and families of currently incarcerated people in an action that defied demographics.

A Long Road Ahead: Although lobbying efforts in Albany were successful, there are still significant obstacles that sweeping legislation like the HALT Solitary Confinement Bill will have to overcome before it will be able to make it to the floor of the Assembly, much less the Republican-controlled Senate. Partisan divisions are only part of the problem. Geographic and demographic splits also

juries to make the right decision. They may even fear the trial process and not consider it worth the trouble. Reputations and employment are often under threat, even after an acquittal. Going to trial, whether innocent or guilty, is a risk. Numerous miscarriages of justice have amply demonstrated the fallacy of the phrase, ‘if you’re innocent, you have nothing to fear’. An innocent person, under pressure and thinking of the future, may opt for the certainty of a quick conviction, a smaller bill and a lesser sentence rather than gamble on a trial. For defendants with mental health issues or financial problems, this decision may seem even more appealing as it means less stress, no confusing and intimidating procedures to maneouvre, and lower risk. Add to this the current incentive of the guilty plea discount scheme and you have a recipe for miscarriages. There is already – within weeks of the introduction of the charge – some anecdotal evidence of the innocent pleading guilty to evade additional costs.

Impractical and costly: For any person who has spent a significant amount of time in court, the idea that the new charges will be recovered from your average defendant is questionable. Financial penalties are currently the most common sentence in the criminal justice system. The amounts owed to the courts are enormous.

During the passage of the Criminal Justice and Courts Bill through Parliament, it was revealed that, as of July 2014, £549m was owed to HMCTS, with 48% of fines unpaid after 18 months (here). Offenders typically pay these fines in small weekly instalments (around £5 to 10 per week, depending on means). For fines that run into the hundreds of pounds, this can mean a year of repayment – without complications.

Since a large number of defendants are repeat offenders, they often have a backlog of debt. I recently observed a defendant who was still paying back over a £1000 worth of fines, a situation which had been ongoing for several years. Add to this the routine prosecution costs, victim surcharge and legal aid contribution, and you have a very large unpaid bill: and that is the status quo. Adding, potentially, several hundred pounds to these existing debts will undoubtedly increase it. The Ministry of Justice’s own impact assessment concluded as much, estimating a £1.2bn increase by 2020/2021 (here). Moreover, the scheme will cost around £25m to enforce – £5m of which will be spent on additional prison places. Whether one thinks it is right or wrong that so many offenders are failing to pay the money they owe, the bottom line is this: the Justice Secretary’s charge will not be paid back quickly, if at all, by many defendants. If so many are already struggling to clear their debts, the chances of additional (and much larger) costs being met are surely small.

Most defendants are indigent. Many exist on state benefits, and plenty are unemployed or lack fixed accommodation. Many have drink and/or drug addictions. Many have mental health issues, learning difficulties or a lack of education. These factors make financial self-management very challenging. Poverty and chaos often define their lives. This is not the only problem though. Substantial cuts to HMCTS over the years have meant that most courts no longer have reception desks or adequate administrative staff. Phoning a court, in my experience, is pointless. Courts need to manage the administration of the debts; if they are under-staffed and hard to contact, how will it work?

One cannot simply walk into a court and pay a fine. It must be done by direct debit, deducted directly from benefits or paid using a payment card. All of these, at various times, have problems or face disruption. Convicted defendants often have problems with benefit sanctions or a lack of fluid capital. Resolving such issues is very difficult when offenders cannot cannot contact courts or afford to travel to court centres. Often, offenders simply stop paying because they cannot find any other way of getting assistance. They are summonsed, magistrates

must sit and hear their account, and the issue is (possibly) resolved. This costs money – perhaps more than the original fine. Such a system is farcical and a false economy.

The notion that the new court charge must be recouped from defendants in addition to these existing difficulties belies the lack of understanding – as well as lack of empathy – that the Justice Secretary has for those faced with paying the fee and administering the policy. It demonstrates a lack of practical understanding of the court system. It also provides evidence of a lack of familiarity with fundamental principles of justice, the role criminal proceedings play in society and the importance of protecting parties to the process. Its introduction seems to be blind to both essential principles and the reality of practice – perhaps wilfully, given that the policy was imposed using procedural subterfuge. The Justice Secretary is required to review the charge three years after its implementation. I would urge whoever occupies Petty France from May 2015 to do so much sooner.

Legislation Limiting Solitary Confinement in New York Gains Momentum

A bill to significantly limit the use solitary confinement in New York state prison and local jails gained momentum last week, after nine Assembly members and two state senators agreed to support the legislation. The new sponsorships, secured after a day of lobbying that brought more than 120 activists to Albany from around the state, brought the total number of co-sponsors to 33 in the Assembly and 11 in the Senate. Citing the words of the United Nations Special Rapporteur on Torture Juan Méndez, who condemned long-term solitary confinement as torture, advocates convinced the legislators of the urgency of a sweeping bill called the Humane Alternatives to Long-Term (HALT) Solitary Confinement Act, which would limit the maximum time of isolation to 15 consecutive days, and a maximum of 20 days over any 60-day period.

The bill would also completely ban the use of isolation on individuals with mental illness, as well as youth, seniors, pregnant women and nursing mothers, and members of the LGBTQI community—groups that are particularly vulnerable to the effects of solitary, or prone to abuse while in solitary, or both "The practice of solitary confinement is subject to widespread abuse," Méndez said in a videotaped statement, which was played at an educational event held on the morning of April 22 in the Legislative Office Building. "It leads to the violations of fundamental human rights, including the right to personal, physical or mental integrity, and may constitutes cruel and inhumane treatment, and even torture."

Scientific evidence shows that people who are held in isolation for 22 to 24 hours a day suffer severe irreversible psychological damage, Méndez said, adding that long-term solitary confinement "must be absolutely prohibited." Studies have shown that people held in isolation often develop acute forms of paranoia and psychosis that cause them to mutilate themselves, and in many cases, to commit suicide. Figures obtained by the Correctional Association of New York from the New York State Department of Corrections and Community Supervision (DOCCS) indicate that the rate of suicide in New York state prison is 59 percent higher than the national average for incarcerated persons.

Among the individuals who took his own life while being held in isolation was Benjamin Van Zandt, whose mother, Alicia Barraza, also spoke at the morning event. Van Zandt was arrested and charged for arson when he was 17. Despite being diagnosed with mental health problems, he was placed in solitary confinement multiple times over the course of three years. He reportedly also endured repeated physical and sexual abuse at the hand of other incarcerated with him at Fishkill Correctional Center. At some point during his downward path through despair and acute depression, Van Zandt decided his life wasn't worth living, and hanged himself in his cell at the age of 21.

Since her son's death, Barazza has become a passionate advocate for the HALT Solitary Confinement Act. "There is absolutely no reason that another family should have to endure what we went through," Barazza said "I think we should put an end to the number of suicides that come from solitary confinement" said Selestina Martinez, a social worker born and raised in the Bronx who joined in the lobbying, which was organized by an advocacy group called the New York Campaign for Alternatives to Isolated Confinement (CAIC). Martinez's cousin, who has completed 23 years of a 25-year sentence, spent large portions of his time in solitary confinement. Now that he only has two years left before he will be released, Martinez said, her cousin is frightened to come home because he doesn't know how he will be able re-enter society after a long time spent in isolation. "It's kinda like throwing somebody into the water and expecting them to swim when they don't know how," she said, referring to people who have done time in solitary confinement.

Across the country, at least 80,000 people are being held in some form of isolated confinement, locked down in one- or two-person cells for 23 to 24 hours a day. In New York State prisons, the number is about 4,500 at any given time. Each year in the state of New York, the Corrections Department sentences over 14,000 people to terms in so-called Special Housing Units (SHUs). About 8,000 of those sentences, roughly 57 percent, result in three or more months in the 'box,' as solitary confinement is commonly called by those who experience it. About 3,900 of the sentences, nearly 28 percent of the total, send people to isolation for six months or longer. Some individuals are kept in "disciplinary segregation" for years at the time, while "administrative segregation" can last for decades.

"I've known men who lost their minds," said Tyrrell Muhammad, who spent seven consecutive years in solitary confinement, and spoke of his experiences at the morning event. During each day in isolation, Muhammad said, he had to fight hard to stay sane. A few week after entering solitary confinement, Muhammad began suffering the consequences of extreme isolation and idleness. First, he began having hallucinations while staring for hours at the flaking paint on the walls, which he saw transforming into the faces of famous people. One time, Muhammad said, he recognized Dr. Jay, a basketball star who played during the 1970s. Another time, he saw the face of Abraham Lincoln. "This is how you could tell you're slipping," Muhammad told Solitary Watch. After more time spent in complete isolation, Muhammad said, he often would not realize he had been talking to himself loudly for hours until a guard outside his cell told him to be quiet.

Contrary to what is commonly thought, only in a small number of cases people are put in isolation because of violent behaviour inside prisons or jails. Most of the time, they end up in solitary confinement for minor actions that are considered to be in violations of prison regulations, for example having too many postal stamps, occupying the wrong side of the cell, or talking back to a correctional officer. Pushing Legislation to Limit Solitary Confinement: The April 22nd morning press event featured sponsors of three bills to limit solitary confinement. A bill introduced by Assembly Correction Committee chair Daniel J. O'Donnell would ban solitary for youth and people with developmental disabilities, as well as individuals with mental illness, and states that solitary confinement sanctions be imposed as a measure of last resort, and for the minimum period necessary. . A bill already passed by the Assembly, after being introduced by Nily Rozic, bans solitary for pregnant women.

The lead sponsors of the HALT Solitary Confinement Act also spoke at the event. Assembly Member Jeffrion Aubry and State Senator William Perkins originally introduced the bill in January 2014. "We have a human rights crisis here in New York State. The cost of solitary confinement as a state and a society are immeasurable," said Perkins, a democrat from