Joint and Several Injustice

In my brief essay entitled 'Adversarial vs Inquisitorial' I included quotes from a number of senior legal professionals that indicate why so many injustices are caused by virtue of our adversarial system of justice. I summarise as follows:

- "We can't avoid the fact that the adversary system does make justice a game."
- "Lawyers are institutionally schizophrenic ... a lawyer's objective within the system is to achieve a result favourable to the lawyer's client, possibly despite justice, the law and the facts."
- "One of the functions of a lawyer is to lie for his client. … He is required to make statements as well as arguments, which he does not believe in."
- "Lawyers might accurately be described as serial liars because they repeatedly try to induce others to believe in the truth of propositions, or in the validity of arguments, that they believe to be false."
- "A system that exalts an adversarial supremacy over the quest for truth and justice is on the verge of moral bankruptcy."
- "Justice means fairness, fairness means truth, and truth means reality. Those who expect any of the above from the adversary system should lie down until the thought goes away."
- "Ethics invented by lawyers are self-contradictory. Lawyers purport to have a duty not to deceive the court, but also claim to have a sacred duty to get the best result for the client. If the client is in the wrong, the best result is to win the case; if he is guilty, the best result is to get him off. Both results necessarily deceive the court and pervert justice."

So we have a rather suspect system of reaching justice and fairness as a starting point for the nightmare in which I found myself in 2000.

There are bad laws and there are misused laws that can be used (or abused) by devious legal professionals in situations for which the laws were not designed to be used. A bad law or a misused law can provide a mechanism for terrible injustice.

Let's look more closely at one such 'bad' law. This law, as it is used in the English justice system, is acknowledged as a bad law by many other justice systems throughout the world. It is a law that is open to abuse. It is the law relating to a 'Joint and Several' liability for a crime. This judgement can be invoked when multiple defendants are found

to have contributed to the losses of a victim or claimant. The big questions in this type of situation are:

- Who is responsible for reparation?
- What if one defendant is unable to pay?
- What if one defendant is the mastermind of a crime and other defendants have minor roles?

'Joint and Several' liability makes certain assumptions as follows:

- The victim is squeaky clean – a pure white victim that has been wronged,
- The multiple perpetrators have conspired together to commit the crime.

In Book One of *Inveigled*, I drew a caricature of what is clearly an immoral use of a 'Joint and Several' judgement, where 'Man A' plans and masterminds a theft to steal $1,000,000. 'Man A' actually steals $999,999 and 'Man B' is persuaded to take $1. 'Man A' then proceeds to squander his $999,999. When the crime is discovered, a clever legal eagle supporting the victim manages to attain a 'Joint and Several' judgement against 'Man A' and 'Man B', which effectively means that 'Man B', who was persuaded to take $1, is now liable to pay back the full $1,000,000 whilst 'Man A' wanders off into the sunset to start a new life. Is that fair? Is that justice?

Is The Victim Always Squeaky Clean?

In the High Court in November 2000 a barrister presented a civil case prepared by NCR's US legal department and their London solicitors, Taylor, Joynson, Garrett (TJG) to The Honourable Mr. Justice Lightman. There were a huge number of affidavits, exhibits, statements and other documents submitted to the court. The objective of NCR and TJG was to gain a 'Joint and Several' judgement against Buchanan and me.

Amongst the multitude of submissions there were two affidavits and a number of exhibits from Alun Long, an internal auditor employed by NCR.

I would now like to move forward over three years to February 2004 and the criminal trial of Buchanan. Alun Long also provided a number of witness statements to this court. Herewith an excerpt:

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Excerpt from the witness statement of Alun Long

> The NCR Corporate Audit Department performed audits of NCR Belgium in 1996, 1997 and 1998. I was the Corporate Audit Manager for those audits. Corporate Audit reports were written dated May 1996, November 1997 and August 1998. I can produce copies of these reports as exhibit ARKL 95. These reports clearly commented on the very poor financial controls, which existed at NCR Belgium, particularly during 1996 and 1997.

> Major problems were experienced in preparing Statutory Financial Accounts for the year ending 1995. The problems were so severe that the external auditors were not happy with the financial records prepared by NCR and "qualified" their independent audit report for 1995. I understand this was because of the poor accounting records at NCR Belgium.
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> Crucial issues raised in the May 1996 Corporate Audit report included a partial change in the computer accounting system. This change in computer system was, unfortunately, poorly planned, with inadequate staff training and poor technical systems support. This unfortunately led to confusion and uncertainty in the Finance and Administration Department.
>
> The May 1996 Corporate report also detailed significant weaknesses and breakdowns in the financial and accounting controls. A prime weakness was the lack of reconciliation between the General Ledger and the supporting sub-ledgers.
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> Financial areas of specific concern in our 1996 report include problems in paying suppliers. Neither were there reconciliations between the outstanding Accounts Payable invoices (sub-ledger) and the General Ledger.
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> The Corporate Audit report of May 1996 also noted that "there were weaknesses in the performance of key reconciliations and a lack of formal procedures to ensure an adequate internal control environment."
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> I believe the general breakdown in accounting controls, as highlighted in the Corporate Audit report of May 1996, provided the atmosphere and opportunity for fraud to be committed. The poor internal accounting controls also meant that detection of fraud by NCR was unlikely.
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> This was the accounting and control environment Michael Buchanan found when he arrived at NCR Belgium. I believe this gave him the opportunity to exploit these weaknesses for his own benefit.

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Now we move back to the High Court in November 2000. Amongst Alun Long's submissions to the civil court there were documents about the NCR company, NCR accounts, copies of various NCR brochures, Buchanan's employment contract and many other communications between Buchanan and NCR, details of PSL and PCSL, details of some of Buchanan's dodgy dealings and many other documents of limited relevance to the case.

However, there was no mention of this financial shambles in NCR Belgium. Clearly, Alun Long knew of this shambles at that time and I'm sure would have informed NCR's US legal representatives and TJG, but they chose to hide this from the court.

If this statement regarding the parlous state of the financial controls in NCR Belgium was important enough to be submitted to the criminal court in 2004, why was it not submitted to the civil court in 2000?

The answer is painfully clear. Who was 'pulling the strings' at the two very different court hearings? In 2000, the civil action was directed by NCR's US legal department and TJG. In 2004, the criminal action was directed by the police and the Crown Prosecution

Service. So, Alun Long, the human face of NCR, free of the shackles of NCR's US legal department and TJG, finally revealed the 'whole truth' that had been withheld in 2000.

So, was NCR so squeaky clean and pure white?

The Order of Things

When a victim has suffered some kind of loss for which others were responsible, it is possible to claim reparation of funds stolen or damages through a civil court. In my case we had a situation where, due to NCR's non-existent financial controls, Mike Buchanan, sought to take advantage for his own financial benefit. To achieve this Buchanan lied and deceived me into moving funds ultimately for his own benefit.

In such circumstances the normal course of events would see a criminal trial deciding the guilt of a defendant. Once guilt has been established a victim or claimant can make a case through the civil court for reparation for the losses suffered. However, my honest voluntary statement was used by NCR (with some devious fancy footwork and some distorted image painting) to turn the injustice system on its head. NCR and TJG selectively used my statement in order to mount a civil action against Buchanan and me long before any criminal action came to court.

In this rather bizarre civil case in November 2000, The Honourable Mr. Justice Lightman pronounced that Buchanan and I were guilty of something. There was no name to the charge that we were found guilty of, as there were no charges as this was not a criminal court. Whatever it was that he found us guilty of it was sufficient for him to approve the 'Joint and Several' judgement pursued by NCR and TJG.

When the case eventually reached the criminal court in February 2004, NCR presented very different evidence to that presented in the civil case over 3 years earlier. I was found not guilty of 'conspiracy to defraud'. A rather different conclusion in the criminal court to that made by the Honourable Mr. Justice Lightman almost 4 years earlier in the civil court.

A Terrible Conspiracy?

Yes, this was a terrible conspiracy. However, it was not a conspiracy between Buchanan and me. I was lied to, deceived and inveigled against my will into this nightmare. I trusted Buchanan as all of his management at NCR appeared to. I was the honest, hard-working business partner of NCR that had delivered many millions of dollars worth of business to them.

The terrible conspiracy is that between NCR and TJG, who presented carefully selected information to the High Court in order to achieve their distorted objective. They omitted critical information necessary for The Honourable Mr. Justice Lightman to make a reasonable judgement. They included certain facts, they excluded certain facts and they distorted certain facts in order to paint a picture of a conspiracy between Buchanan and me. They purposely mislead the Court.

In the criminal case in 2004, I was found not guilty of 'conspiracy to defraud'. In fact Judge King stated very clearly that the court accepted that I had been inveigled into this crime.

Had The Honourable Mr. Justice Lightman known in 2000, what Judge King knew in 2004, would he have approved a 'Joint and Several' judgement?

A Complete Stitch Up

So, long before any criminal charges had been brought, long before any criminal trial, long before I was found 'not guilty' of fraud, NCR and TJG had massaged the information available, mostly through my honest voluntary statement, and painted a picture to a solitary judge, the Honourable Mr. Justice Lightman, and achieved their Joint and Several judgement. It was a complete stitch up.

Who Is The Victim?

So the perceived victim (NCR) is maybe not quite so white as portrayed in the High Court and one of the perceived perpetrators (me) is maybe not so black. How does our justice system deal with this? Well they may have dealt with it somewhat differently had NCR revealed the full facts to the court.

NCR's barrister painted a picture of a conspiracy between Buchanan and me. There was no mention of the financial shambles at NCR Belgium; there was no mention of the deceit, manipulation and inveiglement by Buchanan, drawing me unwillingly into this nightmare; there was no mention of my personal financial support for my customers in the developing world and there was no mention of my immense hard work for many years that won millions of dollars worth of business for NCR.

What happened to me was all about NCR's incompetence and Buchanan's greed and manipulation. I was 'Man B', in the wrong place at the wrong time. I was the victim.

Alun Long also revealed 'off record' to Mark Durbin, that NCR would never have missed the money had Mark not discovered documents on my computer and gone to the police. So NCR really had 'lost' this bank account before it was stolen. I've often asked TJG where the money in this account came from but I have never had an acceptable answer.

It's still a mystery to me precisely what went on in NCR Brussels in the mid 1990's even though these events have destroyed my life and so much more.

I had worked tirelessly since 1995 for NCR, for the UPU and for our postal customers, delivering huge benefits to all involved, and, after five years of immense hard work, in 2000, I was sitting in court as 'Man B', a frightened pawn, watching these heavyweight, skilled legal deceivers paint pictures; pictures of a whiter that white NCR and a blacker than black 'Man B'; pictures based on their terrible distortions.

Buchanan, already a reasonably wealthy man, stole almost £750,000. So, one assumes that he was 'worth' well over one million pounds, yet NCR recovered only approximately £300,000 from him before they settled and let him walk off into the sunset. So 'Man A' was dealt with after repaying a fraction of what he had taken. NCR then turn their attention to 'Man B'.

I admit that I was persuaded by Mike Buchanan to borrow £45,000 from the stolen funds when the Inland Revenue threatened to force the sale of my home to pay a tax bill. I had been so busy travelling the world working hard for NCR, the United Nations and PSL that I had taken my eye off of the tax situation. Had events not overtaken me I would have certainly repaid the money so there was no intention to take funds that were not mine. I found myself in a difficult situation with the taxman and could find no other way out.

Even the police found it hard to understand why I had not taken more money. I told them simply that it was not my money.

I paid NCR approximately £320,000, being seven times more than I had borrowed. NCR were not satisfied with this so they aggressively pursued me, destroying my business, my family, my health and so much more.

It's hard to believe that this odious saga is due totally to the corporate incompetence of NCR in the first place.

Legal Theft

Having distorted the facts to the Court and gaining, by deception, the agreement of The Honourable Mr. Justice Lightman, NCR and TJG set about what can only be described as 'legal theft'. They simply stole my money and my assets with the blessing of the injustice system.

Joint And Several Reform

The law relating to 'Joint and Several' liability is designed to protect the perceived victim, assuming the victim to be perfectly 'white'. But what about protecting the 'Man Bs' of this

world, the innocent, honest man who just happened to be in the wrong place at the wrong time.

Many justice systems throughout the world are addressing this issue. There are simply too many 'Man Bs' to ignore. What is referred to, as 'Modified Joint and Several' liability is a simple concept where a perceived perpetrator of a crime has their liability capped in proportion to their level of involvement in the crime.

The combination of the deficiencies in our adversarial system and the draconian rules relating to a Joint and Several responsibility for a crime has meant that I have suffered from what I regard as 'legal theft'.

An honest man in the wrong place at the wrong time when NCR's incompetence met with Buchanan's greed and I am now legally liable to pay over £800,000, being made up of what Buchanan stole, legal fees in pursuance of Buchanan and extortionate interest on the money stolen by Buchanan.

Can you think of anything more unjust than this?