

## Truth withheld, Justice denied: The role of evidence suppression in the Tomlinson Case

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“Justice is truth in action.” These words spoken in 1851 by Benjamin Disraeli evoke the ultimate objective, but truth is a casualty of injustice, as it is a casualty of war. When Miscarriages of Justice arise from truth suppression, a core element of any democratic society is fatally undermined. Miscarriages of Justice come in various forms, not only wrongful convictions (Walker & Starmer, 1999) and they provide prime examples of how vulnerabilities to systemic abuse can develop unless there is constant awareness and scrutiny. The death of Ian Tomlinson, following on from the interaction with PC Simon Harwood at the G20 protests in London in 2009, provides a significant case study in the suppression of evidence. Truth was only activated in this case, *after* it had previously been suppressed. Two forms of evidential suppression occurred in the Tomlinson case demonstrating misconduct by the pathologist and pointing towards police misconduct. I shall outline each in turn, as the history of the case unfolds.

It is tempting to be lulled into a belief that the infamous miscarriages of the 1980's are a thing of the past, and that the incorporation of various legislative instruments and organisations have eliminated the risk of repetition. Unfortunately it never works like this and each generation has to relearn the lessons of the past and build on the earlier remedies. The iceberg is larger than previously believed (Naughton, 2003). Whilst wrongful convictions based on confession evidence are now less likely to be centre stage, international concern has increasingly focused evidential attention on forensic science. The problem in both instances is the same: the growth of an arrogant culture in which there is a presumption of invulnerability.

The UK is one of the few major nations not to have a National Forensic Science Institute and in the wake of Government market based policy, no longer has a national forensic science service. The main repercussion of these deficiencies is fragmentation and creeping deregulation. Unless standards are unified, certified and monitored, not only do unprofessional practices arise but so do unprofessional practitioners. A contemporaneous series of events exemplify the urgent need for re-appraisal and action.

In August 2012, Dr Patel, a pathologist who had provided the initial opinion in the Tomlinson G20 case, was stuck off by *The Fitness to Practise Panel of The Medical Practitioners Tribunal Service* (MPTS, 2012). The panel found that he had an arrogant rigid mindset which generated an unwarranted confidence in his own ability. He had committed 68 errors in his examination (BBC, 2012) and had wrongly attributed Mr Tomlinson's death in April 2009 to cardiac arrest (Hurst, 2012). The panel also found that he had lied about his status in order to remain on a Home Office register (Meikie, 2012). Moreover, the panel stated that Patel had acted with repeated, serious dishonesty (MPTS, 2012:39, 48, 49).

If this were an exceptional one off aberration by a novice that slipped through the net it would be serious enough, but the malaise runs much deeper. Dr Patel had been qualified for 35 years. Significant concerns had been voiced before 2009 about his competence. These were sufficiently grave for him to be removed from the Metropolitan Police panel of pathologists offered contracts in 2004. The following year, other complaints were presented to the GMC. After 2006 it was a prerequisite to qualify for the Home Office register that the practitioner be part of a group practice of pathologists. Dr Patel deliberately concealed from the National Policing Improvement Agency, the fact that he was not part of a group (Meikie, 2012).

Somewhere along the line someone was not reading the signs or applying strict scrutiny. Another pathologist, Professor Sebastian Lucas told the *BBC News* on Thursday 23 August, that it was well known amongst some of the profession that Patel had been routinely giving the same cause of death as natural causes when this cannot have been the case.

Other cases dating back to 2002 have surfaced which resulted in 3 and 4 month suspensions for Patel in 2010 and 2011 (Meikie, 2012), one of which concerned dishonestly omitting key findings in relation to a murder victim. I trust there will be a thorough review of all cases he has handled over the last decade. The Coroner has explained his appointment of Dr Patel in the first place on the basis that the only requirement under the Coronial regime was that the person was a registered medical practitioner (Mathews, 2010:1). These systemic deficiencies are unacceptable and jeopardise the search for truth as well as generating resource implications at all levels.

For Mr Tomlinson's family it meant a prolonged and painful uphill struggle to undo the damage to their search for justice. There was delay while other pathologists were engaged who ultimately came to a different and unanimous conclusion that the death resulted from injury to the liver which caused internal bleeding and finally cardiac arrest. The consequence that a further two post mortems were required to overcome the deficiencies of the first, must have added to the suffering of Mr Patel's family. Furthermore, with conflicting medical opinion the DPP was initially unwilling to mount a prosecution against the police officer concerned. An Inquest followed and the jury declared that Mr Tomlinson had been unlawfully killed (Hurst, 2012). More delay ensued while the decision to prosecute was reconsidered and a prosecution for manslaughter instigated. This cannot have been straight forward in the light of Patel's original opinion, one which he was unwilling to change

Alongside this unfolding saga is an equally unpalatable tale of systemic fault within the police. Initially a statement of denial and non involvement was issued. The City of London Police also withheld details of Mr Tomlinson's injuries from his family (IPCC, 2012a:58). When the police account was contradicted by the video recorded by an American Fund Manager in London on business, it was claimed Mr Tomlinson was pushed out of the way for safety reasons and later, rumours were peddled that some protesters dressed up as police might be responsible (*Inquest*, 2009:5). One of the significant points revealed by the footage is that the attacker on Mr Tomlinson is wearing apparel that conceals his lower facial features.

Timely witness statements were made by PC Smith, PC Jackson and PC Moore, the three police who proximately observed the attack on Mr Tomlinson by PC Harwood, but these reports were not made available to the coroner, the family and the *Independent Police Complaints Commission* (IPCC) which is the body charged with the duty of investigating allegations of deaths occurring at the hands of the police (IPCC, 2012a:3) until after their existence became public. The existence of the information that the three police officers had passed on, was revealed by the Guardian newspaper, which points out that police have a statutory obligation to inform the IPCC when there is evidence of a person dying after contact with officers (Lewis, 2012a). The Coroner told the IPCC that had he been aware of the evidence from the three police officers he would not have refused to allow the police to attend the first Post Mortem. This is one of several adverse outcomes that resulted from the information not being forwarded to the appropriate authorities (IPCC, 2012a:3).

The trial this year of PC Simon Harwood was successfully defended on the basis that he had only used reasonable force when he struck Mr Tomlinson on the leg and pushed him to the ground. What the jury were unaware of was the background of this officer. In 2001 he had quit the *Metropolitan Police* on health grounds just prior to a disciplinary hearing. He subsequently rejoined the *Surrey police* and re-entered the Met in 2005. There were a series of allegations being investigated

involving suspects being threatened, throttled, punched, and kneed, one of which was upheld. Indeed, the Met tried to withhold the relevant details from the court (Lewis, 2012b). Additionally, on the same day as Mr Tomlinson's death, Simon Harwood had already had altercations with protestors and bystanders as well as pushing a *BBC* cameraman to the ground (El- Enany, 2012). Video footage of the movements of Simon Harwood and Ian Tomlinson, leading up to, and involving the critical incident, has been collated by *The Guardian* and available for viewing online (Walker & Grandjean, 2012). By the time of the G20 protest, Harwood was a member of the so-called elite *Territorial Support Group* (TSG). The *Independent Police Complaints Commission* regarded this re-employment as "simply staggering" and recommended that an internal investigation in public be held in September, 2012 (IPCC, 2012b).

In September 2012 Harwood was found guilty of gross misconduct and received the maximum penalty available to the disciplinary panel in cases of police misconduct, which was that he was dismissed from his position as a police officer. The panel found that Harwood had:

- "a) struck Mr Tomlinson on his left thigh with your baton; and
- b) pushed Mr Tomlinson so that he fell to the ground;

The use of the force described was found to be not necessary, proportionate or reasonable in the circumstances." (*Metropolitan Police*, 2012). However, the panel did not adjudicate whether "such dangerous actions inadvertently caused or contributed to the death of Mr Tomlinson on 1 April 2009." Numerous questions remain. The death of Ian Tomlinson is not an isolated incident (El-Enany, 2012). We are becoming anesthetised to the rising tide of infringements on the exercise of the ordinary citizens' right of movement and right to protest. (Mansfield, 2012). Violence against protesters and other "outrageous tactics" are part of a disturbing and anti- democratic pattern being employed "to quash political protest and peaceful demonstrations in the UK, within politics, the police and the judiciary" (Mansfield in McVeigh & Townsend, 2011). The tragedy of Ian Tomlinson demonstrates yet again that these tactics inflict an unacceptable degree of harm to members of the public.

It would be understatement to wonder what has become of quality control of evidential sources. This loss of evidential authenticity has immediate ramifications for the overall integrity of our system of justice and should ring alarm bells in all quarters. Regular review and effective processes of checks and balances are vital in circumscribing the potential for corrupt practice because as Newburn found in his report for the *Home Office*, "police corruption is pervasive, continuing and not bounded by rank" (1999;v).

As if this is not enough, the whole sullied picture is exacerbated by the iniquitous cuts in public funding which have already hit forensic science resources but are also impacting upon the quality and numbers of personnel who are willing to engage in the system at all levels. If market forces are to be the determinative factor in the quest for truth then, just like most economies, we will be heading for irretrievable meltdown. Justice is not a business enterprise still less a commodity. "Truth in action" remains the objective.

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