Rethinking of Miscarriages of Criminal Justice System in Britain: Aspects of Police Malpractice, the Fallibility of Forensic Science and the Failure of the Trial Stage

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Content

Ⅰ. Introduction

The purpose of our library based paper study is to engage in a comprehensive examination of the criminal justice system in Britain in order to ascertain what impact the chosen contributory factors have had on miscarriages of justice. These contributory factors are that of: police malpractice, the fallibility of forensic science and lastly, failure of the trial stage. The study is designed to achieve support for the assumption that through these contributory factors, not only has the credibility of the criminal justice process been undermined, but more importantly, that the suspect/defendant has been significantly disadvantaged.

It is important to note, that the contextual usage of the lexis 'criminal justice' in this instance is concerned with justice to suspected offenders rather than victims of crime, or society as a whole. We have chosen this particular context, because the avoidance of convicting the innocent is crucial in any criminal justice system. This is axiomatic from the maxim of English law that: "10 guilty men should escape rather than one innocent man suffer" (Hobson Case (1823) I LWCC261).

We are going to conduct my investigation by first of all collating all the relevant information. The introduction sets the ground for the paper and allows the reader to become familiar with the main aims of the paper's purpose. Present paper begins to take each of the three core contributory factors in sequence. The first section examines how police malpractice has contributed towards miscarriages of justice against the defendant. In doing so, the chapter includes the weakness of police discretion, in that it is largely open to abuse.

Another section examines how forensic science has contributed toward miscarriages of justice against the defendant. The issue of incompetent scientists is a large part of this part, and it has been dividend into three parts, namely: scientific misinterpretation, scientific contamination and lack of scientific knowledge. Final section highlights the trial stage, highlighting the failures within the process and how this contributes towards miscarriages of justice against the defendant. The validity of trial by jury is also discussed including the significance of the abolition of the peremptory challenge. Witness unreliability, plea bargaining and the members of the court are also discussed including the judiciary and defence counsel. The paper can contributes to the reader, so that he or she can follow the process more easily, and in doing so, understanding how the criminal justice system impedes the suspect/defendant. Due to the nature of the study, there will be included both the potential for abuse and

evidence through citing previous abuses leading to miscarriages of justice.

Ⅱ. Police Malpractice

Ⅱ. i Generalisation of Police Malpractice

Police malpractice has contributed towards miscarriages of justice against the defendant. In doing so, the credibility of the criminal justice system of UK has been undermined. The main central factor which has contributed to police malpractice and towards miscarriages of justice against the defendant, is that of the abuse of police discretion. Police discretion is without a doubt, a necessary part of police work, and it depends on selective judgement in deciding whether and how to deal with illegal behaviour, which is encountered. police discretion is a required part of police work because of the substantial number of incidents regarded as breaches of the law, compared to the police resources available. Thus, the prioritisation of certain incidents is required (Blandon-Gitlin *et al.*, 2011).

The major weakness of police discretion though, is that it is very open to abuse. The potential for abuse is also substantial because of the dispersed character and low visibility of police work itself (Kassin *et al.*, 2010). Furthermore, it must be noted that those lower down the police structural hierarchy have more discretion. This has been illustrated by Das and Verma (2002: 32) who stated that: "*The police department has the special property ... that within it discretion increases as one moves down the hierarchy.*"

Legislative interpretational scope is a further contributory factor towards police malpractice, and that of miscarriages of justice against the suspect/defendant. In order for stop and search to be regarded as legal, the

Police and Criminal Evidence Act (PACE) 1984 must be strictly adhered to. Sections 1-3 of this Act permit the police to stop and search a person when they have reasonable grounds for suspicion. The due process element of 'Reasonable Suspicion' is there to protect the suspect, yet, what is deemed reasonable is reliant on police interpretation, which is subjective (Waters & Brown 2000).

Arrest (under section 24 of the Police and Criminal Evidence Act 1984) is also dependent upon the Lexis of 'Reasonable Suspicion'. This Lexis is certainly unhelpful in controlling the exercise of this intrusive discretionary power (Blandon-Gitlin *et al.*, 2011; Wadham 2001). The law is a supposed due process protector, but in reality it seems to be quite the opposite because the legalisation provides wide boundaries within which the police can operate accordingly to their own working rules, and in doing so, the police are free to partake in malpractice (Das & Verma 2002). Moreover, the threshold of 'Reasonable Suspicion' is so low that many suspects may be incorrectly arrested on the basis of weak evidence.

Ⅱ. ii Effect of Police Racism

On the issue of police racism, Gunnlaugsson and Galliher (2000) in 'The Myth of Black Criminality' argue that this accounts entirely for the official statistics which suggests that ethnic minorities are no more prone to criminal activity. As well as racism, he forwards the belief that there are in addition, stereotypes in operation by the police which are in actual fact certainly disadvantageous towards those from ethnic minorities, including those from the West indian and Asian communities. He has highlighted that of racism further by referring to a police officer in conversation with a reporter.

The racist attitude displayed from this police officer contributes towards

that of miscarriages of justice against the suspect/defendant because according to Gunnlaugsson and Galliher, the police and their racialist stereotypes will in turn lead to arresting ethnic minority individuals regardless of whether an offence has been committed.

Police racism has also been noted by Wadham (2001) they unlike Gunnlaugsson and Galliher, believe that the over-representation of blacks in the official figures is not purely because of police discrimination. According to Wadham, it is much more likely that black people do commit certain crimes more frequently than white people. Still, they do accept that police racism (as well as policing policies) are responsible for the hyperbolic representation of the black crime rate (Findley 2011).

In association with stereotypes, they are in themselves a contributory factor towards malpractice. Loader and Mulcahy (2001) have themselves noted a process of stereotyping used by police officers whereby quick judgements are made about members of the general public on the basis of visible signs. Such stereotyping has the repercussion of wrongly perceiving someone either by their dress code or by the colour of their skin. This is not to say that all police officers would do this, or other forms of malpractice (Britton 2000). Nor would it be appropriate, to adopt a 'rotten apple' theory – pointing to isolated incidents of a small number of individuals consciously circumventing the rule of law, and of the police code of practice (Kleining 2007). To take this theory at face value, would be unwisely ignoring the influence of professional and occupational pressures.

Ⅱ.ⅲ Effect of Social Pressures and Media

Social pressures may also contribute towards police malpractice and therefore miscarriages of justice against the defendant. Society has an

influence over policing, and this has been recognised by section 106 of PACE which requires individual police forces to consult the community over policing (Kassin *et al.* 2010). Societal concern originates often from amplification by the media. An example of amplification comes from Markham and Punch. Markham and Punch (2007) believed that the police and the state deliberately manipulated the reporting of ‘mugging’ by young, black individuals in south london (the term ‘mugging’ was imported from the united states in 1972). Gans *et al.* (2011) argues that the problem was exaggerated so that a 'moral panic' resulted. A 'moral panic' is where the audience becomes so sensitised to the issue at hand that it is almost actively seeking out the problem itself. A headline in one of the newspapers at the time of: 'must harlem come to handsworth?' illustrated this sensitisation on the part of newspapers and in this instance, the newspaper was stating that ‘mugging’ had begun in Britain.

This 'mugging' led to repressive police action to deal with the situation. Repressive action would not have been given public support had it not been for media output preparing the public for such measures. This was also the case with the Prevention of Terrorism (Temporary Provisions) Act 1874. This Act meant that the police could arrest without warrant on 'Reasonable Suspicion' and that included the power to detain for two days, with the possibility of a further five days, if authorised by the Home Secretary (Ward *et al.* 2010).

The police may be also placed under extreme pressure by the media to catch and convict for example the 'mugger' or the 'terrorist' and to deal severely with any potential insurgencies. This has the knock on effect of over policing and of clouding their objective judgement (Levi 2006).

As well as the scope for malpractice, the numerous types of abuses shall be discussed. The first area of concern, is with regard to that of conduct of interviews. Pre-PACE suspects were very much open to abuse

from the police. Such abuse included psychological tactics and physical force in order to gain a confession.

Moreover, on the 7th February 2001, a Mr Stephen Downing was freed on bail by the Court of Appeal having been in prison for 27 years. He was jailed for the killing of a typist named Wendy Sewell, whose body was found in a cemetery in Bakewell, Derbyshire. This is the longest running miscarriage of justice case which involved the police making Mr Downing sign a false confession through bullying tactics. The defendant also had learning difficulties and a solicitor was not present at the interrogation. This case highlights the major weakness of the criminal justice process of the past and it seems that the defendant's conviction will be quashed. Nowadays, the police have specific guidelines on the conduct of interviews. Within this literature, conditions such as heating, periods of rest and refreshment are mentioned. This is important because fatigue is a great factor in increasing the suggestibility and inaccuracy of a suspect's performance (Ward *et al.* 2010).

Police malpractice may contribute towards miscarriage of justice against the defendant if legal advice at the police station is either denied or if it is granted, is that of a poor standard. According to PACE 1994, free legal advice must be provided upon request. Even so, Nobles and Schiff (2000) discovered that in some 41.4 per cent of cases 'Ploys' were adopted to attempt to dissuade suspects from seeking advice which was their legal entitlement. Leo and Liu (2009) also found there to be discouragement by the police.

In association with legal advice of a poor standard, Levi (2006) found that some legal advisers failed to safeguard their client's interests in the face of hostile of repetitive questioning. Also, Harmon (2001) found that when legal advisers arrive at the police station they have difficulty in ascertaining details of the allegations, and usually have nothing more than

a hurried interview with their clients.

Ⅱ.iv Police Malpractice of outside the Police Station

Police malpractice can occur also outside the police station (Fielding 2002). The 1993 royal commission relied upon research that found questioning to have taken place outside the police station in ten per cent of cases (Waters & Brown, 2000). Due to this study relying on self-reports by police officers, it may be argued that the results were substantially under-estimated (Mclaughlin & Johansen, 2002). This means that there is the potential then for the fabricating of 'verbals'. Verbals are that which the police attribute to suspects through the use of false statements. This is allowed to continue under the present system unchecked. Some officers tend to try to legitimise what they do in order to convict those whom they believe to be guilty – this is that of 'noble cause corruption'. Verballing suspects is purely a convenient way of filling evidential gaps (Leo & Liu 2009).

False confessions have contributed towards miscarriages of justice against the defendant/suspect. These confessions have led to many innocent people being incorrectly convicted and jailed. The position of the innocent person who confesses falsely has been weakened through legislation. In particular, sections 32 and 33 of the criminal justice and public order act 1994 – this abolished the corroborations requirements in law. Harfield (2006) argued that interrogations are a matter of construction – facts are seen to be made rather than discovered. This stance has been supported by Naughton (2005) who have reported a CID sergeant stating that he had been taught, whenever he found someone carrying a knife, to make them say that it was for their own protection. Instead of the CID sergeant seeking for the truth in the incident, he wants

the suspect to acknowledge that it was for his own protection because this constitutes admission of the crime of carrying an 'offensive weapon'. The police officer has thus created a 'coerced-passive' confession where the suspect confesses by not really understanding the legal significance of the remarks made. Therefore, in line with Harfield (2006), the facts are duly created through the style of police questioning.

Malpractice may be allowed to continue due to the lack of police accountability. Police officers are regulated by statutory law, in particular by the Police and Criminal Evidence Act 1984. This is clearly ineffective and can be ignored by the 'enforcer' – the police officer who is willing to bend the rules for the sake of law enforcement (Zellick 2010). Police officers are in addition held to be accountable to both the courts and the complaints process. An individual officer may face a civil action in tort or may be disciplined by the Police Complaints Authority for that of malpractice. Also, there seems to be a lack of general confidence in the latter, both from the general public and from the police themselves. This indicates that there is a lack of any real deterrent which therefore means that a police officer or officers can continue unhindered, due to the low risk of being disciplined (Naughton 2005).

The police being self-regulated is an important issue for debate. There has been a call from the general public for many years for an independent body to be set up to regulate the police force. Self-regulation may have the advantage of expertise and experience, but it is arguably not objective as it is police officers who are regulating. They may be seen as 'protecting their own'. An independent body perhaps should be installed for the purpose of regaining objectivity and with it public confidence (Zellick 2010; Harfield 2006).

It can be argued that legal regulation in any case is ineffective in cases where the police can rely on consent. This may contribute to miscarriages

of justice in the sense that police officers may feel they have to apply unfair pressure in order for defendant to admit to a crime so that legal regulation may be sidestepped.

Ⅲ. The Fallibility of Forensic Science

Ⅲ. ⅰ Scientific Misinterpretation

Scientific misinterpretation may be illustrated through applying the case of the Maguire seven. Here the defendants were accused of handling the explosive substance of nitro-glycerine (Edmond & Roberts, 2011). At the original trial in 1975, it was stated that because nitro-glycerine was discovered underneath the fingernails of most of the defendants, this constituted direct and intentional contact, which fulfilled section 4 of the Explosive Substances Act 1883 (Parson & Bandelt, 2007). On the basis of this forensic evidence alone, the defendants were subsequently convicted. Fortunately, there was a later re-examination of the scientific evidence. This was carried out by a professor burns, and the relevant details were published in July 1990 through the Interim Report of Sir John May (Zellick 2010).

The re-examination of the scientific evidence led to the acknowledgement of the fact that significant amounts of nitro-glycerine could be collected from another source - a towel(Edmond & Roberts, 2011). Not only was it likely to be picked up, it was also found that nitro-glycerine easily travels to the destination of under the fingernails. Therefore, a misinterpretation on the part of scientists contributed to the miscarriage of justice as the explosive substance was incorrectly viewed with regard to its origin, that is, how it came to be present initially

(Phillips 2007).

Scientific misinterpretation as a contributory factor of miscarriage of justice against the defendant in operation in the Maguire case. As a counter argument it may be forwarded that the miscarriage of justice was later rectified and also scientific misinterpretation was not to blame for the maguire's remaining in prison when substantial scientific argument on their behalf became available (Medwed 2012). The substantial scientific argument was based in a 1982 Home Office Journal named the 'Transfer of Nitro-Glycerine to Hands during contact with Commercial explosives'. In this journal it stated that it had proved that the explosive nitro-glycerine could in fact 'migrate' under the fingernails from traces on the hands without the explosive being kneaded. The lack of kneading implies a lack of direct and intentional contact (Crispino 2007).

Scientific misinterpretation was merely an ongoing process furnishing a contributory essence of miscarriage of justice causation (Zellick 2010). The British Home Office were advised by scientists and they must have chosen to either ignore the journal's credibility on the basis of scientific fact or to suit keeping innocent person's in jail in order to keep public faith in the government and the criminal justice system (Parson & Bandelt 2007). The former seems more likely as innocent contamination was finally accepted and the maguire's were released. The decision to disregard the evidence has to be related to that of misinterpretation.

Ⅲ. ii Scientific Contamination

Another contributory factor leading to miscarriages of justice against the defendant is that of scientific contamination (Roman 2012). An example of this was evident in the Maguire case. The second report of the May inquiry in 1992 noted that the nitro-glycerine found under the fingernails

was more likely to be a product of the swabbing techniques used to take samples rather than from a contaminated towel. This means that contamination on the part of the scientist can be a direct contribution towards miscarriages of justice (Zalman 2011).

There is certainly a great deal of uncertainty in the area of forensic science which impedes an objective onlooker from getting to the facts (Zalman 2011). For example, in the May Second Report, traces under fingernails were said to have been unlikely to have originated from a towel. Yet, innocent contamination from a towel was accepted by the crown, and professor Burns in the Maguire case, believed that the transfer of explosives to the hands from a towel was possible (Parson & Bandelt 2007).

As time goes on, scientific fact/opinion tends to change. For example, the Greiss test used in 1975 is considered nowadays to be not much more than a preliminary screening test (Roman 2012). Technological advances also influence that of forensic science in a substantial manner. The more sophisticated techniques are viewed by the forensic scientists being more reliable than the old outdated techniques. An example of a technological advancement is in the study of weak or damaged fingerprints. They have been greatly advanced by Laser Image Enhancement (Medwed 2012). The arrival of new technology often underlines the previous inadequacies and the potential for injustice. The use of computers can substantially reduce the previous human error, yet computers themselves are prone to failure due to their delicate and complex circuitry (Crispino 2007).

The whole validity of forensic science evidence must be called into question and perhaps should not be so heavily relied upon as being 100.0 per cent proof. Also, forensic science evidence is circumstantial evidence rather than direct evidence and has been misused, particularly by the police as being somewhat of a 'magical solution'. There have been several

scientific methods which have contributed to miscarriages, not merely because of the scientist but because of the false belief in its reliability. In the case of the Birmingham Six, Dr Skuse believed very much in the reliability of the Greiss Test. He was the main prosecution witness at the original trial and he commented that he was 99 per cent certain of the presence of nitro-glycerine from using his chosen test (Phillips 2007).

The purpose of this test was to detect for nitro-glycerine via the presence of nitrate observed through a chemical colour change. There was a prosecution review of the evidence in 1990 and it was forwarded by that review that nitrate in soap or detergent could give positive results. So, contamination could have come from the process of cleaning the bowls used in the testing process.

Ⅲ.ⅲ Lack of Scientific Knowledge

The 'lack of knowledge' from forensic scientists is particularly relevant to those who are not always the 'experts' they represent themselves as being. Russell Stockdale and Angela Gallop (ex-Home Office Emplyees) found that the 'defence experts ... simply didn't know what they were talking about'. Also, Angela Gallop disturbingly found that "one of these 'experts' didn't even know how to use a microscope" (Leo & Gould 2009; Crispino 2007).

Another contributory factor towards miscarriage of justice is that there is no regulation whatsoever over independent expert witnesses and as a consequence anyone with a scientific background can claim to be an 'expert' (Roman 2012). An 'expert' is someone who is somewhat of a specialist in a certain discipline. There are several forensic disciplines, so a scientist who decides to depart and become an independent expert witness cannot possibly be correctly labelled as being an expert in every

area. Even where an 'expert' may be re-cognise, it is still difficult to ascertain whether he or she is giving medical fact or opinion.

McCartney (2006) has forwarded the following questions: "How and by whom, is it decided when an expert in a scientific discipline is expressing an opinion on matters within his science? Who decides when he ceases to do so, and is expressing no longer an expert opinion but merely the opinion of an expert? How and by whom should these questions by decided in a rational system of jurisprudence?" (McCarthney, 2006, 180)

With regard to the police, they have an important influence upon the scientists. Such influence occurs due to the fact that they rely very much on background information provided to them by the police. Relying on such information may well be a contributing factor towards miscarriages of justice, in that, the officers involved in the case may already have a strong perspective on who is the guilty party. He or she will then lead the scientist in the direction he or she desires. A scientist can for example confirm the existence of fibres found on an object at the crime scene, but will not be asked to prove whether an individual police officer could have innocently or maliciously caused the transfer of fibres (Crispino 2007).

A contributing factor to that of miscarriages of justice is the fact that scientists just do not research any of the background information themselves and thus cannot place the evidence in context. Russell Stockdale (Gould & Leo 2011; Jones & Newburn, 2002) has emphasised the importance of intervention, Stockdale gives the example of a rape case he once was involved in. the police at the time believed that they had extremely promising evidence of guilt. This evidence was in the form of DNA fingerprinting. The evidence held by the police was that of a semen stain on a sheet in a bed where the rape was alleged to have occurred. On forensic examination, there was a positive identification.

The last contributory factor of miscarriages of justice against the

defendant, is related to the general imbalance between the prosecution and the defence. There are several instances whereby the defence is disadvantaged (Zalman 2011). For example, fee scales for defence scientists are unsatisfactory, and many practitioners employed in the private sector have been forced by commercial pressures to refuse legally aided cases in favour of privately funded work which is better paid. Refusing legally aided cases on cost grounds, laces the defendant at a substantial disadvantage compared with the prosecution.

The defence is further disadvantaged, as it has limited access to the crime scene. It is limited in the sense that the prosecution agencies are always first to the crime scene and have the potential to take away all the useful forensic evidence (Gould & Leo 2011). Therefore, this imbalance from the beginning, can contribute to a miscarriage of justice against the defendant because it is so heavily weighted in the prosecution's favour, as the police and the prosecution agencies have more time to analyse the evidence which is important in building a case. The prosecution agencies are aided because of the fact that they are first to be informed of any forensic results. This is clearly unfair and highlights a bias in the criminal justice system.

There is further subjectiveness in operation with respect to the close relationship between the forensic science service and with the police laboratories. According to Savage (2007) insisted that the laboratory scientists themselves decide who is the best qualified to aid the police in their case construction.

Ⅳ. Failure at the Trial Stage

Ⅳ. i Validity of Trial by Jury

At the stage, there are several issues which have undermined the credibility of the criminal justice system of UK and which have contributed towards miscarriages of justice against the defendant. The first issue concerns the validity of trial by jury. Jury member may contribute towards a miscarriage of justice if they are unable to fully understand evidence of a complicated nature. Savage, and Poyser (2007) insisted that juries are particularly unsuitable when dealing with matters involving scientific and identification evidence.

Furthermore, they believe that juries should concentrate on determining questions of credibility. Understanding evidence of a complicated nature, was noted in the Roskill Report of 1986 that wisely recommended the abolition of a right to jury in complex fraud cases. The Report was based on the premise that in complex fraud cased, lay persons are unsuitable to the task in which they have been appointed(Severt, 2006). As well as having stipulated the forementioned point concerning the limit of jury comprehension, the Report also commented on the fact that the length of extremely detailed fraud cases would more than likely cause substantial disruption of the lives of the members of the jury (Walker & Starmer, 1999).

The defendant at the trial stage, has been significantly disadvantaged by the defence's right to a peremptory challenge being abolished under the Criminal Justice Act 1988, section 118. The peremptory challenge was a means by which jurors could be objected to without a reason having to be forwarded. The right to a peremptory challenge was slowly eroded in that originally seven peremptory challenges were allowed and this was later

reduced to three under the Criminal Law Act 1977 (Severt 2006).

Ethnic minorities are under-represented on british juries (Nobles & Schiff, 2000) and the composition of the jury is of significant importance to them. A black defendant for example being faced with an all-white jury may believe this to be unfair because a jury to him or her should be representative of the public as a whole, thus a jury arguably should reflect the multi-racial community we live in (Garrett 2011).

Having ethnic minority members on the jury is crucial for two reasons. Firstly, it gives the defendant confidence in the trial process and secondly, it allows the jury members from the ethnic minority community to inject a clearer insight into matters such as culture which might be relevant. As for as contributing to miscarriages of justice is concerned, section 8 of the contempt of Court Act 1981 prevents an onlooker from gaining any insight into what takes place in the jury room (Britton 2000).

In addition, it should be noted that the only real acknowledgement of ethnic minority individuals came from the Royal Commission who recommended that the defence should be allowed to apply to the judge for the selection of a jury to contain up to three people from ethnic minority communities. This though is only granted in exceptional cases (Kleinig 2007).

A further example of the imbalance between defence and prosecution was highlighted in 1978 and 1980 when the attorney-general issued guidelines permitting the prosecution to make checks regarding the suitability of jurors in certain cases involving terrorism, the official secrets act, and 'professional' criminals (Walker & Starmer 1999).

Another contributory factor towards miscarriages of justice against the defendant is that for the unreliability of witnesses. Witnesses at the trial stage may mis-remember or over-exaggerate information Harfield (2006).

Witnesses may also twist their recollections or as alleged victims, invent stories for personal gain. And witness duplicitness aside, defective identification evidence can contribute towards that of miscarriages of justice. The fragility of identification evidence has been widely recognised by many academic commentators including Zalman (2012). As a response to defective identification evidence in the 1970s, the Devlin Committee recommended that identification of a visual nature should be prevented from going to a jury unless there were 'exceptional circumstances' which reduced the risk of misidentification (Walker & Starmer 1999).

Unfortunately, parliament did not act on the recommendation. The disclosure of evidence is furthermore an important issue for contemplation at the trial stage. Disclosure is the process in which the prosecution and the defence must reveal to each other information about their case prior to trial.

Ⅳ. ii Variation by the Criminal Procedure and Investigation Act 1996

As a result of the Criminal Procedure and Investigations Act 1996, the prosecutor has to disclose to the defence any material which in the prosecutor's opinion might undermine the case or make a statement that there is no such material (Zalman 2012). The danger though is that a defendant will plead guilty in ignorance of such material. Moreover, the prosecutor's opinion as to the standard to be met is not reassuring. The subjective element that exists, ignores the history of miscarriages of justice and leaves it open to abuse by the prosecution (Wadham 2001).

Plea Bargaining has contributed towards miscarriages of justice resulting against the defendant. According to Gunnlaugsson and Galliher (2000, 149) the definition of plea bargaining is that of: *"The exchange of official*

concessions for the act of self-conviction." Plea Bargaining has contributed towards miscarriages of justice against the defendant because innocent individuals have been induced into pleading guilty. The person inducing the defendant is that of the lawyer. the lawyer has to decide based on the evidence available, whether it would be in the client's best interest to accept a plea of guilty in exchange for concessions.

Savage (2007) discovered that a great deal of effort went into persuading defendants to plead guilty. Their study, noted that out of a sample of 121 defendants, 71 per cent had changed their plea on account of pressure placed upon them.

The lawyer therefore can contribute to miscarriages of justice. The use of plea bargaining by the defence lawyer in this instance, is highlighting the fact that many within the profession prefer to move away from a challenge to the prosecution case. There seems to have been generally, an uncritical acceptance of the prosecution case by lawyers acting for the defence (Harmon 2001).

Defence lawyers have had a detrimental impact on defendants at the trial stage in addition to that of plea bargaining. Incompetent lawyers can seriously disadvantage a defendant and this can be illustrated from the case of fergus in 1994 (Savage & Poyser 2007).

With regard to solicitors, they are regulated by law society. This self-regulating body would deem the forementioned case as being a very serious instance of malpractice and would take appropriate action. At the present state, there is little to be done to prevent such malpractice pre-trial because the solicitor has a certain amount of freedom in which to operate. Thus, it is almost impossible to police every solicitor or every solicitor's practice in United Kingdom (Spence *et al.* 2007).

Political influence alongside that of social pressure was evident at the trial of the Guildford Four. Political and social condemnation for the

perpetrators combined with the judicial desire for finality led to the defendants being mis-judged. The pejorative labelling of the defendants as 'Terrorists' further prejudiced the accused, as the emotions of both the judge and jury were heightened (Severt 2006).

Even though judges make mistakes, there is no possible way he or she may be successfully challenged in court in order to prevent a miscarriage of justice from occurring against the defendant. Naughton (2005) has illustrated this point by stating that: "Within our secretive and closed judiciary there are no means whereby any judge can be called to account for the decisions he or she takes, there are no known methods or discipline or of being called to account for error, neglect or negligence." (Naughton, 2005, 174)

In a strict sense, Mansfield though has failed to consider that judges can be removed by a motion approved by both House of Parliament. The removal of a judge though, is only ever exercised in exceptional circumstances and still in reality, does little to aid the defendant (Spence *et al.* 2007).

This 'presumption of innocence' has been further eroded in association with the Criminal Justice and Public Order Act 1994. This piece of legislation has contributed to miscarriages of justice against the defendant because adverse inferences can be drawn from a defendant's silence. This places the defendant at an obvious disadvantage because he or she is being forced into answering some or all of the questions directed towards them, which may lead to breaching the unwritten legal rule concerning the privilege of self-incrimination (Spence *et al.* 2007).

Lastly, at the trial stage, there is the question of whether the inquisitorial rather than the adversarial would be the preferred process. The Royal Commission ordered research into the inquisitorial system through observing France and Germany. Mclaughlin and Johansen (2002)

found that there was a high degree of confidence in the system. The inquisitorial system does have the fact that the accused's previous convictions can be presented at trial. the inquisitorial and adversarial processes both can potentially contribute to miscarriages of justice against the defendant. The adversarial trial currently adopted should remain until substantial evidence proves otherwise. If evidence discovered highlights a balanced standpoint then, a compromised option may be desirable.

V. Conclusion and Suggestion

There is little doubt that police malpractice, forensic science and the failure of the trial stage has significantly contributed towards miscarriages of justice against the defendant / suspect in United Kingdom.

Police malpractice seems to have contributed towards miscarriages of justice against the defendant / suspect in many ways. One such way, is that of the use of police brutality in order to gain confessions. Proven miscarriage of justices cases like for example the Guildford Four, have heightened public attention to the issue. An attempt to control the actions of officers was introduced in 1984 through the Police and Criminal Evidence Act. This Act though has proved to have been largely ineffective. Rules have still been directly breached, for example by failing to read a suspects rights or instead by the police using their discretion to bend the rules somewhat. Police culture seems to be a further contributory factor towards miscarriages of justice and this not only reinforces stereotypes but can lead to police corruption being hidden, especially if it is deemed as being that of a 'Noble Cause' (Zalman 2012).

Forensic evidence can contribute towards miscarriages of justice against the defendant / suspect. As we have seen, this can occur through scientific

misinterpretation, scientific contamination or lack of scientific knowledge. Also, scientific opinion tends to change over time and as new methods are introduced the older methods become redundant or are only used as a primary indicator, with further tests to be carried out. In addition, evidence of a forensic nature is not necessarily an indicator of a person's guilt. It may prove someone was at the crime scene but nothing more. For example, scientific evidence proving sexual intercourse does not highlight whether the alleged victim consented.

There also appears to be an imbalance between the prosecution and the defence. The defence have limited resources due to inadequate funding compared with the scientists for the prosecution. The defence are further disadvantaged because of the fact that they have a limited access to the crime scene which in reality menas that they are dependant on evidence collected by the prosecution.

Lastly, the defendant / suspect has been disadvantaged by the trial process itself. This seems to have occurred through the jury arguably no having the ability to understand complicated evidence and through the judge influencing the jury in his or her favour. Matters such as plea bargaining and disclosure have also been contributory factors towards miscarriages of justice as well as the abolition of the defence's right to a peremptory challenge under the Criminal Justice Act 1988.

As far as miscarriages of justice against the defendant / suspect is concerned, there are similar themes which run throughout. The tendency of the criminal justice process to be balanced more so on the side of crime control than that of due process (Garrett 2011). The erosion of the right to silence illustrates this as to does the hidden erosion of the 'presumption of innocence'. Much more focus is placed on conviction without serious contemplating that of the 'Innocent' individual who incorrectly finds him / herself in the criminal justice process. The recommendations of the

Runciman Committee have been a step in the right direction but much more is needed so that the balance of crime control-due process is gained.

On the other hand, the miscarriages of justice's situations of South Korea have to consider the miscarriages of justice in the UK.

In South Korea, in reality, the criminal justice system is riddled with assumptions which have either not been tested or, when tested, have been found to be unwarranted. Cases of domestic violence provide an example of this. After years of turning a blind eye, failing to prosecute and taking little action against perpetrators, some of the key issues of domestic violence have gradually been addressed. Marital behaviour behind closed doors was for a long time deemed a 'no go' area for law enforcement. This reluctance of the law to become involved accounts for much of the past difficulty in pursuing legal remedies for child abuse, both physical and sexual, and for rape, unless it involved being jumped on in an alley (Cole & Kwan 2007).

Many police forces in South Korea have now developed domestic violence units with specially trained officers conducting the investigations more than before. The spotlight must now move to the prosecutions and the courtroom. Lawyers and judges often regard prosecution as inappropriate because it might harm family relationships, and see their role as preserving the marriage.

Even where prosecutions are brought, recent research suggests that most rape victims are dissatisfied with the way in which the prosecution handled their case (Kwan 2009). More generally, South Korean courts can meet a hostile environment. If her husband is on bail, he often sits in the hallway feet away from her, harassing her may be exercised by his family or mates. The initial questioning of the woman is sometimes antagonistic, justified by those who are supposed to be on her side as testing the strength of any case they could bring and letting her see what is going to

come from those who will represent her husband.

In South Korea, The increased scrutiny of all aspects of the criminal justice system over the last ten years has led to a better understanding of what that system is and how it operates. However, as the issues discussed in this paper demonstrate, there is no quick fix, and the parameters of debate should not be too tightly drawn. Deliberate malpractice and negligence may never be fully eradicated, but equally they should not be allowed to flourish under rules made by lawyers for the benefit of other lawyers. There is no reason why a brain-surgeon should be required to exercise reasonable case, but the police, prosecution and lawyers in court should not. The claim the it is criminal justice system that anonymously fails and not the personnel is unsustainable.

Therefore, it could be argued that South Korean government need to consider to the situations of miscarriages of justice of UK. Through this, criminal justice system in South Korea will provide good quality criminal justice services for the citizens in South Korea.

Miscarriages of justice will always continue due to human error, police officers not abiding to their legal requirements and also due to external forces in operation such as the police's budget. The lack of regulation is noticeable throughout all three of the core contributory factors, and perhaps a move away from self-regulation may be an adoption worth employing.

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Abstract

Rethinking of Miscarriages of Criminal Justice in Britain: Aspects of Police Malpractice, the Fallibility of Forensic Science and the Failure of the Trial Stage

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The purpose of present research is to attempt a rethinking of miscarriages of criminal justice system in Britain: aspects of police malpractice, the fallibility of forensic science and the failure of the trial stage. This body of work examines three chosen core factors which have contributed towards miscarriages of justice against the defendant / suspect in UK. These three core factors are that of: police malpractice, forensic science, and failure of the trial stage. Section two discussed police malpractice and in doing so examines the scope for abuse as well as the types of abuse which may have actually occurred in the post. Police discretion is examined alongside that of the arguable ineffectiveness of the Police and Criminal Evidence Act 1984. Section three shattered the belief that forensic science is all scientifically pure and reliable. It is illustrated that through lack of scientific knowledge, scientific contamination and scientific misinterpretation, miscarriages of justice against the suspect / defendant can result. The section also comments upon the disadvantageous nature of the Criminal Justice process with regard to the inequality between the defence and the prosecution in association with funding and resources. The section four examined the failure of the trial stage. Here, the issue of trial by jury is discussed in particular their arguable lack of

knowledge in association with evidence of a complicated nature. Also, the detrimental impact of the abolition of the peremptory challenge is focused upon. The main member within the courtroom are also examined including the judiciary and the defence solicitors. The judiciary have contributed to miscarriages of justice through influencing the jury and through the defence counsel forwarding poor presentations. In the final section have been explained about conclusion and suggestion for Miscarriages of Criminal Justice System in South Korea.

Key Words : Police Malpractice, Forensic Science, Trial Stage, Miscarriages, British Criminal Justice System
경찰위법행위, 법과학, 재판단계, 사산, 영국형사사법시스템

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