the Parole Board may consider that an offender has reduced their risk of harm, despite not being able to attend a particular course, because they have been able to undertake other offending behaviour work which has achieved the same outcome.

As at 31 December 2013 there were 5,335 prisoners serving an Indeterminate Sentence of Imprisonment for Public Protection, of which 3,561 were beyond the tariff. Of these prisoners beyond tariff, 3,160 had completed at least one accredited offending behaviour programme successfully; 415 had attended a programme and not completed it successfully and of these, 62 had yet to complete any programme successfully; and 184 are currently attending a programme and the outcome is not yet known. The figures have been drawn from administrative IT systems, which, as with any large scale recording system, are subject to possible errors with data entry and processing. No information is collected on how many prisoners have not been offered an accredited offending behaviour programme and this could only be obtained at disproportionate cost.

Police Chief Inspector Tanya Brookes Jailed for Fraud *BBC News, 06/05/14*

A former Surrey Police chief inspector has been jailed for a series of fraud offences targeting high street stores. Tanya Brookes, 46, was condemned by a judge for bringing "shame" on the police service. She was convicted of 25 counts of fraud and cleared of two at an earlier trial. She pleaded guilty to eight further offences in March. Other charges were ordered to lie on file. At Winchester Crown Court Brookes was jailed for two-and-a-half years. Brookes, from Nursery Road, Godalming, who had worked under her maiden name of Sillett, was suspended from duty after her arrest in January 2012. She was later dismissed for misconduct.

UK Court Rejects Extradition Request due to French West Indies Jail Conditions

Magistrates have refused to extradite to France a man suspected of cocaine smuggling and firearms offences, on the grounds that conditions in its overseas prisons are inhumane and degrading. The decision by judge Quentin Purdy will be seen as a blow to France's commitment to human rights and demonstrates that the European arrest warrant is not an automatic conveyor belt for removing suspects. The judgment, given last Thursday, has led to the release of Kurtis Richards, 54, who had been in Wandsworth prison for almost a year after being arrested at Gatwick airport. Richards, a citizen of Dominica in the West Indies, was accused in the arrest warrant of smuggling approximately 80kg of cocaine as well as a pump-action shotgun and two hunting guns into Guadeloupe. He denies the charges.Guadeloupe and Martinique have the status of administrative departments of France. The application for Richards' extradition is believed to be the first time French authorities have used a European arrest warrant on behalf its overseas possessions in a UK court.

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 Cullinene, 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,

Miscarriages of JusticeUK (MOJUK)
22 Berners St, Birmingham B19 2DR
Tele: 0121- 507 0844 Fax: 087 2023 1623

MOJUK: Newsletter 'Inside Out' No 476 (08/05/2014)

Case For Judicial Review Changes Not Made *Joshua Rozenberg, theguardian.com*

The government has not demonstrated the necessity for its planned changes to judicial review, an all-party committee of MPs and peers said on Wednesday. And proposals by the justice secretary, Chris Grayling, called into question his very role.

In a measured and well-researched report, the joint committee on human rights said that Grayling had not made the case for his claim that challenges to public authorities in cases not involving immigration had "expanded massively" in recent years. Immigration claims are no longer heard in the high court, the committee pointed out, and when these cases are excluded from the figures the number of claims has remained remarkably steady.

Grayling modified some of his initial proposals in response to sharply-worded criticism from the judges, as I reported in February. But the MPs and peers were concerned that changes in costs rules would deter contributions by bodies that intervene in individual cases to assist the courts. And they said that restricting the availability of cost-capping orders until a later stage in the proceedings would undermine effective access to justice.

The committee reserved its most far-reaching criticism for Grayling's dual role as lord chancellor and secretary of state for justice. Until Lord Irvine was sacked by Tony Blair in 2003, the lord chancellor was a quasi-political figure with, as the committee put it, the "role of standing up within government for the interests of the justice system". Now, it said, the holder of that office was a "political minister in a government which has collective responsibility for its political views".

The committee noted that Grayling had written an article for the Daily Mail on 6 September 2013, the day on which his judicial review consultation was launched, suggesting that judicial review was being used as "a promotional tool by countless leftwing campaigners". The committee said: Such politically partisan reasons for restricting access to judicial review, in order to reduce the scope for it to be used by the government's political opponents, do not qualify as a legitimate aim recognised by human rights law as capable of justifying restrictions on access to justice, nor are they easy to reconcile with the lord chancellor's statutory duties in relation to the rule of law.

The MPs recognised that ministers had a legitimate interest in ensuring that judicial review was not abused in a way that incurred unnecessary public expense or delayed the decisions of democratically elected public bodies. Nevertheless, they continued, the lord chancellor's energetic pursuit of reforms which place direct limits on the ability of the courts to hold the executive to account is unavoidably problematic from the point of view of the rule of law. Providing independent judges with the means to deal adequately with possible abuses is an important part of the constitutional arrangements … In our view, the government's proposals on judicial review expose the conflict inherent in the combined roles of the lord chancellor and secretary of state for justice.

The committee concluded that these issues should be considered by other Lords and Commons committees and recommended a "thoroughgoing review" of Grayling's combined roles. Such criticisms were anticipated by parliament when it passed the Constitutional Reform Act 2005, which begins with fine words about the lord chancellor's "constitutional role in relation to the rule of law". The act also requires him and other ministers to uphold the independence of the judiciary. Grayling told the committee he took these responsibilities very

seriously. But there must be some doubt about whether these provisions could ever be used as the basis for a legal challenge. My own view is that the conflicts identified by the committee are inherent in the role of a secretary of state who, like any other politician, is seeking further advancement within government.

It is significant that a well-respected cross-party committee of senior MPs and peers has drawn attention to the effects of politicising the role of lord chancellor. There is no question of going back to the pre-2003 arrangements, which were already showing strain at the time. But that makes it all the more important for parliament to give the most intense scrutiny to proposals that may further threaten the rule of law.

Chris Grayling Blocks Inquiry Into Sexual Assaults Inside Jails *Chris Green, Indpendent*

The Secretary of State for Justice, is blocking the work of the first ever independent inquiry into the extent of rape and sexual assault in Britain's prisons, sources have told The Independent on Sunday. The Commission on Sex in Prison was set up in June 2012 by the Howard League for Penal Reform, Britain's oldest prison reform charity, to investigate the prevalence of "coercive sex" – which could involve rape, harassment, intimidation, assault or bribery – in UK jails. Academics, former prison governors, politicians and health experts were recruited to carry out interviews with serving prisoners. Sources said the work was welcomed by Ken Clarke, the then Justice Secretary, but that relations soured when Mr Grayling took on the role in September 2012.

Researchers are infuriated that they have been banned from approaching serving prisoners or current prison governors – and even prisoners no longer behind bars but currently on licence or parole. One source said the Ministry of Justice (MoJ) was doing "everything in its power to block the commission's work". The ban means that no prisoner serving a life or indeterminate sentence is permitted to participate in the research. For those on licence, even volunteering to give evidence could be regarded as a breach of their conditions, which could be punishable by a recall to prison.

A source close to the commission said the MoJ seemed to be "in denial" over the issue of sex in prison and said it was "disappointing" that the ministry was standing in the way of an independent inquiry. We wanted to do proper research in prison or with people who have just been released … and we've been blocked from doing that," they said. "We know there are very unhealthy practices going on inside prison. We know there's coercive and abusive sex going on – it would be bizarre if there wasn't. But nobody quite knows how prevalent it is." They added that the decision not to allow researchers access to serving prisoners was all the more baffling as previous studies had been permitted, such as a Howard League investigation into the experiences of former armed service personnel in jail, which reported in 2011. Mr Grayling is believed to have taken exception to the issue of consensual sexual relationships in prison, which the commission is also studying. He is said to have dismissed the inquiry with the words: "Prisoners aren't going to have sex on my watch."

Some of those involved with the project believe the Howard League's vocal opposition to many MoJ policies – such as cuts to prisoners' legal aid and the ban on inmates receiving parcels – has influenced Mr Grayling's opinion of the research.

"We know that the Secretary of State is taking it very personally, as is obvious from his statements about 'left-wing pressure groups'. Our commission's work seems to have fallen into that whole world view," said Andrew Neilson, the charity's director of campaigns. There's an inescapable sense that we have a Secretary of State and Lord Chancellor who is taking a very politicised view of his role. Everything is being seen through the prism of Us vs Them, which for a government minister is not a helpful way to act."

[5] The ground of appeal relates to the competency of KA's statement as proof of fact, having regard to the dicta in A v HM Advocate 2012 JC 343 that for a statement to be introduced as evidence of fact it was necessary for the four elements referred to by Lord Bonomy to be made out. These included, in particular, that the witness remembered giving a statement and accepted that it was the truth. Reference was made to Rehman v HM Advocate [2013] HCJAC 172. The submission involved a proposition that the witness's evidence should be looked at as a whole and, when that was done, her position was essentially that she could remember neither the events nor the making of the statement.

[6] In response, the Crown submitted that the requirements for a statement to be treated as evidence of fact in terms of Jamieson v HM Advocate (No. 2) 1994 JC 251 were simply that the witness must accept that she gave a statement to the police, could not recall what was in the statement but acknowledged that what was said was true. The four elements referred to by Lord Bonomy were obiter and had not been accepted by Lord Emslie or mentioned by Lord Marnoch.

[7] This is a case in which it is reasonable to conclude that the witness was not keen to give evidence against the appellant and was simply not being candid when she said that she had no recollection of the incident or of giving a statement to the police. That having been said, the witness did ultimately accept that it was her signature on the police officer's notebook and that she must therefore have spoken to the police at the relevant time and place. The witness also accepted not only that as a generality she would have told the police the truth, she also actually accepted that the material passages in her statement were true.

[8] No more was required for the content of her statement to form part of her evidence capable of proving fact in terms of Jamieson (supra). As the Lord Justice General (Hope) said in that case (at 259), it is sufficient if the witness accepted that she had made a statement and that what she had said was the truth. A (supra) was concerned with a complaint about a misdirection on adoption of statements in terms of section 60 of the Criminal Procedure (Scotland) Act 1995 and is not directly relevant. As it was put in simple terms in Rehman (at para [49]), albeit also in the context of a misdirection complaint, if the witness accepts that her statement contains the truth, if it is proved it becomes part of her testimony, available as proof of fact. That is the position in this case and this appeal must accordingly be refused.

Imprisonment for Public Protection (IPP) Prisoners *House of Lords / 6 May 2014*

Lord Wigley to ask Her Majesty's Government how many Imprisonment for Public Protection prisoners were imprisoned at the latest date available date; how many of those were beyond the tariff; and of those beyond their tariff, how many (1) have completed rehabilitation programmes courses successfully, (2) have been on rehabilitation courses but have not completed them successfully, (3) have been offered rehabilitation courses but are awaiting their completion, and (4) have not been offered rehabilitation courses.[HL6602]

Lord Wallace of Saltaire (LD): The Parole Board assesses the risk posed by individual prisoners when considering their release or transfer to open conditions, and work that has been completed to reduce these risks, rather than only looking at whether specific offending behaviour programmes (OBPs) have been completed. It is not mandatory for Indeterminate Sentence Prisoners to complete OBPs in order to achieve release. Other work that may help to reduce risk may take the form of accredited OBPs; however, it may also include activities such as education or training, work, one to one sessions with a psychologist and a range of other interventions. Although in some circumstances an OBP may be the preferred option,

Queensland Jail in Lockdown as Smoking Ban Anger Remains

The protest at the Southern Queensland Correctional Centre near Gatton, which ended about 2am on Tuesday 6th May 2014, was one of two protests at state prisons this week. Five inmates climbed onto a roof to protest against the ban, which came into affect on Monday. A Justice and Correctional Services spokeswoman said authorities were looking into the cause of the unrest and if charges would be laid. Michael Clifford, spokesman for the prison guards' union United Voice, said the smoking ban had created tension between guards and inmates. He said the lives of prison workers were in danger. "The government maintains this smoking ban was implemented to create a safer workplace, however it's clear it has had the opposite effect," Clifford said in a statement. Our officers are paying the ultimate price by being put in even more danger." The Arthur Gorrie Correctional Centre in Ipswich also remains in lockdown after two prisoners also climbed onto a roof on Monday, reportedly to protest over their access to the prison oval and food. Investigations into that protest were also continuing, a government spokeswoman said. Smoking has been banned in Queensland prison cells since 2008, but the new ban extends this to other areas of the state's correction centres.

Brian Croal V. Her Majesty's Advocate [2014] ScotHC HCJAC_34 (15 April 2014)

[1] On 20 June 2012, at Stirling Sheriff Court, the appellant was found guilty of an assault on a female, namely MH, by repeatedly punching her on the head to her injury and by threatening her with violence at an address in Fallin on 26 February 2012. Sentence was deferred several times until on 20 February 2013, after the appellant had completed a 2 year Drug Treatment and Testing Order in respect of other matters, he was fined £250. The ground of appeal is that the sheriff erred in repelling a no case answer submission.

[2] The evidence against the appellant came first from the complainer. She did not have a clear recollection of the incident, but did remember providing a statement to the police. It is not disputed that the complainer "adopted" her statement as her evidence and that this provided one source of evidence that the appellant had assaulted her as libelled.

[3] Secondly, there was evidence from a female, namely KA, who initially purported to have no recollection either of the incident or of giving a statement to the police, because of the effects of valium and heroin. She maintained that she had no memory over a 2 day period. She did not even know why she had been cited to attend court. However, she said that she was prepared to "accept" that a police officer had spoken to her if the officer gave evidence to that effect. She did acknowledge that a statement, which was noted in a police officer's notebook, had her signature appended to it, albeit that its nature pointed towards her drug addled state. This meant, however, that she had "obviously" been talking to the police. She also accepted that, if she had spoken to the police, she would have told the police the truth. In particular she accepted that it would be the truth if she had told the police, as recorded in the notebook, that she had gone with the complainer on a bicycle to a shop in Fallin and had encountered the appellant and his brother. The appellant had called the complainer and the witness "grassing wee bastards" and approached them aggressively. The appellant then said that he was going to hit the complainer and he did do by skelping her twice on the face. The witness accepted not only that this would be the truth if contained in the notebook but also that this was the truth. This is so albeit that in cross-examination she reverted to saying that she could not remember anything that had happened or giving the statement.

[4] The witness was able to identify the appellant, whom she knew as a neighbour, in court. In due course the taking of the statement and its content was spoken to by the relevant police officer.

The IoS spoke to several recent prisoners on condition of anonymity who said they had regularly witnessed sexual assaults taking place in the jails where they served. "We had a number of serious cases at one prison where younger or vulnerable prisoners were sexually molested or even raped," one said. In every case known to me, all that the prison authorities did was to move the alleged perpetrator, sometimes days or weeks later. Only one case actually got reported to the local police and that was when the victim was released and went to the police to complain."

Sadiq Khan, Labour's Shadow Secretary of State for Justice, said: "Not only are there public health issues [with sex in prison], but some of what goes on might even be criminal. Standing in the way of research which will help us find out more about what's happening in prisons seems like a petty response from Chris Grayling. The fact that it's the Howard League making this research, who have been very critical of this government, should not be a reason for blocking them." It is understood that the Howard League is so angry about their treatment at the hands of Mr Graying and the MoJ that it has requested copies of all correspondence in which its name is used since he was made Secretary of State. One insider said the charity wanted to "understand better the antagonism towards us". Michael Amherst, one of the inquiry's commissioners, said the suggestion that Mr Grayling was personally obstructing the work – first reported by the Politics.co.uk website – was "extremely disturbing".

Constance Briscoe Guilty: High-Flying Judge/Barrister Jailed for Lying

[Anyone who has been convicted in a trial, where Constance Briscoe was the Crown Prosecution Barrister or convicted in a trial where Constance Brisoce was the judge, may have good cause to find appropriate legal help to review their prosecution and conviction. In particular if you know of anyone falsely accused/convicted of sexual offences, ask them to contact, Helga Speck of P.A.F.A.A. / S.O.F.A.P.] <http://www.pafaa.org.uk/wordpress/>

Paul Peachey, Indpendent, 01/05/14: Scotland Yard has launched a new criminal inquiry into one of Britain's best-known barristers, as her high-flying career ended Friday 2nd May with an sixeen month prison term. Once feted as a black role model and champion of the abused, part-time judge Constance Briscoe was damned over her role in the political destruction of the former Energy Secretary Chris Huhne – and portrayed as a manipulative fantasist whose own family had warned the authorities for years that she had lied and falsified documents on her path to legal success. Briscoe, 56, the author of a bestselling memoir of her unhappy childhood, is the first judge to be jailed for nearly two decades, after a jury found her guilty of lying to officers investigating the former Cabinet Minister for swapping speeding points with his then-wife to avoid a driving ban. Her conviction comes 15 years after the Bar Council declined to investigate allegations made by the barrister's mother into Briscoe's fitness to practice over a litany of allegations, which included forging signatures and falsifying information on official documents.

The Crown Prosecution Service said it would not review cases for potential miscarriages of justice during her 29-year career at the bar, despite demands by Mr Huhne, who was jailed for perverting the course of justice after his ex-wife and Briscoe exposed his crime to the media. "We have no plans to review cases involving Constance Briscoe as counsel," it said in a statement. Mr Huhne – whose rising political career was ended by the revelations of the point-swapping and subsequent cover-up – said: "Constance Briscoe has been revealed as a compulsive and self-publicising fantasist… The Bar, the Crown Prosecution Service and the judiciary went on entrusting her with responsibility for people's lives because they were not prepared to blow the whistle on one of their own."

Her conviction means it can now be revealed that police are investigating allegations that Briscoe tampered with documents used in her successful libel battle against her mother in 2008. The case was sparked by the disgraced judge’s unflinching depiction of a violent childhood in her book Ugly but members of her family said her claims were lies. Briscoe and her publishers, Hodder and Stoughton, have pursued 80-year-old Carmen Briscoe-Mitchell for costs of more than £500,000 as a result of the case, but a plan to evict her from her home was put on hold pending the outcome of the barrister’s two trials. The publisher failed to respond to requests for a comment. Ms Briscoe-Mitchell told The Independent that she was preparing to restart the legal battle and demanded an apology after Briscoe claimed in the book that her mother cut her with a knife, beat her for wetting the bed and taunted her about her appearance. “Of course she’ll have to go to prison for lying all the time,” she said. The libel battle divided the family and Ms Briscoe-Mitchell has contended that her daughter won the case based on tampered documents and her status as a senior legal professional. Scotland Yard confirmed on Thursday that it would be looking into her allegations. “We were contacted in September last year regarding an allegation of fraud, which relates to documents that were allegedly fraudulently obtained from Southwark Council. The matter is being investigated by Lewisham CID,” said a spokesman.

The guilty verdicts brought an end to the second trial of the suspended barrister for misleading police about her central role in exposing Mr Huhne’s crime of passing speeding points to his then wife, former government economist Vicky Pryce, and then tampering with documents to cover up her deception. Briscoe was found guilty of three counts of perverting the course of justice in acting as the fixer for Pryce, her friend and neighbour. Pryce wanted to get revenge on her husband who had been having an affair with an aide by arranging for a newspaper to reveal in 2010 that they had lied about who was driving when he was caught speeding 11 years ago. However, the revelation meant they were both jailed for six months.

Briscoe had claimed that she was told in 2003 about the points swap. Phone records revealed that she was involved in passing the story to newspapers despite her denials to police. She was removed as the main prosecution witness in the Huhne trial – throwing the whole case into jeopardy – and was subsequently charged with three counts of perverting the course of justice. Briscoe’s legal team had claimed that she had become enmeshed in a personal and political manoeuvrings between the feuding politician and the economist after the break-up of the marriage in 2010 and got herself into the “most frightful mess”.

However, her story unravelled when the scale of her contacts with the newspaper emerged through emails and telephone calls. During a covertly recorded phone call between Huhne and Pryce, the former minister suspected Briscoe was behind the leaks to the media. “The only person batty enough to go on this sort of vendetta is Constance,” he said.One journalist wrote to a colleague that Ms Briscoe “is determined to go for the kill. Unlike VP [Vicky Pryce] she is nicely out of the spotlight and just wants Huhne to get his comeuppance, ie, to lose his position as Energy Secretary and be exposed as a liar”. Meanwhile, lawyers for Ms Briscoe-Mitchell, 80, have pored over fresh allegations of dishonesty heard at the trial including claims that she forged of a signature of a friend, an Australian judge, so she could skip a course, fly home and collect an award.

Ms Briscoe-Mitchell wrote a nine-page letter to the Bar Council in 1999, seen by The Independent, saying her daughter should be barred from the profession because of alleged dishonesty and financial wrong-doing. Her letter included a claim that her daughter forged

because it had been doing it for eight years, and no one in government had bothered to check. There is no such thing as failure any more, just lessons to be learnt.

Accountability has always been weak in the UK, but under this government you must make spectacular efforts to lose your post. At the Leveson inquiry in May 2012, the relationship between the then culture secretary Jeremy Hunt and the Murdoch empire that he was supposed to be regulating was exposed in gory detail. He was meant to be deciding impartially whether to allow the empire to take over the broadcaster BSkyB, but was secretly exchanging gleeful messages with James Murdoch and his staff.

We all knew what it meant. The emails, the Guardian observed, were likely to "sever the slim thread connecting Hunt to his cabinet job". "After this he's toast … it's over for Hunt," wrote Tom Watson MP. Ed Miliband said: "He cannot stay in his post. And if he refuses to resign, the prime minister must show some leadership and fire him." We waited. Hunt remained culture secretary for another four months, then he was promoted to secretary of state for health. On 2 September 2012, the Guardian revealed that the housing minister, Grant Shapps, had founded a business that "creates web pages by spinning and scraping content from other sites to attract advertising" – a process that looks to me like automated plagiarism. He had been promoting it under the false name of Michael Green, who claimed to be an internet marketing guru. Again it looked fatal. Two days later, in the same reshuffle that elevated Hunt, he was upgraded to Conservative party chairman.

A real Mr Green – Stephen, this time – was ennobled by David Cameron and appointed, democratically of course, as minister for trade and investment. In July 2012, a US Senate committee reported that while Lord Green was chief executive and chairman of HSBC, the bank's compliance culture was "pervasively polluted". Its branches had "actively circumvented US safeguards … designed to block transactions involving terrorists, drug lords and rogue regimes". Billions of dollars from Mexican drug barons, from Iran and from "obviously suspicious" travellers' cheques "benefiting Russians who claimed to be in the used car business" sluiced through its tills.

Out went dollars and financial services to banks in Saudi Arabia and Bangladesh linked to the financing of terrorists. The Guardian reported that HSBC "continued to operate hundreds of accounts with suspected links to Mexican drug cartels, even after Green and fellow executives were told by regulators that HSBC was one of the worst banks for money laundering." Green refused to answer questions and sat tight. He remained in post for another 17 months, until he gracefully retired in December 2013.

After it had become obvious to almost everyone that it was impossible for them to remain in the cabinet, Cameron refused to sack either Liam Fox or Maria Miller. Forgiveness and redemption by all means, but they are not unconditional: without contrition or even acknowledgement that wrong has been done, there is no difference between giving people a second chance and engaging in an almighty cover-up.

There has seldom, in the democratic era, been a better time to thrive by appeasing wealth and power, or to fail by sticking to your principles. Politicians who twist and turn on behalf of business are immune to attack. Those who resist are excoriated. Here's where a culture of impossible schemes and feeble accountability leads: to cases like that of Mark Wood, a highly vulnerable man who had his benefits cut after being wrongly assessed by the outsourcing company Atos Healthcare as fit for work, and starved to death – while those who run such companies retire with millions. Impunity for the rich; misery for the poor.

Myths are still propagated about a victim's sexual history, and about the effect of any alcohol they have drunk, Ms Saunders says – so, before jurors hear evidence, judges must warn them not to form false judgements. Police and prosecutors are still not getting to grips with the crime, despite extra training, more victim support (though this remains negligible, for such a stigmatising crime) and specialist forensic centres. As we reported on Friday, the conviction rate is falling, again, and the number of cases referred to prosecutors has fallen by a third in two years, despite a rise in recorded offences. As the former DPP Keir Starmer told i: "It is not due to rape offences dropping, I am certain about that."

Many women never come forward. Research suggests that only about 6 per cent of rape offences result in a conviction for rape. This situation shames one of the world's finest judicial systems. Ms Saunders' new guidance on how police and prosecutors must handle rape cases, due later this year, cannot come soon enough. *Editorial: Indpendent, 06/05/14*

Welcome to Britain, the New Land Of Impunity, Especially G4S

No matter the criticisms made or damage done, fat cats and politicians seem able to cling on. Often their efforts are rewarded *George Monbiot, The Guardian, 05/05/14*

What do you have to do to fall out of favour with this government? Last month, the security company G4S was quietly rehabilitated. It had been banned in August 2013 from bidding for government contracts after charging the state for tagging 3,000 phantom criminals. Those who had died before it started monitoring them presented a particularly low escape risk. G4S was obliged to pay £109m back to the government. Eight months later, and before an investigation by the Serious Fraud Office has concluded, back it bounces seeking more government business. Never mind that it almost scuppered the Olympics; never mind Jimmy Mubenga, an asylum seeker who died in 2010 after being "restrained" by G4S guards, or Gareth Myatt, a 15-year-old who died while being held down at a secure training centre in 2004; never mind the scandals at Oakwood, a giant prison it runs. G4S, described by MPs as one of a handful of "privately owned public monopolies", is crucial to the government's attempts to outsource almost everything. So it cannot be allowed to fail. Was it ever banned at all? Six days after the moratorium was lifted, G4S won a contract to run HMRC services. A fortnight later it was chosen as one of the companies that will run the government's Help to Work scheme. How did it win these contracts if in the preceding months it wasn't allowed to bid?

When I first worked in Brazil in the late 1980s, the country was widely described as o pais da impunidade – the land of impunity. What this meant was that there were no political consequences. Politicians, officials and contractors could be exposed for the most flagrant corruption, but they remained in post. The worst that happened was early retirement with a fat pension and the proceeds of their villainy safely stashed offshore. It is beginning to look a bit like that here. This is not to suggest that the people or companies I name in this article are crooked or corrupt; it is to suggest that the political class no longer seems to care about failure.

The failure works both ways, of course. As Polly Toynbee has shown, the Help to Work pilot projects, which G4S will run, reveal that it is a complete waste of time and money. Yet the government has decided to go ahead anyway, subjecting the jobless to yet more humiliation and pointlessness. Contrast the boundless forgiveness of G4S to the endless castigation for being unemployed. A record of failure reflects the environment in which such companies are hired: one in which ministers launch improbable schemes then look the other way when they go wrong. G4S had to pay back so much money for the phantom criminals it wasn't monitoring

the signature of a relative to obtain a council flat and falsified information on a passport application. The Bar Council declined to act, saying it was a result of "inter family discord" and there was no evidence to substantiate the allegation, according to documents seen by The Independent, the Bar Council failed to respond to inquiries.

R v Constance Briscoe - Sentencing Remarks: 1.Constance Briscoe, you are the third individual to have been convicted of criminal offences arising out of a saga whose origin goes back to 2003, when both Chris Huhne and Vicky Pryce lied about who had driven a speeding motor vehicle, and extends to you in 2011, when you sought to hide your true motive and role in the exposure of that story. You then compounded your position by deliberately fabricating evidence when you thought that you might be exposed. If there is a common thread between you all, then, from the insights I have had into the character of the each of you during this case, I regret that it is one of arrogance by educated individuals who considered that respect for the law was for others.

2.I am only too conscious that your convictions mark a personal tragedy for both you and your children. You are an individual who unsurprisingly has been something of a role model to others. Although blessed with intelligence, you did not have every advantage in life. However you worked hard at school and were the first person in your family to go to university. Having gained a degree in law, you joined the Bar and over the years established a successful criminal practice, and had the privilege of being appointed a Crown Court Recorder. You have done all of this whilst raising your two much loved children.

3.However, over the years you have also courted a significant degree of self publicity, and therefore built up a familiarity with the workings of the media. I have no doubt that it was this familiarity which led you to offer to assist Vicky Pryce to disseminate her story about taking Chris Huhne's penalty points. It is clear from the email and phone evidence, that you were intimately involved in the negotiations between Vicky Pryce and the press, both in relation to her requirement for a confidentiality clause and, for the corroboration and dissemination of her story that she had been subjected to pressure; motivated, as was Vicky Pryce, by a joint desire to ensure the downfall of Chris Huhne. In contrast to the true position, when you came to provide your two witness statements to the police, you painted a wholly misleading picture of impartiality and lack of involvement with the press, in order to enhance your credibility as a witness in the criminal proceedings involving them.

4.Subsequently, when your true attitude and role was exposed by the disclosure of the emails from the Mail on Sunday, you sought to cover your tracks by manufacturing a false witness statement, which admitted to a limited amount of contact with that newspaper. Unfortunately the matter did not stop there, because after this deception had been uncovered, and you had been charged with the offences at counts 1 and 2 on the indictment, you proceeded to manufacture a second false statement, which you provided to a defence expert in order to obtain an innocent explanation for the existence of the first one. It was only after that expert opinion had been served on the Crown Prosecution Service, and they had in turn obtained their own expert evidence, that this further deception was exposed.

5.I am sure that you realise only too well that such conduct strikes at the heart of our much cherished system of criminal justice, which is integral and invaluable to the good order of society. In those circumstances I regret that I do not consider that any other sentence can be justified, but one involving the deprivation of your liberty. I of course take into account, amongst other matters, your good character, and the devastating effect that these convictions will have upon your career at the Bar. However, your conduct not only involved deliberately seeking to paint a false picture of your role and attitude for the purposes of

enhancing your credibility in the Chris Huhne and Vicky Pryce prosecution, but was compounded by the deliberate manufacturing of evidence so as to avoid your own detection. The last of these deceptions taking place during the period leading towards your own trial. In those circumstances, and having regard to the principle of totality, I consider that the least sentence which can properly be passed upon you is one of 16 months imprisonment. That total will be reached by consecutive sentences of 4, 5 and 7 months custody respectively, upon counts 1, 2 and 3. You know that you will be released half way through that term, but will remain on licence for the full term and liable to recall if you were to commit any further offence or otherwise breach the conditions of your licence. *Source CrimeLine, 02/05/14*

Guilty, but I was Prosecuted on the Basis of Constance Briscoe's Deception

The legal system reached the right conclusion, but for the wrong reasons – the process was flawed: Now that Constance Briscoe is behind bars I can tell the tangled tale of the crooked judge, the criminal cabinet minister and his vengeful wife. Briscoe, a barrister and crown court judge, made my divorce one of the messiest in history. She was a neighbour. Her daughter and ours were friends, and we invited her once a year for drinks. She was left by her own partner, Anthony Arlidge QC, roughly when I left Vicky Pryce. The two suddenly became firm friends, plotting revenge through tabloid stories.

Briscoe craved media validation. She kept yellowing news cuttings on her wall. Her misery memoir Ugly had been a bestseller, accusing her mother, Carmen Briscoe-Mitchell, of child abuse. Her mum, now 80, sued for libel, supported by Briscoe's siblings. On that occasion Briscoe won. When she was arrested for perverting the course of justice in my case, it thankfully stopped the repossession of her mother's home to pay the libel fees. After the trial Briscoe was described by her mother as a "liar and fantasist". Briscoe and my ex-wife wanted to destroy my political career, and were trying to plant a story in the Mail on Sunday that I had swapped speeding points. The journalists worried that this was merely a divorce spat, until Briscoe lied that she knew about the points swapping in 2003, long before any animus from the divorce.

That story later caused the Essex police to turn up at Briscoe's door. She panicked and ran off to the gym. They hung around for four hours until she came home, and she felt obliged to give a false witness statement. This was the key evidence that persuaded the police and the Crown Prosecution Service to prosecute my wife and me. I was convinced that Briscoe had made this up, which is why I went on denying guilt and hoping that I could cause the prosecution case to collapse. Nothing encourages a defence like being fitted up with fake evidence.

Although I was guilty, I justified my denial to myself by saying that it was a relatively minor offence committed by 300,000 other people (according to AA polling), that prosecutions should be based on facts not fantasy, and that we would no longer be able to pursue requests for disclosure about Briscoe's wrongdoing. My defence team set about proving that Briscoe was lying. We went through months of pre-trial hearings to get the Mail on Sunday to reveal its contact with her and my ex-wife. To protect their "unimpeachable" star witness, the police even took a statement from Briscoe in August 2012 saying she had not talked to the press and was not close to my ex-wife.

At that point alarm bells should have been ringing for police and prosecutors. They should have ditched her, because they had only gone to her in the first place because of what appeared in the Mail on Sunday. But they would then have been left with an embarrassing hole in a case against an ex-cabinet minister. They persisted with Briscoe until October, when we showed the extent of the emails between Vicky, Briscoe and the Mail on Sunday. At that

British forces appear to have been involved. They were allegedly beaten, subjected to mock execution, and then flown to the UK against their will in circumstances that their lawyers say amounted to a "rendition" operation. On arrival they were put under control orders. When the pair challenged those orders on the grounds that the government had been involved in their mistreatment, government lawyers relied upon a practice known as NCND – 'Neither Confirming nor Denying' the truth of the allegations in open court – and were permitted to present their full case in closed court.

Lord Justice Kay criticised the high court's acceptance of NCND, which he described as a policy "lurking just below the surface". It was not a legal principle and needed to be justified, he said. "It is not simply a matter of a governmental party to litigation hoisting the NCND flag and the court automatically saluting it," he said. "I do not consider that the appellants or the public should be denied all knowledge of the extent to which their factual and/or legal case on collusion and mistreatment was accepted or rejected. Such a total denial offends justice and propriety." Kay also ruled that the control orders had been unlawful because the Home Office had not disclosed all relevant information when it asked a judge to issue them. The appeal court ruled that the case should be sent back to the high court, which should reconsider the original challenge to the control orders. A Home Office spokesperson said: "We are disappointed by the court of appeal's decision and are considering whether to appeal."

CF's solicitor, Tayab Ali, said: "I am delighted that the court of appeal has vindicated our concerns over the manner in which this control order was imposed. Crucially, in rejecting the government's over-reliance on the 'neither confirm nor deny' policy, this judgement will assist those seeking to expose serious wrongdoing on the part of the authorities."

Both men are British citizens of Somali descent who are alleged to have been involved with al-Shabaab, the Somali militant group that carried out the attack on Nairobi's Westgate shopping mall last year. Their wives and children are in Somalia. The identities of both men had been protected by anonymity orders, as neither has been convicted of an offence, but Mohamed's order was lifted when he went on the run. Mohamed was assessed to be linked to a group said to have received terrorism training from Saleh Nabhan, a leading al-Qaida figure suspected of involvement in the 1998 US embassy bombings in east Africa. He is also said to have received terrorism training from, and to have fought for al-Shabaab, and is accused of helping other British men slip into and out of Somalia. CF travelled to Somalia in 2009, where he too is said to have received training and fought alongside al-Shabaab. Mohamed is thought to have been helping CF leave the country when they were detained after travelling to the breakaway territory of Somaliland. *Ian Cobain, theguardian.com, 02/05/14*

Judicial System Must Learn to Separate Fact From Fiction in Rape Trials

Few crimes are so reliant on the testimony of the victim as rape. And for some defence barristers, a rape victim's character is still fair game. The sort of aggressive cross-examination by defence barristers determined to break victims' resolve was supposed to have been consigned to the past, but persists. Last year, horrifically, in the middle of a trial for sexual assault, the victim, Frances Andrade, killed herself after being accused of lying.

It is unusual that a Director of Public Prosecutions speaks so publicly about the failings of the legal system. But in an interview with i, Alison Saunders today calls for an overhaul of judges' guidance to juries in rape trials. The rape conviction rate is unacceptably low, she says, and some women have lost faith in the legal system: "I think it has a broader impact on the willingness of people to come forward and report that they have been raped."

not normally hold more than 400 prisoners … the evidence suggest that if these figures are exceeded, there can be a marked fall-off in all aspects of the performance of a prison".

It was a view that David Cameron was happy to articulate when Labour's Jack Straw first proposed the building of a US-style Titan jail holding more than 2,500 inmates back in 2009. "The idea that big is beautiful with prisons is wrong. I have spent some time in prison – purely in a professional capacity – at Wandsworth prison and was profoundly depressed by the size and impersonality," said Cameron. A concerted campaign blocked Labour's Titan programme. Its main legacy was the opening of the G4S-run Oakwood prison in Wolverhampton in April 2012. It was originally designated by Labour to be a Titan jail but was downsized to "super-sized" status and opened with a capacity of 1,600 – the largest in Britain at the time.

Despite the Conservative opposition to Titan jails, Grayling embraced the idea of supersized jails and announced plans last September for a 2,100-place prison on the site of a former Firestone tyre factory in Wrexham, north Wales. He also launched a feasibility study into building a second giant jail on the site of Feltham young offender institution in west London. The growth of the 1,000-plus jumbo jails has been fuelled by the ad-hoc addition of new blocks at existing jails. Four more are due to be added this year, to HMP Mount, HMP Parc, HMP Peterborough and HMP Thameside, to provide a further 1,200 places and keep ahead of the ever-rising prison population figures.

Grayling has compounded the trend by his drive to close small community and open prisons on the grounds that they are uneconomic. Blundeston, Dorchester, Northallerton and Oscar Wilde's Reading jail have all been closed on these grounds and there is a question mark over the future of the notorious Dartmoor prison. The justice secretary surprised many of his critics when he halted his predecessor's plans to privatise eight or nine more jails when he came to office. Instead he accepted the case that the public sector could run them more cheaply. He initiated a "bench-marking exercise" to drive down costs throughout the 130-odd prisons in England and Wales and announced that his blueprint was to be the G4S-run Oakwood supersized jail. At Oakwood the cost per prisoner place is said to be only £13,200 a year – a third of the average category C prison cost of £31,339 a year. Those figures have been challenged, but Grayling has been using them to drive down staffing levels and costs throughout the prison system.

Advocates of supersized jails claim that prison architecture has moved on from monolithic Victorian warehouses. Instead prisons are designed on smaller living units with plenty of open spaces on a campus-style site. But the signs are that the new generation of ad-hoc jumbo jails with their quick-build housing blocks are already struggling. Only last month, Doncaster prison, which holds 1,132 people in accommodation meant for only 738, had to call for help from neighbouring jails when prisoners spent Saturday night setting fire to beds, flooding cells and attacking prison officers. Such increased volatility is the inevitable outcome of the race to expand jails faster than the increase in the prison population. With fewer than 600 spare places in a jail system with a capacity of just under 86,000, the outcome is by no means certain.

Terrorism Suspects Win Appeal Against 'Secret Justice' Measures

A terrorism suspect who went on the run disguised in a burqa has won a surprise legal battle with an appeal court ruling that dealt a major blow to the government's reliance on secret justice measures in cases of national security. Control orders that had been imposed on Mohammed Ahmed Mohamed and a second man, who can be identified only as CF, were quashed after the court ruled that the government should not have been able to answer allegations of serious wrong-doing behind closed doors. Both men were detained in Somaliland in 2011 during an operation in which

point, the police started to investigate the telephone contact between them.

Between June 2010, when I left Vicky, and October 2012, Briscoe rang or texted Vicky 848 times, and Vicky rang or texted her 822 times. In the month when the speeding story broke in the media Briscoe rang 221 times and Vicky rang 160 times. Because of her sworn denials, Briscoe was bound to be prosecuted. Ironically, Briscoe was not prosecuted for her key lie about 2003. That would have required Vicky to testify against her, and the prosecutors had trashed Vicky's credibility in her own trial. Instead, Briscoe was accused of lying about her friendship, media contact, and the subsequent cover-up.

Once the judge ruled that there was still a case to answer against me, I decided to plead guilty. I did not want to perjure myself like Jonathan Aitken or Jeffrey Archer, or have an undignified slanging match in court with my ex-wife. I regret committing the offence, but do not regret pleading guilty. The legal system reached the right conclusions in all three criminal cases, but usually for the wrong reasons. I was prosecuted on the basis of Briscoe's lies. Briscoe was convicted for tangential offences. There were four jury trials (including two mistrials and deadlocked juries) before Vicky and Briscoe were found guilty. The Ugly libel case now looks unsafe.

Briscoe was widely regarded at the bar as a loose cannon. Her mother complained about her to the bar council, which failed to take action. Briscoe may now cost the CPS dearly in reviews of her past prosecutions. If she was capable of making up evidence against me, she could hide evidence from a defendant to whom she had a duty of disclosure. There is here a touch of Stafford hospital or Bristol Royal infirmary, where doctors turned a blind eye to rogue or incompetent colleagues. As George Bernard Shaw said, every profession is a conspiracy against the laity. Doctors, teachers, accountants, lawyers – even journalists. No one likes whistleblowing on their own team, but sometimes it is necessary. Chris Huhne, The Guardian

Royal Prerogative of Mercy: Over 350 Issued in Northern Ireland *BBC News, 02/05/14*

Northern Ireland Secretary Theresa Villiers disclosed that 365 'Royal Prerogative of Mercy', commonly known as a royal pardons had been issued between 1979 and 2002. The figures was given in an answer to a question from MP Kate Hoey. There are no figures for ten years between 1987 and 1997, as the records have apparently been lost. It is not clear how many of those pardoned were members of paramilitary groups, or what proportion, if any, were members of the security forces.

Miss Hoey said she was "astonished" at the disclosures. "I'm astonished first of all at the numbers involved, but also at the fact that the government seems to have lost 10 years of records for something that is a hugely important thing," she said. "The Queen presumably signs these, so how can they lose them? We want to know how many more were issued and, more importantly, who they were issued to and why they were given a pardon. This is something the public need to know. We want transparency and honesty and this is neither honest or transparent." Miss Hoey also questioned why the pardons were not publicly recorded, as is the practice in Great Britain. "In England, when someone gets a royal pardon it traditionally has appeared in the London Gazette. There is also a Belfast Gazette, where one would have assumed the names would have appeared. That has not happened and when I asked those questions, the Secretary of State appears to be saying that it is not normal procedure in Northern Ireland. This is wrong because at that time policing and justice were not devolved to Northern Ireland so, again, there are a lot more questions to be asked." The Northern Ireland Office (NIO) said: "It is for those members of the previous government responsible at the time to explain how and in what circumstances they used the RPM (royal prerogatives of mercy). No RPM have been issued since the current government came to power in May 2010.'

Mohammed v Ministry of Defence & Ors [2014] EWHC 1369 (QB)

Introduction and Summary: 1) The important question raised by this case is whether the UK government has any right in law to imprison people in Afghanistan; and, if so, what is the scope of that right. The claimant, Serdar Mohammed ("SM"), was captured by UK armed forces during a military operation in northern Helmand in Afghanistan on 7 April 2010. He was imprisoned on British military bases in Afghanistan until 25 July 2010, when he was transferred into the custody of the Afghan authorities. SM claims that his detention by UK armed forces was unlawful (a) under the Human Rights Act 1998 and (b) under the law of Afghanistan.

2) As this is a long judgment which discusses many issues and arguments, I will summarise my conclusions at the start. This is, however, a bare summary only and the reasons for my conclusions are set out in the body of the judgment.

3) UK armed forces have since 2001 been participating in the International Security Assistance Force ("ISAF"), a multinational force present in Afghanistan with the consent of the Afghan government under a mandate from the United Nations Security Council. Resolutions of the Security Council have: (1) recognised Afghan sovereignty and independence and that the responsibility for providing security and law and order throughout the country resides with the government of Afghanistan; (2) given ISAF a mandate to assist the Afghan government to improve the security situation; and (3) authorised the UN member states participating in ISAF to "take all necessary measures to fulfil its mandate".

4) ISAF standard operating procedures permit its forces to detain people for a maximum of 96 hours after which time an individual must either be released or handed into the custody of the Afghan authorities. UK armed forces adhered to this policy until November 2009, when the UK government adopted its own national policy under which UK Ministers could authorise detention beyond 96 hours for the purpose of interrogating a detainee who could provide significant new intelligence. This UK national policy was not shared by the other UN member states participating in ISAF nor agreed with the Afghan government.

5) SM was captured by UK armed forces in April 2010 as part of a planned ISAF mission. He was suspected of being a Taliban commander and his continued detention after 96 hours for the purposes of interrogation was authorised by UK Ministers. He was interrogated over a further 25 days. At the end of this period the Afghan authorities said that they wished to accept SM into their custody but did not have the capacity to do so due to prison overcrowding. SM was kept in detention on British military bases for this 'logistical' reason for a further 81 days before he was transferred to the Afghan authorities. During the 110 days in total for which SM was detained by UK armed forces he was given no opportunity to make any representations or to have the lawfulness of his detention decided by a judge.

6) On the issues raised concerning the lawfulness of SM's detention I conclude as follows:

i) UK armed forces operating in Afghanistan have no right under the local law to detain people other than a right to arrest suspected criminals and deliver them to the Afghan authorities immediately, or at the latest within 72 hours. On the facts assumed in this case SM's arrest was lawful under Afghan law but his continued detention after 72 hours was not.

ii) It is now clear law binding on this court: (a) that whenever a state which is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") exercises through its agents physical control over an individual abroad, and even in consequence of military action, it must do so in a way which complies with the Convention; and (b) that the territorial scope of the Human Rights

was cast as infallible. Despite photographs of her bruised body, including her right breast, the prosecution cast doubt upon McMillan's allegations of being injured by the police – all while Officer Bovell repeatedly identified the wrong eye when testifying as to how McMillan injured him. And not only was Officer Bovell's documented history of violent behavior deemed irrelevant by the judge, but so were the allegations of his violent behavior that very same night.

To the jury, the hundreds of police batons, helmets, fists, and flex cuffs out on March 17 were invisible – rendering McMillan's elbow the most powerful weapon on display in Zuccotti that night, at least insofar as the jury was concerned. That hyper-selective retelling of events to the jury mirrored the broader popular narrative of OWS. The breathtaking violence displayed by the NYPD throughout Occupy Wall Street has not only been normalized, but entirely justified – so much so that it doesn't even bear mentioning. After the police cleared the park that night, many of the remaining protesters went on a spontaneous march, during which a group of officers slammed a street medic's head into a glass door so hard the glass splintered. It is the only instance of which I know throughout New York City's Occupy movement where a window was broken.

Still, it is the protesters who are remembered as destructive and chaotic. It is Cecily McMillan who went on trial for assault but not Bovell or any of his colleagues – despite the thousands of photographs and videos providing irrefutable evidence that protesters, journalists and legal observers alike were shoved, punched, kicked, tackled, and beaten over the head. That mindset was on display during the jury selection process at McMillan's trial, when juror after juror had to be dismissed because of outright bias against the Occupy movement and any of its participants. It's impossible to understand the whole story by just looking at it one picture, even if it's McMillan's of her injuries. But that is exactly what the jury in McMillan's case was asked to do. They were presented a close up of Cecily McMillan's elbow, but not of Bovell, and asked to determine who was violent. The prosecutors and the judge prohibited them from zooming out.

This is, of course, how police brutality is presented to the public every day, if it is presented it at all: an angry cop here, a controversial protester here, a police commissioner who says the violence of the NYPD is "old news". It's why #myNYPD shocked enough people to make the papers – because it wasn't one bruised or broken civilian body or one cop with a documented history of violence. Instead, it was one after another after another, a collage that presented a more comprehensive picture – one of exceptionally unexceptional violence that most of America has already accepted.

Relentless Rise of the Jumbo Jail *Alan Travis, theguardian.com,29/04/14*

Behind the relentless rise in the prison population in England and Wales, to a record 85,000 since Chris Grayling became justice secretary 18 months ago, lies a growing network of "jumbo jails". These were originally built to hold 700 to 800 prisoners but now take more than 1,000. The most notorious include Wandsworth in south London, which has an official capacity of 972, yet holds 1,603 prisoners within its Victorian walls. It is not alone. Birmingham prison, which used to be known as Winson Green, now locks up 1,443 inmates every night while Pentonville in north London bangs up more than 1,300.

Ten years ago, fewer than 20% of prisoners were warehoused in these jumbo jails, but now 28 prisons in England and Wales hold more than 1,000 prisoners each, accounting for more than 40% of the total population. This has happened with little public debate. In fact, the conventional wisdom within the criminal justice system remains that small and local is the preferred option for prisons.

Lord Woolf, the former lord chief justice, set out the orthodox view in his landmark penal reform report in the aftermath of the 1990 Strangeways prison riots. He said that "jails should

Planned Closure of Two Women's Prisons Halted by Legal Action

Askham Grange in Yorkshire and East Sutton Park in Kent were due to be taken out of service so that prisoners could serve their sentences closer to home. But their successful records in encouraging rehabilitation and enabling mothers to remain with their young children have led women's groups and other organisations to oppose their closure. The Independent Monitoring Board warned earlier this year that shutting Askham Grange open prison could lead to an increased risk of re-offending. No children are understood to have been separated from their parent at the prison's mother-and-baby unit for the past five years, according to submissions made to the MoJ. By comparison, at HMP Styal, in Cheshire, one of the prisons expected to take prisoners redistributed from Askham Grange, more than 22 children are said to have been taken away from their mothers, mostly at birth.

There are 3,860 women in prisons in England and Wales, a level that marks a sustained decline in the female prison population, which stood at well over 4,000 until 2012. Confirming the delay, a prison service spokesperson said: "The planned closure of the two open women's prisons is currently subject to ongoing litigation, so it would be inappropriate to comment further at this time. To ensure we have a fit-for-purpose prison estate, we keep it under constant review. We will always have enough prison places for those sent to us by the courts and continue to meet the needs of female prisoners." *Owen Bowcott, theguardian.com, 04/05/1*

Cecily McMillan's Guilty Verdict Reveals Mass Acceptance Of Police Violence

Molly Knefel, theguardian.com, 05/05/14

The verdict in the biggest Occupy related criminal case in New York City, that of Cecily McMillan, came down Monday afternoon. As disturbing as it is that she was found guilty of felony assault against Officer Grantley Bovell, the circumstances of her trial reflect an even more disturbing reality – that of normalized police violence, disproportionately punitive sentences (McMillan faces seven years in prison), and a criminal penal system based on anything but justice. While this is nothing new for the over-policed communities of New York City, what happened to McMillan reveals just how powerful and unrestrained a massive police force can be in fighting back against the very people with whom it is charged to protect.

McMillan was one of roughly 70 protesters arrested on March 17, 2012. She and hundreds of other activists, along with journalists like me, had gathered in Zuccotti Park to mark the six-month anniversary of the start of Occupy Wall Street. It was four months after the New York Police Department had evicted the Occupy encampment from the park in a mass of violent arrests. When the police moved in to the park that night, in formation and with batons, to arrest a massive number of nonviolent protesters, the chaos was terrifying. Bovell claimed that McMillan elbowed him in the face as he attempted to arrest her, and McMillan and her defense team claim that Bovell grabbed her right breast from behind, causing her to instinctively react.

But the jury didn't hear anything about the police violence that took place in Zuccotti Park that night. They didn't hear about what happened there on November 15, 2011, when the park was first cleared. The violence experienced by Occupy protesters throughout its entirety was excluded from the courtroom. The narrative that the jury did hear was tightly controlled by what the judge allowed – and Judge Ronald Zweibel consistently ruled that any larger context of what was happening around McMillan at the time of the arrest (let alone Bovell's own history of violence) was irrelevant to the scope of the trial.

In the trial, physical evidence was considered suspect but the testimony of the police

Act coincides with that of the Convention. Accordingly, the Human Rights Act extends to the detention of SM by UK armed forces in Afghanistan.

iii) In capturing and detaining SM, the UK armed forces were acting as agents of the United Kingdom and not (or at any rate not solely) as agents of the United Nations. The UK government is therefore responsible in law for any violation by its armed forces of a right guaranteed by the Convention.

iv) Article 5 of the Convention, which guarantees the right to liberty, was not qualified or displaced in its application to the detention of suspected insurgents by UK armed forces in Afghanistan either (a) by the United Nations Security Council Resolutions which authorised the UK to participate in ISAF or (b) by international humanitarian law. Further, the authorisation given by the UN Security Council Resolutions to "take all necessary measures" to fulfil the ISAF mandate of assisting the Afghan government to improve security does not permit detention (a) outside the Afghan criminal justice system for any longer than necessary to deliver the detainee to the Afghan authorities nor (b) which violates international human rights law, including the Convention.

v) ISAF detention policy is compatible with Article 5 of the Convention and falls within the authorisation given by the UN Security Council. SM's arrest and detention for 96 hours therefore complied with Article 5.

vi) However, his subsequent detention did not. The UK government had no legal basis either under Afghan law or in international law for detaining SM after 96 hours. Nor was it compatible with Article 5 to detain him for a further 25 days solely for the purposes of interrogation and without bringing him before a judge or giving him any opportunity to challenge the lawfulness of his detention.

vii) SM's continued detention by the UK for another 81 days for 'logistical' reasons until space became available in an Afghan prison was also unlawful for similar reasons and was not authorised by the UN Security Council. In addition, this further period of detention was arbitrary because it was indefinite and not in accordance with the UK's own policy guidelines on detention.

viii) Accordingly, SM's extended detention for a total of 106 days beyond the 96 hours permitted by ISAF policy was not authorised by the UN mandate under which UK forces are present in Afghanistan and was contrary to Article 5 of the Convention.

ix) In circumstances where his detention took place in Afghanistan, the law applicable to the question whether SM has suffered a legal wrong is Afghan law, which gives him a right to claim compensation from the UK government. However, the English courts will not enforce that claim in circumstances where SM's detention was an 'act of state' done pursuant to a deliberate policy of the UK government involving the use of military force abroad. SM therefore cannot recover damages in the English courts based on the fact that his imprisonment by UK forces was illegal under Afghan law.

x) However, this 'act of state' defence does not apply to claims brought under the Human Rights Act for violation of a right guaranteed by the Convention. Article 5(5) of the Convention gives SM an "enforceable right to compensation" which the courts are required to enforce.

xi) This decision will not come as a surprise to the MOD which formed the view at an early stage that there was no legal basis on which UK armed forces could detain individuals in Afghanistan for longer than the maximum period of 96 hours authorised by ISAF. I have found that this view was correct. Nothing happened subsequently to provide a legal basis for such longer detention, either under the local Afghan law, international law or English law. UK Ministers nevertheless decided to adopt a detention policy and practices which went beyond the legal powers available to the UK. The consequence of those decisions is that the MOD has incurred liabilities to those who have been unlawfully detained.

69) ***Arguments from Silence:*** I have mentioned the lack of any case law. There is also no evidence that anyone detained by UK or other international armed forces operating in Afghanistan has sought to challenge the validity of their detention or to claim damages for unlawful detention in the Afghan courts. The MOD has sought to draw inferences about the position in Afghan law from that fact. Reliance was also placed on the absence of any complaint by the Afghanistan Independent Human Rights Commission, which under Article 58 of the Constitution is responsible for monitoring human rights in Afghanistan, that detention by ISAF is unlawful.

I do not find arguments of this kind persuasive. It is clear from the expert evidence that Afghanistan does not at present have a fully functioning legal system, and there may be many political and practical reasons why, if ISAF detentions are not authorised by Afghan law, the law is nevertheless not being enforced. The absence of any legal challenge or complaint cannot in any event be a substitute for a legal analysis.

70) In so far as its opinion might be regarded as authoritative, there is no evidence as to what view the Afghanistan Independent Human Rights Commission would express if asked for its view as to the legality of ISAF detentions. There is, however, evidence as to the opinion of the Independent Commission for supervision of the implementation of the Constitution, established under Article 157 of the Constitution. On 10 July 2013 the solicitors acting for SM wrote to the chairman of the Commission seeking its opinion on the right of the UK government to detain Afghan nationals in Afghanistan. A letter in reply dated 17 July 2013 stated that the Commission finds any kind of foreign prison or detention centre clearly contrary to Article 4 of the Constitution which recognises that national sovereignty in Afghanistan belongs to the Afghan nation, manifested through its elected representatives.

417) ***Conclusion***: For the reasons given in this judgment, I have found that, on the facts alleged by the MOD, the arrest of SM on 7 April 2010 and his initial detention by UK armed forces operating in Afghanistan was lawful.

418) However, ISAF policy permitted detention for a maximum of 96 hours after which time the detainee had either to be released or handed into the custody of the Afghan authorities. I have found that SM's continued detention on UK military bases for a further 106 days after that period had elapsed was unlawful. That is because:

i) Such detention was illegal under Afghan law; ii) Such detention was also unlawful under international law as it was not authorised by the UN Security Council Resolution which provided the mandate for the UK and other national forces participating in ISAF, nor was there a legal basis for such detention under international humanitarian law; iii) SM's detention solely for the purpose of interrogation from 11 April until 6 May 2010 was not for a purpose permitted by Article 5 of the Convention; iv) SM's further detention from 6 May until 25 July 2010 was not in accordance with any written policy for detention adopted by ISAF or the UK and was therefore arbitrary; v) For these reasons, and because SM was held in custody on the decision of Ministers and officials without being brought before a judge, and without being given any opportunity to challenge the lawfulness of his detention, his detention after 96 hours was contrary to Article 5 of the Convention and section 6 of the Human Rights Act.

419) The conclusion that SM's detention after 96 hours was unlawful will not come as a surprise to the MOD. It is apparent from documents to which I have referred in Part III of this judgment (at paragraphs 40-44 above) that the MOD formed the view at an early stage that there was no legal basis on which UK armed forces could detain individuals in Afghanistan for longer than the maximum period of 96 hours authorised by ISAF. Legal advice also confirmed that

there was no basis upon which UK forces could legitimately detain individuals for longer periods in the interest of interrogating them because they were believed to have information of intelligence value. As was recognised in a memorandum in 2006 (see paragraph 42 above): "The reality of the legal basis for our presence in Afghanistan is such that available powers may fall short of that which military commanders on the ground might wish …"

Nothing happened subsequently to alter that reality.

420) The UK explored the possibility of obtaining the agreement of NATO and other nations participating in ISAF to extending the 96 hour detention period authorised by ISAF and concluded that such agreement was not achievable (see paragraphs 45-46 above). The approach adopted in November 2009 was for the UK to adopt its own policy permitting detention beyond 96 hours for intelligence purposes but without obtaining any additional powers to provide a legal basis for doing so.

421) In April 2010, while SM was being held in custody for an extended period for the purposes of interrogation, the MOD set out its position to the Divisional Court in the case of R (Maya Evans) v Secretary of State for Defence [2010] EWHC 1445 (Admin) as being that the UK did not have the power to intern suspected insurgents captured in Afghanistan but only had power to detain them temporarily for a period of up to 96 hours. That position is reflected in the judgment of the Divisional Court (at para 17): "The power to capture insurgents extends to a power to detain them temporarily. In the absence of any express authorisation in the UN Security Council resolutions, however, the Secretary of State takes the view that the UK has no power of indefinite internment. That is why the issue of transfer to the Afghan authorities is of such importance."

422) The transfer issue raised in the Maya Evans case was whether transfers to three Afghan prisons should be stopped because there was a real risk that those transferred would be tortured or seriously mistreated. The claimant alleged that there was such a risk and applied to the Court for an injunction to prevent further transfers. The MOD opposed the application denying that there was such a risk. The MOD also raised the spectre that, if an injunction was granted, individuals captured by UK forces would have to be released because the UK had no power to detain them for longer than 96 hours. As stated in the judgment of the Divisional Court (at para 23): "If it were not possible to transfer detainees to Afghan custody, the consequences would be very serious. Detainees would have to be released after a short time, leaving them free to renew their attacks and cause further death and injury. The opportunity to prosecute them and to gain intelligence would be lost."

423) It is now apparent that when push came to shove and detainees could not be transferred to Afghan custody within 96 hours - either because there was considered to be a real risk of ill treatment or, as in the present case, because there was not enough room in the Afghan prison - detainees were not released as the MOD had said would be necessary (because the UK had no legal power to detain them).

Instead, they were imprisoned indefinitely on British military bases until transfer became possible. Moreover, that was done even though the MOD's own policy and procedures for detention did not authorise long term detention in such circumstances (see paragraphs 307-309 above). In SM's case the total period spent in UK detention was 110 days; in the case of the three PIL claimants, the period was even longer - being around 290 days in each case.

424) Decisions were thus made to adopt a detention policy and practices in pursuit of military objectives which went beyond the legal powers available to the UK. The consequence of those decisions is that the MOD has incurred liabilities to those who have been unlawfully detained. http://www.bailii.org/ew/cases/EWHC/QB/2014/1369.html