

exist to keep detainees safe were not followed. Lloyd failed to receive the emergency medical care he required and was left in a police cell uncared for and unmonitored. Learning from his tragic and preventable death must be applied nationally across all forces. It is not acceptable that sanctions for the officers found guilty of misconduct have not been more serious. For the public to have any faith in the police they must be seen to be held to account, with sanctions proportionate to the seriousness of the charge."

INQUEST has been working with the family of Lloyd Butler since his death in August 2010. The family is represented by INQUEST Lawyers Group members Ifti Manzoor from Irwin Mitchell solicitors and Stephen Cragg QC of Doughty Street chambers.

#### **Minors Remain Jailed for Life Despite US Supreme Court Ban on such Sentences**

Two years after the US supreme court banned mandatory sentences of life without parole for people under 18 years old, most of the states that carry the brutal punishment have done nothing to change their ways, leaving the vast majority of the prisoners already on the sentence still facing the prospect of spending the rest of their natural life in a cell.

A report from the Washington-based justice reform body, the Sentencing Project, underlines what has become a legal paradox. In 2012, the highest judicial panel ruled in *Miller v Alabama* that mandatory life without parole for juveniles was a violation of the eighth amendment that forbids cruel and unusual punishment. Yet since then only 13 of the 28 states that carry the sentence have amended their laws.

Even many among those 13 states have failed to meet the spirit of the supreme court's ruling by replacing full-life sentences with exceptionally harsh terms that will still see prisoners who were convicted as teenagers – some as young as 13 – languish in prison until their elder years. Nebraska has introduced a minimum 40 years in custody for juveniles convicted of homicide before a parole review can even be contemplated. In Iowa, the governor went even further and commuted all the state's juvenile life without parole sentences to minimum terms of 60 years.

In a criminal justice system renowned for its toughness – the US has the highest incarceration rate in the world – the locking away of children for their entire lives is widely considered to be singularly harsh. America is the only country in the world, bar none, that allows kids to be sentenced to die in prison with no chance of rehabilitation.

Yet as Justice Elena Kagan spelled out in *Miller v Alabama*, advances in scientific knowledge of the brain has highlighted differences between the adult and juvenile brain. She concluded that such differences both "lessened a child's 'moral culpability' and enhanced the prospect that, as the years go by and neurological development occurs, his 'deficiencies will be reformed'."

**Hostages:** Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinane, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva, Terry Smith, Hyrone Hart, Glen Cameron, Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Romero Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan, Ihsan Ulhaque, Richard Roy Allan, Carl Kenute Gowe, Eddie Hampton, Tony Hyland,

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## **MOJUK: Newsletter 'Inside Out' No 483 (26/06/2014)**

### **In Memory Gerry Conlon 1954-2014: A Grave Miscarriage of Justice**

One of the best-known victims of a miscarriage of British justice, Gerry Conlon of the Guildford Four, has died at home in his native Belfast. Portrayed on film by Daniel Day-Lewis in the Oscar-nominated *In the Name of the Father*, Conlon was still campaigning on behalf of those in prison he believed were innocent even in the days before his death from cancer early on Saturday morning. He was 60. Conlon spent 15 years in prison for an IRA atrocity of which he was entirely innocent: the pub bombings in Guildford, Surrey, in 1974 in which five people were killed.

In a statement issued through Gareth Peirce, the lawyer who helped him and the other members of the Guildford Four – Paul Hill, Paddy Armstrong and Carole Richardson – gain their freedom, his family confirmed he passed away in the early hours of Saturday morning 19th June 2014. The family said: "He helped us to survive what we were not meant to survive. We recognise that what he achieved by fighting for justice for us had a far, far greater importance – it forced the world's closed eyes to be opened to injustice. It forced unimaginable wickedness to be acknowledged. We believe it changed the course of history. We thank him for his life and we thank all his many friends for their love." The Conlons added: "He brought life, love, intelligence, wit and strength to our family through its darkest hours".

Conlon, who was from the Lower Falls area of Belfast, watched his father Giuseppe die in prison as one of the so-called Maguire Seven, which also included Conlon's aunt Annie. They were arrested after being falsely accused of taking part in the same IRA bombing campaign in southern England during the mid-1970s. When he entered prison, Conlon's father was suffering from emphysema and had just undergone chemotherapy. He died in 1980.

Peirce, who was with the Conlon family when Gerry died, added her own tribute. She said: "Once a community has been made suspect en masse every organ of the state will feel entitled, in fact obliged, to discover proof of their suspicions. The example of what happened to Gerry and his entire family should haunt us forever. Sadly these lessons are jettisoned when the next suspect community is constructed. "Lessons should have been learned. One of the campaigns that Gerry was most strongly articulating at the time of his death was pointing out what is being done to the Muslim community today. He was the bravest of fighters, not just for himself and his family but, by virtue of his victory, he took on the fight for others."

In October 1989 the court of appeal in London quashed the sentences of the Guildford Four after doubts were raised about the police evidence against them. On his release after a decade and a half in jail, Conlon went outside to face the media, stating: "I've been in prison for 15 years for something I didn't do, for something I knew nothing about." In an emotional climax to his speech, he added: "I watched my father die in a British prison for something he didn't do." Conlon also vowed in his first minutes of freedom to fight to free the Birmingham Six, convicted of a series of IRA pub bombings in 1974.

The life sentences handed down to the Maguire Seven were later overturned by the court of appeal in June 1991. In 2005, prime minister Tony Blair issued a public apology to the Maguire Seven and the Guildford Four for the miscarriages of justice they had suffered. Sinn Féin president Gerry Adams said: "Gerry and his father Giuseppe were two of the most infa-

mous examples of miscarriages of justice by the British political and judicial system. To his family and friends I want to extend my sincere condolences."

Alex Attwood of the SDLP, whose party conferences Conlon had attended in recent years, also paid tribute: "What he learned from his time in prison and campaign for release was the importance of not only raging against his own injustice but fighting for those who had also suffered miscarriages of justice." Among others to pay tribute to Conlon, was the band the Pogues, who tweeted: "All the Pogues send sincere condolences to the family of Gerry Conlon today. How lucky we were to know him. RIP."

In 2009 Conlon wrote in the Guardian about the personal and emotional struggles he suffered as a result of his incarceration and battle for freedom. He endured two breakdowns, attempted suicide and became addicted to drugs and alcohol following his release. Conlon also began suffering nightmares after securing his freedom. "The ordeal has never left me," he said. Despite his personal problems, Conlon dedicated the rest of his life to challenging over miscarriages of justice. He campaigned for the release of British prisoners held by the American military in Guantánamo Bay. One of his last public outings was in a Belfast court just a few weeks ago, where he was supporting an appeal by Brendan McConville & John Paul Wootton who unsuccessfully tried to overturn a murder conviction over the Continuity IRA killing of a police officer in 2009.

Arguably the most tenacious campaigner for Conlon's freedom and his three friends was his mother Sarah, who died in 2008. On the living room of her home in Albert Street, west Belfast, there was a framed photograph of a newspaper headline from the week her son was finally freed from jail. The headline quoted the trial judge, Mr Justice Donaldson, who sentenced the Guildford Four to life in prison back in 1975. The judge told Conlon and his friends: "If hanging were still an option you would have been executed."

#### **Who Will the Gerry Conlons of the Future Count On?** *Owen Jones, The Guardian, 22/06/14*

*We should remember the miscarriage of justice suffered by the Guildford Four when we hear politicians whipping up anti-Muslim prejudice*

Nightmare is a term too casually used to retain its emotional impact; in casual conversation, it's tossed around to describe delayed train journeys or prolonged waits in airport departure lounges. But it is difficult to describe the experience of Gerry Conlon – who has died at the age of 60 – as anything other than a living, never-ending nightmare.

For those who find it too disturbing to imagine that the British state could be capable of such injustice, it will be comforting to conclude that this episode belongs to the history books: disturbing, but a reminder of a murky past we have thankfully moved on from. It is certainly true that the Guildford Four and Maguire Seven miscarriages of justice had much to do with an endemic anti-Irish racism that many of my generation do not appreciate. The prejudice dates back centuries, particularly to the Reformation and Protestant Ascendancy in Ireland, when the Irish were portrayed as subhumans and animals; to the 19th-century Irish famine; to the treatment of postwar Irish migrants to the UK who were met with signs of "No blacks, no dogs, no Irish". With this deeply embedded prejudice as a backdrop, the IRA bombing campaign fuelled a sense that all Irish people were to be treated as suspicious. That's what allowed these miscarriages of justice not just to happen, but to be ignored for so long.

But let's abandon any complacency that such injustice could not happen again. Conlon expressed solidarity with another group enduring a similar experience: Britain's Muslims. He noted the case of Binyam Mohamed, a British resident locked up in Guantánamo Bay for five years without charge

prison on day release. It needs to be managed better but the principle is sound. It is a sensible thing to gradually test long term prisoners in the community before their final release is agreed. In the same way it is important to test prisoners' behaviour in the virtual community under supervised conditions and get them to understand and control the behaviours that lead them to committing offences. Where the prisoner gives indications that their behaviour on line may put others at risk, action can be taken accordingly.

So in conclusion, I don't think we can go on with prisons in a pre-internet dark age: inefficient and wasteful and leaving prisoners woefully unprepared for the world they will face on release. I don't believe you can modernise justice through new technology without addressing this. Yes, there are security issues to be addressed, but the technology allows every key stroke to be monitored and access can be risk assessed. We now need to get on with getting this part of prison policy to make its long overdue entrance into the 21st century.

#### **Police Failings Contributed to Death of Lloyd Butler In Police Custody**

The jury at the inquest into the death of Lloyd Butler in police custody in Birmingham has found that his death may have been preventable. In a highly critical conclusion, they found that he should not have been detained in custody but instead taken to A&E. An inadequate risk assessment led to discretion being applied to keep Mr Butler in custody. Rousing checks were not adequately carried out and visits were not maintained on schedule. There was also a delay in the arrival of the health-care professional to the custody block. The jury concluded that had Mr Butler been monitored in hospital at the time of his heart attack, the probability is he was more likely to have survived. The medical cause of death was cardiac arrest, alcoholic liver disease and alcoholic cardiomyopathy.

Janet Butler, Lloyd Butler's mother said: "All we have ever wanted was to know the truth about Lloyd's death and for those responsible to be held to account. Lloyd died nearly four years ago and it has been a long and painful battle to reach this point. Nothing will bring back our dearly loved son but the inquest has at last finally given us a clear picture of what took place over those hours and exposed the degree of police failure and neglect that led to Lloyd's death. "We call now on West Midlands Police to act in response to the evidence that has come out during Lloyd's inquest and for proper action to be taken against those responsible."

The seriousness of the case was reflected in the unusual steps taken by the IPCC in recommending disciplinary action for gross misconduct against several officers involved with Lloyd's care. Disciplinary hearings that took place before the inquest found that scheduled cell checks did not take place and that officers failed to comply with police procedures requiring intoxicated detainees to be woken during monitoring checks. Officers were seen making personal phone calls and browsing the internet instead of monitoring CCTV. Despite being found guilty of gross misconduct in his public duty, Sgt Mark Albutt received a final written warning and did not face dismissal. PC Dean Woodcock was found guilty of misconduct in his public duty and was said by West Midlands Police to have received 'management advice'.

A freedom of information request made by INQUEST last year revealed that between 2009 and 2012, the IPCC found that 15 officers investigated in relation to a death in or following police custody had a case to answer for gross misconduct. Three of the officers resigned or retired prior to the gross misconduct hearing taking place. Of the rest, 8 were found guilty, but only one was dismissed. The rest were allowed to keep their jobs.

Helen Shaw, co-director of INQUEST said: "Evidence during the inquest has revealed shocking and inhuman treatment of this vulnerable man. Basic police procedures that

new technology development? Well, to start with, one of the most important initiatives across the justice system is the development of digitalised case records that can be exchanged across the CJS between police, CPS, courts and probation so the huge bundles of paper files become a thing of the past. Video links are increasingly used for court appearances by prisoners avoiding the costs and disruption involved in transferring them to court for what are often very short appearances. But how will the accused, remanded prisoners, be able to access all the information they should have about their case? What about all the other proceedings a prisoner may be involved in – family and civil cases for instance? What about the prisoners who are themselves victims of crime? How, in the new digital age, will they progress an appeal?

Whatever your views on crime and punishment, the one thing we can all agree on I hope, is that we want prisoners to leave prison less likely to commit crime than when they went in. I have occasional differences of opinion with the Justice Secretary but he is absolutely right to say we need to transform rehabilitation outcomes. We know a lot about what works. Prisoners need the skills, experience and habits to get and hold down a job on release. And they need practical help to make sure they have a roof over their head, manage their money and access other services after release.

I have not seen any research that looks specifically at prisoners' level of IT skills. It is a gap that needs to be filled. But we know that almost half of all prisoners have no qualifications at all and we can infer that the level of IT skills is correspondingly low. I can think of few jobs nowadays that do not require at least a basic level of IT skills. In importance it's just a short way between basic literacy and numeracy. Most jobs will require a lot more than that. Some prisoners, particularly those doing longer sentences undertake Open University courses or other higher level qualifications if they can get help to pay the fees. Not surprisingly, a lack of access to IT is a major barrier to their studies.

There have been efforts to address this. 'Virtual Campus', for instance, a secure web based IT platform has been rolled out across most prisons and is an important resource. But too often we find the hardware still in boxes, staff without the relevant skills to use it properly and, at best, it being used to far less than its full potential. It is not just a matter of education and training. How do you apply for a job without web access? Look for and apply for accommodation? Manage your money? Make travel arrangements? For all the efforts of the agencies, we know that the most effective rehabilitation support is provided by strong and positive family relationships. So maintaining and strengthening family relationships is a crucial part of the rehabilitation process. But visits are difficult and the travel is costly.

A couple of years ago I went to visit the UK detention facility in Camp Bastion, Afghanistan. One of things they were doing there was allowing the Afghan detainees to have closely supervised Skype conversations with family members who were in an aid agency's office in Kabul. If they can do it with potentially hostile detainees in a tent in the Afghan desert, I can't see why we can't do it here. I have in fact seen a small number of similar examples here. Detainees held in immigration removal centres here are allowed supervised access to friends and family back home – but not if they are held under the same powers in a prison. – but not if they are held under the same powers in a prison. In another example, HMP Parc in Wales fixed for a prisoner to join the parent teacher conference of his son who was having trouble at school. The prison governors and staff I speak too are in no doubt more of this kind of thing is possible, it would be beneficial and they could safely manage the risks involved.

Managing and reducing the risk offenders pose to others is a crucial part of a prison's work. You will be aware of the controversy there has been recently about letting prisoners out of

until his release in 2009. He was abducted – or "rendered" – and tortured by the US, with the complicity of the British intelligence services. The UK government gave him £1m compensation last year. Gary McKinnon's fight against extradition attracted astonishing support, but less well-known is the case of Talha Ahsan, a young Muslim poet from Tooting who – like McKinnon – was diagnosed with Asperger's syndrome. Ahsan was locked up for six years in British prisons without charge or trial: the Criminal Prosecution Service told him that it had insufficient evidence to prosecute him in Britain. He is now locked up in a Connecticut Supermax prison, having been forced to plead guilty – like 97% of US federal cases – to avoid decades of imprisonment. Where the tireless British solicitor Gareth Peirce once defended Irishmen like Conlon, she now defends Muslims like Ahsan.

So here is my fear. Last week, David Cameron informed the House of Commons that Britain faced the threat of terrorism from British jihadis returning from Syria and Iraq. The Met's Cressida Dick – who oversaw the police operation that shot dead the innocent Jean Charles de Menezes in 2005 – has this weekend backed up his assertions. Some will cast a wary eye back to the cast-iron intelligence that Iraq posed an imminent security threat to Britain. And set against a background of frighteningly widespread anti-Muslim bigotry, the threat of miscarriages of justice like that suffered by Conlon is surely real and will in turn serve as a recruiting sergeant for fundamentalist extremism.

Already, more than a third of British people believe Muslims pose a "serious threat" to democracy. Just a third believe they are compatible with the "British way of life". And 45% of Brits think there are "too many Muslims". Studies of media coverage suggest a relentlessly negative depiction of Muslims; in 2011, the journalist Richard Peppiatt resigned from the Daily Star in protest at its anti-Muslim slant. Muslims are invariably portrayed as radicals, extremists and potential terrorists. The recent Trojan Horse saga portrayed socially conservative pushy parents as "extremists". Crucial as it is to defend a secular education, it was again Muslims being singled out and cast as a threat to "British values".

Existing government strategies like the "Prevent" counter-terror policy fuel the stigmatisation of Muslims; the House of Commons communities and local government committee found that Muslims were left feeling as though they were all suspected terrorists. The likes of the former defence secretary, Liam Fox, are calling for ever greater surveillance powers. New Labour cracked down on civil liberties – opposed by the Lib Dems and the Tories at the time – but now renewed authoritarian measures are on the agenda. During the anti-Irish hysteria of the 1970s, there was a stronger left than there is today, willing to resolutely defend civil liberties and those, such as the Guildford Four, who suffered miscarriages of justice. But today, even some self-described progressives treat Muslims as a threat to secular democracy. Can the possible Muslim Gerry Conlons of the future count on strong voices to speak out for them? None of this deals with the root causes of terrorism, of course. In 2002, the joint intelligence committee warned that the "threat" from al-Qaida-type extremists "would be heightened by military action against Iraq". Grievances about foreign policy, widespread Muslim poverty, anti-Muslim prejudice in the media and broader society, and a crackdown on civil liberties all risk fuelling radicalisation.

With Conlon's passing, it is a moment not just to reflect on the injustice he endured, but to treat it as a warning. British society is awash with anti-Muslim prejudice – as it was once infested with anti-Irish sentiment – and there is a growing atmosphere of fear over Isis. Innocent British Muslims may well find themselves targeted by attacks on civil liberties that were hard-won by our ancestors at great sacrifice. It will not only be unjust for the victims, it may endanger the safety of us all.

### **Gareth Peirce - Requiem for Gerry Conlon**

When Gerry Conlon, who has died aged 60 of lung cancer, met survivors of the US's Guantánamo Bay detention camp, he found that their 21st-century experiences mirrored his in the 1970s. He too had been hooded, shackled and subjected to rendition – from his home in Northern Ireland to a police station in Surrey – threatened, brutalised and tortured until he confessed to the IRA bombings in 1974 of pubs in the garrison towns of Guildford and Woolwich. Yet the claim that four innocent and improbable young people were responsible should have been immediately derailed by the cast-iron alibis of two. Instead, the intimidation of alibi witnesses, or in the case of Gerry, the burial of a statement that proved he could not have been anywhere but at a hostel in Kilburn, north-west London, for young Irish men, overcame that obstacle.

Even more inconveniently, the IRA unit that had carried out some 60 other attacks to which Guildford and Woolwich were identical was captured. Three years later, in 1977, the court of appeal heard first hand the testimony of the IRA unit – they were responsible and no one else. Nonetheless, the four appellants were sent back to prison for another 12 years.

Born in Belfast, growing up in the impoverished, warm and close-knit community of the Lower Falls Road, Gerry was the much-loved son of Guiseppe and Sarah. Guiseppe's death from emphysema was exacerbated by working in a lead factory; Sarah, a cleaner in the kitchens at the Royal Victoria Hospital, lived to see Tony Blair's apology in 2005 for Guiseppe's imprisonment, three years before her own death.

Gerry's childhood was one he described as happy. He scraped through primary school at Raglan Street, and at St Peter's secondary school engineered his demotion to class 1D from class 1C, where many of the boys were too studious for his liking. Class 1C learned Gaelic and the orientation of the history that was taught was Irish; had he stayed in that class he considered later he might have possessed a greater awareness of the history of Ireland and a more defined Republican point of view. Instead, he clattered through life in Belfast as a minor delinquent, scuttling back and forth to London.

In no way equipped with self-discipline or even physical stamina or fortified with any political rationale for his fate, he entered the hell of the English prisons of the 1970s, when to be Irish – and even more, IRA – was to be in danger. Year after year of solitary confinement, punishment imposed for endlessly angrily asserting his innocence, movement without notice from prison to prison, often just when his mother was using her one week's holiday to visit her husband and her son at different ends of England, humiliation, degradation and fear nevertheless fuelled an insistence that he could and would take charge of his own fate.

He clamoured and shouted and wrote and in the later years telephoned and besieged the great and the good until gradually there was movement, by the slowest of degrees. The release when it came, came with the sudden falling of the citadel; all of the evidence had been fabricated. Everyone had been wrong and he had been right. The euphoria of release almost immediately evaporated in the pandemonium of public attention; the longed for reunion was with a family too damaged to accommodate the ways in which he was haunted by demons. He had nevertheless an acute, intelligent and articulate raw voice which vividly communicated his experience of injustice. From his book *Proved Innocent* (1991) followed a film, *In the Name of the Father* (1993).

However, for many years he fell into an abyss from which he could not climb out, hiding like a recluse in a tiny apartment in Plymouth, Devon, knowing no one, physically and mentally broken. Unable to find joy, he resorted to drugs, attempting to experience what was otherwise inaccessible. Finally, a psychologist in Plymouth and a psychiatrist in Belfast began to iden-

and friends; education; travel. The list goes on. And there is a dark side to these developments. These new technologies can be used to facilitate crime, exploitation and abuse. We worry about how to keep our children safe on line. The technologies can help us communicate but they can isolate us too. We need to know how to use them safely.

Prisoners have been excluded from almost all of this. I acknowledge there have been important developments in the way prisons use new technologies to manage prisoners. System for analysing intelligence reports and assessing risk are increasingly sophisticated. The prisoners' file system, P-Nomis, is now in universal use so the risks of incidents happening because information is not exchanged are much reduced – although, infuriatingly, we still find examples where one department has decided to set up their own records system and not share information with other parts of the prison.

Prisons are increasingly using self-service kiosks for prisoners to access basic information and carry out simple tasks – to check the small wage they receive for their work has been paid and make a shop order for instance. These are welcome developments and enable staff time to be used more efficiently. They come with a word of warning however – they should be in addition to regular staff contact not instead of it. It may be that it is when the prisoner comes into the wing office to order some cell supplies that he drops a hint that there may be trouble on the wing or so and so is very down and has not come out of his cell.

The area where I think prisons lag furthest behind is in prisoners' access to the internet. I am not advocating that prisoners should have unrestricted access. But let's be clear, as many in this audience know, it's relatively easy for prisoners to get hold of an illegal phone. One prisoner on the wing holds a phone which they rent out. All anyone else needs is a sim card. Some of that illegal use might be relatively harmless – staying in touch with friends and family for instance but they can be used to plan crime, do drug deals and harass victims. There has been some horrible video circulated recently which shows a group of boys in a YOI assaulting another lad. I have had distressing correspondence from victims asking how they can get a facebook page with a prisoner gloating about their crime taken down. I think right now the systems reactions to this kind of abuse and illegal use is too slow and complacent.

I understand the concerns that if prisoners' access to new technologies was increased that would lead to more of the abuses I have described. Prisons are in the business of managing risk. All the time prisons are making decisions about balancing security considerations against the discretion that is necessary if staff supervision costs are to be reduced and prisoners are to participate in work and resettlement activities. Like other risk management processes in a prison, prisoners' access to new technologies and the internet needs to be based on risk assessment of the individual concerned and properly supervised. Furthermore, I would be astonished if the sort of expertise gathered in this room could not provide technical solutions that would minimise risk. Frankly, if President Obama can listen to Angela Merkel's mobile telephone calls I would have thought we could keep a check on what Fletcher and Godber are up to in HMP Slade. And, as anyone who is on the government's IT system knows, it is difficult enough getting onto the BBC News site, let alone anything more dodgy.

I suppose too, that there is a fear that a move in this direction will be seen as being 'soft' on prisoners. I suspect that is what they said when they first took the chains out, replaced straw with bunks or put telephones on the wing landings. We can't leave prisons in a time warp, and prisoners woefully unprepared for the world they will re-enter or for that matter, afford the expense of running prisons in a pre-digital dark age.

So what are the benefits to allowing prisoners to be part of the modernising justice through



gling to manage them safely and securely. - there was still a problem with drugs that could not be detected with current testing methods. - The main prison remained insufficiently safe and more prisoners told us they felt unsafe at the time of this inspection than at the last inspection or than at similar prisons. - Measures to reduce violence were weak; A third of prisoners told us they had been victimised by other prisoners and one in 10 told us they had been physically assaulted. - some incidents were not properly investigated and measures to address the behaviour of bullies and support victims were ineffective. - The use of force, special cell, segregation and adjudications was high, and the segregation unit continued to provide an unacceptably poor environment and regime. - Young adults were over-represented in violent incidents and disciplinary processes, and the prison had taken too long to identify and address this - Resettlement outcomes remained insufficient on both sites. Despite the fact that Winchester was to become a resettlement prison, little thought had been given to preparation for its new role. - The assessment of short-term and remand prisoners needs had deteriorated since the last inspection and was now inadequate. - Delays in completing risk assessments meant there was a risk that some prisoners with serious offences would be released before this was done. - Inspectors made 111 recommendations

#### **'Modernising Justice through New Technology'** *Nick Hardwick Chief Inspector of Prisons*

You can't 'modernise justice through new technology' – at least in prisons – and forget about prisoners. Part of the agenda needs to be the carefully managed improvement in prisoners' access to new technologies. In my remarks I will acknowledge the risks that need to be managed but go on to balance them against the potential benefits of digital case management, rehabilitation and improved efficiency in the day to day running of prisons. The Prison Reform Trust and the Prisoner Education Trust have produced an excellent report on this issue – 'Through the Gateway – How Computers can Transform Rehabilitation' – which I have used in preparing my remarks and I commend to you.

First, I should briefly explain the role of HMI Prisons and the work we do that informs these remarks. Prison inspection has a long history in England and Wales and my statutory role now is to report to the relevant Secretary of State on the treatment of prisoners and the conditions in prisons. Over the years, the Chief Inspector's remit has been extended beyond prisons and with partners such as HMIC, Ofsted and CQC we now inspect police and court custody, juvenile establishments and all forms of immigration detention. With partner inspectorates we now form the mechanism by which the UK delivers its obligations as a party to the United Nations Optional Protocol to the Convention Against Torture to ensure the independent inspection of all places of detention.

In all the 100 or so unannounced inspections we undertake each year we make our judgements against variants of four healthy prison tests: Safety – prisoners, particularly the most vulnerable are held safely. Respect – prisoners are held with respect for their human dignity. Purposeful activity – prisoners are able and expected to take part in activities likely to benefit them. Resettlement – prisoners are prepared for their release into the community and helped to reduce the likelihood they will reoffend. Prisoner access to new technology has a role to play in all of them.

Imagine you had been marooned on a desert island for the last five years or so – or locked in a prison cell. How much the technology and how it's used would have changed. Smart phones, PCs, tablets, the Cloud, Twitter, Tumblr, Skype, contactless payments replacing coins in your pocket – I can't keep up myself. Looking for and applying for a job, housing and a host of other services; paying our bills and managing our finances; staying in touch with family

tify, if not to fix, some of the broken pieces; Gerry's persistent reactivation of trauma was as bad as any observed throughout the conflict in Northern Ireland; he exhibited extraordinary recall, remembering the pattern of the policeman's tie in the Surrey police station, the tic of the prosecutor's face, the horror of his father's last days. Every night was a torment.

Despite these struggles, this brave and endearing human being made an enormous mark. He travelled all over Australia to challenge injustices there, most emphatically those to the indigenous Australian population; he spoke at every prestigious university in the US about innocent prisoners; he proffered himself as the best evidence of why the death penalty should be abolished, he visited the family of Shaker Aamer, the last British resident in Guantánamo, and campaigned for his release, berating Irish Americans for their instinctive failure to extend their support to a new suspect community, the Muslims, in the same way they had to him when he was wrongly detained. The diagnosis of his cancer came three weeks before his death, and in that time he came to understand the volume of affection for him across the world. He is survived by his partner, his daughter and two sisters. • Gerard Conlon, born 1 March 1954; died 21 June 2014

#### **Conrad Jones Appeals Against Conviction**

*Coventry Telegraph, 19/06/14*

A Coventry man who served years in jail after he was convicted of trying to derail a murder trial has taken his bid to clear his name to the Court of Appeal. Conrad Jones, 48, formerly of Sewall Highway, Wyken, was accused of terrifying a female witness as he did all he could to prevent her giving evidence. Jailed at Birmingham Crown Court for doing an act intending to pervert the course of justice in 2007, he served the custodial portion of a 12-year sentence. But he has always denied any wrongdoing and this week took his case to London in a bid to overturn the jury's guilty verdict. His legal team, headed by senior QC, Joel Bennathan, said the conviction is "unsafe" and should be quashed. The prosecution alleged Jones had tried to help five men beat a murder charge after the shooting of Clinton Bailey at the Three Horseshoes pub, in Foleshill, Coventry, in April 2005. The chief witness became the target of a "professional and organised" attempt to prevent her giving evidence at the trial, it was alleged. She was offered money and threatened with serious violence.

But on appeal, Mr Bennathan said serious doubts had been cast on the safety of the conviction and the reliability of the witness' evidence in the case. "The applicant submits that a review of all the accounts and evidence given by the central witness and alleged victim at his trial raises such doubts as to her honesty generally, and her truthfulness in evidence at his and other trials, such as to render his conviction unsafe," he said. "In essence, she gave an account of numerous second-hand communications from the applicant, but a single face-to-face confrontation when he, in Nottingham at about 1pm on the 1st or 2nd June 2006, sought to threaten her and bribe her so as to prevent her testifying in the murder trial." However, recently disclosed evidence showed that Jones could not have been in Nottingham on June 1 and was not there at the time he was said to have been on June 2, the QC told the London court. That fatally undermined the reliability of her evidence, he continued. Mr Bennathan said it was notable that Jones was convicted after a third trial, the first having been aborted and the second ending with the jury undecided. "If anyone was to say the prosecution case was overwhelming or devastating, well, one jury certainly didn't find it so," he told three judges. After hearing the arguments, Lord Justice Pitchford, Mr Justice Turner and Mrs Justice Carr decided to reserve their decision on the appeal until a later date.

### Major Murder Case Collapses in New 'Police Corruption' Scandal

Scotland Yard is facing serious questions after the prosecution of a man charged with murder quietly collapsed following an investigation into alleged police corruption. In a devastating new blow to the Metropolitan Police, it can be revealed that one of the reasons the Crown Prosecution Service (CPS) offered no evidence against Ali Tasci, charged with stabbing a man to death, was because prosecutors had belatedly discovered the case may have been tainted. The initial investigation into the murder was led by an officer who rose to a senior rank in the Met – and who was later identified as corrupt in a secret police report. It is also understood that another corrupt officer not involved in the original investigation was present at the crime scene before anyone had called 999.

The family of the victim, Selhouk Behdjjet, had no idea that an inquiry into suspected corruption had any influence on the decision to drop the prosecution at the Old Bailey earlier this year until they were contacted by *The Independent*. Mr Tasci has always denied the charges. News that a murder inquiry may have been compromised and a prosecution was later dropped poses disturbing questions over the extent of wrongdoing inside the Met, and raises fresh concerns over whether Scotland Yard under its current Commissioner Sir Bernard Hogan-Howe is willing to confront corruption in its ranks. The Behdjjet case has echoes of the recent scandals surrounding two other high-profile murder cases, those of Stephen Lawrence and Daniel Morgan, where police corruption was said to have tainted the inquiries. The Morgan case remains unsolved.

Mr Tasci was charged with the murder of Mr Behdjjet, a drug trafficker who was killed in his flat in north London in 1994. Selhouk Behdjjet was murdered in 1994. It is understood he was killed over a drugs deal involving several kilograms of heroin. The murder remained unsolved for almost 20 years until a cold-case review by the Met identified new forensic evidence and led the CPS to charge Mr Tasci in 2012. The review by a Scotland Yard murder squad also identified historical intelligence on police corruption related to the case, but the potential vulnerabilities were not shared with the CPS before prosecutors made the decision to charge Mr Tasci in 2012. The Met said it was “not aware” of this. Mr Tasci, 51, was then held on remand for two years inside Belmarsh, a high-security prison in south-east London which houses the most dangerous offenders.

For reasons that are unclear, a new investigation by the Met's Directorate of Professional Standards into the original 1994 inquiry began in 2013 – one year after Mr Tasci was charged and awaiting trial. The Scotland Yard inquiry found no evidence of police corruption. However, the CPS said the results of the investigation did in part contribute to the decision to offer no evidence against Mr Tasci at a pre-trial hearing at the Old Bailey in February. In a statement, the CPS said it wrote to the family “to explain the central reasons for offering no evidence” which included the fact that some “key witnesses” had subsequently died while others could no longer be relied upon. Senior CPS sources said it also offered the family a meeting when it would have raised the investigation by the Met's Directorate of Professional Standards if the offer had been accepted.

However, the daughter of Mr Behdjjet, who lives with her elderly mother, says they have never received any correspondence from the CPS. Layla Holliday, who was six months' pregnant when she learnt of her father's murder, said: “I was shocked when *The Independent* told me about this. The police told me it was for other reasons and I trusted what they were saying. You always hear of suspected corruption and cover-ups but you never think it would be this close to home.” Layla Holliday recalls one of the police officers identified by *The Independent* visiting her home a couple of weeks after her father's murder. She said: “He was asking me where all my dad's money was.

### Prisoners: Radicalism

*House of Commons: 23 Jun 2014 : Column 6W*

*Dr Fox:* To ask the Secretary of State for Justice what steps his Department is taking to prevent the spread of Islamic extremism among the prison population. [201335]

*Jeremy Wright:* We are alert to the risks posed by individuals who may wish to radicalise others, and we are committed to tackling radicalisation in the prison environment as an important element of our responsibility to protect the public and reduce re-offending. NOMS has in place a wide-ranging programme of work to manage individuals convicted of terrorist or related offences. This programme focuses on: increasing the counter-terrorism intelligence infrastructure working with partner agencies; ensuring provision of an effective Chaplaincy which can challenge extremist ideology; structured risk assessment tools and bespoke interventions; staff briefing and training, and robust processes for the management of offenders on release. NOMS contributes to the cross-Government CT strategy CONTEST, and works alongside other Departments to manage the threat posed. As with all significant criminal threats, a multi-agency approach is taken to ensure that information and learning is shared between agencies.

*Dr Fox:* To ask the Secretary of State for Justice what assessment his Department has made of the potential risks of imprisoned extremists returned from terrorist operations overseas (a) radicalising the Muslim prison population and (b) recruiting other prisoners to commit terrorist acts in the UK or overseas. [201336]

*Jeremy Wright:* I am responding to this question as I am the Minister responsible for the prison estate. We are well aware of the risks posed by individuals who return to the UK having gained experience, through training or participation, in terrorism overseas. At the current time clearly those travelling to and from Syria are of particular concern. The Prison Service works closely with the Police and other Agencies in all areas of Counter Terrorism work; including where individuals are held in custody having returned from overseas. All prisoners are managed according to the risk they pose, taking into consideration all relevant information and intelligence that is identified. The National Offender Management Service (NOMS) has long recognised the threat posed by terrorists and extremists, and has considerable experience in managing this threat. The Prison Service will continue to use its well established and effective three-tiered response: to identify behaviour that may indicate extremism, to report it using established intelligence systems, and to manage it through disruption and intervention.

### Report on an Announced Inspection of HMP Winchester

Inspection 17/21 February 2014 by HMCIP, published 24/06/14. HMP Winchester is a complex establishment - in effect it is two prisons in one. The main category B site is a typical Victorian prison of radial design holding 556 men, while the newer West Hill site is a category C training prison holding 129 men. At our last inspection in October 2012 we found that outcomes had deteriorated sharply and we were seriously concerned about the prison. We gave notice of our intention to return more quickly than usual and, unusually, announced the date of this inspection so the prison would have a clear deadline for making improvements. Although there had been progress, we were disappointed by what we found; too little had been done too late.

Inspectors had the following concerns: - the prison was seriously overcrowded and operating at 35% above its certified normal capacity - Some men's progress had been set back because they had been moved to other prisons on overcrowding drafts in the middle of training courses or other work to address their behaviour. - Following the closure of Reading Young Offenders Institution, the prison had recently started to hold young adults and was strugg-

vided during the passage of RIPA and contrary to the Interception of Communications Code of Practice; further believes that continuous mass surveillance of the social media of every UK citizen is not only incompatible with basic human rights and the Magna Carta but exposes the Government to an avalanche of privacy claims; and urgently calls on the Secretary of State for the Home Department to bring forward legislative proposals to end these practices.

### **Mental Health Deaths Inquiry Launched**

An inquiry into deaths of people with mental health conditions who have died while detained in hospitals, police custody or prisons has been launched by the Equality and Human Rights Commission (EHRC). The inquiry will examine suicide, homicide, unknown and accidental deaths of people in psychiatric hospitals, prison and police custody in England and Wales. The commission will assess evidence between 2010 and 2013 to identify trends and systemic issues that might be resulting in deaths. There were 98 non-natural deaths of people detained in psychiatric hospitals and almost half of those who died in police custody in 2012-31 had mental health conditions, the EHRC said.

The commission will work closely with social care regulator the Care Quality Commission and other relevant organisations and will also take evidence from frontline staff. The inquiry will gauge how well hospitals, prisons and police forces are complying with Human Right Act duties to protect everyone's right to life. A report on the findings will be published in spring 2015. Mark Hammond, chief executive of the EHRC, said: "The right to life is the most fundamental right we all share. Despite efforts by the various authorities to prevent deaths of people in psychiatric hospitals, prisons and police custody, every year there are preventable deaths. We want to work with all the organisations involved to make sure the lessons of previous tragedies are indeed being learnt." Andy McNicol , Community Care, 10/06/14

### **Parole Board Meetings - Victims Personal Statment- To Attend, Not Attend**

*Dan Jarvis:* To ask the Secretary of State for Justice (1) in what circumstances offenders can choose not to attend a parole board meeting when a victim reads a victim personal statement; (2) what estimate he has made of the proportion of offenders present at parole board hearings when a victim personal statement is read.

*Jeremy Wright:* The victims of serious violent and sexual offences, where the offender has been sentenced to 12 months or more, may opt into the statutory victim contact scheme, operated by the National Probation Service. Where they do so, they will be informed of a Parole Board review and offered the opportunity to make a victim personal statement (VPS). The VPS provides victims with a valuable opportunity to tell the Parole Board how the offence has affected them or their family, both at the time it was committed and since, and how they think the offender's release would affect them. The VPS can contribute to a better and more informed hearing, as it may enable more robust questioning of the offender about the offence, remorse and victim empathy.

The independent Parole Board is responsible for the conduct of parole hearings. The normal practice is that the offender will not be present when the victim reads his/her VPS, but there may be circumstances where he/she will be. In many cases, the victim does not wish the offender to be present during the reading. While the conduct of an individual hearing is for the chair of the panel of the Parole Board, the chair cannot insist that the prisoner attends to hear the VPS being read if he/she does not wish to do so. No estimate has been made centrally of the proportion of offenders present at the hearing when the VPS is read out.

It was an odd question and made me more suspicious as my dad's flat was ransacked after he was killed and we thought the police had been going through things which didn't really relate to the investigation. At the time we just assumed they were doing their job."

A CPS spokesman said the investigation by the Met's anti-corruption command led prosecutors to "conclude that the integrity of the crime scene could not be guaranteed". The Met said it was "not aware" of the crime scene's alleged compromise. A police source familiar with the case said: "This news will cause utter chaos inside the Met. You can't mess about with murder – it is the most serious offence on the books. There has been a massive cover-up to protect the reputation of the police and the family have been misled. The Met claims other damaging cases like the murders of Stephen Lawrence and Daniel Morgan were all such a long time ago. Well, this prosecution collapsed in 2014 and the full reasons were suppressed. I am afraid there is a cancer at the heart of Scotland Yard that has never, ever been dealt with."

Keith Vaz, chairman of the Home Affairs Select Committee, said: "It is unnerving to discover another case of potential corruption which may have destroyed a legitimate murder prosecution. It is clear that there may still be skeletons in the closet which, despite the Met's claims to the contrary, are affecting justice today. It is vital that all possible corruption is exposed in order to wipe the slate clean – otherwise many more families may be left without the closure they deserve. I will be writing to Alison Saunders, the Director of Public Prosecutions, to understand just how many prosecution cases have been compromised by corruption."

A senior detective on the Behdjjet case was later named as a rogue police officer in Operation Tiberius, a secret Met file compiled eight years later, in 2002. The report found organised crime syndicates could infiltrate Scotland Yard "at will". Operation Tiberius claims the officer involved in the Behdjjet case also caused a separate prosecution to collapse in 1998 before he left the force. The prosecution of the detective's own informant for fraud was aborted after the officer was found to have had "unauthorised and undocumented contact" with the suspect. Once he left the Met, the officer went on to become a successful businessman and employed his informant, according to Operation Tiberius. His lawyer said that the "substance" of Operation Tiberius was "false". He added: "The information which you have, certainly insofar as it relates to him, is misleading, inaccurate and untrue." Tom Harper, Independent, 20/06/14

### **Camden Artist's Sudden Death After Police Questioning** *Tom Marshall, Ham & High, 19/06/14*

The Independent Police Complaints Commission (IPCC) has launched an investigation into the death of the 37-year-old, an artist and former social sciences student from Kentish Town. The man, who the Ham&High has agreed not to identify, suffered a cardiac arrest after being stopped by officers on a cycle path off Agar Grove, Camden Town, on Thursday June 5. He died in hospital three days later on Sunday June 8. The dead man is described as Asian, of average height and slim build, who was wearing a red top and dark trousers at the time.

His distraught family say they have no idea what happened, but that he seemed to have injuries that were "consistent" with being restrained. A close relative said: "We don't know why he was restrained or stopped – the police have told us nothing. There's a complete blackout as to what happened. "What he was doing on that footpath, I don't know. There are injuries on his body that are consistent with being restrained."

The man came into contact with officers at 11am and paramedics arrived at about 11.35am. He suffered a cardiac arrest, went into a coma and died after his life support was switched off.

Police have released few details aside from saying that officers had "cause to stop him"

during routine patrols, after which he was “taken unwell”.

The family spoke to the Ham&High after visiting the scene in an effort to piece together his final moments. They said the man was “very physically fit”, with no known health conditions. “We’re trying to establish the facts ourselves,” a relative said. “He was a beautiful, handsome young man. Everyone who knew him loved him and loved his company. He was a peaceful man. He was not violent or aggressive towards police. It’s all so sudden and unexpected.” A post mortem was carried out on Friday and the results are pending.

A spokesman for Camden Police said: “Officers administered first aid until the London Ambulance Service arrived. The matter has been referred to the IPCC, who are investigating.” The IPCC is appealing for witnesses after carrying out door to door enquires at the scene last Thursday, June 12.

IPCC Commissioner Jennifer Izekor said: “This is a tragic incident. The IPCC will carry out a robust and thorough investigation. I would urge anyone who witnessed any part of the police contact with the man to come forward as soon as possible. My thoughts are with the family.” IPCC witness appeal number 0800 015 4876 or people can email [agargrove@ipcc.gsi.gov.uk](mailto:agargrove@ipcc.gsi.gov.uk).

#### **Merseyside Police pay John Spencer £40,000 for Wrongful Arrest** *BBC News, 21/06/14*

A 37-year-old man has received £40,000 compensation from Merseyside Police after he was punched and sprayed with CS gas during a wrongful arrest. John Spencer, of Seaforth in Liverpool, was assaulted by an officer on 8 August 2010 after he denied making improper phone calls to a former friend. His mother Susan, who witnessed the incident, was awarded £10,000. Mr Spencer said: "It's mentally destroyed me - I can't trust the police again."

Mr Spencer had been asleep when the officers knocked on the door of his home in Sandhurst Close with a warrant at about 01:30 BST but woke up. He refused to accept the warrant and went back to bed. "The officer slammed the door open, grabbed me by the throat, started physically punching me and spraying me with CS gas. "When the assault was happening my mum pulled the officers off me to stop them hitting me," he said.

His mother told two officers the claims made against her son were untrue, as their home phone had been disconnected and there was no credit on their mobile phones, Iain Gould DPP Law Solicitors said. Mr Spencer was arrested on suspicion of assaulting a police officer, of which he was later acquitted at Liverpool Crown Court, his solicitor Iain Gould said. Mrs Spencer was also arrested for obstructing police. I issued court proceedings in which I alleged false imprisonment, assault, malicious prosecution and misfeasance in public office."

A Merseyside Police spokesman said: "The force can confirm that it sought external legal advice before a settlement amount was negotiated before the case went to trial." "Merseyside Police remains absolutely committed to the highest integrity and the professional standards of its officers at all times."

#### **IPCC Serves Notices In Sean Rigg Investigation**

The IPCC's reopened investigation into the death of Sean Rigg is progressing. On 13 May 2014, the Administrative Court approved the terms of a consent order quashing the findings of the original investigation in relation to the arrest, restraint and detention of Mr Rigg. The IPCC awaited the outcome of matters at the Administrative Court before serving disciplinary notices on the officers. IPCC investigators have now served notices of investigation on five officers involved in the arrest, restraint and detention of Sean Rigg. Arrangements are being made to interview the officers under criminal and misconduct caution.

Court's approach in MM. It could not be seriously argued, he said, that the way in which the regimes for the issue of certificates under the 1997 Act and for the obligation to answer questions (and for the questioner to act in reliance on them) under the 1975 Order worked were insufficiently accessible or foreseeable for them not to be “in accordance with law” [31]

Both domestic courts and Strasbourg are giving way to the temptation to elide the tests of legality and necessity when determining whether an interference with Convention rights is permissible. It is particularly important that Strasbourg judges observe the difference between the two, because legality is a bright line test, whereas necessity gives states some margin to manoeuvre: a cardinal feature of [the Strasbourg] court's jurisprudence in relation to necessity is to afford a margin of appreciation, of greater or lesser width, to the contours within which the member state has seen fit to draw the impugned rules. The ECtHR does not extend the margin of appreciation – and it is right that it should not do so –to its consideration of legality. [32]

In Lord Wilson's view, Strasbourg's “powerful criticism” in MM of the failure of the regime under the 1997 Act to regulate disclosure by reference to the circumstances of the caution, clearly addresses its proportionality and thus the necessity, as opposed to the legality, of the interference. The 1997 Act did not fall foul of the principle of legality; its application, on the other hand, to the cases of T and JB the regime set up by the 1997 Act and by the 1975 Order failed the requirement of necessity. The disclosure of their cautions, obviously that of T but also in my view, in the light of the triviality of her one and only offence, that of JB, went further than was necessary to accomplish the statutory objective and failed to strike a fair balance between their rights and the interests of the community; and so it violated their rights under article 8. [50]

Lord Wilson noted, further, that it was the Home Secretary who identified a need to scale back the criminal records system “to common sense levels”. Lord Reed pointed to a lack of a rational connection between dishonesty as a child and the question of whether, as an adult, the person might pose a threat to the safety of children with whom he comes into contact [142].

In upholding the declarations of incompatibility in relation to the 1997 Act, the Court observed that it was impossible to read and give effect to its provisions in a way which was compatible with the respondents' Convention rights [53; 120]. But they allowed the Secretary of State's appeal in T against the decision that the 1975 Order was ultra vires. This was inconsistent with the declaration of incompatibility, which stated that it did not affect the validity or continuing operation of the 1997 Act, Part V of which in fact relied upon the validity of the terms of the Order [61-62]. No judicial remedy in relation to the Order was necessary. Lord Reed explained that it had no adverse consequences for T and he could be regarded for the purposes of the Convention as having obtained just satisfaction given the courts' acceptance that his complaint is well-founded and the resultant amendment of the Order [66;157-158].

#### **Early Day Motion 147: Mass Surveillance**

That this House notes with great concern that surveillance by GCHQ of every British resident using Google, Facebook, Twitter and YouTube has now been confirmed by the Director General of the Office for Security and Counter-Terrorism; further notes that the Regulation of Investigatory Powers Act 2000 (RIPA) has been interpreted as authorising mass surveillance of internet communications, content and metadata sent inside the UK; further notes that GCHQ justifies such conduct without a warrant on the basis that such data is external under RIPA when mediated by a computer server in the US; believes that this construction is flawed, contrary to evidence given to Committees of the House, contrary to written assurances pro-



their right to respect for private life under Article 8 of the European Convention on Human Rights. T also asserted that his obligation to disclose the warnings violated the same right. Both T and JB were successful in the Court of Appeal, which made declarations that the relevant provisions of the 1997 Act were incompatible with Article 8. The Court of Appeal in T held that the 1975 Order was also incompatible with article 8 and beyond the powers set out in the Rehabilitation of Offenders Act 1974.

The Secretaries of State appealed to the Supreme Court. While they have made amendment orders designed to eliminate the problems identified by the Court of Appeal, their appeals concern the 1975 Order and 1997 Act as they stood at the time. The following summary is based on the Supreme Court's Press Summary.

Legal Background"Under the 1974 Act, where a person is asked about his criminal record the question will be treated as not extending to 'spent' convictions. Consequently, he is entitled not to disclose these and cannot be liable for a failure to do so. Equally, a prospective employer is not entitled to make any decision prejudicial to the individual by reference to spent convictions or to any failure to disclose them. This applies to cautions, warnings or reprimands, which are spent as soon as they are given.

However, the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and various sections in Part V of the Police Act 1997 make certain questions exempt from the 1974 Act, particularly where they relate to specified professions and employments, such as working with children and vulnerable adults. Part V of the 1997 Act deals with enhanced criminal record certificates (ECRCs). These are issued where an "exempted question" within the meaning of the 1975 Order is asked, including by a prospective employer. Disclosure is then made of every "relevant matter" recorded on the Police National Computer, including, at the relevant time, any spent conviction or caution [83-84]. These were the provisions which the Court of Appeal declared to be incompatible with the Convention in January 2013.

Lord Neuberger (President), Lady Hale (Deputy President), Lord Clarke, Lord Wilson, Lord Reed unanimously dismissed the Secretary of State's appeals against these declarations of incompatibility. They allowed the appeal against the Court of Appeal's declaration that the 1975 Order was ultra vires.

Reasoning behind the decision: The respondents' cautions represented an aspect of their private lives, respect for which is guaranteed by Article 8. Laws requiring a person to disclose his previous convictions or cautions to a potential employer constituted an interference with that right. The disclosures in the ECRCs also constituted Article 8 interferences, significantly jeopardising the respondents' entry into their chosen fields of endeavour.

Lord Reed considered that sections 113A and 113B of the 1997 Act were incompatible with Article 8 because they fail to meet the requirement under the Convention that any interference with the Convention right be "in accordance with law". In this he followed the line of reasoning taken by the Strasbourg Court in *MM v UK* (No 24029/07, *The Times* 16 January 2013). Legality requires safeguards which enable the proportionality of the interference to be adequately examined [108-119; 158]. Legislation like the present which requires the indiscriminate disclosure by the state of personal data which it has collected and stored did not contain adequate safeguards against arbitrary interferences with Article 8 rights [113-119]. Lord Neuberger, Lord Clarke and Lady Hale agreed with Lord Reed's conclusion on legality [158], while Lord Wilson disagreed [28-38], emphasising the importance of the distinction between the tests of legality and necessity in a democratic society. On this point he was critical of the European

### Early Day Motion 134: Increase in the Prison Population

That this House is concerned by the Government's recent decision to further increase the prison population by over 400 inmates; notes the ongoing rise in the prison population in each consecutive year since the Government came to power and the consequences such increases in the population have on staff and inmates, including a higher number of assaults; is alarmed that the Government has closed over 20 prisons since 2010 and thousands of prison staff have left the service under voluntary exit schemes putting additional pressure on all remaining staff; further notes the repeated warnings Ministers have received from hon. Members, trade unions and the Chief Inspector of Prisons regarding an increase in the prison population; and calls on the Government to stop its plans to further increase the prison population and instead focus on adequate resources and further investment in the public sector prison service. Sponsors: Lavery, Ian/ McDonnell, John / Llwyd, Elfyn / Morris, Grahame M / Mearns, Ian / Clark, Katy - House of Commons: 18.06.2014

### 38 Police Officers Leave While Facing Conduct Inquiries *Danny Shaw, BBC News, 20/06/14*

Thirty-eight police officers in England and Wales have left the service in the past four years, avoiding inquiries into their conduct and possible disciplinary action, figures show. The data from the IPCC police watchdog relates to death in custody cases and other serious allegations. The BBC has seen the data, which has been examined by the watchdog the Independent Police Complaints Commission (IPCC), from and including 2009-10 to 2012-13. Among those to leave were six Metropolitan Police officers, six from Durham and six from Essex police. A police spokesman said that leaving early was less costly to the taxpayer. Police officers who resign or retire while under investigation cannot be subject to any disciplinary action - although criminal proceedings may still be brought against them. If they leave they still get a pension, and an officer cannot be interviewed about the case under investigation. The IPCC said the practice hampered investigations and damaged public confidence in policing. The figures, supplied by the IPCC, relate to 29 out of 482 completed investigations independently conducted by the watchdog. In the 29 investigations, 26 officers retired and 12 resigned. The investigations included three death in custody cases. The other investigations related to death following police contact cases, corruption allegations, and serious complaints about neglect of duty and inappropriate use of force. An IPCC spokesperson said: "As a general principle a police officer resigning or retiring when they are subject to investigation does not serve anyone's purpose and can frustrate our investigations leaving important questions unanswered." The spokesman added that the IPCC did not have the power to prevent a police officer or member of police staff leaving before misconduct proceedings.

But College of Policing chief executive, Chief Constable Alex Marshall, said that the college was compiling a national register of officers that had been dismissed for gross misconduct "including those electing to resign or who retire in the face of gross misconduct". He said: "The register isn't just a matter of naming and shaming bad police officers, it is about protecting the public from officers who commit wrongdoing by preventing them from re-entering the service." Since the register came into effect in December, 148 names have been added to it.

Marcia Rigg-Samuel, whose brother Sean Rigg died at Brixton Police Station in London, said she was alarmed at the figure that 38 officers had left the police before investigations ended. Last month, it emerged that an officer under investigation in her brother's case - PC Andrew Birks - who was involved in Mr Rigg's arrest, restraint and detention - was leaving

the force. The officer was subsequently suspended which had the effect of preventing him leaving, because an officer under suspension requires approval to leave. Ms Rigg-Samuel said: "Our family are alarmed at the statistics where officers have retired or resigned pending disciplinary investigations, just as PC Birks attempted to do just last month in our case. It is important that this escape hatch is closed where there are serious investigations against officers; for the time being all such officers must be suspended in order to avoid allowing them the opportunity of preventing the search for the truth and potential misconduct proceedings."

On Thursday, the IPCC announced that it had served notices of investigation on five officers involved in the arrest, restraint and detention of Mr Rigg and that arrangements were being made to interview them under criminal and misconduct caution. Scotland Yard said two of the four were on restricted duties. Daniel Machover, the Rigg family's lawyer, called for the remaining four officers who are being investigated in the case to be suspended to ensure they do not resign or retire.

But the national policing lead for professional standards Chief Constable Jacqui Cheer said: "Where officers resign during the course of gross misconduct proceedings, they often do so as a result of the strength of the evidence against them and an acceptance that dismissal is inevitable. By resigning at this early stage, the expense to the service and taxpayers of carrying out an extended investigation is saved. Officers or staff who resign in the face of a gross misconduct investigation can then be placed on the College of Policing's Disapproved Register, which prevents them from re-entering the service." The Home Office said it was committed to changing the law to ensure officers who did leave in such circumstances still faced sanctions.

#### **Probation Service in Chaos as Systems Wipe Offenders' Data** *Mark Leftly, Independent*

Britain's probation service is in chaos after a series of crippling computer failures over the past three weeks, with thousands of offenders' case files lost, frozen or wiped. In preparation for widely condemned moves to hand over 70 per cent of the service to the private sector later this year, the IT system was upgraded on 2 June. But probation officers across the country have told The Independent on Sunday that the updated systems are full of glitches and have even shut down, leaving the service under "crisis management". Offenders have been turned away from community service, evidence has not been available for court hearings, and new offences have not been added to case files. The Shadow Justice Secretary, Sadiq Khan, warned last night that public safety had been "put in danger" by the crisis. Mr Khan said: "I have been inundated with horror stories from around the country, and in the past few days have met staff at the coalface in London and South Wales about the chaos that's crippling the probation system. What's really alarmed me is how the IT system on which so much relies is in meltdown. "If information on serious and violent offenders is being lost in the system, or disappearing into gaps because of the crazy way the probation service has been carved up, that's when public safety is put in danger." While Unison said it warned the Government last month that "the potential for this mass restructuring of probation ICT [information and communication technology] systems ... to go badly wrong is very high".

The Justice Secretary, Chris Grayling, reorganised the service in April from 35 probation trusts into 21 community rehabilitation companies (CRCs) that mainly supervise those on community sentences or just released from prison. Private-sector contractors and mutual companies formed by probation staff are currently bidding to run the CRCs, with the winners expected to be confirmed by the end of the year. The Government is also establishing a national probation service (NPS) for high-risk offenders, which will stay in state hands.

However, this division is hindering officers' efforts to work together on cases that cross both services, an issue further complicated by the changed IT system that does not allow officers to see each others' files. A revamp of a system known as nDelius also left some CRCs without access to files for a week. A second system, Oasys, has also been hit by glitches. Dave Adams, the Warwickshire branch chairman of Napo, the probation officers' union, said officers could not record the hours of community service offenders had done, creating a "huge backlog" of work. He added that around 30 offenders on community service had to be turned away in Warwickshire alone that first week. Officers did not have their case files, so could not be certain that offenders were not, for example, guilty of sex crimes that would rule them out of working on school projects.

Other offenders who should have seen a probation officer within days of being in court have had those meetings delayed because court orders could not be electronically documented. "Colleagues are putting in entries to case files, then find them disappearing," said Mr Adams. Napo's West Mercia branch chairwoman, Joanne Perkins, added that officers, asked in court for information on areas like how much unpaid work an offender had completed, could not provide the information as they could not access the files. "'Firefighting' and 'crisis management' are the sort of terms being bandied about," she said. Yvonne Pattison, a Napo vice-chairwoman and a probation officer in the north-east, said the system has been dubbed "Delirious", with cases "just disappearing" from computer screens and others closing down half-completed as the Save button was not working. This has created major delays: serious cases involving parole reports can take up to two days to write. Ms Pattison said at one point that the system would not allow updates to breaches of, and amendments to, offenders' probation conditions. She added that new glitches were coming up "all the time".

Ian Lawrence, general secretary of Napo, said: "These reforms are an untried and untested dangerous social experiment which are being rushed through at breakneck speed without the proper infrastructure being in place. "We urgently call on the Government to halt these so-called reforms, allow the infrastructure to be put in place, and to test this new system to make sure the public won't be put at risk," he added.

A Ministry of Justice spokeswoman said: "Where local IT issues have occurred we have worked with probation staff to swiftly resolve them. We have also kept in close contact with the courts and have had no reports of serious disruption."

#### **Old and Minor Convictions/Cautions Need Not be Disclosed**

Rosalind English, UK Human Rights Blog, 18/06/14

R (Application of T & anor) (Respondents) v SSHD and anor (Appellants) - The Supreme Court has unanimously declared that government rules regarding the disclosure of spent convictions are unlawful and incompatible with Article 8 of the Convention.

One of these conjoined appeals involved T, who was prevented from employment involving contact with children when a police caution was disclosed in respect of the theft of two bicycles when the respondent was eleven years old (see my previous post on the Court of Appeal judgment in T). In JB, the police issued a caution to a 41 year-old woman in 2001 when she was caught shoplifting (a packet of false fingernails). In 2009 she completed a training course for employment in the care sector. She was required to obtain an "enhanced criminal record certificate" or ECRC, which disclosed the caution. The training organisation told JB that it felt unable to put her forward for employment in the care sector.

Both respondents claimed that the references in the ECRCs to their cautions violated