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MOJUK: Newsletter 'Inside Out' No 682 (05/04/2018) - Cost £1

Application by Kevin Maguire for Judicial Review (Northern Ireland) – UKSC 2015/0134

[An individual does not have an inalienable right to choose who represents him/her in court. Neither does he/she have the right to decide how their defence is conducted. Further that he/she cannot dictate to counsel how that defence is conducted.]

The issue in this case is whether in publicly funded cases in which the court has certified that the interests of justice require the accused to have the services of two counsel to conduct his trial, where the accused wishes to retain a particular junior counsel, the requirement of the General Council of the Bar that he must instruct an available senior counsel or proceed with junior counsel is not compatible with the accused's convention right under Article 6(3) to defend himself through legal assistance of his own choosing?

The appellant was accused of sexual offences. A certificate for legal aid was granted for representation by two counsel by a District Judge, by reason of the case appearing to present exceptional difficulty. The appellant instructed a junior barrister, Mr Barlow, and Mr Neville, a solicitor-advocate, to act as his counsel at the trial. The jury failed to reach a verdict and was discharged. A re-trial was scheduled. The position of the respondent Bar Council of Northern Ireland, as reflected in their Code of Conduct at the relevant time, was that where legal aid was granted for two barristers in criminal cases, one should be a senior counsel except in exceptional circumstances. As he is not a senior counsel, Mr Barlow was disciplined by the Bar Council for leading in the appellant's first trial (no steps having been taken by him to ascertain whether senior counsel was available). The appellant wrote to the Bar Council shortly before his re-trial was to commence expressing his wish to have Mr Barlow as leading counsel in his case with assistance from a junior. The Bar Council refused. Various correspondence followed between the Bar Council and the appellant, who alleged that the appellant's inability to instruct Mr Barlow as his lead advocate with the assistance of a junior breached Article 6(3) ECHR. The Bar Council maintained its position and the appellant applied for judicial review, pending which his retrial was stayed. The Divisional Court rejected his application. Following this, the retrial took place. The appellant was acquitted on seven counts, with the jury unable to reach a verdict on the four remaining.

The Supreme Court unanimously dismisses the appeal. The fundamental basis of the right guaranteed by article 6(3)(c) is that the legal representation should be conducive to a fair trial, rather than conferring complete freedom to an individual defendant to choose the lawyer by whom to be represented. A defendant does not have the right to decide in what manner his defence should be assured – the right is to be represented by sufficiently experienced counsel of one's choice, but the role to be played by that counsel cannot be dictated by the defendant.

Clarke and another (Appellant) v The State (Respondent) (Trinidad & Tobago)

On appeal from the Court of Appeal (Trinidad and Tobago): The applicants were tried with seven other men for murder. The case against the applicants was that, pursuant to a plan orchestrated by one of their co-accused, Boodram, they kidnapped the victim and handed her over to other gang members who threatened, assaulted and ultimately killed her. The applicants' involvement ended once they had handed over the victim. The applicants were convicted of manslaughter and sentenced to thirty years' imprisonment with hard labour. The jury was unable to reach a verdict in relation to Boodram and the gang members allegedly involved in the infliction of violence leading to the victim's death. The applicants' appeals against conviction to the Court of Appeal were dismissed.

The issues are: (1) Whether the applicants' convictions for manslaughter are unsafe on the grounds that (i) the defence was prevented from cross-examining the key prosecution witness about false statements he had made; (ii) the prosecution did not decide until after counsels' speeches to put the case on the basis of joint enterprise rather than felony murder; (iii) the judge misdirected the jury on the elements of joint enterprise homicide; and/or (iv) the jury's decision was inconsistent and/or indicated that they had disregarded the judge's directions. (2) Whether the judge erred in failing to give the applicants credit towards their sentence for the time they spent in custody awaiting trial. Permission to appeal has been granted in this case.

If Your Dead, Your Dead, Regardless of Your Being Alive

A man who presented himself before a court to prove that he is still alive has been refused the annulment of his death certificate. Constantin Reliu, 63, was declared dead in 2016, around two decades after he left his native town of Barlad, Romania to work in Turkey. He had no contact in the intervening period with his (allegedly unfaithful) wife, who reported him dead, The Independent reports. Mr Reliu returned to Romania in January and has sought to annul the death certificate to allow him to enter legal employment again. However, the judge ruled that the deadline for appealing a death certificate had passed and there was nothing they could do.

Fixing A Hole? Potential Solutions To The Problem Of Disclosure

In the wake of the collapsed cases of Liam Allan and others in late 2017, the House of Commons' Justice Select Committee has launched an inquiry into the 'extensive issues' with criminal disclosure. They are currently inviting written evidence on this issue. One of the central questions the Committee is asking is as follows: Are the current policies, rules and procedures satisfactory to enable appropriate disclosure of evidence and support the defendant's right to a fair trial? In our view, they are not. Tom Smith and Ed Johnston look at potential solutions to the disclosure scandal

The recent spate of cases collapsing due to failures in disclosure of relevant evidence arguably represents only a small (if highly impactful) part of a long-term procedural and cultural problem. The Criminal Procedure and Investigations Act 1996 (CPIA) introduced extensive reform of the disclosure process. Yet, in the two decades since, various researchers and commentators (including Sprack (1997); Plotnikoff & Woolfson (2001); Epp (2001); Redmayne (2004); and Quirk (2006)) have been critical of unresolved flaws in the regime, highlighting the failure of the police and prosecution in complying with their duty to share exculpatory evidence with the defence in a timely manner.

Notwithstanding attempts to fine-tune the process through 'soft' regulation – such as the Attorney General's Guidelines on disclosure and the Crown Prosecution Service (CPS) disclosure manual – such issues persist. The review of Lord Justice Gross (2011) and the report of the HMCPSI (2017) continue to demonstrate that the regulatory structure for disclosure is arguably not fit for purpose, which has potentially severe consequences. We would argue that to perpetuate a policy of, ultimately, tinkering with the existing system will likely result in few substantial improvements.

The working theory behind this conclusion is, and has been for some time, that problems with criminal disclosure are not merely caused by under resourcing, poor training, or leadership deficit (which all may play a part). It is underpinned by a problem of culture.

The police (and to a lesser extent perhaps, the CPS) embody the adversarial nature of English and Welsh criminal justice. On a day to day basis, they are charged with detecting, investigating and prosecuting a range of offences, from the commonplace to the most distressing and serious. Whilst the police are conceived, in theory, as objective investigators, it is hard to escape the reality that their role encourages (and possibly demands) a focused, prosecutorial mindset. At the same time, the police and CPS are asked to objectively and neutrally assess whether evidence undermines their case – and by extension the aforementioned investigatory work – and assists suspects of crime.

There is a very obvious conflict of interest between the adversarial tendencies of police and prosecution work, and the objective needs of a fair and accurate search for the truth. This is a fatal flaw in the design of the disclosure process; like any structure, it will stand or fall depending on how robust its foundations are. Giving the police and prosecution sole responsibility for determining whether evidence should be disclosed to, effectively, their opponents is a faulty cornerstone. This is exacerbated by a virtually invisible process; very little attention has, until recently, been paid to disclosure decision-making at the earliest stages of criminal investigations and there is no clear recording or auditing process for such decisions. The paucity of information included in the Metropolitan Police Service review of the Liam Allan case should be noted as evidence of this.

Tunnel Vision: The 'explosion' of information available during criminal investigations is certainly a factor. Clearly, when large amounts of material are available to officers in a case, they will feel the need to focus on the most relevant. This already challenging process is exacerbated when time and resource pressures effect officer decision making. It is arguable that the well documented squeeze on police officer numbers, as well as the general desire to progress cases more swiftly (at both the investigative and court stages) may be increasing the risk of important material being missed. However, it is also possible that such an argument – which effectively relieves officers and prosecutors of responsibility for mistakes – may simply disguise a 'tunnel-vision' approach to reviewing evidence for disclosure, focusing only on that which supports a prosecution. It is, however, very difficult to establish this due to the lack of transparency in the process and the deficit of evidence available.

With regard to wider policy issues, changes to legal aid may play a role.

For example, limited resources available to criminal defence lawyers may discourage or prevent them from pushing for more extensive disclosure or thoroughly examining unused evidence for relevant exculpatory material. This is, however, speculative. Moreover, if the problem lies with initial disclosure by the police and prosecution, the capacity of the defence to comb evidence is less relevant, as material will simply not be available to them. Another wider policy issue of note, influencing both the investigative and court stages of criminal justice, is the focus on efficiency of proceedings (explored in depth in the Leveson Review).

A general desire (or pressure) to progress cases swiftly may lead to limited early disclosure – either before or after charge, or before a first appearance at court. In research by Cape and Smith (2016) examining detention and bail prior to trial, practitioners commented on the very inconsistent availability of material, evidence and information prior to the first hearings. Moreover, the study found that the cases presented at first hearings tended to rely on police summaries which were relatively brief. Such findings are particularly concerning in light of the push to encourage early guilty pleas. Whilst this policy has its place in saving unnecessary cost and stress for complainants and witnesses, it may be much more difficult for defendants and lawyers to enter an appropriate plea when they have very little information about the

case against them. The cliched adage that 'a defendant knows if they are guilty' is simply not an answer to this problem. Disclosure is therefore a key stepping stone in ensuring that cases charged and brought to court are effectively dealt with at the first appearance. This also impacts bail decision making, as defendants and lawyers with little disclosed information may feel unable to effectively make representations regarding bail at the first appearance.

It should also be noted that Article 7 of the EU directive on the right to information in criminal proceedings is very clear that 'documents… essential to challenging effectively… the lawfulness of the arrest or detention' and 'at least… all material evidence in the possession of the competent authorities' should be made available to suspects and their lawyers. Whether current practice is compliant with this is questionable. In arguing that leaving the EU will not result in a race to the bottom, the Government has expressed confidence that this jurisdiction will achieve high standards on a 'voluntary' basis post-Brexit. If that is to be more than a pipe dream in the area of criminal disclosure, it would seem vital to take action to ensure that this directive is properly transposed into British Law.

In the spirit of productive debate, the authors propose three potential alternatives to the current regime of disclosure at the investigative stage. All involve, in essence, removing some responsibility from the police and prosecution for determining whether evidence should be disclosed to the defence.

Alternative 1: Full Disclosure: The first is what might be termed 'full disclosure' – that is, providing the entirety of the available evidence (except for sensitive material) to the defence, with an ongoing duty to continue disclosure of all evidence. This approach would address the potential for adversarial 'game-playing' on the part of the police or prosecution since it would prevent material from being hidden from the defence (unless classified as sensitive). This solution is not without problems. It does not necessarily combat the possibility of relevant material being missed, particularly in light of the levels of material now potentially available as electronic information. Suspects in police stations (many of whom, according to various studies, do not receive legal advice) would be unable to effectively manage this burden alone, and defence lawyers would not – without a significant change in policy direction – have any greater capacity than before to undertake the work of examining such evidence (currently the role of the police).

Since the police would likely play no further role in assessing whether evidence is exculpatory – and therefore fully embrace an adversarial, prosecution-minded role – it is unclear whether this solution would achieve anything other than over-loading the defence with a haystack of evidence, and few tools for finding needles.

Alternative 2: Judicial Disclosure Officer: The second solution would be to remove responsibility for decision-making regarding disclosure from the adversarial parties altogether. We would propose creating a specific, independent role for determining whether evidence should be disclosed to the defence in a neutral and objective manner. We propose that this should be a judicial figure (either qualified/experienced to the level of District Judge or Deputy District Judge), with a significant background in criminal legal practice. This role would purely be concerned with: 1) Initially receiving all evidence from the police, and receiving further evidence on an ongoing basis 2) Determining what, if any, evidence fulfils the current requirements under the CPIA for disclosure of exculpatory evidence to the defence 3) Determining what evidence is non-disclosable on the basis of irrelevance to the defence 4) Making decisions about withholding evidence on the grounds of sensitivity (for example, on Public Immunity or Article 8 ECHR privacy grounds) 5) Doing this on an ongoing basis for the life of a case

To be clear, this figure – which we tentatively suggest could be called the Judicial

Disclosure Officer (JDO) – would make no decisions regarding the strength of a case against a suspect or what evidence the police/prosecution should use or not use in a case.

They would solely be responsible for determining disclosure. We feel this would fully address the cultural problems which currently hamper fair and relevant disclosure. There would, however, clearly be resource implications. Since the JDO would make decisions regarding disclosure in a large number of cases, this would require full-time and experienced staffing, located in every police force area to ensure adequate coverage. Whether this can (or would) be resourced is a difficult question to answer, as it would likely need to be centrally funded to protect independence. Indeed, the idea of a semi-independent police-based figure is not recommended. This concept underpinned the introduction of the Custody Officer role under the Police and Criminal Evidence Act 1984, which has and continues to have problems of independence (see Dehaghani (2017)). This would be a very significant step, as it would effectively be creating an entirely new figure in the English and Welsh criminal justice system, perhaps most closely comparable to an investigative judge in the inquisitorial systems of various European jurisdictions. We consider this solution to have the most potential to ensure the long-term fairness of the disclosure process.

Alternative Solution 3: A third solution would be to harness technological innovation to assist the police in undertaking their current role. The most obvious method of doing so would be the use of Artificial Intelligence (AI) or algorithmic decision-making in the disclosure process. There is some history in the use of such technologies in criminal justice practice. From January 2017, New Jersey became the first state in the US to almost eradicate the use of bail completely. Judges now use a nine-factor algorithm to examine whether a defendant is either dangerous or likely to abscond prior to trial.

The defendants who are classified in either category can be detained and the remaining defendants are released albeit with various monitoring conditions attached. Such techniques have emerged closer to home. In May 2017, the BBC reported that Durham Constabluary, with the assistance of academics from Cambridge and Winchester Universities, were preparing to 'go live' with an artificial intelligence system designed to assist custody officers in deciding whether or not to detain suspects at the pre-charge stage. At a basic level, the system employed an algorithm called the Harm Assessment Risk Tool (dubbed 'HART') which would classify suspects as being a low, medium or high risk of reoffending. This, in turn, would help custody officers determine whether or not it is necessary to remand the suspect in custody or release them, with or without bail. The decision-making of the algorithm is based on data which Durham Constabulary gathered between 2008 and 2013. This data includes behaviour predictors such as the criminal history of the suspect as well as age, gender, two forms of residential postcode and existing police intelligence. In 2013 the tool was tested and was found to be 'correct' in 98% of cases, with 'high risk' forecasts correct 88% of the time.

Durham Constabulary have stated that the decisions will only be 'advisory' during the experimental use of the tool. The latter fact – that humans remain the ultimate arbiters – has been welcomed by critics who complained that reliance on factors like gender and postcode undermined the fairness and reliability of the algorithm. That being said, if the tool continues to make 'correct' decisions in 98% of cases, there is some argument to be made that humans cannot necessarily do any better. These are examples, and apply primarily to risk assessment and prediction. But clearly there may be some scope for adopting or utilising a similar approach in assessing what material is suitable for disclosure, and therefore presents an opportunity to make better, fairer decisions. A key benefit of this solution would be to tackle the issue of

high volumes of evidence. With well-designed and reliable technological assistance, the police could shift into an oversight and fine-tuning role in ensuring disclosure is undertaken properly, rather than attempting to grapple with very large amounts of material with varying levels of relevance or usefulness.

Equally, if designed properly, an algorithm which determines whether evidence needs to be disclosed or not would be entirely neutral and not subject to the bias that some police officers (and, quite frankly, human beings generally) will inevitably succumb to. Of course, this raises serious questions about how such a system would be designed, if it could be designed. This would take significant time and investment to achieve.

Despite long-term anecdotal evidence and individual case examples demonstrating issues with criminal disclosure, we believe that a greater body of research evidence would greatly inform future reform. At present, the authors are preparing a bid for funding to undertake independent research into disclosure practices in police stations and courts. We believe that, in the long term, empirically tested evidence would help to establish the true extent of the issues, their causes, and help inform potential solutions. This article is designed to kick-start a conversation which is solutions-focused. The authors recognise these solutions are imperfect, but would welcome input and dialogue to take them forward.

The 'Reasonable Citizen' — SSHD V Sergei Skripal

Mr Justice Williams made a best interests decision that blood samples could be taken by the Organisation for the Prohibition of Chemical Weapons from Sergei and Yulia Skirpal in order that the Organisation for the Prohibition of Chemical Weapons (OCPW) could undertake their own analysis to find evidence of possible nerve agents. Both Sergei and Yulia were and remain unconscious and in a critical condition, and were unable to consent to such blood samples being taken.

The SSHD made a number of submissions as to why taking the samples was in the best interests of the Skripals, including a number that potentially presupposed a relatively active citizenship on their part, including: Best interests was not to be determined by reference to purely medical factors but the OPCW evaluation may be of direct medical relevance in that it might add to the knowledge base against which they are being treated and even if it only confirms the current evaluation, this is of direct medical relevance to them. The main consideration ought to be the beliefs and values that would have been likely to influence the decision if Mr Skripal or Ms Skripal had capacity to make it. An individual subjected to such an attack with personally catastrophic consequences would want to see it fully and properly investigated and that all appropriate steps to identify the perpetrators (individual and state) have been taken. In addition the other factors that Mr Skripal or Ms Skripal would have been likely to consider if he or she were able to would include the effects of their decision on others and their duties as responsible citizens. In particular they would have been likely to want to support the work of the international body set up by international law knowing that its processes were unimpeachable, it was entirely independent, that the results of its enquiry would potentially be beneficial to the criminal investigation, confirming the nature of the attack and the substance used; and giving assistance in bringing to justice those responsible; identifying those who carried out the attack. They would have wanted to support the UK Government in taking steps on the international plane to hold those responsible to account.

The Official Solicitor was in general supportive of the SSHD's arguments, and focussed on the 'substituted judgment' of what the patient would consider if he were able to and in particular the interest any individual victim would have in seeking to further the inquiry into what had happened to them. He submitted that although there was little evidence before the court about Mr Skripal or Ms

Skripal as individual persons there was nothing that should cause the court to consider either hold views which would suggest they would not want to get to the bottom of what had happened. In particular the Official Solicitor emphasised that the detriment to either Mr Skripal or Ms Skripal was negligible; in particular in relation to the physical aspects of the taking of the samples but also the disclosure of medical records and the subsequent consequences of the investigation.

Mr Justice Williams emphasised that 'best interests' had been held by the courts potentially to be a very broad concept. He noted that the Lord Chancellor's Code of Practice issued in accordance with ss. 42-43 of the Mental Capacity Act also identified the possibility that other factors that the person lacking capacity might consider if they were able to could 'include the effect of the decision on other people - the duties of a responsible citizen'.

Accordingly, he held that: "So the evaluation of what order is in the best interests of Mr Skripal and Ms Skripal involves a far broader survey of whether the taking of blood samples will have any medical benefit to them and whether the disclosure of their medical records will bring any medical advantage to them. It includes every consideration that might bear on what is in their best interests."

However, Mr Justice Williams held that he was unable to ascertain on the evidence before him either of the Skirpals' past or present wishes or feelings. Nevertheless, he held that: "The case is put both by the Secretary of State and the Official Solicitor on the basis of how the beliefs and values of the reasonable adult subjected to an attack of any sort, but particularly of this sort, might influence their decision. Although it would be impossible for me to be unaware of what is in the public domain about Mr Skripal and Ms Skripal that is not evidenced before me and so I am constrained to approach this decision at this moment in time on the basis of assumptions as to how a reasonable citizen would approach matters. In the absence of any evidence to show that either Mr Skripal or Ms Skripal was not a reasonable citizen that is how I will approach it. The evidence establishes that the OPCW is an independent organisation with the support of 192 nation States and one of whose primary tasks is providing technical assistance in relation to chemical weapons issues. Their procedures appear to be rigorous and robust – as would be expected given the subject matter of their work. Their enquiry can be expected to be entirely objective and independent. The results of their enquiry will likely hold very considerable weight in any forum. Their enquiry is therefore likely to produce the most robust, objective, independent and reliable material which will inform any determination of what happened to Mr Skripal and Ms Skripal."

He went on to state that: "Most reasonable citizens in my experience have a quite acute sense of justice and injustice. Most want to secure the best information about what has happened when a serious crime is alleged to have been committed. I accept that such a person would believe in the rule of law; that justice requires that crime or serious allegations of crime are thoroughly investigated; that where possible answers are found as to who, how and why a crime was perpetrated, that where possible truth is spoken to power; that no-one whether an individual or a State is above or beyond the reach of the law and that in these turbulent times what can be done to support the effective operation of international conventions is done. Whilst I don't assume that the reasonable citizen would necessarily have asked himself or herself those sorts of questions in quite such detail I do believe that if those issues were put to them they would adopt them and they would influence their decision. In any event all go to the general point that the reasonable citizen, including Mr Skripal and Ms Skripal believe that justice should be done."

Accordingly, he accepted that the Skripals' decision would be influenced by these values and beliefs and that the influence would be in favour of consenting to the taking and testing of samples and disclosure of notes. Mr Justice Williams went to state that: "Even if I am wrong

on these assumptions as to their beliefs or views I am satisfied it is in the broad parameters of their best interests for it to be known as far as may be possible what occurred to them and the OPCW enquiry will promote that aspect of their best interests."

Comment: The judgment is an interesting example of how wide the consideration of what is deemed to be in someone in best interests can go, and the degree to which the behaviour of a reasonable citizen can be presupposed.

Dominic Ruck Keene, Barrister at One Crown Office Row.

Preventing Ill-Treatment During Police Custody and Pre-Trial Detention

The Danish Chairmanship of the Council of Europe's Committee of Ministers is organising a seminar in Copenhagen on 22 and 23 March to discuss ways to strengthen the prevention of torture and ill-treatment during police custody and pre-trial detention, the time when persons are most at risk from being ill-treated. The event is organised with the support of the European Committee for the Prevention of Torture (CPT), the Convention against Torture Initiative (CTI) and the Danish Institute against Torture. Representatives from the Council of Europe member states will share national experiences on non-coercive investigative and interviewing police techniques and on the implementation of safeguards to prevent torture and other ill-treatment. These safeguards include, for example, informing persons apprehended by the police about their rights, effective access to a lawyer, notification of custody and access to a doctor.

Speaking at the opening, Foreign Affairs Minister Anders Samuelsen said "all Council of Europe member states have committed to combating torture, but no country is perfect". "That is exactly why we have to work together to ensure human dignity and to combat and prevent all forms of torture", he added. CPT Chair Mykola Gnatovskyy underlined that "to prevent torture and other ill-treatment, governments must ensure there are adequate safeguards, well-trained police officers and an independent police complaints mechanism". "Above all, we need to promote a police culture that sees ill-treatment by police officers as unprofessional and demeaning to the police itself", he said.

The Failure of Custody Visiting in Police Stations

John Kendall is a retired commercial solicitor. With an interest in finding out about custody, though with no intention at that stage to write about custody visiting, he joined a local scheme and worked as a visitor for three years. Finding it very unsatisfactory, he looked, in vain, for academic analysis. He then undertook a self-funded research project at the University of Birmingham, and obtained access to visitors, custody blocks, police, and detainees.

Custody in police stations is a very locked-down affair. People who have been arrested and are detained spend most of the time isolated in their cells. Custody visitors are the only outsiders who get to see the detainees in their cells. My research has highlighted serious problems in the system of monitoring police custody now known as the Independent Custody Visiting Scheme. This scheme enables members of the public to make random, unannounced visits to check on the welfare of the detainees in police custody and to report to the local Police and Crime Commissioner. In practice, I found that visitors are not independent of the police and lacked the required expertise to effectively monitor custody conditions. The scheme does not meet international human rights obligations and is probably counterproductive as it obscures the need for proper, effective regulation.

Custody blocks are the places where the hundreds of thousands of people who have been arrested each year are processed. The police have wide discretion in how they operate custody. The police say the primary purpose of detention in custody is to make the suspect

'amenable' to investigation. There is little regulation except self-regulation, and what the police do there is largely invisible to the outside world. Those who are detained in custody run the risk of being neglected and abused by the police. Whatever the extent of the actual neglect or abuse, it remains the case that 20 people each year die in police custody.

A former custody sergeant characterised custody in police stations as 'a very locked-down environment, the police's world, which nobody else except custody visitors really gets a view into'. But while the custody visitors may get a view into that locked-down environment, the power of the police and official policy prevent them from making independent and effective scrutiny of what is going on in custody.

The policy of custody visiting has been developed by the police and the Home Office. The scheme was not the brainchild of government, and the official approach to its development has been radically different from the lines envisaged by its original proponents, Michael Meacher MP and Lord Scarman. Official policy prioritises the promotion of confidence in the police, not the welfare of detainees. Custody visiting is organised in a way that causes the police least trouble, and the authorities have airbrushed out the idea that custody visiting could be a deterrent to police misconduct that can lead to abuse and deaths in custody.

Not independent: Under the Police Reform Act 2002, custody visitors are required to be independent of the police and the Police and Crime Commissioners. I found that the visitors were not independent, because of their background, the structure of the scheme and their socialisation and training by the police and the Police and Crime Commissioner. The visitors often came from sections of society more favourable to the police. For example, some were related to, or friends with, police officers. Visitors who make trouble can be dismissed summarily, many did not keep their professional distance from the police, the training they received was solely from a police perspective and the visitors failed to challenge the police. When it came to the most important issue of reducing the number of deaths in custody, many of the visitors thought their work had nothing to do with it.

Extensive Reforms Needed: The timing and privacy of visits as well as the overriding authority of police to control the visiting work compromised the whole regulatory function. I found that the visits took place at predictable times, and never during the night. I also found that the existence of the visiting scheme, specific visits and the reports of those visits, made no significant impact on police behaviour. The police could delay admission to the custody block and deny access to some detainees. Even when visitors were allowed to see detainees, privacy was not always granted as custody staff remained close, making it impossible to talk confidentially. Since custody visiting doesn't live up to the claims made for it in the official literature, doesn't provide reassurance to the public about custody and the Police and Crime Commissioner offer no useful information about the scheme, radical and extensive reforms are needed.

It would entail a proper regulatory system where: 1) All visits were unexpected 2) Visitors would gain immediate access to the custody blocks 3) New statutory powers for the visitors would afford visitors independence and distance from the police 4) Visitors would be trained by lawyers as well as the police 5) Visitors would have the authority and expertise to challenge the police 6) Reports as a result of visitation findings were publicly and widely available 7) The scheme had much greater independence from the state.

Why have the police and the Home Office kept this ineffective scheme going? Their purpose has probably been to obscure the need for a greater degree of regulation. In its current state, the visiting scheme lacks legitimacy, and when that is appreciated by politicians and the public alike, pressure for a reformed, truly independent and effective regulatory system must surely follow.

The Danger of Informants

Kati Gardella: When someone accused of a crime is on trial is the most pertinent time to gather information indicative of the presence of guilt. This process of fact-finding is taken to the extreme when someone steps forward with information that they claim came out of the defendant's mouth, information that significantly increases the likelihood that the defendant is guilty. When one presents themself as an informant, or is solicited by attorneys to closely seek out anything that the defendant says that is salient to the case is a practice known as "snitching." The goal of the prosecution is for the informant to bring back information that has semblance to a confession, and they may incentivize the informant with rewards such as a lighter sentence if what they say helps produce a guilty verdict.

The basis of the practice of seeking informants is flawed in itself, as the assumption is that the suspect will talk about the crime he or she has been accused of willy-nilly, even if it is to their new cellmate, who they have barely just met. It is quite unhealthy in the legal system if the prosecution team is more intent on condemning rather than truthful information. Attorneys who have utilized incentivized informants in the past have sometimes held the belief that it is unimportant if they themselves believe in the credibility of the informant, as long as the jury buys it. Informants will either be solicited by authorities or appear with information out of their own accord and hope to be rewarded. Both voluntary and solicited informants are harmful to the overall morale of the correctional institution. It is more likely that inmates will be more cynical and untrusting of one another if they know that it is possible that someone has been solicited just to report back on what they have said in the private confines of their cell.

In 2005, the Northwestern Law School's Center on Wrongful Convictions found that false informant testimony was the leading cause in wrongful convictions in capital cases.Also in 2005, the Center on Wrongful Convictions in Chicago issued a report titled "The Snitch System: How Incentivized Witnesses Put 38 Innocent Americans on Death Row." This report calls snitching a "cycle of betrayal," as informants are often fellow inmates who can have peers reporting them in the future.

The first documented case with a wrongful conviction involving an informant was in 1819, in Manchester, Vermont. Jesse and Stephen Boorne were brothers accused of killing their brother in law Russel Colvin. While imprisoned, Jesse's cellmate was Silas Merrill, who testified that Jesse confessed to the crime. Merrill was rewarded with freedom for his confession, and the brothers were sentenced to be executed by gallows. Luckily, Colvin turned out to be alive, and this information reached the authorities in time for the brothers to be justly freed. Although most cases of wrongful convictions are not as extreme as this one- with the victim not even being dead, this raises important doubt about the credibility of informants.

Like Merrill, many informants are given freedom, or at least a reduced sentence. The alleged confession was the only proof that the brother in law had been murdered (it would have been hard to gather other evidence, considering that he was still very much alive) and was the major reason for the brothers receiving the death penalty. It is quite scary that what is essentially a rumor and word-of-mouth is taken seriously in court and not immediately dismissed as hearsay. The Innocence Project website is a good resource for more statistics about informants. Out of cases that were overturned because of DNA testing, 15% of the cases had used information from informants as critical evidence in the case.

There is also the issue of police and other law enforcement officials seeking out informants and providing them with many details of the case that have been undisclosed to the public. By doing so, they are essentially feeding the informant enough information for them to come

forward and make a statement of the suspect's guilt- even if this is completely fabricated. Even when an informant has tried to withdraw a previously made statement in court, there have been instances when they were faced with pressure from the prosecution to uphold what they previously said. Attorneys will even belittle informants once they fail to serve their purpose in court. They instrumentally attack their credibility to incriminate the defendant.

Texas attempted to pass a bill in 2015 that would disallow the use of informants who were receiving benefits from their testimony in cases where there was a potential death penalty. Their testimony would only be admissible if they were able to present an electronic recording of the defendant's statement. This is fair enough, as there would be physical proof of the words. Incentivized informants are producers of corruption that are easily overlooked. It is very easy for the jury to listen to the statement, and be so enraptured that they fail to notice any discrepancies. This can also cause too much weight in the decision-making process of the jury. The most helpful steps for the future are to significantly reduce the use of incentivized informants in court. DNA testing is the most reliable measure for determining guilt, and has successfully been used to exonerate wrongfully convicted individuals.

John Grisham: Eight Reasons For America's Shameful Number Of Wrongful Convictions

It is too easy to convict an innocent person. The rate of wrongful convictions in the United States is estimated to be somewhere between 2% to 10%. That may sound low, but when applied to a prison population of 2.3 million, the numbers become staggering. Can there really be 46,000 to 230,000 innocent people locked away? Those of us who are involved in exoneration work firmly believe so. Millions of defendants are processed through our courts each year. It's nearly impossible to determine how many of them are actually innocent once they've been convicted. There are few resources for examining the cases and backgrounds of those claiming to be wrongfully convicted. Once an innocent person is convicted, it is next to impossible to get them out of prison. Over the past 25 years, the Innocence Project, where I serve on the board of directors, has secured through DNA testing the release of 349 innocent men and women, 20 of whom had been sent to death row. All told, there have been more than 2,000 exonerations, including 200 from death row, in the U.S. during that same period. But we've only scratched the surface.

Wrongful convictions happen for several reasons. In no particular order, these causes are: Bad Police Work: Most cops are honest, hard-working professionals. But some have been known to hide, alter or fabricate evidence, lie on the witness stand, cut deals with snitches in return for bogus testimony, intimidate and threaten witnesses, coerce confessions or manipulate eyewitness identifications. Prosecutorial Misconduct: Most prosecutors are also honest, hard-working professionals. But some have been known to hide exculpatory evidence, encourage witnesses to commit perjury, lie to jurors, judges and defense lawyers, use the testimony of bogus experts or ignore relevant evidence beneficial to the accused. False Confessions: Most jurors find it impossible to believe that a suspect would confess to a serious crime he didn't commit. Yet the average citizen, if taken to a basement room and subjected to 10 consecutive hours of abusive interrogation tactics by experienced cops, might be surprised at what they would say. Of the 330 people who were exonerated by DNA evidence between 1989 to 2015, about 25% gave bogus confessions after lengthy interrogations. Almost every one recanted soon after.Faulty Eyewitness Identification: More often than not, those who witness violent acts have trouble accurately recalling the facts and identifying

those involved. Physical and photo lineups may exacerbate the problem because police manipulate them to focus suspicion on favored suspects. Jailhouse Snitches: In every jail there is a career criminal staring at a long sentence. For leniency, he can be persuaded to lie to the jury and describe in great detail the confession overheard from the accused, usually a cellmate. If he performs well enough on the stand, the authorities might allow him to walk free. Bad lawyering: Those accused of serious crimes rarely have money. Many are represented by good public defenders, but too many get stuck with court-appointed lawyers with little or no experience. Capital cases are complex, and the stakes are enormous. All too often, the defense lawyers are in over their heads. Sleeping Judges: Judges are supposed to be impartial referees intent on ensuring fair trials. They should exclude confessions that are inconsistent with the physical evidence and obtained by questionable means; exclude the testimony of career felons with dubious motives; require prosecutors to produce exculpatory evidence; and question the credentials and testimony of all experts outside the presence of the jury. Unfortunately, judges do not always do what they should. The reasons are many and varied, but the fact that many judges are elected doesn't help. They are conscious of their upcoming reelection campaigns and how the decisions they make might affect the results. Of those judges who are appointed rather than elected, the majority are former prosecutors. Junk Science: Over the past five decades, our courtrooms have been flooded with an avalanche of unreliable, even atrocious "science." Experts with qualifications that were dubious at best and fraudulent at worst have peddled — for a fee, of course — all manner of damning theories based on their allegedly scientific analysis of hair, fibers, bite marks, arson, boot prints, blood spatters and ballistics. Of the 330 people exonerated by DNA tests between 1989 and 2015, 71% were convicted based on forensic testimony, much of which was flawed, unreliable, exaggerated or sometimes outright fabricated.

Brandon L. Garrett, a professor of law at University of Virginia, has studied nearly all of the trial transcripts from wrongful convictions later exposed by DNA-based exonerations. "There is a national epidemic of overstated forensic testimony, with a steady stream of criminal convictions being overturned as the shoddiness of decades' worth of physical evidence comes to light," he wrote last year in The Baffler. "The true scope of the problem is only now coming into focus." An excellent new book by Radley Balko and Tucker Carrington, "The Cadaver King and the Country Dentist," chronicles the story of two of the most brazen experts ever allowed in a courtroom. Steven Hayne was a controversial forensic pathologist who once boasted of performing more than 2,000 autopsies in a single year. His sidekick, Michael West, was a small-town dentist who assumed the role of an expert in many other fields. Together they tag-teamed their way through rape and murder trials in Mississippi and Louisiana, accumulating an impressive string of convictions, several of which have been overturned. Some are still being litigated. Many others, however, seem destined to stand.

It's a maddening indictment of America's broken criminal justice system, in which prosecutors allowed — even encouraged — flawed forensic testimony because it was molded to fit their theories of guilt. Over two decades, elected judges permitted these two professional testifiers to convince unsophisticated jurors that science was on the side of the state. The atrocities that occurred in Mississippi and Louisiana aren't specific to one time and place. The medical examiners, police officers, prosecutors, judges and others who hold sway over our criminal justice system around the country have largely failed to deliver justice. We must do better.

Porridge Breakfast

A woman who insistently tried to order a breakfast sandwich from a prison security booth which she mistook for a drive-through restaurant has been jailed for driving under the influence of drugs. Lizabeth Ildefonso, 44, drove up to the Riverhead Correctional Facility in Suffolk County, New York and ordered a "bacon, egg and cheese". Deputy Sheriff Yvonne DeCaro told the woman that she was at a prison and not a drive-through, but she "insisted that she really wanted a sandwich", the sheriff's office told PIX11. The deputy said he subsequently noticed that the woman's pupils were dilated, her eyes were glassy and she had white powder on her nose. She was arrested after failing a sobriety test and, on top of it all, was found to be driving without a valid license. Ildefonso has been charged with driving while ability impaired by drugs and driving without a license.

HMP Leeds Severely Overcrowded Still Violent and Unsafe

HMP Leeds, a large and "severely overcrowded" inner-city Victorian prison, was assessed by prison inspectors, for the second consecutive inspection, as unsafe with high levels of violence, according to a new report on the West Yorkshire jail. Peter Clarke, HM Chief Inspector of Prisons, urged HMP Leeds to tackle the causes of the 'poor' safety assessment as there were "cautious grounds for optimism" that, with greater safety, the management could improve overall performance. 19 recommendations from the last inspection had not been achieved.

An inspection in December 2015 had found deteriorating standards. When inspectors returned to Leeds in October and November 2017, they found a further decline in purposeful activity – work, education and training for prisoners. There was no improvement in the three other key areas assessed by inspectors – safety, respect and rehabilitation. Mr Clarke said: "Perhaps this should come as no surprise, given that the prison is one of the most seriously overcrowded in the country, with 91% of the cells holding more prisoners than they were designed for." Inspectors found the prison held 1,127 men against a 'certified normal capacity' of 669.

Though Leeds had avoided the "shockingly high" increases in violence and drugs seen elsewhere, Mr Clarke said, it was "particularly concerning that, yet again, we found Leeds to be an unsafe prison, with our assessment of the area of safety being a very clear 'poor'. Levels of violence of all kinds were far too high…Not only did prisoners feel no safer than at the last inspection, the harsh reality was that they were indeed less safe. Violence, self-harm and the use of force were all high. Several staff had been suspended or dismissed for misbehaviour when using force." Since 2015, there had been four self-inflicted deaths, and another occurred during this inspection. "The day after the inspection ended, there was an apparent homicide in the jail, and a few days after that another self-inflicted death," Mr Clarke added. Leeds also had a problem with drugs, with over 60% of prisoners saying it was easy to get hold of drugs.

Against this, however, inspectors noted that there was an "energetic and focused" leadership team. Despite its age and overcrowding, Leeds was generally clean. An "excellent" initiative involved a small group of staff and prisoners called 'Q-branch', who carried out maintenance tasks and had a "very impressive" impact. At the time of the inspection, 47% of the staff were still in their probationary period, and prisoners expressed frustration at their inexperience and lack of knowledge of basic procedures. The report noted, though: "Managers were aware of the challenges faced by the large number of new recruits…and were attempting to support them and enhance their skills." Inspectors were also encouraged by the quality of work on rehabilitation and release planning. The report noted: "Creative links with a range of local businesses

were used to enhance employment opportunities for those released. For example, in the last three years Tempus Novo, an energetic and entrepreneurial charity set up locally by two former prison staff, had placed 132 men in employment." Inspectors made 56 recommendations.

Mr Clarke said: "Despite our troubling findings on safety, there were some cautious grounds for optimism. Unlike far too many local prisons, Leeds had not slipped dramatically backwards in terms of its performance in recent years. While it had not managed to buck the trends in violence and the prevalence of drugs that have afflicted much of the wider prison estate, neither had it experienced the shockingly high levels of increase seen in many other prisons. And for that, credit must be given to the energetic and focused leadership of the senior management team…If HMP Leeds can become a safer place in which to hold prisoners, there is no reason why it should not make progress in other areas and show a much stronger performance at the time of the next inspection.

Harmondsworth IRC – Persistent Failings in Safety And Respect

Harmondsworth immigration removal centre (IRC) at Heathrow, holding large numbers of men with mental health problems in prison-like conditions, continued to show "considerable failings" in safety and respect for detainees, according to prison inspectors. Many areas were dirty and bedrooms were endemic with bed bugs, showers and toilets were poorly ventilated. 37 recommendations from the last inspection had not been achieved and 8 only partly achieved.

Publishing a report on an inspection in September 2017, Peter Clarke, HM Chief Inspector of Prisons, said a 2015 inspection of Europe's largest immigration detention centre had highlighted concerns over safety, respect and provision of activities. In 2017, Harmondsworth had made some improvements since then, "but not of the scale or speed that were required. In some areas, there had been a deterioration. The centre's task in caring for detainees was not made any easier by the profile of those who were held. There was a very high level of mental health need and nearly a third of the population was considered by the Home Office to be vulnerable under its at risk in detention policy. The continuing lack of a time limit on detention meant that some men had been held for excessively long periods: 23 men had been detained for over a year and one man had been held for over 4.5 years, which was unacceptable."

Inspectors found: • Worryingly, in nearly all of a sample of cases, the Home Office accepted evidence that detainees had been tortured, but maintained detention regardless. "Insufficient attention was given to post-traumatic stress and other mental health problems." • While violence was not high, a high number of detainees felt unsafe. Detainees told inspectors this was because of the uncertainty associated with their cases, but also because a large number of their fellow detainees seemed mentally unwell, frustrated or angry. • Drug use was an increasing problem.

Mr Clarke said the governance of the use of force was generally good "and we noted that managers had identified an illegitimate use of force by a member of staff on CCTV cameras and dismissed the person concerned." HMIP used an "enhanced" inspection approach, interviewing hundreds of staff and detainees to give them an opportunity to tell inspectors, in confidence, about any concerns relating to the safe and decent treatment of detainees. Neither detainees nor staff told inspectors "of a pernicious or violent subculture," Mr Clarke added, though only 58% of detainees said that most staff treated them with respect, well below the average figure for IRCs. Both staff and detainees felt that there were not enough officers to effectively support detainees. Around a third of staff felt they did not have sufficient training to do their jobs well and few had an adequate understanding of whistle-blowing procedures.

Inspectors were also worried about the security regime. Mr Clarke said: "Some aspects

of security would have been disproportionate in a prison and were not acceptable in an IRC…Harmondsworth is the centre where, in 2013, we identified the disgraceful treatment of an ill and elderly man who was kept in handcuffs as he died in hospital. A more proportionate approach to handcuffing was subsequently put in place by the Home Office and followed by the centre contractor. It is with concern, therefore, that at this inspection we found detainees once again being routinely handcuffed when attending outside appointments without evidence of risk."

Physical conditions had improved since 2015 but many areas were dirty and bedrooms, showers and toilets were poorly ventilated. Inspectors in 2015 raised serious concerns about bedbugs but they remained endemic in 2017. There were infestations of mice in some areas. Inspectors were also concerned that only 29% of detainees said they could fill their time while in the centre and many described "a sense of purposelessness and boredom."

There were, however, some positive findings. The on-site immigration team made considerable efforts to engage with detainees, faith provision was good and complaints were managed well. The welfare services were impressive and there was positive engagement with third sector groups, including the charity Hibiscus Initiatives which provided support to many detainees before release or removal. Inspectors made 50 recommendations.

Overall, though, Mr Clarke said: "The centre had failed to progress significantly since our last visit in 2015. For the third consecutive inspection, we found considerable failings in the areas of safety and respect. Detainees, many identified as vulnerable, were not being adequately safeguarded. Some were held for unacceptably long periods. Mental health needs were often not met. Detainees were subject to some disproportionate security restrictions and living conditions were below decent standards. It is time for the Home Office and contractors to think again about how to ensure that more substantial progress is made."

HMYOI Brinsford–Disturbing Increase in Prisoner Self-Harm

HMYOI Brinsford avoided massive increases in violence seen in many other jails but must address a 'dreadful' rise in self-harm by young adult prisoners and change a regime in which they are locked in cells for long periods of the day, according to prison inspectors. Brinsford was inspected in November 2017. Inspectors concluded that "boredom and frustration caused by the poor regime" contributed to continuing high levels of violence. However, Peter Clarke, HM Chief Inspector of Prisons, said it was to the credit of the prison that levels had not risen since the previous inspection in 2015, bucking the national trend of enormous increases.

Despite this, inspectors downgraded the assessment of safety at Brinsford, a jail for young male adults aged 18-21, near Wolverhampton, in the West Midlands, because of concerns about prisoners self-harming. Self-harm had "increased quite dramatically." There were 554 self-harm incidents between May and October 2017, with a small number of individuals accounting for multiple incidents. "To understand the dreadful increase in self-harm," Mr Clarke added, "it is impossible to ignore the potential impact of the regime at Brinsford, which was particularly poor for a population consisting mainly of young adults. For those who were supposedly in full-time employment, five-and-a-half hours out of their cell each day was typical, and was simply not good enough, leaving very little time for access to showers or telephones. For those who were unemployed, an hour out of their cell each day was typical. For the prison to make meaningful progress in many other areas, these unacceptable figures must be improved." Inspectors also noted that some of the meals were too small for young adults.

Mr Clarke said Brinsford "had been on a journey of peaks and troughs in performance." The lowest trough was in 2013 when inspectors found the prison in urgent need of improvement, with the lowest possible assessment of 'poor' in all HMIP's healthy prison tests. Following that inspection, the prison benefited from new leadership and a very significant injection of resources. At the next inspection, in 2015, one inspector commented that in many ways it resembled a 'brand new prison'. "However, since 2015, in common with the rest of the prison estate, Brinsford had felt the impact of reduced resources, and the improvements proved to be fragile," as the assessments in 2017 showed, Mr Clarke said. "The gleaming paint and brand-new furniture that inspectors saw in 2015 had begun to fade. The lack of new investment, compounded ¬– we were told – by frustration with the facilities management contract, meant that there had been an inevitable decline in living conditions. Despite the problems with the facilities management contract, there were some issues that were in the gift of the prison to rectify, particularly around basic cleanliness."

Overall, Mr Clarke said: "It was obvious (in 2017) that the current enthusiastic yet realistic leadership at Brinsford was determined to implement successfully the many credible plans that they now had in place. It is to be hoped that their plans will succeed. The improvements we saw in 2015 turned out to have been fragile and built on weak foundations that did not endure…It is not unreasonable to hope that if the plans of the current senior leadership come to fruition, the results of the next inspection will be markedly better; but that is speculation. For the moment, Brinsford is a prison that is working hard to bring about some much-needed improvements, which we hope will prove to be more durable than in the past."

Aleksandr Aleksandrov v. Russia - Jailed for Being Homeless

The applicant, Aleksandr Aleksandrov, is a Russian national who was born in 1983 and lives in Cheboksary (Russia). The case concerned his prison sentence for kicking a police officer. In 2005 Mr Aleksandrov was found guilty of a drunken assault on a police officer and sentenced to one year's imprisonment. The trial court refused to impose a non-custodial sentence because, among other things, he had no permanent residence within the Moscow Region where the offence had been committed and the sentence pronounced. Mr Aleksandrov appealed, unsuccessfully. Relying on Article 14 (prohibition of discrimination) of the European Convention on Human Rights, Mr Aleksandrov alleged that the only reason he had been given a custodial sentence had been because he had not had a permanent place of residence in the region in which he had been tried and that this had been discriminatory. The case was also examined under Article 5 (right to liberty and security). Violation of Article 14 taken in conjunction with Article 5 Just satisfaction: 10,000 euros (EUR) (non-pecuniary damage)

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, 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.