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US War On Drugs: "Equal Justice Under Law" Rings Hollow

Ezekiel Edwars, Open Democracy: It is disgraceful enough that America – a supposed beacon of liberty – is by far the world's largest incarcerator. But adding outrage to injury, our massive criminal punishment system is infected at all points by racial injustice. The difference by which our country treats people of colour in the enforcement of our criminal laws renders the ring of the maxim "equal justice under law" – the inscription above the entrance to the United States Supreme Court – hollow, leaving it at best a lofty aspiration that remains elusive throughout the streets and courts of this country. It is no surprise, in many ways, as such racial unfairness is the latest stop on our long road of racist policies, from slavery to forced labour to Jim Crow laws. But like those dark chapters in our history, we will look back with the same shame at mass incarceration.

The era of mass imprisonment, during which time the US prison population has grown over 11 times faster than the general population, has hurt people of all races and ethnicities, almost all poor or working class. But the harm it has caused communities of colour has been wildly disproportionate. Major drivers of the increase in incarceration – including the bitterly fought 'war on drugs' and the aggressive expansion of mandatory minimum sentences, both of which have resulted in an astounding 790% increase in the federal prison population over the last two decades – have smashed harder through the Black community than any other. Indeed, 60% of the people in our prisons are now racial and ethnic minorities. Despite national surveys demonstrating that Blacks use and traffic in drugs at equal or lower levels than whites, Blacks are ten times more likely to spend time in prison for drug offences.

Just think, America's white incarceration rate is almost unparalleled globally, standing between two and a half to seven times higher than other western countries, with one in 17 white men going to prison. Yet the Black rate is over five times higher, with one in three Black men ending up behind bars. Similarly, while America's incarceration of 33% of all women and girls behind bars worldwide ensnares white women at a disturbingly high rate of one in 111, the net cast for Black women is far wider, with one in 18 incarcerated.

Racial disparities result from disparate treatment of Blacks at every stage of the criminal justice system. But let us take as examples just two critical junctures of the criminal law system, one at the front-end and one at the back-end: police encounters and sentencing. Both of these pivotal moments in the criminal enforcement process are defined by racial unfairness.

Turning first to policing. Anecdotally, in the past few years we have seen on video again and again police officers callously disregard life – Black life, that is. Time and again, law enforcement has shot and killed often unarmed Black people across the country under a range of circumstances – reaching for a driver's licence upon a police officer's order, shifting around in a wheelchair, angling away from the police while walking on a roadway, running away from an officer with back turned, playing with a toy gun at 12 years old. We have also seen a Black man choked to death because he was not immediately compliant when being arrested for selling untaxed cigarettes, and another Black young man killed during a "rough ride" in a police van.

Meanwhile, when the police have dealt with armed white people who have killed multiple people in high-profile violent incidents, from a movie theatre in Colorado, to a church in South Carolina, to a shooting spree in Michigan, they have detained them alive. It is as if the police are more likely to greet Black nonviolence with violence and white violence with nonviolence. The urgent yet decades-old problem of excessive police force towards Black people is part of a much larger and long-festering pattern of over-aggressive, biased policing and racial profiling in communities of colour. For many years, police have focused their resources on minor and/or nonviolent offences, leading to high concentrations of unwarranted stops, searches, arrests and incarceration of Black people. Indeed, when we look at available data on stops and frisks, and on arrests for low-level offences, it tells a familiar, tired, and painful story about racially biased policing. It tells a story of millions of stops, many of which are in violation of our constitution, in cities around the country, mostly of innocent Blacks and Hispanics, far out of proportion to their population. Everywhere such data is analysed, the single most important factor driving these discretionary decisions by police to use their authority to stop and detain people is the colour of a person's skin.

Take New York City as an example. Of the 4.4 million pedestrian stops made by the New York City Police Department from January 2004 through June 2012, 83% of the people stopped were African-American or Latino and only 10% were white. In over nine out of ten stops, no further police action was taken, because the people stopped had done nothing wrong. And yet New York is the rule, not the exception. From Philadelphia to Newark, from Baltimore to Chicago, from Boston to Miami, over and over again we find the same patterns: the police make tens of thousands of stops every year; most people stopped are Black or Hispanic; Blacks and Hispanics are stopped far out of proportion to their percentage of the cities' populations; most of the Blacks and Hispanics stopped are not arrested; and contraband is more likely to be found on whites than Blacks and Hispanics who are stopped.

As in stops, so too in arrests. In the ACLU's 2013 national report on marijuana possession arrests, we documented that Blacks were four times more likely to be arrested than whites despite comparable usage rates. Such disparities persisted, indeed often widened, across hundreds of counties throughout the country, regardless of demographics. In the past year we have documented similar disparities in low-level arrests in Minneapolis and in cities across New Jersey. These racially biased stops and arrests, which are not only often unlawful and perhaps the most glaring example of the increased criminalisation of America's poor, lead to communities feeling distrust, anger, resentment, and fear of the police departments they are paying taxes to for protection and help. This breakdown in relationships harms communities, the police, and public health and safety generally. Such practices also result in the unnecessary entanglement of people of colour in the incarceration system, which reduce people's earning capacity and civic participation, and lead to a number of other collateral consequences that reverberate long after arrest and far beyond prison bars.

Jumping from police contact to punishment, we find the same story of differential treatment by race. Black and Latino offenders sentenced in state and federal courts face significantly greater odds of incarceration than similarly situated white offenders and receive longer sentences than their white counterparts in many jurisdictions. Sentences imposed on Black males in the federal system are nearly 20% longer than those imposed on white males convicted of similar crimes with comparable criminal histories. Blacks represent 12% of drug users, but 38% of those arrested for drug offences, and 59% of those in state prison for drug offences. Such racial disparities increase with the severity of the sentence imposed. The level of disproportionate representation of Blacks among prisoners who are serving life sentences without the possibility of parole (LWOP) is higher than that among parole-eligible prisoners serving life sentences.

Although Blacks constitute only about 13% of the U.S. population, as of 2009, Blacks constituted 28.3% of all lifers and 56.4% of those serving LWOP, and 56.1% of those who received LWOP for offences committed as a juvenile. In the federal system, Blacks are 20 times more likely to be sentenced to LWOP for a nonviolent crime than whites. As of 2012, the ACLU's research shows that 65.4% of prisoners serving LWOP for nonviolent offences are Black. In some states, the racial disparities are even worse. In the federal system, 71% of the 1,230 LWOP prisoners are Black. The racial disparity is even higher for juvenile offenders sentenced to LWOP. Nationally, about 77% of juvenile offenders serving LWOP are Black and Latino, while Black youth are serving these sentences at a rate 10 times higher than white youth.

Many of these racial disparities in sentencing have resulted from theoretically 'race neutral' sentencing policies that have significant disparate racial effects, particularly in the cases of habitual offender laws, mandatory minimums, school zone drug enhancements, and federal laws adopted by Congress in 1986 and 1996 that at the time established far harsher sentences for possessing the same amount of crack cocaine as powder cocaine, two forms of the same drug. For example, someone convicted of an offence involving just five grams of crack cocaine was subject to the same five-year mandatory minimum federal prison sentence as someone convicted of an offence involving 500 grams of powder cocaine (for higher quantities of drugs, the mandatory minimums increased to ten years, twenty years, even life in prison). The 100-to-1 ratio resulted in vast unwarranted racial disparities in the average length of sentences for comparable offences because the majority of people arrested for crack offences are Black. By 2004, under the 100-to-1 disparity, Blacks served virtually as much time in prison for a nonviolent drug offence (58.7 months) as whites did for a violent offence (61.7 months). In 2010, 85% of the 30,000 people sentenced for crack cocaine offences under the 100-to-1 regime were African-American.

The case of Douglas Dunkins is one example of the unfairness and harshness of our drug sentencing laws. In 1992, at the age of 26, despite having no prior felony convictions, no history of violence, and having been convicted of the nonviolent offence of conspiracy to possess and distribute crack cocaine, Douglas Ray Dunkins Jr. was sentenced to mandatory life without the possibility of parole. No drugs were seized in the case, and Douglas was convicted largely on the basis of testimony from co-conspirators who received reduced sentences in exchange for their testimony. If Douglas had been sentenced for an equal amount of powder cocaine instead of crack, he would have received an (albeit still harsh) sentence of 20 years. Douglas is now 50, has been incarcerated for 24 years, and is now a grandfather. His three daughters, who were little kids when he was incarcerated, are now in their twenties. He has missed their entire youth, including their school graduations. Douglas's mother, Bonnie Dunkins, has Stage Four cancer, and is no longer strong enough to make the four-hour trip from her home in Fort Worth, Texas to El Reno, Oklahoma, where Douglas has been in prison since Bill Clinton was starting his first term in office. The ACLU represents Douglas on a petition to President Obama seeking a commutation (reduction) of his sentence that would allow Douglas to get out of prison and rejoin his family.

Racial disparities in sentencing also result in part from prosecutors' decisions at the initial charging stage, suggesting that racial bias affects the exercise of prosecutorial discretion with respect to certain crimes. One study found that Black defendants face significantly more severe charges than whites, even after controlling for characteristics of the offence, criminal history, defence counsel type, age and education of the offender, and crime rates and economic characteristics of the jurisdiction.

Available data also suggests that there are racial disparities in prosecutors' exercise of discretion in seeking sentencing enhancements under three-strikes and other habitual offender laws.

The ACLU is working to end racial injustice in the enforcement of our criminal laws and punishment. On policing, through litigation, advocacy, and public education, we are seeking to eliminate racial profiling and biased policing from law enforcement, institute de-escalation training, change the culture of policing from occupying warrior to guardian of the communities of which they are a part, and end the selective enforcement of low-level offences through implicit bias training, reclassification and decriminalisation of offences, and pre-arrest diversion programmes, not to mention ending the failed 'war on drugs'. On sentencing, in addition to having pushed successfully for partial reform of the crack-powder disparity and establishing the Clemency Project 2014 to seek reduction of unfair drug sentences, we seek to end mandatory minimum sentencing, abolish life without parole for offences committed by children under 18 years of age and for anyone convicted of a nonviolent offence, require federal and state governments to examine racial disparities in sentencing, including racial disparities in prosecutors' exercise of discretion when seeking sentencing enhancements, and to cease immediately all federal death penalty prosecutions and impose a moratorium on executions to ensure that racial bias does not play a role at any stage of the capital punishment process.

These are all critical steps towards reform. But undergirding the disparate treatment of people of colour in our criminal law system is racism. Sometimes it is implicit, sometimes explicit, sometimes unintended, other times driven by animus, sometimes structural, other times individual. It is a scourge which has plagued this country since its founding. Until America grapples meaningfully with this illness, seeking holistic treatment aimed at eradicating the virus as opposed to superficial band-aids meant only to stop the latest bleeding, racial disparities in our legal system will persist, and reforms such as those above will continue to be needed, and will reduce but be insufficient to eliminate such profound unfairness.

£7.69m paid in Compensation to Serving Prisoners as a Result of Injuries

Andrew Selous: From 2005 to 2010 approximately £7.69m was paid in compensation to prisoners as a result of injuries sustained whilst in custody. In 2010 to 2015 this fell by 21.1% to £6.07m, with £0.68m paid in 2013/14 and £1.2m in 2014/15 respectively. NOMS robustly defend all claims brought and successfully defended two thirds of total claims brought by prisoners. An audit of all concluded personal injury claims submitted to the Prison Service over the course of a year is underway as part of a drive to identify opportunities to cut payouts and legal costs. The data relates to claims cases settled out of Court and those lost at Court. It is drawn from information available on a National Offender Management Service database. As with any large scale recording system, it is subject to possible error in data entry and processing.

Gove Reveals Plans for 'Reform Prisons' and League Tables

Jon Robins, Justice Gap: Michael Gove outlined his plans for 'reform prisons' based on academy schools with increasing autonomy for governors and quality underpinned by league tables, in his appearance before the House of Commons' justice committee this morning. The justice secretary told the MPs that he was planning to publish a white paper this spring, and summed up his approach to prison policy as 'turning prisoners from liabilities into assets'. Gove set his plans for what he called 'freestanding reform prisons', which he clarified, would remain in the public sector. 'To allow governors to have a considerably greater degree of freedom, we need to create a new legal status in the same way that the Blair government created a unique status for academy schools,' he explained.

The minister wanted to create a 'legal foundation' that could allow for 'groups of prisons led by a strong governor, who was made a significant difference in one prison and who can then take on others, in the same way that headteachers in academy chains have'. He flagged up the possibility of better performing prisons becoming 'the improvement partner' of weaker ones – 'in the same way we have seen in schools – and in the NHS – where we have seen strong foundation trusts taking weaker ones under their wing'. 'We all know that keeping people in prison costs the state. Even before they ended up in custody, many will have not just cost taxpayers money but brought misery into the lives of others and themselves… . I hope that the criminal justice system and, in particular, prison will give those individuals the chance to reflect and rebuild their lives and give the state the chance to turn them into people who can contribute.'

The justice secretary also set out plans for prison league tables comprising what he called 'aspirational measurements' to compare prisons over three to five year periods. The tables would have metrics such as the number of qualifications that prisoners were securing and a prison's achievement of 'resettlement goals'. Gove also said there would be 'dipstick measures', enabling people to compare how prisons were performing on a weekly basis featuring 'key indicators' such as time spent out of a cell. The minster was asked how the Ministry of Justice could meaningfully rank high security prisons like HMP Long Lartin ('which houses terrorists and people with serious jihadi pasts') with low security prisons. 'Where previous governments were thinking about introducing tables in education, similar arguments were made. For example, how can you compare school in Tower Hamlets or Ealing with a large multicultural intake with a school in Herefordshire? The experience of school league tables shows that once you start measuring, you generate progress,' Gove said.

The minister was also asked whether a program of prison reform could succeed in the context of 'extreme overcrowding'. He took issue with the question. 'We do have a problem with crowding. I would not say overcrowding,' he said; adding that his 'ideal' would be 'one prisoner in each room'. Gove warned of 'over-fixating' on numbers. 'There is a danger of being paralysed by the thought that we cannot make any changes unless we reduce population,' he said. Whilst Gove confirmed plans to push on with shutting down 'ageing and ineffective' Victorian prisons as part of a 'new-for-old' prison building scheme, he was short on detail. 'We have made it clear that there are some prisons – apart from Holloway, none have been named – that will close down,' he said. 'We hope we can get a good deal for the taxpayer and then reinvest in more humane decent and more productive sites elsewhere.'

Public Inquiry into the Fatal Shooting of Anthony Grainger

Anthony Grainger, 36, was killed when he was shot in the chest during a Greater Manchester Police operation in Cheshire in 2012. He was unarmed at the time. Tony Murphy of Bhatt Murphy, solicitor to Anthony's partner Gail Hadfield- Grainger said: "Gail Hadfield- Grainger hopes that this long-awaited decision will ensure progress in securing truth and accountability in respect of the fatal police shooting of Anthony Grainger" Jonathan Bridge of Farleys, solicitor to Anthony's parents said: "The family have already waited for over 4 years to learn the true facts surrounding Anthony's death and are keen that there be a full and transparent inquiry with all material made available, particularly the secret evidence that prevented the criminal proceedings against the Chief Constable from continuing. The Public Inquiry should now allow such secret material to be properly considered." Deborah Coles, Director of INQUEST said: "When a member of the public is shot and killed by the state, it is absolutely essential that there is a robust, transparent and far reaching investigation looking at all the circumstances. We welcome this decision and hope that four years on from Anthony Grainger's death, this inquiry will now go ahead without any further delay"

Three Serving Police Officers Arrested in Police Federation Fraud Inquiry

Vikram Dodd, Guardian: Detectives investigating concerns over the handling of £1m at the Police Federation have arrested four people, including three serving officers, on suspicion of fraud. The federation, which represents most of the 125,000 police officers in England and Wales, called in Surrey police on Tuesday. Surrey police said in a statement on Friday: "The allegation relates to concerns about the transfer of around £1m to a charitable account in August 2015." It added that the four people arrested were two men in their 50s and two men in their 40s. They remain in the custody of Surrey police, within whose area the federation's headquarters is located. They were detained on suspicion of fraud under section 4 of the Fraud Act and conspiracy to defraud, the Surrey force said.

The Police Federation of England and Wales called police in over concerns about accounts held by its constables' central committee. DetSupt Karen Mizzi, leading the investigation, said: "We are carrying out a detailed and thorough investigation into allegations of fraudulent activity involving significant amounts of money. "As the allegation was only reported to us on Wednesday 16 March, our enquiries are at an early stage but specialist officers, including our economic crime unit, are investigating to establish whether any offences have occurred. The Police Federation reported the matter to us as their headquarters is in Leatherhead and we are their local force, but to be clear those arrested are not Surrey police officers. Our professional standards department is currently in liaison with colleagues in relevant forces to inform them of the arrest of their officers. Due to the nature of the allegation, and those arrested being serving officers, Surrey police has notified the Independent Police Complaints Commission (IPCC) and will also be in liaison with the charity commission going forward."

The federation has been mired in controversy for years over how it handles money and the government has threatened to take it over if it does not reform. In a statement, the federation said it had called in police on Tuesday "to investigate potential fraudulent activity, relating to accounts held by the federation's constables' central committee". The federation said: "The issue was identified by the PFEW itself and we are fully cooperating with their initial investigation, which is being undertaken to determine whether any offences have been committed. Until those inquiries are complete it would be inappropriate to comment further."

The federation has previously faced allegations of bullying and secret multimillion-pound bank accounts. Its relationship with the Conservative party was poisoned by the Plebgate affair involving the former cabinet minister Andrew Mitchell. An independent review, chaired by Sir David Normington, following the scandal raised questions about the conduct of some of the federation's former representatives, and found that officers were disenchanted with the body supposed to represent them. The federation was created by parliament in 1919 to represent rank-and-file officers and stop them joining unions with the right to strike.

A federation spokesperson confirmed that Will Riches had resigned as vice-chair of the federation on Wednesday, but would not say why. Riches remains in his other posts, including on the federation's interim national board and on the powerful constables' central committee, where he serves as a representative for the Metropolitan and City of London forces. Riches has been a constable in the Met since 1995, starting his service in east London. He first won election to the constables' central committee in 2009, and in 2014 he became vice-chair of the federation, losing out on being chair after a coin toss. The committee making the choice had split evenly, and Steve White, seen as a leading voice for modernising the organisation, was

chosen after Riches called heads on a flipped 50p coin; it landed on tails.

Mass Stop and Search by Police Doesn't Reduce Crime Alan Travis, Guardian

The use of large "surge" stop-and-search operations by the police has no discernible effect in reducing crime, according to newly released Home Office research. The study looks at the mass use of stop and search by London's Metropolitan police to tackle knife crime in 2008/09, at a time when officers were carrying out one search every 20 seconds on average nationwide. The study was released following a Freedom of Information request by the Guardian and its findings directly impact on the recent debate between the home secretary and the Met commissioner over whether a rise in knife crime can be linked to falls in stop and search.

The use of large-scale mass stop and search operations has been highly controversial not least because black people are still four times more likely to be stopped and searched on the streets by the police than white people. The home secretary, Theresa May, launched a major campaign to scale back the mass use of stop and search by the police and to replace it with targeted operations on crime hotspots designed to improve arrest rates. She has argued large-scale stop and search operations can poison community relations.

The official evaluation looked at 10 London boroughs which saw a threefold increase in weapon searches by the police, up from 34,154 in the year before to 123,335 in the first year of Operation Blunt 2, which began in the spring of 2008. It also compared crime rates in a further 16 London boroughs, which saw a much smaller increase – up 18,103 – in weapon searches over the same period. The researchers looked at nine different measures of police recorded crime including assaults involving a knife, robbery, and weapons and drug possession offences.

But their analysis found "no statistically significant crime-reducing effect from the large increase in weapon searches during the course of Operation Blunt 2. This suggests that the greater use of weapons searches was not effective at the borough level for reducing crime." The Home Office researchers say their analysis was confirmed by data from the London Ambulance Service showing that callouts for weapons injuries did not drop more in the boroughs targeted for the mass use of stop and search than the other boroughs: "Rather, ambulance callouts actually fell faster in those boroughs that had smaller increases in weapons searches." They add that both types of boroughs saw reductions in the number of murders involving stabbings during the period but say the small numbers involved mean that it is unlikely the falls in the mass stop and search boroughs could be attributed to the police operations. "Overall, analysis shows that there was no discernible crime-reducing effects from a large surge in stop and search activity at the borough level during the operation. However, it does not necessarily follow that stop and search activity does not reduce crime," the study concludes.

It says that the study was based on data at London borough level with populations of over 200,000 per borough and it is possible that it masked localised efforts in cutting crime in particular areas: "It is possible that a base level of stop and search activity does have an effect after which there are diminishing, or even zero, returns," but the researchers say it has not been possible to shed light on what the level would be. The home secretary clashed with the Met commissioner over the issue last October when she publicly criticised his claim that the rise in stabbings was linked to falls in stop and search in London boroughs.

There has been a significant reduction in the use of stop and search by the police in England and Wales, down from a peak of 1.2m in 2010/11 when 9% led to an arrest to 539,000 in 2014/15 of which 14% resulted in an arrest. Knife crime has fallen by more than 16% since 2011 although that includes a 9% increase recorded by the police in the last 12 months. A Home Office spokesperson said: "The government is clear that the power of stop and search, when used correctly, is vital in the fight against crime. However, when it is misused, stop and search is counterproductive and a waste of police time. "Stop and search must be applied fairly, effectively and in a way that builds community confidence rather than undermining it. No one should be stopped on the basis of their race or ethnicity." He added a number of new measures had been introduced since 2014 to improve the effectiveness of stop and search including the Best Use of Stop and Search scheme, which was creating more transparency and accountability in its use.

Review into Racial Bias in the Criminal Justice System Begins Government Statement

Offenders, suspects and victims have been urged to share their experience of possible racial bias in the criminal justice system. The Prime Minister has asked David Lammy MP to lead the review to investigate evidence of possible bias against black defendants and other ethnic minorities in England and Wales. A consultation will be hosted on www.gov.uk until June, with a final report published in spring 2017. David Lammy MP said: We know that there is disproportionate representation in the criminal justice system – the question is why. Over the course of the next year my review will search for those answers, starting with an open call for evidence to get to grips with the issues at hand. There is clearly an urgent need for progress to be made in this area, and the evidence received through this consultation will be crucial in identifying areas where real change can be achieved. Questions in the consultation include why respondents think black defendants are more likely to be found guilty by a jury, face custodial sentences and report a worse experience in prison than white defendants. Despite making up just 14% of the population of England and Wales, Black Asian Minority Ethnic (BAME) individuals currently make up over a quarter of prisoners. Latest figures also show that BAME people make up a disproportionate amount of Crown Court defendants (24%), and those who are found guilty are more likely to receive custodial sentences than white offenders (61% compared to 56%). The review will address issues arising from the CPS involvement onwards - including the court system, in prisons and during rehabilitation in the wider community, to identify areas for reform and examples of good practice from the UK and beyond.

Why Are So Many Prisoners From Ethnic Minorities? I Intend to Find Out

David Lammy MP, Guardian: Where America leads, Britain usually follows. Art and culture, film and fashion, language and political ideas all have a habit of crossing the Atlantic. But in one important area of British life we must resist this trend: the incarceration rates for ethnic minorities. America is home to almost 25% of the world's prisoners, but not even 5% of the world's population. Minorities make up a disproportionate share: about one in every 15 African American men are incarcerated, alongside one in 36 Latino males. The figure for white men is one in 106.

The numbers have shock value, but in Britain we have our own problems. Black people here are almost four times more likely than white people to be behind bars. Similarly, the number of Muslim prisoners has more than doubled in the last decade. We have not reached US levels yet, but these are problems that must be confronted. When the prime minister asked me to conduct an independent review into this issue I accepted with little hesitation. I have had to put to one side day-to-day party differences because the review is a rare chance to forge a cross-party consensus on an issue that is complex, contested and divisive. It is also a chance to hear voices from beyond Westminster and Whitehall, from judges to community groups; prison officers to offenders themselves. The first challenge is to unpick the facts. It is the case, for example, that offenders from minority backgrounds are more likely to face prison sentences than white offenders

for the same offences. The odds are 39% greater, in fact, according to recent analysis.

Many will attribute this to old-fashioned discrimination, and that is certainly what black and Muslim offenders were keen to convey to me on a visit to Pentonville prison a few weeks ago. One Muslim prisoner, who was from Yorkshire and had been sentenced at York crown court, put it quite plainly: "My solicitor was white, my barrister was white, the prosecutor was white, the judge was white, the jury was white, and when I first went to prison the governor was white and so were all the guards." If his experience and viewpoint are representative of many, we have a serious problem. Looking at the diversity of staff in our justice system will be one aspect of the review. Ultimately, any justice system must be founded on trust, fairness and equality before the law, irrespective of ethnicity, social class or background. Another way forward may be the emerging body of work around "implicit bias". Evidence from this field shows how we can all exhibit biases in our behaviour without even being aware of them. Experiments show CVs with "white-sounding" names being treated more favourably than those with names linked to minority backgrounds, for example. Others will want to interrogate these figures about the justice system further. It appears to be the case, for example, that defendants from minority backgrounds are less likely to plead guilty and benefit from reduced sentences through plea bargains. Perhaps this explains the greater likelihood of going to prison.

However, often one answer poses another question; if minorities plead "not guilty" more often than average, why is this the case? Are defendants from minority backgrounds receiving inferior legal advice? Or is it because they do not trust the system to deliver on its promises? Is there another explanation altogether for minorities making different choices in similar situations? The point is that too often we don't know the answer. Many have strong hunches, but a consensus can only be achieved through hard facts and rigorous analysis. Over the course of the next year my review will provide that, starting with an open call to evidence from anyone who wants to contribute. There will be a formal process for people to get involved through the gov.uk website, alongside opportunities for people to connect and debate the issues on social media. I will examine whether the system treats people fairly – as well as what more can be done to help offenders from minority backgrounds turn their lives around. That means understanding if prisoners from particular backgrounds are more likely to get stuck in cycles of reoffending – and what more can be done about it. When half of all crime is committed by people who have already been through the criminal justice system – costing up to £13bn per year – we need answers to these questions. In the US this problem is being tackled with a growing urgency. Last year, America's crime rate and incarceration rate both fell for the first time in four decades. We need to share that vision. My job in leading this review for England and Wales is to take action before things get that bad, and put our country on a path to different future.

Judges Overturn Practice of Double Conviction for Aggravated Offences

Owen Bowcott, Guardian: A long-established legal practice of imposing double convictions for racially or religiously aggravated offences has been overturned by a high court ruling that could influence national crime statistics. The unanimous judgment earlier this month concluded that duplication was unjustified and quashed three underlying convictions for harassment. Offenders should not be found guilty twice in magistrates courts for the same individual piece of behaviour, a panel of three senior judges said. The harassment itself and any racially aggravated aspect of what occurred should be dealt with as a single offence, they said. The case was brought by Keith Allen, a solicitor with the law firm ABR solicitors, and Nicholas de la Poer, a barrister of New Park Court Chambers, both in Leeds, in relation to a defendant, James Henderson, who was convicted six times last year in relation to three separate incidents.

The original trial took place before Huddersfield magistrates. Three of Henderson's convictions were for racially aggravated harassment under the Crime and Disorder Act 1998; the other three offences related to the same victims but under the Public Order Act 1986. Allen argued that the court was wrong to convict the defendant of both offences as it meant he would have two crimes on his record when there was only a single instance of offending behaviour. The district judge, however, relying on guidance issued by the Justices Clerks Society and a previous high court case from 1991, concluded that the law permitted him to convict the defendant of both offences. On appeal in the high court, De la Poer convinced the judges – Lord Justice Simon, Mr Justice Cooke and Mr Justice Leggatt – that they should overturn the three lesser convictions.

In similar cases in future, the judges said, if defendants are convicted of the more serious aggravated offence then alternative charges for the less serious underlying offence should simply be adjourned sine die (without date) – meaning they would not be mentioned on the defendant's record. "For this defendant it means that the convictions wrongfully entered on his record were quashed," Allen said. "On a national scale it will mean that a number of people who have been convicted of both could appeal, seeking to set aside convictions for underlying offences, and the Justices Clerks Society will need to change their guidance to magistrates." He added: "I was surprised to find out that the magistrates court had a policy recommending convicting people for twice the number of offences than they had committed and am happy that that policy has now been brought to an end through this case."

De la Poer said: "The practice which had developed within the magistrates court of convicting of both offences had attraction for administrative reasons." But he added: "Mr Henderson's case should bring this practice to an end, dealing comprehensively as it does with the administrative convenience argument, the obscure statutory provision mentioned in the guidance and a number of other reasons advanced by the district judge in support of his reasoning behind convicting on both the underlying offence and the aggravated form." It is difficult to estimate how many offences will be affected in future. A spokesperson for the Crown Prosecution Service said: "We are considering the judgment and any implications it may have for us including any practical difficulties which need to be overcome. "This judgment is not about whether two alternative charges are brought – it is about how convictions are recorded by the court. Ultimately how courts record convictions is a matter for them although we will of course work with them as appropriate to overcome any issues in cases such as these."

Court Sets Aside Conviction For Refusing To Answer Police

The Court of Appeal has set aside a conviction for refusing to answer a question when stopped by the police under the terrorism legislation on the basis that the PPS charged him under the wrong legislation. Sean O'Reilly ("the appellant") was stopped in his car by the police on 11 March 2014. He was told that he had been stopped under s. 21 of Justice and Security Act 2007 ("the 2007 Act"). When asked to provide details of his movements he said he was going to his mother's home but refused to give her address. He was informed that it was an offence under the 2007 Act not to provide the required information and that he was liable to be arrested if he continued to refuse to do so. The appellant was subsequently arrested and charged with obstruction of a police officer in the due execution of his duty contrary to s. 66(1) of the Police (Northern Ireland) Act 1998 ("the 1998 Act"). At the hearing in the magistrates' court, the appellant's counsel argued that he should have been charged under s. 21 of the 1997 Act rather than s. 66(1) of the 1998 Act and that the judge should stay the

proceedings. The District Judge took the view that the PPS could charge the appellant with either offence as each was made out on the facts. The appellant was convicted and fined £50.

The case was stated for the opinion of the Court of Appeal with the question being whether the judge was correct in law in ruling that an offence under s. 21 of the 2007 Act (refusing to answer a question under the stop and question power) could alternatively be prosecuted as obstructing a police officer in the due execution of his duty contrary to s. 66 of the 1998 Act: • The offence under s. 66 of the 1998 Act is triable either in the magistrates' or Crown Court. The penalty on summary conviction is imprisonment for a term not exceeding six months or a fine or both and the penalty in the Crown Court is imprisonment for a term not exceeding two years or a fine or both. • The offence under s. 21 of the 2007 Act is triable only in the magistrates' court and the penalty is a fine.

Mr Justice Treacy, delivering the judgment of the Court of Appeal, referred to the case of Devlin in which the Court had addressed the interaction between s. 21 of the 2007 Act and the offence of obstructing a police officer under s. 66 of the 1998 Act. In this case it was held that liability for omissions is exceptional in the criminal law and only exists when the law imposes a duty to act. The judge noted that the failure to provide details of movements could not independently constitute the offence of obstruction under s. 66 of the 1998 Act: "Whilst the Court in [the Devlin case] acknowledged that the refusal to provide his name and address made it more difficult for the police constable to perform his duty he could not be guilty of an offence under s.66 as he was not obliged by common law or statute to give the constable the information requested." The judge said that Parliament, however, had intervened to provide a bespoke and carefully calibrated statutory regime defining the scope of the powers of the questioning police officer and the mode of trial and penalty for non-compliance. Section 21 of the 2007 Act therefore criminalised conduct which would not of itself otherwise be criminal: "When Parliament has defined the ingredients of an offence and has prescribed the mode of trial and the maximum penalty it must ordinarily be proper that conduct falling within that definition should be prosecuted for that statutory offence and not for a common law offence which may or may not provide the same defences and for which the potential penalty is unlimited."

He noted that in the present case the offence of obstruction is on a statutory footing, the penalty is not unlimited and the appellant was dealt with in the magistrates' court where the maximum penalty is a fine: "The enactment of the specific offence under the 2007 Act could not therefore extend the reach of s.66. This would have defeated the intention of Parliament which must have carefully weighed up the competing interests and constructed a bespoke offence under s.21 of the 2007 Act triable only in the magistrates' court and with the maximum penalty being a fine. If Parliament had wanted to make the offence triable on indictment and/or subject to a potential penalty of imprisonment it could easily have so provided. It conspicuously did not so provide." He added that undesirable consequences could follow if the PPS were able to charge a person under either s.21 or s.66 as it could lead to inconsistent charging and sentencing approaches. He said that prosecutors could elect to charge under s.66 and defendants could find themselves exposed to trial on indictment and facing a maximum of six months imprisonment: "We do not consider that such an approach can be regarded as lawful and it is inconsistent with the intention of Parliament".Mr Justice Treacy further noted that the appellant was informed by the constable that it was "an offence under the Justice and Security Act" not to provide the required information and he may therefore have had at least constructive knowledge that the penalty would be a fine when he made his decision refusing to provide the information sought. The Court of Appeal concluded that where a person fails to provide required details under s.21 of the 2007 Act he can only be prosecuted for that statutory offence and dealt with by the punishment contained in that statute. It is not an option to alternatively prosecute for obstructing a police officer under s.66 of the 1998 Act as there is no duty under that provision to provide the requested details. The Court allowed the appeal and set aside the conviction.

Neither Confirm Nor Deny = Neither Truth Nor Justice

Following the exposure of police spy Mark Kennedy in 2010, activists and journalists slowly began to lift the lid on political policing in Britain. Their investigations found that the state had used undercover officers to infiltrate hundreds of political groups to surveil their activity and attempt to undermine dissent. We now know that officers commonly used intimate relationships with targets as a tactic, stole the identities of dead children, spied upon families fighting for justice following the death of loved ones in police custody, and lied in court to secure convictions against activists. Disturbingly, internal investigations by state agencies over the same period revealed little. In 2012, Mark Ellison QC conducted an independent review into police corruption during the Stephen Lawrence murder investigation. The findings were damning. Following increased public pressure, the Home Secretary announced an independent public inquiry into undercover police operations. Lord Justice Pitchford was appointed to lead the Inquiry.

Next week, at a crucial preliminary hearing, Pitchford will consider what legal approach he will take in response to applications to keep information secret. Police agencies argue that much of the Inquiry should be held behind closed doors, excluding both the public and non-state core participants. Donal O'Driscoll is one of nearly 200 victims of police spying operations already granted core participant status. He is also part of the Undercover Research Group, an organisation which researches and uncovers police spies and assists those fighting for state accountability. He says this is a pivotal moment. 'This hearing will set the foundations for the rest of the Inquiry. What happens there dictates how the Inquiry will be and how everyone will engage with it. Worst case scenario is that the judge goes for a totally secret inquiry, in which case it's pretty much dead in the water. Nobody on the non-state side will trust it in any form. In all likelihood there would be a mass walkout.' Donal O' Driscoll

Culture of secrecy: The police agencies controversially assert that Pitchford should uphold the practice of Neither Confirm Nor Deny (NCND) throughout the Inquiry in relation to the identity and activities of police spies. If this approach is adopted, hearings will be held almost entirely in secret, and the details of undercover operations, including the identity of officers, will remain hidden from the public. Lengthy submissions from the Metropolitan Police Service (MPS), supported by the other police agencies, contain wide ranging assertions to support their view that secrecy is in the public interest – from a duty not to break an alleged promise to officers of 'life-long confidentiality' to concerns that exposure could lead to 'emotional unhappiness.'

'My impression is that this is desperation' says O' Driscoll. 'They are desperate to maintain their culture of secrecy and their unaccountability; it's about protecting their reputation.' Merrick Cork, another core participant in the Inquiry, is also dismissive. 'They'll argue anything' Cork says. 'The first rule of power is to protect itself. If they were interested in justice they'd want to root out the wrongdoers and the bad practices. The fact that they close ranks shows that they're not interested in justice; they're interested in power. NCND is not long standing, nor is it a policy. It's a relatively recent practice that they pick and choose when to use. It wasn't until six months into the court proceedings of the eight women who sued the police over undercover relationships that they even brought up NCND.'

Former undercover officer turned whistleblower Peter Francis agrees. He has told the Inquiry he was never promised lifelong confidentiality and that NCND wasn't mentioned during his employment, nor included in any written documentation relating to his role. His submissions are a sig-

nificant blow to the police's credibility. Worryingly, the Home Office submissions to the Inquiry support the police stance on NCND. Despite claiming to have ordered the Inquiry 'to [restore] public confidence in the police by uncovering the truth… in as open a way as possible', the Home Office argues that 'the public interest in ensuring that police techniques remain effective should outweigh the interest in public access to information.' 'When I read the Home Office submissions it felt like the whole thing was tipping over into farce,' says O'Driscoll. 'The Home Office ordered the Inquiry, set the terms of reference, spoke of all the horrible abuses that took place and now it's asking for all of that to be kept secret. It doesn't make sense.' If the state core participant arguments are accepted next week, the Inquiry could become dependent on self-disclosure by the police, in secret hearings. Considering that serial breaches of disclosure obligations and destruction of evidence by the MPS form the backdrop to the Inquiry, who could have confidence in such a process? 'We're victims of serious police misconduct, participating in the public interest to ensure a thorough investigation. We're not going to walk in and tell our stories in those circumstances. The police can spin a complete set of lies and we're not going to be able to challenge it. We're the ones who've already had all the intrusion, why would we go through that again if there's no chance of justice at the end?' explains O'Driscoll.

In stark contrast to the police position, non-state core participants assert that it is essential that the Inquiry is open and transparent. Cork and O' Driscoll are two of 133 non-state core participants who wrote to Pitchford (here) calling for the release of officers' cover names and a list of the political groups spied upon. Cork explains: 'Everything that we got so far, everything that has led to this inquiry over five years, has all come from the 15 officers that have been exposed. This is just 10% of the estimated total number of undercover officers. We need the cover names so people can know they were targeted. The only way we will get the truth is if the people who were spied upon are able to tell their stories. Otherwise we're only going to get 10% of the truth.' A key term of reference of the Inquiry is to discover 'whether and to what purpose, extent and effect undercover police operations have targeted political and social justice campaigners'. If Pitchford accepts the police submissions on NCND next week, the cover names will remain secret. Without their publication, people won't know they were spied upon and it will become impossible for the Inquiry to fulfill its aims.

As the establishment forces unite to demand secrecy, Pitchford is in an unenviable position. But if he yields to their demands, the process is bound to fail. As this is a public inquiry, it follows that the starting point must be open proceedings, with minimal restrictions, fully justified on a case by case basis. Those who were spied upon deserve answers. The Inquiry was ordered to help address the loss of public confidence in the police resulting from serious misconduct in undercover operations. If it appears to be a cover-up, the Inquiry will only increase the concerns it was called to address. To be effective, it must be open.

Ministers Need to Reinstate A National Forensic Science Service – And Quickly

Alastair Logan, Justice Gap: A new forensic and biometrics service is planned by the Home Office, four years after it controversially abolished its predecessor. Ministers say there will be a 'national approach' to forensic science in criminal cases in England and Wales and they are supporting a police review of whether there should be a 'joint Forensic and Biometric Service' to achieve economies of scale, increased capability and resilience. The Forensic Science Service, a government-owned company, was shut down in 2012, after the government said it lost £2m each month. The Commons Science and Technology Committee published two reports in 2011 and 2013 lambasting the government for its secret decision to close the Forensic Science Service (FSS) in 2010 listing a series of failures including

the lack of a coherent archiving system for materials from investigations after the closure of the FSS Archive and a failure to address chronic problems in the funding for forensic science research.

The secrecy meant that The Lord Chief Justice, the Government's Chief Scientific Officer, the DPP, the Attorney General and even the Forensic Science Regulator (FSR) had no idea this was being done. England and Wales are the only countries in the world in which forensic sciences entirely in the hands of either the police or private forensics science providers whose principal customer is the police. In-house police laboratory work has increased massively since the FSS was closed. In January 2015 the National Audit Office produced an analysis which confirmed the worst fears of those who have expressed repeated concerns about the way in which forensic science is being treated and its impact on the criminal justice system. It said forensic science provision was under threat because police were increasingly relying on unregulated experts to examine samples from suspects and crime scenes. Digital analysis of computers and smart-phones was being conducted in an ad hoc manner which did not provide value for money, it said.

Miscarriage risk: Senior politicians, scientists and lawyers, including the criminal law committee of the Law Society, had warned in 2012 that closing the forensic science archive would cause miscarriages of justice and stop police solving crimes and that reliance on private forensics science providers would leave the detection of crime and criminals at the mercy of market forces. Further the refusal to allow police forces to lodge forensic items into the Forensic Archive meant that police forces had to create individual storage systems with no national standards and future cold case reviews would become impossible.

The decision to adopt a 'national approach' must go hand in hand with the creation of a new FSS and the re-opening of the Forensic Archive. The FSR must be given statutory powers to create and enforce national standards for forensic analysis and the training and research that the old FSS, an internationally acclaimed body, provided must again re-instated. Lastly, the government must abandon its belief that the criminal justice system must be cost neutral and funded by those who use it.

Prolific Young Offenders to be Tagged With GPS Trackers *Police Oracle*

Courts in London first in UK to be given powers ordering criminals to wear the equipment. Some of the capital's most prolific young offenders will be fitted with GPS tags from this summer in an attempt to reduce reoffending in the city. The Mayor's Office for Policing and Crime announced that courts in north and east London will be the first in the UK to have powers to order criminals to wear satellite tags, which track an offender's location. The pilot will initially target up to 100 of the most prolific young adult offenders in the selected areas and means that those who do reoffend can be easily identified at the scene, saving police time and money. Similar GPS schemes have taken place across the country, including in Durham and Thames Valley, but often on a voluntary basis where the offender is given the option of wearing the tag rather than face a custodial sentence. The decision around who will provide the tags for the pilot has not yet been made but now that the secondary legislation has been approved, such a process can be started.

The London pilot is part of the Mayor's £3 million programme to tackle the most serious repeat offenders and is set to build on work which has seen offending by youths leaving custody drop from over 70 per cent in 2012 to around 56 per cent. "Cracking down on reoffending is essential as we continue to tackle crimes across the capital. This innovative pilot uses the latest GPS technology to help deter reoffending and aid rehabiliitation," said Mayor

of London Boris Johnson. “It is these kind of pioneering projects, from body worn video and tablets to sobriety tags that are helping us to ensure London remains the greatest and safest big city on earth.” The new pilot has been approved by the Ministry of Justice, who earlier this year scrapped a contract with British company Steatite because the project to create a bespoke tag was proving “too challenging”. Instead it will now look to procure “off the shelf” products for its offender management programmes. “GPS tagging is an innovative tool to help us make sure offenders in the community are complying with the terms of their sentence,” said Justice Minister Dominic Raab. “This technology can reinforce public protection, strengthen rehabilitation so offenders are dealing with their problems and critcially drive down re-offending.” He added that the pilot will “inform plans” to roll out GPS tagging across the country. In a separate trial last year, 48 criminals across five London boroughs volunteered to be electronically monitored, with the pilot finding the tags provided £169,000 worth of savings to the public purse and savings to society in excess of £2.8 million.

Lesbians Forbidden From Having Sex In Prison Lose High Court Appeal

Civil partners, Michelle and Stephanie Hopkins, said they felt "degraded and humiliated" by the refusal to let them share a cell at HMP Bronzfield women's prison. When first locked up at the private prison, in Ashford, the couple were allowed to share a cell - but only on condition that they didn't have sex. There was no suggestion that they had done but, in February last year, the decision was taken to shift Stephanie to the next door cell. At London's High Court, their barrister, Hugh Southey QC, attacked that decision as a clear breach of their fundamental rights. Mr. Southey QC,contended that the intimate relationship restriction was unlawful because it is inflexible and also because it should have been made, but was not made, in a statutory instrument. Another aspect of the Claimant's case is that the decision not to allow her to share a cell with the Interested Party has also infringed her rights under Articles 3 and 8 of the ECHR as well as constituting a breach of the Equality Act 2010 ("the 2010 Act") as the Claimant was a "disabled person" within the meaning of that Act.

All the claims are denied by the First Defendant (Sodexo) and this stance is supported by the Second Defendant (Ministry of Justice), who has responsibilities for prisons. Their case was: a) The First Defendant had statutory authority to issue the Policy (including the intimate relationship restriction) and it was entitled to operate the Policy as it sought to achieve an underlying statutory aim of maintaining good order and discipline in prisons; b) The decision to move the Interested Party out of the Claimant's cell meant that the Interested Party was placed in a neighbouring cell to the Claimant so that the Claimant and the Interested Party were able to provide care for each other during the day when they (like other prisoners) were not locked in their cells; c) There has been no violation of the Claimant's rights under Article 3 and/or 8 of the ECHR even if those rights were engaged; and that d) The Claimant is not a "disabled person" within the meaning of the 2010 Act and even if she was, sections 20 and 149 of that Act have not been contravened.

But, dismissing their challenge, Judge Stephen Silber said the prison's 'no sex' rule was 'sensible and realistic'. The prison's operator, Sodexo, was justifiably concerned that sex amongst inmates would undermine 'good order and discipline'. Allowing the couple to share a cell at night would have smacked of 'condoning sexual activity' amongst prisoners. And if a special case were made of the couple, other sex-starved jailbirds might view it as 'favouritism', the court heard. Sir Stephen ruled: "A prisoner like Michelle does not have the rights of ordinary citizens to choose in whose company they can sleep. That is because any custodial

order inevitably curtails the right to enjoy many features of life outside prison." The ban on intimate relations between prisoners was part of the "necessary restrictions of prison life".

Police Accused of Concealing Role of Undercover Officers From Judges

Rob Evans, Guardian: More than 100 anti-war campaigners fought a decade-long legal battle to uphold their right to protest, eventually winning a ruling in their favour and compensation. Now the protesters are alleging they had been infiltrated by two undercover officers who could have provided crucial evidence to bolster their case and cut short “lengthy, stressful and expensive litigation”. They say the concealment of the spies from the judges is part of a continuing cover-up of the covert infiltration of political groups and could have distorted the justice system. Their allegations are due to be examined by a judge-led public inquiry into the conduct of the undercover police officers who were embedded in hundreds of political groups since 1968.

One of the issues due to be scrutinised centres on the alleged systemic withholding of key evidence by the state in a series of court cases that resulted in the unjust convictions of political campaigners. The latest claims come ahead of a two-day hearing, starting on Tuesday, in which police will argue that broad swaths of the public inquiry – set up following revelations of misconduct by the undercover officers – should be held behind closed doors. The claims relate to about 120 campaigners who were unlawfully detained and prevented from attending a rally against the Iraq war in March 2003. The campaigners were in three coaches on their way to protest outside a Gloucestershire RAF base, Fairford, which was being used by American planes to bomb Iraq. They were intercepted, searched and questioned by police in a lay-by before being forced back on to the coaches and returned to London. In 2006, law lords sitting in the House of Lords, then the highest court in the land, ruled the protesters had been unlawfully detained, without toilet breaks, and forced to return to London. The ruling was hailed by the protesters and their lawyers as a landmark victory for liberty and human rights.

In 2013, some of the protesters were awarded more than £4,000 each in compensation by a county court judge who said the police had no powers to stop the coaches. The judge called the protesters “decent hardworking people who had never been in trouble with the police” and said they had been humiliated and intimidated by police. Now it is alleged that a suspected undercover officer, known to protesters as Rod Richardson, was on one of the coaches stopped by police. Three years ago, he was accused in parliament of stealing the identity of a boy who had died at two days old and adopting it when he pretended to be a protester for three years. The Metropolitan police service (MPS) has apologised to the mother of the dead boy for using his identity, although it did not confirm that Richardson was an undercover officer. The Guardian has obtained a photograph of the man known to protesters as Richardson who has been independently identified by two different activists.

According to campaigners, Richardson posed as an anti-capitalist protester between 2000-03 in radical groups in London and Nottingham. In a legal submission to the public inquiry, the protesters have alleged that a second undercover officer was “heavily involved in the group laying on the coaches and other support”. Lord Justice Pitchford, the judge leading the inquiry, has agreed to examine the alleged involvement of the undercover officers, saying the protesters have raised an “important issue” about the disclosure of evidence. Police argued at the House of Lords hearing that they had been justified in turning back all the protesters on the coaches because they had received intelligence warnings that they were likely to cause disorder at the military base.

According to police, this intelligence was not precise enough to distinguish between protesters who were likely to be law-abiding and those who were not. However, the protesters have dis-

puted this claim, arguing that the undercover infiltration would have given the police detailed enough intelligence to show them if anyone was likely to cause disorder. They allege the true identities of the undercover officers, and the intelligence they disclosed, was not disclosed to the protesters at any point. “Judgments were handed down on incomplete information,” they have said. Pitchford’s inquiry is holding a series of preliminary hearings before taking evidence about a series of allegations involving the undercover infiltration of political movements. The hearing will focus on the crucial question of how much of the inquiry will be held in public. The police will argue that large parts of the inquiry should be held in secret to protect the undercover officers.

Zoe Young, one of the protesters, said: “The police secretly had people undercover on the buses and organising the buses, they kept that fact secret when the case came to the appeal all the way to the House of Lords and during the civil proceedings for compensation, and now they are trying for blanket secrecy even in the public inquiry into what went on.” The Met said its policy of neither confirming nor denying if any individual works or has worked undercover “has been considered by the courts and found to be necessary to protect the identities of those who work or have worked in covert roles, often in difficult and dangerous situations. This work leaves a legacy of risk to operatives, and often to their families. “We are providing our fullest possible support to the current public inquiry into undercover policing. The Metropolitan police service will deal with requests for information or to provide disclosure through the preliminary hearings and inquiry itself. That is the correct place for the MPS to respond.” Richard Berry, the assistant chief constable of Gloucestershire police, who were sued by the protesters, said: “To the best of my knowledge we were not aware of this claim that undercover police officers were part of the group of protesters who attempted engage in a protest at RAF Fairford in 2003. We will consider any necessary action once the entirety of the information has been provided.”

Sexual Offences: False Accusations

Minister of Justice Lord Faulks: My Lords, there are no plans to review the law in this area. It is a very serious matter to make a false allegation relating to a sexual offence and there are strong sanctions against those who do.

Lord Campbell-Savours: My Lords, should we not now consider the reform of the law which allows someone like this man, Nick, who, hiding behind a wall of anonymity, makes allegations of a sexual nature against reputable public figures such as Lord Bramall, the late Lord Brittan and the late Mr Edward Heath, the former Prime Minister, and others, with not a shred of forensic or corroborative evidence whatever? It is simply unjust. Is it not now time that the whole issue of anonymity for the accused, and in particular the defence of the falsely accused, was put back on the national agenda and considered here in Parliament?

Lord Faulks: My Lords, I am sure that the noble Lord will accept that this is a very delicate issue. Parliament in 1976 decided that there should be anonymity both for complainant and for defendant. Parliament then abolished that in 1988. In 2010, the coalition Government considered the matter and decided, in balancing the various public interests, not to take further action. The noble Lord refers to a well-known case, and of course legitimate criticisms can be made about the handling of that matter, although we must allow the police some operational freedom. But I can say that Sir Richard Henriques, a retired High Court judge, is looking into the matter, an IPCC complaint has been made, and in due course the Government will respond to any recommendations or publications on that matter. But one must remember how difficult it is to make these allegations, and while I entirely accept what he says about those people in high places, of course no one is above the law.

Lord Geddes: My Lords, to follow on from my noble friend and enlarge on his point about

whether the accusation is ultimately proved true or false, and referring back to the 1988 decision, would it not be far more equitable if both parties either had anonymity or neither did?

Lord Faulks: I accept that there is a superficial attraction about that symmetry. But I suggest that one of the important things that the public policy demands is that making a complaint should not be discouraged. It is no easy thing to make a complaint about, for example, rape or sexual offences. The possibility not only that you will be cross-examined and traduced in court but will have your name emblazoned on newspapers or other means of communication is a considerable inhibition in making that complaint. That is one of the difficult factors that Parliament took into account when deciding to retain anonymity.

Lord Armstrong: My Lords, I have stated elsewhere the reasons for my conviction that Sir Edward Heath was not a child abuser. The allegations that have been published in the media to that effect have no shred of credible corroboration. Wiltshire Police are conducting an investigation, which is forecast to last for 12 months or more and which involves interviewing an extensive range of Sir Edward’s friends, colleagues, staff and former crew members and searching through 4,500 boxes of his archives. I have suggested to the chief constable of Wiltshire Police that there can be no conclusive or satisfactory outcome to this investigation. Even if, as seems likely, the police find that there is insufficient evidence to have justified a prosecution, the cloud of suspicion which has been hanging over Sir Edward’s memory would not be definitively dispelled. In the unlikely event of a finding that there is sufficient evidence, that evidence could not be tested in a court of law because Sir Edward is dead and cannot be prosecuted. It seems as if Wiltshire Police are arrogating to themselves the role not only of investigator but also of prosecutor, judge and jury in this matter. Does the Minister not agree that the investigation is a travesty of justice and a prodigious waste of police time and resources?

Lord Faulks: I am sure that there will be a lot of sympathy around the House and elsewhere for what the noble Lord says. Of course, we must not interfere with police operational independence. However, the points that he eloquently makes about proportionality in view of the death of Sir Edward and the likelihood of any significant evidence one way or another being unearthed at this stage are valuable, and I take them on board.

Lord Thomas: My Lords, there are sound public policy reasons for keeping the anonymity of a complainant throughout the trial and beyond, but are there not also sound public policy reasons for giving the trial judge the discretion, after an acquittal, to consider whether the identity of the complainant should be released if he is satisfied that it is a false accusation and not tainted by mental illness?

Lord Faulks: The noble Lord makes an important point. But of course, he will know only too well that someone who has had a false complaint made against them is vulnerable to prosecution for perjury, perverting the course of justice or wasting police time, and that an individual has the right to sue for malicious prosecution or defamation. So remedies do exist.

Lord Fowler (Con): My Lords, is not the noble Lord, Lord Campbell-Savours, absolutely right in what he said? Is it not quite clear that the present system of protecting the innocent from having their names plastered all over the media has broken down? Does justice not require that the Government take a fresh look at this whole issue and not just leave it to the police?

Lord Faulks: At the moment, as my noble friend will appreciate, this is a matter for the police, who consider that only in exceptional circumstances will it be appropriate to name suspects. Sometimes it is true that naming a suspect provokes people to come forward who they have kept quiet about allegations for fear that they will not be believed when they accuse prominent members of the

so-called establishment. However, I accept my noble friend's point. Clearly it is a matter to which any Government will give anxious consideration in weighing up these very difficult, conflicting issues.

Unannounced Inspection of HMP Highpoint

We last inspected Highpoint in 2012, when we described a complicated prison that was, in some ways, a microcosm of the issues in the prison system as a whole, but which was delivering some reasonable outcomes. This inspection found a similar picture. Despite some very serious challenges and contradictory evidence sources, we found a prison that was working hard to sustain generally reasonable outcomes. 23 recommendations from the last inspection had not been achieved and 12 only partly achieved. Inspectors made 71 new recommendations.

In our survey many prisoners raised safety concerns and levels of violence were higher than we often see. The large extended site made supervision a challenge and there was clear evidence that new psychoactive substances (NPS), 'hooch' and the associated issues of debt, bullying and intimidation were serious concerns. The prison was well ordered and benefited from the confidence that comes through visible leadership. Reception of new prisoners needed some improvement but was reasonable. A number of initiatives werein place to better understand and challenge violence and illicit drug supply. Prison staff were in control and intelligence was managed well. Poor behaviour was dealt with robustly and there was a sense that enough prisoners felt incentivised, prepared and able to make some investment in their future while at the prison. The prison actively sought to improve safety, but would have benefited overall from a more considered and strategic coordination of these efforts.

Despite three self-inflicted deaths since 2012, self-harm was relatively low. Case management generally required improvement but the care of the most complicated cases was excellent. Use of force was low and oversight had improved. Conditions in segregation had improved and it was not used excessively. The segregation regime was limited but reintegration planning was good. Staff in the unit dealt with a small number of very poorly behaved prisoners with sensitivity. There had been another death soon after our inspection which is the subject of investigation by the PPO. Highpoint comprised many units of differing ages and types. Conditions on these units ranged from reasonable to very good, with a focus across the prison on maintaining or improving standards. Most cells were in good order and the grounds were well kept. Relationships between staff and prisoners were good, managers led by example and 82% of prisoners felt respected by staff. Consultation with prisoners was in place, although for prisoners with protected characteristics this required improvement. In general, however, the promotion of equality had improved, with some particularly useful support from the local Council for Race Equality in place. Management of the high number of formal complaints, while improving, was still variable. Health provision was reasonable and also improving. The amount of time prisoners spent out of their cells was adequate but some aspects of the daily routine were curtailed due to staff shortages. The provision and effectiveness of work and activity was judged by our Ofsted colleagues to be good overall with sufficient purposeful places for about l, l 00 of the 1,300 prisoners. We found 67% engaged in activity but about 15% were still held in cell during the working day. The number formally recorded as unemployed was about 200, although this was mainly due to the tardiness of the work allocation process. The quality of teaching, learning and assessment was good and there was a very good learning environment and culture supported by respectful relationships between prisoners and tutors. Prisoner achievements were generally high.

Outcomes for prisoners remained weakest in resettlement. The prison lacked a meaningful assessment of prisoner need and offender management was ineffective and not well integrated. Many prisoners lacked a full assessment of their offending risk or a sentence plan. Public protection work and risk assessment concerning release on temporary licence decisions also required improvement. In general, services provided across the resettlement pathways were better and improving. Immediate needs were being assessed by the two community rehabilitation companies (Essex and London) operating in the prison and pre-release planning was developing.

Kars and 21 Others All Turkish Nationals v. Turkey (no. 66568/09)

The case concerned an operation conducted by security forces in Bayrampaşa Prison on account of hunger strikes and a death fast begun by the prisoners, including the applicants, and its consequences. Throughout the year 2000 prisoners in various Turkish prisons, including Bayrampaşa Prison, began hunger strikes and death fasts to protest against the introduction of "F-type" prisons, which provided for smaller living units for prisoners. In spite of attempts by various interlocutors, the prisoners refused to end the death fasts; they also refused to be examined by doctors sent by the Medical Council, who noted alarming weight loss in the prisoners and deterioration in their heath, which could affect their vital functions and entail their deaths within a few days.

On 18 December 2000 the governor of Bayrampaşa Prison submitted for the prosecutor's approval a request for intervention by the security forces, in order to provide the necessary treatment and prevent the deaths. On 19 December 2000 the security forces intervened in the prison, but they were met with resistance from certain prisoners, carrying firearms and inflammable products. The operation gave rise to violent confrontations; 12 prisoners were killed and about 50 prisoners were injured, including the applicants.

On 20 April 2010 39 gendarmes were charged; their trial, opened before the Bakırköy Assize Court, has apparently not yet ended. On 16 July 2001, the State prosecutor also charged 155 members of the prison staff, on the ground that they had allowed firearms to be brought into the prison, and 1,460 gendarmes who had evacuated the prisoners at the close of the operation, accusing them of ill-treating the prisoners during their evacuation. On 23 June 2008 the criminal court declared that the prosecution of the gendarmes and the prison staff was time-barred, in two separate judgments. On 27 February 2001 criminal proceedings were brought against 167 prisoners on a charge of rebellion. Those proceedings were also declared time-barred in a decision issued by the Eyüp Criminal Court on 28 April 2009, upheld by the Court of Cassation.

Relying in particular on Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment), the applicants notably alleged an excessive and disproportionate use of force by the authorities during the operation conducted in Bayrampaşa Prison. Relying further on Article 6 (right to a fair trial), they complained that the proceedings brought against them for rebellion had been unfair and excessively long. Violation of Article 2 – in respect of Birsen Kars, Mehmet Kulaksız, Serdal Karaçelik and Hakkı Akça. Violation of Article 3 – in respect of Münire Demirel, Gülizar Kesici, Nursel Demirdöğücü,Mesude Pehlivan and Filiz Gençer. Violation of Article 6 (length) – in respect of Ercan Kartal, Şadi Naci Özpolat, Kenan Günyel, Serdal Karaçelik, Nursel Demirdöğücü, Mehmet Güvel, Filiz Gençer, Mehmet Kulaksız, Mesude Pehlivan and Münire Demirel.

Hostages: Sally Challen, Naweed Ali, Khobaib Hussain, Mohibur Rahman, Tahir Aziz, Roger Khan, Wang Yam, Andrew Malkinson, Michael Ross, Mark Alexander, Anis Sardar, 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 Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan & Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Robert Knapp, 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.