Aamer Anwar, the lawyer for Bayoh, said this evidence should be central to the investigation by the PIRC and prosecutors at the Crown Office, with whom he raised the concerns over Paton's history several months ago. The relatives' allegations have been released by Anwar. Family members have also given accounts of what they say is Paton's history of racism. A close relative who met Paton by chance in Kirkcaldy earlier this summer told Anwar this month that he had asked Paton "are you still working?' He said 'no, I'm a total racist. I hate all blacks'. He said it quite normal and said 'I'm off work just now'." Swan and another relative said this close relative had told them at the time that Paton was more explicit, telling his relative "I'm not working just now. I've not worked since May. I'm trying to get out of the police since that incident with that black bastard. He was off his face, he deserved it."

The PIRC's investigation has also considered whether Bayoh died from "excited delirium", a controversial theory that some people detained by police can exhibit superhuman strength, high levels of stress and hallucinations. Bayoh is understood to have taken undisclosed amounts of the drug ecstasy earlier that night. In the weeks immediately following Bayoh's death, the Scottish Police Federation and Watson claimed that Bayoh had been very aggressive towards the police and that Bayoh had chased "a petite female police officer". Watson said she was the victim of an "unprovoked attack by a very large man who punched, kicked and stamped on her. The officer believed she was about to be murdered and I can say that but for the intervention of the other officers that was the likely outcome."

That CCTV footage, taken from the security camera of a nearby pub, was shown for the first time to Bayoh's partner, Colette Bell, and close family members last week by Frank Mulholland, the lord advocate. Speaking after viewing the footage, Anwar said: "He was not a terrorist, he was not brandishing a knife at police officers, he was not carrying a knife when officers attended, nor was he 6ft-plus with superhuman strength. His family state that he did not deserve to die." Anwar has previously disclosed that several of the officers involved were heavy: one weighed 152kg (24 stone) and a second 114kg. These allegations were put to Paton's lawyer, who declined to comment as an inquiry was ongoing.

Police Scotland refused to comment on the specific allegations made by Paton's family. Assistant chief constable Kate Thomson told the Guardian: "It would be inappropriate to comment as there is an independent investigation into the circumstances surrounding Sheku Bayoh's death, which is currently being carried out by the PIRC, and they have submitted an interim report to the Crown Office. Police Scotland remains committed to co-operating fully with the PIRC's inquiries. I would like to again offer my condolences to Sheku's family and we await the conclusion of the investigation."

Hostages: 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 Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, 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 Allan, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Ray Gilbert, Ishtiaq Ahmed.

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MOJUK: Newsletter 'Inside Out' No 552 (22/10/2015) - Cost £1

"Challenging Miscarriages - the Inability of the System to Accept Responsibility"

by Mark Newby, United Against Injustice, Conference, Liverpool, Saturday 10th October

Thank you for inviting me here today to speak to you about a subject that not only we are concerned about but that every right thinking member of society should care about - miscarriages of justice. Today I want to talk to the subject of the inability of the establishment to accept responsibility. My argument here today is that we are probably at the worst moment we have ever been at for tackling such miscarriages and I would say that one of the fundamental reasons for this is the inability of the machinery of the state to accept responsibility and admit error when they are wrong.

You see we are all human beings in the end and a system that relies on individuals will in the end deliver outcomes based upon human error. Whether you are the hapless accused, the Police, the Prosecutor, the Defence Counsel, the Jury, the Judge, the appeal lawyer, the CCRC or the Appeal Judges We All Make Mistakes And We Are All Infallable .Of course the fundamental problem with a system that never admits mistakes is that it is in a downward spiral - organisations that cannot admit fault in the end will become failing organisations. The easiest answer is to brush it under the carpet or find an excuse for why things went wrong.

But sticking plasters will not save a system which is bleeding from every artery.

As we will see one case which demonstrates better than most complete system failure is the case of Victor Nealon and you will hear from Victor this afternoon about this and the personal impact the best part of the last two decades have had upon him. But of course there are other illustrations and so for example I will also mention another case I am now instructed in and have been interested in for some time the Appeal of Susan May. Finally I would like to deal with the current spate of cases in the aftermath of the Savile scandal.

But before we enter into the cases let's consider how bad the situation is and look at some of the key issues facing us : 1. We have given control of our Justice System to the Media and Politicians 2. We have removed fundamental safeguards of those accused and each year these safeguards are eroded further 3. Public funding has been subject to a sustained and unremitting attack 4. Past cuts have encouraged poor representation and cases where every corner is cut 5. The CPS is in my view badly administered and massively underfunded, high quality advocacy and review in the CPS has been positively discouraged by the changes introduced for example the new policy on charging offenders in sexual offence cases leading to the lowest common denominator for prosecutions. 6. We have taken the Forensic Science Service which was admired across the World and decimated it and the retention of exhibits for another perceived financial saving. Now we leave exhibits in the hands of private organisations with restricted ability to access those exhibits when a case goes wrong. 7. The Police themselves have equally been attacked by substantial cut backs, large reduction in experienced investigators and a drive towards results at all costs. 8. The Courts are skewed in favour of convictions at all costs and we live in a world where "statistics" are the order of the day, we charge additional fines and disincentivise those who want to plead not guilty. 9. We have a public funding system for criminal appeals which is non-existent, difficult to achieve and awash with delay. 10. The Court of Appeal has become a hurdle which few get across in seeking to appeal their convictions and the Court itself has put in place significant hurdles. For example it has over recent years narrowed appeals based on

false memory, weakened fatally good character directions and recently introduced a requirement for original legal teams to comment on the grounds and factual basis. Whether through design or by accident the net effect of these reforms has been to narrow the opportunity to appeal. 11. The Supreme Court in Nunn has reinforced difficulties in obtaining access to Original Exhibits denying some appellants the opportunity to ever put right their wrongful convictions 12. The CCRC remains under funded, delays are wholly unacceptable and there remains a lack of dialogue and accountability for CCRC decisions 13. Even if you manage to achieve against all odds a successful quashing of your conviction it is virtually impossible to be compensated for what has happened to you.

This brings us nicely to the case of Victor Nealon, we will return to some of the other issues shortly. Victor Nealon was convicted of attempted rape in 1997. The victim was attacked outside a nightclub in Redditch by an unknown male. The evidence used to secure his conviction was a disputed ID parade and a weakened alibi. The court was under the impression that there was no DNA evidence available from the exhibits. This was a false impression. Most witnesses did not pick out Victor Nealon, there was no identification by the complainant or her friend and of the 3 that did 2 may have been privy to conversations with a police officer at the time of the ID and a third said at trial that he had a lurking doubt that he was right. As for the alibi it was a cheap attempt to attack Victor Nealon's credibility by contradicting videos which were said to have been rented from a Video Store. Importantly, Victor Nealon had offered his DNA to the police in order that they could have exculpated him from the offence. The officer did not arrange any DNA tests. What the jury did not know was that the exhibits had not been tested. Only the skirt of the victim was produced at the trial and the remaining exhibits remained in their sealed bags.

Following a first failed appeal by the same legal team, who it appears had taken their eye off the ball during the original case, Victor Nealon was left to apply to a newly formed independent body CCRC. His was not a fishing expedition to seek to obtain DNA evidence to support his cause, he knew his DNA was not on the items and he urged the commission to undertake those tests. In two separate applications advanced by experienced appeal lawyers, the Commission rejected the application putting forward - an erroneous proposition that "it did not undertake speculative tests". This was a serious error by the commission. You might have thought that the commission having been newly created it would have dedicated itself to cases such as these and sought to undertake that work.

The truth is of course that in those formative years for the commission it was swamped with old cases from the old C3 Division at the Home Office and the organisation quickly fell into one which it was never envisaged to be - a desktop case review body rather than a body set up to independently investigate miscarriages of justice. We now know of course that the Commission has taken an exceptional approach to this case and the Chairman has apologised in person to Victor Nealon. Apologies are a rare thing in the criminal justice system. But as we shall see this simply isn't enough.

In 2008 having been approached we saw the only way forward was to seek to do what the Commission would not and, as a result, with support from the Legal Aid Agency we commissioned DNA tests. As we know the results were startling - showing that on most of the victims clothing (intimate areas) an unknown male was identified as the contributor, not Victor Nealon. The Commission then undertook comprehensive work in its third review to discount every possible innocent explanation for the presence of the DNA. This allowed Peter Wilcock QC counsel for Nealon to say in the Court of Appeal on 13th December 2013 that such evidence was likely to have had a dynamite impact upon the Trial. That of course is not the end of the story in this case.

But this case isn't just about the CCRC in the affair: it poses questions of other players The Police. There was the disputed ID evidence in which Victor Nealon was not identified by any of the key

Sheku Bayoh Death In Custody: Has Officer Involved a History Of Violence?

Severin Carrell, Guardian: A policeman heavily involved in the detention of Sheku Bayoh, a Sierra Leonean man who died in police custody in Fife in May, has a history of violence and expressing racist views, the officer's family has alleged. The Guardian has seen testimony from close members of the family of PC Alan Paton, 41, who was one of the first officers on the scene before Bayoh died during his arrest on Sunday 3 May in Kirkcaldy. They claim that Paton violently assaulted his own parents 10 years ago. Family members also allege that Paton, who is referred to as Officer A in the official independent inquiry into Bayoh's death by the police investigations and review commissioner (PIRC), told one close relative after the incident this summer that he "hated all blacks" and was "a total racist". The police officer's family allege that senior officers in Fife allowed Paton to remain on active duty, deploying him as a community police officer, after his assault on his parents, Ann and John Paton, in 2005. They state that his mother was knocked unconscious after being pushed over by Paton. A spokeswoman for the PIRC, Kate Frame, indicated that these allegations would form part of the "complex and wide-ranging" investigation into Bayoh's death. "The commissioner fully empathises with the deceased's family and has reassured them that she and her team of investigators are objectively exploring all relevant lines of inquiry," the spokeswoman said. "Any appropriate further action arising from the findings of our investigation, including the consideration of criminal proceedings, will be a matter for the lord advocate to decide upon."

Members of Paton's family voluntarily approached Bayoh's family soon after his death to share their experiences. They said they had expressed deep concern to police in Kirkcaldy that Paton, who is on sick leave, remained on frontline duties immediately after the assault on his parents in 2005. One family member has said in a sworn statement that Paton "kicked lumps" out of his father, who was left with a badly bruised jaw and damaged ribs. The "substantial beating" left Paton's father with "mass bruising", the relative told the Guardian. That relative also alleges that Paton was involved with another officer in an assault on a drunken man in 2003, which was investigated by his force. No charges were brought. Now estranged from Paton, the family raised those concerns again three years ago after further disputes. They allege that senior officers told the family to stop raising their concerns.

Bayoh, 31, a trainee gas fitter who had no previous record of any misbehaviour or violence, died while he was being held down on the pavement within 30 seconds of being confronted by a group of four officers, including Paton. He was hit with CS spray, pepper spray and batons, and was held in wrist and ankle restraints. The postmortem report said Bayoh had nearly 30 separate injuries on his head, chest, lower legs and left arm, including a fractured rib, cuts, bruises and grazes. The cause of death is under investigation, but Bayoh's family suspect he died as a result of "positional asphyxiation", suffocating after being forcibly held face down on the pavement by the arresting officers. The postmortem report said Bayoh had petechial haemorrhaging, or tiny blood spots around his eyes, regarded by experts as likely evidence of positional asphyxiation.

Barry Swan, Paton's brother-in-law, told BBC Scotland that when one local commander spoke to a close relative who had raised the most recent concerns, "it was pretty much put in the way: 'Get back in your box, you're not going to be bringing this out, keep it swept under the carpet.'" Peter Watson, the lawyer for the Scottish Police Federation, which represents rank and file officers, said his firm PBW Law "is representing the interests of Mr Paton in the inquiry surrounding the death of Sheku Bayoh. The matters you raise have nothing to do with that inquiry." The federation's media spokesman refused several requests to respond to the allegations against Paton.

Pat Finucane Murder: Widow Lodges Legal Appeal Over Inquiry Ruling

The widow of murdered solicitor Pat Finucane has lodged an appeal against a ruling that the government was justified in not holding a public inquiry. The lawyer was shot dead by loyalists in 1989 and his family have campaigned for an independent inquiry to examine UK state collusion in the murder. Prime Minister David Cameron agreed to a legal review of the case in 2011. But he stopped short of setting up a public inquiry. The High Court judge, Mr Justice Stephens, rejected the legal challenge over the need for a public inquiry, in June.

In a statement on Wednesday, Geraldine Finucane's solicitor said a "full independent and international tribunal of inquiry where documents will be examined in public and witnesses shall be compelled to attend and be cross examined" remains "the only model capable of achieving the truth of Pat's murder". In September, the government failed in an attempt to make the family of Mr Finucane pay the costs of a legal challenge against the prime minister. A lawyer for the Northern Ireland Secretary told Belfast's High Court that as the June challenge had failed, the family should pay the full costs. But the judge rejected the application and ordered costs in favour of Mrs Finucane. *BBC News, 15/10/2015*

Double Miscarriage-of-Justice Victim Martin Foran in Payout Fight

A terminally-ill cancer patient who was jailed for two robberies he did not commit is fighting for compensation a year after he was exonerated. Martin Foran, 71 and from Manchester, served a total of 18 years in prison but was twice cleared on appeal. The Ministry of Justice said it only pays compensation when a conviction is quashed "because of a new fact." But, Mr Foran says despite being found innocent his ordeal has left him ill and unable to pay basic bills. Mr Foran was convicted in 1978 of robbery following an investigation by the since discredited West Midlands Serious Crime Squad. He was portrayed as an IRA member by a regional paper and served six years of a 10-year sentence. The conviction was finally quashed last year.

Between his release and his successful appeal, he was found guilty in 1985 of robbing a Birmingham pub landlord. That conviction was quashed on appeal in 2013, but not before he had served 12 years inside, during which time he spent 47 days in a rooftop protest and hunger strike at Nottingham jail. His wife Valerie even scaled a nearby roof in a show of solidarity.

Last year, Mr Foran held a three-week protest outside the Ministry of Justice in London as part of his compensation fight. He said he was told the justice secretary would speak to the West Midlands chief constable, but has not heard any update about this since. Speaking exclusively to the BBC, he said the London protest "nearly killed me. It is affecting my health but I will continue fighting to my grave. My health is worsening." He added: "I've had to walk the streets trying to find a solicitor who would represent me on a no-win no-fee basis. It has been soul-destroying. I can't even afford to run the car and the phone is about to be cut off. I'm also behind with the gas and electricity bill." Mr Foran said his dying wish is to get an apology for his family. "It destroys me that no-one has apologised to my wife Valerie and children for what has happened as they have suffered more than I have," he added. I would like to be able to go on holiday with my wife and enjoy what time we have left, but I cannot do this."

Speaking about Mr Foran's case, a Ministry of Justice spokesman said: "The fact that a conviction has been quashed by the Court of Appeal does not mean it was necessarily a miscarriage of justice." The BBC has yet to receive a response from West Midlands Police.

[Martin was fitted up by the notorious 'West Midlands Serious Crime Squad', 63 victims of the squad had their convictions quashed.]

witnesses. In respect of the limited identifications that did follow there remains the question of why the police officer dealing with the case was present at the ID Parade. There is the question why the same officer failed to act on the DNA evidence and why late rebuttal evidence over an alibi was not produced until the end of the trial. There is the question of why the officer arguably misled the Court and the CPS and continued to do so during the appeal investigation.

In a current atmosphere where the integrity of the police is called into question this case offers little comfort. It is yet another troubling case for the police. To West Mercia Polices credit they launched a fresh investigation to find the true suspect for the original crime and an ongoing investigation called for by the major crime review team into the original investigation and the officers involved was initiated by the Professional Standards Department. Unfortunately it is particularly disappointing to say that 18 months down the road that investigation is still running and the Professional Standards Department have fallen into serious delay with the investigation. At the same time Proceedings have now been instigated against the Chief Constable of West Mercia Police based upon misfeasance in public office, malicious prosecution and false imprisonment.

There are of course other players as well who should answer for what has gone wrong. We alluded to the Criminal Cases Review Commission and the apology that they have proffered both in writing and personally to Victor Nealon . There is no doubt that serious errors were made in failing to investigate the forensic position and relying on what they were told by the police. The issue is however is that enough? Should a man simply say that I have been given an apology so that is all I can do? We think not, those who are at fault should make recompense. Accordingly notice of intended proceedings have been given to the CCRC. This will be an action grounded in negligence and will bring with it its own challenges. I will not elaborate too much on this action as it is pending and I do not want to place the CCRC who have come today in a difficult position answering an action they cannot publically comment upon. Suffice to say this, we have weighed up all arguments but have come to the conclusion that proceedings should be brought, if they can, because how else does a man ensure the power of the state not to make gross mistakes is checked.

The perverseness of the situation is made even clearer then when in the aftermath of Victor Nealon's conviction being quashed: Both the CCRC and the Police indicating their support for his challenge against the MOJ but didn't want to address their own failings. There is of course a pattern here - no responsibility but a willingness to pass responsibility to others. There is also a current dialogue with Victor Nealons original solicitors whom also are seeking to avoid any liability. This time his lawyers are seeking to return to the old favourite of civil limitation to seek to avoid a claim, where it is clear all of the issues in this case might be avoided if his original solicitors had done what a competent lawyer would have namely commissioned their own DNA tests. So if the appellant was let down by the police, his solicitors and the CCRC in the past, you might of at least thought he could rely on the support of the state on his release.

The reality is that whilst the Court of Appeal has a miscarriage of justice unit, it is wholly underfunded and as a result there is little safety net for those who are released by the Court of Appeal. This is exaggerated when due to cost saving an appellant like Victor Nealon is released from a distant prison when the Court uses a video link. The net result was that he was left abandoned on the 13th December 2013 having been dumped at Leeds Railway Station. He was only saved when a BBC Journalist offered to get him a room in return for an interview. We should have a system in place for cases like this where those released are fully supported and receive urgent interim financial support. Disturbingly the State will instead put every hurdle in the way of Victor Nealon as he fights to have his life restored.

His claim for compensation has been refused and the Secretary of State with his new miscarriage test is seeking to go behind the decision of the Court of Appeal Criminal Division. The new test now requires an applicant to show beyond a reasonable doubt that he did not commit the offence.This is an innocence test one which should be specifically excluded. The previous law made quite clear that an applicant is not required to demonstrate his innocence, the SSJ should not be allowed to go behind the judgement of the court of appeal which restores innocence to the applicant. The new section was only enacted following the successful challenge of Ian Lawless in Ali and Others [2013] where the court settled on a formulation that entitlement to compensation was merited where no reasonable jury properly directed could not convict the applicant on the basis of the newly discovered fact.

In Ali the Secretary of State had sought again to go behind the Court of Appeals decision and argue that just because the confession evidence was deemed unreliable there could still have been a re-trial. A nonsense of course because there was no other evidence upon which to try the hapless Mr Lawless. He had made the whole thing up. Only recently did Ian Lawless finally get an offer of compensation - 5 years after his conviction was quashed. A wholly unacceptable time period during which Ian Lawless has suffered greatly. It should also be remembered that the test in Ali and Others was not a generous one so for example Barry George could not achieve compensation because his case went all the way to re-trial and therefore the Court was able to conclude that there was evidence for a properly directed jury to consider. As a result there was no reason for the Govt to enact the new section other than a pure ideological intention to stop those wrongfully convicted being compensated at all costs.

Where are we now with the Miscarriage of Justice Challenges?

The case was refused in the Divisional Court and is now with permission on appeal to the Court of Appeal Civil Division. It is likely that whatever the outcome there the losing party will appeal on to the Supreme Court, particularly as the Secretary of State for Justice contends the Courts are bound by the Supreme Court decision in Adams. It would take a whole day of the conference to explain just how complicated the current arguments are over the New Scheme, the meaning of Innocence and whether the new section breaches article 6 (2) of the European Convention of Human Rights.

The essence of the argument is that: 1 - We say the new section is unlawful 2 - The new wording of commit is the same as asking someone to prove innocence 3 - We can prove Innocence in any event 4 - We dispute whether the Court in Adams really did declare that the test was a "lex special is" or that 6 (2) would not apply. The SSJ arguing the Court has previously declared the law on this issue to be a special category to which normal judicial review principles do not apply - " lex special is" 5 - We are satisfied that if this case goes to Europe that unlike in Allen the Court is very likely to conclude the Governments new scheme is a breach of the convention and should not stand. 6 - The Govt cannot escape in this litigation simply because at the end of every refusal letter they record a hollow sentiment that just because they have refused compensation doesn't mean that the applicant tis not innocent.

What is clear is that all these legal challenges eat up time during which Victor Nealon will not achieve any just settlement for what has happened to him. Not only that but the Government will use the current position to refuse everyone the prospect of any miscarriage compensation. So there we have it the sorry tale in the Victor Nealon Case of a system unable to accept responsibility. The Police who misused their powers to secure a wrongful conviction, his defence lawyers who incompetently let him down, the CCRC who made serious mistakes in reviewing his case and the ministry of justice who are financially seeking to avoid a just settlement at all costs. If only the efforts all of these organisations have now put in to defend

continued segregation; (2) whether the appellant's segregation breached article 3 of the Convention; and (3) whether his segregation violated article 8.

On the first issue, rule 94(5) means that segregation should not continue beyond the initial 72 hours unless the Ministers' authority has been granted before the 72 hours have expired [15]. Rule 94(6) makes it clear that the Ministers' authority takes effect from the expiry of the 72 hour period [16]. A late authority by the Ministers, granted after the expiry of the 72 hour period, cannot have effect [17]. This is consistent with the purpose of the legislation: to provide a safeguard for the protection of the prisoner, by ensuring that the need for segregation is reviewed within a short time by officials external to the prison and that segregation is maintained only for so long as is necessary [18]. On the three occasions when authority for the appellant's segregation was granted late, that authority was invalid, and incapable of renewal. Consequently, the appellant's segregation for periods totalling about 14 months lacked authorisation under the Prison Rules [28]. It is however accepted that the appellant was not prejudiced as a result [29].

On the second issue, the conditions of segregation and the measures imposed were not in themselves in breach of article 3 [32-33]. The appellant was placed in segregation in the interests of his own safety, and there was a genuine and reasonable concern that he was at risk of serious injury or worse [34]. The appellant did not suffer any severe or permanent injury to his health. The isolation he experienced was partial and relative. Whilst the duration of his segregation was undesirable, and the conditions could have been improved, the appellant's segregation did not attain the minimum level of severity required for a violation of article 3 [36-37].

On the third issue, the Ministers accepted that segregation is an interference with the right to respect for private life under article 8(1). It must therefore pursue a legitimate aim, be in accordance with the law, and be a proportionate means of achieving the aim pursued [39]. The segregation pursued a legitimate aim, namely the protection of the appellant's safety [40]. However, during the periods in which the appellant was segregated without valid authorisation under the Prison Rules, his segregation was not in accordance with the law [41]. Additionally, some of the decisions taken by Governors to segregate the appellant or to apply for Ministers' authorisation for his continued segregation were not taken in the exercise of their own independent judgment. Instead, they proceeded on the basis that the decision had already been made by the Executive Committee for the Management of Difficult Prisoners ("ECMDP"), a body which was not entrusted with the power to make such a decision. This invalidated subsequent decision-making by the Ministers, as their power of decision was predicated on a valid application being made to them. This breach of domestic law also results in a violation of article 8, although it does not appear to have prejudiced the appellant, as when Governors did carry out an independent assessment, they reached the conclusion that segregation was necessary to protect the appellant's safety [66-73].

In relation to proportionality, the seriousness of the risk of harm required to justify segregation becomes greater as time goes by, and increased scrutiny will be applied as to whether segregation is the only means of addressing the risk [76]. Other potential accommodation options, providing reduced association and greater supervision for prisoners who remain at risk of harm, were not available in Scotland during the period in question. No consideration was given to the possibility of transferring the appellant to a prison elsewhere in the UK. No meaningful plan was put in place until the appellant had been in segregation for 55 months. Accordingly, the Scottish Ministers have failed to establish that the appellant's segregation for the entire period was proportionate [83-86]. In the circumstances, just satisfaction can be afforded by making a declaratory order [89].

Shahid (Appellant) v Scottish Ministers (Respondent) (Scotland) UKSC 2014/0273

On appeal from the Inner House of the Court of Session: This appeal considered whether the segregation of the appellant in prison was unlawful because of the failure to adhere to the time limits set out in the Prisons and Young Offenders Institution (Scotland) Rules 2006. In addition it further considered whether the duration of the segregation breached Article 3 and 8 ECHR. On 8 November 2008 the appellant was convicted of murder and sentenced to life imprisonment with a punishment period of 25 years. He was removed from general association with other prisoners ('segregated') for a continuous period of four years and eight months from his remand before trial until 13 August 2010. The decision to segregate him was made under the relevant prison rules on the ground that it was necessary in order to maintain good order or discipline in the prison, and to protect him and other prisoners, and the rules required renewals of authorisation by the Prison Governor within time limits which were not always adhered to in the appellant's case. The appellant challenged the lawfulness of his segregation in proceedings for judicial review issued on 20 October 2009.

The Supreme Court unanimously allows the appeal, granting a declarator that the appellant was segregated unlawfully during three separate periods totalling 14 months; and that his article 8 rights were violated. Justices: Lord Neuberger (President), Lady Hale (Deputy President), Lord Sumption, Lord Reed, Lord Hodge

Background to the appeal: In 2006 the appellant and his two co-accused were convicted of the racially-aggravated abduction and murder of a 15 year old boy. Upon being remanded in custody, from 7 October 2005 the appellant was removed from association with other prisoners and placed in solitary confinement (segregation). It was considered that the appellant and his co-accused were liable to attack by other prisoners, and there were persistent fears for their safety if accommodated in mainstream conditions. Apart from a period immediately prior to and during his trial, the appellant remained in continuous segregation until 13 August 2010. Altogether he spent 56 months in segregation.

The appellant was segregated pursuant to the Prisons and Young Offenders Institution (Scotland) Rules 1994 and the subsequent Prisons and Young Offenders Institution (Scotland) Rules 2006, the relevant provisions of which are identical. Rule 94 of the 2006 Rules permit a Governor to authorise segregation for up to 72 hours for the purpose of "maintaining good order or discipline", "protecting the interests of any prisoner", or "ensuring the safety of other persons". Segregation beyond 72 hours for a further month must be authorised by the Scottish Ministers, "prior to the expiry of the said period of 72 hours", on the application of a Governor. The Scottish Ministers may renew the authority for further monthly periods, again on the application of a Governor.

The appellant sought orders declaring that certain periods of his segregation were in breach of the relevant Prison Rules, and that his segregation violated article 3 of the European Convention on Human Rights, the prohibition against torture, inhuman and degrading treatment, and article 8, the right to respect for private life. His judicial review challenging the lawfulness of his segregation was refused by both the Outer House and the Inner House of the Court of Session.

Judgement: The Supreme Court unanimously allows the appeal, granting a declarator (1) that the appellant was segregated unlawfully during three separate periods totalling 14 months; and (2) that his article 8 rights were violated. Lord Reed gives the only judgment with which Lord Neuberger, Lady Hale, Lord Sumption and Lord Hodge agreed.

Reasons for the judgment: There are three issues in the appeal: (1) whether the authorities' admitted failure to comply with the time limits imposed by the Prison Rules invalidated the

themselves had been put into dealing with the case in the first place Victor Nealon would never have had to endure what has befallen him.

Perhaps one of the greatest issues that challenge appellants today is that of delay. Another couple of cases illustrate the point. Firstly an unsuccessful CCRC Referral - Dent. Mr Dent applied to the CCRC many years ago and was given a provisional statement not to refer. Representations were made as to why that was wrong - that was in 2006/7 - it was not until 2012 that his case was finally referred. By then of course the tide had turned once again over sexual offences and the net result was that his appeal was refused.

Another person for whom time ran against them was Susan May. I am pleased to have been asked to help Susan's application having had the honour to meet her at such conferences several times. Susan's family and supporters worked tirelessly to get a fresh application to the CCRC It has been a long fight one which Susan was not to see the end of having sadly passed away in October 2013. If you want to know more about Susan's case then I would urge you to visit her website and watch the documentary which has been made over the case.

For a considerable amount of time the Commission have had this latest submission based upon some excellent work from Arie Zellerman who you will hear from later. Sadly this is another example of a case which seems lost in the CCRC with the latest update referring to scoping work between forensic scientists. If the Commission agree with the Family's Expert then it is likely that this case will call for referral on the basis that key evidence the Crown relied upon was wrongly attributed to Susan. Of course it may be to the applicant's considerable advantage that this detailed work is being done but it seems a repetitive theme that cases nonetheless get lost in the very structure of the CCRC and its endless committees and deliberations rather than action and feedback.

Let us then consider some of the other worries to which I have alluded to. The Savile Scandal and the issue of historical allegations. Of course the fallout from the scandal is not all bad and if some genuine victims do get justice as a result then that this outcome must be respected. The unpalatable truth however is that such investigations lead to many false allegations and this is particularly so when officers charged with conducting an independent investigation start an enquiry by making public statements indicating that they "believe the victims". I am sure some of you saw the recent Panorama programme and this is indicative of the problems that are now faced. It is clear that some allegations have been given far too much support rather than a sceptical eye. It does not mean that some should not have been prosecuted or that the police had placed in the past too much store in support from the establishment but that does not provide an excuse for a lurch to a threshold for testing allegations pre charge which is now non-existent. We are involved in a number of these enquiries across the country and whilst the last outcome shouldn't affect future trials it is perhaps disturbing that for example in North Wales we have secured 3 consecutive acquittals.

Where cases collapse or proceed to acquittal with regularity this raises serious questions over whether the pendulum has swung too far. Not only does bringing false allegations or flimsy prosecutions ruin the lives of those accused but it also acts as a positive disincentive to these who are genuine victims. What then of the Court of Appeal? This is an institution which was almost universally criticised during the recent Justice Committee Enquiry to which I was one of those who had the pleasure giving evidence. This had led to a strongly critical report by the Committee calling for a review of the test for quashing convictions and in turn if required a review of the CCRC test for referral.

Ultimately the Court of Appeal is not considering cases in the way that was envisaged following the Criminal Appeal Act 1995 and the suggestion in its defence from the former Lord Chief Justice that it was open to consider general safety of what might often be referred to

as "lurking doubt" is unsustainable. The problem is that the evidence is that the Court is now pursuing a strategy of narrowing the opportunity to appeal at every turn. From the outside it seems like it is seeking to plug every gap for an appeal in the hope that this will somehow protect the integrity of the system when in fact the converse is true.

Some examples have been: Requiring a Single Judge to no longer grant permission to appeal on the papers in a case long out of time but to refer it to the full court for consideration. Blocking the availability of Good Character directions in any case where the Crown might rely on bad character Requiring appeal lawyers to confirm the factual basis and obtain comments on any grounds of appeal On bad appeals reporting Solicitors and Counsel to their regulatory bodies Reducing to an almost non -existent level the availability of rep orders in the Court of Appeal for Solciitors . Plugging the gap rulings - where there is an appeal granted subsequently targeting that new point and over turning it in subsequent cases

The CCRC - I have said something about the CCRC already and I probably don't need to say too much more. Too slow, still too secretive and not referring nearly enough cases. Yet it is still a vital organisation and one with many good commissioners and lawyers such as those who have supported this conference today. The inconsistency and lack of transparency remain the vital issues which the commission still have to address. We don't want to see headlines about Professional Footballers applying to the CCRC we want to see headlines about the increased numbers of referrals and quashed convictions of ordinary applicants.

Finally perhaps the gravest challenge to the future is the systematic attack on Legal Aid. We now have a system that has sustained: 17.5% cuts on fixed fees Those fees had already been reduced year on year for the last 15 years Payments incentivised towards securing guilty pleas A dramatic reduction already in the number of providers Proposals to reduce the number of duty solicitors contracts from 1200 to 525 A systematic attack on criminal appeal firms with aggressive auditing practices Limits on when firms can grant funding Reductions in the fees that can be paid to expert witnesses

The removal of defence cost orders to anyone who has not been refused legal aid and then only paid at legal aid rates The consequences of which are large numbers of firms can no longer operate financially and are leaving. The pool of good miscarriage of justice lawyers is rapidly diminishing at a time when conversely the amount of miscarriages are increasing. Ultimately there is a common thread to all of this .it is easy to attack legal aid, to restrict appeals and fail to refer or to investigate or prosecute flimsy cases when the system has nothing to worry about because it does not answer for its mistakes .where error can be swept under the carpet.

However .. perhaps we are coming close now to a time when the cracks can no longer be papered over. Where the efforts to block justice have become so perverse that they will soon be no longer sustainable. Where scandal has fatally damaged the police, where prosecutions are collapsing with too much regularity and where our appellate system is being criticised by the establishment itself. The next few years will determine what sort of society we want to be in the end, if we truly believe in justice we shall have to learn how to say sorry and put right our errors. We should not fight against compensating men such as Victor Nealon, Sam Hallam and Ian Lawless we should embrace the opportunity to do so. We should embrace our failures they are the road to success and better organisations. Let me remind you what Michael Jordan one of the most successful basketball players the world has even seen said: "I've missed more than 9000 shots in my career. I've lost almost 300 games. 26 times, I've been trusted to take the game winning shot and missed. I've failed over and over and over again in my life. And that is why I succeed"

Mark Newby, United Against Injustice, Conference, Liverpool, Saturday 10th October 2015

through the night and into the morning", according to the Senate report. Although the CIA only acknowledges waterboarding three detainees – Abu Zubaydah, Khalid Shaikh Mohammed and Abdul al-Rahim al-Nashiri – the lawsuit claims the agency subjected Ben Soud to a "form of waterboarding". "He was strapped to a wooden board that could spin around 360 degrees," the suit claims. His interrogators spun him around on this board with a hood over his head covering his nose and mouth. While strapped to the board with his head lower than his feet, his interrogators poured buckets of cold water him. While they did not pour water directly over his mouth and nose, they threatened to do so if he didn't cooperate." Ben Soud was also treated with the same frigid-water dousing and plastic-sheet coating that Salim received, only Ben Soud reported the freezing water being treated with a gel-like substance, causing it to stick to his body.

Famously, Jessen and Mitchell, former instructors in the military's Survival Evasion Resistance Escape (SERE) program to counter torture, revised torture techniques from the SERE training and proposed to use them on CIA detainees. They faced their first test case in the spring of 2002, after the CIA captured Abu Zubaydah, then thought to be a senior member of al-Qaida, and took him to Thailand. Although Zubaydah spoke openly with his FBI interrogators who sought to establish a rapport with him, Mitchell cabled the CIA's Counterrorism Center "nearly every day" for permission to torture him.

CIA personnel, with Mitchell overseeing, waterboarded Zubaydah 83 times in the span of a month. Eventually, according to the Senate intelligence committee's report – which gives Mitchell and Jessen the pseudonyms Grayson Swigert and Hammond Dunbar – Zubaydah would submit to torture after hearing his captors snap their fingers twice. They forced him into "confinement boxes", one the size of a coffin and the other just two and a half feet square and 21 inches deep.

Now missing an eye, Zubaydah is still detained at Guantánamo Bay, although the CIA no longer believes he is a member of al-Qaida. The Senate intelligence committee concluded the torture techniques did not produce any useful intelligence; the CIA's official position as of 2014 is that the question is unanswerable. But the 2002 test case convinced the CIA, supported by the Bush White House, of the value of torture. The torture of Abu Zubaydah, who is not a party to the lawsuit, began weeks before the US Justice Department provided its August 2002 legal blessing, since withdrawn, to the CIA torture program. An adviser to Condoleezza Rice would later inform the Bush-era secretary of state that use of the techniques Mitchell and Jessen implemented amounted to a "felony war crime".

A Spokane-based company the two founded, Mitchell and Jessen Associates, would secure $75m from the CIA in contracts, in addition to a further $6.1m from the agency for legal expenses in the event of criminal or civil action stemming from the contract. Although Barack Obama banned CIA torture by executive order on the second day of his presidency, the CIA continued to cover the company's legal bills until 2012. Mitchell and Jessen themselves each received more than $1m from their contracts. The suit does not claim that Mitchell and Jessen were present during the torture of Salim, Ben Soud and Rahman. But it derives their culpability through the application of the torture techniques – prolonged sleep deprivation, nudity, "stress positions", cramped confinement – that the two psychologists provided to the CIA, which implemented the techniques. "Defendants are directly liable," the suit charges, "because they designed, developed, and implemented a program for the CIA intended to inflict physical and mental pain and suffering on Plaintiffs, and because Plaintiffs were tortured and subjected to cruel, inhuman, and degrading treatment as a consequence of their inclusion in that program."

CIA Torture Survivors Sue Psychologists Who Designed Infamous Program

Survivors of CIA torture have sued the contractor psychologists who designed one of the most infamous programs of the post-9/11 era. In an extraordinary step, psychologists James Mitchell and Bruce Jessen now face a federal lawsuit for their role in convincing the CIA to subject terror suspects to mock drowning, painful bodily contortions, sleep and dietary deprivation and other methods long rejected by much of the world as torture. In practice, CIA torture meant disappearances, mock executions, anal penetration performed under cover of "rehydration" and at least one man who froze to death, according to a landmark Senate report last year. Versions of the techniques migrated from the CIA's undocumented prisons, known as black sites, to US military usage at Guantánamo Bay, Bagram Airfield in Afghanistan and Abu Ghraib in Iraq.

On behalf of torture survivors Suleiman Abdullah Salim and Mohamed Ahmed Ben Soud, as well as a representative of the estate of Gul Rahman – who froze to death in a CIA black site in Afghanistan – the American Civil Liberties Union (ACLU) filed the suit against Mitchell and Jessen on Tuesday in a federal court in Washington state, where the two currently reside. They seek compensatory damages of at least $75,000. The suit calls the torture program a "joint criminal enterprise" and a "war crime" in which the CIA, Mitchell and Jessen colluded and from which Mitchell and Jessen financially profited.

Although numerous US government investigations have pierced the veneer of secrecy around the torture program, the program's government architects have faced no legal reprisal. A Justice Department inquiry ended in 2012 without prosecutions. The new lawsuit, aimed not at government officials but the contractors Mitchell and Jessen, aims to break the trend. "This case is about ensuring that the people behind the torture program are held accountable so history doesn't repeat itself," Steven Watt, one of the ACLU attorneys representing the three ex-detainees, told the Guardian. "Impunity for torture sends the dangerous message to US and foreign officials that there will be no consequences for future abuses. This lawsuit is different from past ones because public government documents now provide exhaustive details on the CIA torture program, and they identify the people who were tortured and how it happened. The government has long abused the 'state secrets' privilege to prevent accountability for torture but at this stage, any claim that the torture of our clients is a state secret would be absurd."

One of the litigants reacted to his torture by attempting to kill himself. Another was kept naked for "more than a month", the suit alleges, and was subjected to "a form of waterboarding". Salim, a Tanzanian fisherman, said in a video published by the Guardian that flashbacks from his ordeal in CIA custody are a permanent part of his life. After five years in CIA and then US military custody, Salim's captors released him unceremoniously from Bagram in August 2008, presenting him with a memo stating that the US determined him not to pose a threat to the US.

"You can't sleep, you can't eat, you can't smell," said Salim, who says his CIA captors chained his arms and legs to a metal hoop in his cell that forced him into a squatting position so uncomfortable it prevented him from sleeping. Like other detainees, Salim was doused in ice-cold water and then wrapped in a freezing plastic sheet. According to the lawsuit, Salim hid painkillers he was given in order to hoard a dose strong enough for an ultimately unsuccessful suicide attempt. "Flashbacks come anytime, so much they make you crazy," Salim said in the video.

Ben Soud, who now lives in his native Libya, was taken to a CIA black site in Afghanistan, and for extended periods permitted "sleep only for minutes at a time because of painful stress positions, constant blaring music, and guards banging loudly on the door of his cell every hour or so", the suit claims. Guards paraded him naked around the black site for "15 minutes every half hour

Tariff Review of Jordan Towers - Justice Collins Refuses to Reduce Sentence

1.Jordan Towers was born on 9 December 1990. On 19 May 2007 he together with two others was involved in attacks on two men which resulted in the death of one and the wounding of the other. As a result, on 23 November 2007 all three were convicted of murder and of an offence contrary to Section 18 of the Offences Against The Person Act 1861. Mr Towers received a tariff of 13 years so that taking into account days spent on remand, his tariff expiry date is 22 May 2020.

2. Mr Towers did not use the knife on either of the victims. He was convicted on the basis of joint enterprise in disgraceful conduct on the evening in question. He has not accepted that he was guilty and still insists that he was wrongly convicted as he had, as he put it, done nothing wrong. While he did not stab either victim, he threw a lump of concrete or a brick at the deceased after he had been stabbed and he approached the second victim in order, the prosecution alleged, to enable the other two to attack him. While a failure to accept responsibility for what occurred does not necessarily mean that an individual is precluded from a reduction in tariff if otherwise he would qualify, it undoubtedly affects his attitude and can show that there has not been the exceptional and unforeseen progress that is needed.

3. I note from the representations made by Mr Towers' solicitor that it is said that there is an appeal outstanding. This is surprising since the conviction was some 8 years ago. In fact, the Sentence Planning report of 29 April 2014 states that his appeal against conviction and sentence was denied in February 2008. Hard though it may seem, the reality is that albeit he may have taken a back seat there was ample evidence to justify the jury's verdict that he was guilty by virtue of joint enterprise.

4.There is a very helpful and detailed report from an independent psychologist. She records that Mr Towers, as the Tariff Assessment Reports (TAR) show, had as recently as the summer of 2014 received negative CNOMIS entries relating to his attitude if things did not go his way. He has had anger management problems and it is clear that he still can react in a negative way because of that. To his merit, he is working at it and wishes to complete a course which is designed to help.

5. Mr Towers has made considerable progress since being sentenced. There is concern that, albeit he has some empathy for his victims, his view that he was not guilty has disabled him from true remorse and full victim empathy. None of those producing TARs states that Mr Towers' progress has been exceptional nor that there is any new information which casts doubt on the appropriateness of the tariff.

6. The psychologist says that Mr Towers still presents with a number of risk factors which have not been sufficiently addressed. Were he to be released now, he would be a medium to high risk of reoffending, albeit for offences of dishonesty and failing to obey court orders rather than violence. He was someone who was easily led and joined in with the wrong crowd. That danger still exists.

7. In the circumstances, I cannot recommend a reduction in tariff since none of the possible reasons for so doing are met. The psychologist in her report identifies ways in which in a Category C prison Mr Towers can be assisted. I would urge those responsible to give careful consideration to those suggestions since there is it seems real hope that Mr Towers can put his past appalling behaviour behind him. *Justice Collins,Wednesday 14th October 2015*

Stretch Limo Hired For Asylum Seekers

A Home Office contractor has apologised for the "clearly inappropriate" decision to hire a stretch limo to take a group of asylum seekers from London to Manchester. Serco said the move had not cost the taxpayer any extra money and that it was a one-off. Seven African men were transported in a 16-seat Hummer from a hotel to their new homes, the Daily Mail reported. They had been staying in the hotel while their claims were processed. New procedures have been introduced to prevent it happening again, Serco said.

Early Day Motion 497: Relief Of Pain Using Medicinal Herbal Cannabis

That this House notes that medicinal herbal cannabis is used successfully for the relief of pain, and muscle spasms associated with multiple sclerosis and spinal cord damage, for those not helped by other medications, chronic neuropathic pain, for example caused by a damaged nerve, facial neuralgia, chronic pain following shingles, and weight loss and debilitation due to cancer and AIDs; further notes it is also effective in relieving nausea and vomiting associated with chemotherapy or radiotherapy when other treatments fail, also extreme epilepsy in children, and therapy-resistant glaucoma; notes that herbal cannabis is used for medical purposes in Germany, Switzerland, the Netherlands, Israel, Spain, Canada and more than 20 US states; and calls on the Government to reschedule cannabis from schedule 1 to schedule 2 which would recognise its medicinal value and enable GPs to prescribe much cheaper cannabis medicines than Sativex which is extremely expensive.

Black People 'Three Times More Likely' to be Tasered *BBC News*

The difference in how often ethnic groups encounter Taser use is dramatic. For Asians the chance of involvement in a Taser incident in 2010-14 in England and Wales was only three in 10,000, whereas for white people it was six and for black people it was 18 in 10,000. Some 12.7% of incidents in 2010-14 involved Black people, who constitute only 4.4% of the population. But only 4% involved Asians, who form 8.1% of the population. This pattern is repeated in all age groups. Tasers are mainly used on men in their twenties and thirties, but the discrepancy is not caused by different ethnic age distributions. It is also reflected across England and Wales, including those local forces with enough incidents to assess separately (West Midlands, West Yorkshire, Greater Manchester and the Metropolitan Police). The ethnic discrepancy also occurs across the various levels of Taser deployment, from being drawn to fired.

Matilda MacAttram, from the campaign group Black Mental Health UK, said the statistics were "deeply disturbing" and pointed to emerging evidence that police were using Tasers against people with mental health problems, particularly those from African-Caribbean communities. "There's an increasing amount of data, both anecdotal and also concrete, which show this supposedly "non-lethal" weapon is being used against people who are in a very vulnerable state. That's actually a violation of their human rights and it should not be happening," she said.

The National Police Chiefs Council (NPCC), which co-ordinates national operational policing, said specialist Taser officers acted fairly regardless of race. A NPCC spokesman said: "Every use of Taser is reported and scrutinised by a supervisor and officers are personally accountable to the law each time their Taser is drawn. Officers receive specialist training that helps them to determine the best course of action in resolving a violent or potentially violent situation. Taser is one of many tactical options a police officer can use. In 80 per cent of Taser uses in the UK, the mere presence of the device is enough to resolve the violent or potentially violent situation without any force being used."

Rick Muir, director of the Police Foundation, an independent think-tank, described the figures as "extremely worrying". He said: "We do not know whether this is due to discrimination by officers or whether this reflects wider social inequalities which means some groups are disproportionately likely to come into contact with the police in situations where a Taser might be deployed." Last year, there were also 522 cases involving people under the age of 18, but there were only 349 such cases in 2010. Of last year's cases, 158 involved children under 16. In Hampshire a police officer took his Taser out of his holster in an incident with a nine-year-old boy. The data released by the Home Office showed that a Taser had been drawn during an incident involving a 91-year-old man in Suffolk, but Suffolk Police said it could find no record of it.

Harvard's Prestigious Debate Team Loses to New York Prison Inmates

It emerged this week that students from Harvard University lost when competing against a group of New York prisoners, beneficiaries of the Bard Prison Initiative – not in a bare-knuckle boxing match, but in a competitive, intellectual debate. The Harvard name alone rings bells worldwide and the team in question had just won the national debating title. For the inmates it's an incredible achievement that should not be underestimated, but I feel as if we are impressed by it because of our stereotypes of criminals being a) irrational and b) stupid. I'm an ex-prisoner who happens to be writing for a national newspaper and yet I am still partaking in the same judgmental behaviour as the rest of the law-abiding world.

The truth is that while I was inside Britain's most notorious nicks I saw varying shades of academic genius. One of my cohabitants whom I met in the dinner queue had completed four university degrees since he had been behind bars. He was even correcting the exam paper itself in his astrophysics MA's final assessment. Then there were the sometimes comedic and warped manifestations of misspent high IQs kept in 23-hours-a-day captivity, such as the inmates who used buckets, ice cubes and bin-liners to distil alcohol. Educational classes in prison offer training to those who've often been alienated from school the first time around. Prison classrooms turn the dynamic on its head: in a room full of bad boys you don't stand out by being bad so everyone is trying to prove themselves with academic achievements. Through this engagement you can feel prisoners' empowerment and self-confidence growing by the minute. As one of the New York prison debaters, Carlos Polanco, put it, the course helped them to "believe in themselves". It's a shame, then, that the powerful aura of an education department in an otherwise grim prison experience has been hit hard by the combination of our current austerity programme and a demand for immediate quantifiable results. When you're under lock and key the only place you can escape to is inside your head. Hijacking your brain with study absorbs you absolutely, unlike television. Before I went to prison I hadn't read a book in a decade. I'd raced through Tolkien, The Twits and an encyclopaedia in my prepubescent innocence, but had become so bored at school that I began to truant and avoid anything associated with supposed education.

While inside, I devoured every classic on the bookshelf. I also studied Spanish to talk to the high number of Latin Americans who'd been arrested trying to walk through airports with Colombia's biggest export. My grammar teacher was a 70-year-old Colombian grandfather who didn't speak a word of English before jail and had learnt it all from the cockney geezers on the wing. As a result he didn't understand basic outside-world vocabulary, such as traffic cone or drill, but he did talk about "'avin' a bubble with his china plates". Besides the New York prisoners having excess time to brush up on their skills, I'm certain that the prison experience itself taught the victors their unusual propensity for empathy – the key skill for successful debate. Prison requires people to be more empathetic – negotiating an understaffed and overwrought shed overflowing with machismo requires a fine balance between self-respect and respect for others. Many crimes leave empathy to be desired but then again, behaviour verging on sociopathic is omnipresent on the outside as well. From road rage to tit-for-tat relationship arguments; from a pointless fight over nothing that lands you with six months in prison to our justice system that often fails to be empathetic towards the root reasons for defendants' criminality – the human condition is plagued by this shortfall in understanding.

When you break down the facts about inmates, education and the subsequent contribution to society, the argument is clear: less than 2% of formerly incarcerated Bard students who earned degrees while in custody passed back through the prison gates within three years, in comparison to the statewide recidivism rate of 40%. All credit is due to both teams and the organisers of the Bard Prison Initiative for bringing our stereotypes, expectations and one of our most negative yet ubiquitous human characteristics into focus.

yesterday: "The American Academy of Forensic Sciences conducted a study last year of forensic odontologists and concluded that the analysts could not even accurately determine which marks were bite marks. In 2009, the National Academy of Sciences published a report that concluded that there was insufficient scientific basis to conclusively match bite marks."

The Dallas District Attorney's Office provided an early model of a post-conviction review unit that has been productive in investigating claims of wrongful conviction. Its conviction integrity unit, created by former District Attorney Craig Watkins, has been continued by current District Attorney Susan Hawk. Additionally, Texas lawmakers passed legislation in 2013 that allows courts to grant inmates new consideration if advancements in science undermine the evidence used to convict them. The Texas Forensic Science Commission is currently reviewing cases in which bite mark analysis contributed to the conviction. In the interest of justice, other states should follow suit. *Nancy Petro, Wrongful Convictions Blog, 14/10/2015*

Appeal Court Backs 'Deport First, Appeal Later' Policy For Foreign Prisoners

Harriet Grant, Guardian: The Home Office won a key legal challenge on Tuesday 13th October 2015, over the "deport first, appeal later" policy, which removes the right of foreign prisoners to appeal against deportation from within the UK. Lord Justice Richards at the court of appeal ruled that it would not be a breach of European human rights legislation for two men convicted of drug offences to be deported before their appeal rights are exhausted. Lawyers for the men argued that they would not have a fair hearing if they had to appeal from their respective countries of origin, Jamaica and Kenya. The policy, which was a manifesto commitment, removes the right of an individual to an appeal in the UK unless they can show there is a "real risk of serious irreversible harm" if they are deported to their country of origin. It is a central part of the government's commitment to reduce the number of foreign-born offenders who fight against their deportation on human rights grounds, in particular article 8, the right to family life.

Immigration minister James Brokenshire described the process as "cracking down on the appeals conveyor belt used by criminals to delay their removal from the UK". More than 230 foreign national offenders have been removed under these powers since they were introduced. The two men in the case both have long-standing family ties to the UK and lawyers had argued that deporting them would be a breach of their human rights. Kevin Kiarie came to the UK from Kenya when he was three years old and was given indefinite leave to remain as the dependent of an asylum seeker. Courtney Byndloss came to the UK in 2002 and was later given leave to remain as the spouse of a British citizen. He appealed to stay in the UK to be with his eight children.

In his ruling, Richards dismissed the argument that an appeal heard from overseas would not allow the men proper access to justice. In relation to the relationship between Byndloss and his children, and Kiarie and his family in the UK, he referred to the "strong public interest in the deportation of foreign nationals who have committed serious criminal offences". The ruling will be a boost to the home secretary, Theresa May, in her battle to introduce a tougher deportation regime not only in the UK but across Europe. The government will now be able to move ahead with plans to widen the application of the ruling so that it can be used in many more non-criminal deportation cases. The battle to remove foreign-born nationals who have been convicted of offences in the UK has been a thorn in the side of both Labour and Conservative governments going back a decade since Charles Clarke was forced to resign when it was revealed that over a thousand foreign prisoners had been released without being considered for deportation. Lawyers for the men say they will be considering an application to the supreme court, the only stage left in the process of appeal against deportation.

Clifton Jeter Fails to Convince the Court of Appeal *Manchester Evening News*

A convicted murderer who tried to kill two guards after running amock in Strangeways Prison has failed to convince top judges he was in fear of his life at the time. New York gangster Clifton Jeter, 37, was jailed for life and ordered to serve a minimum of 34 years at Manchester Crown Court on September 26 last year. He was convicted of the attempted murder of Alistair Cadell and Liam Keates at HMP Manchester. Jeter, who was born in the UK before moving to New York, was already serving life, with a 27-year minimum term, for a knife murder he committed in 2007.

In 2013 he was transferred to Strangeways' special intervention unit (SIU) for challenging prisoners, Sir Brian Leveson told London's Appeal Court. He belonged to a prison gang, opposed by a rival Muslim gang, and had been found in possession of an improvised weapon In October 2013, Parviz Khan, who had been involved in a plot to behead a British soldier, was transferred into the SIU. Khan and Jeter were both in 'single unlock', which meant they were only allowed out of their cells when others in the unit were shut away in theirs.

On November 22 2013, Jeter ran at Mr Cadell from behind and attacked him with a razor blade, leaving him with wounds to his face, head and back. He then lashed out at Mr Keates, who had rushed to help his fellow officer, leaving with a 'deep wound' to the back of his neck and a cut above his knee. The prosecution case was that Jeter was unhappy in the SIU due to the restrictive regime and stabbed the officers as he wanted to get out.

However, his barrister, Joe Stone QC, at his appeal argued he was in mortal fear of Khan and acted in self-defence. He said Jeter could do nothing to neutralise the threat and knew that, if he didn't get out of the SIU, he was going to be killed. However, that line of defence was ruled out by the trial judge and jurors were never allowed to hear it.

Crown barrister, William Baker, said such a defence would amount to 'an attacker's charter' and trigger 'anarchy' in prisons. Sir Brian ruled that the trial judge 'was correct' not to leave the issue for the jury to decide. "Parviz Khan was locked in his cell and was not in a position to attack Mr Jeter or threaten to do so," he observed. The judge, sitting with Mrs Justice Lang and Mr Justice Jay, refused Jeter's appeal against conviction. A challenge to Jeter's sentence was also dismissed and that means he will not be able to apply for parole until 2048.

Criminal Justice: When Feelings Trump Rigour *Guardian Editorial*

Maybe you are a wizard with back-ups and clouds, but – if not – losing your phone will induce real panic at least, and at worst something like grief. It's a graver matter than losing, say, a Walkman a generation back, because it's also the loss of an address book and a family photo album, and maybe the friendships and memories embedded in these.

It might, then, sound like common sense for the sentencing council to specify, as it did in new guidelines this week, that the "emotional distress" that might result, for example, from pinched personal data will now be deemed an aggravating factor in punishing thieves. But this is one small part of a developing emphasis on feelings in the criminal justice system, which comes at the expense of its traditional dispassion. Elements of the "victim's rights" agenda, such as rising expectations on the court to keep victims posted about their case, are beyond argument. Others, however, are more contentious – or, at least, they ought to be.

The system has always had to reckon with the consequences of misdeeds, of course. Get caught speeding after killing a child and your treatment is, inevitably, harsher than if you had the good luck to get clocked speeding just as recklessly before you'd caused any harm. Steal a phone that turns out to contain the only snap of a lost love and you have, arguably, had

the same sort of "moral misfortune" as the speeding motorist who just happened to run into a child. Feelings of loss are, however, a much more subjective matter than the solid fact of a lost life. The potentially perverse consequences of leaning too heavily on the emotions of victims was illustrated last month when the court of appeal ruled that abusers of Asian children deserved longer sentences because their victims suffered more than other children. Shame may well be a special problem in some communities, but give that too much weight and the divisive effect might be to leave other victims feeling like they warrant less protection.

The scales of justice have to weigh all sorts of things – facts, culpability and the public interest. Adding feelings to the mix, in the name of "tilting the balance towards the victim", is always tough to argue against, but won't always make things fairer. Sometimes, as with victims' presentence statements, it has been done without the dire consequences that defence lawyers feared. But sometimes, as when a bloody-minded victim is consulted on the precise charges to be pursued, process gets arbitrarily distorted. And if the push to warn witnesses about the questions they will face in court goes too far, prosecution cases will not be tested as rigorously as they should be. The impulse to protect rape victims, especially, from aggressive interrogation is commendable, but it would be better advanced by stricter rulings from the bench.

It is the state, not the victim, that prosecutes. If that is forgotten, retribution will take precedence over other aims of punishment, such as rehabilitation. The demand will always be to add new aggravating, not mitigating, factors. And in writing courtroom rules, the pressure will be to secure more convictions at the expense of the old overriding priority of ensuring the innocent go free. The 19th and 20th centuries saw ever-more protections extended to those in the dock: it was a civilising march. In the 21st century so far, all the emphasis is instead on feelings in the witness stand. That can't go on forever without upsetting the scales.

New California Law Addresses Prosecutorial Misconduct

Orange County Register: Prosecutors who intentionally withhold evidence from defense attorneys or the court could face tougher punishment and greater scrutiny under a new state law prompted by the misuse of jailhouse informants by Orange County prosecutors. The legislation, signed by Gov. Jerry Brown, strengthens the ability of judges to remove individual prosecutors and, if warranted, their offices, from cases if prosecutors are found willfully withholding evidence. The new law also requires judges to report offending prosecutors to the state bar, which licenses attorneys.

The bill was not widely supported by Orange County legislators, though District Attorney Tony Rackauckas said Tuesday he supported it. The legislation was sponsored by Assemblywoman Shirley Weber, D-San Diego, a professor at San Diego State University whose late husband was a judge. She said the legislation is important because it forces judges to hold prosecutors accountable. "I've always had as a priority this whole issue of social justice," Weber said. "When it doesn't work, it has the tendency to do a lot of harm." Weber also said inspiration from the law tracked to events in Orange County.

In March, a Superior Count judge barred the District Attorney's Office – all 250 lawyers – from the highest-profile mass murder case in county history. Judge Thomas Goethals made the rare move of kicking the Orange County District Attorney's Office off the case, saying prosecutors couldn't ensure a fair trial in the penalty phase of the trial of confessed mass murderer Scott Dekraai. Goethals sited misleading or false testimony from sheriff's deputies about jailhouse informants and the unintentional failure of prosecutors to turn over evidence. The Dekraai case was handed to the state Attorney

General's Office, which is appealing on the grounds that the judge overstepped.

An Orange County public defender, representing Dekraai and double-murder defendant Daniel Wozniak, has accused police and prosecutors of illegally using jailhouse informants over the past 30 years to coax confessions from defendants and withholding evidence about those informants. Rackauckas has admitted in past interviews that his prosecutors made some mistakes in handing over evidence and using informants, but none intentionally. Prosecutors have labeled the accusations as unfounded and reckless. Rackauckas said Tuesday he supports the new, stricter sanctions and thinks they should even be stronger for prosecutors who willfully withhold evidence from defense teams. "I think it's a good law. And any prosecutor who acts in the manner proscribed by the law, intentionally, that's reprehensible conduct," Rackauckas said. "There has not been any intentional bad faith withholding of evidence in the D.A.'s office. If that were to happen and I found out about it, that person would be terminated."

The California District Attorneys Association opposed the bill partly out of concern that prosecutors who mistakenly failed to turn over evidence would be punished along with the prosecutors who do so by intent. "Let's make sure the conduct that is proscribed is actually misconduct," said Sean Hoffman, director of legislation for the prosecutors' association. We look at prosecutorial error and prosecutorial misconduct as two different things." The bill was sponsored by California Attorneys for Criminal Justice, a 2,000-member group dedicated to preserving defendants' rights. "The public deserves to have confidence that prosecutors are committed to playing by the rules instead of trying to win at all costs," said Jeff Thoma, association president. I applaud the passage of AB1328 and it being signed into law. I believe this has the positive effect of insuring greater due process by reducing (discovery) violations and holding those accountable that do so in bad faith."

Texas Judge Frees Steven Mark Chaney, Convicted of Murder by Junk Science

State District Judge Dominique Collins ordered the release from prison of Steven Mark Chaney yesterday after he had served more than a quarter of a century behind bars. He was convicted of the 1987 murders of an East Dallas couple, John and Sally Sweet. Nine witnesses testified to support Chaney's alibi. Yet he was convicted by bite-mark junk science. This case — and widespread official recognition of the unreliability of this type of forensic evidence — should prompt new consideration of all cases in which bite-mark testimony contributed to the conviction.

Chaney's release was supported by Dallas County District Attorney Susan Hawk, his New York based Innocence Project Attorney Julie Lesser, and the Dallas County Public Defender's Office. They all recognize that Chaney did not receive a fair trial. As reported in The Guardian, Chaney will remain free while the Texas Court of Criminal Appeals reviews the case. His attorneys believe he will be exonerated…"Julie Less, exoneration attorney for the Dallas county public defender's office, said: 'We're confident that when the reinvestigation is complete, the district attorney's office will be in a position to formally agree that he is innocent of this crime.'"

In Chaney's case, two forensic dentists said bite marks on one of the victims were his. Jim Hales, chief dental consultant for the Dallas County medical examiner's office, testified that the odds of the marks coming from any other were "one in a million." Dr. Hale has since said the science used has been discredited and has admitted that he exaggerated the strength of this evidence even by scientific standards of the day. Chaney's attorney, Julie Lesser of the New York based Innocence Project, also alleged prosecutorial misconduct. Defense attorneys never saw evidence that an expert had concluded there was no blood on the bottom of Chaney's shoes as another expert testified at trial. DNA testing has since found no linking of Chaney to the crime. Regarding bite-mark evidence, the Dallas Morning News reported