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Guardian View on Privatising Probation: Ideology Over Facts

Chris Grayling was a justice minister who preferred to keep faith in privatisation even when his changes were failing some of the most vulnerable in our society. He ought to be accountable. In any ideology faith replaces sight. Blind obeisance means giving up on evidence, on the ability to learn and to correct one's course and instead be willing to look like a fool. This was the approach the government took when it privatised chunks of the probation service in 2015 – saying it would inject dynamism, deliver improved outcomes and that contracts would link the arms of the criminal justice service. This was firmly contradicted last week by parliament's justice committee which issued a scathing report on the reforms, saying they had failed to deliver promised improvements and MPs doubted they ever would. Left to look asinine is Chris Grayling, the justice secretary behind the changes.

Probation services are meant to oversee the rehabilitation and resettlement of prisoners. Yet the committee found the impact on reoffending rates has been "disappointing". The much-hyped, enhanced role for voluntary organisations has not only not materialised – the sector's involvement has actually decreased. The basic design is flawed. The categorisation of its 264,649 offenders (90% of them men) as either low, medium or high risk makes no allowance for the fact that levels of risk can change. The justice department negotiated the contracts poorly, and has had to revisit them and top up funding as a result. A "through the gate" service that promised to help former prisoners reintegrate turned out to mean that everyone would get a leaflet. Morale is at an all-time low.

That the whole sorry project was embarked upon before two pilot schemes were even complete was reckless. It is also a tell-tale sign that the ideas were driven by ideology rather than evidence. Though he tactfully refrains from hammering the point too hard, committee chair Bob Neill cannot help but echo the finding of probation inspector Dame Glenys Stacey, whose most recent report declared that the state-run part of the service works better. That Mr Neill is a Conservative and a criminal barrister, who presumably takes no political satisfaction from this, only makes the situation more awkward for the current government.

Supportive, challenging relationships are the key to rehabilitation. The government's changes led to a situation in which supervision was reduced to a tick-box exercise, meetings replaced by phone calls. Reoffending rates remain stubbornly high, with all the risk to the public that entails, while prisons are packed. Since one of the report's findings is that confidence in non-custodial sentences has collapsed, partly due to a lack of contact between probation contractors and the courts, the reforms have made a bad situation worse. Then there are the offenders themselves, many of whom are extremely vulnerable and at least a tenth of whom leave prison not knowing where they will spend the next night.

It does look like the state-run National Probation Service is more effective than that delivered by the private sector. Ministers warn another reorganisation will mean more chaos, but it's extremely hard to see how, if the current contracts are cancelled or contractors go bust, a new set of contracts will be any better. Since they are more expensive to manage (£5.1m) than the prisons inspectorate (£3.5m), hiring more lawyers to manage them is not the answer. The obvious solution is to take the service back in-house. That "payment by results" and competition at all costs remain official doctrine when ministers are rewarded for failure breeds cynicism of the most corrosive kind. Mr Grayling must be held accountable, his failings consigned to the past tense.

A Crack in the Edifice': Privacy Advocates Hail Supreme Court Cellphone Data Ruling

Julia Carrie Wong, Guardian: If you live in the US and carry a cellphone, you might as well be wearing an ankle monitor that logs your location every 15 minutes and maintains an archive of that information dating back as much as five years. That may sound like the scaremongering of a privacy advocate, but the analogy comes from Chief Justice John Roberts who, on Friday, authored a majority opinion ruling in the supreme court that the government could no longer access an individual's cellphone location data without a warrant.

"A cellphone faithfully follows its owner beyond public thoroughfares and into private residences, doctor's offices, political headquarters, and other potentially revealing locales," Roberts wrote, noting that 12% of people even take their phones in the shower. "Accordingly, when the government tracks the location of a cell phone it achieves near perfect surveillance, as if it had attached an ankle monitor to the phone's user."

The case, Carpenter v United States, is being hailed as a "groundbreaking victory for Americans' privacy rights in the digital age" by Nathan Freed Wessler, the ACLU attorney who argued the case before the supreme court in November. That is because, as Andrew Crocker of the Electronic Frontier Foundation explains, the ruling is "a crack in the edifice" of the "third-party doctrine" – a long-established legal theory that holds that if an individual shares information with a third party, they no longer enjoy constitutional privacy rights. In practical purposes, this means that the government needs only a subpoena or court order to obtain bank records or phone call history, rather than a search warrant – which is harder to get. "The government has been close to running the table on those kind of cases," Crocker said. "They've had almost free rein."

The Carpenter case, for example, stems from an investigation into a string of robberies in Michigan in 2011. Armed with the cellphone numbers of 16 potential suspects, the FBI was able to get a court order for those numbers' cell-site location information (CSLI). In the case of one of the suspects, Timothy Carpenter, the government received 12,898 time-stamped logs of every time the phone connected to a cellular network over 127 days, which averages out to a log of his location every 14 minutes for more than 4 months. Under the third-party doctrine, Carpenter (or any other cellphone user) could not claim that this data was private because he had "shared" it with his mobile service provider. And Carpenter's case is by no means unusual. In an amicus brief he filed for the EFF, Crocker noted that AT&T received 70,528 requests for CSLI in 2016, while Verizon received 53,532. About 75% of the requests to Verizon in 2016 were made without a warrant.

And while the law has remained in the pre-smartphone age, the amount of data that we generate and share with third-parties – not just phone companies, but also internet service providers and web service providers – has rapidly expanded. "It's impossible to go five minutes without creating sensitive data that is then held by someone else," said Crocker. "The amount of data being compiled about all of us just continues to grow and grow." Plus, the fact that those third-parties usually retain all that sensitive data for some length of time has meant that the government has access to "a surveillance time machine", said Alex Abdo, senior staff attorney at the Knight First Amendment Institute.

Normally, when the government puts a suspect under surveillance (by, for example, tapping their phone or following them), the surveillance begins when the investigator gets authorization and then goes forward in time, Abdo explained. But with digital records like CSLI, the government can achieve retrospective surveillance of extraordinary detail. In the Carpenter ruling, Roberts made clear that

he is not comfortable writing off an individual's right to privacy for this kind of incredibly detailed and practically unavoidable data just because it involves a third party. "He tries to craft a narrow opinion, but you can see that he's concerned with how to conceive of privacy in a world where we are all constantly tracked and monitored," Abdo said. "Time will tell how far the courts will go in recognizing privacy in the digital age, but I think his opinion is a good omen." In a dissenting opinion, Justice Samuel Alito worried that the ruling "guarantees a blizzard of litigation while threatening many legitimate and valuable investigative practices upon which law enforcement has rightfully come to rely." Crocker concurred, saying, "You can be sure that EFF and the ACLU and our fellow travelers will be using these kinds of arguments for other forms of information that companies have access to."

HMP Lewes Mutiny Trial

On the 2nd July 2018 myself & my 4 co-defendants Steve Goodwin, Dave Carlln, Shane Simpson, & John Udy stood trial at Hove crown court on charges of prison mutiny, criminal damage (£239,259.91) & violent disorder in relation to an incident at HMP Lewes on 29th October 2016. The trial is due to last 4-5 weeks, and will hopefully highlight the unsafe, unhygienic and unlawful conditions that prisoners are being held In.

On the 9th December 2015 the Guardian published an article about a prison officer Kim Lennon who raised concern over the levels of violence & overcrowding at HMP Lewes she said "everything was dangerous in the prison", unfortunately instead of taking on board & addressing the issues, HM Prison Service 'sacked' Kim Lennon & completely Ignored the issues effecting HMP LEWES, allowing them to manifest into one big cocktail of disaster.

There were a number of incidents in 2016 not only HMP Lewes but at HMP's Erlestoke, Bedford,Birmingham & Swaleside all arising out of the~same issues Inc. Overcrowding, 23 + hour lock up, unhygienic, unsafe & unlawful conditions. Which is little wonder when you consider that In his report titled Life in prison: Living conditions (published October 2017) HMCIP Peter Clarke stated "I would urge readers not to assume this paper Is simply another account of some dilapidated prisons, but to look at the details of what we describe, and ask themselves whether it is acceptable for prisoners to be held In these conditions in the united kingdom in 2017." For anyone who watched ITV's Prisons Uncovered: Out Of Control? (Shown on Monday 11th June 2018) the reality of what Peter Clarke describes In his report is all too real. However without Incidents of the calibre at Birmingham etc. none of these issues would ever be exposed to the extent they have been. Unfortunately HM Prison Service, The Police & the CPS are now going all out to secure unnecessary and vindictive Mutiny Charges which carry lengthy prison sentences.

In solidarity, Ross A Macpherson: A6791AD, HMP Belmarsh, Western Way, SE28 0EB

Ross Macpherson, David Carlin, Shane Simpson, John Udy, Steven Jake Goodwin

Indictment In the Crown Court At Hove: The Queen - V - David Carlin, Shane Simpson, John Roy Mark Udy, Steven Jake Goodwin And Ross Alexander Macpherson Are Charged As Follows:

Count 1 Statement of Offence Taking part in a prison mutiny, contrary to section 1(1) and 1(2) of the Prison Security Act 1992. Particulars of Offence Ross Alexander Macpherson being a person detained in legal custody, on the 29th day of October 2016, while on the premises of HMP Lewes, together with one or more other persons detained in legal custody, engaged in conduct intended to further a common purpose of overthrowing lawful authority in the aforesaid prison.

Count 2 Statement of Offence Taking part in a prison mutiny, contrary to section 1(1) and 1(2) of the Prison Security Act 1992. Particulars of Offence Steven Jake Goodwin, being a person detained in legal custody, on the 29th day of October 2016, while on the premises of HMP

Lewes, together with one or more other persons detained in legal custody, engaged in conduct intended to further a common purpose of overthrowing lawful authority in the aforesaid prison.

Count 3 Statement of Offence Taking part in a prison mutiny, contrary to section 1(1) and 1(4) of the Prison Security Act 1992. Particulars of Offence David Carlin, Shane Simpson And John Roy Mark Udy, being persons detained in legal custody, on the 29th day of October 2016, while on the premises of HMP Lewes, at which a prison mutiny was taking place, failed without reasonable excuse to submit to lawful authority when he had or was given a reasonable opportunity to do so.

Count 4 Statement of Offence Violent Disorder, contrary to section 2(1) of the Public Order Act 1986. Particulars of Offence David Carlin, Shane Simpson, John Roy Mark Udy, Steven Jake Goodwin And Ross Alexander Macpherson on the 29th day of October 2016 used or threatened unlawful violence when present together being 3 or more persons in total who used or threatened unlawful violence and the conduct of them all, taken together, was such as would cause a person of reasonable firmness present at the scene to fear for his personal safety.

Count 5 Statement of Offence Damaging Property, contrary to section 1(1) of the Criminal Damage Act 1971. Particulars of Offence David Carlin, Shane Simpson, John Roy Mark Udy, Steven.Jake Goodwin And Ross Alexander Macpherson on the 29th day of October 2016 without lawful excuse damaged a cell wing and property at Her Majesty's prison at Lewes to the value of £239,259.91 belonging to Her Majesty's Prison intending to destroy or damage such property or being reckless as to whether such property would be destroyed or damaged.

Mark Alexander Open Letter to the Lord Chancellor - Rt. Hon. David Gauke MP

Supporters of Mark Alexander's campaign for justice have launched www.freemarkalexander.org to mark 3000 days of his wrongful imprisonment. Mark and his family have released key legal documentation and evidence for the first time, including the Criminal Cases Review Commission's much criticised Final Statement of Reasons of 2015.

Despite writing to the Secretary of State for Justice in April 2018, Mark and his family are still awaiting a response. We have decided to publish Mark's letter openly to raise awareness about his plight. Please help us to support Mark and his family by writing to the Minister yourself: Hon. David Gauke MP, The Lord Chancellor, House of Commons, London, SW IA OAA.

Dear Sir, I have contemplated writing to you on our family's behalf for some time, but felt it best not to trouble you unless I had first exhausted all other avenues. That point has now been reached. After eight years of patiently and faithfully waiting upon procedure and protocol, the urgency of this matter can wait no longer. I have spent these last eight years in prison for a murder I did not commit, and – perversely – am doubly-punished for having passed-up a charge bargain that would have seen me freed many years ago on manslaughter.

To make matters still worse, it was my own father who was killed. Losing him whilst simultaneously losing my freedom has been an unbearable torture. To be accused of killing someone I love and admire so dearly is a sensation beyond grief itself. My mother, her family, and my father's family all vouch for my innocence – and together we cry out for justice. Yet the past eight years have brought little of that. They have only served to compound our shared misery.

It did not take long for evident anomalies in this case to spark the interest of observant investigators. In January 2014, a concerned documentary producer began scrutinising the evidence in more detail. She applied to your Press Office for permission to subject me to questioning on the basis of evidential developments subsequent to trial, and to record the process on film. I agreed to this

request and remain willing for my testimony to be scrutinised by experts and members of the public. It took 26 months for your Press Office to formally respond, causing our family much unnecessary anxiety and distress. Rather than expressing sympathy and encouragement, we found the Press Office reluctant to facilitate the interview, or even engage with us.

Further submissions were made by the Producer in September 2017, but 8 months on, and in spite of repeated follow-ups, we have not received so much as an acknowledgement. We expected the Ministry of Justice to be keen to support rather than frustrate efforts to uncover wrongful convictions, particularly in difficult investigatory stages preceding any formal review procedure. Yet the extraordinary delays we have experienced give the impression at least that your department does not take miscarriages of justice seriously, and that this phenomenon is a low priority for them. I trust and pray that this impression is misleading. Indeed, I firmly believe that the Ministry of Justice's values are not reflective of this behaviour. This is why I am writing to you today to call for your personal support and intervention in this urgent matter. I have written this letter openly because I believe others will wish to echo this call to you directly.

I can assure you that our application meets the legal threshold required to authorise such an exceptional request. The circumstances are highly unique and readily distinguishable. I do not intend to labour over the legal justifications here, although these are covered in the Producer's latest submissions, of which I enclose a copy. What is needed here is political will more than anything else. The will to uncover the truth; to remedy past wrongs where those are apparent; to see justice done for our family.

This interview will not be a comfortable experience for me. My evidence will be interrogated, my credibility tested, unanswered questions will be asked – and under considerable pressure. Nevertheless, I have a duty and a responsibility to my father and to my family to see this through. I intend to cooperate fully with this process because I know it will encourage people to come forward with information which they may have been reluctant to divulge all those years ago. To give but one example, four household assistants worked in my father's home at the time of his death. All were registered under false identities. Only one came forward during the original police investigation, but no statements was taken. The remainder were neither identified nor traced. This represents an alarming gap in our knowledge and understanding of the case, but it is not the only one. Only an appeal to the public could yield such information, which is why this documentary – and my participation – is so important.

I'd like to thank you for your time and consideration and would of course be happy to answer any questions you may have. I look forward to hearing from you and hope you will be willing to support our efforts to secure justice. Gratefully yours, Mark Alexander

Mark Alexander A8819AL HMP Coldingley Shaftesbury Road Bisley Woking

Race Hate Murder Was Avoidable

Bhatt Murphy Solicitors: Bristol Safeguarding Adults Board (BSAB) has published on its website a highly critical report concerning the race hate murder of Kurdish asylum-seeker Kamil Ahmad by Jeffrey Barry in Bristol on 7 July 2016. Barry, a violent mentally-ill racist, was convicted of Kamil's murder in October 2017 and is serving a life sentence. The trial judge described the failings by public authorities leading to Kamil's murder as "calamitous". Today's findings by the Safeguarding Board, which have been accepted by the myriad public authorities involved, add to this growing chorus of concern. The report concludes that Kamil's murder could have been avoided, including by the organisations taking action against Barry in respect of the race hate

crime to which he subjected Kamil for years. The organisations criticised in the report are Avon and Wiltshire Mental Health Partnership NHS Trust, Cygnet Healthcare, Bristol City Council, Milestone Housing Trust and Avon & Somerset Constabulary. Particular criticism is levelled at the NHS Trust and Cygnet Healthcare for failing to put a plan in place to protect Kamil following Barry's release from mental health detention on 6 July, having been arrested and sectioned on 13 June 2016 after writing thirty-four notes threatening to kill Kamil and others.

"This report confirms our worst fears, that Kamil's life could have been saved if just one of the organisations involved had protected him from the racism that ended his life. The space this leaves in our lives can never be filled, yet not one of the organisations involved has offered us an apology since we lost our wonderful brother, uncle, cousin and friend. We call on each of these organisations to apologise and to sit down with us to answer our questions. The Chief Executive of the Avon and Wiltshire Mental Health Partnership NHS Trust in particular must also consider her position given so many of these catastrophic failings happened on her watch."

The family's solicitor Tony Murphy of Bhatt Murphy said as follows:"Any member of our society is entitled to protection from a known violent racist, not least a vulnerable asylum seeker. This systemic failure to protect Kamil constitutes race discrimination on a multi-agency level and a fatal breach of his human rights. The family now awaits the findings of an NHS Homicide Review, including to consider whether all of the evidence concerning this tragedy should be referred to the Crown Prosecution Service and the Equalities & Human Rights Commission. The charity Stand Against Racism & Inequality (SARI) supported Kamil during his life, as they have supported his family following his death.

Court of Appeal Quashes Syrian Refugee's False Identity Document Conviction

Bindmans Solicitors: This week the Court of Appeal quashed the conviction of Salman Malak, a Syrian refugee of Kurdish ethnicity, for possession of a false identity document with improper intention. Mr Malak had pleaded guilty to the offence in 2015 following inadequate advice from his previous lawyers and was sentenced at Manchester Crown Court to 12 months' imprisonment.

Mr Malak came to the UK after fleeing Syria in 2014, where he was under threat from both forces loyal to the Assad regime and fighters of so-called 'Islamic State'. He was smuggled in a lorry through a number of countries before flying from Copenhagen Airport to Manchester Airport, where he arrived on New Year's Eve 2014. On arrival, Mr Malak immediately presented himself to the authorities and tried to explain that he had flown using a false passport and wished to apply for asylum.

Mr Malak was arrested, detained, prosecuted, remanded in custody, given inadequate legal advice, convicted and sent to prison, followed by immigration detention. While in prison, he applied for asylum and his refugee status was granted several months later. Through his own research, he came across the case of another Syrian refugee and realised he might have grounds to appeal his conviction. Following his release, Asylum Justice, a charity which provides free legal services to asylum seekers and refugees in Wales, put him in contact with Bindmans LLP, who instructed Richard Thomas of Doughty Street Chambers for the appeal against conviction.

Mr Malak's appeal was successful on each of the grounds pleaded. Firstly, the Court of Appeal held he should have been advised that on his instructions there was no acceptance of 'improper intention' within this jurisdiction, a critical element of the offence charged. His guilty plea was therefore equivocal and a nullity.

The second ground of appeal related to advice given about the defence under section 31 of the Immigration and Asylum Act 1999, available to refugees charged with certain offences.

The Court of Appeal recited that following the case of Asfaw, section 31 is to be construed as to provide immunity from prosecution for refugees fleeing from persecution in their country of origin who make a short-term stop-over in an intermediate country en route to the country of refuge. The Court held that Mr Malak was not given the advice necessary to make an informed decision about his plea and the defence would quite probably have succeeded if run. It concluded, "Mr Malak should never have been convicted."

Following the decision, Mr Malak said, "I hope awareness of cases like mine will prevent others being prosecuted in similar circumstances in the future." Patrick Ormerod, one of the solicitors acting for Mr Malak for his appeal, said, "I'm delighted Salman's conviction has been quashed by the Court of Appeal. Sadly, there are many others like him who are prosecuted when they should not be, receive inadequate advice, and lose their liberty. Wrongful convictions of this nature are inevitable consequences of cutting a justice system to breaking point, of treating refugees as criminals first and asking questions later."

Safety Watchdog Forced to Reveal Findings of Inspections Into Dangerous Prisons

Hardeep Matharu,'The Justice Gap': Freedom of Information request to Health and Safety Executive reveals concerns about 'firefighting', inexperienced staff and no clear focus on investigating underlying causes of violence and learning lessons in some prisons The health and safety watchdog has been forced to reveal the findings of the inspections it has carried out in dangerous prisons as assaults against prison officers have soared. Last month, the Health and Safety Executive (HSE) told me that, as a result of increasing numbers of reported assaults on prison officers, it led an 'inspection initiative at a small number of prisons at the end of 2017', but that it could not give out any information about its key findings.

In response to a Freedom of Information request, it has now outlined the issues the inspections highlighted – including a focus on 'firefighting', underlying causes of violence not being prioritised in internal investigations, how filthy jails and an 'unfair' Incentives and Earned Privileges Scheme can lead to violence, and the failure of placing young offenders into adult prisons in order to control levels of violence. The HSE is the country's independent body for work-related health, safety and illness. Its enforcement duties include dealing immediately with serious risks, ensuring employers are complying with health and safety law, and holding to account those failing in their responsibilities to do so. It can serve notices, issue cautions and prosecute employers.

According to the Government's latest safety in custody statistics, self-harm, assaults and serious assaults – between prisoners and on prison staff – have again risen to 'record highs'. Assaults on prison staff have increased by 196% since 2010, with 8,429 incidents recorded in 2017, up 23% from the year before. There were also more than 800 serious assaults on staff in the same period. Although the HSE said it found that causes of violence and aggression are known and understood in the prisons it inspected and that there are 'policies, procedure and initiatives, both locally and nationally, to enable the management of violence and aggression', many of the other findings I obtained under Freedom of Information raised a number of concerns.

The key findings: Internal prison investigations into violence that 'do not focus clearly on underlying causes and lessons learned' and findings not being widely shared; Good practice not always being recognised by staff, with the HSE noting that 'it was not always clear "what good looks like"'; Prisons feeling 'overwhelmed by the challenges of identifying priorities and allocating resources to address these'; A 'focus on 'firefighting'; Inexperienced staff 'contributing to the challenges of managing violence and aggression', with the HSE questioning

whether it was the case of 'the right people, in the right place at the right time with the right experience'; Dirty prisons being 'an estate-wide issue to resolve as poor environment is directly related to violence and aggression'; Concerns around overcrowded prisons and the placing of young offenders in adult prisons as a means of controlling violence. The HSE said: 'Pressures on residential accommodation can lead to an inappropriate mix of prisoners and increase the potential for violence and aggression. The integration of young offenders into the mainstream system was not reported as being successful in controlling violence amongst this group.'; The Incentive and Earned Privileges Scheme – whereby prisoners are able to earn benefits in exchange for responsible behaviour – can lead to violence and aggression as it was felt, by both prisoners and staff, 'to be ineffectively applied and unfair'; The 'churn of staff and prisoners' in some prisons 'not enabling supportive relationships to be developed to assist the management of violence and aggression'; Unpredictability leading to frustration and violence, with both prisoners and staff preferring a consistent, predictable prison regime; Delays in transferring prisoners from courts to prison leading to frustration and potential violence, with the HSE suggesting that 'contracts for prisoner transport require review'; Health and safety resources in some prisons not being used to effectively focus on risks from violence and aggression; Controlling the risks of violence to healthcare staff was 'inconsistent', with some feeling very safe and those in other prisons feeling at 'considerable risk'; Systems for reporting incidents of violence and aggression being unnecessarily complicated, with up to 12 forms needing to be completed in some prisons; Prisons being inconsistent at identifying the training required by staff, delivering and then monitoring its effectiveness

The HSE said that effective leadership of a prison was key, and that it 'found good practice in all the establishments we visited but also inconsistent implementation'. Despite the HSE telling me last month that it was 'currently feeding back the findings from this work to senior management in HM Prison and Probation Service and private contractors', a press officer at the Ministry of Justice said she would need to know which prisons had been inspected and the dates of the inspections before the Ministry of Justice would be able to comment on the findings.

We Think we Know What Rape Is But Do We?

The legal definition of rape has been adapting over time and the greatest legal strides have been made in the last 42 years, writes Natalie Smith. Daphne Morgan was asleep in her home in Wolverhampton, sharing a bed with her 11-year-old son when she was dragged into another room and raped by three men. Her husband had let them in. In fact he had invited them to their home, informed them she might struggle but that she liked it because she was kinky. Her two children had been woken by her screams. When her ordeal was over, she drove to the local hospital and set in place a chain of reactions that brought about a huge change in the law. It was 1973 and the three men who raped her stood trial. Her husband faced prosecution for aiding and abetting the offence but not for rape because a husband in law could not be guilty even though on that terrible night he too had raped her. All four men were found guilty, her husband received a sentence of 10 years imprisonment and the others four years.

The facts of the case were such that it was clear Mrs Morgan had not consented to the terrible events she was subjected to but the case was appealed by the defendants to the Court of Appeal and subsequently wen to the House of Lords. They argued that when the judge directed the jury on the law he had been wrong. The judge told the jury that when considering if the defendants had honestly believed Mrs Morgan consented they were to consider if that belief was reasonable for

them to think she had. The lawyers argued that reasonableness of the defendant's belief was not necessary, if the perpetrators had honestly believed she had consented they should be acquitted whether it was reasonable for them to hold that belief or not. This wasn't just a case of defendants' doing all they could to overturn their convictions. There was also a legitimate legal issue to resolve and the question had to be answered by the House of Lords.

No definition: In the 1970s, rape as it still does now, raised difficulties, more so than many criminal offences. The case of Morgan, was of great concern to the public and politicians, so much so a parliamentary advisory group was set up to assist the government of the day to work out what to do about it. The group's main issue of concern was that although it was a criminal offence under the 1956 Sexual Offences Act for a man to rape a woman, there was actually no statutory definition of what rape was. In 1975 there was no statutory definition of what consent was in legislation. The law relied upon a common law definition of rape that dated back to the 17th century when rape was considered unlawful sexual intercourse with a woman without her consent, by force, fear or fraud. Force was the primary focus for most people and the assumption was that there had to be a struggle, a woman had to show signs of injury or had to resist for the crime to be committed. The feeling of the advisory group was that the focus had to be drawn back to the essence of the crime which was having sexual intercourse without consent.

The advisory group, led by one of our most prestigious lawyers of our age, Rose Heilbron set out with incisive accuracy the problems with the offence of rape as they saw it: It involves an act – sexual intercourse – not in itself either criminal or unlawful and can, indeed, be both desirable and pleasurable. Whether it is a criminal depends on the complex considerations, since the mental states of both parties and the influence of each upon the other as well as their physical interaction have to be considered and are sometimes difficult to interpret… there can be many ambiguous situations in sexual relationships… however precisely the law may be stated, it cannot always adequately resolve these problems. In the first place, there may well be circumstances where each party interprets the situation differently and it may be quite impossible to determine with any confidence which interpretation is right. Although in a criminal case it is the accused who is on trial, there is a risk that a rape case may become, in effect, a trial of the alleged victim. Whatever the outcome, the very fact of having been involved is liable, at present, to have embarrassing or even damaging consequences for the women. The parliamentary group recommended that rape be defined.

A year later the 1976 Sexual Offences (Amendment) Act came into force and England and Wales finally legally defined in statute one of the oldest offences. The statute said that a man commits rape if he has unlawful sexual intercourse with a woman who at the time did not consent and he knew that she did not consent or was reckless as to whether she consented. Reasonableness did not form part of the definition. The advisory group said they did not think it tenable that a man was judged not by himself but by the standards of the hypothetical reasonable man.

Many of the other concerns at the time were left as they were. The fact that Mr Morgan did not stand trial for rape was not addressed, as the concept of rape in marriage was still not accepted by the law. Nine year later in 1984 Parliament once again asked for assistance and the advisory group concluded that the extension of rape prosecutions should be extended if a man has non-consensual sexual intercourse with his wife when they are no longer cohabiting. The committee was divided as to whether it should extend to all cases of non-consensual sexual intercourse within marriage. The logic in 1984, a time when the UK had already had a female prime minister for five years, was that sexual intercourse within marriage was not unlawful and there were 'grave practical consequences… once placed before the police

they are under a duty to investigate and the intervention of the police might well be to drive couples further apart'. In 1991 husbands could finally face prosecution for the rape of their wives. In 1994, it was accepted that rape could be committed against men. Then in 2003 rape was redefined once again, in gender neutral language, the lawmakers' defined rape to be when a person's mouth, anus or vagina is penetrated with a penis, that the person does not consent to the penetration and that the person committing the act does not reasonably believe that person consented. What is considered reasonable is to be determined having regard to all the circumstances, including steps taken to ascertain consent.

Finally, the ghosts of Morgan were put to rest. The concept of rape that we have today has been carved only in recent times and it might yet be redefined over the coming years. Ideas of rape only being committed by force still persist for many. Judges give directions to juries today warning them about unwarranted assumptions that lack of threat of force, struggle or injury indicate consent. They are to be warned of the distinction between proper legal consent and submission to the offence. I don't know what happened to Daphne Morgan or those who were convicted. She saw the sentences of the perpetrators reduced by the Court of Appeal to only three years, sentences that would be considered lenient by today's sentencing practices. In 1973 she was publicly named. That would never happen today. The parliamentary advisory group set up in 1975 made other recommendations including that complainants in sexual offences cases should have anonymity. It took a few years to fully implement but those who make criminal complaints of sexual offences today are afforded complete anonymity by the court. Anyone who does publish details that could lead to their identification will be prosecuted. The advisory group in 1975 also criticised the procedure of rape trials, feeling that some restriction on the questioning of the complainants regarding their sexual history was needed unless agreed by the Judge.

That is now the position. The advisory group did make clear that their criticism lay at the practice and procedure which often meant that rape victims lived the ordeal over again through the court process. However, they underlined that from time to time false allegations are made for a variety of motives and so all relevant and proper cross examinations must be permitted to ensure a fair trial. The 1975 committee, made one further recommendation that there should be balance of the sexes on those juries that consider rape trials. One of their recommendations was there be a minimum of four women for rape trials, to date that has not been enacted. It's very important to understand the legal history and evolution of the law of sexual offences, not just to see how far we've come in a relatively short time but in criminal law the courts are now regularly trying historic sexual offences cases, and juries have to apply this old law once again.

Pre Issued Settlement – The Case of D

This case concerns a defendant D, who had been remanded in prison custody for 4½ months without lawful authority. D was arrested for breaching a non-molestation order, imposed by a County Court. He was taken to the Court in the custody of police officers, and appeared before a district judge without having had access to legal advice. The judge subjected him to questioning and remanded him to prison, directing that either the police or prison officers brought D back to Court in seven days to conclude his case. Neither the Court, police, or prison made arrangements to have D returned to Court. The detaining authorities then subsequently failed to review his custody, forcing D to remain in custody for 4 ½ months. D sought assistance from Duncan Lewis and the team ensured he was visited in prison immediately, to investigate his claims. It was soon established that D was being held unlawfully. Graeme Rothwell then pursued and

secured D's release. There were three potential defendants in this case and much of the initial investigative work involved identifying the foundation defendant. Ultimately, this proved to be the Ministry of Justice. We successfully sought damages, claiming false imprisonment, misfeasance and negligence. The defendant attempted to settle for almost £10,000 less than this claim was actually worth. Following robust submissions and negotiation, it was persuaded to settle before the need to issue civil proceedings arose. D received £30,000 in damages and the defendant had to pay the claimant's inter-parte legal costs.

As this case was a pre-issue settlement there was no judgment. The matter is significant as it shows Duncan Lewis are willing to listen to all who seek their assistance, and take allegations seriously, even when at first they appear to be incredible, or misplaced. The client had alleged something which might easily be disbelieved at first thought - that the authorities had locked him up 'by mistake'. Duncan Lewis considers all enquiries, however incredible they might seem, with a clear eye and a cool head.

Half of Immigration Detainees Denied Legal Representation

Jon Robins, 'The Justice Gap': Only half of all immigration detainees have a lawyer compared to eight out of 10 prior to the 2013 legal aid cuts. In its annual survey, the charity Bail for Immigration Detainees spoke to 103 detainees being held in removal centres and found that, of the 50% of detainees held in detention that had legal representatives, only 61% had a publicly funded legal aid solicitor. The situation was markedly worse for detainees held in prisons under immigration powers. Out of 50 detainees who had moved from prison to detention, only three had received immigration advice from a solicitor while in prison.

In 2012, immediately before the implementation of the legal aid cuts under the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act, BID reported that almost eight out of 10 (79%) of those held in immigration detention had a legal representative; and three-quarters were funded by legal aid. Today, less than a third have a representative funded by legal aid. According to BID, almost six out of 10 detainees without a legal representative (57%) cited money as the main reason they were unable to get legal assistance. 'These results once again highlight the scale of injustice in our immigration detention system,' comments Celia Clarke, BID's director. 'It is an outrage that 50% of detainees do not have a legal representative. Not only does the Home Office lock individuals up without trial, separating families and damaging vulnerable people, detainees are denied the legal representation that would enable them to challenge these decisions.' Almost three quarters of detainees (74%) had worked on their own immigration cases and a similar proportion (73%) complained that they could not access online help and in particular Home Office and other government sites were blocked as well as solicitors' and BID's sites.

Rape Conviction Quashed - Judge Banned Questions About Girl's Use Of Contraceptive Pill

Ruaidhrí Giblin, Ireland International News Agency: A man convicted of raping a 15-year-old family friend has successfully appealed his conviction over the trial judge's ruling preventing his lawyers from questioning the girl as to why she was on the contraceptive pill at the time. The girl had asserted that she was a virgin before her encounter with the now 25-year-old man, who had pleaded not guilty to rape and defilement at his home between 4-5 October 2014, when he was 21. He was found guilty by a Central Criminal Court jury and jailed for eight years by Mr Justice Patrick McCarthy on 29 July 2016. After the jury verdict, the man's barrister, Giollaíosa O'Lideadha SC, said his client continued to maintain his innocence.

The Court of Appeal quashed the man's conviction over a ruling which prevented the defence from asking questions of the complainant as to why she was on the contraceptive pill, and remained on it despite some adverse medical reactions, at the time. It was the defence case that all sexual activity was consensual and that the complainant had been involved in sexual activity, including intercourse, with another male shortly before his encounter with her. It was the prosecution's case, based on statements by the complainant, that although she had boyfriends, she had not previously been sexually active and was a virgin prior to her encounter with the man.

During the trial, the defence sought to question the complainant on her sexual history, particularly in respect of messages on her phone which carried sexual innuendo and at least one photo of a penis. The purpose was to establish that she had been sexually active and had probably engaged in intercourse immediately prior to the alleged rape. The defence also sought to introduce evidence that would assist in establishing that the complainant was taking the pill not just for medical reasons but at least partly for contraceptive purposes in contemplation of such activity.

In his ruling, the trial judge had said the texts and other communications did not "stretch" to admissions of having close sexual relations and that it would be "degrading" to the complainant to cross examine her on those. The trial judge said the defence had put forward a "bald proposition" that the girl was on the pill because she was sexually active. However, medical material showed the girl was on the contraceptive pill for medical reasons "quite unrelated to the purpose of inhibiting" pregnancy, the trial judge had said. Giving judgment in the Court of Appeal, Mr Justice Alan Mahon said these were difficult and complex issues for the trial judge to balance between protecting the rights of the accused and excluding evidence which was irrelevant and prejudicial. The Court of Appeal found no fault with the judge's rulings in relation to material on her mobile phone. The court did, however, have a concern in relation to the ruling preventing any questions being raised as to the reasons why the complainant was on the contraceptive pill or remained on it despite some adverse medical reaction to the medication.

There was, at least, a possibility that the jury might be persuaded that a primary or secondary motivation for taking the pill, and remaining on it, was to facilitate sexual intercourse and that such sexual activity as occurred in the course of her confrontation with the man "was not the first occasion on which she had engaged in sexual intercourse". It was "an important credibility issue," Mr Justice Mahon said. "That issue ought to have remained open to greater clarification aided by cross examination. It is a matter which ought properly to have been left to the jury for consideration." Accordingly, Mr Justice Mahon, who sat with Mr Justice George Birmingham, president of the Court of Appeal, and Mr Justice John Hedigan, allowed the appeal on this ground, set aside the man's conviction and ordered a retrial. The man was admitted to bail to appear before the Central Criminal Court at the next list to fix dates.

Hostages: Sally Challen, Naweed Ali, Khobaib Hussain, Mohibur Rahman, Tahir Aziz, Roger Khan, Wang Yam, Andrew Malkinson, Michael Ross, Mark Alexander, Anis Sardar, Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan & Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Robert Knapp, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan.