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Joint Enterprise, 'Gangs' and Racism: Time to Halt This Continued Injustice

Becky Clarke, Institute of Race Relations (IRR): The Crown Prosecution Service (CPS) has published the data from its joint enterprise pilot flagging scheme. By reviewing case files during the period of February to August of 2023 information has for the first time been captured on the use of joint enterprise (JE) in criminal prosecutions. JE is a term used to describe a set of legal principles developed by the courts which allows for more than one person to be convicted of the same offence, even where defendants are convicted of murder or manslaughter even if they did not play a decisive role, sometimes with whole groups convicted for a crime committed by one person.

It is important to acknowledge the obfuscation that has preceded this publication of 'official' data on JE. Following a decade-long delay since initial calls for data collection and reform of JE law. The deadlock was finally broken in February after a judicial review claim was brought by Liberty and JENGbA, alleging that the CPS's failure to collect data on the protected characteristics of defendants in JE cases was a breach of the duty under the Equality Act 2010 to have due regard to the need to eliminate race discrimination.

So, what does the long-awaited information actually tell us? Sadly, in many ways, nothing we didn't already know. The numbers of people charged as defendants in JE cases is both deeply shocking and yet unsurprising. Anyone listening to JENGbA, the grassroots campaign formed in 2010 by prisoners and families affected by JE, has long known about the scale of this particular injustice. The CPS pilot covers just over six months of this year and includes six of the fourteen regional CPS areas. [1] This review of all ongoing and new homicide and attempted homicide cases where they are being prosecuted on a JE basis has resulted in 190 cases being flagged, representing 680 individual defendants. This is huge, and illustrates the potential for net-widening and the spiralling human and financial costs of JE defendants spending decades in a broken and violent prison system. Beyond the headline statistics, this article seeks to make sense of what is happening in these cases. By connecting this CPS analysis to an ever-growing body of research, we have been collectively building over near on a decade, I explore how and why these patterns in prosecution exist.

What's going on? CPS pilot data substantiates the findings from previous research, including that by me and Patrick Williams published in 2016, that JE prosecutions are disproportionately used with Black, Asian and other racialised defendants. We would anticipate issues of data coverage and accuracy with the CPS information gathered here on ethnicity because much of it is drawn from police systems or where gaps exist they filled in retrospect. Notwithstanding these problems, the disproportionate use of JE is clear. Across the whole pilot data set 56% of the defendants in these cases are from Black, Asian and other racial minority backgrounds. When we remove the 'unknown' ethnicity cases this means almost two thirds of defendants, and the most significant ethnic category is 'Black', reflecting one third of all defendants in these JE flagged prosecutions. Understanding the structures and processes that cause such inequalities is critical, particularly how continuities in systemic forms of racism can shape these distinct prosecution and punishment strategies. I will return to unpick this further in a moment.

There are other concerning patterns of disproportionate use. The data suggests that 37 defendants have a disability. Again, coverage is patchy here, with disability 'unknown' for 18% of defendants. However, where the CPS did flag the defendant's disability it often reflects a learning need, a neurodiversity or mental health issues. This raises questions about whether the CPS is following its own policy with regards to unnecessary charging of vulnerable defendants. Also, a small but significant proportion (7%) of the defendants in these cases the CPS reviewed are girls and women. The CPS data shows that these 47 girls and women drawn into JE cases are more likely secondary parties, substantiating findings from our research about the over-criminalisation of female defendants in JE cases.

Perhaps most alarming in the new data is the age range of the defendants prosecuted using JE. A concern highlighted recently in some longitudinal analysis of homicide cases with multiple defendants was how the age of such defendants has been lowering over time. Children and young people made up over half (54%) of the defendants in these CPS pilot cases, and these young people were disproportionately likely to be from Black Asian and other minority ethnic backgrounds. For a young person who finds themselves in the dock of an adult Crown Court in a murder trial, the stakes could not be higher. In comparison to other countries in Europe and beyond, the use of life sentences for children and young people in the UK is shocking. As is the litany of suffering and harm they experience. This analysis of JE use may be critical in understanding how we got here.

Now you see it, now you don't – dangerous associations and the 'gang' - In our research we revealed how the 'gang', in many cases a central feature of the prosecution narrative, is a primary signifier of collective culpability in JE cases, acting as a deeply racialised marker of criminality and dangerousness. Political and media rhetoric of the 'gang' has established it as the contemporary 'folk devil', to blame for a discreditable plethora of harms and social problems. The power of the 'gang' narrative in JE prosecutions rests largely on a range of racialised signifiers that can both intensify the use of a 'gang' narrative, or even replace or produce the 'gang' narrative without requiring an explicit reference to it. Prosecutors 'attribute racialised criminal markers upon those in the periphery of events', with these courtroom strategies drawing on long precipitated criminalising narratives of the communities within which many of the defendants live.

Findings from the CPS pilot suggests, as they see it (and we could write a whole article on this issue alone!), just 21% of these cases reviewed are 'gang related'. Whilst closer to one third of the London North cases, this is lower than would be anticipated given previous research on JE. As someone who has followed cases in the northwest, especially Manchester, I would question whether this review accurately reflects the actual use of the 'gang' in the cases we have seen go through the courts in the period of the pilot. Reflecting the impreciseness of the concept, its application is difficult to judge especially in a review of the prosecution process like that of the CPS pilot where the case may be examined at a very early pre-charge stage. We have seen the 'gang' appear and disappear at different stages of the process of criminalisation, meaning whether a case was reviewed pre-charge, or during a trial, might be significant in 'seeing' the 'gang' narrative emerging.

Our research and recent cases going through courts, reflect how some judges are cautious about how the police and prosecutors define 'gangs', with some dismissing 'gang' evidence as it appears in the court. This may in turn lead to prosecutors being more circumspect in its use as a prosecution strategy. Yet research shows that in cases where the 'gang' isn't the primary signifier, the racialised signifiers that produce the 'gang' in the mind of the jury may remain present even where the explicit narrative of 'gang' A and 'gang' B is not.

If those signals are still present then we would argue that the racialised 'gang' remains a powerful guilt-producing device in the courtroom and with juries, shaping and adding weight to the prosecution and sometimes judicial inferences about collective intent and culpability. This is especially relevant for the many defendants who have not engaged in violence, who may have sought to withdraw from events, or were not present at the scene when the violent incident occurred.

Proximity to Whiteness – a Case of Resisting Culpability - Ninety-five defendants in the JE cases reviewed for the pilot are children aged 17 or under. There are then a further 271 are young adults aged 18-24 years. That over half (54%) of the defendants are children or young people is of huge concern. With sentence lengths in such cases often stretching to decades (in our research JE prisoners under 25 were serving an average of 20 years), the reality being that young people will likely be in prison longer than they have been alive. If convicted of manslaughter, as seems to be increasingly the case for some of the children and young people drawn into the JE net, the consequences remain grave. Once they have served their years in prison, they are released with a conviction they must declare for the remainder of their lives. They are viewed as a 'killer' in all future contexts in their life. Some of these children and young people will then be drawn into the immigration system, facing potential deportation during their sentence or after their release. In this immigration context I have observed how the racialised 'gang' narrative, set out in criminal court, is used to claim a young person convicted of manslaughter in a JE trial poses an 'imperative threat' to public protection. For these children and young people, their future lives will be forever shaped and curtailed by the JE conviction.

Does it have to be so? Is the over-charging of children and young people in these cases necessary or inevitable? Legal principles central in JE cases such as the mens rea or intent,[2] and the high bar required for the defence to demonstrate that the defendant withdrew from events, make it extremely difficult for even the most committed defence lawyers to counter prosecution claims of a young person's intent. This is particularly so when phone evidence such as photos or music lyrics can be used powerfully in the court to claim a collective mindset.

There are cases though where, even when such evidence of young people carrying knives exists, a murder or manslaughter charge is deemed not appropriate. Where the powerful racialised signifiers are not in play, it can be argued that the young person has been 'playing at "middle-class gangsters", listening to drill music, smoking cannabis and carrying knives', or engaging in 'idiotic fantasies'. By creating distance from the 'reality' of the gang or dangerousness such cases reveal how significant racialised narratives are in effect determining culpability. The proximity to whiteness, or to 'middle-class' values, can insulate a young defendant and ultimately change the outcome, from the prosecution charge to conviction and sentence.

Who Wins – Examining Shared Pressures and Decision-Making

Even a brief journey into the criminal law literature on the legal principles of joint enterprise reveals how thorny and often incongruent their application has become. Similarly, dip your toe into the discussion around the 'gang', whether in academia or local communities, and you will experience an equally complex, charged and contradictory debate about definitions and the significance of the 'gang' in an understanding violence, in particular youth violence.

In the context of policing and prosecution though, it may be the impreciseness of these concepts that determines their value. The racialised 'gang' as a guilt producing device, alongside joint enterprise extending liability for a crime, have the potential to (re)produce and legitimise each other. With distinct 'gang' policing and surveillance strategies producing a range of evidence for a criminal trial, how would this inform CPS decision-making regarding success of conviction and ultimately the charge decision?

In a dialogue between police officers and prosecutors that is currently undisclosed, and notoriously difficult for even the defendant to access during or after the process, a charging decision is made. How does the increasingly pre-emptive approach to policing, the gathering of data and searching online accounts, or the availability of a police 'expert witness', inform the prosecution charge decision and approach? A 'gang narrative', shaped in the courtroom by police intelligence or expert witness statements, can support 'conviction-maximising', when there is no evidence of a defendant's physical participation in the crime.

Whilst not suggesting this inter-dependency of the police and CPS in such cases is wholesale or clear cut, as with judges, there may be cases where the local CPS are more circumspect of the police case summary or intelligence. Given this data we must be open now to exploring the likelihood of overcharging in these cases, and question how this may lead to discriminatory outcomes. Understanding how such charging decisions are made in JE cases, how the contributions of individuals as 'principal' or 'secondary' defendants are determined (or actually not determined in many cases, as the CPS data suggests), is going to be key to dismantling its disproportionate use. Decisions are made in such a highly charged context and with a lack of transparency. On the one hand, locally a person has been seriously harmed or lost their life, and families and communities need a response. On the other, the pursuit of unfair and racially-biased joint enterprise prosecutions only serves to systematically inflict more harm on the very same communities. JE prosecutions are both occurring within and contributing to a criminal justice system in crisis. Now is the time to halt what has been recognised by campaigners and political figures as a widespread miscarriage of justice.

[1] The CPS areas included in the pilot were North East, North West, Yorkshire and Humberside, Merseyside and Cheshire, the West Midlands, London North and London South.
[2] In joint enterprise cases the prosecutors must prove that a secondary party assisted or encouraged the principal to commit the crime, and that they intended to assist or encourage the principal. Even post the 2016 Jogee ruling on 'foresight', what constitutes assistance or encouragement is not properly defined by law.

Six In 10 Women Sent to Prison Serve Sentences of Less Than Six Months

Prison Reform Trust: Over half (58%) of prison sentences given to women in 2022 were for less than six months, despite a widespread recognition that short prison sentences are harmful and ineffective, a new analysis of local court area data published today by the Prison Reform Trust reveals. The analysis shows that 'theft from shops' was the most frequent offence, accounting for more than a third (36%) of women's prison sentences of less than six months in 2022. This is in comparison to just 16% of men. The government's Female Offender Strategy Delivery Plan, published earlier this year, reaffirms a commitment to see fewer women in prison. The analysis shows that there was a welcome reduction of 44% in the overall use of imprisonment for women, down from 7,418 prison sentences passed in 2014 to 4,120 in 2022.

Yet despite these encouraging signs, there are concerns that this trend has reversed following the end of the Covid-19 pandemic and its impact on courts. The women's prison population on 6 October 2023 was 3,604—a rise of 15% since January—almost 500 more women. The latest Ministry of Justice prison population projections predict that the women's prison population will rise to 3,800 by November 2024. This analysis of local data also reveals significant geographical variations between police force areas. For example, in Nottinghamshire 73% of prison sentences given to women in 2022 were for less than six months. Whereas in Merseyside, 43% of prison sentence given to women in 2022 were for less than six months.

Data shows the top 10 police areas where the highest proportion of women are sentenced to immediate custody for a period of less than six months in England and Wales. Figure 2 shows the bottom 10 police force areas where the lowest proportion of women are sentenced to immediate custody for a period of less than six months in England and Wales. This geographical variation may, in part, reflect areas with more effective coordinated approaches to women in the criminal justice system. In some areas there have been concerted local efforts to develop more effective responses to women's offending through joined up working between police, courts, and women's services. For example, in Greater Manchester, an area with a longstanding coordinated strategy, between 2014 and 2022 there was a 65% reduction in the number of women sentenced to less than six months, in comparison to a reduction of 52% nationally.

Commenting, Pia Sinha, Chief Executive of the Prison Reform Trust, said: "Sixteen years on from Baroness Corston's seminal review on women's offending, we continue to see too many women being sent to prison to serve pointless short sentences. The government's own evidence shows that community sentences see fewer people go on to commit crimes in future. The unfolding capacity crisis is a chance for a reset on how we use these ineffective disposals. In doing so, the government can learn from the progress made in many local areas to develop a joined-up response to women's offending, which is often driven by addictions and mental ill health. The answers lie in proper investment in treatment and care in the community not prison."

Justice Committee Report on Public Opinion and Understanding of Sentencing

Responding to the findings of the House of Commons Justice Committee report on public opinion and understanding of sentencing published today, Mark Day, deputy director of the Prison Reform Trust said: "Decades of politicians telling the public that prison sentences are not tough enough — despite all the evidence showing sentences were getting longer and more severe — have contributed to the dysfunctional and reactive debate on sentencing the committee highlights in its report. We support the committee's call for a more consistent and principled approach by the government, and a structured way of engaging with the public on sentencing policy. A national debate on sentencing and the beleaguered state of our penal system is long overdue."

CCRC Review of AM Case - Not Complete - Further Delays

While work is well underway, the independent review into the Criminal Cases Review Commission's investigations into Andrew Malkinson's rape conviction will be received later than initially expected. The review was commissioned by the CCRC and King's Counsel Chris Henley has sole responsibility for its findings and recommendations. The Terms of Reference published in August stated that the report would be provided by 24 October. Due to the complexity of the case and some review materials still awaiting receipt, Mr Henley has said that completion by the original date will not be possible. Mr Henley has been granted full access to the CCRC's records on each of the investigations, and all staff and commissioners still in post are available to contribute to the review. Material still awaiting receipt includes additional documents to those already supplied by Greater Manchester Police and further submissions Mr Malkinson's representatives have requested to submit. The CCRC will share the full report with the Lord Chancellor's office and the findings will be made public within legislative constraints. The CCRC expects the review to be completed this calendar year. No date for publication has been set.

Police Taking Nearly Three Times Longer to Investigate Crimes Than Seven Years Ago

Jon Robins, Justice Gap: The police are taking nearly three times longer to investigate crimes than seven years ago. According to new Home Office data comparing the first three months of 2016 with the same period in 2023, the time to charge or summons for all offences almost tripled, rising by 188% from an average of 16 days to an average of 46 days. The time to charge or summons for sexual offences excluding rape more than doubled, rising 124% from an average of 110 days to 247 days – and the time for rape rose by 78% from an average of 174 days to 309 days.

The data came from 39 of the 43 police forces in England and Wales and was obtained as a result of a Freedom of Information request by the law firm Hickman & Rose. 'Generally speaking, the police now take far longer to investigate crimes than they did a decade ago,' commented Jenny Wiltshire, head of crime at Hickman & Rose. 'The main cause of this is a lack of resources. Most police forces do not have enough expert officers to deal with the volume of crime they face nor the complexity of the modern investigatory process.' According to new statistics, the average time taken by the police to bring a case to charge or summons rose from just over two weeks in 2016 to a month and a half earlier this year.

Wiltshire added that it was 'notable' that delays have increased since the introduction of Release Under Investigation (RUI) as an alternative to police bail in 2017. 'RUI was meant to end the problem of suspects being kept on bail for years on end, but it has instead allowed investigations to drift as there are no longer any bail dates to work towards,' she added. 'RUI effectively gives the police carte blanche to take all the time they like.' She said delays caused problems throughout the justice system as 'victims are obliged to wait for justice; while suspects may have to put their lives on hold before they can have their day in court'. 'And this is just the tip of the iceberg. When decisions are finally made, court backlogs compound the problem, meaning achieving justice can take years, even for relatively straightforward matters,' she added.

Hickman & Rose point out that the statistics covered robbery and all sexual offences excluding rape'. But add that the 'two data points can be put alongside published statistics for the offence of adult rape to paint a broad picture of police performance nationwide'. The time to charge or summons for robbery rose by 27% from an average of 37 days to 47 days. Jenny Wiltshire also pointed out that the data did not reveal how long it takes the police to decide not to proceed. 'I have had clients who have waited for many years while the police investigate, only to be informed that the case is being closed with no further action being taken.'

Staff Shortages Forcing England's Prisons Into Emergency 'Red' Measures

Haroon Siddique, Guardian: Prisons in England have run emergency "red regimes" 22 times this year, after falling below minimum staffing levels, the Guardian has learned. One prison reported using the most restricted level of regime for inmates – traditionally "an absolute last resort" – on 15 occasions. A red regime, described by HM Prison and Probation Service (HMPPS) as "not a sustainable position", is reserved for periods when staff resources have fallen below the locally agreed minimum and only a basic regime can be achieved. Experts warned this was denying prisoners access to work, the library, rehabilitation or even meals and lead toleading to a "culture of hopelessness". Last year, a prisoner at Doncaster jail described being locked up for 23.5 hours a day with no showers under a red regime. Swaleside prison in Kent has operated under a red regime on 15 occasions this year, while Manchester, Stocken in the east Midlands and Bristol jails have used the emergency measure twice each and Ashfield, also in Bristol, once. HMPPS said it was unable to say the duration of each red regime.

Pia Sinha, the chief executive of the Prison Reform Trust, said: “Red regimes in prisons used to be the absolute last resort. The fact that they have become routine in so many of our prisons reflects the grim reality of our prison system today. No one benefits from these regimes. They breed despair among people in prison, they lead to poor motivation and poor job satisfaction among prison staff and create a culture of hopelessness. “Alleviating the pressure on the system and creating more headroom in the prison estate is crucial to getting regimes in prisons moving. Delivering regular, safe and decent regimes in prison is one of the best ways to ensure that people leave prisons rehabilitated. A prison that is routinely running on red will have no rehabilitation going on within its walls – it is failing people in prisons, failing staff and failing in its duties.”

The FoI response revealed that on 7 September no prisons in England and Wales were operating a red regime but 32 of 123 were operating an amber-red regime defined as a “reduced but sustainable delivery of activities and services”. The highest level is a green regime, which is full delivery of activities and services, followed by green-amber, where the majority are delivered. Details of the restricted regimes come amid an overcrowding crisis. The justice secretary, Alex Chalk has responded by saying the government will release thousands of prisoners up to 18 days early, attempt to return more foreign prisoners and rent prison places abroad for UK criminals. Andrew Neilson, the director of campaigns at the Howard League for Penal Reform, said: “Inadequate staffing, overcrowding, and lack of resourcing mean that people are warehoused in unsafe conditions for hours on end with nothing to do. Just last week, the prison population passed 88,000, the highest number ever recorded in England and Wales. These instances of red regimes are not a coincidence but the direct consequence of ever-increasing prison population figures and of a system that has been asked to do too much with too little for too long.”

A Prison Service spokesperson said: “We are doing more than ever to attract and retain the best staff, including boosting salaries and launching our first-ever nationwide recruitment campaign. These efforts are working – we have hired over 4,000 additional officers since March 2017 and retention rates for prison staff are improving.”

Jailing Women for Illegal Abortions ‘Unlikely to Provide a Just Outcome’

Samantha Dulieu, Justice Gap: Senior judges have said jailing women who have illegal abortions is ‘unlikely to provide a just outcome’, referring to two recent cases where women’s sentences have been reduced on appeal. In the case of Carla Foster, jailed for terminating her own pregnancy beyond the legal time limit, the Court of Appeal found her original 28 month sentence was wrongly calculated. It was reduced to a 14 month suspended sentence in July, after she had already served over a month in prison and been denied access to her children. In the 17-page ruling the judges noted the case of another woman who had her sentence for procuring a miscarriage reduced, saying: ‘in cases of this nature, there will often be substantial personal mitigation to balance against the seriousness of the charge; and that an immediate custodial sentence in such cases is unlikely to provide a just outcome’.

Dame Victoria Sharp, sitting with Lord Justice Holroyde and Mrs Justice Lambert, said Foster’s case ‘calls for compassion, not punishment’. They added that ‘no useful purpose is served’ by her serving a custodial sentence. The Court of Appeal found the original sentencing judge, Mr Justice Pepperall, had wrongly calculated the sentence before factoring in mitigation. This was why it was later found to be too punitive. Foster’s case caused widespread public outcry, with many expressing concern that a mother could receive such a long prison sentence for breaching Victorian-era legislation. Labour MP Stella Creasy called for ‘urgent reform’ of the law in the aftermath of the case, and Dame Diana Johnson said the law as it

currently stands was having a ‘chilling effect’ on healthcare staff.

Daniel Hegarty: Public Prosecution Service Loses Soldier B Prosecution Challenge

BBC New: The PPS has lost a legal challenge over its decision not to prosecute a soldier accused of killing a teenager in 1972. Daniel Hegarty, 15, was shot dead in Londonderry during the Army's Operation Motorman. The Court of Appeal had quashed the PPS's decision not to prosecute the man, known as 'Soldier B', who died earlier this month. On Tuesday 17th October, a PPS attempt to appeal this was blocked at the High Court. In a statement, the PPS said it acknowledged the court ruling, which was made by three judges. "The PPS considered that the Divisional Court judgment in this case raised a number of legal points of general public importance that were still relevant after Soldier B's death and had the potential to affect other cases. Whilst we believed it was important to seek clarity on these legal issues from the court, we acknowledge the continuing pain of the family of Daniel Hegarty throughout the legal process". Operation Motorman was a major operation by the Army to reclaim "no-go areas" set up by republican paramilitaries in towns and cities across Northern Ireland. Daniel Hegarty's cousin, Christopher Hegarty, who was 16 at the time, was wounded in the same incident. In 2019, it was announced that Solider B was to be prosecuted for the murder of Daniel. The case was then dropped by the Public Prosecution Service (PPS) after a review following the collapse of a separate trial involving two ex-soldiers for Troubles-era offences. That decision was subsequently quashed by the Court of Appeal in June.

Court’s Deference to the Sanctity of Juries Is Amiss. They Sometimes Go Wrong’

Jon Robins, Justice Gap: The problem with the criminal appeal system’s failure to get to grips with miscarriages of justice was not the watchdog but the court of appeal which was ‘constitutionally wrong’, argued a leading legal academic last week. Professor Michael Zander KC, an emeritus professor of law at the London school of Economics, was delivering a lecture last week in honour of his 90th birthday, during which he declared he was ‘pessimistic’ at the prospects of the Law Commission review of criminal appeals dealing with the system’s shortcomings. ‘The problem is not the CCRC or the referral provisions,’ said Zander, who was at the heart of the proposals that led to the formation of the Criminal Cases Review Commission (CCRC). ‘The problem is the Court of Appeal which, since 1907 when it was established, has refused to recognise that its role, given by the legislature, includes being sometimes asked to review jury verdicts, even though there is no new evidence.’

Michael Zander was a member of the 1993 Royal Commission on Criminal Justice set up in the wake of scandals such as the Birmingham Six and Guildford Four and which recommended setting up a CCRC-style body. The commission has come in for considerable criticism in recent years and, most recently, since the overturning of the conviction of Andrew Malkinson at the beginning of the summer. As a result of its perceived failure in that case, there are now two inquiries (one by the government and one by the CCRC itself) looking at the CCRC, as well as a Law Commission review considering ‘whether there is anything wrong with the statutory provisions for referral of cases by the CCRC to the Court of Appeal’. ‘In my view there is nothing wrong with those provisions,’ Zander said. The problem was ‘not the CCRC or the referral provisions’. ‘The problem is the Court of Appeal which, since 1907 when it was established, has refused to recognise that its role, given by the legislature, includes being sometimes asked to review jury verdicts, even though there is no new evidence.

The lawyer flagged up the CCRC’s founding statute, Criminal Appeal Act 1907 which provides that court ‘shall allow the appeal if they think that the verdict of the jury should be set

aside on the ground that it is unreasonable or cannot be supported having regard to the evidence'(Section 4(1)). 'The Court's deference to the sanctity of the jury's verdict is constitutionally wrong,' Zander continued. 'Since 1907, the constitutional sanctity of the jury's verdict has applied only to a verdict of acquittal. Juries do sometimes go wrong.' He said that there were various proposals including those of the 1993 royal commission 'aimed at getting the Court to act as the original framers intended'. 'In vain. The court remained unmoved. I am pessimistic as to the prospects of the Law Commission doing better.'

The title of Michael Zander's lecture was 'Promoting change on the legal system' – also the title of his inaugural lecture six decades earlier – and he reflected on a remarkable career pushing for progressive change in the law on a number of fronts: the criminal justice system, access to justice and the development of human rights. The same year Zander joined the LSE, 1963, he became legal correspondent of The Guardian, a position he held for 25 years contributing over 1,400 articles. His campaigning journalism led to many significant fundamental changes. The reform that the academic described as being 'the most useful in terms of its result and certainly most significant for me personally' were the landmark PACE (Police and Criminal Evidence Act) protections for suspects in the police station. These were introduced following an earlier royal commission – the 1978 Philips royal commission on criminal procedure (which also recommended the establishment of the Crown Prosecution Service). The Philips commission was set up after a 1977 Zander article which appeared in the Criminal Law Review. The concerns came to the fore as a result of the scandal over the case of Maxwell Confait, a male prostitute known as Michelle, was throttled and his body discovered in a burnt-out flat in Catford, South London in 1972. Three innocent boys were jailed for his murder after making confessions that medical evidence subsequently demonstrated could not have been true.

The academic recalled how in 1970, Lord Parker, the Lord Chief Justice, announced that hopeless applications for leave to appeal in criminal cases would be penalised by ordering that part of the time spent appealing would not count towards the sentence. 'The news of this warning must have flashed around the prisons since the number of applications for leave to appeal dropped dramatically,' he recalled. Up to 1970 they had been running at the rate of 12,000 a year but collapsed to 6,000 a year. According to the academic Lord Parker's statement was based on the (wrong) assumption that prisoners would have received the legal advice supposedly guaranteed by the Criminal Justice Act 1967. Zander went on to interview 132 prisoners who had applied for leave to appeal and demonstrated the many had not received legal advice. The Lord Chief Justice change the rules requiring barristers to sign a statement as to whether there were grounds for appeal.

Justice for All - Zander also played a pivotal role in the law centre movement. The academic was the lead author of the influential 1968 Fabian pamphlet Justice for All. He recalled how he came across the law centre idea during a summer in the US on a Ford Foundation grant to investigate legal innovation as part of President Lyndon Johnson's so-called War on Poverty. 'In an article in September 1966, I recommended state-funded neighbourhood law firms providing free services in poverty areas,' he said. The Lord Chancellor invited him to discuss the idea but ultimately was not persuaded nor did such radicalism find favour with the mainstream legal profession ('the Law Society said it was strongly against the idea'). However it was adopted by the Society of Labour Lawyers who recommended the establishment of what it named 'law centres'. 'Nineteen months later, on July 17, 1970, I was present at the well-attended formal opening of the first law centre, in a converted butcher's shop in North Kensington,' he said. Zander called the introduction of law centres as 'a significant development in the provision of legal services in poor neighbourhoods'.

High-Risk Prisoners Sit GCSE English – And Out Perform Peers on Outside

Sally Weale. Guardian: More than three-quarters (78%) of the small cohort of prisoners who sat the exam at HMP Frankland in County Durham secured a pass at grade 4 or above – equivalent to a C – which is almost three times the success rate for resits in further education colleges in England, according to their teachers. Their success was achieved despite their studies being restricted by their circumstances. The prisoners had just a year to complete the course, which was condensed into one three-and-a-half hour session each week and – unlike the average GCSE candidate – they were permitted zero access to the internet. Jo Watmore, the education manager at HMP Frankland, said: "People often ask me what's the point of giving classes to people who are not going to be released for years, if at all, but I think their punishment is being locked up and this is about providing meaningful, purposeful activity for some of the hardest to reach people in society, to give them a chance to progress and develop themselves. Education is a way to help them change their mindset and change the way they view themselves and society and, after all, the majority do get out eventually and have to rejoin the community. Studies have shown education helps prisoners become more settled, less aggressive and even less likely to self-harm."

Frankland holds male prisoners over the age of 21, including high-risk remand prisoners and category A inmates thought to pose the greatest threat to the public, police or national security. Many are serving life sentences and whole-life tariffs. The GCSE classes were run by teachers from Milton Keynes College Group, one of the largest providers of prison education in England, working with 29 prisons. Nine prisoners, all of whom are serving long sentences for a range of serious offences, sat the GCSE. They each had to apply for the course, have an interview and take a skills test before they could enrol.

Pre-Recorded Cross-Examinations - Not Working as They Should

Law Gazette: An influential cross-party group of MPs is calling for evidence on the use of pre-recorded cross-examination, including its impact on court listings, capacity and delays. Section 28 of the Youth Justice and Criminal Evidence Act 1999 allows vulnerable and intimidated witnesses to pre-record cross-examination before the trial. The recording is presented during trial without the witness needing to attend. According to a section 28 process evaluation report published by the Ministry of Justice in April, the cross-examination experience 'could still be unpleasant and stressful for witnesses, mostly due to the style of questioning by defence advocates'. The evaluation found that witnesses were not always provided with timely and clear information about the section 28 process. Advocates and court staff believed section 28 had a negative impact on scheduling and court listings due to, for instance, the requirement for the same judge and advocates to be available at all hearings. Responding to a Law Commission consultation on evidence in sexual offences prosecutions, the Criminal Bar Association said section 28 was being used to avoid listing difficulties 'because once the recording is completed the case ceases to be a priority and the trial can take place two or more years later'.

The justice committee held two evidence sessions in June on the use of section 28 and the government's evaluation. Committee chair Sir Bob Neill said: 'Earlier this year we heard compelling evidence from barristers that there are real problems with how section 28 is working. Now we want to gather more evidence to put to the government to see if the situation can be improved for everyone. 'In our call for evidence the committee wishes to analyse every aspect of the practical operation of section 28, its impact, plus any improvements or reforms which need to take place following its implementation.' The deadline for submissions is 6 December.

Jail Cells Without Toilets Persist in England Despite 'Slopping Out' Law

Helen Pidd, Guardian: Cells in some English jails still do not have toilets, leaving prisoners to defecate in buckets overnight and sleep in "inhumane" conditions, the Guardian has learned. The practice – known as "slopping out" – was supposed to be outlawed from 1996. But at least five prisons still have cells without sanitation, posing particular problems for elderly or disabled prisoners. In HMP Bristol, the chief inspector of prisons recently spoke to inmates who said they had to resort to using buckets and throwing the waste out of the window, which then splashed into the cells below. The smell of urine on the landing was "overpowering", Charlie Taylor reported this week. Though prisons without cell toilets are supposed to operate "night sanitation" systems, allowing prisoners to be unlocked if necessary, many do not function properly. Prisoners who need to use the toilet join an electronic queue to be unlocked – usually for eight minutes – and many report long waits. At Grendon, a so-called "therapeutic" jail in Buckinghamshire, most prisoners do not have in-cell sanitation and so rely on an electronic keypad system when locked up. "For some prisoners, this was not a problem, but many others told us of delays to use the toilet, particularly in the morning and on landings which housed larger numbers of prisoners. Although prisoners had been provided with plastic pots to use in their cell for this purpose, this was not decent and they were unable to wash their hands," inspectors reported.

Long Lartin, a high-security jail in Worcestershire for about 600 men, also issues buckets to prisoners without in-cell sanitation to limit the number of inmates having to be unlocked. About half of all cells there do not have toilets. Sue Harrop, the chair of the independent monitoring board (IMB) at Long Lartin, said: "The cells on the four wings that lack running water and sanitation accommodate some elderly and infirm prisoners. The use of buckets is problematic when the men are locked up for extended periods due to regime restrictions. There is not even a sink to wash their hands after using their bucket. They are required to 'slop out' into an open sluice with no splash-guard or privacy for men emptying their pots. The board view this practice as inhumane." There are also no toilets in the original 1960s residential block at HMP Coldingley, a medium-security men's prison in Surrey. Coldingley IMB's annual report, published in October 2023, said: "The much-needed refurbishment of the original old residential units is under way, but some of the existing call-bell sanitation facilities will remain in use for years and … appalling and inhumane conditions have recently been witnessed."

The age-old practice of "slopping out" – referred to at the time by penal reform groups as the "single most degrading element of imprisonment this century" – was officially brought to an end on 12 April 1996, according to the National Council for Independent Monitoring Boards. On that day, the last plastic pot was ceremoniously discarded at HMP Armley in Leeds, West Yorkshire.

No Record Of Calls Between Defendants Charged With Perverting The Course Of Justice

JV stood trial at the Croydon Crown Court on a charge of perverting the course of justice. It was alleged that JV assisted TA, who had been tried and convicted separately, in bribing a complainant of kidnapping to withdraw his complainant. The prosecution case was that JV had twice called TA on her phone and then handed her phone to the complainant. The complainant alleged that during the phone call TA offered him £10,000 to retract his statement to police. The complainant also alleged that JV encouraged him to take the money and gave him a letter to sign. In interview, JV denied the allegation and offered police her phone for examination. The police never seized her phone during the investigation. Prior to trial, defence made a s8 application for disclosure of all phone logs and call records of TA on the day of the incident. Records were disclosed on the first day of trial that showed no call or text between JV and TA. The Crown offered no evidence, and a not guilty verdict was entered by the Court.

Lee Calvert: Convictions Referred Following New Information

A man's murder and firearms convictions have been referred to the Court of Appeal by the Criminal Cases Review Commission (CCRC). Lee Calvert was convicted of murder and possession of a firearm with intent to endanger life following a trial at Bradford Crown Court in 2014. He was sentenced to life imprisonment with a minimum term of 36 years, which was later reduced to 32 years on appeal. Following an investigation, the CCRC has decided to refer the case for a fresh appeal on the basis of new evidence.

Lee Calvert was jailed in 2014, aged 23, for his part in the murder of Barry Selby, 50, of East Bowling, who was shot in the leg and had acid thrown on him in October 2013. He died three days later in hospital. Calvert, of Stirling Crescent, Holme Wood, was found guilty alongside Joseph Lowther, of Copgrove Road, Holme Wood; Robert Woodhead, of Fred's Place, Tyersal and Andrew Feather, of Heysham Drive, Holme Wood.

At the sentencing hearing in June 2014, Mr Justice Globe accepted Calvert had fired the gun and poured acid over Mr Selby at his home in Raleigh Street, East Bowling. The attack happened at about 2.10am on October 14, 2013. Calvert was sentenced to life imprisonment with a minimum term of 36 years, which was later reduced to 32 years on appeal. Calvert asked 'Where's the justice?' as he was led away to start his prison sentence.

Protesters Face Prison and £200,000 Bill Over Injunction They Knew Nothing About

Good Law Project: When the retired teacher Gaie Delap climbed up a gantry over the M25 on a grey morning last November, she knew she might face arrest and imprisonment. But she had no idea she could be landed with a bill for legal fees that could be as much as £200,000. Delap is one of 12 people who breached an injunction granted to National Highways – the Government-owned company that looks after major roads – and who are currently appearing at the High Court.

A judge issued the injunction on the day before the protest, under provisions which meant National Highways didn't need to name specific people who were barred from protesting or tell specific people about the existence of the ban before they protested. The group didn't know about the injunction before they took action, and now face up to £200,000 in legal fees and a possible two years in prison. These sanctions would be in addition to criminal charges they face next year, for the same action.

Injunctions are powerful legal tools used to stop people doing something, which are being used more and more to suppress protest. According to Lochlinn Parker, "you can be made to pay costs even if you have not done anything wrong at all". And "even if the injunction should not be granted, it is risky and very expensive for a protester to challenge it." Companies and governments can rack up huge legal bills which people accused of breaching an injunction are forced to pay if they lose and if you challenge an injunction that only increases these costs. Since legal aid is not available for such cases, the amounts incurred can be devastating.

"Something is seriously wrong when the scales of justice are so unbalanced, said Good Law Project Legal Manager Jennine Walker. "Ordinary citizens who are taking peaceful action in protest at the Government's failure to tackle climate change are being punished to the point of being crushed. And we have to ask ourselves: is this the free and democratic country we want? We're keeping watch on how the state is using injunctions to crack down on protest and exploring how we can make a difference. We must defend our shrinking rights to protest to ensure democracy is upheld.