

Insanity Grips The British High Court – OK Given To Charge Exonerated People ‘Room and Board’

by Hans Sherrer

Insanity is defined by the Random House Webster’s Unabridged Dictionary (1999 ed) as “the condition of being insane.” The same dictionary defines *insane* as “not of sound mind; of, pertaining to, or characteristic of a person who is mentally deranged.” July 29, 2004 marks the day members of the British High Court were gripped by insanity.

Mike O’Brien was one of three defendants known in Britain as the ‘Cardiff Newsagent Three’, convicted in 1988 of the October 1987 robbery and murder of newsagent Phillip Saunders in Cardiff, Wales. The three men were exonerated of the murder in 1999 and released after 11 years of imprisonment.

O’Brien was awarded damages of \$1.17 million¹ by the British Home Office. However the Home Office deducted \$66,000² what it describes as his ‘saved living expenses’ during the time he was wrongly imprisoned.

The Home Office’s deduction was based on their formula of charging O’Brien about \$6,300³ annually or \$525 monthly, for the ‘bed and board’ he had been provided for 11 years by the British Prison Service. The charge only covered the estimated cost of providing O’Brien with food and a cell to sleep in. The Home Office’s rationale was that the British government had to bear the cost of his upkeep during the period of his imprisonment, expenses that he would have had to personally bear if he had been free. So the deduction was imposed to prevent him from experiencing a financial windfall by saving those expenses while imprisoned. A Home Office spokesperson said of the deduction, “morally, this is reasonable and appropriate.”⁴

The Home Office also considers the ‘bed and board’ deduction a bargain for O’Brien, since the Prison Service’s budget expense apportioned for each British prisoner is approximately £26,000 (\$47,000) per year.⁵

O’Brien experience with the Home Office isn’t unique. The ‘bed and board’ deduction is levied against everyone in Britain awarded damages by the Home Office after exoneration from a wrongful conviction.

Robert Brown, e.g., was exonerated in 2002 of a 1977 murder conviction and released after 25 years of wrongful imprisonment. Imprisoned at 19 years old, and released a quarter-century later at 44, he was billed about \$144,000⁶ for the living expenses he had saved during his decades of wrongful imprisonment. Brown’s reaction to the deduction was one of disbelief: “I was arrested, fitted up and held hostage for 25 years and now they are going to charge me for being kept as their prisoner against my will. Can you think of a more disgusting way to abuse someone? I really feel that my heart is truly and finally broken. ... I’ve tried to maintain my dignity, but the state has treated me with nothing but contempt – now they are asking me for money for my bed and board in jail.”⁷

Paddy Hill was one of the Birmingham Six wrongly convicted in 1975 as IRA terrorists. The six innocent people were released in 1991 after 16 years of imprisonment. Hill was billed \$90,000⁸ for room and board, and the Home Office also deducted \$126,000⁹ as interest on money it advanced him pending a decision on his damage award. He was not told at the time of the “advance” that he would be charged interest – much less the usurious interest rate of 23%. Hill responded

angrily to the Home Office’s conduct: “They had enough money to frame me. Nevertheless, when it comes to paying out compensation for ruining my life they happily rip me to shreds. ... I’ve had to put up with this, yet there has not been one police officer convicted of fitting people up. The Home Office had no shortage of money to keep me in jail or to run a charade of a trial.”¹⁰ Hill continued, “While I was in prison, my family lost their home, yet they get no compensation. But the state wants its money back. It’s like being kicked in the head when someone has beat you already.”¹¹

Vincent Hickey was one of the Bridgewater Four wrongly convicted of killing a paperboy in 1979. The four people were exonerated and released in 1997. Hickey was charged \$108,000¹² for the 18 years that the Prison Service provided him three squares a day and a bed to sleep on.¹³ Showing he hadn’t lost his sense of irony after being victimized by a frame-up orchestrated by ten police officers, Hickey quipped, “If I had known this I would have stayed on hunger-strike longer, that way I would have had a smaller bill.”¹⁴

The harshest public criticism of the Home Office’s policy was by John McManus, with the Scottish Miscarriage of Justice Organisation: “The government seems intent on punishing innocent people. It’s hard to believe someone actually thought this policy up. If you tell a child about this they will think it insane. Only a sick mind could have invented this policy. ... It is cruelty with intent. They seem to want to punish people for having the audacity to be innocent.”¹⁵

Although everyone affected was upset by the ‘bed and board’ deduction, Mike O’Brien was the only one who chose to legally challenge the Home Office’s policy. He said, “Morally, the position of the government is just outrageous. It shows total contempt for the victims of miscarriages of justice. It makes me livid. ... A government can’t get much worse than this.”¹⁶

In March 2004 the British High Court (Court of Appeals) ruled in O’Brien’s favor: It was improper for the Home Office to deduct a ‘saved living expense’ charge from his damage award.¹⁷ However the Home Office appealed for reconsideration. In reversing its decision on July 29, 2004, the Court stated the charge was a “lawful and reasonable” deduction.¹⁸ The Home Office now has a green light to charge ‘room and board’ to exonerated people.

Although he has been diagnosed as suffering from “irreversible, persistent and disabling post-traumatic stress syndrome,” due to his ordeal of being wrongly convicted and imprisoned for over a decade, O’Brien has vowed to continue fighting the Home Office. He is planning to appeal to the House of Lords, and if they don’t intervene, he will take his case to the European Court of Human Rights at Strasbourg.¹⁹

There seems to be something amiss with the idea that a person should reimburse the cost of their room and board to the very government agency that was a party to their wrongful conviction and imprisonment. As John McManus observed, “Only a sick mind could have invented this policy.”²⁰ Its reasonable description as an idea “characteristic of a person who is mentally deranged,” places it squarely within the realm of something definable as insane. Thus the British High Court can be said to have been gripped by insanity when it embraced the insane policy of charging an innocent person room and board for the term of their wrongful imprisonment.

Endnotes:

1 The award was for £650,000. All money amounts are converted from £ (British pounds) to \$ at the exchange rate on June 15, 2005 of about £1.8 to \$1.

2 £37,000

3 £3,500

4 *We locked you up in jail for 25 years and you were innocent all along? That’ll be £80,000 please*, Neil Mackay (Home Affairs Editor), Sunday Herald, March 14, 2004.

5 The British Prison Service’s 2004 budget is approximately £2 billion (\$3.6 billion), and as of August 27, 2004 there were 75,045 people under custody of the Prison Service. See, HM Prison Service homepage at, <http://www.hmprisonservice.gov.uk/>.

6 £80,000

7 *We locked you up in jail for 25 years and you were innocent all along?*, *supra*.

8 £50,000

9 £70,000

10 *We locked you up in jail for 25 years and you were innocent all along?*, *supra*.

11 *Innocent Brits charged for prison stays*, WorldNetDaily.com, March 15, 2004.

12 £60,000

13 *We locked you up in jail for 25 years and you were innocent all along?*, *supra*.

Anthony Marino Update

By Annmarie Roberts

Anthony Marino is an innocent U.S. citizen who has been imprisoned in Costa Rica for six years. After three years of pre-trial custody Anthony was convicted in 2002 of allegedly defrauding several U.S. investors. He was sentenced to 18 years in prison. He vehemently denies the fraud accusation and is appealing his conviction. (See, *Unjust Cruelty Hidden As Dual Criminality - The Anthony Marino Story, Justice:Denied*, Issue 24, Spring 2004).

Anthony is over 65 and in poor health. He has diabetes, high blood pressure with severe hypertension, and an aneurysm. Concern by Anthony’s family about his health led them to contact the Ombudsmen in Costa Rica, who worked with Anthony’s Costa Rican public defender to successfully argue to a judge the Costa Rica’s Constitution required Anthony’s transfer to a prison facility that had some provisions for a prisoner over 65 with health problems. Consequently, Anthony was recently transferred to such a facility from the grossly overcrowded general population prison where he had been for almost six years. (Note: The Ombudsmen are involved with a non-governmental human rights organization that works according to United Nations guidelines to help people who are having their human rights abused.)

On December 4, 1982 Costa Rica signed and adopted the International Covenant on Economic, Social and Cultural Rights (ICESCR), an Organization of American States (OAS) treaty that governs international prisoner transfers. The importance of considering a transfer for health reasons is recognized in that treaty’s Article 12 - The Right to the Highest Attainable Standard of Health. That article’s section entitled, *Violations of the Obligation to Respect*, specifically emphasizes the importance of a state’s legal obligation to first and foremost respect a prisoners “right to health” – which includes authorizing a prisoner’s transfer to his or her home country when that is necessary for health reasons.

Costa Rican doctors have told Anthony that his medical care needs are unavailable in Costa Rica. So beginning in 2002 his family spent a year preparing paperwork and obtaining United States government approval for his transfer under the ICESCR to a prison medical facility in the U.S. where he could receive the care he needs.

Even though the Costa Rican government is aware of Anthony’s medical needs, in August 2003 they denied his transfer to a prison medical facility in the United States. Their justification was that he owes restitution to the group of American investors who originally filed the claim of fraud against him in a Costa Rican court. These investors recently requested Anthony’s transfer to the United States so their dispute can be settled in the United States. In spite of the expressed desire of the investors and Anthony’s health needs, Costa Rica continues to deny his transfer to the United States.

Anthony is indigent and cannot repay the debts Costa Rica claims he owes, so no one can benefit financially from him remaining in that country’s prison system. His family continues working with the Costa Rican Ombudsmen, his public defender, and human rights groups to convince Costa Rican authorities that Anthony’s health condition is precisely the type of circumstance that should trigger his transfer under the ICESCR to a U.S. medical prison facility.

Anthony Marino’s contact person is his daughter, Annmarie Roberts. Email her at: annroberts1111@hotmail.com.

14 *Id.*

15 *Id.*

16 *Id.*

17 *The wrongly imprisoned are still paying for crimes they didn’t commit*, Comment, The Observer (London UK), July 31, 2004.

18 *Making the innocent pay twice*, Editorial Comment, The Herald, London UK, July 30, 2004.

19 The wrongly imprisoned are still paying for crimes they didn’t commit, *supra*.

20 We locked you up in jail for 25 years and you were innocent all along?, *supra*.