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Thomas Ross QC: Remember 'Wullie' Beck

STV news recently reported that William Beck, aged 59, suffered a fatal heart attack on 20th May 2020 while with his family in Glasgow. The name of William (known as 'Wullie') Beck will be familiar to all regular readers of the Scottish Criminal Case Reports. I first met him in 2019. By then almost 30 years had passed since his conviction in the High Court at Livingston and he had long since served the sentence of six years' imprisonment; yet his commitment to set that conviction aside had not wavered.

In describing his determination I cannot improve upon the assessment of the Scottish Criminal Cases Review Commission (in 2012) "more importantly, to suggest that the applicant has refused to acquiesce in his conviction would be a serious understatement. He has protested his innocence consistently since his conviction. As well as pursuing an appeal following his conviction (despite the absence of legal assistance) he complained about the conduct of the identification parade post-trial … He applied a number of times to the office of the Secretary of State for Scotland to have his case referred to the High Court. He made a further attempt to open up an avenue of appeal by applying direct to the court in 2006 … He attempted to petition the nobile officium …. He has engaged the assistance of MSP's and of the Innocence Project. He has applied to the SCCRC on three occasions … the breadth and persistence of the applicant's conduct in pursuing his claims of miscarriage of justice is striking and is unlike any other applicant the Commission has encountered".

Was Wullie Beck the victim of a miscarriage of justice? The indictment alleged the robbery of two post office workers during a cash collection at the Safeway in Livingston on 12th December 1981. There seems to have been little doubt that the robbery was committed by two men who were pursued on foot to a get-away car (a Ford Grenada stolen earlier that day in Glasgow) in which they made their escape. As put by the trial judge (Lord Dunpark) in his charge to the jury, although other civilians saw part of the incident, the case against William Beck ultimately rested upon identifications of William Beck made by two eye witnesses, A and M.

Cases based solely upon identification by eye witnesses have given British lawyers cause for concern for more than a hundred years. Ironically, a notorious miscarriage of justice almost a century earlier had involved a different Beck, Adolf Beck, convicted in 1896 at the Old Bailey. In 80 years the problem had not gone away and in 1974 the Home Secretary appointed a committee, chaired by Lord Devlin, to consider 'the wrongful convictions of Mr Luke Dougherty and Mr Lazlo Virag' – in both cases 'wrongful' because honest witnesses acting in good faith had simply identified people who had had absolutely no involvement in the relevant crime.

Scotland had of course experienced its own problems – the Bryden Report (1978) listed cases where Royal Pardons had followed Scottish convictions based upon erroneous identifications. In a country of only five million citizens no fewer than four Royal Pardons had been granted in a period of seven years. The list included the case of Maurice Swanson who had been convicted in the High Court in Glasgow on 28th August 1974 then pardoned on 25th July 1975. Swanson had been identified by three witnesses, two bank tellers and an independent female who had been standing at a nearby bus stop - yet was completely innocent of the crime.

Scotland's response to the Devlin Report came in the form of a Practice Note on Identification Evidence, issued in 1977 by the Lord Justice General (Emslie) which referred to, 'the case in which the only evidence inculpating the accused … is evidence of visual identification by witnesses in circumstances in which their opportunity for accurate and reliable observation … has been limited in time … or merely fleeting and where the accused was not previously known to them … In such a case … the risk of conviction on mistaken identification by honest witnesses cannot be wholly excluded'. The case of William Beck was such a case – so how 'risky' were the identifications upon which the conviction was based?

There is very little noteworthy about the identification made by witness A. He was aged 36 at the relevant time and appears to have had an occupation that would require study and intelligence. He ran to the Ford Grenada upon hearing and seeing the uproar and claimed to have obtained a good look at the driver, who he identified as William Beck at a subsequent identification parade.

In Scotland, a case cannot succeed on the basis of the evidence of one witness, so where did the necessary corroboration come from? In that respect the investigating officers were fortunate – a police constable stationed at Livingston police office resided in a neighbouring street. Indeed they were doubly fortunate; on a cold December afternoon many Livingston residents would have been safely sheltered indoors – as the Ford Grenada sped off police constable M was out in the street cleaning his car and thus able to see the driver.

At the relevant time, the conduct of an identification parade in Scotland was regulated by 'Interim Guidelines' which were later replaced by 'Guidelines' which had been approved by the Secretary of State and the Lord Advocate (the two sets were found by the Scottish Criminal Cases Review Commission to be 'in all material respects the same'). The central principal of the Guidelines was that 'every precaution should be taken to see that identification parades are fairly conducted and, in particular, to exclude any suspicion of fairness …'. The need to conduct the identification parade in a way that excluded any 'suspicion of unfairness' was particularly acute in William Beck's case because witness M was Police Constable M, stationed at the venue of the identification parade. In these circumstances it was perhaps reasonable to expect something close to rigid compliance with the Guidelines; so how did Strathclyde Police perform?

Clause 30 of the Guidelines provided that "if a witness makes a positive identification from photographs other witnesses should not be shown photographs but should be asked to attend an identification parade". On Sunday 13th December 1981 a female eye witness (witness C) had been shown books of photographs at Livingston police office and had selected a photograph of William Beck as someone who 'resembled the person whose face she had seen before she crossed the road to run down the path'. On Tuesday 15th December 1981, a second witness, PC M was shown photographs at Livingston police office, the office at which he was stationed, and selected an image of William Beck.

Clause 31 of the Guidelines provided that "prior to any identification parade, the defence are entitled to be advised of any earlier identification made from photographs by any witnesses viewing the parade". Witness C and PC M both made 'identifications' from photographs then viewed the identification parade. There is nothing in the papers to suggest that this was disclosed to the defence at any stage.

Clause 10 of the Guidelines provided that "the accused should be placed beside persons of similar age, height and general appearance". The police elected to place William Beck in a parade with

five stand-ins; the minimum number permitted by the Guidelines. The Scottish Criminal Case Review Commission later agreed that “one of the stand-ins selected was not sufficiently similar in general appearance to be a suitable stand-in in terms of the Guidelines”.

Further, the Guidelines had clauses designed to prevent officers ‘connected with the enquiry’ assisting with the entry and exit of witnesses. One of the officers who assisted with the entry of witnesses that day was DC P – stationed at the same police office as PC M and involved in the arrest of William Beck earlier that day. The solicitor who protected William Beck’s interests at the Identification Parade had responded to the entry of PC M to the parade room by immediately noting upon his papers ‘ID too positive – ID without even looking down parade’. In short, in a case that depended upon the absolute minimum of two sources of evidence linking William Beck with the crime, no fewer than four arguable irregularities can be identified in the conduct of the identification parade.

Add into the mix the fact that the getaway car was also seen by witness L, who had observed the face of the driver and described him as having “a moustache … about 40 years old”. Mr Beck had no moustache and was aged 20. Having viewed the parade L had been prepared to state “I would say that the driver was not on that parade”. L was not called as a witness.

William Beck believed that he had been badly treated by the Scottish criminal justice system and there were other unfortunate events which added fuel to his fire. The trial judge had erred in directing the jury upon reasonable doubt telling them “for a verdict of guilty you need not be absolutely certain of guilt, and I emphasise, not absolutely certain, but you must be reasonable certain”. He had also made a slip of the tongue in dealing with the subject of majority verdicts “for a verdict of guilty you need a majority of eight … it really doesn’t matter so long as there is a majority of 8 in favour of an acquittal verdict”. William Beck was convicted by majority verdict.

The three judge bench that (in 2006) refused to extend the time limit within which to lodge an appeal included the son of the trial judge. The opinion of the court refusing leave to appeal was delivered by the counsel who had appeared for the Crown as advocate depute when the original appeal against conviction was refused in 1982. Given that his appeal had previously been argued (albeit without the benefit of legal representation) and refused, any combination of judges would have resulted in an identical outcome but mature legal systems operate on the basis that even a suspicion of bias should be avoided.

When he attempted to petition the Nobile Officium of the High Court in January his application for a warrant for service was refused by a single judge. When the review came before a court of five judges the Crown was not represented - there was no advocate depute in court.

I have no reason to doubt that both A and M genuinely and sincerely believed that William Beck was the driver of the get-away car but when dealing with identification evidence sincerity is part of the problem. As Lord Gardiner put it in a House of Lords Debate in 1974, “the danger of identification is that anyone in this country may be wrongly convicted on the evidence of a witness who is perfectly sincere, perfectly convinced that the accused is the man they saw, and whose sincerity communicates itself to the members of the jury who therefore accept the evidence”.

Equally, I have no reason to doubt William Beck’s assertion that he was innocent. It would not mean that witnesses A and M were dishonest, merely that they made an error of identification. The state would not have wasted resources on the Devlin and Bryden Committees if many errors of identification had not resulted in wrongful convictions in the past.

It is absolutely beyond doubt that William Beck lived the majority of his life like a person who had suffered a grave miscarriage of justice. I believe that no lawyer could have emerged from 30 minutes in his company with the same confidence in the trial and appeal process in Scotland.

Supreme Court to Rule on 'Paedophile Hunters' Case

A convicted paedophile who was snared by a vigilante group is to have his case examined at the UK Supreme Court. Judges at the UK's highest court will consider whether prosecutions based on the covert operations of "paedophile hunters" breach the right to privacy. Mark Sutherland, 37, believed he was communicating with a 13-year-old boy on the dating app Grindr. But in reality it was a 48-year-old man who was part of a group called Groom Resisters Scotland. The Supreme Court will hold a virtual hearing to consider the case and will issue its judgement later. It will decide whether covert sting operations by vigilante groups are a breach of the right to a private life and private correspondence under Article 8 of the European Convention on Human Rights (ECHR). The court defines "paedophile hunters" as self-appointed groups of vigilantes who impersonate children in order to expose people whom they consider to be sexual predators. It says some of these groups have attracted substantial online followings and debate in mainstream media.

Sally Challen Can Inherit Controlling Husband's Estate, Rules Judge

Caroline Davies, Gurdian: A woman who won an appeal over her conviction for murdering her controlling husband can inherit his estate, a judge has ruled. Sally Challen, 66, was given a mandatory life sentence in 2011 after being convicted of murdering Richard Challen, 61, of Claygate, Surrey in August 2010. Appeal judges quashed her murder conviction in February last year and ordered a new trial. She was released in June following a preliminary hearing for the new trial at the Old Bailey after prosecutors accepted her plea to manslaughter. She was sentenced to nine years and four months for manslaughter, but released after the judge concluded she had already served her sentence.

In a ruling on Wednesday, the judge Paul Matthews concluded that a rule barring people who kill from inheriting their victim’s estate should be waived in her case. His decision followed a high court hearing in Bristol earlier this month. Challen had been in a relationship with her former car dealer husband for about 40 years, since she was 15 and he was 22, and they had two sons, the judge heard. She had beaten him to death with a hammer, and claimed she had suffered years of controlling and humiliating abuse. Matthews said Challen had been a victim of coercive control and suffered psychiatric illness. “The deceased’s behaviour during their relationship and their marriage was by turns contemptuous, belittling, aggressive or violent,” he said. “His response to any suggestion that she would divorce him was that he would limit access to their children. He would ignore her complaints about his behaviour or insist that she was mistaken and that she had not seen what she said she had seen,” the ruling added.

Challen had considered suicide after killing her husband and had left a note saying she could not live without him. “These facts are extraordinary, tragic, and, one would hope, rare,” the judge said. “They lasted 40 years and involved the combination of a submissive personality on which coercive control worked, a man prepared to use that coercive control, a lack of friends or other sources of assistance, an enormous dependency upon him by [Challen], and significant psychiatric illness.” He added her husband had “undoubtedly contributed significantly” to the circumstances in which he died, and said he considered without his “appalling behaviour over so many years” she would not have killed him.

He left no will, and a major asset, the home they shared, had been jointly owned. Every case had to be decided on its merits, and not all victims of coercive control would necessarily be able to inherit, the judge said. “I emphasise that the facts of this terrible case are so extraordinary, with such a fatal combination of conditions and events, that I would not expect them easily to be replicated in any other,” he added. The ruling means that Challen, and not the couple’s sons, would inherit. A “major effect” of that would be that Challen would not have to pay inheritance tax. Challen’s guilty plea to manslaughter was accepted on the grounds of diminished responsibility after a psychiatric report concluded she was suffering from an “adjustment disorder”. The prospect of a retrial was seen as a key test of new laws on domestic abuse and coercive control introduced in 2015.

Prison Release Schemes Almost Impossible to Deliver, Says Watchdog

Jamie Grierson, Guardain: Prisoners in England and Wales have been left confused by high-profile government announcements that led them to believe thousands of inmates would be temporarily released to mitigate the spread of the coronavirus behind bars, a prison deaths watchdog has said. The Independent Advisory Panel on Deaths in Custody (IAPDC) concluded the early release schemes were "hard to understand, difficult to explain and close to impossible to deliver", following a review of hundreds of messages sent by inmates to prison radio. On 4 April, the Ministry of Justice said up to 4,000 prisoners would be eligible for the end of custody temporary release (ECTR) scheme, in addition to freeing pregnant women and mothers of babies. The government also committed to releasing vulnerable prisoners, of whom there are about 1,200, through compassionate release.

Seventy-nine people have been released under the ECTR scheme, while about 22 pregnant women and mothers of babies have been freed and fewer than 10 vulnerable prisoners released. The IAPDC analysed more than 200 messages sent to prison radio at 55 prisons for its review. Launching the review, Juliet Lyon, the chair of the IAPDC, said: "Eligibility criteria and the convoluted process of early release are mired in complexity and risk aversion."

One of the messages read: "Everyone's frustrated. We're behind these doors, we don't know what's going on. We've stopped having updates now. I used to get updates every two days or so explaining what's going to happen. We're just frustrated because we don't know anything." Another read: "No sign of early release, no staff have any clue if it's even true but it's on the news." Another said: "I'm sure there is a lot of prisoners suffering from severe anxiety, isolating in their cells not knowing when they're going to be unlocked." Some of the messages expressed concern about a lack of personal protective equipment among staff. One message read: "I want to know why prison officers aren't wearing gloves, face masks and protection gear?Based on this review, the IAPDC made 10 recommendations, including streamlining and expediting the early release scheme to create the headroom needed to take active steps to protect life.

There were positive aspects highlighted by the review, with prisoners expressing a "high degree of respect and appreciation" for staff, while many vulnerable inmates spoke highly of the support. But the review revealed that the severely restrictive regime in place to curb the spread of the virus, which includes a ban on visits and just 30 minutes spent out of cells each day, is having a negative impact on prisoners' mental health and wellbeing. The panel recommends overhauling the process of release on compassionate grounds, given the low number of vulnerable prisoners released to date. Last week, the Guardian revealed there had been five suicides in six days in May, further raising concerns that the regime was taking a heavy toll on inmates' wellbeing.

A Prison Service spokesperson said: "As noted in this report and by Public Health England, our strong but necessary measures are working to limit the spread of the virus and save lives. We will announce plans to ease these measures safely in due course. We make no apologies for putting public safety first and ensuring all prisoners are subject to thorough assessments before they leave custody."

Poverty and Debt Driving Young Women to Self-Harm

Denis Campbell, Guardian: Young women are being driven to self-harm as a result of poverty, debt and their struggles to pay household bills, research shows. Women aged 16-34 from the poorest backgrounds are five times more likely to harm themselves than those from the most well-off families, according to the study by NatCen Social Research. Its findings, released by the charity Agenda, show a close association between wealth and mental ill-health, and show that young women in poverty are much more likely to suffer psychologically. Jemima Olchawski, Agenda's chief executive, said NatCen's research showed that the debate about the recent rise in mental health problems among young women – which often cites social media, exam stress and body image issues as negative influences – took too little account of deprivation.

"It's devastating to see such high and increasing levels of self-harm among young women, especially those living in poverty and facing deprivation. This is especially concerning as we move into an economic downtown," Olchawski said. "The increase in self-harm among young women is deeply worrying. Yet the discussion around this issue and women and girls' mental health is often very narrow, focusing on issues like social media rather than reflecting on wider causes. This research highlights the important relationship between self-harm and poverty." Agenda is an alliance of groups working to help young women and girls affected by abuse, poverty, poor mental health, addiction, homelessness and criminal justice issues.

There is mounting evidence that self-harm is on the increase in the population as a whole, and that teenage girls and young adult women are the most affected. The proportion of 16- to 24-year-old females who say they have self-harmed rose from 6.5% to 19.7% between 2000 and 2014, according to a previous study. NatCen, which based its findings on face-to-face interviews with more than 20,000 people in England, also found other stark differentials in mental health related to young women's financial circumstances. One in five women aged 16-34 with serious money problems have self-harmed in the last year. Self-harm is three times higher in women who have fallen behind on utility payments or who have had utilities disconnected (13%) than among those who have not (4%). Women who say they do not feel safe in their neighbourhood are four times more likely to self-harm than those who do not.

Dr Mary-Ann Stephenson, the director of the Women's Budget Group, said: "This powerful report shows the strong links between poverty, mental health and self-harming for younger women. We know that young women are particularly likely to have been hit badly by the economic impact of Covid-19, since they are more likely to work in sectors like hospitality and retail that have been closed down." Men, especially middle-aged men, are more likely to kill themselves than women. However, the suicide rate among girls and young women aged between 10 and 24 has risen: in 2018 it was the highest on record. A recent report by Prof Sir Michael Marmot of University College London, called Health Equity in England Ten Years On, found that women in the poorest areas faced the worst health inequalities and that their life expectancy had fallen by 10% in the last decade.

Sally McManus, who led the research for NatCen, said: "People have become increasingly likely to report using non-suicidal self-harm as a way of coping and this increase is particularly apparent in young women. This report indicates that self-harm often occurs in the context of poverty and debt, especially for young women." Andy Bell, the deputy chief executive of the Centre for Mental Health thinktank, said: "This survey underlines that economic and social inequalities have a major impact on our mental health. Young women's mental health has deteriorated significantly in the last decade, and those who are most disadvantaged are at a far greater risk still. "The impact of Covid-19 on young women's mental health is likely to add extra pressure both now and in the coming months and years. It's vital that we take action now to protect mental health for all and reduce the inequalities that lie behind so much of the distress this survey has brought to light." A government spokesperson said: "We are absolutely committed to supporting everyone's mental wellbeing, especially during this unprecedented period. Vulnerable young women can continue to access mental health services, including virtually, and we have released new tailored guidance to help people deal with this outbreak through practical tips and advice."

Suspect's Right to Privacy Reinforced

Kate Goold, Bindmans: In March 2015 we attended the Home Affairs Select Committee with our client Paul Gambaccini to make representations on pre charge bail and suspect anonymity pre charge- ie, when an individual is suspected of an offence but has not been charged, read more here. We argued that given the fact the police only require reasonable suspicion to arrest an individual, suspects should have a reasonable expectation of privacy given the devastating and disproportionate damage publicity at this stage could bring. Publicity does not only cause irrevocable damage to those with a public profile but to any individual. The subsequent fall out from publicity can result in the break up of families, the loss of employment and huge financial cost. That individual may not be charged, but the damage has been done. The Select Committee expressed concern but change was slow to come. This then came to a head when Sir Cliff Richard took action against South Yorkshire police after they, with a BBC helicopter filming from above, searched his property while he was abroad. Sir Cliff had not even been arrested or interviewed by the police at this stage. After the investigation concluded with no further action being taken, Sir Cliff took action against the police and the BBC and succeeded with the High Court finding that this was a "serious infringement on his privacy rights".

This view and greater legal certainty was provided by the Court of Appeal in an appeal brought by Bloombergs (ZXC and Bloombergs PLC 15 May 2020). In this case a confidential letter of request was sent from a UK investigative body to a foreign government requesting information. The letter of request made it clear this was a criminal investigation into bribery and corruption. Bloombergs published and the subject of the request-a CEO of the Corporate's subsidiary, brought a privacy claim. In this appeal Lord Justice Simon stated the Richard case was a "legitimate starting point" for the issue of privacy during a criminal investigation. The Court of Appeal rejected the suggestion by Bloombergs that businessmen involved in public companies lay themselves open to greater scrutiny and held that "those who have simply come under suspicion by an organ of the state have, in general, a reasonable and objectively founded expectation of privacy in relation to that fact….. The suspicion may ultimately be shown to be well-founded or ill-founded, but until that point the law should recognise the human characteristic to assume the worst (that there is no smoke without fire); and to overlook the fundamental legal principle that those who are accused of an offence are deemed to be innocent until they are proven guilty".

The Court of Appeal brought a human element to their judgment properly recognising the irremediable damage publicity of an investigation can have on both individuals and corporates. Lord Justice Simon did accept that there may be exceptional circumstances where publicity may be warranted, but this case did not exhibit any of those exceptional circumstances.

Media organisations have expressed concern about the "chilling effect" this judgment has on the ability the media and public have to scrutinise the affairs of a public company and also the ability for others to come forward if they know that wrong doing is suspected. Having heard all those arguments the Court of Appeal concluded the Article 8 rights- the right to private life -of the individual being investigated outweigh the Article 10 rights – the freedom of expression. The Court of Appeal gave robust support to the Sir Cliff Richard Judgment of Mr Justice Mann, but it is reported that Bloombergs have applied for permission to appeal to the Supreme Court given that Article 10 considerations have such importance in a democracy.

Pranjic-lvl-Luklc v. Bosnia and Herzegovina

The applicant, Goran Pranjic-lvl-Lukic, is a national of Bosnia and Herzegovina who was born in 1962 and lives in Karlsruhe (Germany). The case concerned the applicant's complaint about being escorted by the police to involuntary psychiatric and psychological examinations during criminal proceedings against him. In 2004 the applicant was indicted for damaging the fac;:ade of his neighbour's house and for spitting at a police officer and verbally abusing another after they had been called to the scene. In 2011 the Municipal Court terminated the proceedings concerning the offence of damaging property as statute-barred and adjourned them in respect of the other offence of assaulting an official after a psychiatrist concluded that the applicant was incapable of standing trial because of mental health problems.

The criminal proceedings were resumed in December 2012, while non-contentious proceedings for the applicant's mandatory psychiatric treatment were still pending. The Municipal Court ordered that the applicant undergo psychiatric and psychological examinations, including his being forcibly escorted to those examinations on four occasions. In July 2013 the court decided to adjourn the proceedings and then in October 2016 to terminate them on the basis of medical reports which concluded that he had a permanent psychological illness.

Throughout the criminal proceedings, in a written objection to the Judicial Police Department and in an appeal to the Constitutional Court, the applicant unsuccessfully complained about his treatment by the judicial police when they escorted him for psychiatric examination, alleging that on one occasion he had been handcuffed in front of his ailing parents.

Relying in particular on Article 8 (right to respect for private and family life) of the European Convention on Human Rights, Mr Pranjic-lvl-Lukic alleged that the court orders for him to be escorted to involuntary psychiatric and psychological examinations had been unlawful because they had been issued when the decision terminating the non-contentious proceedings had not yet become final. Further relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention, he also complained about being handcuffed when he was being escorted by four judicial police officers to one of his involuntary psychiatric examinations. Violation of Article 8, Violation of Article 3 Just satisfaction: 3,900 euros (EUR) for non-pecuniary damage and EUR 70 for costs and expenses

NI: Around 200 People Interned in 1970s Bring Legal Proceedings After Adams Ruling

Lawyers for around 200 people who were interned between 1972 and 1975 will launch legal proceedings against the legality of their detention today following the Supreme Court's landmark ruling in R v Adams. Earlier this month, the court unanimously held that the interim custody order (ICO) made in respect of former Sinn Féin president Gerry Adams in 1973 was invalid because it had not been considered by a Secretary of State. Belfast-based Ó Muirigh Solicitors is now representing around 200 clients who believe that they were subject of an unlawful interim custody order which had not been considered by a Secretary of State. Solicitor Pádraig Ó Muirigh said: "In circumstances where it was the function and sole responsibility of the Secretary of State to properly consider each and every application for an Interim Custody Order, we will be putting the Secretary of State to his proofs to demonstrate such lawful consideration was given in relation to each of our clients.

"Since the Supreme Court judgement we have been reviewing our clients prison files and have found an absence of evidence of consideration of the applications by the relevant Secretary of State, whether during the tenure of William Whitelaw, Francis Pym or indeed Merlyn Rees who served

as Secretary of State when internment ceased in late 1975. "We have also requested from the Crown Solicitors Office a complete, unredacted, copy of our client's entire internment papers and a copy of legal advices from the then JBE Hutton QC which featured in the R v Adams Court of Appeal and UK Supreme Court case. If we do not receive a satisfactory response we may issue proceedings in the High Court against the Secretary of State without further notice. We are also reviewing the lawfulness of the detention without trial of our around a further 200 clients from the 9th August 1971 until November 1972 under the earlier Civil Authorities (Special Powers) Act 1922. This recent judgement by the Supreme Court has again brought into fresh focus the failed policy of internment and its questionable legal framework."

Police Seizure of 26,748 Bottles Of Baileys Cream Liqueur Violation of Article 1

The applicant company, Avendi OOD, is a Bulgarian limited liability company based in Sofia which trades in alcoholic beverages. The case concerned the applicant company's complaint that the authorities had failed to comply with a final domestic court decision ordering the return of its merchandise, which had been seized as evidence in criminal proceedings. In January 2005 the Varna regional police carried out a search-and-seizure operation at a warehouse where merchandise belonging to the applicant company was stored. The police seized 26,748 bottles of Baileys cream liqueur belonging to the applicant company as evidence in ongoing criminal proceedings against a certain M.M. and S.S. who were suspected of storing merchandise subject to excise duty without the mandatory stamps. M.M. and S.S. were subsequently acquitted and the Varna District Court ordered the return of the seized bottles to the applicant company. The court's decision became final in December 2005.

However, the investigative and tax authorities continued to retain the bottles pending parallel proceedings against the applicant company for storing merchandise without the mandatory excise duty stamps and against an importing company and its representative for selling the beverages to the applicant company without the mandatory excise duty stamps.

The bottles were eventually returned to the applicant company in March 2007, by which time the shelf life of the bottles of liqueur had expired. The applicant company filed a claim for damages against the State, requesting that the tax authorities' decisions refusing to return the bottles be declared null and void and that it be awarded compensation for damage and lost profits, but the claim was unsuccessful. Relying in particular on Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, the applicant company complained that it had been deprived of its property and had suffered pecuniary losses because of the failure to enforce a final domestic court decision in its favour, after a series of unlawful actions by the tax and prosecuting authorities. Violation of Article 1 of Protocol No. 1 Just satisfaction: The Court held that the question of the application of Article 41 (just satisfaction) of the Convention in so far as pecuniary damage resulting from the violation found is concerned was not ready for decision and reserved it for decision at a later date.

Russia Must Reform Legislation That Puts Life Prisoners in Strict Imprisonment Regime

In Chamber judgment in the case of N.T. v. Russia (application no. 14727/11) the European Court of Human Rights held, unanimously, that there had been: a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights. The case concerned the applicant's complaint about routine handcuffing and various aspects of his strict imprisonment regime, which had been applied to him for several years on the sole

grounds of his life sentence. The Court found in particular that the Government had neither justified the applicant's prolonged isolation, including solitary confinement, nor his routine handcuffing for more than five years. The applicant's situation had moreover been aggravated by the fact that he had been confined to his cell for about 22-and-a-half hours a day, without any other activity to do, such as work or education, and by the fact that he often had to carry a heavy lavatory bucket to empty it outside while still handcuffed. Overall, the applicant's treatment had to have caused him significant distress and had been inhuman and degrading. The Court considered that the violation found in the case disclosed a systemic problem which affected each life prisoner during the first ten years of his imprisonment and gave suggestions for the measures which could be taken for reform.

Principal facts: The applicant, Mr N.T., is a Russian national who is currently serving a life sentence in special-regime correctional colony no. 6 ("IK-6") in the village of Elban in the Khabarovsk Region. Mr N.T. started serving his sentence in special-regime correctional colony no. 56, located in the Lozvinskiy settlement in the Sverdlovsk Region ("IK-56"), in December 2010. He was automatically placed under the strict imprisonment regime, which applies to all life prisoners in Russia for at least the first ten years of their sentence. He was detained there for over seven years before being transferred to IK-6, where the strict imprisonment regime continued for several more months until the statutory period expired. During this time he was held in solitary confinement or a double cell with another prisoner. From the first day of his detention in IK-56 until the end of 2015, he was handcuffed each time he left his cell, and even when he had to empty his heavy 30-litre lavatory bucket into a cesspool outside the building, there When transferred to IK-6 in March 2018 he was put on the list of dangerous prisoners ("prisoners inclined to escape, attack, take hostages, commit suicide or self-injure"), and prison guards started to handcuff him again on a regular basis. being no sewerage system in the facility.

Decision of the Court Article 3 (inhuman or degrading treatment). All in all, the applicant had been segregated for years from the rest of the prison community, solely on the ground of his life sentence, either in isolation or by confinement in a double cell. His situation had been further aggravated by the fact that he had been confined to his cell for about 22-and-a-half hours a day, without any purposeful activity, such as work or education.

The Court had already held that all forms of solitary confinement were likely, in the long term, to have damaging effects, resulting in the deterioration of mental faculties and social abilities. Confinement in a double cell could have similar negative effects if both detainees had to spend years locked up in one cell without any purposeful activity, adequate access to outdoor exercise or contacts with the outside world. Detention in double cells in such conditions or prolonged isolation could therefore only be justified by particular security reasons. The Government had not, however, explained the reasons for the applicant's solitary confinement.

Nor had they provided any reasons to justify the systematic handcuffing of the applicant, apart from the fact that he had been on the list of dangerous prisoners from March 2018. That did not explain though why it had been necessary to use handcuffs on him from the date of his arrival at IK-56 in 2010, particularly as he had never breached prison discipline during the entire period of his detention in that facility. His routine handcuffing from 2010 to 2015, especially while being escorted around IK-56, a highly secure facility, had clearly exceeded the legitimate requirements of prison security. That situation had been aggravated by the fact that he had had to regularly carry a heavy lavatory bucket outside to empty it with his hands cuffed.

The isolation, limited outdoor exercise and lack of purposeful activity had to have resulted in intense and prolonged feelings of loneliness and boredom for the applicant which could have led

to his being institutionalised, while the routine handcuffing had diminished his human dignity and caused him anguish. Such a situation had to have caused significant distress to the applicant which had gone far beyond the unavoidable suffering and humiliation inherent in life imprisonment. The Court concluded that that had amounted to treatment proscribed by Article 3. There had therefore been a violation of Article 3 of the Convention on account of the inhuman and degrading treatment to which the applicant had been subjected under the strict imprisonment regime.

Article 46 (binding force and enforcement): The violation found in the applicant's case stemmed in large part from the relevant provisions of the the Code for the Execution of Criminal Sentences, which disclosed a systemic problem affecting each life prisoner during the first ten years of his imprisonment. Taking into account the urgent need to grant such prisoners speedy and appropriate redress at domestic level, the Court decided to outline measures that could be instrumental in resolving the structural problem in compliance with the Convention.

Such measures could include removing the automatic application of the strict imprisonment regime to all life prisoners and putting in place provisions which imposed - and maintained - the regime only on the basis of an individual risk assessment of each life prisoner and for no longer than strictly necessary. It could also be envisaged that certain aspects of the strict regime be mitigated, particularly those concerning physical restrictions, the isolation of life prisoners and their access to social and rehabilitation activities. Just satisfaction (Article 41). The Court held that Russia was to pay the applicant 3,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,000 in respect of costs and expenses.

Potoroc v. Romania

The applicant, Ioan Potoroc, is a Romanian national who was born in 1953 and lives in Bucharest. He suffers from various medical disorders, including in particular brain damage following several strokes, and has to use a wheelchair. The case concerned the applicant's conditions of detention despite being seriously ill. Mr Potoroc was convicted in a final judgment in 2009 for his involvement in international drug trafficking and sentenced to 15 years' imprisonment. He was placed off and on in prison hospitals during his detention until his release in 2017 after a European Court judgment found that the criminal proceedings against him had been unfair (Potoroc v. Romania, no. 59452/09, of February 2017) and he applied for a review of the decision sentencing him to imprisonment.

There had in the meantime been several sets of proceedings concerning the interruption of the execution of his sentence on health grounds. Following a first set of proceedings, a court ordered his release in 2012 on account of his "dreadful" state of health.

However, he was returned to prison in 2015 when the authorities applied for a reassessment of his health in a second set of proceedings and it was found that adequate medical care was available in prison. In 2016, in a third set of proceedings, a court dismissed the applicant's further request for release, while in a fourth set of proceedings, his request to be transferred to a hospital was granted. The courts relied in the decisions on several medical reports finding that the prison healthcare system was able to cater for the applicant's needs, but that he needed constant help, which should be provided by a personal assistant.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Potoroc alleged that his continued detention had amounted to exceptional hardship owing to his advanced age, significant health problems, and the inadequacies of the medical treatment he had received in prison. He complained in particular that he had never been provided with a personal assistant and that help from fellow inmates had been inadequate. Violation of Article 3 - concerning the compatibility of the applicant's state of health with his detention from 9 March 2015 until 20 September 2017. Just satisfaction: EUR 3,000 (non-pecuniary damage)

HMP The Verne - Weaknesses in Provision of Activities and Health Care

A prison in Portland in Dorset holding men convicted of sexual offences, was found to be safe, with low violence and self-harm, and respectful. Inspectors, however, found weaknesses in the provision of activities for the men held, as well as in some aspects of health care. Peter Clarke, HM Chief Inspector of Prisons, said the inspection of The Verne, a former immigration removal centre, in February 2020 had led to a positive report. “Outcomes were good, our highest judgement, in our healthy prison tests of safety and respect, not sufficiently good in purposeful acivity and reasonably good in rehabilitation and release planning.”

Few prisoners reported feeling unsafe and when violence or antisocial behaviour did occur, incidents were investigated well and victims received good support. Managers had worked effectively with prisoner peer support workers to promote a safe community ethos. “It was this sense of community and the positive relationships between staff and prisoners which encouraged good behaviour,” Mr Clarke said. Relationships between staff and prisoners were among the best inspectors had seen: 97% of prisoners reported that most staff treated them with respect. Living conditions were good and residential units were clean and well equipped.

Health care provision, however, was less positive. It had taken too long for NHS commissioners to carry out a health needs assessment to reflect the needs of the prisoners. Mr Clarke said: “As a result, the health services team was under-resourced and was unable to meet the needs of the population.” Prisoners were never locked in their rooms and had free access around the site for over nine hours a day. However, there was not enough activity to occupy all prisoners and, in addition, the education curriculum did not meet their needs. Too many prisoners were unemployed at the time of the inspection. While behaviour, attitudes to learning and punctuality were good, there needed to be more focus on progressing learners to the next stage of their education and better support for those with additional learning needs.

Support for prisoners to maintain contact with their family and friends was reasonable, though facilities for visitors were basic. Public protection procedures were reasonable but inspectors identified weaknesses in implementing contact restrictions, which needed to be addressed.

June 2020 SAFARI Newsletter

CPS Reports: A report from HM Crown Prosecution Service Inspectorate (HMCPSI) in Dec 2019 (https://tinyurl.com/safari-72) has said that the steep decline in rape convictions in England and Wales is partially due to a lack of resources which has left the criminal justice system "close to breaking point". The report was commissioned as part of an emergency, 'End-to-End' rape review overseen by the National Criminal Justice Board (CJB), which brings together the Ministry of Justice, Home Office, law enforcement agencies and senior members of the judiciary. But there's a problem, and it's a problem that the legal system has had for very many years. They seem to assume that every allegation is true and the person being accused is lying. When conviction numbers drop, instead of being happy that innocent falsely accused people have been correctly exonerated, they claim that the percentage of "successful" convictions is too low, so they fight for powers to make convictions easier.

There seems to be a complete lack of comprehension that quantity does not equal quality. They request more funding to help them achieve higher conviction rates, while the falsely accused person struggles to obtain enough funds to defend themselves. There needs to be equality of arms; the prosecution and defence need to have the same level of access to the tools that will help prove innocence or guilt. It is a complete fallacy to state that there are sufficient safeguards to protect the innocent. In sex-offence cases, where an accuser's uncorroborated word can be sufficient to convict, and the jury are left "choosing whom to believe"; and when the Court of Appeal choose to disbelieve retractions of those original allegations, it is now vital to be able to prove your innocence conclusively.

The report itself appears to assume that all reported rapes really occurred, stating that there has been an increase of 42.5% in the number of reported rapes, but a decrease of 22.6% in the number of cases charged. But, where there is such an incentive to make false accusations (thousands of pounds in compensation from the CICA for rape), how sure can anybody be that the 42.5% increase in reporting is due to more genuine complainants coming forwards, as opposed to more false accusations being made? The report states that delay in bringing cases forward can be a significant cause of cases not being charged, and says: "There was some evidence that in cases which had been delayed, the complainant withdrew their support." Many of those cases may have been false accusations with the accuser thinking better of their actions (thankfully) before charging took place.

SAFARI does, of course, appreciate that some guilty people are either not being charged, or being acquitted, but the system must never forget that wholly innocent people are also being convicted with little prospect of a successful appeal. Ironically, the HMCPSI report of January 2020 (https://tinyurl.com/safari-73) finds that the CPS is still failing in its duty of disclosure. This follows on from some high-profile cases which very nearly resulted in yet more innocent victims being wrongly convicted when vital evidence was only disclosed at the 11th hour. The report says that the CPS's disclosure of evidence is still sub-standard; in more than half of the criminal cases looked at, the CPS's charging advice did not deal properly with unused material; and in only 16% of cases where police performance was sub-standard did prosecutors identify the failing and feed this back at the charging stage. Some aspects of the CPS's performance were said to "show continuous improvement", in some areas performance was "very low, and although there was progress, there is still a long way to go before an acceptable standard is reached." Caroline Goodwin QC, chair of the Criminal Bar Association, said: "If this report had given the equivalent of an Ofsted grading for a school it would still, tragically, not move out of the bottom-ranked 'failing'.

Criminal defence barristers are still not paid for the many hours spent examining unused material. It is this task, within what the inspectorate reveals as a still failing system due to starved and inadequately trained professionals at both police and CPS, that is often the difference between liberty and imprisonment." Amanda Pinto QC, chair of the Bar Council, said the report was 'not reassuring'.

The False Allegations Support Organisation (FASO) is trying to keep their website (http://www.false-allegations.org.uk), and FaceBook page updated with virus and Courts issues. They continue to respond to phone calls (on 0844 335 1992 - please note this is not a free number) 6 pm - 10 pm, Mon-Fri); letters (FASO c/o 176 Risca Road, Crosskeys, Newport, NP11 7DH); and eMail: support@false-allegations.org.uk.

MPs who care: (1) Philip Davies, MP for Shipley, put a written question about the

Domestic Abuse Bill on 28th Apr 2020 as follows: "Another amendment I will be tabling would extend the definition of domestic abuse to include parental alienation. This is where one parent deliberately alienates the other parent from a child. I have heard horrific stories affecting parents and children, which I would love to expand on today but cannot because of the time available. However, if we are to save future generations of children from having non-existent relationships with one of their parents, something needs to be done, and my amendment would be a start. I also want to amend the Bill so that false allegations of domestic abuse would be classed as domestic abuse in their own right. Some parents have their reputations and lives trashed by malicious, vexatious accusations, particularly in relation to domestic abuse. By including false allegations of domestic abuse in the definition of domestic abuse, we can hopefully reduce the instances of this occurring. The definition of domestic abuse should also include cases where one parent deliberately denies the other parent contact with their children for no good reason. As far as I am concerned, this is just as abusive as other forms of abuse that are regularly mentioned; it causes significant distress, upset and harm. In some cases the harm is so bad that it can tragically lead to suicide." MPs who care: (2) Sir Gary Streeter MP wrote to a SAFARI reader: "I will certainly consider the points you make in your letter in relation to future improvements to the Criminal Justice System. I do recognise the point that you make that some defendants are also victims because allegations against them are false. I will ensure that government takes this into account in considering the new Victims' Law."

The APPG (All-Party Parliamentary Group) on Miscarriages of Justice held a meeting in the House of Commons on 4th February 2020 about defective forensic science being used in the justice system. The APPG heard from Louise Shorter (Inside Justice), Professor Carole McCartney (Northumbria University), Dr Gillian Tully (Forensic Science Regulator), Professor Ruth Morgan (University College London), and Professor Angela Gallop CBE (Forensic Access). Defective forensic science is one of the biggest causes of miscarriages of justice today. Since the abolition of the Government-run Forensic Science Service, vital forensic investigation is now entrusted to private laboratories, which can put commercial viability before justice.

Inside Justice (info@insidejustice.co.uk, Inside Justice, One Business Village, West Dock Street, Kingston upon Hull, East Yorkshire, HU3 4HH, Tel: 020 3961 8790, https://www.insidejustice.co.uk) is a not-for-profit investigative unit that explores alleged miscarriages of justice. Louise Shorter said that resources are tight, and confidence in forensic science needs to be maintained. With the correct strategy for exhibits, and a diligent pathologist, much more useful evidence is possible. 'Tapings' at the scene of crime, i.e. gathering debris with sticky tape, can provide excellent evidence of fibre presence and often DNA, but because Touch DNA (which uses very small samples) is now possible, tapings are not considered valuable enough to justify the cost. In a recent case where material was requested to investigate, tapings and a carrier bag with blood and fingerprints had already been destroyed, and vital evidence was either contaminated, or police would not release it. The cost to the public purse of a wrongful conviction with CCRC involvement or Judicial Review and referral to Court of Appeal is orders of magnitude higher than a thorough forensic investigation. If exhibits are kept, the work is easily achieved at a fraction of the cost. There is an acknowledged burden on the police to store samples, but this needs careful organisation and sufficient space. In 2017 Louise circulated a questionnaire to 43 police forces as part of her MSc. It was clear most of them either did not comply with rules or followed the wrong policy. Only two followed the guidelines correctly. The exercise was repeated in 2019, and the result was better but still not perfect. The

National Police Chiefs Council (NPCC) and the Criminal Procedure and Investigations Act 1996 (CPIA) rules say they should be kept for 30 years or the length of a sentence. Some police stores are not fit for this purpose and are too full. Evidence is lost, contaminated, destroyed, or non-disclosable. There is regional inconsistency, as some forces have a dedicated archivist and others do not. There is no way of quantifying the problem and no consequences for the police. If you have experience of missing evidence that might add to Inside Justice's data, please email info@insidejustice.co.uk.

Dr Carole McCartney, a professor in the School of Law, Northumbria University, and previously a senior lecturer in criminal law and criminal justice at the University of Leeds, specialises in the science of forensic evidence and its use in solving miscarriages of justice. She said that there is frequent failure of forensic science to assist in cases to its full potential. Cases are often blocked by inadequate safeguarding of exhibits and samples. They are lost or destroyed, and this means that miscarriages of justice cannot be resolved, and crimes remain unsolved. During questions, Dr Anne Priston, OBE (fibre specialist) also said that much information is lost between the crime scene and the court, and this leads to miscarriages of justice. Post-conviction, Appeal Court judges should be more open about what can be released and allowed; the evidence could either confirm or rebut the prosecution case. Cases are not being resolved.

Professor Ruth Morgan contributed to the House of Lords report, ("Forensic science and the criminal justice system: a blueprint for change" - https://tinyurl.com/safari-70). This raised many concerns. She said that the Government had responded to this report, and they are at a crossroads. There must be a will to change, or this will still fail. This needs a concerted effort. Professor Angela Gallop has had 40 years of experience as a forensic scientist and is chief executive of Axiom International. She was president of the Forensic Science Society and sits on the Independent Police Commission. She said that there is always a balance between cost and quality of work. The National Forensic Service closed in 2012, and this work is now carried out by private labs or police facilities. She outlined areas of concern. Insourcing – can the police be trusted to be independent and impartial? Less work is carried out at the scene of the crime, selecting only certain techniques. The problem with this is that if you just pick DNA testing, you do not gather information about how it got there or the pattern of deposits. Sources of data are increasing, but tests are limited. There is a lack of experience in directing forensic work and streamlining of reports. Evaluation is not holistic, and wrong conclusions can be drawn. Sometimes there are grounds to challenge, but the defence may not be aware of these. The primary sources of evidence used now are fingerprints, DNA and digital. Other expertise is ignored, and there is a de-skilled workforce. Textile expertise is lost, and this is important. The number of experts on fibre analysis has gone down from around 60 to six. SOCO staff are not taking all the samples needed; tapings, debris, and DNA collection all take time. The investigation is stripped out. Digital data is the most significant single challenge; the cost and complexity of accreditation alone is an issue, and the context is essential. It is better not to use it at all than to be too selective. This needs automatic review by the defence.

Dr Gillian Tully is the Forensic Science Regulator and is responsible for setting standards in forensic science. She says that decision making at the original scene of the crime is vital. There are cases where death is not initially thought suspicious, and unjust acquittals are possible. Police training is essential. Often there are omissions in considering clothes, bedding, nappies, and tissues etc. Police need to attend the crime scene, for which resources are required. The decision about what gets sent off to the lab is vital, and validated test methods are required. At trial, it is essential to send the right competent people to present evidence and answer questions effectively. With regard to disclosure, confidence is needed at every level. Swabs must not be contaminated. DNA samples need the right equipment and environment, and there needs to be confidence in interpretation, and balance in reporting. There are many risk areas; wherever people are involved there will be errors. Crime scene investigation errors are sometimes unreported despite the fact that mistakes made must be recorded and escalated. There is an anonymous reporting line: Crimestoppers UK Helpline. There has been a threefold increase in cases going to the Regulator's office. With most types of data, it is essential to be clear about Uncertainty (the estimated difference of an obtained result from an accurate value, which can be affected by parameters such as a limited sample or poor condition of the sample). While DNA test sensitivity has improved, the necessity for clean samples and equipment has increased accordingly. Juries may not understand this.

The difference between Factual Evidence and Opinion Evidence must be made clear. There can be pressure to change reports and issue an amended version without saying so. Dr Gillian Tully's response to the House of Lords report "Forensic science and the criminal justice system: a blueprint for change" is available online on the parliamentary website. Statutory enforcement to release sample or digital evidence is needed but is not sufficient on its own. Dr Tully confirms that more investment is required throughout.

Supreme Court Rules "Hostile" Judge Harassed Litigant In Person

Neil Rose, Litigatin Futures: A High Court judge "harassed and intimidated" a litigant in person in ways which "surely would never have occurred if the claimant had been represented", the Supreme Court has ruled. It recounted also the observation of court president Lord Reed during the hearing "that a judgment which results from an unfair trial is written in water". The decision in the libel case of Serafin v Malkiewicz & Ors [2020] UKSC 23 is likely to attract more press coverage than usual because the High Court judge involved, Mr Justice Jay, was counsel to the Leveson inquiry. The Supreme Court upheld the decision of the Court of Appeal last year to overturn Jay J's ruling. The appeal court found that "on numerous occasions, the judge appears not only to have descended to the arena, cast off the mantle of impartiality and taken up the cudgels of cross-examination, but also to have used language which was threatening, overbearing and, frankly, bullying. "One is left with the regrettable impression of a judge who, if not partisan, developed an animus towards the claimant." The Court of Appeal also found that the judge's conclusion that the defendants had shown a public interest defence was unsustainable, as was his finding as to the truth of the meaning of one of the allegations. The Supreme Court highlighted 25 instances of inappropriate behaviour from the judge over the five days of oral evidence – such being offensive, making unreasonable demands, curtailing cross-examination, and at one point during the evidence revealing "in hostile terms" what his finding would be.

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