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Exoneration for Abdelbaset al-Megrahi: Lockerbie bombing Appeal November

MOJO Scotland: Appeal court judges have ruled that an appeal against the conviction of the late Abdelbaset al-Megrahi for the Lockerbie bombing can start in November, his family's lawyer has said. The bombing of Pan Am flight 103, travelling from London to New York on December 21 1988, killed 270 people in Britain's largest terrorist atrocity. Former Libyan intelligence officer Megrahi – found guilty in 2001 of mass murder and jailed for life with a minimum term of 27 years – was the only person convicted.

An appeal against his conviction was lodged after the Scottish Criminal Cases Review Commission (SCCRC) referred the case to the High Court in March, ruling a possible miscarriage of justice may have occurred. A virtual hearing took place on Friday before the Lord President Lord Carloway, Lord Justice Clerk Lady Dorrian and Lord Menzies, where the legal team representing the Megrahi family outlined the grounds for their appeal.

The family's lawyer Aamer Anwar said on Thursday that the court has allowed the appeal in relation to the argument that "no reasonable jury" could have returned the verdict that the court did and on the grounds of non-disclosure of documents by the Crown. At the virtual hearing Claire Mitchell QC, representing the Megrahi family, also said the legal team should be allowed to see protected documents held by the UK Government. She said it is "in the interest of justice" that the defence get to see the two documents, which are covered by a public interest immunity certificate. Foreign Secretary Dominic Raab has lodged an updated public interest immunity certificate with the clerk of court, dated August 2020. Mr Anwar, who has seen a copy of the judges' decision, said the court is still considering the part of the appeal relating to the new public interest immunity certificate and will appoint special counsel for this purpose to represent the person making the appeal, which has been instituted by Ali Al-Megrahi on behalf of his father. The special counsel will have clearance from the security services and is entitled to see the confidential information and appear at a private hearing which the Megrahi family's legal team may not attend, Mr Anwar said.

They must not disclose any of the confidential information to the Megrahi family's legal team, except with the permission of the court, and if permission is given, only in accordance with any conditions imposed by the court. Mr Anwar said: "The reputation of Scottish law has suffered both at home and internationally because of widespread doubts about the conviction of Mr al-Megrahi. It is in the interests of justice and restoring confidence in our justice system that these doubts can be addressed, but the only place to determine whether a miscarriage of justice did occur is in our appeal court. Today was an important milestone for the Megrahi family on the road to try to establish that the verdict against their father was a miscarriage of justice. There can never be a time limit on justice." The appeal is scheduled to start on November 24.

Erosion of Public Trust in State Response to Deaths of Concern

A new report seeks to address the erosion of public trust in the justice system's response to deaths that give rise to public concern. When a catastrophic event or systemic failure results in death or injury, the justice system must provide a framework to understand what happened and to prevent recurrence. These are major incidents causing multiple fatalities, or arising from a pattern of systemic failure. The report, published by JUSTICE, records 54 recommendations of the organisation's working party, directed at remedying shortcomings in the system by building on the strengths of the present system of inquests and public inquiries.

Chair of the working party, Sir Robert Owen, said: "A system cannot provide justice if its processes exacerbate the grief and trauma of its participants. Our recommendations seek to ensure that inquests and inquiries are responsive to the needs of bereaved people and survivors, while minimising the delay and duplication that impede effectiveness and erode public confidence. We think that this set of proposals, if implemented, will provide a cohesive and cost-effective system, with the prospect of a reduction in duplication and delay, and which in turn should serve to increase public trust."

JUSTICE's director, Andrea Coomber, said: "Our work began before the onset of the pandemic. But the current coronavirus crisis reinforces the relevance and timeliness of this project. Our recommendations, in particular our proposal for a special procedure inquest, aim to equip the justice system with a means of effective investigation less dependent on the mercy of successive governments. Further, they aim to ensure that the implementation of recommendations is monitored – a crucial objective if we are to understand how the virus has killed so many and how to avoid future recurrence."When a catastrophic event or systemic failure results in death or injury, the justice system must provide a framework to understand what happened and to prevent recurrence.

This Working Party of JUSTICE, which publishes its report When Things Go Wrong: the response of the justice system, on 24th August 2020, seeks to address the erosion of public trust in the response of the justice system to deaths giving rise to public concern. These are major incidents causing multiple fatalities, or arising from a pattern of systemic failure. If it is to enjoy the confidence of the public, the justice system must provide a response that is consistent, open, timely, coherent and readily understandable. Unfortunately, these systems are too often beset with delay and duplication, with insufficient concern for the needs of those affected by disasters. Instead of finding answers through the legal process, bereaved people and survivors are often left feeling confused, betrayed and re-traumatised. The lack of formal implementation and oversight following the end of an inquest or inquiry makes the likelihood of future prevention limited.

Having sat for a year, the report records 54 recommendations of the Working Party directed at remedying such shortcomings by building on the strengths of the present system of inquests and public inquiries: 1) The framework – We propose new State and independent bodies to provide oversight and facilitate information-sharing – a Central Inquiries Unit within Government, a full-time Chief Coroner and a special procedure inquest for investigating mass fatalities as well as single deaths linked by systemic failure, able to consider closed material and make specific recommendations to prevent recurrence. 2) Opening investigations – Greater collaboration between agencies, building a cross-process dossier, would reduce the multiple occasions that bereaved people and survivors have to recount traumatic events and ensure that they are fully informed throughout the process. 3) Procedure – Processes for appointing inquiry chairs and panels, for establishing the terms of reference and for providing information and relevant documents to core participants need to be more structured and transparent. Drawing on previous JUSTICE working parties on accessibility, we recommend that bereaved people and survivors are placed at the heart of the process – in choice of hearing space; improved communication and questioning by professionals and signposting to support services. Aside from the legal formalities, we also call for widespread use of commemorative "pen portraits" and therapeutic spaces for bereaved and survivor testimony. 4) A statutory duty of candour, including a rebuttable requirement for position statements, would help foster a "cards on the table" approach. Directing the inquiry to the most important matters early on could result in earlier findings and reduced costs.5) Accountability

and systemic change – We conclude that an independent body should lead oversight and monitoring of the implementation of inquest and inquiry recommendations, whose review could aid scrutiny by parliamentary committees.

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Relentless Rising Violence Inside Prisons in Honduras

Targeted killings, massacres, and deadly riots have all occurred in Honduras' maximum-security prisons this year, putting a spotlight on how violence has spiraled out of control despite government efforts to stop it. Since November 2019, at least 55 killings have taken place inside Honduras' prison system, according to InSight Crime's count of murders by inmates reported in local media. Officials did not respond to requests for these figures. The most recent killings occurred on August 6, when three suspected Barrio 18 gang members were found strangled in La Tolva prison, east of Tegucigalpa, Proceso Digital reported. Digna Aguilar, a spokeswoman for the National Prison Institute (Instituto Nacional Penitenciario), told InSight Crime in a text message that the area of the prison where the crime occurred only houses "members of the same gang." For this reason, authorities say the massacre likely had to do with an internal conflict among Barrio 18 gang members, a version of events also reported by local media. Aguilar said in a press conference that authorities are still investigating.

La Tolva prison was also the scene of a riot in December 2019 that left five suspected MS13 gang members dead. Another 37 alleged gang members were also murdered that month during riots in El Provenir prison in the capital Tegucigalpa and Tela prison in northern Atlántida department. The country's prisons currently hold more than twice the number of inmates they were designed for, and international organizations, such as the United Nations, have expressed concerns about the violence in such facilities. In 2017, InSight Crime confirmed in an in-depth investigation that Honduras' prisons had transformed into powerful incubators for organized crime groups. In a San Pedro Sula prison, for example, jailed MS13 and Barrio 18 gang members were able to continue their activities and use violence to exert control, all without interference from officials. The government later closed the jail that same year. But the violence has persisted even in maximum-security prisons built specifically to curb gang control.

Prison massacres, as well as the smuggling of high-powered weapons, points to a "complete lack of control" on the part of the authorities. La Tolva maximum security prison was set up in 2017 as a means to relieve Honduras' overcrowded prison system. When hundreds of gang members from the Támara prison, in Tegucigalpa, were transferred to La Tolva, authorities claimed that the gang members "wouldn't have any more luxuries" and would see their power

curtailed. This, in theory, would be achieved through better surveillance and security controls, including the isolating of gang members. The recent gang killings at La Tolva, however, underscore that the new maximum-security prisons are plagued by the same dynamics as before. After the killings last December, President Juan Orlando Hernández ordered a state of emergency in the country's prisons, placing the police and military in charge of their security.

Targeted killings have also been rampant. In December 2019, the director of El Pozo prison, another new maximum-security facility in Santa Bárbara department in the west of Honduras, was killed just days after the drug trafficker Nery Orlando López was shot dead in a gory prison slaying. Video shows the quick assassination of López, also known as Magdaleno Meza Fúnez, whose ledgers were used as evidence in the US drug trafficking case against Juan Antonio "Tony" Hernández, the president's brother who was ultimately convicted. Lopez's lawyer, Carlos Chajtur, said at that time that the video suggests a "plot by the penitentiary authorities and maybe higher-level authorities," the Associated Press reported.

In July, Barrio 18 gang leader Ricky Alexander Zelaya Camacho, alias "Boxer Huber," was shot dead by the same gunman who killed López in a similar ambush at the Támara prison, El Heraldo reported. In Zelaya Camacho's killing, two guards removed him his cell and took him to the prison barbershop to perform cleaning duties, where he was killed. Authorities also recorded the country's first-ever massacre inside a female prison this year, in which six women with suspected links to the MS13 were murdered by rival Barrio 18 members. Some inmates claimed that the prison's director was present during the slaughter in May.

Meanwhile, the weakness of prison controls was put on display in July when authorities seized several AK-47 rifles and grenades that were used to attack guards in the Támara prison, according to Tiempo Digital. "Here we have a situation that raises more questions than answers. How do those weapons get into a maximum-security prison?" said a human rights activist specializing in prison issues who spoke to InSight Crime on the condition of anonymity for security reasons. "I believe there is shared governance [of the prison] between the criminal groups inside and parts of the government," the activist added. Orlín Castro, a journalist from San Pedro Sula specializing in security issues, told InSight Crime that these types of prison massacres, as well as the smuggling of high-powered weapons, points to a "complete lack of control" on the part of the authorities. "The gangs are the ones that are [more often than not] linked to these clashes. Two weeks ago there were six injured and two killed in the Puerto Cortés prison," Castro said in a text message. "The attack targeted a drug trafficker and enemy of the MS13."

Against the Law: Why Judges Are Under Attack

The Secret Barrister: Branded 'enemies of the people' by the media and falsely accused of taking sides in Brexit by Conservative ministers, the judiciary is under threat - as is democracy. Critics of the prime minister tend to deride him as inconsistent; a popularity obsessed, anthropomorphised Groucho Marx quote for whom fidelity to principle can never trump fidelity to self-interest. But in Boris Johnson's defence, there is one belief to which he has remained steadfast over the past 12 months: his determination to control the independent judiciary. His interest in the justice system was trailed in his final Telegraph columns last summer, in which he filed falsehood-strewn clickbait railing against our "crook-coddling criminal justice system" and vowing to "root out the leftist culture of so much of the criminal justice establishment".

However, since entering Downing Street he has found himself moved, both by experience and by the counsel of that ubiquitous Unnamed Downing Street Source, to train his atten-

tions more broadly. The problem with our justice system, it has been decreed, is the judiciary. Cue the anonymous and self-aggrandising media briefing that the PM's chief adviser Dominic Cummings "wants to get the judges sorted". The course was set at the beginning of Johnson's premiership when he unlawfully prorogued parliament and then sent out pliant ministers to spread misinformation about the judges who had dared point this out, from the business minister Kwasi Kwarteng telling the BBC that "many people … are saying that the judges are biased" to Johnson's own response when asked about the supreme court decision, chuntering: "There are a lot of people who want to frustrate Brexit."

It was back on 23 June 2016 that more than 17.4 million voters expressed their desire to leave the European Union in a referendum referred to by Prime Minister Theresa May in 2019 as "the biggest democratic exercise in our country's history". Just over four months later three unelected judges apparently attempted to overturn the democratically expressed will of the British people. Ruling on judicial review proceedings brought by Gina Miller, the high court judges held that the process for giving notification to leave the EU under article 50 of the Lisbon treaty legally required an act of parliament, and that the notice to withdraw could not be given by the government using its prerogative powers.

The front page of the Daily Mail the following day made a statement that echoed around the world. "Enemies Of The People" was emblazoned above photographs of the three judges involved. A profile of each was provided on the Mail's website: "One founded a European law group, another charged the taxpayer millions for advice and the third is an openly gay ex-Olympic fencer." The Telegraph opted for a similar front page: "Judges vs the people". Sajid Javid, then communities secretary, told the BBC's Question Time that "This is an attempt to frustrate the will of the British people and it is unacceptable." When May was asked whether she was concerned about the impact of the Mail's headlines, she chided: "It is important that we have a free press."

On 24 January 2017, the supreme court upheld the decision of the high court. As rage swirled on social media and Nigel Farage accused the "establishment" of trying to "frustrate" Brexit, Iain Duncan Smith declared that the decision had created "real constitutional issues about who is supreme". As the future foreign secretary Dominic Raab soberly warned, an "unholy alliance of diehard Remain campaigners, a fund manager [and] an unelected judiciary" had "thwart[ed] the wishes of the British public".

Where to start with the errors strewn throughout this reporting and commentary? On no possible interpretation of the judgments did either the high court or the supreme court "block Brexit". They simply delineated how, as a matter of law, Brexit could be achieved – a route that the government duly followed and accomplished within two months. Similarly, the courts were not "straying into political territory". As the high court judgment clearly stated, all sides to the litigation, including the government, agreed that the case raised "a justiciable question which it is for the courts to decide", and one which was "a pure question of law".

Judicial review is not, as politicians would have us believe, a tool by which judges overrule a political decision that they disagree with. But the reporting and commentary betrayed a fundamental misunderstanding of how our constitution actually works. Concepts that are merrily tossed around in political discourse as if commonly and widely understood – such as parliamentary sovereignty, the separation of powers and judicial independence: the cornerstones of our democracy – were on this occasion so poorly discussed that it suggested widespread unfamiliarity among the political class with the very basics of how our country operates.

On the last of those three concepts, judicial independence, there was an even graver problem. The reaction to this entire episode, by ministers, parliamentarians, media and the public, exemplified a sprawling global phenomenon in which the independence of the judiciary is under direct attack. We have all been fed accusations against lily-livered liberal judges prioritising the rights of illegal immigrants, money-grabbing compensation claimants and career criminals over the law-abiding British public. But the "Enemies of the People" headline and associated commentary, personally attacking the individual judges, felt like a significant, emblematic moment; a sudden, choking realisation of how careless we have been in our treatment of our constitutional principles, and how close we might be creeping to doing irreparable damage to the framework of our democracy. Johnson's government charted a deliberately provocative course against the judiciary in September 2019, after the supreme court unanimously ruled that the prime minister had acted unlawfully in advising the Queen to prorogue parliament.

A brief reminder of those inconvenient facts: Johnson advised the Queen to prorogue parliament for an unprecedented five weeks in the run-up to "Brexit Day", briefing in the press that this had nothing to do with stifling parliamentary scrutiny of his plans to force a "no deal" exit from the EU, and was instead all to do with preparing a Queen's Speech. He then refused to sign a witness statement confirming this on oath, or indeed to offer any reason to the courts for the prorogation. The supreme court ruled that proroguing parliament, and thereby preventing MPs from holding the government to account, with "no reason, let alone a good reason" was unlawful.

The supreme court's unanimous judgment, delivered by Lady Hale, was damning for the government. Parliamentary sovereignty and parliamentary accountability, the foundational principles of our constitution, could be undermined if the government was able to prorogue parliament without any legal limit. There must, therefore, in order to maintain parliamentary sovereignty, be some legal limit on the power to prorogue. As with the Miller decision, three years earlier, the ruling was quickly, falsely, reframed as the judges taking sides on Brexit. Leader of the House of Commons Jacob Rees-Mogg denounced the judges as having effected "a constitutional coup". In truth, while a judgment of enormous significance, the decision simply involved the application of established principles of common law to a novel situation. The government's response, rather than apologising for having given the Queen unlawful advice, was to attack the judges who pointed this out.

Since the turn of the year, there has been a series of high-profile court decisions in which judicial reviews have confirmed that the government has acted unlawfully. In February, the court of appeal ruled against the Home Office when it attempted to deport 25 convicted Jamaican nationals, having detained them in conditions where they could not access legal advice. Cummings's response was to demand "urgent action on the farce that judicial review has become". Last month, the court of appeal ruled that British-born Shamima Begum ought to be permitted to return to the UK from a Syrian refugee camp to appeal against the Home Office's decision to deprive her of her British citizenship, the Home Office's own lawyers having accepted that she could not otherwise possibly have a "fair and effective" hearing. Johnson told the Sunday Telegraph that the solution to such pesky judicial interference might be to deprive Begum and those like her of legal aid. Having pondered whether "judicial review does indeed go too far", he declared it "odd and perverse" that as a nation we allow those whose lives are seriously affected by executive fiat to have access to legal redress.

It is with such high regard for our fundamental constitutional principles that the government has just announced the composition of the commission on the constitution, rights and democracy, following through on its 2019 manifesto commitment to hold a constitutional review to

"restore trust in democracy" by ensuring that judicial review "is not abused to conduct politics by another means". The problem, of course, is that "conducting politics by other means" is a misrepresentation of the purpose and operation of judicial review. Public authorities must act within the law. If they do not, judicial review exists as the corrective. Judicial review is not, as politicians would have the public believe, a tool by which judges overrule a political decision that they disagree with. The questions that the courts decide are those are of lawfulness, applying common law principles developed over centuries.

Politicians being frustrated by the courts is the sign of a healthy constitution. You would not know it from the government's narrative, but the overwhelming majority of applications for judicial review are resolved in the government's favour; the charge of judges abusing trust in democracy is just a complaint that the courts are not conferring on Johnson a 100% win rate. And the key point, often marginalised and forgotten, is this: we live in a parliamentary democracy. The courts are required to follow the law passed by parliament. If parliament believes that the courts have misunderstood the effect of the law, or misinterpreted it, parliament can - at any time it has not been arbitrarily and unlawfully prorogued - legislate to make its intentions clear.

But that's not what this government wants. Led by a prime minister indulged by a lifetime of never being told no, and guided by a self-styled "disruptor" with no respect for truth or the rule of law, we have an executive which, perhaps uniquely, has no intention of deferring to the courts or to parliament, or being in any way bound by the law. It is, in the scheme of things, trivial but nevertheless emblematic that when Cummings himself was challenged about breaking the law during lockdown, the government not only gaslighted the public about the facts, but enjoined Suella Braverman, the attorney general and superintendent of the Crown Prosecution Service responsible for prosecuting breaches of lockdown regulations, to abuse her office by offering a public opinion on Twitter vouchsafing the lawfulness of Cummings' conduct.

This was around the time that Priti Patel, the home secretary, irritated at judges having the audacity to rule against her in immigration detention bail hearings, sent a letter attempting to influence a senior immigration judge, and then, when the story was leaked, permitted her civil servants to lie about it on social media. Institutions are expected to bend to the whim of the prime minister and his supplicants. The new commission is no different, which is why in Edward Faulks, the PM has appointed a chair who has not only written extensively about his own settled views on "the courts' incursion into political territory", but was a justice minister under Chris Grayling from 2013 to 2015 at a time when they were telling the Daily Mail that judicial review was a "promotional tool for left-wing campaigners" and legislating to restrict its use. Little surprise that he has also called for the repeal of the Human Rights Act, another awkward constraint on ministerial caprice.

Judges are tough critters, robust enough to deal with the rough-and-tumble of strong media criticism and the occasional politician stepping out of bounds. The reaction of Sir Terence Etherton to the "Enemies of the People" story is a case in point. JK Rowling tweeted: "If the worst they can say about you is you're an Openly Gay Ex-Olympic Fencer Top Judge, you've basically won life." Sir Terence and his husband had the tweet put on a mug. More than half of all judges surveyed reported that they had feared for their personal safety. Threats have become common However, judges are also human. And the cumulative effect of years of chipping away at the foundations is starting to show. In the immediate aftermath of the headline, the lord chief justice sought advice from the police for his protection – the first time in his career that he had needed to do so. More than half of all judges surveyed reported that they had feared for their personal safety. Threats of hostage-taking, assault and death have become common. Some have been physically assaulted in court.

Not all of this can be attributed to media and political comment; judges are dealing with the most combustible elements of society and making decisions that can overturn people's lives. There is a heightened risk inherent in the job. But it would be the height of naivety to pretend that printed and tweeted words do not have consequences. And it is not merely a British phenomenon. In the US not only has the supreme court divided along party lines since 2010, but President Trump makes unrestrained attacks on "so-called" judges and "Obama judges" who rule against his unlawful executive conduct. While British people may laugh at the pantomime of Trump tweeting "See you in court!" at judges, here home secretaries are indulged in their threats to "fight" judges for their liberal treatment of "foreign criminals". Trump's rhetoric is ours.

If we lose judicial independence, we lose the rule of law. The day a judge makes a binding decision affecting the rights and liberties of one of us, not on the legal and factual merits, but with a nervous glance to the press and public galleries, or with a beady eye on political favour or punishment, is the day that the decay in our democracy turns terminal. Judicial review is what protects us, the individual, from the overbearing might of the state. It exists to ensure that, however venal, corrupt or malign the politicians who govern us, we are treated equally and according to the law. The government's claims to be restoring trust in democracy by rolling back these checks and balances mask an audacious power grab, allowing them to govern unlawfully and without accountability. Casting a glance across the world, we see the logical consequences taken to their grisly extremes. Every would-be authoritarian regime has the judiciary in its sights. From the Polish Law and Justice party attempting to remove a third of its senior judges, to Turkish president Recep Tayyip Erdoğan dismissing a quarter of all judges following the failed military coup in 2016, to Hungary's Viktor Orbán's "climate of fear" leading to the removal of unfavoured judges and the installation of party loyalists. Let us never be so naive as to suppose that we are immune.

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Alec Smith, who was 75 years old at the time of his conviction in 2017, has had that conviction for a historic indecent assault quashed by the Court of Appeal. He had consistently denied assaulting his accuser in the late 1960s, maintaining that all he had done was patted her on the leg. The Court of Appeal ruled the conviction was "unsafe" and based on "highly prejudicial evidence". This highly prejudicial evidence consisted of what is known as "multiple hearsay", which was not admissible in evidence by any route. The prosecution had failed to provide any hearsay application before the trial, in breach of criminal procedure rule 20.2 (2); the consequence of this was that there was no considered or detailed written response from the defence. The absence of notice and response led to an unstructured and ill-thought-through discussion of the first hearsay statement on the first day of the trial. The judge was therefore given no adequate submissions on the admissibility of this hearsay evidence, and he never ruled on the issue, although he had indicated that he considered it to be "triple hearsay", and that on first principles he would not admit the triple hearsay evidence. No formal ruling was given as requested, the Judge merely saying: "I - well I'm going to but I mean - I want to press on with the case."

The prosecution then adduced the triple hearsay evidence anyway, both from the accuser and another witness. The triple hearsay evidence consisted of the accuser saying, in effect, that Person A had told them that Person B had told Person A that Alec had told Person B that he had admitted the offence at the time. The second witness's evidence about the alleged confession was no more than her reporting that the accuser had previously told her this triple hearsay

evidence (at which point it technically becomes quadruple hearsay). In this instance, Person A was now dead and could not be questioned, but Person B was still alive and had provided a recent statement saying that there had been no confession of an offence.

However, the jury had heard two accounts, from two separate individuals, that there had been an admission. In speaking to the jury about this triple hearsay evidence, the judge did not direct them to place no reliance on the content of the alleged confession. Indeed, he gave them no formal directions at all on the point. In telling the jury that the reason why they had been permitted to hear the confession evidence was to assess whether or not the accuser had been consistent, the judge confused the analysis. In his second warning to the jury, the judge told them that if they found that the confession had been made and was not "limited to touching her leg", they could place weight upon it. The jury was then left to choose which to believe: the first-hand witness account of the appellant's former wife (Person B), and the multiple hearsay (which they should never have heard at all and therefore on which no weight could be placed). The Court of Appeal ruled: "It is for those reasons that we have come to the conclusion that the conviction is indeed unsafe. This was highly prejudicial evidence and, in the context in which it fell to be considered, had the capacity to act as confirmation of the guilt of the appellant. It should not have been admitted, and the warnings given by the learned judge were, in our view, insufficient to remove the important prejudicial effect." The Provisions of the Sexual Offences (Amendment) Act 1992 apply to this case so we have not reported anything in the case which is likely to lead to the public identification of the victim. [R v Alec Smith [2020] EWCA Crim 777 – Case: 201900881] End

The Crown Prosecution Service's job is to send your case to court for trial if there is a "realistic prospect of conviction" (See section 4.6 of The Code for Crown Prosecutors at http://tinyurl.com/SAFARI38). It is not based on whether you are likely to be guilty, and they will do everything they can to convince the jury that you are. When communicating with them, be open and honest but only provide the information they ask about, and information which helps to prove your innocence. Otherwise, despite being innocent, you might inadvertently provide them with additional information which they consider could sway the jury towards deciding you are guilty.

[Are you a prisoner maintaining innocence who has achieved Enhanced status? Please let us know how you achieved this, (ideally along with the type of offence you were accused of) as we'd like to share this information (anonymously of course) with other readers.]

COVID-19 MAKES it more difficult to keep in touch with your loved ones. However, Purple Visits and Prison Voicemail can help. Purple Visits are secure video calls that can take the place of prison visits and allow your 'visitor' to see and chat to their loved one via their smartphone or tablet (but not computer). See https://tinyurl.com/safari-76 for more details. Prison Voicemail allows you to leave a prisoner a voicemail message. They can dial into collect that message and even leave a reply for you. See https://tinyurl.com/safari-77. End

An innocent man was falsely accused by a group called "Scorpion Hunters" of trying to have sexual contact with a child which led to him being forced to spend 36 hours in police custody over the Christmas 2019 period. The man was only cleared when police arrested the real paedophile, Stephen Price, some months later. Mr Price had been using the innocent man's profile picture on a dating site to avoid detection. Scorpion Hunters then made the matter worse by 'naming and shaming' the innocent man but had incomplete information which resulted in the wrong person being arrested. Mr Price had contacted someone who called herself "Talia", who was really a woman from the Scorpion Hunters group. "Talia" had said she was 14. Still, despite this, Price sent her explicit pictures and videos and asked for indecent images of

her. The man who was entirely innocent and initially accused by Scorpion Hunters went through hell and back following the false allegation.

Recently, another 'Paedophile hunters' group known as Edinburgh Exposure incorrectly identified a car belonging to an alleged paedophile and then published details on the web. Vandals who saw the car's details scratched slurs into the door and smashed out windows. The owner of the car, a 49-year-old father of three, has no connection with the suspected paedophile who was the intended target of the attack. In February 2019 two members of Edinburgh Exposure, Robert Scoular (now deceased) and Katrina Scoular, who ran the group's FaceBook page, were slapped with ASBOs (Anti-Social Behaviour Orders) for live-streaming an attack on an innocent man on that page, which showed them shoving open the door of his home and heckling him for 45 minutes. Sheriff Frank Crowe said: "This was done purely for entertainment." Extra police had to be drafted in to secure the court, and others who claimed they had been falsely accused by the Scoulars held a silent protest there while they arrived.

In January 2020, another "paedophile hunter" group (group name not known) live-streamed, to thousands of followers on FaceBook, the arrest of a totally innocent 55-year-old man in Ormskirk, Lancashire. A spokesman for Lancashire Police stated that they were satisfied that this was a case of mistaken identity. They said: "We are confident the man originally named by this group was not involved in any attempts to groom children or commit sex offences, and he has no previous convictions for such offences." Furthermore, in January 2020, "paedophile hunter" group Angels of Innocence were responsible for a 'sting' on yet another innocent man in Middlesbrough, who was accused on social media of offences he had not committed. Cleveland Police said that the accusation had a "detrimental impact" on the innocent man's family, employment and personal life. End

A recent article in the Journal of Law and Society (https://doi.org/10.1111/jols.12235), entitled: 'Paedophile Hunters', Criminal Procedure, and Fundamental Human Rights' concludes: "Unless paedophile hunting is constrained by a narrower and more robustly enforced regulatory regime, it should not be permitted, let alone encouraged, in contemporary liberal democracies. […]. "Where paedophile hunters commit criminal offences in the pursuit of their targets (such as encouraging the commission of the s. 15 offence), both hunter and target should be prosecuted so that the conduct of both is meaningfully deterred. The CPS should issue clearer guidance on the breadth of offences that these groups can – and often do – commit, and the courts should not allow paedophile hunters to operate outside the constraints of police-led covert investigations. The institutions of the state have been too placatory towards paedophile hunters, and this approach is being exposed for its shortcomings with each passing report of a paedophile-hunting investigation gone wrong. A new approach is needed to safeguard not only those subject to paedophile-hunting stings and their families, but also the core institutional values of the criminal justice system." End

Margaret Gardener, CEO of FASO UK (http://www.false-allegations.org.uk/) says: "How amazing that after the Henriques report into the Met's handling of the allegations against Cliff Richard and Paul Gambaccini, which was followed by the senior police officer's investigation into the validity of the report, a change in the re-training of police officers was made, all in the name of equality and fairness. Now that fewer accused are being sent to court and found guilty, or cases are dropped, there is an outcry that the accused are 'getting away with it'. How many of these are actually falsely accused?

False allegations are buried by the media, government, police / CPS, the Victims' Commissioner, and the women's lobby, while there is no counter lobby for those being falsely accused - because if they try to raise their heads above the parapet, they are again vilified as society thinks 'there's no smoke without fire'. Women's groups argue that complainants'

phones / computers being examined violates their human right to privacy. Sometimes the only evidence that can protect an innocent defendant is on those devices. People accused of offences will invariably have their phones/computer examined and their privacy compromised.

The Liam Allan case demonstrates how important it is for the police to check the veracity of the complaint in this way in order to avoid miscarriages of justice. Police should be doing a thorough investigation into who is telling the truth, and digital evidence helps to show this. Those accused have never had the right to stop all their devices being seized - and the police have been doing so for the past 20 years, ever since I have been supporting in this field. What is equality here? The law is weighted on the side of those who shout the loudest and get the most media coverage, in order to browbeat the police / CPS, and the government who tend to give way to those creating such an outcry. It is about time the falsely accused and their supporters got together and started shouting with their evidence of the wrong being done against them, despite the pressures of being falsely accused a second time, as they have the temerity (it will be said) to tell the truth and shout out against the false accuser.

Persecuting the falsely accused is the modern form of the witch hunt which ceased in the 1750's – you are damned if you stand up for the truth and forever after targeted, or when found not guilty, or there is no evidence against you. Justice needs to be that: JUSTICE – not support for those that can shout the loudest. To achieve justice, we need to find a balance for a failing system and work together to recognise those failings and redress the imbalance of these issues by discussion and debate. Genuine victims and the falsely accused need to be brought together in this so that all innocent individuals are supported fully." End

According to the HM Crown Prosecution Service Inspectorate report "2019 rape inspection: A thematic review of rape cases" (see https://tinyurl.com/safari-75), they say "If 58,657 allegations of rape were made in the year ending March 2019 but only 1,925 successful prosecutions for the offence followed, something must be wrong. The National Criminal Justice Board has commissioned work to determine where exactly the justice system is failing victims." SAFARI is disappointed that, despite so many proved miscarriages of justice, the CPS still consider that a small number of convictions is bad news. As Margaret Gardener of FASO asks in this newsletter: "How many of these are actually falsely accused?" It is clearly entirely unacceptable to any intelligent and ethical person to increase the number of rape convictions by increasing the number of convictions of the innocent falsely-accused.

In a Lords debate on 4th March 2020, Lord Campbell-Savours said: "My Lords, as the Carl Beech affair now draws to a close, is not the real scandal in its management the fact that decent, honourable people, who have and had given a lifetime of public service to their country, have had their reputations destroyed by the headline-grabbing accusations of ambitious self-publicists and irresponsible policemen, who believed and promoted the lies of a fantasist, and that the damage that these purveyors of untruth have done can never be mitigated? Surely the perpetrators of this huge injustice bear responsibility for what has subsequently happened and it rests on their conscience, and history will never forgive them." Baroness Williams of Trafford said: "I agree with much of what the noble Lord says. Once someone is falsely accused, that can never be undone and it can blight their entire life from that moment forward. There is some remedy in law - perverting the course of justice or perjury in court - but he is absolutely right that those allegations can never be reversed and can destroy lives for ever." Lord Paddick said: "My Lords, does the Minister not agree that complainants should always initially be cared for as genuine survivors of sexual offences but investigations

should always be an objective search for the truth, and that there is no contradiction in such an approach?" Lord Grade of Yarmouth said: "My Lords, in view of the life-changing and career-ruining result of some of these accusations, is it not time that people were not named until charged? I wonder what the Government's attitude is to that. It would be a great remedy in future to protect public figures from ruination by glib accusations."

Slovakia: Police Ill-Treatment of Roma Violation of Articles 3 & 14

The applicants, R.R. and R.D., are Slovak nationals. The case concerned their complaint of police ill-treatment, lack of a proper investigation, and discrimination on the grounds of their Roma origin. On 19 June 2013 a police operation was carried out at Budulovská St in the town of Moldava nad Bodvou, which is in eastern Slovakia, with the declared purpose of searching for wanted persons and objects originating from criminal activities. The operation on the street, which is home to a Roma community, involved 63 officers, of which 15 were from the rapid-reaction force, and 23 vehicles. The first applicant, R.R., submitted that he had been handcuffed, dragged outside his house and beaten with truncheons. He had also been kicked by police officers and struck with an electroshock weapon. A police report on his detention stated that he was suspected of having committed a minor offence by disorderly conduct, that he had resisted being taken to the police station in connection with it and that officers had used lawful force, such as holds, grabs, blows, kicks and handcuffs.

A forensic report of August 2014 found, among other things, that he had suffered a fractured rib and had probably been hit by a baton on the back. The second applicant, R.D., submitted that police officers had beaten him and struck him with an electroshock weapon. He had also received blows from a baton on his right shoulder, back and the left side of his legs. A police decision on his detention stated that he had resisted arrest aimed at taking him to the police station in order to be investigated over a suspicion that he had also behaved disorderly in the course of the operation and that force had been used on him according to the law, consisting of holds, grabs, blows, kicks and handcuffing. A forensic medical report of August 2014 found in particular that injuries on him had been caused by a blunt, flat and oblong object, probably a baton. The injuries had been minor, and had not necessitated any sick leave and any treatment longer than seven days.

The applicants complained of a violation of their rights under in particular Article 3 of the European Convention as they had been mistreated by the police and the respondent State had failed to protect them from that mistreatment by conducting an effective investigation into it and into possible racist motives behind it. Under the same provision, in conjunction with Article 14, they also complained that their Roma ethnicity and what they considered to be institutional racism in Slovakia had been the decisive factors in their alleged ill-treatment and in the alleged failure to conduct a proper investigation into that ill treatment.

Violation of Article 3 (inhuman treatment), Violation of Article 3 (investigation), Violation of Article 14 in conjunction with Article 3 – on account of the lack of investigation into the alleged discrimination in the planning of the operation of 19 June 2013, in so far as it concerned the applicants, Just satisfaction: 20,000 euros (EUR) to each of the applicants in respect of non-pecuniary damage, and EUR 6,500 to the applicants jointly in respect of costs and expenses.

Reforms to UK's Antiquated Spying Laws

Law Commission: Reform is needed to bring the law into the 21st century and protect the United Kingdom from espionage (spying) and unauthorised disclosures (leaks), according to a report from the Law Commission that has been laid in Parliament today [01 September 2020]. In the last

twenty years, new communications and data technology has changed the nature of espionage and leaks. For example, hostile states can conduct cyber-attacks on the UK through multiple servers across multiple countries. At the same time, the potential impact of spying and leaks has increased: a single disclosure could contain terabytes of data. However, the Official Secrets Acts 1911, 1920, 1939 and 1989 that help protect the country from spying and leaks are outdated and no longer fit for purpose. The Law Commission's recommendations aim to ensure the law can protect against the nature and scale of modern threats and allow Government to respond effectively to illegal activity. At the same time, our aim is for the recommendations to be proportionate, in line with human rights obligations and ensure that Government can be held to account.

Recommendations Include: 1) A statutory public interest defence should be available for anyone – including civilians and journalists – charged with an unauthorised disclosure offence under the Official Secrets Act 1989. If it is found that the disclosure was in the public interest, the defendant would not be guilty of the offence. 2) Updating the archaic language of the Official Secrets Acts to ensure the legislation is fit for purpose. For example, we recommend replacing the word "enemy" with "foreign power", which would include terrorist organisations and companies controlled by a state. 3) For prosecutions of public servants (crown servants and contractors) who leak information, we recommend removing the requirement to prove that the leak caused damage. Instead, the offence should require proof of a sufficiently culpable mental state (which should be decided by Parliament). For example, knowledge or belief that the disclosure would cause damage. 4) For cases of espionage carried out against the UK from abroad, we recommend that an offence would be committed irrespective of whether the individual is a British citizen, provided there is a significant link between the individual's behaviour and the interests of the United Kingdom. 5) Public servants and civilians should be able to report concerns of wrongdoing to an independent statutory commissioner who would be tasked with investigating those concerns effectively and efficiently. 6) Parliament should consider increased maximum sentences for the most serious offences in relation to leaks. However, the Law Commission does not make a recommendation on what new maximum sentences should be.

Professor Penney Lewis, Criminal Law Commissioner, said: "In the last twenty years, the world has moved on but these vital laws protecting our national security have not kept up. They are in urgent need of reform. Our recommendations will help to give the Government the tools it needs to respond to espionage and leaks, whilst also being proportionate and protecting individuals' human rights." The recommendations in detail cover two separate areas: Espionage offences, i.e. spying: Unauthorised disclosure offences, i.e. leaking, including when in the public interest Espionage Offences: The Russia report, published by the Intelligence and Security Committee of Parliament in July 2020, has highlighted the need for reform of the 1911 Official Secrets Act to ensure that espionage can be properly prosecuted. We agree. In our Report, we make a number of specific recommendations, which are designed to modernise the law and ensure that it addresses the nature of the threat of espionage now facing the UK. For example:

Currently, a person who is not a British national or public servant doesn't commit an offence if they engage in espionage against the UK whilst abroad. In the modern, interconnected world, in which many acts of espionage are committed from abroad, this definition is too restrictive. The offences should be expanded so that they can be committed irrespective of the individual's nationality. Instead, the test should be whether there is a "significant link" between the individual's behaviour and the interests of the United Kingdom. "Significant link" should be defined to include where the conduct relates to a site or data owned or controlled by the

UK government – e.g. data held on foreign servers.

Finally, we recommend that the new espionage statute contains modern language and updated provisions. In addition to replacing "enemy" with "foreign power", we recommend replacing the terms "sketch, plan, model, note and secret official pass word and code word" with "document, information or other article" (which should be defined to include any program or data held in electronic form) when outlining the type of information that could be stolen. We make no recommendations about the registration of foreign agents, which was raised in the ISC's Russia report, because this was not a matter that we addressed in our Consultation Paper.

Unauthorised Disclosure Offences: The Law Commission is also making a number of recommendations to reform the Official Secrets Act 1989 to improve protections against leaks. The recommendations include: For public servants, offences should not continue to require proof of damage, as is currently the case. Instead, they should require proof of a sufficiently culpable mental state, by which we mean, for example, proof of the defendant's knowledge or belief that the disclosure would cause damage. It would be for Parliament to determine in new legislation what the mental fault element should be. For Parliament to consider increased maximum sentences for the most serious offences related to unauthorised disclosures. We recommend this because the current maximum of two years doesn't always reflect the damage that a disclosure could cause, or the culpability of an individual. However, the Law Commission does not make a recommendation on what new maximum sentences should be.

Similar to the espionage offences, an unauthorised disclosure offence is not committed if the disclosure of information is made by someone who isn't a British citizen or crown servant and is abroad when they make the disclosure. Therefore, a UK government contractor who is not a British citizen would be guilty of the offence if the disclosure was made in the UK but not if the disclosure was made abroad. We therefore recommend that sections 1-4 of the Official Secrets Act 1989 be amended to make clear that an offence is committed when an unauthorised disclosure is made by a government contractor abroad irrespective of whether they are a British citizen.

Unauthorised Disclosures in the Public Interest: The Law Commission's recommendations offer protections for disclosures that are made in the public interest, ensuring that the UK meets its obligations under Article 10 of the European Convention on Human Rights, concerning the right to freedom of expression. It is important to stress that we are not making recommendations on the fine detail of such a defence, as we did not consult on the area and believe that there are matters central to that defence that are essentially political. Further work will therefore need to be done to establish a workable defence. We have recommended this model on the basis that this is the what Article 10 requires. There are many reasons (such as how the defence might work in practice) why Parliament may wish to go further than what Article 10 requires.

Our Recommendations Include: A statutory public interest defence should be available to anyone charged with an offence under the Official Secrets Act 1989 (including civilians and journalists), that they can rely upon in court, if the court found that the disclosure was in the public interest This would require both the subject matter being disclosed being in the public interest AND the manner of disclosure also being in the public interest. We do not outline which factors define the public interest, as this is a political question and therefore should be determined by Government and Parliament. We recommend that an independent, statutory commissioner should be established to receive and investigate allegations of wrongdoing or criminality where otherwise the disclosure of those concerns would constitute an offence under the Official Secrets Act 1989. This would be available to all, although we envisage

that it would be used most by public servants. In rare cases where disclosing to the commissioner would not be sufficient to protect the public servant's Article 10 rights, or they nonetheless disclosed without authorisation, they would of course be entitled to advance a public interest defence in line with the above.

Punishing Companies for Corporate Crimes

Benjamin Bestgen examines the available options for punishing companies and questions whether our current laws are appropriate. Corporate crimes make prominent headlines, particularly when they involve large multinationals like Volkswagen, WellsFargo, Pfizer or Odebrecht. But smaller businesses like Cambridge Analytica or your local fish wholesaler, chicken farmer or accountant might also commit crimes. Examples of corporate crimes include: environmental pollution, tax evasion, exploitative and unsafe labour practices, fraud, modern slavery, bribery, coercion, money laundering, bid rigging, criminal threats, market manipulations, cartel offences, misuse of data, animal cruelty and even corporate homicide. Due to size, influence, nature of the crime or resources, corporate crimes can often be more severe in scope and consequences than crimes committed by individuals.

Who to punish? Punishing a human is straightforward but it's harder to pinpoint who is criminally culpable in a legal entity. To establish criminality, we require mens rea – the criminal mindset. The problem is that companies have no minds and only a select few individuals – directors and senior managers – can be said to embody the mind and enact the will of the company, as noted in Tesco Supermarkets Ltd v Nattrass 1971. But what about lower-ranking employees or influential shareholders? Do you also prosecute the company's advisers – lawyers, accountants, tax advisers, other consultants? Should a parent entity be criminally liable for the wrongdoing of a far-removed subsidiary or an entire company group be punished for the criminality of the parent?

Responses across jurisdictions appear inconsistent. In the US, companies can be vicariously liable for employees' criminal actions committed as part of their employment. The US also accepts an aggregate mens rea: criminal intentions can be established by combining the conduct and knowledge of multiple individuals acting for the company. Other offences have strict liability, meaning mens rea does not have to be established. Interestingly, criminologists James Gobert and Maurice Punch proposed that companies are not individuals and criminal law should analyse them differently. Instead of looking for human traits like mens rea, we should treat corporate crime as a systemic problem: for instance, a company that failed to establish or adhere to proper risk management and compliance procedures or has a poor grip on management conduct, policies and business operations can foster a culture that incentivises or ignores misconduct. Arguably, allowing such a corporate culture to endure and thereby increasing the risk of criminality is inherently blameworthy and should permit holding an entity criminally liable.

What penalties? You cannot imprison a company, so many jurisdictions resort mainly to financial penalties to deter or punish corporates. But cynical "wisdom" dictates that businesses already price estimated financial penalties into any wrongdoing they contemplate: crime still pays if you get to keep some of the profits once all fines and legal costs have been settled. And if fines are too high and could threaten bankruptcy, a desperate business might still commit the offence if they think they've got little to lose. Others calculate that a court would consider the wider social, political and economic impact too dire and refrain from issuing crushing fines ("Too big/important to fail.").

Legal academic Marc A. Cohen also discusses a variety of other options: 1) Imprisonment of directors and/or owners: in many cases company officers act with relative impunity, relying on their insurance and the corporate veil for protection. If the humans running or owning a company could be readily imprisoned for corporate crime committed on their watch, they might take a keener interest in keeping the business honest. 2) Incapacitation: a business could see important licenses revoked, be excluded from dealing with certain parties, in certain markets or have limits imposed on how big it may grow or what products it is permitted to buy or sell. A financial services business could also be restricted in how many funds it may have under management or which products or currencies it is permitted to trade in. 3) Rehabilitation: a business can be ordered to submit to independent audits or be obligated to employ compliance officers or engage in other activities to benefit the communities it operates in (pro bono work, environmental improvements, job creation schemes).

Deferred Prosecution Agreements are options too, as they allow the state to avoid lengthy, expensive trials, are court-supervised, public, transparent and appropriate conditions and obligations can be imposed on the business to rehabilitate itself and improve – effectively a corporate probation. Lastly, in some cases, judicial dissolution of the offending entity, also called a "corporate death penalty", may be the just response. Some companies committed crimes so harmful, deadly or irresponsible that it can legitimately be asked that such an entity should no longer be allowed to exist, regardless of any market upset or unemployment this causes.

Future questions. Cohen notes that despite many corporate prosecutions, fines and other punishments, there is scant knowledge on the effect of available punishments on corporate behaviour. Is it better to punish individuals inside the company than the legal entity itself? Do criminal charges add any particular benefits to civil lawsuits regarding corporate misconduct? What penalties are most effective in changing corporate policies and behaviours? And how should we address cases where companies and the state cooperated in criminal actions? For anyone interested in corporate punishments, this may be further food for thought.

Benjamin Bestgen, writng for Scottish Legal News, is a solicitor and notary public (qualified in Scotland). He also holds a Master of Arts degree in philosophy and tutored in practical philosophy and jurisprudence at the Goethe Universität Frankfurt am Main and the University of Edinburgh.

EDM 831Protecting and Valuing Whistleblowers

That this House recognises that the Public Interest Disclosure Act (1998) does not provide a sufficient degree of protection for employees who 'whistleblow' or raise concerns with their employers, whether in public service or private business, when they identify a risk to personal safety, the environment or of fraud, particularly when this results from a failure to observe pertinent, guidance, regulations or laws; believes that a replacement of the Act is necessary to ensure that employees are sufficiently protected so they have confidence to disclose their concerns; and further believes that an Independent Whistleblower Commission should be established, to set standards so that such concerns are thoroughly investigated and the findings acted on, whilst protecting 'whistleblowers' from recrimination or mistreatment.

Serving Prisoners Supported by MOJUK: Walid Habib, 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, Hyrone Hart, 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.