Miscarriages of JusticeUK (MOJUK)
22 Berners St, Birmingham B19 2DR
Tele: 0121- 507 0844 Email: mojuk@mojuk.org.uk Web: www.mojuk.org.uk

MOJUK: Newsletter 'Inside Out' No 848 (26/05/2021) - Cost £1

John Phillip Mcaleer Conviction Quashed Pending Retrial

On 20 November 2015, at the St Albans Crown Court, before Her Honour Judge Catterson, the applicant was convicted by a majority of 11 to 1 of an offence of attempted murder. On 1 April 2016, Her Honour Judge Catterson sentenced him to an extended sentence of 20 years, comprising a custodial term of 15 years' imprisonment and an extension period of 5 years. His application for leave to appeal against conviction and to rely on fresh evidence, pursuant to section 23 of the Criminal Appeal Act 1968, has been referred to the full court by the single judge.

The Facts: Late in the evening of 29 June 2015, the applicant and his girlfriend, Danielle Hammond, went with friends to the applicant's sister's flat. It was on the fourth floor of a residential building and had a balcony to the front of the building. Most present had drunk a lot and been taking drugs. An argument took place between the applicant and Danielle Hammond in the hallway. Jake Hulse heard a loud thud and went out to the hallway to find the Ms Hammond lying on the floor. The applicant was trying to pick her up and she was crying. He and a friend ushered the applicant away and told him to apologise to Ms Hammond. The applicant went to the her and they were initially in the front room together. They later moved out onto the balcony and shut the balcony door behind them.

Mr Hulse heard the balcony door slam. He walked into the front room and saw Ms Hammond with her back to the balcony railings. Her elbows were propped on the railings. According to Mr Hulse, the applicant took one step back into the front room from the balcony. Ms Hammond spoke, causing the applicant to spin round as if to hit her. She raised her leg to protect herself, the applicant grabbed her leg and shoved her over the balcony. The applicant looked over the balcony, turned and walked back in the flat. He told a witness in the front room, "Danielle jumped". The witness told him that he had seen what he had done and the applicant became hysterical. Ms Hammond sustained serious injuries and did not give evidence at the trial. The Crown case was that the applicant had deliberately forced Danielle Hammond over the balcony with the intention of killing her. The prosecution also relied, apart from the evidence of Mr Hulse and others at the scene, upon the evidence of two earlier incidents in June 2015 which they said indicated the applicant had been physically abusive towards Ms Hammond in the past and demonstrated a propensity for him to abuse her and for her to be reluctant to complain. The defence case was accident and a denial of intention.

Fresh Evidence of a Possible Jury Irregularity: The jury irregularity came to the attention of the authorities when a few days after the verdict one of the jurors, Ms CA, emailed the trial judge with her concern about members of the jury researching the case and the applicant online. Cambridgeshire Police conducted an investigation in relation to potential juror offences under the Juries Act 1974. Statements were taken from all the jurors and one juror, Mr MD, was interviewed under caution. He denied researching the case on the internet and no charges were brought against him. None of the nine other jurors knew of any internet research. We must focus on the statements of Ms CA, the jury foreman Mr JP and another juror Ms JB.

Conclusion:First, we wish to express our gratitude to the parties for the great care they have taken in ensuring we have not infringed the principles set out in Mirza. We are also grateful to the police for their detailed and thorough investigation.

Second, we wish to express our concern at the contact between the applicant's family and CA. We appreciate and understand why they wish to support the applicant given his conviction for such a serious offence but once CA had spoken to them, they should have put her in touch with the applicant's solicitor and withdrawn. Third, for the reasons Mr Price gave, we have very considerable reservations about the accounts given by CA. Her approach to jury service was surprising to say the least. She was well aware of the judge's directions but the text messages she sent indicate she was prepared to discuss the details of the jury's deliberations with a friend. She may well have lied about her contact with the applicant's family and how she knew to approach the applicant's solicitor. Her accounts have been inconsistent and they suggest an improper motive and a bias.

It comes to this. We would not be prepared to receive anything that CA may say save and insofar as it is confirmed by other sources. However, there is one important respect in which CA's account is confirmed by another source and that is the allegation that one juror accessed the internet in direct violation of the judge's directions, discovered a previous conviction and informed at least one other juror of the result of his research. JB knew that MD had discovered the applicant had broken a man's jaw. This would be potentially bad character evidence of some significance in the context of a trial for an offence of attempted murder where the issue was: did the applicant push Ms Hammond over the balcony or did she fall? It was potentially very damaging to the appellant's case. It was evidence of bad character that the prosecution did not consider was probative of their case against him. Had it been admissible, it would have been accompanied by a clear direction from the judge on why it was admissible and the approach the jury should adopt to it. The judge was unaware of the juror's misconduct and gave no such direction. Had the defence been aware that two jurors knew of the applicant's previous conviction, they would undoubtedly have made an application to discharge the whole jury. In all probability, this would have been granted.

We are in the position therefore that ignoring CA's account save in that one respect and accepting JB's account, as Mr Price invited us to do, we know at least two jurors, possibly three, knew of the applicant's bad character. We have nothing from MD on whether that knowledge affected him. We have no reason to doubt JB's assertion that she truly believes the information he provided did not affect her. However, we cannot be sure. We cannot be sure it did not affect her subconsciously and we cannot be sure it did not affect MD. If so, we cannot be sure that what they had learned of his conviction did not influence the other jurors as they contributed to the discussions. Neither JB or MD had the benefit of clear directions from the judge on bad character or, most importantly, submissions from the defence on its relevance. Both were in the convicting majority. For those reasons, therefore, we have concluded that there was a serious irregularity of a kind that has undermined the safety of the conviction. We give the applicant leave to appeal against his conviction. We quash it and we will hear any representations on a retrial. *John was subsequently retried, and found not guilty by a jury on 23 May 2019.*

Scottish Criminal Cases Review Commission Refer Sentence of Dillin Armstrong

On 26 August 2019, after a trial at the High Court in Edinburgh, the jury found the applicant and three co-accused guilty of the attempted murder of a young man. The jury found a fifth accused not guilty of attempted murder but guilty of assault to injury. The applicant received an extended sentence of 13 years, comprising a ten-year custodial term and a three-year extension period. On 3 May 2019, at the High Court in Glasgow, another individual had pled guilty to the charge of attempting to murder the young man. All five of the applicant's co-

offenders had their sentences quashed on appeal and reduced sentences substituted in their place. The Commission concluded that the principle of comparative justice was breached in this case. The Commission was satisfied that, had the applicant's appeal been heard alongside the appeals of his co-offenders, the applicant's sentence would have been reduced to some extent, to reflect the reduced sentences that his co-offenders received on appeal. Accordingly, the Commission believes there may have been a miscarriage of justice in the applicant's sentence. The Commission also believes it is in the interests of justice that the case be referred to the High Court for determination. In accordance with the Commission's statutory obligations, a statement of reasons for its decision has been sent to the applicant, the High Court, the Lord Advocate and Crown Office. The Commission has no power under its founding statute to make copies of its statements of reasons available to the public. This release is for information purposes only and the content of this news release should not be treated as forming part of the Commission's statement of reasons.

Prisoner Death Investigations

Prisoner mortality rates are up to 50% higher than in the wider community, and prisons are 'uniquely liable to abuses and distortion of power'. Prisoner deaths represent 'the extreme end of a continuum of near-deaths and injuries, creating important learning which could avert further deaths, 'risks to custodial health and safety generally' and risks to societies. International law imposes obligations to investigate prisoner deaths. These investigations deserve further attention by lawmakers globally.

The investigation of deaths occurring in unnatural, surprising and unclear circumstances is an important area. Death investigations matter for myriads of reasons, including legal accountability for risky practices, individuals and institutions; public health and safety; systemic institutional concerns and unaddressed risks; medical care quality; to address community concerns; and for bereaved individuals' understanding). If deaths are not effectively investigated, and suitable remedial action is not taken to respond to findings and recommendation by coroners, 'the adverse consequences for the general community can be disastrous'.

Every prisoner death investigation provides a window to identify, organise and apply learning to safeguard prisons and societies. At present, an accountability deficit stretches across the criminal justice system and its overseers due to limited efficacy at preventing future deaths. There is an international need to develop best practice for investigating deaths in detention, which should consider how to stimulate penal change through death investigations.

To support the UK's compliance with Article 2 of the European Convention on Human Rights (ECHR), which protects the right to life, the Prisons and Probation Ombudsman (PPO) has investigated prisoner deaths in England and Wales since 2004. Ombudsman's institutions oversee prisons worldwide and provide unelected accountability mechanisms, operating at the intersections of public administration and administrative law. Ombudsman's institutions hold the substantive potential to shape imprisonment but have not received commensurate political attention. Not all Ombudsman's institutions investigate deaths. As 'standard Ombudsman's territory' prisoner complaints have generated some to limited knowledge.

Prisons and Probation Ombudsman (PPO) are examining the PPO's success at establishing feedback loops through prisoner death investigations. To identify potential to extend self-conscious, confident communication work early in the investigation across PPO investigators; communicate praise as well as deficits to prison staff throughout investigations; adjust template PPO recommendations. An evidence base to inform recommendations is urgently required and holds the potential to produce a step-change in (inter)national prison oversight practices worldwide.

Four in Five Female Prisoners in Scotland Found to Have History of Head Injury

Libby Brooks, Guardian: Four in five female prisoners in Scotland have a history of significant head injury, with sustained domestic abuse the most likely cause, according to research that experts argue bolsters the case for routine screening of inmates. The study – led by Glasgow University, funded by the Scottish government and published in the Lancet Psychiatry – also found that violent criminal behaviour was three times more likely in women with a history of significant head injury, and that these women spent three times longer in prison. The work adds to a growing body of research on the over-representation of people with brain injuries in the prison population, in particular among women.

Domestic violence was cited by 89% of survey participants who reported repeat head injuries. Two-thirds (66%) reported repeat head injuries over many years, and 40% had an associated disability. A first head injury before the age of 15 was reported by 69% of the women. Common effects of significant head injury include the impairment of information processing, impulsivity and egocentricity, which can increase the risk of offending. Injuries incurred before adulthood can affect how the brain matures. For the study, researchers interviewed 109 women – around a quarter of Scotland's female prison population – between 2018 and 2019 and assessed them for a history of head injury as well as for disability and mental and physical health conditions. Almost all participants in the study, 95%, reported a history of abuse, with more than half reporting sexual abuse in childhood and 46% reporting sexual abuse in adulthood. A history of alcohol or drug misuse was common, and 92% complained of mental health difficulties, with anxiety and depression the most common.

Tom McMillan, a professor of clinical neuropsychology at Glasgow University and the lead author of the study, said: "It is already recognised that women in prison are vulnerable because of histories of abuse and substance misuse. However, this research shows that a history of significant head injury is also a vulnerability and needs to be included when considering mental health needs and in developing criminal justice policy. "We need routine screening to identify women with serious head injuries, and also to educate them, as they often don't realise that repeated knocks have an impact. We know that the Prison Service is considering placement and custody for women more generally, and this really needs to be included in their assessment."

HMP High Down –Significant Concerns About Treatment and Conditions of Prisoners

There had been no prisoner or staff deaths due to COVID-19, but hundreds of prisoners had been isolated following possible contact with infection during the months before the inspection. They had faced isolation periods of 10 days with no time out of cell at all other than a weekly shower. A good number had experienced these levels of isolation two or three times with irregular welfare checks. Recorded levels of self-harm had reduced during the pandemic and violence had decreased, but use of force by staff remained at pre-pandemic levels – much, the report noted, occurring when prisoners refused to return to cells after short periods unlocked.

Health care provision was poor and caused serious concern for inspectors. There had been a lack of consistent leadership, severe staff shortages and health care staff said they felt compromised by the unmanageable demands on their time. Progress had been too slow to provide prisoners with purposeful activity 12 months into COVID-19 restrictions. Most prisoners still had only one hour out of their cells each day, sometimes less when time in the open air was cancelled. It had taken five months to launch in-cell education packs.

The work of the offender management unit was fundamentally undermined by the decision to

reverse the prison's change of function. There was little contact between prison offender managers and prisoners and there was a large backlog of assessments of prisoners' risk and needs. However, there was a good focus on the release of high-risk prisoners, though staffing difficulties had prevented staff from listening to the calls of prisoners who required public protection monitoring.

Overall, Mr Taylor said: "We found a troubled prison confronting difficult, long-term challenges. It is a serious indictment of HMPPS leadership that the governor and her team should have been asked to spend so much of the pandemic distracted by a change in function which was ultimately suspended. The prison leadership need an early, definite and final decision on the future direction of the establishment and category C prisoners who were brought to High Down deserve to know how their needs will be met to help them emerge from prison with less risk of reoffending."

MA v Secretary for Justice, HMPs Whatton & Stafford & MB

By these proceedings, MA ("the Claimant") challenges the decisions of the Secretary of State for Justice ("the First Defendant"), of the Governor of HMP Whatton ("the Second Defendant") and of the Governor of HMP Stafford ("the Third Defendant") (together "the Defendants") to refuse, and to continue to refuse, both telephone and audio contact and any inter-prison visits between the Claimant and her wife, MB ("the Interested Party"). Those decisions were first taken on 5 September 2017, and most recently on 4 March 2020. The Claimant further seeks declarations that prior refusal of any contact (including by written correspondence) between her and the Interested Party was unlawful.

Factual Background: The Claimant and the Interested Party are each serving sentences of imprisonment for public protection for sexual offences. They are currently in different prisons. They are married to each other. They met at HMP Whatton in around June 2015. At the time of sentence, both of them identified as men. Each of the Claimant and the Interested Party now identifies as a woman. The Claimant was formerly known as C. The Interested Party was formerly known as D. On 22 April 2013, she changed her name by deed poll to E. In May 2017 HMP Whatton accepted her change of name to MB. The Claimant and the Interested Party became engaged in 2015 and they married on 29 June 2017. Shortly after they were married, the Claimant was moved to HMP Stafford. Since then they have wished to maintain contact with each other. Initially all contact was refused. Subsequently, consequent upon a report by the Prisons and Probation Ombudsman "("PPO"), they have been allowed contact by written correspondence. However contact by telephone and by inter-prison visit remains refused. By letter dated 4 March 2020 ("the Decision"), the Second Defendant confirmed the position. The position of all three Defendants is aligned. The Second Defendant has taken the lead in the decisions. The current governor is Dr Lynn Saunders. She has given evidence by witness statement. HMP Whatton is a specialist category C prison exclusively for people convicted of sexual offences. The prison runs a number of accredited offending behaviour programmes.

The Claimant's Challenge: first, the continued refusal of the Defendants to permit any form of telephone or audio contact, or of inter-prison visits, with the Interested Party; and secondly, the past prohibition of written correspondence between July 2017 and 2020 and the ongoing restriction and delay in the exchange of written correspondence. She does so on the grounds that the Defendants' conduct is in breach of relevant policy as a matter of public law and that it amounts to an unjustified interference with her rights to a private and family life under Article 8 European Convention on Human Rights ("ECHR"). The challenge is supported by the

Interested Party, who has brought her own separate application for judicial review (CO/3232/2019), on similar grounds. By consent, those proceedings have been stayed on agreed terms, pending the outcome of these proceedings.

The Parties' Arguments: The Claimant seeks a declaration of violation of Article 8, a quashing order for any decision preventing contact, and mandatory orders that written correspondence be delivered without delay and that the Defendants shall facilitate inter-prison visits and inter-prison telephone contact on a regular basis. Further the Claimant seeks just satisfaction pursuant to section 8 of the 1998 Act. In accordance with the principles in Faulkner, supra, there should be an award of damages for the Claimant's anxiety, frustration and distress. There is evidence of this in the witness statements of the Claimant and the Interested Party.

The Defendants contend, first, there should be no mandatory order requiring phone calls or inter-prison visits to take place. At most there should be declaratory relief, leaving the matter for the Defendants to reassess in the light of updated facts. Secondly as regards just satisfaction, the Defendants had little to say. A monetary award is only made if necessary and in the present case public vindication of rights by way of a declaration as to the future is sufficient.

Discussion and Analysis: First, in the light of my conclusions on issues (1) and (2), in due course I will make declarations that the decisions restricting all telephone contact and inter-prison visits were contrary to Article 8 ECHR and in relation to inter-prison visits, in breach of policy, and thus unlawful. I will hear the parties on the precise terms of those declarations.

Secondly, I am not prepared to make mandatory orders requiring the Defendants to allow or facilitate telephone contact and inter-prison visits. It is for the Defendants to consider how matters can be taken forward, and under what conditions such contact and visits are appropriate to take place. The Defendants will understand from the declaratory relief and the terms of this judgment, that telephone contact and inter-prison visits are to be allowed, under appropriate conditions.

Thirdly, as to just satisfaction, I conclude that, in principle, there is to be an award of damages on this basis. Having read the Claimant's detailed account in her witness statement, I am quite satisfied that she has suffered substantial anxiety, frustration and distress over the period of a number of years, since she was moved to HMP Stafford. As was pointed out at the time, the attendance of the Claimant and the Interested Party at the hearing of this claim, each by video link from her prison, was the first time that this married couple had seen or heard each other in almost four years. I understand that the parties will endeavour to agree the amount of that award guided by awards made in Strasbourg and other cases. If not, then the matter can be referred back to court.

Conclusion: In the light of my conclusions in paragraphs 133, 141 and 150 above, the Claimant's claim in relation to the restrictions on telephone contact and prison visits with the Interested Party succeeds; her claim in relation to written correspondence is dismissed.

Judges Must Consider Children's Welfare When Sentencing Mothers

Noah Robinson, Justice Gap: The courts must consider the welfare of children when sentencing mothers, MPs have urged. The Joint Committee on Human Rights has drafted new clauses to the Police, Crime, Sentencing and Courts Bill in order to protect the right to family life of children when their mother is sentenced. 'When a mother is sentenced to prison, children themselves receive their own sentence to serve,' the report argues and sets out amendments to the Bill to give greater visibility to children when their mother is sentenced.

MPs and peers point out that it has raised the issue now over two parliaments. 'Children are hidden from sight because there is no central or consistent way of collecting information on

children whose mother is sentenced to prison,' the report says. 'This has serious implications for the support available to the separated mother and her children, and impedes the design of services that are vital to support these children and go some way to ensuring that their right to family life is not breached.' Children's voices are 'too often ignored or not heard' when their mother is sentenced, despite case law and guidelines that should ensure that their best interests and welfare are considered.

The committee points out that that the issue engages with the right to family life, protected under Article 8 of the European Convention of Human Rights as a well as the UN Convention on the Rights of the Child. Proposed amendments include requiring a judge to have a copy of a pre-sentence report when considering the impact of a custodial sentence on the dependent child. In 2019, the committee called for change, including in prioritising data collection on the number of children whose mothers are in prison and increasing the visibility of children in the sentencing process. MPs and peers now argue that the new Police, Crime, Sentencing and Courts Bill is seen as an 'opportunity' for these areas to be addressed.

Despite Government promises in 2019 to 'establish more accurate metrics to capture centrally the number of pregnant women and new mothers in custody', the Committee notes their continued concern about the lack of data. 'The Government's insouciant approach continues to keep a group of children invisible,' the report describes. The Committee proposes an amendment requiring the Secretary of State to collect and publish data on the number of prisoners who are primary carers of a child and the number of children who have a primary carer in custody.

The report also describes how the Committee 'cannot see how the welfare… of children are being sufficiently considered' if it is not prioritised in the sentencing of a parent. The Committee argues that judges can only 'fulfil their obligation to weigh the Article 8 rights of a child when sentencing if they know that the child exists' and recommend that during sentencing, enquiries should be made to establish whether the offender is the primary carer of a child. Whilst there have been some minor changes to sentencing guidance, there are 'strong risks' that this continues to be 'too little to be effective'.

'A young child's separation from its mother when she's sent to prison risks lifelong damage to that crucial relationship,' commented Harriet Harman MP, chair of the Committee. 'Yet, too often, the child is invisible in the court process. This must change. Most mothers who are in prison have committed non-violent crimes. And it's appalling that there's so little concern for children that the Government doesn't even know how many children are suffering separation from their mother by imprisonment. There will be much backing from MPs from all parties for these law changes proposed by the Joint Committee on Human Rights.'

England and Wales Prisoners Taking Fewer Rehabilitation Courses

Eric Allison and Jamie Grierson, Guardian: The number of accredited rehabilitation programmes started and completed by prisoners in England and Wales has significantly decreased, the Guardian can reveal, making the route to release more difficult for thousands of inmates. Between 2009 and 2019, the number of rehabilitative courses to tackle general offending that were started and completed fell 62%, despite the prison population increasing significantly in this time, data released under freedom of information laws reveals. The figures were uncovered by Donna Mooney, whose brother Tommy Nicol killed himself after being repeatedly refused access to courses he needed to gain his release while serving an imprisonment for public protection (IPP) sentence. She says the sharp decline in courses started and completed is clear evidence that the number of spaces available has been cut by the

Ministry of Justice (MoJ) The IPP sentence, under which offenders were handed a minimum term but no maximum term, was scrapped in 2012 but more than 3,000 prisoners remain locked up today under the regime, which a former supreme court justice recently described as "the greatest single stain on our criminal justice system".

Completion of rehabilitative courses is often a requirement by the Parole Board for release for IPP prisoners. Figures released by the MoJ show the number of starts and completions for courses designed to tackle general offending, such as "cognitive skills booster, enhanced thinking skills and thinking skills programme," fell between 2009 and 2019. However, there have been increases in the numbers starting and completing courses designed to tackle domestic violence and violence.

Mooney told the Guardian: "My brother died over five years ago and one of the main factors at play in his death was the fact he was denied access to the rehabilitation that was required in order for him to be released. Have any lessons been learned from my brothers death? My opinion is no. "How can you tell people that their release is dependent on them showing lowered risk through completion of accredited courses but then have these programme cut by more than half? People serving an IPP sentence have always struggled to access these courses, through no fault of their own, and this is made even harder year on year, pushing them ever further past their tariff release date." Nicol killed himself six years into his sentence after being jailed on a minimum four-year tariff. Of the 3,100 inmates serving under the terms of an IPP, 486 are 10 years or more over their minimum tariff, including a man who has served 15 years after receiving a tariff of four and a half months. Last year Mooney, with Shirley Debono and a small team, launched a charity, United Group for Reform of IPPs (Ungripp), which calls for the sentences to be abolished retrospectively and those sentenced under the law resentenced according to the principle of proportional punishment.

IPP sentences came attached with an indefinite licence period, meaning released offenders face recall to prison for the rest of their lives. While the number of unreleased prisoners is falling and stands at about 1,849, the number of recalled prisoners continues to rise and is about 1,338. John Podmore, a former governor of Brixton and Swaleside prisons, now a criminal justice consultant, said IPP inmates were lost in a "Kafkaesque chaos" in which they are perceived as a risk because their mental and physical health is deteriorating due to their continued incarceration. He said: "It is time to switch the burden of proof away from prisoners unable to obtain help and interventions in custody, exacerbated by almost a year of uninterrupted solitary confinement. All those subject to the sentences should be released at the end of their tariff unless the Prison and Probation Service can prove they still pose a risk."

In January the Home Office and MoJ minister Chris Philp was reported to have told MPs it was an "historical anomaly" that more than 3,000 people remained in custody on indefinite sentences, but there were no immediate proposals to make changes. Officials said the main reasons for the apparent reduction in the number of accredited programmes in custody since 2010 was that responsibility for running substance misuse accredited programmes had transferred from the Prison Service to the NHS, and investment in programmes has remained broadly stable. An MoJ spokesperson said: "Investment in accredited programmes hasn't changed over the last decade and IPP prisoners are prioritised, but the independent Parole Board decides when IPP prisoners are released and completion of a course is only a part of that decision. The number of IPP prisoners has fallen by two-thirds since 2012 and we continue to support those struggling to progress."

USA: Half-Brothers Receive $75m Payout For Wrongful Conviction 30 Years Ago

Scottish Legal News: Two men in North Carolina who were wrongfully convicted of the rape and murder of a young girl more than three decades ago have received a $75 million payout, believed to be the largest in US history. Henry McCollum and Leon Brown, who are intellectually disabled half-brothers, spent decades on death row until they were exonerated by DNA evidence in 2014. Coerced as teenagers into signing false confessions written by law enforcement officers, Mr McCollum spent 31 years on death row, becoming the longest serving death row inmate in North Carolina. Mr Brown, who was 16 when he was convicted, was the state's youngest person on death row.

A jury in the United States District Court for the Eastern District of North Carolina last week returned a verdict totalling $75 million against the State Bureau of Investigation agents who violated their civil rights, comprised of $31 million of compensatory damages for each brother and $13 million in punitive damages. Prior to the verdict, Roberson County, North Carolina Sheriff's Department and two of its officers agreed to pay the brothers $9 million for their part in the miscarriage of justice and to avoid having the case go to the jury against them.

Des Hogan, partner at Hogan Lovells, which represented the brothers on a pro bono basis, said: "Henry and Leon lost more than 31 years of their lives, and suffered enormously during this long incarceration for a crime they did not commit. "You can't put a price on this loss, but we are grateful that defendants have been forced to acknowledge this travesty of injustice and a strong message has been sent in North Carolina and around the country that coercive interrogations and covering up police misconduct will not be tolerated."

Louisville Detective Mark Handy Sent to Prison For Putting Away Innocent Men

Andrew Wolfson, Courier Journal : With some of his victims sitting behind him Tuesday 18th May 2021 in the courtroom, disgraced former Louisville Detective Mark Handy offered no apologies for helping send four innocent men to prison. On his 62nd birthday, he admitted he had perjured himself in one of the cases and tampered with evidence in another. Showing no emotion, he was led away to jail by a deputy sheriff after Jefferson Circuit Judge Olu Stevens sentenced him to one year in prison under a plea bargain that prohibits him from seeking probation.

Edwin Chandler, who spent 10 years in prison because of Handy's lies, said he took no joy in seeing Handy taken off to jail. "Nothing can replace what I have lost," he told Stevens. Reading from a brief statement, Chandler said the "criminal justice system is broken" and recounted how he fought for nearly 30 years for justice. He also told how local and federal prosecutors knew for years about Handy's crimes took no action against him, allowing him to continue to wear the badge as a detective and later a deputy sheriff. Chandler praised former Louisville cold-case Detective Denny Butler and Special Prosecutor Shane Young for finally bringing Handy to justice. Handy's lawyer, Brian Butler, told reporters Handy never meant to send innocent people to prison. "He said something that wasn't true," Butler said of Handy's testimony in Chandler's trial, "and the result was tragic." Butler didn't address the other cases. He said his client had no fear of prison because he started his career as a corrections officer.

Later, on the street outside the courthouse, Chandler joined with others who have been wrongfully convicted to demand that the Department of Justice investigate civil rights violations in Louisville. Butler noted that Handy is one of only two officers held to account in 201 wrongful homicide convictions since 1990 in Kentucky, Illinois and Oklahoma. He said taxpayers in those states paid a combined $417.3 million to settle 74 cases. A former state lawmaker, Butler called for the Justice Department to investigate every federal civil rights lawsuit

that results in a settlement and to issue a public report on the cause and recommendations to improve the system. The city of Louisville already paid Chandler an $8.5 million settlement after his lawyers showed Handy fed Chandler facts to use in his confession and taped over surveillance video that might have pointed to the real killer.

The city is still on the hook for millions of dollars more in pending lawsuits filed by three others — Keith West, Jeff Clark and Keith Hardin — who claim Handy violated their civil rights. West spent nearly seven years behind bars for the shooting deaths of two men he said he killed in self-defense when they tried to kidnap and rape him. Handy admitted that he taped over a statement from a key witness. Stevens refused in 2019 to overturn West's two manslaughter convictions, but former Gov. Matt Bevin pardoned him later that year.

Handy was the lead detective in the case against Hardin and Clark, who were convicted in the 1992 slaying of teenager Rhonda Warford. Handy testified that Hardin admitted sacrificing animals as part of a satanic ritual and later decided that he wanted to "do a human." But a judge ruled in 2016 that Handy wasn't credible, citing his misconduct in the Chandler case and other evidence. Clark and Hardin were released after 22 years in prison, and citing its duty to do justice, the state attorney general's office dropped the case.

Chandler, who was convicted in 1995 for the robbery and murder of convenience store clerk Brenda Whitfield, was exonerated in 2009 with the help of new fingerprint technology that identified another suspect, Percy Phillips, 54. Phillips was subsequently charged with murder in a case that is still pending. Butler recommended in 2009 that Handy be prosecuted for perjury in Chandler's case, but Commonwealth's Attorney Dave Stengel said there wasn't enough evidence to win a conviction and his successor, Tom Wine, in 2016 reached the same conclusion.

The U.S. Attorney's Office also considered prosecuting Handy in 2017 but dropped the case, Butler said. Acting U.S. Attorney Michael Bennett declined to comment. Finally, the Metro Council in 2018 voted to ask Kentucky Attorney General Andy Beshear to appoint a special prosecutor, and he assigned Young, the Hardin County commonwealth's attorney, to the case. Two months later, the grand jury indicted Handy. 'I made the call': Ex-police chief defends Breonna Taylor officer discipline Young said it took him four hours to decide Handy should be charged and that he asked the U.S. Justice Department to investigate why he wasn't prosecuted earlier. Handy was finally indicted in September 2019, with both the prosecution and defense agreeing to give him probation. Both said his plea to a felony was sufficient punishment because it would make him ineligible to ever serve again in law enforcement. But in a passionate letter to Stevens, County Attorney Mike O'Connell said Handy committed a "grave human rights violation" and that probation would be "manifestly against the public interest." Stevens rejected the proposed deal, calling Handy's crime a "breach of public trust." That led to the second plea agreement requiring Handy to serve a year in prison.

Unaccountability – The Disease within Government

Pierre Janelle diagnosed the root cause of The Catholic Reformation as "anarchy the disease within the church". It is my contention that unaccountability is the disease within Government and the root cause of many of its shortcomings today. Unaccountability means the reluctance of the Government to be held to account by Parliament, the courts, constitutional conventions or international law. It means that the Government does not have to answer to anyone, other than the electorate, for its actions, as if that electoral mandate frees it of scrutiny under other elements of the constitution. This is being done under the guise, in the words of the Queen's speech,

of "[restoring] the balance of power between the executive, legislature and the courts".

The common thread linking many Government policies is the perception that it should have the sole power to enforce its will, and to view constitutional checks and balances as an unwarranted restriction on its sovereign power to do whatever it likes. This fundamentally misunderstands the nature of the British constitution and replaces balance and nuance with dogmatic executive dominance. I set out below in overview a large number of areas of Government policy linked by this common thread of unaccountability. Although in each individual case the merits of the Government's position could be debated, taken in totality they reveal an underlying resentment of constraints.

Prorogation of Parliament – Unaccountability to Parliament: There were clearly serious political difficulties with the Government advancing its agenda in a divided Parliament without an effective majority. But the Government's 2019 solution was simply to shut down Parliament – to refuse to be held to account by the democratically elected legislature. This is, once more, the essence of unaccountability – the Government doesn't like what Parliament has to say and rather than listening to competing voices, it simply shuts them down. In the Miller (No. 2) case, the Government's argument to the Supreme Court was essentially that it wasn't the courts' business to interfere with what was an inherently political decision. There was a broad sense of political resentment that the Supreme Court could even consider stopping the Government from doing whatever it wanted.

Independent Review of Administrative Law – Unaccountability to the Courts: The terms of reference of IRAL and the way in which it was framed pointed to an outcome desired by the Government. That desired outcome was to reduce the areas of Government action which were justiciable by the courts. Although on the one hand justiciability can be seen as the need to demarcate political activity from judicial activity, the end result would have been that even if the Government acted unlawfully, it could not be held to account by the courts. Credit must go to the IRAL panel for a report which was fair and balanced and, in making modest proposals for reforms, did not follow the pre-ordained route of accepting restrictions on justiciability.

Repeal of the Fixed-Term Parliaments Act 2011 – The point of this short Bill is to re-establish the prerogative power to dissolve Parliament and, arguably due to the breadth of the clause 3 ouster, in effect to overturn the Miller (No. 2) decision and make dissolution and prorogation powers non-justiciable. This makes for double-unaccountability. The Prime Minister could exercise an archaic prerogative power, deriving from the Crown, without any parliamentary accountability (Parliament cannot vote against dissolution) or judicial accountability (the decision cannot be questioned in the courts).

Unaccountability to Constitutional Conventions: Pre-Brexit, the Sewel convention was always honoured by the Government. Post-Brexit, and reflecting the chasm between Scotland and the UK Government on Brexit, the Sewel convention has been routinely flouted in relation to Brexit-related Westminster Bills. The Scottish Parliament do not give their consent, but Westminster legislates regardless. If the Northern Ireland Veterans Bill does go ahead, it seems unlikely that the Northern Ireland Assembly would consent to it. Ignoring constitutional conventions is another aspect of unaccountability.

Conclusion: This has been no more than a whistle-stop tour of multiple Government policies all linked by the common element of unaccountability. Individually there are arguments in favour of each policy, but collectively they all point in the same direction, that the Government do not want a brake on their power to govern. Behind this are two fundamental legal misconceptions. The first is to place sovereignty of Parliament at the top of a hierarchy of constitutional principles, trumping all other principles. This does not cohere with constitutional theory which contains a multitude of competing, overlapping and sometimes conflicting constitutional principles: the Rule of law, the separation of powers, democracy, civil liberties, fundamental rights etc. The business of running the state is a shared constitutional endeavour with built-in checks and balances, and those checks and balances are a key part of the system, not an unnecessary restraint of the power of Government. The second misconception is to conflate the sovereignty of Parliament with the will of the Executive. Sovereignty inheres in Parliament, not in the person of the Prime Minister. Numerical party superiority may sometimes mean that one looks like the other, but this does not make them the same thing. Parliamentary sovereignty is not observed by side-lining Parliament.

Janelle's original thesis may have been flawed in diagnosing anarchy as the sole cause of the church's problems. Likewise, unaccountability is most likely not the only problem the Government may face. But a refusal to acknowledge that sometimes you get it wrong, that there are constraints on your power to act and that scrutiny is of long-term benefit to Government could ultimately lead to political failure. Unaccountability is a disease within Government.

USA: Half-Brothers Receive $75m Payout For Wrongful Conviction 30 Years Ago

Scottish Legal News: Two men in North Carolina who were wrongfully convicted of the rape and murder of a young girl more than three decades ago have received a $75 million payout, believed to be the largest in US history. Henry McCollum and Leon Brown, who are intellectually disabled half-brothers, spent decades on death row until they were exonerated by DNA evidence in 2014. Coerced as teenagers into signing false confessions written by law enforcement officers, Mr McCollum spent 31 years on death row, becoming the longest serving death row inmate in North Carolina. Mr Brown, who was 16 when he was convicted, was the state's youngest person on death row. A jury in the United States District Court for the Eastern District of North Carolina last week returned a verdict totalling $75 million against the State Bureau of Investigation agents who violated their civil rights, comprised of $31 million of compensatory damages for each brother and $13 million in punitive damages. Prior to the verdict, Roberson County, North Carolina Sheriff's Department and two of its officers agreed to pay the brothers $9 million for their Des Hogan, partner at Hogan Lovells, which represented the brothers on a pro bono basis, said: "Henry and Leon lost more than 31 years of their lives, and suffered enormously during this long incarceration for a crime they did not commit. "You can't put a price on this loss, but we are grateful that defendants have been forced to acknowledge this travesty of injustice part in the miscarriage of justice and to avoid having the case go to the jury against them.

Serving Prisoners Supported by MOJUK: Derek Patterson, Walib Habid, Giovanni Di Stefano, Naweed Ali, Khobaib Hussain, Mohibur Rahman, Tahir Aziz, Roger Khan, Wang Yam, Andrew Malkinson, Michael Ross, Mark Alexander, Anis Sardar, Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan & Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Robert Knapp, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Peter Hannigan.