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Attica 50th Anniversary: the Sound Before the Fury

John Bowden, FRFI: Traditionally the radical left, in Britain especially, have failed to support or recognise the prison struggle as an integral part of the wider class struggle or understand prisons as essentially instruments and weapons of class oppression, which maintain and enforce the power of the capitalist state. This ideological vacuum critically undermines and weakens the ability of the working class to seriously challenge the capitalist apparatus of raw state power.

If a single event revealed the revolutionary potential and significance of the prison struggle, it was undoubtedly the Attica Prison Uprising of 9 September 1971 in New York State, when prisoners rose up and declared Attica a liberated zone in the wider class and black liberation struggle then being openly fought in the US. The murderous response of the US state to the Attica rebellion also reflected the clear understanding and recognition by that state of the revolutionary dynamic and significance of the uprising and its potential to ignite wider rebellions beyond Attica's walls.

On 9 September 1971 most of the prison population of Attica rose up and seized control of the prison, taking 42 members of staff hostage. What originally fuelled the uprising was the dehumanising and barbaric treatment suffered by Attica prisoners and the vicious racism of an all-white force of guards; 54% of those incarcerated at Attica were African Americans and 9% were Puerto Rican. During a period of growing prisoner activism in US jails at the time, Attica was used to concentrate and brutalise prisoner 'trouble-makers'.

The spark that ignited the Attica Uprising was the murder by guards of legendary revolutionary prisoner and Black Panther Party member George Jackson at San Quentin State Prison on 21 August 1971. The day after Jackson's murder, 700 Attica prisoners participated in a hunger strike in his honour. What then began as a rage-fuelled riot was soon transformed into an extremely well-organised political action, as racial divisions and gang conflict amongst prisoners dissolved into a collective brotherhood and unified revolutionary force. Once prisoners had taken over Attica they organised a list of demands for officials to meet before they would surrender, and elected spokesmen to represent them at negotiations, whilst also appointing medics and security to ensure the safety of hostages. The spirit of the Attica prisoners during the uprising was clearly voiced by 21-year-old Elliot James 'LD' Barkley, who was just weeks away from release before the uprising and was murdered by state forces during their recapture of the prison: 'We are men! We are not beasts and we do not intend to be beaten or driven as such. The entire prison populace — that means each and every one of us here — has set forth to change forever the ruthless brutalization and disregard for the lives of the prisoners here and throughout the United States. What has happened here is but the sound before the fury of those who are oppressed.'

The courage and solidarity of the prisoners who rose up and took control of Attica for four days transformed it from a place of repression and suffering for the most oppressed and marginalised into a place of liberation and freedom. This is why the state responded so murderously to the rebellion. After four days, state governor Nelson Rockefeller ordered in armed police, who while retaking the prison massacred 43 people: 33 prisoners and 10 guards or civilian employees. Some prisoners were murdered while trying to save the lives of hostages.

Subsequent exposure of official information revealed the extent of the state's awareness of the Attica uprising as a political rebellion. During the very first day of the uprising, the FBI sent memos about it to the army, navy and air force, to the CIA, Attorney General, Vice President and the President himself, Richard Nixon. In taped conversations with aides, Nixon justified the Attica massacre: 'You see, it's the black business again. He [Rockefeller] had to do it.' Nixon hoped it would send a message to activists generally, or to those he described as 'the Angela Davis crowd', whilst also having 'a hell of a salutary effect on future prison riots'.

US historian Heather Ann Thompson, author of Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy writes: 'At this time there was a great deal of activism inside prisons. The US government was absolutely consumed with this idea of the left and activists taking over the country. The entire apparatus of the government is deeply fearful of and hostile to the civil rights movement. Add prison activism to this and they think the world's coming apart at the seams, and the Nixon Tapes revealed just how deeply worrying Attica was, even to the US President, who said: "The word is around that this [Attica] is the signal for a black uprising."'

What the Attica Prison Uprising represented to the US state was the spectre of a political rebellion amongst the most oppressed and disempowered, prisoners, spreading beyond the prison walls to the communities of the poor and disadvantaged in wider capitalist society. On the 50th anniversary of the Attica Prison Uprising, we as revolutionaries must embrace that spectre and support the prison struggle as a revolutionary and legitimate frontline of the struggle against the capitalist state.

Unsafe' Pepper Spray Should Be Withdrawn From Prisons

Jon Robins, Justice Gap: The deployment of a controversial pepper spray in prisons was 'unnecessary, disproportionate and unsafe' and must be withdrawn, warned the Prison Reform Trust. The group was responding to the latest warning – the second in a month – from a prisons watchdog about roll out of PAVA which is sprayed into people's eyes causing severe pain as well as violent coughing. HM Inspectorate of Prisons published its latest report into HMP Hull including concerns about PAVA which had been used three times in the previous six months including two incidents involving the use of a baton. Inspectors reviewed the prison records and video footage and concluded that use was 'not necessary and was sometimes not proportionate or safe'.

Last month chief inspector Charlie Taylor reported that it was 'very concerning' to see increases in the use of PAVA spray at HMP Swinfen Hall as 'the regime began to open up' and warned against its deployment would become 'a routine way of managing challenging behaviour'. In the 12 months up to May 2021, officers used the spray 17 times and 'almost half of which had occurred in the last two months'. 'The prison service is not in control of the weapon it's put into officers' hands,' Dawson said. 'The rollout has to stop, and PAVA must be withdrawn from the prisons where the standards promised just aren't being met.'

Three years ago the Ministry of Justice announced it would roll out its use across all adult male prisons as a response to increasing levels of violence despite a six month trial revealing a high risk that it was likely be used unlawfully without additional safeguards. 'At the very start of the pandemic, the government took a secret decision to accelerate the rollout of PAVA spray to all closed adult male prisons,' said Peter Dawson, PRT's director.

The Equality and Human Rights Commission backed a case challenging the PAVA roll out during the pandemic before agreed safeguards were in place which was supposed to lead to its use being more tightly controlled and monitored. 'This should help prevent disproportionate use against prisoners sharing particular protected characteristics and improve scrutiny and accountability,' the group said. About half of HMP Swinfen Hall's prisoners are BAME. Peter Dawson explained: 'When challenged in court, the prison service gave repeated undertak-

ings about the central scrutiny that would be applied to make sure that PAVA was properly used. But yet again, the inspectorate have found that PAVA has been used without justification and that local safeguards are not working. PAVA use has been unnecessary, disproportionate and unsafe, and it's taken the independent inspectorate to notice.'

Violations in Preventive Detention of Mentally Ill Serious Offender

ECtHR Unanimous violations of Article 5 § 1 /f Article 7 § 1 / Article 4 of Protocol No. 7. Case concerned the ordering of preventive detention in respect of W.A. – a man who had serious psychiatric issues – after he had served a 20-year sentence for two homicides The Court found in essence that by this detention, ordered in a reopening procedure in which there had not been any new evidence concerning the nature of the offence or the extent of the applicant's guilt, he had been punished twice for the same offences. Moreover, while the applicant could indeed have been detained as a person "of unsound mind" in accordance with the Convention, his detention had not been lawful as he had not been detained in an institution suitable for mentally ill patients. (Case of W.A. v. Switzerland application no. 38958/16) W.A. suffered from a personality disorder which was difficult to treat and was diagnosed by a psychiatric expert as having carried out the crimes under diminished capacity. However, the court held that the applicant presented a threat to society, preventive detention was not an option.

Demonstrators Storm Courts to Highlight Police Violence Against Women

Maya Oppenheim, Independent: Hundreds of rape alarms could be heard screeching while vivid green and purple smoke billowed outside the historic Royal Courts of Justice on Tuesday afternoon. Scores of protesters descended on the 139-year-old towering Victorian gothic building to voice their fears about police treatment of women. Sisters Uncut, a feminist direct action group, stormed into the landmark to deliver a complaint condemning the police for violence perpetrated against women within their own ranks.vWhile security guards grabbed demonstrators, causing many to shout in shock, banners adorned with the words 'Met Police Blood on Your Hands!' blew in the wind. "I am here to raise awareness of the abuse of police powers," said Patsy Stevenson, whose image went viral online after she was pinned down by two male officers at a vigil paying tribute to Sarah Everard in spring.v"No one is listening. The police are so close to the justice system nothing happens to them. Priti Patel says she is listening yet she is creating more police powers which are not want we want. Priti Patel needs to start listening to women and girls."

The 28-year-old, who is studying physics at university, said many people assume police brutality is infrequent but if you are in marginalised communities, it happens "the whole time". Ms Stevenson said she had never been to a protest before attending the vigil for Everard - a 33-year-old woman who was brutally kidnapped, raped and murdered by a serving Metropolitan Police officer back in March. "It was the first time I went to a proper protest and I was arrested," she added. Met Police officers were criticised for aggressively grabbing women paying tribute to Everard at the peaceful vigil in Clapham in south London before taking them away while others screamed and cried out. "Since Sarah Everard's murder, conversations about police violence have become more mainstream," a woman, who has been involved in Sisters Uncut since 2016 but did not to be named, said. The police are framing it as a problem with individual police but Wayne Couzens is not a one-off. Police abuse their powers. It is not one bad apple. They are rotten to the core. Policing is about violence and control so it attracts people who are drawn to violence and control. The police force protects violent men." Everard's death has eroded trust in the police, as well as fuelling anger the government does not do enough to tackle violence against women. Her

tragic death also triggered an outpouring of women sharing highly personal stories about being sexually harassed, assaulted, or abused by men on the street. "Sarah Everard's murder was the extreme end of a wider culture that condones violence within the police. This year has been a watershed: we now know 15 officers have killed women since 2009," Sisters Uncut and Feminist Fightback, another group who organised the protest, said in a statement issued to The Independent.

"The circumstances around Wayne Couzens illustrate our message clearly: his colleagues called him 'The Rapist', he exposed himself several times, he sent vile, violent messages. And while police are totally unaccountable for their violence against us, courts in Bristol are handing down draconian sentences to Kill the Bill protesters who stood up to police violence. There is one rule for us and another for the police." Lisa Longstaff, who helped organise the protest, said women of colour, sex workers, and single mothers were far less likely to have allegations of police-perpetrated violence robustly investigated. When these men are violent in the police in or in other institutions and are abusing their power, nothing happens," Ms Longstaff, who is part of Women Against Rape, added. "The police have been caught on the back foot. We know of serving police and former police who are worried about the policing bill but they can't say." The comments come after a new "888" tracking service for women travelling alone – proposed by BT and backed by home secretary Priti Patel – was dismissed last month as "terribly misguided" and "flawed" by campaigners who fear freedoms and privacy are being eroded. Meanwhile, the government's controversial new policing bill has been widely criticised by campaigners for rolling back human rights – with many fearing the legislation will compound the pre-existing over-policing and criminalisation of marginalised communities. "Look at the figures of deaths in custody - that is in police stations and in mental health services," Cristel Amiss, a life-long activist who was at the protest, said. "Men are concerned too. This is a seminal moment."

'Nihilistic Litigation': Divorce Judge Laments Costs of Mammoth Case

John Hyde, Law Gazette: An exasperated judge has criticised both parties and their lawyers in divorce proceedings for what he described as an 'almost complete breakdown of constructive communication'. In an extraordinary judgment handed down last week, Mr Justice Peel said the lack of cooperation between the parties and their lawyers in Crowther v Crowther & Ors was very apparent and as a result the legal costs were 'enormous'. The judge noted 'with dismay' that the divorcing husband and wife have made 41 statements between them and the case has stretched to 34 hearings. The bundles exceed 6,000 pages, Peel J explained, as the parties have argued 'almost every imaginable issue, no matter how trivial'. The total costs incurred come to £2.3m (split between £1.4m for the wife and around £900,000 for the husband. Given the couple's net assets come to around £1.75m, the judge said his task now was to concentrate on how to divide the debts fairly. As a last word, he added: 'The only beneficiaries of this nihilistic litigation have been the specialist and high-quality lawyers. The main losers are probably the children who, quite apart from the emotional pain of seeing their parents involved in such bitter proceedings, will be deprived of monies which I am sure their parents would otherwise have wanted them to benefit from in due course.'

The court heard that the wife had entered into an agreement at the time of the pre-trial review with her lawyers that unless they received all outstanding fees, and their costs to the end of the trial, from a sum of £670,000 expected to be awarded to her, they would cease to act. In the event, the money was not paid. A further ultimatum was issued when the wife applied for release of £500,000 from the sale of a marital asset, with her lawyers again saying they would cease to act without payment. The judge added: 'Given that W's solicitors had already received from

W in total (divorce, non-molestation, children, and financial remedy proceedings) costs exceeding £1m, and given that more than £1.8m remained in the joint account holding the proceeds of sale which would be available for distribution at trial, it might be thought rather unattractive for W's solicitors to adopt this position.' In the event, the judge ordered a release of £300,000 and her solicitors continued to act. Peel J said each party thought the other side was 'out to destroy' them and the proceedings were 'intensely acriminious'. 'They, and their lawyers, have adopted a bitterly fought adversarial approach,' he said. 'I asked myself on a number of occasions whether the aggressive approach adopted by each side has achieved anything; it seems to me that it has led to vast costs and reduced scope for settlement.'

Rehabilitation of Offenders (NI) Order 1978 Incompatible With Article 8 of the ECHR

Mr Justice Colton, sitting in the High Court in Belfast, Monday 1st November 2021, made a declaration to the effect that Article 6(1) of the Rehabilitation of Offenders (NI) Order 1978 is incompatible with Article 8 of the ECHR by reason of failing to provide a mechanism by which certain categories of offenders can apply to have their conviction considered to be spent. The applicant was convicted in 1980 of offences relating to a petrol bombing of a house and burglary and theft. He received a concurrent sentence of five years imprisonment. The attack was apparently motivated by a desire for revenge on the resident of the house for having given information to the police about an earlier burglary. The applicant denied any involvement with the gang or the previous burglary but said he was an associate of one member of the gang and felt pressurised to participate. He has had no involvement with the criminal justice system and no further convictions since being released from prison but has experienced difficulties and negative consequences of his convictions over the years and finds the process of repeatedly having to disclose them to be oppressive and shaming. The applicant sought to challenge the legality of Article 6(1) of the Rehabilitation of Offenders (NI) Order 1978 ("the 1978 Order") which prevents his previous convictions from ever becoming "spent". As his sentence was greater than thirty months, his conviction will never become spent and he will never be treated in law as a person who has not committed a criminal offence. The applicant argued that the provision is incompatible with his right to private and family life under Article 8 of the European Convention on Human Rights ("ECHR"). He sought to have the legislation struck down or a declaration of incompatibility.

Applicant's Article 8 Rights and Proportionality: The court held that the failure to provide for the applicant's conviction to become spent engaged his rights under Article 8. It also concluded that there has been an interference with his Article 8 rights and accepted his evidence that the interference has had a significant effect on him. In light of these findings the court had to consider whether any such interference was in accordance with law, pursued a legitimate aim and is proportionate. The court said there was no real issue in relation to the first two limbs of the test and the real issue was therefore one of proportionality/justification. The applicant's primary submission was that the absence of a mechanism under the legislation by which he could apply to have his conviction considered to be spent, irrespective of the passage of time and his personal circumstances, was fatal to Department of Justice's ("the respondent") submission that the legislation is compatible. The respondent's primary submission was that the imposition of periods during which sentences will not be considered spent and the designation of certain offences in respect of which convictions will never be considered spent is a permissible and lawful approach which does not breach Article 8. It was argued that the State enjoys a margin of appreciation in determining the need for interference of Article 8 rights and is

entitled to draw a "bright line" in respect of the designation of certain offences.

The Legislative History: In paragraphs [31] – [52], the court outlined the legislative history to the 1978 Order and the equivalent legislation in England and Wales ("the 1974 Act"). Prior to the devolution of justice to Northern Ireland in 2010 the legislation essentially maintained parity. However, in 2012 and 2014 the rehabilitation periods set out in the 1974 Act were changed to include sentences of imprisonment of up to four years in the rehabilitation regime and to shorten rehabilitation periods for other sentences. In 2019, the Ministry of Justice announced proposals to further reform rehabilitation periods in England and Wales so that, inter alia, some sentences of over four years would no longer have to be disclosed to employers after a specified period of time was passed. A consultation paper published in 2020 contained proposals including the ability of some custodial sentences of over four years to be able to become spent as part of criminal record checks for non-sensitive roles. The Police, Crime, Sentencing and Courts Bill, which introduces these changes is currently being debated in Parliament. If such a change were introduced in NI this would have the potential to be of benefit to the applicant.

In NI, there have been calls to shorten the rehabilitation periods in line with the changes made in England and Wales in 2012 and 2014. The court heard that there was insufficient legislative time available between 2011 and 2016 to effect any changes because of what was described as "a particularly busy legislative programme". When the Assembly was re-established in January 2020 the new Minister of Justice approved a review of rehabilitation periods with the intention to bring forward an amendment to Article 6(1) of the 1978 Order to both reduce current rehabilitation periods and to increase the range of sentences capable of becoming spent. The respondent told the court that it anticipated a draft legislative instrument will be prepared for introduction and debate in the Assembly during Autumn 2021 but noted that this period is "expected to be particularly congested legislative period".

Is Article 6(1) of the 1978 Order compatible with the ECHR? In paragraphs [53] – [79] of its judgment, the court reviewed significant relevant decisions. It focussed on the recent judgment of the Supreme Court in R(P) v Secretary of State [2020] AC 185. In that case, the Supreme Court was considering challenges to the disclosure of spent convictions under both a system of criminal records checks and the equivalent English provisions to the 1978 Order. Because spent convictions were in issue, disclosure was only to employers vetting candidates for sensitive occupations and others who had a pressing need for disclosure. The Supreme Court concluded that the scheme was a proportionate interference with Article 8 rights, holding that it was not disproportionate as a matter of principle to legislate by reference to pre-defined categories where appropriate, even though this might result in cases which individually would be regarded as disproportionate. The decision supported the proposition that there are occasions when the State is entitled to draw "bright lines" in respect of the point at which interference with an individual's Article 8 rights is proportionate or justified.

The court then considered the application of the Supreme Court's decision to the applicant's case. It said the applicant's case can be distinguished as he is seeking to establish that the failure to provide a mechanism whereby he can apply to have his conviction to be spent is disproportionate. The court said that the scope of the circumstances in which the 1978 Order may require disclosure is far wider than the scope of the circumstances in which disclosure of a spent conviction can be required as it goes beyond employers in sensitive occupations and extends, for example, to a person seeking insurance, a tenancy or non-sensitive employment. The Supreme Court in R(P) noted that a smaller jurisdiction such as Northern Ireland has

the capacity to establish mechanism to review whether a previous conviction can be treated as spent for the purposes of the 1978 Order given that the numbers seeking the review will be low (referred to as the practicality issue).

The court's approach to proportionality: In order to decide whether interference with a fundamental right is proportionate to the legitimate end sought to be achieved the court had to consider whether: • the legislative objective is sufficiently important to justify limiting a fundamental right; • the measures designed to meet the legislative objective are rationally connected to it; and • the means used to impair the right or freedom are no more than is necessary to accomplish the objective.

It noted that there is an overriding requirement to balance the interests of an individual against those of society. The court said that the State's rationale for the rehabilitation of offenders is an important objective and something given weight in an Article 8 context: "There is a clear public interest and benefit to society in providing offenders to fully rehabilitate in society after having been convicted of criminal offences. The disclosure of prior convictions can have an adverse impact on rehabilitation and, as the court has found, is an interference with an individual's Article 8 rights. In this context it is important to recognise that the State is entitled to ensure that those who are convicted of serious offences serve their appropriate punishment. When that punishment is completed there is a continuing need to protect the public from further harm. In doing so, in the context of rehabilitation, it is entirely legitimate to impose restrictions on the circumstances in which individual convictions can be regarded as spent. The passage of time since the conviction and the severity of the offence for which a person has been convicted are legitimate factors to be taken into account in this context. Thus, the legislative objective behind the restrictions under challenge are sufficiently important to justify limiting a fundamental right and the measures designed to meet the legislative object have a rational connection to the objective."

The court said the next question for it to consider was whether the means used to impair the Article 8 rights in this case are proportionate or no more than are necessary to accomplish the objective. This question has to be considered in the context of the overriding requirement to balance the interests of the individual against those of society. The court noted that it was clear from the history of the policy and legislative background that the thinking behind the 1974 Act and the 1978 Order in respect of the necessity for "bright lines" which ensured that there are some offences which can never be considered spent was the "fear that such a proposal would be too radical to command general support."

The court commented that whilst confidence in the justice system is an important consideration it seemed that the idea that a conviction can never be spent, irrespective of individual circumstances, pays insufficient weight to the interests protected by Article 8. In considering the appropriate balance the actual and potential interference with the applicant's Article 8 rights and those in a similar position is significant. The court said there must be a question mark about the relationship between the length of sentence and the risk of reoffending so as to justify the operation of the impugned legislation where this subjects the applicant to a lifelong disclosure requirement and where his convictions can never become spent. The system by definition does not distinguish between those who are known to be at high risk resulting in a sentence designed to address risk, such as a life sentence, and those who are not:

"It seems to the court that that it would be both practicable and proportionate to devise a system of administrative review which would enable persons such as the applicant to apply to have their conviction deemed to be spent. The court considers that there must be some circumstances in which an appropriate Tribunal could reliably conclude that an individual's conviction should be deemed to be spent. That system of review would involve consideration of such matters as the

circumstances of the conviction, the length of sentence, the period of time since the conviction was imposed, the conduct of the individual since the conviction and his current personal circumstances."

The court considered that Article 6(1) of the 1978 Order is arbitrary both in substance and effect. It held that the ongoing interference with the applicant's Article 8 rights is not proportionate and said that the objectives of protecting the public and ensuring confidence in the justice system can be achieved by the imposition of lesser restrictions which would facilitate the opportunity for the applicant to apply to have his conviction deemed to be spent. The court recognised that the whole question of rehabilitation of offenders in this jurisdiction is under review but said there was no guarantee that the review will result in new legislation. It noted, however, that it was argued on behalf of the respondent that the current system is compatible with the ECHR, irrespective of any review: "In those circumstances the court does not consider it appropriate to await the outcome of a review. This was not suggested by any of the parties in any event. Accordingly, the court is persuaded that it is appropriate to make a declaration to the effect that Article 6(1) of the Rehabilitation of Offenders Order 1978 is incompatible with Article 8 of the ECHR pursuant to section 4(4) of the Human Rights Act 1998 by reason of a failure to provide a mechanism by which the applicant can apply to have his conviction considered to be spent, irrespective of the passage of time and his personal circumstances.

Detainees Taken off Deportation Flight to Jamaica After Activists Block Road

Diane Taylor, Guardian: Most of the people due to board a controversial deportation flight to Jamaica on Wednesday 10th November 2021, were removed from the flight list, as anti-deportation activists blocked the road in front of a detention centre to try to prevent them from being put on the plane. The activists, calling themselves Stop The Plane, have locked themselves to metal pipes outside Brook House immigration removal centre near Gatwick airport. Originally more than 50 Jamaican nationals were due to fly, but the Guardian understands most were not put on the plane. The flight departed at 1am on Wednesday morning with only two or three passengers onboard. Messages online from anti-deportation groups said the flight departed Birmingham airport with just three deportees on board a plane able to seat 350 people.

JG Acquitted of Attempted Murder at the Old Bailey

JG was the second defendant on the indictment, and father of the first defendant, FG. Along with three others, they were accused of a joint attack using a firearm on the complainant, EW. EW's complaint led to a large-scale operation in South East London on the night of 8 April 2020, involving more than 65 Counter Terrorist Specialist Firearms Officers. JG was arrested during this police operation. The operation was widely reported, and saw children as young as 11 years old detained in zip-locks by CTSFO officers. No firearms or weapons were found. EW was a highly suspect prosecution witness. The Defence asserted his account to the police was false, and had been deliberately fabricated to frame JG and his son. There was reason to believe EW had concealed the identity of his true assailants.

Through careful analysis of the case and the significant unused material served, solicitor Rabah lodged a detailed, multifaceted application under Section 8 of the Criminal Investigations and Procedure Act 1996 for further inquiries and disclosure to be undertaken. In his application, Rabah indicated that, 'In all the circumstances, it is extraordinary that the Crown is able to call EW as a witness of truth... The importance of full and anxious disclosure, and all appropriate inquiries being comprehensively explored by the Crown in respect of

EW, is heightened in this case.' Rabah's application was lodged on 1 November, having been recently instructed in the case, with the four-week trial listed to start on 8 November.

On 3 November, the Crown Prosecution Service wrote to the Court to confirm that, 'following a further review of this case it is no longer considered that there is a realistic prospect of conviction in respect of all defendants on all counts.' On the afternoon of 4 November, at a hearing in the Central Criminal Court previously reserved for disclosure arguments, the prosecution formally offered no evidence against all defendants on all counts. Not Guilty verdicts were entered for JG.

Children Imprisoned on Remand – The Stark Reality of Racial Bias

Transform Justice has been tracking the ethnicity of the children remanded in London for the last eighteen months. For most of this time nine out of every ten children remanded in London have been from minoritized communities. In February 2021 the vast majority – three quarters – were black even though black children only make up 18% of London's under 18 year old population. The latest figures show a slight improvement – 59% of London children on remand are black. But the disproportionality is still stark. And still shameful. Particularly since recent YJB research shows that those who are remanded are more likely to be sentenced to imprisonment.

The disproportionality of the national and London child remand population has been getting worse in recent years and no-one can really pinpoint why. What we do know from our London data is that the problem starts earlier – the children detained post charge by the Metropolitan police have more or less the same ethnic profile as those remanded by the court. And from the YJB report we know that black and mixed heritage children are more likely to be remanded by the court than children of other ethnicities after controlling for demographics and offence related factors. This report puts paid to two reasons often put forward for the disproportionate number of black boys on remand and sentenced to imprisonment – that black and mixed heritage children are accused and commit more serious crimes and that disparity is really about class not race.

A new report by the Inspectorate of Probation throws some light on why we have made so little progress in resolving this wicked problem. As does research by a Dutch academic Dr Yannick van den Brink who observed youth remand hearings and interviewed youth offending team staff. The Inspectorate is pretty damning about YOTs' management of black and mixed heritage boys on court orders. They found that the boys had high needs including for education – 60% had been excluded from school, the majority permanently. Half the boys had experienced racial discrimination, and the Inspectorate suggests practitioners are not exploring the implications of that discrimination for boys' offending. Though work meetings were a safe space, "staff did not always raise concerns when they felt that children had been discriminated against, for example in relation to stop and search activity. An example of this was the case of a boy who was being stopped and searched five times per week and, while the case manager thought this was concerning and that the child was being targeted, it was not raised with colleagues or managers. This lack of attention and escalation could suggest that black and mixed heritage boys in the youth justice system experiencing racism may have become normalised, not only to the boys themselves, but also to those working with them".

The Inspectorate suggests that practitioners may be afraid to question and put pressure on black and mixed heritage boys when that is the only kind of intervention the boys appreciated. "Honesty and transparency were considered to be important elements of the support received from YOS workers. However, the boys did not feel that this always happened. They felt that attending the YOS was a better option than going to custody, but that they did not always feel challenged or stretched by the interventions they received. This reflected what we saw in

much of the casework we inspected. There was often an absence of the difficult conversations that are necessary to support children to consider their life experiences and the impact these have had on them, their identity, their thinking and their behaviour".

Part of the answer is to give practitioners the training and confidence to understand the ramifications of discrimination and to try to tackle it. One area of clear discrimination is the "adultification" of black and mixed heritage boys. Court staff and judges can have a stereotypical view of vulnerability "It is way easier to convince people of this when the child is tiny, White, with blond hair: 'look at him, he is so small'. But if he is 6 foot 2 and Black and big, people just have different reactions to them … He was challenged all over the place, particularly by the cell staff: 'why is he vulnerable?' But what does vulnerable look like? It apparently doesn't look like him" (Yot officer). The YOT officers interviewed for Yannick's research felt discrimination in the court could just arise from ignorance. Frequently there is no black or mixed race magistrate on the panel and misguided assumptions can be made "a magistrate who comes from 'Suburbia', who is not used to Black people or whatever, it is not that they are deliberately going to make decisions that are biased towards a Black child, but they may not necessarily understand the reasons why this child is now living with an uncle and why dad is living in Nigeria. But to an African family, that's no problem…. So if a kid like that comes into court and says 'I am living with my uncle', the magistrates might think 'that is irresponsible' [from a White, Western perspective], while to us that is the ultimate responsibility! (Yot officer of Nigerian heritage)".

The road to reducing disproportionality in the youth justice system is long but navigable. The Inspectorate makes clear recommendations including for YOTs and children's services to understand their own data, make a plan and communicate it to all staff. "Most staff knew that addressing disproportionality was a priority but many were not aware of a stated vision or specific approach that they should be considering in their day-to-day practice". It would also be good if the key data were published. The government publishes monthly data on the number of children in custody in England and Wales and their ethnicity, but not the ethnicity of those on remand. Transform Justice has obtained all the London data via freedom of information requests. Now we know six out of ten remanded children in London are black, the disproportionality problem cannot be swept under the carpet

Suicide Risk Bars Extradition to Romania

An ethnic Hungarian woman's extradition to Romania, to serve a 7-year sentence for people trafficking offences has been barred on the grounds of oppression due to her high risk of suicide. The High Court reversed the decision of the district judge and found that his treatment of the evidence and the facts of the case had been unfair. Represented by Malcolm Hawkes, the Appellant relied upon an expert psychologist's opinion which showed that her suicide risk was currently high and would be higher still if extradited to Romania. The court found the district judge was wrong to reject the psychologist's conclusions when the prosecution had failed to challenge that evidence at all. The court also agreed that the district judge was wrong to have ignored or downplayed the detailed and cogent evidence of anti-Hungarian discrimination in Romania. He failed to take into account the Appellant's evidence of serious anti-Hungarian discrimination generally and police torture by beating. This evidence was consistent with the European Commission on Racial Intolerance's 2019 report. The judge also failed to reflect the Committee for the Prevention of Torture report of their 2018 visit to Romania which found that none of the prisons they visited had any suicide prevention plan in place, while the Romanian law penalises those prisoners who engage in acts of self-harm. Notwithstanding the seriousness of the Appellant's offences, Mr. Justice Holman concluded that the combination of the time spent in custody during these proceedings (2 years) the Appellant's serious suicide risk, ethnic discrimination and mental anguish she would suffer in prison rendered her extradition to Romania oppressive.

India - Extradition Request For Murder Refused

On 22 September 2021, District Judge Snow discharged Gursharan Singh, Amrit Singh and Piara Singh Gill from an extradition request issued by India. India alleged that the three British nationals were involved in a conspiracy to murder Rulda Singh, a politician, who was shot outside his home on 29 July 2009 and died two weeks later. District Judge Snow, referring to the "long running saga" suffered by the requested persons, accepted the submission that there was no evidence sufficient to make out a case to answer against any of them, and accordingly discharged them from the extradition request. Edward Fitzgerald QC represented Amrit Singh, instructed by SKR Legal Solicitors. Graeme Hall represented Gursharan Singh, instructed by Gareth Peirce of Birnberg Peirce Solicitors. The decision has been reported widely, including by the BBC and the Times of India.

Acquittal of Vulnerable Asylum Seeker on Class A Drug Trafficking Charges

MM, an asylum seeker and previous victim of trafficking, was acquitted by a jury on the second week of his trial at Woolwich Crown Court. MM faced charges of supplying Class A drugs, dating back to February 2019 when he experienced a period of homelessness Submissions in Court led to the disclosure of vital police intelligence, withheld until the trial, which corroborated MM's account given at police interview. During the course of the trial, MM's Solicitor exposed endemic investigative and disclosure failures before the jury. The jury returned unanimous verdicts of Not Guilty on all counts in under 50 minutes.

Extradition to Moldova Halted: Appalling Prison Conditions Result In Blanket Discharge

The CPS has conceded it can no longer rebut challenges to extradition to Moldova, on account of the appalling prison conditions in that country, which features rampant, inter-prisoner violence and abuse. The Committee for the Prevention of Torture has long highlighted the issue across fifteen reports from visits spanning over 20 years. Peter Caldwell and Malcolm Hawkes, in separate cases argued that no assurance would be capable of providing a guarantee that their clients would not be subjected to a serious risk of assault by other inmates in a crude caste system, rife with exploitation. The prisons themselves are so short staffed as to rely upon the prisoners to self-regulate, regardless of the risks to the inmates' mental and physical well-being. In repeated judgments at the Westminster Magistrates Court, Moldovan requests were being refused on this Article 3 issue. This has now culminated in the concession that no extradition to that country may take place. The position recalls the CPS concession in 2015, also on an Article 3 prison conditions issue, in respect of Hungary which led to the issuing of improved assurances and resumed extradition. The expectation is the Moldovan government will try to provide an enforceable guarantee in the future. However, for now, no extradition to Moldova is possible and all current cases have been discharged.

Iraqis Subjected to Cruel and Inhumane Treatment Win Damages Against Mod

Dan Sabbagh, Guardian:The Ministry of Defence has quietly settled 417 Iraq compensation claims and paid out several million pounds to resolve accusations that British troops subjected Iraqis to cruel and inhumane treatment, arbitrary detention or assault. Individual claims that have been settled run into the low tens of thousands and follow high court rulings that concluded there were breaches of the Geneva conventions and the Human Rights Act during the military operation that followed the invasion in 2003.

Martyn Day, a senior partner with Leigh Day, the solicitors that brought the action, said: "While we've had politicians like David Cameron and Theresa May criticising us for supposedly ambulance chasing, the MoD has been quietly settling claims. "The settlements here cover a mix of cases, instances of false imprisonment, assault," the lawyer added. "What this shows is that when it comes to what amounts to policing in a foreign state, the military are simply not the right people to do it." Many of the details of the cases remain confidential, although one involved the death of a 13-year-old boy. However, the financial settlements were based on four test cases concluded in the high court in 2017. The four were awarded a total of £84,000 based on three separate incidents.

At the time, one claimant was awarded £33,000 by Mr Justice Leggatt for unlawful detention and a beating it was determined he had suffered in 2007, by "one or more implements", probably rifle butts. Two Iraqi merchant seamen received payments after their detention in 2003: one was awarded £28,000 after an assault and hooding, while a second was awarded £10,000 because they had also been hooded. Many of the fresh claims also involve hooding – where a sandbag or other hood is thrown over the head of a detainee. The practice was banned in 1972 by Ted Heath, when he was prime minister, although some British soldiers have admitted they were not aware of the order while serving in Iraq.

The MoD has not made any public announcement about the claims, but an official disclosure out this week showed that the civil actions had been resolved. It noted that 417 "Iraq private law" claims had been settled during 2020-21 and a further 13 relating to Afghanistan. However, there is no prospect of any criminal action following the 417 civil settlements, after several years of often politically charged debate about the conduct of British soldiers in Iraq during the years of combat operations, which ended in 2011. The government closed down the Iraq historic allegations team in 2017, following the conclusion of the controversial al-Sweady inquiry three years earlier.

That inquiry found that allegations of British troops murdering detained Iraqis and mutilating their bodies were fabricated. The lead lawyer who had brought those claims, Phil Shiner, was subsequently struck off. In April, the government passed the Overseas Operations Act, which introduced a presumption against criminal prosecutions for five years after the event and a longstop to prevent civil claims being brought after six years. At one point, Day and two colleagues were also accused of professional misconduct for the way in which they had brought claims, but the three lawyers were exonerated following a hearing at the solicitor's disciplinary tribunal. An MoD spokesperson said: "Whilst the vast majority of UK personnel conducted themselves to the highest standards in Iraq and Afghanistan, we acknowledge that it has been necessary to seek negotiated settlements of outstanding claims in both the Iraq civilian litigation and Afghan civil litigation." They added that service police and the Service Prosecuting Authority remained open to considering criminal allegations should new evidence emerge.

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