A Judicial Monstering: Child Sex Abuse Cover Up and Corruption in Scotland

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Introduction

Hard work, dedication, commitment, and a proven track record should be enough?

The rule of law is fundamental in a democratic society. Citizens' access to justice is fundamental in a democratic society. The most vulnerable in any society should be protected by effective access to justice in the same way as the most powerful. Victims of child sexual abuse are among the most vulnerable.

The rule of law is the citizens' constitutional safeguard against corruption. Corruption, on the other hand, leaves a lingering stench. Things don't smell right, so to speak. When the rule of law is morphed into the rule of lawyers, corruption thrives.

This book details a narrative account of my experiences of what can happen when the rule of law is manipulated by corruption and instead becomes the rule of lawyers. In my experience, this manipulation has resulted, successfully so far, in the covering up of allegations of longstanding, serious, organised, sexual exploitation of some of the most vulnerable children and young people for whose welfare the state was responsible. There appears to be a continuing intention to protect the end-abusers. The most effective way to achieve this is to prevent effective and fearless investigation.

I decided to become a lawyer when I was working as a social worker with vulnerable young people in residential care. I thought that was the route for me to be most effective in helping people secure justice in all necessary aspects of their lives. For me, it was going back to plan A in a way. But with drive based on experience, commitment and determination to make things better. I'd left school and gone straight to Glasgow University to study law. But I was too young, immature and eager to learn about life and not just law. My elder brother had died in 1978, aged 19, while studying law at Glasgow. It was too painful to be welcomed to university drinking

culture in the GUU Beer Bar, in the company of then Rector Reginald Bosanquet, by Michael's law student friends.

So I worked as a youth worker for three years. That was a fantastic blast of what life is really about as a young person. At 22, I went back to university. This time in Edinburgh. I was only too well aware that resuming student life in Glasgow would involve many distractions. I knew one person in Edinburgh. In 1989, I graduated from New College, Edinburgh University's Faculty of Divinity, with a MA 2/1 in Religious Studies. Then I worked in residential social work.

When I started at Wellington School, Penicuik, in 1990, I was immediately engaged by the chaotic, dynamic, enthusiastic, vibrant, but vulnerable and, to some extent, caustic and sometimes violent atmosphere generated by adolescent boys in a residential care environment. These lads had tremendous ability, sharpness, intelligence, humour, potential, and many other positive qualities that were evident in daily life. Sport was a huge part of their lives. Some were very skilled. Others less so. All were different characters. Many had been profoundly affected by adverse life circumstances. Some were suspected of being inveigled into crime of different kinds. Some were known to put themselves at risk through making money by selling themselves for sex. Others were known to put themselves and others at risk through violence or drugs. But all had potential. And the vast majority were good young people in my assessment.

I decided to go back and study law again. As a second-degree. It could be done in a concentrated two-year course for graduates. I started at Edinburgh University in October 1991. I'd just got married. In order to finance this career move, I worked as a waking night care social worker at Wellington School. Night shift for four nights per week and full-time study at university. Split sleeping shifts. Constant tiredness became a way of life. I managed both and graduated in 1993. Then came the Diploma in Legal Practice. Another academic year on full-time night shift. Young people going AWOL. Emergency Duty Team engagement and Police involvement were regular tasks.

In October 1994, I was lucky enough to start my traineeship at Brodies Solicitors in Edinburgh. Working at the bottom of the pile and glimpsing the fascinating goings-on at Parliament House, the home of the Scottish Supreme Courts and the Faculty of Advocates. I'd decided before I embarked on the law degree that that's where I was going. I had no real idea of how to get there or what sort of work I'd be able to do. But I knew I could do it. I worked 9 to 5 at Brodies. Then I worked night shift in residential social work with young people in care every weekend. When my colleagues were off to the pub on a Friday night, I was off home for a sleep before night shift every Friday and Saturday night. Hard going and with two babies by the

end of 1994. But I was young and enthusiastic. I used my weekend night shifts to study when I could. I got another job writing case digests for Greens Weekly Digest. It was every weekend, relentless. But it helped me to learn about the law in action. About procedure. And to be up to date in the pre-digital world.

Intrants to the Faculty of Advocates have to devote themselves completely to a period of training. This is called Devilling. You become a Devil Advocate. You follow your Devilmaster's work in court and in writing, and you learn. You learn about advocacy skills and communication. I was very lucky to have arranged, completely informally, two excellent Devilmasters. Andrew Smith and Paul McBride, Advocates. I learned a lot from both. But it's nine months when you can't earn anything. No part-time jobs. A huge financial risk.

I was called to the Bar on 11th July 1997. I enthusiastically undertook whatever work came my way, civil and criminal. Very quickly, my previous experience in social work was identified as a relevant background for instructions in contentious child protection and related work. Difficult and, at times, harrowing stuff. I was regularly instructed by the biggest local authorities in Scotland, Edinburgh and Glasgow councils. The focus of this work reinforced for me my enduring commitment to the welfare of children and young people through the operation of the law. This has remained a constant for me throughout my subsequent career as an Advocate.

I started prosecuting criminal cases as an Advocate Depute (a depute of the Lord Advocate, head of the Scottish prosecution system) in September 2003. First of all, as an "Ad Hoc" AD, then, from late 2004, on a full-time basis. I worked hard and enjoyed prosecuting very serious cases in the public interest. Murder trials, rape trials, violence, child abuse, and the whole spectrum of depravity that the High Court in Scotland has to deal with each and every day. I learned about working with and persuading juries. I was good at it. I had a particularly impressive record in rape trials during and post 2003. At one point, I had acquired 18 consecutive convictions in rape trials. I think it may have had something to do with my previous work experience.

Then, in 2010, I was appointed as a part-time Sheriff. A Sheriff is a judge in Scotland with very wide criminal and civil jurisdiction. I frequently sat as a Sheriff between 2010 and 2016. In most Sheriff courts all over Scotland. In 2015, I was appointed as Leading Junior Counsel to the Scottish Child Abuse Inquiry ("SCAI"). As you can imagine, this was a role that I relished. This was the role for which I was as perfectly suited as I thought I could be. Essentially, the focus of the SCAI was to be on historical abuse suffered by children in care settings. I had the relevant experience, and enduring commitment, to people who had suffered in care settings. Then, in 2016, I became ill. I had cancer. I haven't worked formally in legal practice since 28th

October 2016.

This pretty much takes us up to where I need to begin. Up until 28th October 2016, I was an accomplished court lawyer at the highest level. Since that date, as you'll see, I've been unable to persuade any court, tribunal, or other authority that there's any merit in any action or complaint I've made. And I've made many now. Just think. I'm an experienced court lawyer and judge. If I can't legitimately assert my rights, what chance have you got? Worse still, what chance have the people who have been exploited in organised child sexual abuse got? As you'll see, this is the focus of this text.

My Note for SCAI, dated 1st April 2019, is included as a later chapter. This sets out some evidence that I judged to be relevant for investigation by the SCAI. Lady Smith, Chair of SCAI, has taken a different view and rejected my Note. Read it. See what you think. I think it contains some important evidence about the trafficking of children in care and allegations of organised child sexual abuse. It highlights an investigation by the Metropolitan Police, the London police force, in and around Edinburgh, Scotland, in 1996. The Met was investigating the trafficking and sexual exploitation of young people in care between Scotland and London. The evidence led them to Edinburgh because the bank account, cheques and cards belonging to the Dean of the Faculty of Advocates had been used in relevant transactions. The Dean of Faculty was Andrew Hardie, QC. By June 1997, Hardie was the Lord Advocate, head of the Scottish prosecution system, and with power to appoint judges. People who held senior positions in the Crown Office and Procurator Fiscal Service (COPFS), the Faculty of Advocates, and in other relevant institutions were aware of the Met investigation. Detectives had interviewed Hardie in the Dean's room at Parliament House. They had also conducted investigations at the Faculty Clerks' room, where they checked details in Lord Hardie's diary.

On Hardie's appointment as Lord Advocate, some who knew details were almost immediately promoted to judicial, silk, and other positions or allowed to take unheard-of leave from COPFS to pursue doctoral studies. Others, such as the outgoing "Tory" law officer, Lord Mackay of Drumadoon, QC, the former Lord Advocate, was not afforded the conventional judicial promotion due to him. Refused by Lord Hardie. It was unprecedented, but both he and Paul Cullen, QC, the outgoing solicitor General, returned to practice at the Bar. Allegations of cronyism in judicial appointments lingered throughout the course of Lord Hardie's tenure as Lord Advocate. Lord Mackay of Drumadoon was appointed to the bench immediately after Hardie was no longer Lord Advocate, in March 2000.

And don't forget. This was happening in 1996-97. Just a few short years after the scandal engulfing Crown Office and the Scottish legal establishment in connection

with an alleged “Magic Circle” had supposedly been put to bed.

I was unaware of the significance of most of these events until years later. However, it might have been important that, in 1996, my application as an intrant to the Faculty of Advocates detailed my work experience, which, at the time, included weekend work as a Residential Night Care Social Worker at St. Katharine’s Centre, Edinburgh. The Met investigation in, before and after, May 1996, referred to above, was focused on a teenager in the residential unit where I worked. I had no idea at that time. The essential facts for investigation are set out in the Note. I was specifically asked about this work at an interview with the Faculty’s Scholarship Committee in June 1996, prior to Devilling. The committee was chaired by then Treasurer of Faculty, Colin Sutherland, QC, later to take the judicial title Lord Carloway. He was one of several senior QC’s who interviewed me. The scholarship committee interview happened during the Met investigation. I was oblivious to that investigation at the time.

You can see already that, in a small legal system like Scotland’s, especially at the top, it’s critically important to ensure structural integrity, accountability, transparency, and the rule of law. The Lord Advocate’s right to appoint judges is an obvious example. This right of patronage was removed after Lord Hardie’s last judicial appointment as Lord Advocate was made: of himself, with much public outcry about continuity of leadership and decision-making in relation to the Lockerbie Pan Am 103 case. Part of that article explains:

“In less than six weeks, Lord Hardie, the lord advocate, Scotland's senior law officer, was supposed to lead the prosecution against the two Libyan suspects at Kamp van Zeist, in the Netherlands. But he quit late on Wednesday - and appointed himself a judge.”

Hardie’s last appointment to the Court of Session bench, just prior to appointing himself, in exercise of the Lord Advocate’s right of patronage, was the current Lord President, Lord Carloway. As Colin Sutherland, QC, he had been Treasurer of the Faculty of Advocates since 1994 and throughout Hardie’s tenure as Dean. Throughout the Met investigation in 1996-97.

The rule of law is fundamental in a democratic society. It should provide the guarantee that the law is applied evenly and without fear or favour for every citizen. The principle of judicial independence is vital. Judges are protected in discharging their proper judicial duties by the constitutional guarantee of judicial independence. Fundamental to the rule of law is the principle that no person is above the law, not even judges. Structural integrity is essential to ensure that all of these principles are

rigorously applied in practice. Closely related to the concept of the rule of law is the principle of accountability. Accountability and transparency of actions and decision-making are closely allied too with the concept of judicial independence. The democratic principle of judicial independence demands appropriate and necessary accountability. There may be debate about where the line falls to be drawn. But a vacuum of accountability at the very top of the judiciary is not compatible with meaningful judicial independence. It is compatible with, and is capable of facilitating, unaccountable decision-making and abuses of powers.

Uncomfortably proximate decision-making, and decision-makers, are not justified by insistence on the applicability of the rule of law as an abstract concept. Especially in a small legal system. These force justification to be asserted on the basis of personal incorruptibility. Personal incorruptibility is never a sufficient substitute for structural integrity in implement of the rule of law.

No litigant should ever be left wondering whether his or her case was discussed at table or bedroom by the authorities (or their close colleagues) before whom, or against whom, a litigation is taking place. Personal guarantees of the personal incorruptibility of others are no substitute for objectively demonstrable structural integrity. Compromised structural integrity can all too easily slip into the rule of lawyers rather than the rule of law.

The notion of what is, and what is not, an arguable case in law is a flexible concept. The rule of lawyers is a danger to be avoided at all costs. The rule of lawyers lays the path to corruption in a small legal system like Scotland. This danger is enhanced by the entrepreneurial imperative of Advocates; the unrelenting need to generate work and therefore fee income; and the need for grace and favour for advancement. Nepotism and corruption can thrive in such a system. This model of professional structure and operation may no longer be an acceptable one for the provision of properly independent legal services in the broader interests of justice.

And gossip. In a very small, largely contained, legal hub like Parliament House in Edinburgh, gossip is a particular danger. Relationships developed over decades blur the distinctions between personal and professional conversations and details. Gossip is an important currency at Parliament House. Read Nimmo Smith and Friel's Magic Circle report, referred to in the link above, and you'll see why.

It concerned me greatly when I heard the current Lord President of the Court of Session, Lord Carloway, say informally on two different occasions in about 2012-14, at judicial training events, that the previous Lord President, Lord Gill, repeatedly said that he had a file on everyone. Why? If true, isn't such a statement indicative of

structural questionability, if not compromise? And why would Lord Gill be saying such a thing to his then-next most senior judge, Lord Carloway? A small legal system in which its most senior judge systematically banks, hides, and retains personal secrets about its personnel might appear to the objective reader to be the very antithesis of a satisfactorily transparent system. Compromised.

It was in this factual and structural context that I made my wide-eyed, idealistic, enthusiastic, and committed to justice way into practice as an Advocate when I was called to the Bar on 11th July 1997.

This book describes, from my direct personal experience, important facts and details. It demonstrates what happens when the rule of lawyers replaces the rule of law.

I have written this book because, despite what I have seen, I still believe that facts, the truth and the law are all so important that they should prevail, at all costs. I believe that the majority of lawyers and judges in Scotland are committed to those principles.

My silence about the subject matter will do nothing to protect children in care, the public interest, or me.

As you will see, it suits a collaboration of interests, including the Lord President, Lady Smith, the Dean of Faculty, and the Lord Advocate, all my opponents in litigation, very well indeed to keep the threat, or even the prospect, of criminal proceedings, based on fabrication, hanging over my head indefinitely. This does not appear to be a coincidence. It is also a tried and tested manner in which to ensure the abuse of power is made most effective for those who wield it. I reasonably infer the intention is to ensure my silence.

By publishing this book, I am exercising my right to freedom of expression. This publication constitutes a protected act, or series of protected acts, under section 27(1) and (2) of the Equality Act 2010. I am also compelled to exercise the rights available to me as a whistleblower in my different areas of interest and activity and in my different professional contexts and capacities.

I am compelled to narrate the detail in this book because there is an overwhelmingly strong element of public interest in telling the truth about longstanding abuses of children, and of powers, in and by, actors in the legal establishment in Scotland. In order to tell that truth, this publication is made as, or as part of, a discussion in good faith of these critically important public affairs, or other matters of general public interest and importance. By publishing the detail in this

book, any risk of impediment or prejudice to particular legal proceedings is merely incidental to this critically important discussion. There is no such risk in my assessment.

The ground I will cover includes:

- How the independent SCAI has been influenced by the Scottish Government and others.

- How without transparency, or change to its terms of reference, the SCAI's scope of investigation has been narrowed to exclude events and practices of great relevance and longstanding, persistent concern in the public interest.

- How my efforts to shine a light on this have resulted in my publicly funded persecution, culminating in false criminal accusations, and untrue coordinated publicity which, by design, creates a false impression of the true nature of those accusations.

- How those persecuting me have abused their positions, the law, and legal process to protect themselves, evade scrutiny, and harm me and my family.

- How this has had a devastating effect on my family and professional life.

- Of critical importance, how the most vulnerable members of our society are denied justice and remain at risk. Children who have been, or continue to be, abused within the care system. Children remain at risk.