

**Kevin Lane on Life After Prison: 'I Won't Stop Until I Clear My Name'**

*Nick Hopkins, Guardian:* Lane served 20 years for the gangland killing of Robert Magill in 1994. Now free, he is determined to prove he is the victim of a gross miscarriage of justice. Kevin Lane is wearing a blue Italian suit. His white shirt is ironed, his shoes polished and his handshake firm. At this smart London restaurant, he seems out of place among the businessmen and women – but only because he has the physique of a bodybuilder, and a deep voice that draws attention when he raises it. Which he does, very occasionally, when he's animated – as he is now, talking about his new businesses and how he has just bought a new Mercedes. He's doing OK. But there's something nagging at him, and when he is upset, his voice drops. Days earlier, Lane was pictured in a newspaper outside a nightclub with the former Atomic Kitten singer Kerry Katona. A source quoted by the Daily Mail said the pair were "all over each other", and there was talk of them dating. The story, he says, is nonsense. He had been introduced to Katona, and they had gone for a night out with friends: "The rest of it is just not true." But it is the headline that troubles him most. "Kerry Katona pictured kissing convicted murderer." Lane walked out of Blantyre House in Kent on a sunny Friday in January last year. He had mixed feelings as he was driven away from the category D jail. There was relief that his ordeal had come to an end, but also a sense of guilt for the friends he was leaving behind. Underlying it all, there was an anger that won't go away.

Twenty years ago, Lane was jailed for shooting a man called Robert Magill. After he was sent down at the Old Bailey, he says he was the victim of a smear campaign with newspapers nicknaming him "the Executioner", and suggesting he was likely to have been responsible for a number of unsolved murders, including that of the Great Train Robber, Charlie Wilson in 1990. These crimes would certainly have made Lane, now 48, one of Britain's most dangerous and prolific criminals. But Lane says the accusations are all untrue. During the years he was inside, from every bare cell or isolation unit they placed him in, he has raged against his conviction, trying to channel his energy into his case. Now that he is free, the effort continues. Document by secret document, prised from the police in a campaign that has involved writing 10,000 letters, he has pieced together the jigsaw he thinks shows he was framed – and he believes he can show by whom. He knows there are people who want him to shut up, to move on, but he won't. "I might be rebuilding my life, but that doesn't mean I have forgotten. It doesn't mean I will let it go. I won't stop. The people who did this to me have to know that: I won't stop. Not until I have cleared my name."

I first met Lane more than 15 years ago, when I wrote about his case. The Guardian was the first to investigate his conviction, but getting to him was not easy. Lane was in HMP Frankland, a high-security prison in County Durham. He was regarded as an "exceptional-risk" prisoner – and the authorities clearly regarded me as exceptionally foolish for wanting to speak to such a supposedly dangerous man. Three prison officers stood within touching distance of us inside a cramped, windowless room. We sat on low chairs at a low table that was bolted to the floor. Two more guards stood outside. I wasn't allowed a pencil or pen. It was in here, with this overbearing audience, that Lane attempted to explain why he had been wrongly convicted for the murder. Magill, a car dealer by day and hardman by night, had been gunned down near his home in Hertfordshire, as he walked his dog, on 13 October 1994.

Five bullets hit Magill, including two to the head, at very close range, from a sawn-off shotgun. The murder was described by the judge at Lane's trial as "desperately violent, shocking, horrifying". But proof of Lane's involvement appeared flimsy. The first trial collapsed when the jury could not reach a verdict. In the second, the police alleged the murder was a contract killing – and that Lane was hired for up to £100,000. But there was no evidence for this. Witnesses to the murder didn't pick him out at an identity parade. His name wasn't mentioned by two police informers who rang detectives offering to name the killers. Instead, they named two other known criminals – Roger Vincent and David Smith. Lane's conviction rested on a palmprint found on a binliner in the boot of the killer's BMW getaway car. Lane has never denied driving the car – he says it was lent to him by an acquaintance after his own car had been stolen, and that he returned it four days before the murder. He cannot explain how the palmprint came to be on the binliner, but if he had killed Magill, and if he were the professional hitman prosecutors alleged, he was pretty careless covering his tracks. Lane said he borrowed the car to take his sons to see his mother, and detectives found the children's fingerprints all over the dashboard.

Lane's contention that he was "fitted up" took on a different complexion two years after our first meeting. The detective who led the Magill murder inquiry for Hertfordshire police, Detective-Inspector Chris Spackman, was himself jailed. Spackman, it turned out, was deeply corrupt. When he was sentenced to four years in July 2003 for conspiracy to steal, the court heard he was responsible for "a disgraceful catalogue of crime and lies" – which involved plotting to steal £160,000 from his own force, and siphoning off money for himself. To Lane's lawyers, the fact that Spackman had a history of manipulating evidence seemed reason enough to question whether his conviction was safe. But as the exhibits officer in the case, Spackman also had control of all the evidence, including Lane's fingerprints, and the binliner on which his palmprint was found. Vitally, there were also 20 tipoffs naming Roger Vincent as the murderer. Vincent was arrested and charged, but the case collapsed. But before that happened, he had had a series of highly unorthodox "confidential chats" with Spackman, which were not disclosed at Lane's trial. What was said is still a mystery. Spackman has denied any impropriety and Vincent and Smith have denied the Magill shooting. In 2005, Vincent was convicted of another shooting described in court as a "thoroughly planned, ruthless and brutally executed assassination". Smith was convicted alongside him as his getaway driver. That was similar, then, in many ways to the murder of Magill. Could Vincent have been responsible for both? Armed with this new information, Lane urged the court of appeal to look at his case again. It took him 10 years to get a hearing in court.

"I knew I was going to be arrested over Magill because someone called me to warn me. I was told: 'There may be a problem with the car ... you will probably get a tug. It's got nothing to do with you and will blow over. Keep your mouth shut and sit tight.' I knew something was wrong. I remember telling Kim (his ex-partner): 'This doesn't feel right. I'm being set up.'" In July last year, 19 years after his conviction, Lane's lawyers had their day in court. They contended Lane had been framed by a corrupt detective with links to significant figures in the criminal underworld who had concocted the evidence. Two other people have had convictions overturned because of concerns about Spackman – Lane expected to be the third. But, to his astonishment, the court dismissed the application, saying it was "not persuaded that the safety of the conviction is in doubt". So, for now, Lane remains a murderer. The conviction led to the breakup of his marriage; his sons, Tommy and Aaron, grew up without him. Since his release, Lane has been in a hurry. He has had periods of partying too hard. But he has also caught up with a world that has changed dramatically since he went into prison.

He has settled down with a new partner, but is taking time to adjust. He has his own flat and prefers to live alone. Being in a single cell, he got used to doing things his way, and he finds it hard to live with other people. He's meticulously, obsessively clean. He gets up most days at 5am, goes to the gym, and then hits the phone, trying to broker deals for his property and construction businesses. He takes the murder conviction into every meeting, and every social occasion. "I always try to bring it up first. I'd rather it came from me, rather than them finding out from someone else or on Google. Most people are very good about it. They want to hear about the case and my life." Lane has served time with some of the underworld's most feared characters; from Irish terrorists to Brink's-Mat launderer, Kenneth Noye. He regards Kenny Collins, one of the Hatton Garden gang, as a friend. "I met Kenny when I was first on remand at Belmarsh. He's a good man and he was good to me. You don't forget things like that. He's one of the last of the old-school criminals. It may sound strange to say, but there's an honour in the way they behave, a code. You don't get that now. Crime is changing, and the prisons are changing, too. Now, the gangs that exist outside prison are re-forming in jail, and they bring their violence with them. The Yardie gangs, the terrorists. Prison is a more dangerous and volatile place than it was when I first went in. I know prisoners who converted to Islam to get the protection of the Muslim gangs."

Lane didn't have to join a gang; he has respect in the anarchic hinterlands of organised crime, a respect earned in a manner he now regrets. At school in Harefield, Middlesex, found himself defending his older brother, Sean, who was getting teased by friends because of a head brace he had to wear after a serious accident. Lane, it turned out, could throw a punch. Several of them, in fact, at high speed. It is a gift that has got him into trouble – and out of it – throughout his life. "When I was a kid, I'd fight older kids and, when I was a teenager, I'd fight grown men. No guns or knives, just fists. It made me feel special, invincible. It's hard to describe. Looking back now I can see people used me for their own ends. 'Get Kevin, he'll sort it out,' that sort of thing. I was immature and naive. I did things that I regret and there are people I would like to apologise to. In time." Twenty years in jail enhanced rather than diminished this reputation. "There is a lot of bullying and intimidation. I hated to see it going on. I didn't care who it was, or how big they were. It's a strange thing, but the only fear I have ever felt is the fear of losing. The embarrassment of it." Prison officers, he says, would often turn a blind eye, to let inmates sort out problems on their own, in their own way. Fights would take place in gyms, in laundry rooms, under prison rules. Lane says he left the prison system unbeaten – physically and mentally. It's a record he intends to keep.

### **'It Makes You Want To Fight Back': Activists On Life After Prison**

*Charlie Gilmour, Guardian:* The prison wing erupted with joy. People were shouting and cheering and banging heavy objects against their cell doors. It was like everyone's favourite football team had scored at once. "Did you see that?" my cellmate asked excitedly. "Rupert Murdoch just took a hit to the face!" Comedian and activist Jonnie Marbles had managed to sneak a shaving-foam "custard pie" into the July 2011 committee hearing about phone hacking, which he launched at the octogenarian media mogul on behalf, he later explained, of "all the people who couldn't". Few anticipated that, within weeks, he would be joining us behind bars.

When I was sentenced to 16 months in prison for violent disorder during an anti-tuition fee protest in 2010, the sarcastic round of applause that greeted me afterwards should have hinted at the sorts of difficulties I was going to face. It wasn't inmates who were doing the jeering; they mostly seemed as sad and subdued as me. Rather, it was people in uniforms, with

keys, power and, now, total control over my life, who seemed to bear a grudge. Prison was a leap into the dark. Having gone almost without pause from the university exam hall to court, there hadn't been much time for thinking about what life might be like inside. With only Hollywood to go on, I imagined the worst: mentally, I had prepared myself for a long, bloody war against sexual assailants. At 21, I was one of the youngest inmates in HMP Wandsworth. Thankfully, the only instinct I seemed to arouse in other prisoners was a paternal one. "I've got a son about your age," explained one old-timer who came by on my first day to make sure everything was OK. My conviction inspired a strange sort of respect. Officers had a very different approach. During a rare moment out of my cell, two accosted me on the wing and roughly patted me down for "contraband". "Don't forget, Gilmour," one said threateningly, "we can do rectal searches, too. Any time we like."

Conditions in HMP Wandsworth were shocking. The prison was swimming in drugs and swarming with rats. For up to 23 hours a day, inmates – many guilty of little more than bad luck – were doubled up in filthy cells designed to hold one. (The situation has since got worse; in the last year, three Wandsworth inmates killed themselves.) Experiencing the senselessness of incarceration first hand was depressing and infuriating, but I also found it politically affirming. Prison is society's failure writ large in bricks, mortar and razor wire. When I wrote to a newspaper hinting at some of the corruption and abuse I had observed, a senior officer went out of his way to pay a personal visit to my cell. He had the unsent letter in his hand. Life, I was told, could be made "very difficult" if I went down that path. With the thought of daily body searches – and goodness knows what else – I decided to bide my time. As an experience, prison seemed almost tailor-made to make anyone with a social conscience want to fight against it. I couldn't help but feel quashed into silence; since being released in 2011, however, I've spoken out about reform.

Recent research conducted by Dr David Bailey at the University of Birmingham has revealed that there have been more protest events in Britain since 2008 than at any point since the 1970s. Many of those involved have subsequently gone to prison. From the series of high-profile trials that came in the wake of the student protests of 2010-11 and the anti-cuts protests of 2011, to more idiosyncratic cases such as that of Marbles, the state has used the law to stifle dissent. But what happens when you send an activist to prison? Does it break them, or strengthen their resolve? Marbles, now 31, still seems slightly shell-shocked by the whole Murdoch affair. "I just assumed that, once I'd been successful, there was going to be a ticker-tape parade," he says, staring into his pint of cider in a London pub and wearing a grubby cartoon print T-shirt. "It turned out to be quite the opposite." Despite being a seasoned activist – Marbles was a founding member of UK Uncut and had spent the previous two years "living in squats and in the anarchist community" – the attack on Murdoch was not well-planned. "My partner and I at the time were like, we should do something tomorrow. Shall we go to the Tate Modern, or should we attempt to get into parliament, where I will pie Rupert Murdoch? We sort of edged towards the second one. I thought it would be very silly, a bit funny, a bit of an adventure. I didn't think I'd actually manage to pull it off." But he did. Marbles recalls looking on in horror as, one by one, the people between him and Murdoch got up and left until, finally, his path was clear. He sent one final tweet: "It is a far better thing that I do now than I have ever done before." "I had the most intense adrenaline rush of my life," he says now. "I tried to think of an amazing, for-the-history-books kind of thing to say and it came out as something like, 'You naughty billionaire.' It was awful." Marbles' surprise intervention resulted in his immediate arrest, attacks in the media ("Unfunny comic makes Rupert

Murdoch look like a victim,” The Mirror said) and, eventually, a six-week prison sentence for assault. “There’s a proverb I wish I’d known before,” Marbles tells me. “Never start a war with a man who buys ink by the barrel. I was not prepared for the response. It hurt.” In Wandsworth prison, he was treated like a minor celebrity. Fellow inmates, he says, had him signing copies of the Sun. Letters of support flooded in. “Even prison officers thought it was ridiculous that I’d been sent to jail.” They became less sympathetic when they discovered he was somehow publishing a blog about life inside. “They smashed into my cell and started tearing everything apart,” he says. “They made me kneel down while they were ripping things off the wall, throwing stuff around: ‘We know you’ve got a phone, we know you’ve got a phone!’ Eventually, I decided to tell them about these things called letters.” Marbles had been sending his blogposts through the prison mail system, to be typed up by a friend.

After just two weeks and a successful appeal, Marbles was set free. At first, he felt the experience had left him unscathed and ready for more action; among his political friends, he found he had a new status. “I think it shows the courage of your convictions if you can go to prison and keep being an activist,” he explains. But a month after his release, he travelled to Dale Farm, to help the local traveller community resist eviction. The police response, which saw activists shot with Tasers, was, Marbles says, “scarier than prison”, and the two experiences combined left him with “some sort of PTSD”. After that, he burnt out. Having been on the receiving end of state violence twice in a row, he found himself questioning the power of activism itself. “I felt very alienated from my fellow activists,” he says. “That feeling of ‘activism is fun’ was gone. It was like we’d all been playing paintball and I just found out the other team had real guns.”

For 20-year-old Chelsea Stafford, the experience of prison made her “hate the government even more”, which is remarkable when you consider that a year ago she could barely name anyone in it. “I didn’t have the slightest clue,” Stafford says. “I was one of those people who just turned off and didn’t really listen to anything.” Having moved to Liverpool from Suffolk, Stafford was drifting through life. After finding her partner in bed with another woman, she began drinking heavily and, by her own account, was going off the rails. But all that changed when, in April 2015, she saw on Facebook that a group calling themselves the Love Activists had occupied the former Bank of England building in Liverpool city centre with the intention of turning it into a community homeless shelter. Moving out of her home and into the bank led to a political awakening. “I started learning about all the cuts, because people were coming in saying the local hostel didn’t have any room for them and there was no mental-health services, no drug services – people couldn’t get help,” Stafford says. “I was quite shocked, because I had no idea this was going on.”

Despite much local support – the group’s “free shop” for the homeless was, Stafford says, overflowing with donations – the Love Activists were soon served with an eviction order. They decided to resist and, a fortnight later, 130 police officers swarmed the building. “It was half-six in the morning so we were asleep,” Stafford recalls. “Then we heard the chainsaw. They had forensics; they had sniffer dogs; they had everything. There were just five of us.” She was eventually sentenced to 10 weeks in prison for trespass. The injustice of it still rankles: “A paedophile got community service the day we were being sent down for helping the homeless.”

The Love Bank 5, as they became known, had passionate supporters. “Our mates raided the prison van and started banging on the windows shouting, ‘Free the Five!’” Stafford says. “A couple lay down in front of the van and wouldn’t let it move. I started crying with happiness after that. It was overwhelming.” She ended up being “starved” in HMP Styal, however. “I asked over and over for a vegan meal,” Stafford tells me. “They were trying to get me to eat

meat. The girls would all put chips off their plate on to mine and try to feed me up, but obviously you can’t get any nutrition off that. I was trying to drink tea to fill my belly, but that was just making me throw up.” Within her first two days, Stafford broke down. “The first night, I had a panic attack. I was crying. I couldn’t breathe. The second night, I self-harmed.” After biting off the end of a hairgrip, Stafford attacked her own legs until they were covered in blood – something she hadn’t done since she was 16. She found the experience of being in a strange place, and surrounded by people she didn’t know, deeply unsettling. Only letters kept her going. “I got messages from people all around the country offering support and sending stamps and money,” Stafford says. “It really boosted my spirits.” After a week, she was released on appeal, and immediately started calling for the release of the remaining four. “Prisons aren’t constructive,” Stafford says. “You don’t get anything from sending someone there. It just makes people want to fight back.”

Even from within prison, there are opportunities for protest, although they often seem more like acts of desperation. Vhinda (not his real name), a self-employed construction worker in his 30s who spent just under a year behind bars for a public order offence after an anti-fascist protest turned violent, remembers one such incident during his first week inside Wormwood Scrubs. “As a protest, an inmate decided to jump off the landing on to one of those metal safety nets,” he says. “I think he thought he was going to bounce. He didn’t.” Vhinda decided he had to use his time to aid his fellow prisoners in whatever small ways he could. He helped people write letters to their mothers and complaints to the governor; he shared his library of anarchist literature with anyone who expressed an interest; and he volunteered as a Samaritans’ peer supporter. “The state wants you to feel alienated and divided,” Vhinda explains. “So you’ve got to support your fellow people.”

After two inmate suicides – one of which Vhinda felt was caused by a prison officer telling an inmate he was going to die in prison – he decided to stage an esoteric protest of his own. In one of the prison’s workshops, he turned a paving slab into a tombstone and buried it in the ground. Feeling something was missing, he made a tiny wreath of weeds to balance above the inscription: “RIP HMP.” “It was a statement,” Vhinda says. “The prison system is a graveyard for the poor. But it was also something I wanted to see: the death of the prison system as we have it now. It didn’t quite have the desired effect.” For this, and other minor acts of mischief, he fluffed whatever chance he had at getting time off for good behaviour. Though, as an activist, he was not forgotten by the outside world, unlike many other inmates. “Fight Racism! Fight Imperialism! sent me their newspapers to read, people sent magazines that they’d produced, others sent their sociology theses,” he says. “Some days, I didn’t even leave my cell – [I was] just reading stuff. Over the Christmas period, I was getting 10 to 20 letters a day. It was the little things, a statement at the end of the letter like, ‘You’re in there for us. We’re out here for you.’ And they were. Without a doubt they were. I’ve kept every single letter that was ever sent to me.” Whether or not he is still involved in direct action today, Vhinda will not say. But he tells me: “The flame has not been extinguished. Anti-fascism is a moral duty, not a crime.”

As Nick Emley, 65, potters into a west London gastro pub with his little dog Porty in tow, I wonder if it might be time of the more conventional sort that kills the rebellious instinct. Once, Emley was a borstal boy. After allegedly punching a policeman during the Garden House Riot of 1970, at which a Cambridge hotel hosting an event promoting holidays to military dictatorship-era Greece was torn apart, he spent six months and three weeks in the notoriously brutal youth-detention system. Today, however, he is a semi-retired wine buyer and is com-

mending the pub's pappardelle. "I believe in non-violent demonstrations now," Emley says. "I take a Gandhi-ist position." Not so in 1970. "Punching that policeman was accidental," he says, "but things happened in the Garden. I remember ripping up a little ornate lamp-post, pulling it out of the ground and hurling it towards the windows. It was exciting and it got a little bit out of control." While protest and politics were all very new for Emley, who was just 18 at the time, borstal felt like more of the same. "When you've been sent away to school at the age of eight, you get used to loneliness and missing your mother and father and having dreadful prefects that beat you and masters that beat you. I never cried at all in borstal."

On his release, he returned to Cambridge University to complete his degree in modern languages. He was greeted like a hero. "The first night back, when I came to hall, all the undergraduates and graduates and teachers got up to applaud me," he says. "I felt terrific. I stood up on the table. I was very moved." Emley didn't exactly go on to join the Angry Brigade, but his path veered sharply away from the one his Tory-voting parents had hoped he might take. He started teaching at a state school in London, joined his union and voted Labour. He eventually went on to co-found the homelessness charity StreetSmart. "My view is that you mustn't let prison get you down," he says. "You have to overcome it. You have to be bigger than it. You cannot let it break you, because when you are broken, you are finished. It made me determined. If my children were involved in something like this today, then I would be proud of them."

Outside Willesden magistrates court in London, where a huge crowd has assembled to support the Heathrow 13 – another group of activists threatened with incarceration after they blocked the north runway to protest climate change – I reflect on my own experiences. Prison wasn't exactly a cakewalk, but it's clear that activists and protesters can enjoy a privileged status within the system. After I was sentenced, letters and cards from the great and the good jammed up the mail. It started to get a bit silly: my cellmate could hardly believe it when a copy of Crime And Punishment arrived with a personal note from a total stranger called Elton John. A high-profile trial can be a double-edged sword: some officers, who didn't feel I was being punished enough, had their fun trashing my cell while I was away from the wing; others tried to get violent prisoners to beat me up, without success. Inside, those seen to have fought the system are often considered heroes rather than villains. If anything, the experience has hardened my beliefs. I want to highlight the problems of the prison system, to push back. There's a line I like in anthropologist and activist Professor David Graeber's book *Direct Action*: "When completely under the power of the state, one would seem to encounter both its brutality, and its stupidity, in unadulterated form." Through the crowd in London, I spot a seemingly revitalised Jonnie Marbles, chanting and raising his fist. He flashes me a grin. So prison didn't work for him, then? He disagrees: "It worked perfectly; it has driven me further towards social justice."

### **In Flagrante Delicto**

A 77-year-old erotic novel writer who died during a solo sex act was described as passing "in flagrante delicto" by an English coroner. Terence Charles Wakelin, writer of titles like *Love Slave*, was discovered dead by a friend, surrounded with an assortment of "accoutrements" including electric nipple clamps. An inquest heard the adult fiction author had pushed his heart too far while indulging in the kind of act better kept in his books. The court ruled that it was death by misadventure. Isle of Wight Coroner Caroline Sumeray said: "His death arose from a deliberate act which went wrong. He stimulated himself with an electrical device which, with the poorly state of his heart, probably killed him."

### **Rogue Justice review: Bush, 9/11 and the assault on American liberty**

After the towers of the World Trade Center disintegrated, the Bush administration exploited the panic of a horrified country. War poses special threats to democracy, but the most pernicious challenges often come from within. History reveals that nothing has more power to undermine democratic institutions than the boundless fear of a foreign enemy. *Rogue Justice* is Karen Greenberg's splendid new book about all the ways liberty was assaulted in America in the decade after the cataclysm of 11 September 2001. In these years, she writes, America came "perilously close" to "losing the protections of the bill of rights". After the towers of the World Trade Center disintegrated and the Pentagon was set aflame, the administration of George W Bush systematically exploited the panic of a horrified country to dramatically expand its own powers. It never hesitated to undermine "the rights to freedom of speech and religion, to freedom from capricious searches and seizures, to due process and fair treatment, and to protections from cruel and unusual punishment"—in other words, all of privileges guaranteed by the first, fourth, fifth, sixth, seventh and eighth amendments to the US constitution.

Greenberg is director of the Center on National Security at Fordham University in New York. She begins her book with the astonishing intelligence failure that may have made 9/11 possible. An FBI field agent in Minneapolis had filed a report about Zacarias Moussaoui, a French citizen of Moroccan descent who had paid \$8,300 in cash to get time on a flight academy's 747 simulator. As part of a request for a search warrant to examine Moussaoui's computer – after agents had jailed him when they discovered he had overstayed his visa – the agent wrote: "This is a guy who could fly an airplane into the World Trade Center." It turned out that the computer contained what Greenberg calls a "trove of information" about the hijackers and their plans. The FBI, however, only found that out after the 9/11 attacks. Washington never acted on the agent's request for a warrant, which required the approval of the foreign intelligence surveillance (Fisa) court. But the court never even received a request for the warrant, because a Fisa judge had accused the FBI of "routinely lying in the affidavits used to obtain court orders, and agents had become unwilling to stick out their necks by approaching the court for the warrants it could issue".

This failure to crack the biggest terrorism case the FBI ever had set off a stream of decisions in federal courts and Congress that were designed to free the intelligence community of nearly all the restraints the Fisa court had imposed on surveillance activities since its creation in 1978. Greenberg meticulously describes how these actions created a system in which virtually all communications in America by e-mail or telephone could be swept up, in a vast government effort that mostly remained secret for more than a decade. A principal defender of the new surveillance policy, and much of the rest of the "rogue justice" detailed by Greenberg, was deputy assistant attorney general John Yoo, who gleefully "ignored some of the most sacred principles of American democracy and law", sometimes without even bothering to inform his boss, Attorney General John Ashcroft. Yoo often preferred to work directly with the White House, where his crucial ally was David Addington, a member of the office of Vice-President Dick Cheney.

Yoo was the perfect ally for a White House that wasn't interested in "legal nuance". Presidential aides, Greenberg writes, wanted advice not "to guide them in determining which policies were legal, but, rather, to provide plausible cover for the policies they wanted to impose". Yoo's vilest contributions to the war on terror were his memos legalizing torture. Those who knew the most about effective interrogation techniques—including more than three dozen retired admirals and generals – believed that torture was completely counterproductive. Cheney and his minions were convinced, though, that when terrorists were interrogated it

was essential to “go to the dark side”. Yoo asserted in one memo that “any effort by Congress to regulate the interrogation of battlefield detainees would violate the constitution’s sole investing of the commander-in-chief authority in the president.” As Greenberg points out, this was “an extreme and unprecedented position, one with sweeping consequences for all laws, both military and civilian, concerning the treatment of prisoners”.

After Ashcroft made Jack Goldsmith the head of the Office of Legal Counsel in the Justice Department, Goldsmith concluded that Yoo’s memo seemed “designed to confer immunity for bad acts” and made arguments “wildly broader than was necessary to support what was actually being done”. Publicly, though, the Bush administration called the torture “enhanced interrogation techniques”. Many news organizations accepted the term, and the truth about this disastrous policy would not come out until the Senate finally issued its torture report, in December 2014. Related: Senate report on CIA torture claims spy agency lied about ‘ineffective’ program When it did so, California’s Dianne Feinstein declared: “It is my personal conclusion that, under any common meaning of the term, CIA detainees were tortured.” The program, she said, “was not an effective means of acquiring intelligence or gaining cooperation from detainees”.

Greenberg concludes with the mixed progress made by the Obama administration in redressing the excesses of its predecessor. The new president repudiated torture, but he allowed those who had carried out the previous policy to go unpunished. He also was responsible for his own dramatic expansion of presidential power – the right to kill American citizens by drone, if they are considered terrorists. The only unqualified heroes in the book are the NSA whistleblower Edward Snowden, who in leaks to outlets including the Guardian revealed the appalling scope of government surveillance, and the lawyers of the American Civil Liberties Union, who filed more cases challenging the anti-terrorist policies of both administrations than anyone else. “They may have accomplished less than they hoped,” writes Greenberg, “but they have at least succeeded at pulling off the veil.” By connecting so many of the dots in the War on Terror, the author has made her own very important contribution to this process. • Charles Kaiser is the author of 1968 In America, The Gay Metropolis and, most recently, The Cost of Courage

### **Justice System Failing Witnesses/Victims of Crime**

*Rajeev Syal, Guardian*

Witnesses and victims of crime are being failed by a criminal justice system that is approaching breaking point, parliament’s spending watchdog has said. The public accounts committee found that courts and prisons are “bedevilled by long standing poor performance including delays and inefficiencies, and costs are being shunted from one part of the system to another”. The accused and their accusers experience vastly different systems, largely dependent on where they live, according to a report released on Friday. Meg Hillier MP, chair of the committee, said the government has overlooked the consequences of cutbacks with the result that the system’s ability to deliver justice is under threat. “The system is overstretched and disjointed. Victims of crime are entitled to justice yet they are at the mercy of a postcode lottery for access to that justice. About two-thirds of crown court trials are delayed or do not go ahead at all and only 55% of those who have been a witness say they would be prepared to do so again. These are damning statistics. The government has dragged its heels in addressing these problems. The Ministry [of Justice] is now seeking to reform the system but there is more action it can take immediately to benefit struggling regions, and therefore taxpayers,” she said.

Around two-thirds of trials in the crown court were delayed or did not go ahead at all, the committee said. A backlog of 51,830 cases was awaiting a crown court hearing as of September last year and the committee found the system was “not good enough” in sup-

porting victims and witnesses. Just 55% of witnesses have said they would be prepared to do so again with one in five made to wait four hours or more to give evidence in court. Victims were also waiting longer for their day in court and faced a postcode lottery in access to justice, the committee found. An average 134-day wait between the case leaving the magistrates’ court and the start of the crown court hearing was up from a 99-day average wait two years ago. Victims of crime in north Wales had a seven in 10 chance that their crown court trial would go ahead but only a two in 10 chance in Greater Manchester, official data showed.

The length of time victims were forced to wait between an offence being committed and the conclusion of their case ranged from 243 days in Durham and 418 days in Sussex. Examples of victims being sent conflating information on the same case by different parts of the system were also found. The government spends around £2bn a year on the criminal justice system, which in the year to September 2015 saw 1.7m cases dealt with through the courts.

Government spending on the criminal justice system has fallen by 26% and the number of Crown Prosecution Service (CPS) lawyers had dropped 27% since 2010, official figures show. A Ministry of Justice spokesman said Michael Gove, the justice secretary, has endorsed the view that the criminal justice system needs urgent reform and welcomes the report. “That is why we have embarked on comprehensive measures to improve our prisons and courts, backed by over £2bn of investment, to build a swifter, more certain justice system. Our plans will bring modern technology into our courts to better meet the needs of everyone who uses our services, and will replace ageing and ineffective prisons with new buildings designed to support rehabilitation,” he said.

### **I Fear The Birmingham Bombings Inquest Will Only Bring Heartache**

*Chris Mullin, Guardian:* Even if fresh evidence emerges, there is the danger of expectations being raised that cannot be fulfilled. The author Robert Harris once wrote that “whoever planted the bombs in Birmingham ... also planted a bomb under the British legal establishment”. Say that again. Even now, 42 years after the event, shock waves from the explosions continue to reverberate. Wednesday’s 01/06/2016 decision by the Birmingham coroner to reopen the inquest into the death of the victims is only the latest round in a long saga that has involved several major police inquiries, a royal commission and a failed attempt to convict former police officers connected with the case. In addition, more than 30 other convictions were quashed following the disbandment of the notorious West Midlands serious crimes squad, members of which were responsible for the pub bombing convictions. Personally, I have mixed feelings. If there is any genuinely new evidence then by all means examine it, but so long after the event there is a danger that a renewed inquiry will arouse expectations that cannot be fulfilled and lead only to more disappointment and heartache for the families of the victims.

Making her announcement, the coroner referred to a “wealth of evidence that has still not been heard”. It remains to be seen precisely what she was referring to, but at the earlier hearings Ashley Underwood QC, who acted for the relatives, asserted that “there is reason to believe that the murder gang had an informant in their ranks and that the police knew in advance” that the explosions were planned and could, therefore, perhaps have been averted. I find this unlikely. Prior to the bombings the only informer of whom I am aware was an IRA man who was detained as part of an earlier round of arrests. His usefulness would have come to an end with his arrest some months before the pub bombings, although he might have been able to provide the police with the names of some of those who remained at liberty, which would have at least given them an idea of who to keep tabs on. There is also intriguing evi-

dence that an IRA man, arrested after the pub bombings, co-operated with the police. In 1987 the Granada Television programme World in Action obtained a document from the special branch archive which was a precis of interviews with a man who names several of the pub bombers. Remarkably, the police chose to take no action. To do so, of course, would have meant admitting that they had just put away the wrong people. The Criminal Records Office reference on the file is 10368/74. It would be interesting to hear more about this.

In addition, it has been suggested that the IRA was so heavily penetrated by M15 that they may well have had advance warning of what was afoot. Unlikely, given that the pub bombings – like the 50 or so bombings in the West Midlands that preceded them – were a local initiative and would not have required clearance by the IRA high command. In his submission to the coroner, Underwood also alleged that “there is reason to believe that the police had sufficient time between the telephone warnings and the first bomb going off, to evacuate ... but that the record was falsified”. There may be something in this. The man who made the warning call was Michael Murray. When I interviewed him in 1986 he conceded that the warning call was botched, but insisted that he gave more notice than the six minutes later alleged. At the time I was sceptical, but if there is evidence that the record was falsified – and I wouldn’t put anything past those in charge of the initial investigation – then it may well be that lives could have been saved. I am not aware of any evidence, short of a confession, that is likely to lead to a conviction

It wasn’t just the police who told lies. The IRA had its problems too. David O’Connell, the IRA chief of staff, had promised a full inquiry into the pub bombings and that the results would be published “irrespective of how unpalatable the truth may be”. In the event, the outcome was not published. A veteran IRA man later explained to me what happened. There had indeed been an inquiry. The IRA men who came back from Birmingham in the aftermath of the pub bombings had been interrogated and denied that the bombings were anything to do with them. “I firmly believed them at the time. Eighteen months later I was sitting in the house of one of the men who had been active in Birmingham. People had had a few drinks and they started talking. It became clear that we had done it.” It took the IRA 11 years to own up. On 28 October 1985, Joe Cahill on behalf of the Army Council admitted responsibility.

The bottom line is this: the six men convicted of the Birmingham pub bombings had nothing whatever to do with these or any other explosions. They were not members of the IRA or even of Sinn Féin. Of the four men directly responsible for the bombings none was ever charged, though three served sentences for other offences. Two of the four are dead. In addition Seamus Mclaughlin, who was in charge of the Birmingham IRA at the time of the bombings and who almost certainly authorised them, died last year. As regards the two who remain at liberty, I am not aware of the existence of any evidence, short of a confession, that is likely to lead to a conviction. Forty-two years ago it might have been different, but then the police weren’t looking.

#### **Hillsborough: 19 West Midlands Police Staff Refuse to Help IPCC Inquiry**

Nineteen people have refused to assist an independent investigation into the role of West Midlands police after the Hillsborough disaster. The Independent Police Complaints Commission (IPCC) has contacted 258 officers and staff members who were involved with the force’s investigation into South Yorkshire police after the 1989 tragedy in which 96 Liverpool fans died. To date, 161 statements have been taken; 19 individuals declined to co-operate with the IPCC, and nine people were unable to assist for health reasons, the watchdog revealed.

The role of West Midlands police (WMP) and those who led its investigation is one of the areas under scrutiny by the IPCC in its largest-ever inquiry into alleged criminality and police misconduct. An WMP investigation team was tasked with investigating the conduct of South Yorkshire officers for the initial independent inquiry led by Lord Chief Justice Taylor, the director of public prosecutions (DPP) and the South Yorkshire coroner, Dr Stefan Popper. The IPCC is reviewing and analysing thousands of documents to help establish how that evidence was gathered and handled, including what was provided to the DPP in 1990, and whether Popper was pressured by police officers. It is trying to identify and trace coroner’s officers from the period.

The inquiry is also assessing what was known and understood by WMP in relation to the amended accounts of South Yorkshire police officers. The IPCC said it continued to liaise closely with the Crown Prosecution Service (CPS) about those individuals it considered to be suspects and had submitted “substantial evidence-based files”. It added: “Our intention remains to submit full files of evidence to the CPS by the turn of the year to enable decisions to be made on whether any individuals should be charged.” Operation Resolve, the criminal investigation into the planning for the FA Cup semi-final and the day of the disaster, also aims to submit all its files to the CPS by the end of this year. It had previously revealed that 64 people had refused to speak to them as part of their inquiries. In April, an inquest jury concluded the 96 victims were unlawfully killed and that blunders by South Yorkshire police “caused or contributed to” the disaster at Sheffield Wednesday’s stadium.

#### **West Midlands Serious Crime Squad - Controlling The Aftermath of Hillsborough**

The West Midlands police became the major investigating force for all inquiries into the Hillsborough Disaster. They: Investigated the role of South Yorkshire Police in the Hillsborough Disaster. Provided the evidence that went to the Director of Public Prosecutions which led to the decision that there was 'insufficient evidence' to bring about a prosecution. Provided the evidence that went to the Coroner's Court and acted as Officers to the Coroner when a verdict of 'Accidental Death' was recorded against all the dead of Hillsborough. The true role of the West Midlands Police in the Hillsborough Disaster is crucial to any serious history of events. They were brought in 'to do a job' and they utilised all their well honed 'skills' in the process. The 'First Tuesday' documentary gives some idea of the scale of the operation and the vast amount of evidence that had to be gathered and collated. However, there is another version of the work of the WMP which is far more sinister.

Shortly after the disaster the WMP set up offices on Merseyside in order to be close to those they had to interview. They entered Merseyside with a brief - to restore confidence in the police. These were professionals brought in to do a professional job. One of the reasons they stood out was that they were extremely well dressed. This was commented on by a number of people interviewed by them. Their sartorial elegance was no accident however. As one senior officer confided: 'Our boss said get in there and do a good job - we were given a clothing allowance and unlimited overtime'. Sadly, in many cases it worked. They operated a personal touch and many families were on first name terms with their officer. Others however, saw beyond the Armani suits and smelt the sows' ear beneath the silk purse. They realised that they were having a job done on them. People were visited and revisited in attempts to create the appropriate picture of events. Survivors were pressured and browbeaten until some doubted their own experiences. Whilst there are numerous examples that could be given, the two which follow highlight the sinister role of this force and serve as justification for calls for an inquiry into their role.

Detective Superintendent Stan Beechey played a crucial role in the Hillsborough Disaster. He was constantly by the side of the South Yorkshire Coroner, Dr Stefan Popper throughout the course of the inquests. Although Mervyn Jones, the Assistant Chief Constable of West Midlands was officially the Coroners officer, Beechey's role became increasingly significant. Serious questions have to be asked as to why Stan Beechey was still even in the police force let alone playing a crucial role in such a major investigation. Stan Beechey was a former head of the West Midlands Serious Crime Squad. Under his leadership there were numerous cases unsuccessfully prosecuted where there was clearly evidence of fabrication of evidence, confessions obtained under duress and the planting of forensic evidence to name just three examples - there are plenty more. The fact that anyone connected with the Serious Crime Squad should be allowed to be involved in any investigation seriously calls into question the motives of those charged with employing them.

#### **Ken Clarke: Free Prisoners Serving Indeterminate Sentences From 'Overcrowded Slums',**

Ken Clarke has damned, as 'absurd' the policy of keeping prisoners in jail beyond their original terms despite having scrapped indeterminate sentences back in 2012. As justice secretary, Clarke had abolished Imprisonment for Public Protection (IPP) sentences in May 2012 under the Legal Aid Sentencing and Punishment of Offenders Act. At the time, he called indeterminate sentences a 'stain' on the justice system. 'It is quite absurd that there are people who might be there for the rest of their lives, in theory, who are serving a sentence which Parliament agreed to get rid of because it hadn't worked as anybody intended a few years ago,' Ken Clarke told BBC Radio 4's Today programme yesterday in an interview in which he described prisons as 'overcrowded slums'.

The senior Conservative criticised the 'ridiculous burden' on the Parole Board of 'saying they can only release people if it's proved to them that they're not really a danger to the public'. Clarke said: 'No prisoner can prove that - you never know when people are going to lose their control, what's going to happen to them when they're released. You have a few thousand people still in our prisons with no idea when they are going to get out and a parole board that dare not let them out for fear of public attack if one of them does something serious when they said they were satisfied that they were safe. You can't be satisfied.'

Introduced in 2005, the IPP sentence was meant to show New Labour's 'tough' approach to serious offenders. The sentences were intended to protect the public against criminals whose crimes were not serious enough to merit a normal life sentence but who were regarded as too dangerous to be released when the term of their original sentence had expired. An offender was considered dangerous if the court assessed that there was 'a significant risk to members of the public of serious harm occasioned by him of further specified offences'. There were problems from the start. In 2007 a Government green paper (Prisons with a purpose) noted that many IPP prisoners could not find places on the requisite courses deemed necessary to show that they were no longer a danger to the public.

As reported on the Justice Gap, the UK now has more than 4,000 offenders languishing in prison on open-ended IPP sentences despite the sentence being scrapped. You can read other articles on the scourge of IPPs via the link (here). The Today programme featured the case of James Ward, who in 2006 was given an IPP sentence with a ten month tariff and who is still in prison with no release date. 'I find prison hard to cope with, being trapped in a box.

Prison is not fit to accommodate people like me with mental health problems. It's made

me worse. How can I change in a place like this? I wake up every morning scared of what the day may hold.' James Ward Earlier this month the justice secretary Michael Gove announced a review of IPPs. 'We must not compromise public safety but there are a significant number of IPP prisoners who are still in jail after having served their full tariff who need to be given hope that they can contribute positively to society in the future,' he said. There are currently 4,133 people in prison serving an IPP sentence; Four-fifths (81%) of people serving an IPP sentence are still in prison despite having passed their tariff expiry date. Of those who have been released, on average they were held for 44 months beyond their tariff; and 1,353 people are still being held in prison five years or more beyond their tariff, including 143 people held between 8 and ten years beyond their tariff. The Lord Chancellor has the power to change the release test for IPP prisoners—but this power has yet to be used.

**Birdbrain** - Aberdeen Sheriff Court's patience with a serial bird thief ran out after he was convicted of stealing pigeons shortly after being offered an olive branch in a similar case. Dean Wells, 23, was last year convicted of the theft of 24 racing pigeons from an Aberdeen pensioner's loft. He was given a chance to prove his good behaviour when Sheriff William Taylor deferred his sentence by six months. But he was sentenced to 22 days in prison for the theft at a hearing yesterday after Sheriff Margaret Hodge heard he had been convicted since then of the theft of 19 pigeons in late 2014. Wells also had a prior conviction for theft after pocketing three of his uncle's budgies four years ago. He will serve his sentences for the recent offences concurrently.

#### **More Than 215,000 'Extra' Prison Days Imposed For Misbehaviour Last Year**

*Caterina Franchi, Justice Gap:* The number of extra days of imprisonment given to prisoners who break prison rules shot up by more than one third last year, a recent analysis of government data by the Howard League for Penal Reform has revealed. Responding to a written question from Shadow Minister for Human Rights Andy Slaughter, Prisons, Probation and Rehabilitation Minister Andrew Selous, confirmed that in 2015, as many as 215,348 additional days in custody were given as punishment to prisoners after incidents of misbehaviour. This is compared to the 156,070 days that were given the year before - a 38% increase. According to data released by the government, the number of extra days of imprisonment that were handed out following disciplinary hearing - commonly known as adjudications - since 2010 has exponentially increased, and over the last 6 years more than a million additional days were imposed.

A report published by the Howard League for Penal Reform last year, which looked into the use of adjudications in prisons in England and Wales had already warned that 'the system of adjudications [had] bloated beyond its originally intended use, which was to punish incidents of unacceptable behaviour. Instead, in the most out-of-control prisons it [had] become a routinely used behaviour management technique'. Figures now show that disciplinary hearings, or adjudications, where additional days were handed out to prisoners reached a peak of 13,000 last year, with an average of 16.5 days per adjudication. Prisoners that were sentenced to additional days following an adjudication were kept in custody for longer than initially expected and contributed to the chronic overcrowding of prisons in England and Wales. Commenting on the most recent figures, Frances Crook, Chief Executive of the Howard League for Penal Reform, said: Punishing misbehaviour by prisoners languishing in squalid conditions is creating a vicious cycle of troubled prisons and troubling prisoners and these figures reveal that this cycle is now spinning faster than ever. Our prison system is overcrowded and yet the system of adjudications simply feeds further pressure on the prisons. She added: 'If the Ministry

of Justice is serious about reforming prisons, then this is one area that must be tackled’.

### **Kingsmills Massacre: Police Inquiry Re-Opens After Fingerprints Matched**

Police are to re-open their inquiry into the Kingsmills massacre following the discovery of new evidence. A palm print found on a getaway van has been linked to a set of fingerprints. The new evidence comes 40 years after the killings by an IRA gang and 13 years after the families began fighting for an inquest. Ten Protestant men were shot dead in the massacre by an IRA gang near the County Armagh village of Kingsmills in 1976. Colin Worton, whose 24-year-old brother, Kenneth, was one of the men killed, said the announcement that the PSNI would re-open the investigation was a "total shock". "I have to be truthful to you", he told the BBC, "I do feel a mixture of emotions, but one of the worst ones I have is anger. Why has this taken more than 40 years to come out?" He called the men who fired the shots "animals" and said he was "totally sickened" that the investigation has gone on so long. The men who were killed were travelling home from work in a textile factory when their mini-bus was ambushed. After checking their religion, the gang ordered one Catholic to leave before opening fire.

A senior investigating officer has now been allocated to the case and the criminal investigation re-opened. Assistant Chief Constable Mark Hamilton, head of the PSNI's legacy and justice department, said he appreciated this was "a very difficult time" for the victims' families. "Due to a recent forensic development, detectives from legacy investigation branch are now following a line of inquiry in relation to the murders at Kingsmills in 1976. We have been liaising with the coroner's office in relation to this and will continue to do so. We are committed to progressing this matter as expeditiously as possible and will keep them (the families) updated as appropriate."

### **Arbitrary Detention on Suspicion of Belonging to a Criminal Organisation**

In Chamber judgments in the cases of *Mergen and Others v. Turkey* and *Ayşe Yüksel and Others v. Turkey* the European Court of Human Rights held, unanimously, that there had been: a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights. The cases concerned the arrest, placement in police custody and pre-trial detention of members of the Association for Supporting Contemporary Life (Çağdaş Yaşamı Destekleme Derneği – ÇYDD – an association that awards grants to students, especially with the aim of promoting education for girls) on suspicion of belonging to a criminal organisation called Ergenekon, whose presumed members were accused of having engaged in activities aimed at overthrowing the Government by force and violence, and of planning a military coup. The Court found in particular that the Government had not provided any evidence of a link between the applicants themselves and the Ergenekon organisation. It therefore held that the interpretation and application of the legal provisions relied on by the domestic authorities had been so unreasonable as to render the applicants' deprivation of liberty unlawful and arbitrary.

### **UK Weapons Sales to Oppressive Regimes Top £3bn a Year** *Jamie Doward, Observer*

Big increase since 2014 in quantity of missiles and bombs sold to countries on Foreign Office's list of human rights violators. The UK is selling record quantities of arms – including missiles, bombs and grenades – to countries listed by the Foreign Office as having dubious human rights records. Several have been accused of war crimes or suppressing popular protest. More than £3bn of British-made weaponry was licensed for export last year to 21 of the Foreign Office's 30 "human rights priority countries" – those identified by the government as being where "the worst, or greatest number of, human rights violations take place", or "where we judge that the UK can make a real difference". Listed countries that last year

bought British arms and military equipment include: ■ Saudi Arabia, which has been accused of perpetrating war crimes in Yemen. ■ Bahrain, which used troops to quell protests following the Arab spring. ■ Burundi, which is being investigated by the UN for human rights violations. ■ The Maldives, which in 2015 jailed its former president, Mohamed Nasheed, for 13 years following what critics said was a politically motivated show trial.

Figures shared with the Observer show that in 2014 the UK licensed just £170m of arms to 18 of the 27 countries then on the "priority countries" list. The massive increase in sales was largely attributable to sales of weapons to Saudi Arabia. The largest export licence granted was for £1.7bn of fighter jets, agreed in May 2015. In July 2015 the UK approved the export of £990m of air-to-air missiles. In September, it approved the sale of £62m of bombs to the country. All three sales took place after the bombing of Yemen began in March 2015, prompting concerns that civilian buildings have been targeted in widespread human rights violations. In 2015 the UK also approved licences of £84m of military equipment to Egypt, despite concerns about the country's direction since the July 2013 coup that ousted its elected president, Mohamed Morsi. Figures show that in July 2015, a month after the UK refused export licences for the sale to Egypt of components for machine guns and training small arms ammunition, it approved the sale of sniper rifles, ammunition, pistols, body armour and assault rifles. "This is a clear case of the government saying one thing and doing another, and exposes the blatant doublespeak and hypocrisy that lies at the heart of UK foreign policy," said Andrew Smith of the Campaign Against Arms Trade (CAAT), which compiled the export sales figures. "These arms sales are going to countries that even the Foreign Office accepts are run by some of the most brutal and oppressive regimes in the world," he said. "The humanitarian situation in many of these countries is only getting worse, and yet the arms sales are increasing. They aren't just providing military support for human rights abusers; they are sending a strong political support too." The UK, the second-largest arms exporter in the world, approved licences for the sale of £7.7bn of arms last year, but its licensing export regime is under acute scrutiny amid fears British weaponry is being routinely used in Yemen. Last week a British-made cluster bomb, dating from the 1980s, was found to have been dropped on a village in Yemen, even though the use and supply of such weapons is banned under international law.

The Observer has learned that the high court will determine next month whether a legal challenge brought by CAAT against the UK's licensing of arms to Saudi Arabia is lawful. The case is the most high-profile legal challenge to the military export regime since 1997, when the government came under fierce scrutiny over the sale of Hawk jets to Indonesia, an apparent breach of New Labour's "ethical foreign policy. It's an extremely important case," said Rosa Curling, solicitor with Leigh Day, which is representing CAAT in the challenge. "It's going to dictate whether the Department for Business Innovation and Skills approach, in this case on Saudi Arabia, is correct or not. We are of the view that it is not the correct approach. They can't be suggesting that there isn't a risk of serious breaches of international law, given the huge and overwhelming amount of evidence to the contrary. In our view there is an absolutely straightforward case that the licences shouldn't be continuing."

Curling suggested that the challenge's outcome would have wide-ranging consequences. "There will be an analysis of whether what [the Department for Business Innovation and Skills] was doing was correct, and that will feed into all the other decisions the government makes about arms and the evidence (when approving export licences) on which it can or cannot rely." A government spokeswoman said: "The government takes its arms export responsibilities very seriously and operates one of the most robust arms-export-control regimes in the world. We rigorously examine every application on a case-by-case basis against the consolidated EU and

national arms export licensing criteria and are satisfied that extant licences are compliant with these.”

### **W and Others v SSHD (Deportation - Substantive)**

*Gherson Immigration*

Background and history of the proceedings: The appellants are Algerian nationals who were found by the Special Immigration Appeals Commission (SIAC) to constitute a threat to the national security of the United Kingdom. Various Home Secretaries have been trying to deport them to Algeria for several years, which have given rise to protracted litigation. Some of the appeals to SIAC have failed on the ground that deportation to Algeria would not infringe the Appellants' human rights because of assurances given by the Algerian government about their safety and treatment on return.

The Appellants' further appeal to the Supreme Court however, succeeded in *W (Algeria) -v- SSHD* [2012] UKSC 8. The cases were remitted to SIAC for a second and third hearing. On 25 January 2013, SIAC again dismissed the appeals of almost all the appellants bar one. Permission for a further appeal to SIAC was then granted following an oral hearing on 15 January 2014. With its judgment of 23 January 2015 (*BB and Others v SSHD* [2015] EWCA Civ 9), the Court of Appeal remitted the matter to SIAC on two grounds. The first is that SIAC "failed to apply the full, nuanced and holistic approach of *Babar Ahmad* [*Babar Ahmad v United Kingdom* (2013) 58 EHRR 1] to the unusual circumstances of these cases" (paragraph 24). The second is that "SIAC erred in law by placing reliance on some sources of verification [of the effectiveness of Algerian assurances as to proper treatment of returnees] when the evidence did not permit it to do so..." One of the central issues is the interpretation of the ECtHR judgment in *Othman v United Kingdom* (2012) 55 EHRR 1, and in particular the question of "whether compliance could be verified or monitored", which is critical in cases of deportation with assurances.

Facts: The central issue in this appeal regarded the conditions in which the appellants would probably be held for a period of up to twelve days on arrival in Algeria. The controversial period is known as *garde à vue* detention. The Appellants based their claim on three main grounds: (1) that their rights would violate Article 3 of the European Convention on Human Rights and Fundamental Freedoms (ECHR); (2) that the SIAC erred in law by finding that there were adequate safeguards to enable verification of observance by the Algerian authorities of the assurances which have been given by the Algerian government, and (3) that the SIAC erred in law in referring to the fact that Algerian Security Service (the *Département du Renseignement et de la Sécurité* ["DRS"]) officers were present during discussions about the assurances and had subscribed to them, there being no open evidence to support such a conclusion.

The evidence found by SIAC in the open judgments in relation to *garde à vue* detention is that detention is carried out at the Antar barracks by the DRS. During a period of up to twelve days detainees are interrogated, with the purpose of obtaining material from them which might be used in subsequent proceedings. At the end of the period, the detainee, unless released, is handed over to the civilian authorities. If they proceed to detain him, it is within a general custodial institution and in conditions of a kind that were not criticised in these proceedings. The open judgment of SIAC included findings (amongst other things) that many of the cells in the Antar barracks were extremely primitive, the conditions were inadequate, detainees often had to sleep on the floor, had inadequate medical attention, solitary confinement, humiliations by guards and were being pressured to sign documents without understanding them.

The test under Article 3: The Court applied the test used by the Court of Appeal in *Babar Ahmad* to establish that the approach does not alter where removal is sought on national security grounds. Moreover, in determining whether the risk goes beyond the Article 3

threshold, the approach does not vary where there are diplomatic or prosecutorial assurances involved. The test is whether there are substantial grounds for believing that an Appellant faces a real risk of being subjected to treatment contrary to Article 3. A fanciful risk will not suffice. Following *Al-Skeini v SSHD* the Court also considered that the deliberate infliction of ill treatment would more readily be found to be of sufficient severity so as to breach Article 3.

The issues: The Respondent conceded that there was a real risk of the Appellants being detained on return in *garde à vue* detention, in fact the case was conducted on the assumption they would all be detained for a period. Therefore the decisive issue in this case was the effectiveness of the assurances given, and the verification of adherence to these assurances.

The main characteristics of the assurances in this case were: An exchange of letters between the British Prime Minister and the Algerian President, each assuring the other of their firm commitment to international law and human rights and in particular, the right to a fair hearing and the right of presumption of innocence. Correspondence between the British ambassador in Algiers and the Algerian Directorate General of Judicial and Legal Affairs, which included several obligations on behalf of the embassy. A letter from the Algerian authorities concerning one of the Appellants, guaranteeing (amongst other things) that if Y was arrested in Algeria he would enjoy a series of rights including rights to appear before a court and the right to be examined by a doctor. The case thoroughly emphasised the degree to which Algerian National interest is served by having good relations with the UK. It was clear that the Government of Algeria would have an interest in honouring the assurances.

The Appellants had all been identified by the UK government and by SIAC as having a history of involvement in Islamist terrorism linked to Al Qaeda. This fact, combined with the geopolitical and the increase in Islamist activity in the Maghreb, would have led to a greater individual and specific interest by the DRS upon these individual Appellants if returned to Algeria. It was submitted that because DRS officers have the status of "judicial police officers" they have a formal power to detain. Due to the fact that the Appellants were alleged terrorists, it would be the DRS who would exercise detention under *garde à vue*, which the US State Department identified as problematic due to the "overuse of pre-trial detention". Even though the Respondent suggested that there had been an effective modernisation of the DRS in recent times, including that it was "moving towards a role more akin to a traditional intelligence agency", the Appellants presented evidence showing that DRS officers appeared to operate with effective impunity, since there was no known example of a DRS officer being made the subject of either a disciplinary or legal action.

The Court concluded that it could not regard the evidence as bringing us to the point (as was submitted by the Respondent) that the level of concern was so reduced that there was a diminished need for effective verification of adherence to the assurances. With regards to verification of assurances, there was the issue that there could be no monitoring of anyone detained by the DRS, as there had been no access to any DRS facility; there had been no contact between the British Embassy and the DRS; and an independent expert's request for such a meeting was refused. As SIAC has stated previously in *BB*: "Verification can be achieved by a variety of means, both formal and informal and by a variety of agencies, both governmental and non governmental. Monitoring is one means of verification but not the only one."

The British Embassy: The SIAC accepted that the British embassy's role and capacity meant that it would not take positive steps of its own to verify or report on breaches of assurances. It would depend almost entirely on family members or somebody else coming to them with complaints or reports. If such complaints were not considered "credible" and were not

supported by corroborative evidence, medical evidence, or an adequate route to judicial judgment on the point, it would be difficult for any effective action to emerge from the complaint.

Conclusions: The SIAC concluded that they were not convinced that the improvements in the conditions in Algeria were so significant as to remove the need for effective verification that the authorities would adhere to the assurances given. It was "not inconceivable" that if the Appellants were returned to Algeria their article 3 rights would be infringed and there was a "real risk" of such a breach. It was also considered that the different means of verification of adherence advanced by the Respondent did not amount to a robust system of verification. Therefore, the appeals were upheld.

### **MPs Split Over Report Blaming EU For Failure to Deport Foreign National Offenders**

*Alan Travis, Guardian:* Report saying presence of 13,000 foreign offenders in UK would lead to questioning of EU membership passed by casting vote. A Commons committee report blaming Britain's membership of the European Union for the government's failure to deport 13,000 foreign offenders was only passed on the casting vote of its chairman, Keith Vaz. The claim that the government's record on deporting foreign national criminals would lead the public "to question the point of Britain remaining a member of the EU" split the Commons home affairs committee down the middle, with a 4-4 deadlock broken by Vaz's casting vote. The committee's endorsement of an anti-EU position on such an emotive issue was seized on by the justice minister and leave campaigner Dominic Raab, who claimed that even a leading Labour remain campaigner, Chuka Umunna, who sits on the committee, was now questioning staying in the EU. Umunna was not present when the vote was taken on the key passage in the report.

The Home Secretary, Theresa May, defended the government's record and denied that Britain's EU membership was a hindrance. "Foreign nationals who commit crimes here should be in no doubt of our determination to deport them," she said. "Last year we removed a record number of foreign national offenders from this country, including a record number of EU criminals. "Being in the EU gives us access to criminal records sharing and prisoner transfer agreements which help us better identify people with criminal records and, allow us to send foreign criminals back to their home countries to serve their sentences."

The home affairs committee's quarterly report on the immigration system also says it must "seriously question" an "extraordinary" decision by the Home Office to attempt to deport thousands of overseas students on the basis of "questionable or insufficient" evidence that they had cheated in English language tests. Vaz said the Home Office's "arrests, dawn raids and aggressive deportations" of students from outside the EU stood in stark contrast to the failure to remove foreign offenders. "There are still over 13,000 foreign national offenders in the country, who could fill towns the size of Louth in Lincolnshire, Beccles in Suffolk or Berwick-upon-Tweed in Northumberland, and almost 6,000 of these are living within communities," he said. "The public would expect our membership of the European Union to make it easier to deport European offenders, but this is clearly not the case, and we continue to keep thousands of these criminals at great and unnecessary expense. These failures are undermining confidence in the UK's immigration system and in the UK's EU membership."

Umunna accused leave campaigners of trying to hijack the committee's report for their own political gain. "Our partnership with countries across Europe makes it easier for us to deport hundreds of foreign criminals each year. There are clearly some inefficiencies, but there is no doubt our

membership of the EU is a help not a hindrance in clearing the backlog of foreign national offenders," he told the Guardian. "Any attempt to portray the findings of this report as a reason to leave the EU would be wrong, deeply misleading and another example of how desperate the leave campaigns have become. As leading law enforcement heads have said time and time again, Britain is stronger, safer and better off as part of Europe." Raab said the report showed that the EU was making it more difficult to remove dangerous criminals. He claimed that "even the in campaign's political champion" Umunna was now questioning the point of remaining in the EU as a result of the report. The report highlights the fact that the two largest groups of foreign offenders in prison in England and Wales are the 983 from Poland and 764 from Ireland. About 4,000 of the 13,000 foreign national offenders are from EU countries. The Ministry of Justice said both groups had special status and could not be sent home. No Irish prisoners, save for exceptional cases, have been sent back since a 2007 bilateral agreement that has nothing to do with the EU. There is also a block on sending prisoners back to Poland until the end of 2016 as it has an exemption under the EU prison transfer agreement because of lack of capacity in its jails. The committee's report says the 13,000 foreign national offenders who have not been sent home include 5,789 living in the community, more than half of them for two years or more. The number of those living in the community is the highest since 2012. The MPs report that deportations have been steadily increasing and the 5,602 foreign offenders removed in 2015 was the highest number since 2009.

### **Family of British Citizen Death Row In Ethiopia Launch Legal Bid to Bring Him Home**

The family of Andargachew "Andy" Tsege, a British national who is being arbitrarily detained in Ethiopia pursuant to a death sentence imposed in absentia, have launched judicial review proceedings in a bid to bring him home. A well-known and respected critic of the Ethiopian government, Mr Tsege was granted refugee status in the UK having fled political persecution in Ethiopia in 1979. On 23 June 2014, Mr Tsege was abducted during a two-hour stopover at Sana'a Airport in Yemen and unlawfully rendered to Ethiopia. He was detained incommunicado at a secret location for a year. Nearly two years on, Mr Tsege is still held in detention and has not been given access to a court, access to a lawyer, or any unsupervised consular access throughout his time in detention. He is at risk of the death penalty, which was imposed following a trial in his absence in 2009. His family hold grave concerns for his mental and physical health and wellbeing. Mr Tsege's legal team have obtained determinations of arbitrary detention and risk of torture by the UN Working Group on Arbitrary Detention and the Special Rapporteur on Torture. However, the UK government persists in pursuing 'due process' in Ethiopia and refuses to request Mr Tsege's release and repatriation. Mr Tsege's daughter has now brought judicial review proceedings challenging the Foreign Secretary's decision not to request Mr Tsege's release and return but to pursue proceedings in Ethiopia, despite the admission that there is no judicial process available to Mr Tsege in Ethiopia. The proceedings also challenge the Foreign Secretary's refusal to treat Mr Tsege's case as one of kidnap, despite the facts meeting all the criteria for kidnap under English law. Ben Cooper and Katie O'Byrne act for Menabe Andargachew and her family, instructed by Rosa Curling of Leigh Day and working closely with Reprieve.

Hostages: 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 Couitts, 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, 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 Attwool, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan.