Rose West 'Furious' at Prison Gym Shower Ban

Serial killer Rose West is furious after being banned from using the showers in her prison gym, HMP Low Newton. West and fellow inmates are unhappy about the decision which they said leaves them sweaty and smelly after exercise. The convicts have joined forces to call for bosses at the maximum security jail to overturn the ban. It was imposed because inmates complained about having possessions stolen while they were in the gym shower.

Defendant Asks Judge For Loan of Archbold Criminal Pleading, Evidence and Practice

Henry McGrath, of no fixed address, denies carrying out four break-ins, two thefts and one attempted theft on January 15 this year in Watlington. The 57-year-old was appearing at Oxford Crown Court for a pre-trial hearing during which a provisional date was set for his case to be heard on June 30 next year. But as he was being taken back to HMP Bullingdon, McGrath, who is currently representing himself, asked if he could make a request of Judge Ian Pringle. “Your honour, before I go down for Christmas and the New Year, I wanted to ask if I can get a copy of your law book, to help in case I’m not able to get representation?” Judge Pringle replied: “Do they not have copies of [the law textbook] Archbold in Bullingdon?” The defendant answered: “Well, I’ve made enquires your honour and I was told they had a copy, but it’s been stolen. “And with one book among six or seven hundred inmates, I can understand why it was allegedly stolen.” The judge was then told by the court’s listings officer it would be possible to lend McGrath a copy.

Maze Prison Officers Ignored Management

Out-of-control warders took over the running of the Maze Prison after the IRA escape in 1983. Declassified documents show Irish officials warned the British government to take back control of the notorious jail before republican paramilitaries starting killing “easy target” prison officers.

Admin Message From MOJUK: As y'all know MOJUK has no funding and the cost of 'Inside Out', production/paper/toner/envelopes/stamps is around £1.80 a copy. At the very least y'all behind bars, will have to pay the cost of postage 50p a week.

However it is best if you can get family/friend to make a donation to MOJUK or even better take out a standing order. Get them to Email: mojuk@mojuk.org.uk for details.

If you have no one out side, best to send a book of 12 second class stamps, (do not send 1st class stamps), this will cover 12 issues and will send a reminder, when more stamps needed. (If you have sent stamps or arranged a Donation/Standing Order, ignore this).

Hostages: Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Romero Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan, Ihsan Ulhaque, Richard Roy Allan, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Ray Gilbert, Ishtiaq Ahmed.

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What's the Point of Human Rights? *Lady Hale, Warwick Law Lecture*

'The purpose of any human rights protection is to protect the rights of those whom the majority are unwilling to protect: democracy values everyone equally even if the majority do not'

The British used to be proud of their record on human rights. We are, after all, the land of the Magna Carta, signed by King John at Runnymede in 1215. The doors into the library of the Supreme Court of the United Kingdom are engraved with a facsimile of the copy kept in the British Library, with one of its two most important clauses picked out: 'To no man shall we sell, or deny, or delay, right or justice' (article 40). The other is: 'No free man shall be taken or imprisoned or dispossessed, or outlawed or exiled, or in any way destroyed, nor shall we go upon him, nor shall we send against him, except by the lawful judgment of his peers or by the law of the land' (article 39): clear precursors here of articles 5 and 6 of the European Convention on Human Rights. Thus it became the King's duty to uphold the rule of law. Thus it is that the writ of habeas corpus, and other remedies controlling the abuse of public power, were and still are issued in the name of the monarch. In the revolutions of the 17th century, culminating in the Bill of Rights of 1689, it was established that the monarch alone could not make or change the law. Only the King or Queen in Parliament could do that.

So it is not surprising that after the Second World War British Conservatives enthusiastically promoted the idea of a European Convention on Human Rights, to combat the right wing totalitarianism of the recent past in western Europe and the left wing totalitarianism of the then present in the east. They took a leading part in its drafting. They almost certainly thought that its provisions reflected the then existing state of United Kingdom law. They were probably right about that. But as it was originally only a treaty between states which only states could enforce, it did not matter very much if they were wrong. But then in 1966 the United Kingdom recognised the right of individuals to petition the European Court of Human Rights if they thought that their rights had been violated. The expectations of the drafters were soon confounded. They had reckoned without two things.

One was the ingenuity of the British and Irish lawyers who appeared before the Court. The other was the evolutive approach developed by the court in its four landmark decisions of Golder v United Kingdom, Tyrer v United Kingdom, Marckz v Belgium and Airey v Ireland. I do not think that it is any coincidence that three of these cases came from common law countries and provoked strong dissents from Sir Gerald Fitzmaurice, the UK judge. He thought that they were taking the Convention way beyond the original intentions of its drafters and the States Parties who ratified it.

Those cases established three principles. The first, and perhaps the most important, was of purposive rather than a literal construction of the language used. Thus, in Golder, as access to the courts was an essential prerequisite to the rule of law, to which the states parties had declared their commitment, the right of access was 'inherent' in the right to a fair trial under article 6(1). The second, articulated in Tyrer, is that the Convention is a 'living instrument'. This was an echo, whether conscious or unconscious I do not know, of the words of a British Lord Chancellor, Lord Sankey, in Edwards v Attorney General for Canada, where he said that that the Constitution of Canada should be seen 'as a living tree capable of growth and

expansion within its natural limits'. I rather like the 'living tree' concept, because it recognizes both growth and limits to growth, whereas the current problem facing both Strasbourg and the member states is whether there are any limits to how far the Convention can be developed. The third idea, first articulated in Airey, is that the rights protected must be 'practical and effective' rather than 'theoretical or illusory'.

These principles, in their turn led to substantive developments: most importantly, that certain rights have to be implied into the Convention if the express rights are to have any meaning: what is the point of a right not to be killed or tortured by the state unless the state has some duty to investigate what has happened? It also follows that the state may have positive obligations to protect rights as well as negative obligations to refrain from interfering with them. Thus it was that in Marckz v Belgium the court was able to spell out of the right to respect for family life in article 8 a duty to recognize the family relationships of children born outside marriage on equal terms with those of children born within it. Sir Gerald Fitzmaurice appeared almost apoplectic in his dissent.

Thus it was that we discovered that United Kingdom law did not always conform to the rights which had been spelled out in the convention. It did not, for example, recognize a right of privacy which would prevent the armed forces from intruding into the private lives of its soldiers, sailors and airmen by excluding those of homosexual orientation. The other discovery, of course, was that even if the common law did indeed recognize rights such as freedom of speech or rights of property, there was nothing to stop our sovereign Parliament taking them away, for example, by providing for compulsory purchase without compensation at full market value. The idea that the citizen might have rights which he could assert against the state itself was unknown to us.

Thus it was that the occasional proposals for a British Bill of Rights, which had emanated from such disparate voices as Lord Scarman in 1974, Sir Keith Joseph in 1975,and Mrs Shirley Williams n 1976, eventually focused on incorporating the European Convention into our law. This became Labour party policy before they won the General Election of 1997. That year, I had the honour to be one of the select group of High Court judges sitting on the woolsack at the state opening of Parliament and heard the Queen announce that legislation would be introduced to make the European Convention part of United Kingdom law. I well recall the judicial excitement. Here was the biggest constitutional development since the European Communities Act 1972.

The puzzle was how to combine enforceable convention rights with the sovereignty of the UK Parliament. The Human Rights Act which Parliament passed in 1998 adopted what many thought at the time, and most still think, to be a very ingenious solution. It did four main things: (1) It turned the rights in the Convention into rights which were enforceable in UK law. (2) It required the UK courts to take into account the jurisprudence of the European Court of Human Rights and other Council of Europe organs in interpreting those rights. (3) It required the UK courts 'so far as possible' to read and give effect to legislation in a way which was compatible with the convention rights; subordinate legislation could be ignored if this was not possible. (4) It empowered the higher courts to make a declaration that a provision in an Act of the UK Parliament was incompatible with the convention rights; alongside this, it required a Government Minister promoting a Bill to make a statement confirming whether or not its provisions were compatible.

The effect has been profound and was intended so to be by the promoters of the Act. Jack Straw, the Home Secretary, promised that 'over time, the Bill will bring about the creation of a human rights culture in Britain'. Lord Irvine, Lord Chancellor, described it as a 'modern reconciliation of the inevitable tension between the democratic right of the majority to exercise

ple who were detained via courts as opposed to being transferred from prison to hospital.

There were 4,647 CTOs made during 2012/13, an increase of 427 (10 per cent) since last year: 190 more CTO recalls were made during 2012/13 than during 2011/12 (a 9 per cent rise) and 41 per cent of CTOs which ended were by revocation (down from 46 per cent during 2011/12). The number of CTO revocations has increased by 40 (3 per cent) since the previous year; this increase is small compared with the observed increase between the 2010/11 and 2011/12 reporting years. The number of CTO discharges has increased by 450 (an increase of 26 per cent). There were 14,296 uses of place of safety orders(1) (Sections 135 and 136) in hospitals; this figure is 6 per cent (944) lower than during 2011/12. More males than females were subject to place of safety orders in hospitals (8,354 compared to 5,942). The fall in uses was larger for females (9 per cent) than for males (4 per cent).

A Nod Toward Changing US Drug Sentencing *Antonio Ginatta, Human Rights Watch*

US President Barack Obama announced Thursday 19/12/13 afternoon that he had commuted the sentences of eight people convicted of federal drug offenses, six of them serving life sentences, including one for dealing crack cocaine when he was 17 years old.

What connects the eight commutations is that each prisoner was sentenced prior to the passage of the 2010 Fair Sentencing Act, which narrowed the massive disparities between sentences for offenses involving crack cocaine and powder cocaine.

Before that, a person convicted of an offense involving possession of crack cocaine would get the same mandatory prison term as someone with 100 times that amount of powder cocaine, even though the two drugs are largely similar in effect and pharmacology. The sentencing differential particularly impacted African Americans, who historically have been disproportionately convicted of federal crack cocaine offenses (despite the fact that more white people used crack).

While the Fair Sentencing Act was a step in the right direction, it did not apply to people sentenced prior to its passage. This put the law at odds with a core international human rights treaty – the International Covenant on Civil and Political Rights (ICCPR), to which the United States is a party. The ICCPR requires that offenders serving time in prison under an outdated law should benefit from reductions in sentence under a new law. But the United States declined to follow this provision when it ratified the treaty.

Yesterday's commutations address some longstanding injustices. Among those receiving commutations is Clarence Aaron, who at 24 was sentenced to three life terms in federal prison even though his role in the crime was simply to introduce two drug dealers to one another and it was his first criminal offense.

Still, if President Obama is serious about fair sentencing, he needs to go beyond a few commutations. Over half of current federal prisoners, more than 100,000 people, are in for drug offenses; a lot of them are serving harsh mandatory minimum sentences, many for nonviolent offenses. Human Rights Watch has recently documented cases in which federal drug offenders have received mandatory life sentences on the basis of old, minor drug possession offenses.

Bringing drug sentences back into balance will require an act of Congress. Lawmakers could start by passing several bipartisan measures currently being considered in both the Senate and House of Representatives. But Congress should also go further, eliminating mandatory minimums and excessively long sentences for drug offenders, so that the need for these types of commutations is a thing of the past.

now about the consequences of the ruling on whole life tariffs," he told Parliament's Joint Committee on Human Rights. "We are giving our careful consideration to that."

Mr Grayling pointed out that there has already been a case of a triple killer avoiding a whole life tariff since the Strasbourg judgment because a judge said he believed it was now illegal to impose such a sentence under European law. Ian McLoughlin, 55, was instead told he must serve a minimum of 40 years in prison, after he admitted murdering 66-year-old Graham Buck in Little Gaddesden, Hertfordshire, in July. Dominic Grieve, the Attorney General, will now appeal against that sentence, Mr Grayling said. He added that ministers will formally respond to the ruling on whole life tariffs in the New Year.

The Justice Secretary welcomed recent interventions by senior British judges, including Lord Judge, the recently retired Lord Chief Justice, who said decisions should not be "exported" to Strasbourg. "I do think that fundamental decisions about the systems of this country should be made in this country," Mr Grayling said. I think our judges are absolutely right that the judiciary in Strasbourg is moving the court into places that it should not be. They are making decisions about matters that should be before Parliament. My own view is that the European Court of Human Rights has lost democratic accountability by moving its jurisdiction into areas where it should not be." He added that while he supported the original aims of the human rights convention, its interpretation in Strasbourg meant it had become a "legal blank cheque".

Grayling Swings Royal Pardon for Codebreaker Alan Turing *BBC News, 24/12/13*

Computer pioneer and codebreaker Alan Turing has been given a posthumous royal pardon. It overturns his 1952 conviction for homosexuality for which he was punished by being chemically castrated. The conviction meant he lost his security clearance and had to stop the code-cracking work that proved vital to the Allies in World War II. The pardon was granted under the Royal Prerogative of Mercy after a request by Justice Minister Chris Grayling. [Will be personally writing to Mr. Grayling and asking him to request Royal Pardons for Sue May, Ronnie Easterbrook, et al.]

Detained Under the Mental Health Act 1983 and Patients Subject to SCTO's

@ the 31st March 2013, 22,207 people were detained under the Mental Health Act 1983 or detained subject to a Supervised Community Treatment Order. The total number of people subject to detention or Supervised Community Treatment (SCTO) restrictions under The Act at year end has remained similar to the number during 2011/12. On the 31st March 2013, this figure stood at 22,207 people, 60 fewer than in the previous year. This decrease is less than 1 per cent. Of the number subject to The Act: 16,989 people were detained in hospital (a decrease of 514 or 3 per cent). This corresponds with a reported fall in the number of available NHS beds 5,218 people were subject to a CTO (an increase of 454 or 10 per cent). These figures include detentions and CTOs for both NHS and independent sector providers.

There were a total of 50,408 detentions in NHS and independent hospitals during 2012/13. This number was 4 per cent (1,777) greater than during the 2010/11 reporting period. Of this total: All detentions in independent sector hospitals increased by 17 per cent; a large proportion of this increase was attributable to a 31 per cent increase (313) in uses of Part II Section 2 on detention to hospital. Detentions on admission to NHS and independent hospitals increased by 4 per cent (1,324) overall. Detentions under Part III ('Court and Prison disposals') decreased by 16 per cent. In this report we introduce some experimental analysis which compares new data from the criminal justice system to estimate the proportion of peo-

political power and the democratic need of individuals and minorities to have their rights secured'. However, experience with operating each of its techniques suggests that that 'inevitable tension' is very far from being 'reconciled'.

*Enforcing convention rights in UK law***:** Section 6(1) of the Act makes it unlawful for a public authority to act in a way which is incompatible with a convention right. Many of the convention rights require a balancing exercise, between the rights of the individual and the interests of other individuals, groups or the general public, and this is not always easy for a court to conduct. How, for example, is your average judge doing a list of possession actions in a busy county court to balance the convention right of a council tenant to be protected in her home, even though she has no right in our domestic law to be there, against the claims of all the other would-be tenants whose need is as great or greater than hers? It was perhaps easier to balance the right of a Muslim school girl to manifest her religion by wearing a jilbab in defiance of carefully worked out school uniform regulations against the right of the other girls in the school not to be put under pressure to do the same against their will. Another difficulty is the extent to which these new rights against the state are also enforceable against private entities. The Act did not create any new statutory tort against them, but it did provide that the courts were public authorities and thus obliged to act compatibly with the convention rights. This came up in the context of newspaper intrusions into the private lives of celebrities (and others) and it was held that we could develop the existing law of breach of confidence so as to enable us to balance the article 8 privacy rights of individuals against the article 10 freedom of expression rights of newspapers and other media. Thus a newspaper should not have published a photograph of supermodel Naomi Campbell leaving a narcotics anonymous meeting.

A third difficulty is the standard of review of the actions of public authorities. Should we adopt the familiar Wednesbury principles in deciding whether they had acted incompatibly with the convention rights? I never had any doubt that it was not the right approach: it was for the court itself to decide whether what had been done was, or was not, compatible. But where questions of balance and judgment come into play, as they so often do, the decision-maker may be better equipped than the court to weigh the competing interests. In R (Quila) v Secretary of State for the Home Department, most of us thought it disproportionate for the Home Secretary to insist that both husband and wife had to be over 21 before a UK resident could sponsor a foreign spouse to enter the UK. This was avowedly for the purpose, not of efficient immigration control but of preventing forced marriages, yet it was acknowledged that many perfectly happily married young couples would be prevented from setting up home here together as a result. But Lord Brown dissented. He thought that the Home Secretary was better equipped to make that judgment and we should defer to her views: 'in a sensitive context such as that of forced marriages it would seem to me not merely impermissible but positively unwise for the courts yet again to frustrate Government policy except in the clearest of cases'. One reason for that is that, if the Home Secretary disagrees with our decision, she cannot complain to Strasbourg, whereas the young couple can.

Taking into account the Strasbourg jurisprudence: That case was a good illustration of another problematic area. The Act only requires us to 'take into account' the Strasbourg jurisprudence. We do not have to follow it if we do not agree with it. However, as a common law country, we all love working with case law. Counsel have a tendency to treat Strasbourg case law as if it were the case law of our courts. This (as I have previously observed is odd, because Strasbourg case law is not like ours. It does not set binding precedents in the way that our decisions do. It states the general principles, but usually in a way which leaves plenty of wriggle room for the future.

Nevertheless, as the principal object of the Act had been to stop cases going to Strasbourg, the House of Lords very soon took the view that where there was a 'clear and constant' line of jurisprudence, especially at Grand Chamber level, we should generally follow it. We recently followed that line in the prisoners' voting case of Chester. Two Grand Chamber decisions have held that a 'blanket ban' on all sentenced prisoners who happen to be in prison on polling day is incompatible with the right to vote (which is implied into the duty to hold free elections at reasonable intervals which will ensure the free expression of the opinion of the people), although Italy's more measured approach has been upheld. One of us was sorely tempted to say that Strasbourg should allow the member states a much wider margin of appreciation on such a matter, and that its approach was no less arbitrary than our present law. However, we repeated our now well settled view: 'Where . . . there is a clear and constant line of decisions whose effect is not inconsistent with some fundamental substantive or procedural aspect of our law, and whose reasoning does not appear to overlook or misunderstand some argument or point of principle, we consider that it would be wrong for this court not to follow that line.'

There are occasions where we can engage in a 'meaningful dialogue' with Strasbourg if we think that they have gone too far, but there are only two really good examples of this. One concerns the use of hearsay evidence in criminal trials. In Al-Khawaja, a chamber held that the use of a dead victim's witness statement to convict a man of sexual assault was incompatible with his right to a fair trial despite the evidence that he had done the same to others. In R v Horncastle, we explained at great length why we thought this over-prescriptive and disregarding of the numerous protections given to criminal defendants in our trial processes. The object was to persuade the Grand Chamber to take the case, which they did. And after some considerable deliberation, they subtly modified their approach. But in the prisoners' voting case, there was clearly no prospect of their doing that, so there could be no more meaningful dialogue; nor could we see this as going to 'some fundamental substantive or procedural aspect of our law'.

That is the principle when it is clear that, if we find against the individual and he goes to Strasbourg, he will win. But what about the cases where we do not know what Strasbourg would say or where, as the jurisprudence currently stands, he would lose? In Ullah, as is well-known, Lord Bingham enunciated what has since been termed the 'mirror' principle: 'The duty of national courts is to keep pace with the Strasbourg jurisprudence as it evolves over time: no more, but certainly no less'. And Al-Skeini Lord Brown reversed this: 'no less, but certainly no more'. Indeed, I agreed with him then, but I no longer do.

'No less' we understand, but why 'no more'? Why should we not develop the convention rights in the ways which we think right, whether or not Strasbourg would do the same? There is every reason to believe, from what was said before and during the Act's passage through Parliament, that this is what its promoters thought that we would do. The preceding white paper, for example, had said that incorporation would enable the British judges 'to make a distinctively British contribution to the development of the jurisprudence of human rights in Europe'. Jack Straw, the Home Secretary who saw the Bill through the House of Commons, had said the same in Parliament.Moreover, the reason which Lord Bingham gave for the 'mirror principle' was that the meaning of the Convention should be the same throughout the states party to it: elsewhere he had said that national courts should be cautious in developing the rights, otherwise states parties might become bound by obligations which they had never agreed to. That is, of course, a good reason for Strasbourg to be cautious, but nothing we do in interpreting and applying the rights in the UK is in anyway binding on Strasbourg or on

cion" in regard to the Police and Loomis dismissals and resignations in the case.

As any good lawyer would know, it is profoundly unwise to accuse someone of "pure surmise and suspicion" when they themselves are being speculative! What we really required was concrete verification or confirmation from the CPS, not the arbitrary closing down of validated information and evidence.

In response, the Appellant states, there is apt, credible and compelling fresh evidence to clearly vault the threshold of viable Grounds of Appeal required by the Court of Appeal, but counsel have, for whatever reason, elected to completely ignore this new cogent evidence in order to prevent the case from reaching the Court of Appeal where it would, in all probability, be justly overturned as unsafe. On that basis, the advice is irrefutably flawed and unreliable and not a true reflection of the current status of one of the most appalling miscarriages of justice in modem British judicial history. Terry Smith, HMP Swaleside

Report on an Unannounced Inspection of HMP Brixton

Inspection 1/12 July 2013, by HMCIP, report compiled October 2013, published 17/12/13

HMP Brixton is a Category C/D resettlement prison. Inspectors had the following concerns: - the time of this inspection, although the prison had been re-designated and now held a mixture of category C and low risk category D prisoners, its regime and facilities were little changed from its former category B role. - the prison was operating at about 60% over its certified normal capacity - many prisoners were locked in their cells for more than 20 hours a day - the overall quantity and quality of activity would have been unacceptable in any prison, but particularly so in a resettlement prison. - Prisoners had not been told enough about what to expect when they were transferred to Brixton and were frustrated by the poor environment and lack of activities they found on arrival. - Offender management arrangements were also poor and serious delays in completing risk assessments, lack of consistent contact with offender supervisors and the placement of prisoners in Brixton far too late in their sentence, meant it was difficult for many to progress their sentence plans. - work to encourage the development of positive family relationships was too limited. - Prisoners' frustrations were compounded by security restrictions that were much more appropriate for the prison's old role as a category B local than its new role as a resettlement prison for category C and D prisoners. - prisoners' relationships with staff were very poor with prisoners reporting high levels of victimisation by staff - Diversity issues had been neglected, particularly for older prisoners/those with disabilities. - prisoners found it difficult to get basic needs met, such as clean clothing and underwear. - the obvious smell of cannabis on the wings was not challenged. - prison was not yet ready for the category C and D prisoners it now held - Inspectors made 103 recommendations

Grayling: Concerns on Strasbourg Ruling on 'Life means Life' *Telegraph, 18/12/13*

Justice Secretary Chris Grayling, has said he has “very real concerns” about Britain’s ability to impose whole life tariffs on killers and other heinous criminals in the wake of a controversial ruling by the European Court of Human Rights. The Strasbourg judges said earlier this year - in a case brought by three murderers including Jeremy Bamber, who killed five members of his family in 1985 - that locking up criminals without the possibility of release was a breach of human rights laws.

Mr Grayling said the ruling was a further example of how the European court had expanded its remit far beyond what was originally envisaged when the European Convention on Human Rights was drawn up in the wake of the Second World War. “I have a very real concern

Police Officer Wayne Scott Jailed for Multiple Rapes *BBC News*

A former Cleveland Police officer has been jailed for 19 years for a series of rapes and other offences. Wayne Scott had denied rape and attempted rape offences involving one woman, but was found guilty after a trial last month. He admitted raping another woman on seven occasions and a sex offence involving a child. Scott, 37, formerly from Stockton, was sentenced at Newcastle Crown Court earlier. He joined the Cleveland force in August 2002 but was arrested in August 2011 on suspicion of sexual assault and perverting the course of justice in relation to an incident while he was on duty. Det Supt Peter McPhillips said Scott was a "sexual deviant and a predator who manipulated his victims".

Chris 'Scrooge' Grayling Bans Festive Parcels For Prisoners *Indpendent, 23/12/13*

Prisoners have been banned from receiving Christmas presents from their family and friends under new rules condemned as "mean and petty" by campaigners. he new Ministry of Justice regulations, which came into force last month, bar prisoners from receiving all parcels and packages unless there are exceptional circumstances. The rules - part of the Incentives and Earned Privileges (IEP) scheme - include basic items such as stationery, books and additional clothing. Although prisoners are allowed to receive a "one-off" parcel after they have been convicted, Christmas presents are not distinguished from parcels and are banned. Prisoners must use their own wages to buy supplies and luxuries.

Synopsis In Response To "Further Advice On Appeal" By Original Counsel

In October 2013, original trial counsel considered a potential misdirection by the trial judge to the jury at the retrial of R. V. Smith & Smith before Judge Gratwicke in February 2010. This is where the trial judge created a fact from inference, where no inference can be drawn. At the same time, the Appellant provided highly credible Fresh Evidence in the form of new potentially exculpatory police Automatic Number Plate Recognition (ANPR) evidence in support of the defence case; serious violations and improprieties by the British Transport Police (BTP) disclosure officer which entailed a conspiracy to pervert the course of justice by concealing and tampering with evidence.

This was compounded by further new information discovered after a formal complaint had been submitted to the IPCC by TS in regard to the demotion, dismissal and resignations of senior police officers and senior Loomis UK Ltd managers who tendered falsified evidence at the trials. Intrigued by the significant new developments, counsel visited the Essex crime writer at HMP Swaleside , Kent, (01107113). At the Pro Bono legal conference, counsel stated they were prepared to look at the case afresh and prepare advice on Appeal against Conviction. More specifically, counsel asked TS to compile a comprehensive document (TS/35) with source material in relation to gross police misconduct by the BTP disclosure officer DC Martin Hand, which included the deliberate suppression of critical disclosure material and the concoction of fictional email messages to and from Essex County Council and the Highways Agency in regard to non-Police ANPR data.

In the advice, however, inexplicably counsel have failed to acknowledge or consider the existence of the commissioned document (TS/35) with its pinpoint references to new police ANPR data, fabricated email messages and its subsequent insertion in police MG6C evidence schedules as being both accurate and factually true. Amazingly, counsel have proclaimed: "We regret to say that we have not seen such fresh evidence" to render the conviction unsafe. Moreover, counsel have unfairly dismissed credible fresh evidence gathered by the crime writer as "pure surmise and suspi-

any of the other states parties. So this is not a good reason for us to hold back.

I think there is a distinction to be drawn between working out our own answer to a problem which has not yet arisen in Strasbourg and deliberately ignoring a line which Strasbourg has drawn in the sand. So, for example, in Rabone, we held that there was a positive obligation to protect the life of a mentally ill young woman who had been admitted to hospital informally because of serious attempts to take her own life. She was given leave of absence from the hospital despite her parents' serious concerns and she did indeed take her own life. That went further than any Strasbourg case had yet done, but Lord Brown himself said that it would be 'absurd' for us not to decide a question merely because Strasbourg had not done so. Why should we wait for something which might never come? As it happens, unbeknown to us, Strasbourg had a very similar case coming up, brought by the mother of a suicidal schizophrenic man who had been placed in a sixth floor room of a 'crisis centre' and thrown himself out of the window. Strasbourg referred to Rabone in its judgment and clearly thought that we were right. This is a recent example, but there are others, perhaps most notably Limbuela, where we held it degrading treatment contrary to article 3 deliberately to reduce an asylum seeker to utter destitution. Strasbourg has no objection to our doing such things, even if it would not do so itself.

We can compare this with the 'no less, but certainly no more' case itself: in Al-Skeini, we decided that civilians injured in the course of our peace-keeping activities in Basra were not 'within the jurisdiction' of the United Kingdom for the purpose of article 1 of the Convention, and therefore not covered either by the Convention or by the Human Rights Act. We thought that the Grand Chamber had indeed drawn a line in the sand in Bankovic, by insisting that jurisdiction was 'primarily territorial', with only very limited exceptions. As it turned out, we were wrong about that, but I don't think we are obliged to anticipate some of the more surprising or adventurous things that Strasbourg may do.

It is interesting that the two politicians most closely associated with the Act, Lord Irvine and Jack Straw, have both recently delivered lectures disapproving of the so-called 'mirror principle'. They cite the views expressed to Parliament that we might be more adventurous than Strasbourg has been: Lord Irvine approved of Lord Kerr's dissent in Ambrose v Harris, where the majority had held that there was no right to legal advice before being questioned by the police before being taken to the police station. The majority were only too well aware of the storm which had arisen in Scotland after the earlier decision that suspects had to have access to legal advice before being interviewed in a police station.

But I wonder whether, in reality the independent line which past and present Government Ministers would like us to take is not to follow what they would regard as Strasbourg's more adventurous decisions. Jack Straw has been quite blunt in blaming Strasbourg's 'determination . . to expand its jurisdiction and to fail to provide a very wide margin of appreciation save over the protection of basic human rights' for the conflicts which have emerged with what he calls 'the people's will' in member states. In his view, the Human Rights Act has been a great success, and the problem lies with Strasbourg, not with us. But there are other politicians, some of them now in government, who have identified the Human Rights Act as the problem and pledged to repeal it if the Conservative party has a majority at the next election.

'Read and give Effect' This brings me on to the relationship which the Act creates between our sovereign Parliament and the courts. Section 3(1) of the Act states that: 'So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights'. In Ghaidan v Godin Mendoza,the House of Lords held that this was meant to be the principal solution where legislation was

incompatible. This had in fact been clear in the ministerial statements to Parliament when the Bill was going through. By a majority, we held that a person who had been living with a deceased tenant 'as his or her wife or husband' could include the survivor of a same sex couple in a stable, committed union, even though at that stage there was no formal legal status akin to marriage for them to contract into. Frankly, I did not find that in the slightest bit difficult. It would be as easy (or as difficult) to recognize the sort of same sex relationship which qualified as it was to recognize the sort of opposite sex relationship which did so. But Lord Millett did not agree: he thought that the words 'husband and wife' inevitably meant a man and a woman and could not be applied to two people of the same sex.

So far so not very exciting. But statements from Lord Nicholls, Lord Steyn and Lord Rodger also gave a very broad meaning to what was 'possible' - as long as an interpretation was not contrary to the scheme or essential principles of the legislation, words could be read in or read out, or their meaning elaborated, so as both to be consistent with the convention rights and 'go with the grain of the legislation, even though it was not what was meant at the time. They also said that this approach would apply to future as well as to past legislation, thus in effect saying that the Human Rights Act had limited the power of Parliament to pass incompatible legislation. This is, in Lord Phillips' view, contrary to the general principle that Parliament can make or unmake any law, although it is the equivalent of what Parliament provided for in the European Communities Act 1972. This is not, of course, to say that Parliament cannot expressly repeal either or both of those statutes: it clearly can. But unless and until it does so, or expressly repeals or excludes the relevant sections on interpretation, it appears to have limited its own powers.

Perhaps surprisingly, this aspect of the Act has not attracted as much criticism from politicians (although it has from others). Ministers, it would appear, would usually prefer us to solve an incompatibility problem for them rather than make a declaration of incompatibility. The system of control orders introduced by the Prevention of Terrorism Act 2005 provided for the use in proceedings to challenge an order made by the Home Secretary, of 'closed material', secret information not disclosed to the controlled person, but scrutinized by a 'special advocate', who is there to protect his interests but cannot discuss it with the controlled person without leave of the court. The clear intention of the 2005 Act was that the High Court could uphold a control order even if the non-disclosure of closed material meant that the controlled person would not have a fair hearing. In MB however, we held (by a majority) that the provision had to be read down to prevent this, so that, if the hearing could not be fair without disclosure, the Home Secretary would have to choose between disclosure and getting the order.

When the case came back to us on the question of what the minimum requirements of a fair hearing were in those circumstances, Strasbourg having by now given some further guidance, one of our number pushed counsel for the Secretary of State quite hard to argue that we had been wrong to do this first time round and should instead have made a declaration of incompatibility. But counsel quite clearly had instructions not to do this. As Lord Phillips commented, Ministers do not like declarations of incompatibility. They would rather live with our adventurous interpretations, provided that the main thrust of their legislation is not impaired.

Declarations of incompatibility

But there are occasions when we cannot interpret our way out of the problem. Then the higher courts have power under section 4 to declare the provision incompatible. This has no effect upon the validity of the provision or of anything done under or in pursuance of it. But

vide, is proper ministerial accountability to Parliament for the activities of the Security Services.

It is a significant irony that in 2011 the JCHR concluded that the allegations of complicity in torture "should be a wake up call to Ministers that the current arrangements [of review by the ISC] are not satisfactory", but now the issue has nonetheless been sent back to be investigated by that committee. Ken Clarke (remember him?) emphasised that the ISC was up to the task in today's announcement to Parliament, but one wonders whether the NGOs which abandoned the inquiry over its alleged lack of openness might now wish they had stuck with it – see the comments, for example, from Reprieve .

None of this is encouraging. The UK has a duty under Article 3 of the European Convention on Human Rights to investigate allegations of complicity in torture and ensure that proper systems are in place to make sure any wrongdoing isn't repeated (see e.g. this case). Sir Peter has raised serious concerns and they should be independently investigated, as this Government promised. In light of criticisms of the ISC, there must be serious doubts that it will be up to the job. Even with its moderately increased powers, the ISC still falls well short of a judge-led inquiry.

There is a possibility that once criminal investigations are concluded and the ISC has reported, Sir Peter or another former/current judge will be asked to resume this work. But at present, it looks like Sir Peter's report – despite the fundamental importance of these issues – will remain merely a wish list.

IPCC inquiry into Police Taser use on boys at Plymouth School *Guardian, 23/12/13*

An investigation has begun into the use of Tasers by police on three teenagers with learning difficulties. Devon and Cornwall police deployed stun guns on the boys, all aged 14 or 15, after being called to Chelfham senior school, near Plymouth, after reports of an alleged assault on a teacher on 1 December. After the incident, Devon and Cornwall Police referred itself to the Independent Police Complaints Commission.

The watchdog said that according to the information provided by Devon and Cornwall police the Taser was used on three boys aged 14 and 15 following a 999 call about a violent incident at the school. IPCC Associate Commissioner Tom Milsom said: "From the review we have carried out of Taser complaints we have specific concerns about some of the ways and circumstances in which it is used.

Two Inmates Arrested After Death Of Prisoner In HMP Lindholme Indpendent, 22/12/13

Staff at HMP Lindholme, Doncaster, called in South Yorkshire Police at 3.50pm on Saturday 21st December 2013, following the death of a 22-year-old Michael Hennessy. A police spokesman said: "A 23-year-old man and a 26-year-old man, both inmates, have been arrested and detained at HMP Lindholme on suspicion of murder. "The deceased's family has been informed." A post-mortem examination was due to be carried out. HMP Lindholme is classified as a Category C and D prison with a capacity of over 1,100. The former RAF base opened as a prison in 1985 and houses men over the age of 21. That can include people serving life and those on indeterminate sentences.

A snap inspection in the summer was highly critical of the jail's wing for low-risk prisoners, and it has since been closed. Among its findings, HM Inspectorate of Prisons (HMIP) said there were religious tensions on the wing and discovered someone had defecated in washing facilities for Muslim prayers. Described as an "astonishing situation" by the inspectors, more than a third of prisoners interviewed had felt unsafe at some time, while drugs and alcohol were widely available on the D wing, which was shut down shortly after the inspection.

against the defendant and have been condemned as liars. One can only assume the government is afraid of losing populist and female votes.

We wish Mr Cleary well in his attempts to rebuild a life destroyed by what the jury in his case has adjudged to be two female accusers who have deliberately lied and sought to deceive the court.

One would hope that the women concerned might be prosecuted for giving such false evidence but that is unlikely as, just like her predecessor, the current "brave and justice-promoting" Director of Public Prosecutions would never authorise such a prosecution for fear of being criticised.

It is reported that relatives of the two female complainants stormed out of court, angry with the jury's decision. TheOpinionSite.org believes that if such complainants as the two women in this case were not guaranteed anonymity, even after they have been proved to have been lying, these women would not have brought their spurious case in the first place, thus saving everyone involved much pain and suffering.

May we respectfully suggest to the police, CPS, MPs, our pathetically weak prime minister (and those with a vested interest in promoting the sordid injustice that sees so many elderly men being prosecuted for ancient alleged offences when there is so little evidence available) that they think again before condemning more innocent men to death in prison, merely on the word of an individual or group of individuals who seek to exploit others for monetary gain or personal revenge.

When you Wish Upon a Rendition and Torture Inquiry…

Adam Wagner, UK Human Rights Blog, December 2013

On 6 July 2010, in the first innocent days of the Coalition Government, former appeal judge Sir Peter Gibson was asked by the Prime Minister to enquire into "whether Britain was implicated in the improper treatment of detainees, held by other countries, that may have occurred in the aftermath of 9/11." Almost 3 1/2 years later, the Detainee Inquiry has produced a report (it was originally presented to the Government on 27 June 2012 but there have been heavy negotiations about sensitive material in the public version).

The report makes clear at the outset that it "does not, and cannot, make findings as to what happened". Why so? Because the Inquiry was scrapped before it heard evidence from any witnesses, so it couldn't test any conclusions reached purely on the basis of documentary evidence. The reason given at the time by Sir Peter was that "it is not practical for the Inquiry to continue for an indefinite period to wait for the conclusion of the police investigations". The "investigations" are those into claims of collusion by the intelligence services with torture in Libya (see this Q&A for more). There had already been a mass walk-out of the Inquiry by former and current detainees and Non Governmental Organisations, so the job of the inquiry was looking increasingly difficult.

The result is that this report reads, literally, like a wish list. Indeed, the word "wish" appears 117 times. Annex A is a "List of issues and areas the Inquiry would have wished to investigate", and contains 27 in all. Despite it being preliminary, there is a lot in there which is worrying. As Sir Peter told reporters, "[i]t does appear from the documents that the United Kingdom may have been inappropriately involved in some renditions. That is a very serious matter. And no doubt any future inquiry would want to look at that."

But will there be a future inquiry? Well, sort of. The Intelligence and Security Committee (ISC), a joint committee whose members are appointed by the Prime Minister, will now consider the issues and produce a report. But when the Joint Committee on Human Rights (JCHR) reported on the collusion issue in 2011, it said at §65 that: The missing element, which the ISC has failed to pro-

it sends a strong signal to government and Parliament that we think that the UK government will lose if the case goes to Strasbourg. As of September 2012, there had been 28 such declarations, eight of which had been overturned on appeal, leaving 20 still standing, but one is under appeal to us and listed for hearing on 9 December.

Deciding whether an Act of Parliament, especially an Act passed after the Human Rights Act, is incompatible raises the issue of respect for the decisions of our democratically elected representatives much more acutely than does deciding whether the actions of public authorities and Government Ministers are incompatible. The second main example of a successful dialogue with Strasbourg illustrates this. Animal Defenders International concerned our very widely drawn ban on political advertising in the broadcast media. A Strasbourg decision against Switzerland, on very similar facts, had held the ban incompatible with the article 10 right to freedom of expression. So when introducing the Communications Bill to Parliament, the Minister had been unable to say that the provision in question was compatible with the convention rights, but Parliament had passed it nonetheless. We upheld it, because we thought that the restriction of expenditure on political advertising was an important objective which Strasbourg had not fully explored. We do not want our elections determined or distorted by whoever has the deepest pockets. There was then another Strasbourg decision against Norway which followed their earlier decision against Switzerland. Eventually, however, the Grand Chamber upheld our decision, albeit by nine votes to eight. It introduced a widened margin of appreciation for 'general measures' which apply to predefined situations regardless of the individual facts of each case. This ban was proportionate, given the extensive pre-legislation consultation, the undesirability of distortion of public debate by wealthy groups and the fact that alternative methods of communication remained open.

A similar example of respect for the recent judgment of Parliament limiting qualified rights can be found in our declining to declare that the ban on hunting certain wild animals with dogs was incompatible.This was upheld in Strasbourg. Sir Nicolas Bratza, recently retired as UK judge there, has commented that Strasbourg 'has been particularly respectful of decisions emanating from courts in the United Kingdom since the coming into effect of the Human Rights Act . . . In many cases the compelling reasoning and analysis of the relevant case law by the national courts has formed the basis of the Strasbourg judgment'.

But sometimes we have to make a declaration. Government and Parliament then have three choices. The first is to use the 'fast track' remedial procedure under section 10 of the Act. This applies, not only when we have declared legislation incompatible, but also where the incompatibility is clear from a ruling of the Strasbourg court. It allows a Minister to cure the defect by subordinate legislation. This is most suitable where it is fairly clear how to do this. Three out of the 19 declarations have been cured in this way. The most recent concerned the lack of any provision for removing a person's name from the sex offenders register, with the burdens that entails, even if there is every reason to believe that he no longer poses any risk of such offending. Curiously, when introduced the order in Parliament, the Prime Minister was highly critical of our decision, but made no mention of the fact that the Government could have chosen to do nothing about it.

The second option is to change the law by Act of Parliament. This is most suitable if a new legislative scheme is required to replace the offending provision, with choices to be made. The best known example of this is the 'Belmarsh' case, where the Government replaced the executive detention of suspected foreign terrorists which we had found incompatible with the control order scheme.

The final option is to do nothing. But the only example so far has been prisoners' voting. Strasbourg first decided that our law was incompatible in Hirst v United Kingdom (No 2), but did not give us any help to decide what would be compatible. The Scottish Registration Appeal Court made a declaration of incompatibility in 2007. Strasbourg returned to the issue in Greens and MT v United Kingdom, and gave the UK a deadline within which to do something about it. Eventually, in 2012, the Government introduced a draft bill to Parliament which contained three options, one of which was to do nothing - in other words, it was consulting rather than proposing. A committee has now been set up to examine those options.

Meanwhile, two further prisoners' voting cases have come before us.The Attorney General appeared in person before us to argue that we should disagree with Strasbourg: once it was accepted, as Strasbourg has now accepted, that some prisoners can be denied the vote, the threshold for putting a person in prison was a perfectly sensible criterion for deciding who should be disqualified. As I have already mentioned, we thought that we should follow Strasbourg's clear line that this would not do. However, we did not make a declaration of incompatibility. One reason was that there was no point in repeating what had already been declared by the Scottish court.

But I initiated another small rebellion against Strasbourg. The two claimants in the case were convicted murderers sentenced to life imprisonment. One had not yet completed the punishment part of his sentence. The other had done so, but was still in prison because the parole board did not consider that he was safe to be let out. There is now every reason to think that the Strasbourg court would uphold legislation which denied each of them the vote (and no chance of the UK Parliament passing legislation which would give it to them). Usually, Strasbourg does not grant remedies in abstract, divorced from any consideration of how the rights of the individual before the court have actually been violated. They did so in the Hirst case, despite a strong dissent including the then President of the Court and his immediate successor. I thought that we should follow the normal and sensible practice of the Court and refuse to grant any of the remedies available to us, including a declaration of incompatibility, to an individual whose own rights had not been violated, other than by being subject to a law which might violate the rights of others.

I have no personal view on which prisoners should be given the right to vote. But I do think that the issue is a good example of why we need human rights legislation. It is not at all obvious that the franchise should be decided only by those elected under the present franchise. Parliament is rightly proud that it represents and is accountable to the people. But members elected under the present franchise do not represent, and are not accountable to, the people who are currently disenfranchised. The purpose of any human rights protection is to protect the rights of those whom the majority are unwilling to protect: democracy values everyone equally even if the majority do not.

But what of the future?

It is obvious, from this short account of the novel things that the Human Rights Act requires us to do, that there is plenty of scope for controversy. There are now many voices raised against the Act. Sections of the press and media have always been hostile, perhaps not surprisingly, as it was seen as a threat to press freedom from the outset. But this has been fuelled by a perception that it has prevented us from sending some dangerous foreigners back to their home countries and generally allowed people with no right to be in this country to stay here once they have established a private or family life here. Not every member of the public is

must, according to that populist view, be guilty, regardless of what the jury says.

However, it is hard to blame Judge Aubrey without also making clear the sheer force of opposition to the concept that anyone charged with such an offence could possibly be innocent. The Prime Minister, his deputy, the former and current Director of Public Prosecutions, the ubiquitous (and some might say, iniquitous NSPCC), the police, numerous feminist groups and of course, the tacky, puerile and moronic tabloid press are all keen to vilify anyone accused of a sexual offence against children, even if the evidence is of the weakest possible nature. TheOpinionSite.org has previously pointed out the appalling evil that is “similar fact evidence”; the idea that if more than one “victim” comes up with similar accounts, then it must be true.

Peter Spindler, the policeman who headed the investigation into Jimmy Savile also made the point that ”…if so many people are saying the same thing, it must be true.” What Spindler did not say was that in order to claim victimisation – and compensation – all one had to do was to repeat one of the many accounts printed in the tabloid press and unquestioned belief by the authorities would then follow.

Thanks to the never ending tirade of what in our opinion is misinformation put out by so called “child protection experts” such as the former junior police officer, Mark Williams-Thomas and the well paid John Carr, the multitudinous executives of the ever money-conscious NSPCC, vote-hunting MPs and of course the editors always anxious to sell newspapers, the public now regards anyone accused of a sexual offence as being the equivalent of a mediaeval witch. If the accusation is made, it must be true. If the accuse person floats when bound and submerged in water, they must be guilty: if they sink – and die – they must be innocent. Nowadays, thanks to the endless publicity inflicted upon a public that is sick to death of hearing that every man is a potential child abuser, most juries return guilty verdicts rather than critically asking “Where is the real evidence?”

The situation is made worse by the fact that the Association of Chief Police Officers (which rather oddly is a limited company) has issued guidance from its members – who are mainly chief constables – that following every successful conviction for child sex offences, police should ask other “victims” to come forward, safe in the knowledge that “they will be believed” – which therefore means that even before hearing any evidence, the accused has been presumed by the police and CPS to be guilty.

Even when a defendant is found guilty, he can have no faith in the court’s sentence as, should the judge hand down a sentence that is truly reasonable, it is likely to be appealed by the Attorney General as being “unduly lenient” after having been referred to him by an MP seeking votes, a charity seeking money or a co-ordinated group of individuals seeking compensation. The sentence is then duly increased from what the trial judge handed down, even though there is no real evidence base on which to increase it. However, it seems that only sentences given for alleged sexual offences against children are ever referred to the Attorney; not those given for any other crime.

TheOpinionSite.org congratulates with great respect the jury in the case of Paul Cleary. We also condemn the judge’s comments as being, in our opinion, wholly inappropriate and indicative of an inability to stand up for justice and to instead be drawn into the cesspool of populist dogma that now saturates Britain’s courts in cases of this nature.

It is also significant that the government has refused point blank to hold a review into how allegations of historic abuse are handled and prosecuted. Ministers have also refused to review the automatic anonymity awarded to accusers, even after they have lost their case

He developed an interest in filmmaking and would often be seen at meetings with cameras and recording equipment. A fighter to the end, he unsuccessfully challenged the lawfulness of UK law governing surveillance in the European Court of Human Rights in 2010 and at his death was attempting to discover what undercover cop, Mark Jenner, who had infiltrated the Colin Roach Centre where the Free Malcolm Kennedy Campaign Justice for Patrick Quinn, was based, had told his Met handlers about Malcolm's case."

Malcolm's funeral will be on Friday 3 January at 2.00pm at the East London cemetery, Grange Road, E15 0HB. There will drinks afterwards at the Black Lion, Plaistow.

There will be a collection in Malcolm's memory and all donations will be split between United Against Injustice and MOJUK. If you can't make the funeral but would like to contribute then please contact Mark Metcalf on 07952 801783 or email to markcmetcalf@btinternet.com

CPS/Police and Media Remain Silent After Man Cleared Of Historic Abuse

Raymond Peytors - theopinionsite.org, December 27, 2013

Witnesses who make false allegations of historic abuse should be prosecuted

Police and Crown Prosecution Service officials declined the opportunity to make their customary statement from the steps of Liverpool Crown Court after a man had been cleared of 40 year old allegations of historic abuse against children and after he had been extradited from Canada; the only evidence against him was the accounts of the two female complainants. Father of two, Paul Cleary had emigrated to Canada in 1989, had a family and a good job but was forcibly returned to the UK by British police in July of this year.

TheOpinionSite.org should bring to the attention of readers the fact that there have been other cases of historic abuse which have also resulted in an acquittal and where the police and CPS have chosen to say nothing.

One may be forgiven for suggesting that when the prosecuting authorities win a case, they cannot stop talking about it and, when they lose a case, they seek to hide in the deepest hole they can find in order to avoid embarrassing questions or criticism.

Appallingly, in the case of Paul Cleary, even the trial judge seems to have lost his objectivity. Judge David Aubrey, QC, thanked the jurors for their service and duly released Mr Cleary from the dock. However, in a hugely inappropriate manner he then went on to say: "It's quite apparent there are a number of members of the public gallery who are members of the family left distressed as a result of the verdicts of the jury. Of course this court respects and anticipates if they are distressed the two prosecution witnesses in this case will be extremely distressed when they are made aware of the verdicts in this case. It is absolutely essential that both of them are informed of the decision with sensitivity and any help either of them require or need is given to them."

Perhaps it would have been better if the judge had turned to the defendant and said something along the lines of: "You leave the court an innocent man and questions should be asked as to why this case was brought in the first place..oh, and we are really sorry that it has completely ruined your life in Canada, possibly cost you your job and may have destroyed your family by us allowing this case to proceed." In short, the judge should not sympathise with complainants who have been assessed by the jury as being nothing more than liars.

TheOpinionSite.org would suggest that Judge Aubrey was simply not brave enough to stand up against the populist view that any man accused of a sexual offence against a child – even if the alleged offence was 40 or 50 years ago and there is no real evidence against him –

persuaded that we should not export people if there is a real risk that they will be tortured in the country to which we send them. Perhaps not every member of the public is convinced that we should not deprive British children of their right to live and grow up and be educated here if this will be the effect of deporting their only or primary carer. Some Parliamentarians and commentators are concerned about the perceived threat to Parliamentary sovereignty, despite the clever and careful structure of the Act, which most people support. Many are concerned about what they see as the imperialism of the Strasbourg court.There is indeed a serious debate in Strasbourg itself about the limits to its evolutive approach. Some critics are simply hostile to anything European.

It may be no coincidence that it is the Home Secretary, in charge of police and immigration, and the Justice Secretary, in charge of prisons and the criminal justice system, who have been most vocal in their opposition to the Act. The Justice Secretary has promised that in the New Year the Conservative party will publish a document setting out what they will do, when they will do it and how they will do it. Later next year, they will publish a draft Bill. This will scrap the Human Rights Act, make it clear that with legal rights come legal responsibilities, and that the Supreme Court should be in Britain and not in Strasbourg.

In 2008, the Parliamentary Joint Committee on Human Rights produced a report on whether we should have a United Kingdom Bill of Rights. When the present government came into power, it set up a Commission to examine the question, on the same assumption that it would incorporate and build upon all our obligations under the European Convention.

The option of withdrawal was not on the table, to the evident disappointment of some of its consultees and even some of its members. It was perhaps unlikely that the Commission would ever produce a unanimous report and indeed it did not do so.The majority favoured a UK Bill of Rights, despite the fact that most of their consultees favoured the status quo, principally because 'many people feel alienated from a system that they regard as "European" rather than British . . . it is this lack of "ownership" by the public which is . . . the most powerful argument for a new constitutional instrument'. The present position, they believe, is unstable. The voices raised are now so strident and the public debate so polarized that there is a strong argument for a fresh beginning. Quite what that fresh beginning would entail is not so clear,save that it should give no less protection than the current Act, and maybe even more, and that it should retain the possibility of declaring an Act of Parliament incompatible, but not of striking it down.

But once Pandora's box is opened, the range of options is not limited to doing nothing or having a bigger and better UK Bill of Rights. There are clearly some who are willing to contemplate repealing the Act and replacing it with nothing. The Home Secretary told the Conservative party conference that if leaving the European Convention on Human Rights is what it takes to "fix our human rights laws" that is what we should do.

That would take us back to the constitutional position before the Act was passed, but it would raise all sorts of interesting questions about the effect of the decisions which have been made during the period while the Act was in force and whether the common law would now embrace many of the rights which were established during that time. A former Justice of the High Court of Australia, where they do not have a federal bill of rights, Dyson Heydon, has asked 'Is there any fundamental right referred to in the Act which was not given reasonable protection in domestic law before 2000?'. *I hope that I have illustrated how and why the answer is 'yes' and that there is indeed a point to the Human Rights Act.*

Malcolm Kennedy (1947-2013)

A victim of a grotesque miscarriage of justice has died aged 67. Malcolm Kennedy will go to his grave having been unable to overturn his conviction for the manslaughter of Patrick Quinn in Hammersmith Police Station on Christmas Eve 1990.

Quinn certainly was slaughtered. All but one of his ribs were broken, his heart and spleen were crushed and his face pulped in a vicious, brutal attack that left him dead in a police cell where both men had been placed after being separately arrested for being drunk.

Middle-aged and unfit, Kennedy had no previous history of violence but according to the police he had woken from his drunken stupor to kill a man he had never met. Kennedy claimed he had been woken up by a struggle in the cell between three officers and the dead man and had been punched unconscious.

The murder of Quinn was considered so serious by the police that officers on duty cleaned the uniforms they were supposed to hand over for forensic tests, the log book showing who visited the cell was "lost" (just one of several vital documents which disappeared) and procedures for calling in the Police Complaints Authority and pathologist were not followed. None of which mattered when a protesting Kennedy was convicted the following year for murder and sent down for life.

Kennedy was having none of that. He had no record of political activity but he was determined not to go to his grave with a murder conviction. His solicitors located new witnesses who were present in the police station on the night of Quinn's death and a major World in Action programme was made on the case.

The case was referred back to the Court of Appeal and a retrial was ordered at which the sudden appearance of previously lost police 'evidence' halted a trial that was going badly for the prosecution. When the case returned to court Kennedy's case was dealt a major blow when the key police witness was declared mentally unfit to give evidence and the judge in the case dismissed Kennedy's argument that this prevented him having a fair trial.

At the end of the second re-trial the judge put to the jury that Kennedy may not have intended to kill Quinn and was so drunk that he could not remember what he had done. The jury acquitted Kennedy of murder and convicted him of the lesser charge of manslaughter, a perverse verdict as Quinn's injuries clearly indicated he'd been brutally murdered.

Kennedy was sentenced to 9 years imprisonment. Thankfully for him there were now plenty of people convinced of his innocence. Hackney Community Defence Association [HCDA] together with members of the Irish community based at the Irish Centre in Hammersmith, formed the Justice for Patrick Quinn, Free Malcolm Kennedy campaign and were to regularly picket Hammersmith Police Station over many years.

In 1996 in the lead up to Kennedy's appeal against his conviction an early day House of Commons motion attracted 65 signatures. This was made on the grounds that the trial judge wrongly exercised his discretion by deciding that the police officer was medically unfit to give evidence and then in his absence allowing transcripts of his evidence in previous hearings to be read out in open court. Further, that it was an abuse of process for the second re-trial to continue without the police officer giving evidence. The appeal however was lost.

Later, when he had been released from prison, Kennedy's attempts to take his case to the European Court of Human Rights were also unsuccessful.

No sane person wants to go to their grave having been wrongly convicted of another man's death, even if it is of the lesser charge of manslaughter rather than murder. Kennedy was determined to legally prove he did not kill Patrick Quinn.

During the protracted court cases officers from Hammersmith Police station had disputed ever previously knowing who Patrick Quinn was prior to his arrest. This meant there was no motive for police officers to attack Quinn.

Yet, thirteen years after Quinn's death someone who knew him well came forward after he saw a campaign appeal for new witnesses in the Irish press. Joseph Fallon had also died in Hammersmith Police Station in contested circumstances, on 17 September 1987, and the new witness had subsequently helped organise Fallon's funeral.

Interesting, but what had that to do with Quinn? "They were best friends."

So much so that the new witness alleged that at 7.00am on 24 December 24 1990 he was rung by the police to be told that Patrick Quinn, who he had known since 1967, had died in Hammersmith Police Station. According to the man Quinn, like Fallon, was a passionate Republican who often had arguments with the local police.

Asked why he thought the police had contacted him less than 6 hours after Quinn had been confirmed as being dead the Tyrone man felt "it could have been because they had my name in there because of Joe Fallon. My opinion would be that they [the police] knew Patrick Quinn knew Joe Fallon" and as such the man was contacted because of his concern three years earlier when Fallon died.

Despite the new evidence the Criminal Cases Review Commission refused to examine it.

Meantime, Kennedy, who prior to being incarcerated had owned a restaurant, had emerged from prison to start rebuilding his life by setting up a small removals business.

This became increasingly difficult due to what he alleged was "highly intrusive and unlawful surveillance" including interference with his phones, mail and emails. This had the effect of blocking him from going about his everyday affairs whilst preventing potential customers making contact with his removals firm and thus losing him a lot of business.

However, Kennedy's strenuous attempts to pursue a legal case here in Britain and in the European Court of Human Rights were to prove unsuccessful Three years ago, Kennedy admitted he was not hopeful of "having my manslaughter conviction overturned in my lifetime.

I feel the statement obtained in October 2003, disproving the police claims about not previously knowing Patrick Quinn, was new evidence. Yet the CCRC wouldn't commit any resources into taking their own statement and re-opening the case. Consequently I am blocked from appealing against my conviction.

It may be twenty years on but I am still haunted by what happened in 1990. Especially as I am still being harassed due to an ongoing police interest in me. I hoped this would stop when I formally stopped campaigning a few years ago in order to enjoy some relative peace. Sadly that hasn't proven to be the case, and I still find my phones, emails and letters being interfered with and I suspect that will continue until my death. (It did) But, I repeat, and always will - I was not responsible for the death of Patrick Quinn in Hammersmith Police Station in December 1990."

Graham Smith, a close friend of Malcolm Kennedy, said, "The juries in the three murder trials Malcolm faced were not simply deciding whether he had killed Patrick Quinn. If Malcolm didn't murder Quinn a police officer must have done it. In 1990, despite the numerous campaigns against miscarriages of justice up and down the country, there was not the widespread disbelief in the police that followed the overturning of the murder convictions of the Birmingham Six in 1991.

"More recently, there have been the revelations that a Metropolitan police officer most probably killed Blair Peach at Southall in 1979, and South Yorkshire Police conspired to blame Liverpool fans for their deaths at Hillsborough in 1989 in order to deflect attention from their own failings.

"After his release from prison, Malcolm helped others who had been wrongly convicted.