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'Making a Murderer' and the Limits of Open Justice *Marika Henneberg, Justice Gap*

For many of us, Christmas 2015 will be remembered as that time we binge watched Making a Murderer on Netflix. The ten hour documentary provokes a wide range of emotions rarely experienced whilst watching telly. The subject of the documentary is Steven Avery, a Wisconsin man who spent 18 years in prison for a sexual assault that he did not commit. In 2005, two years after his release and after Avery had filed a $36 million federal lawsuit against the county and named individuals responsible for his wrongful conviction, he was arrested for murder.

The documentary covers a decade of legal battles, from Avery's arrest and conviction of murder to present day. It has a fly on the wall perspective where the viewer gets to experience things such as interviews inside police interview suits, examinations of alleged crime scenes, visits to crime labs and we get to see important parts of court proceedings relating to the case. This is raw justice in action. Having worked with wrongful convictions for nearly a decade, I am overwhelmed by the accessible and 'open' justice process that this documentary highlights. In England and Wales such an open justice process does not exist. A partial lifting of a long-standing ban on cameras in court rooms in 2013 meant that cameras were permitted in the Court of Appeal, but the ban still applies in crown and magistrates' courts. Where cameras are allowed, stringent restrictions apply and only footage of lawyers and judges is permitted.

Furthermore, court transcripts are automatically destroyed after five years unless they have been placed under a preservation order. Once destroyed, the important verbatim record of what was said in court is lost forever. Similarly, defence solicitors' files are destroyed after a period of six years unless they have been claimed by the defendant or passed on to another party. Those working with criminal appeals in England and Wales are left to piece together a case, and find the new evidence needed for an appeal, from a stale and fragmented mess often consisting of police interviews, statements and reports given prior to trial, and the judge's summing up and sentencing remarks. This is highly problematic.

Omar Benguit was convicted of murder in 2005 and continues to maintain his innocence after three trials and two failed appeals. I work on Benguit's case and tried to get hold of the court transcripts. Communication with the relevant transcription provider, Mendip Media Group, confirmed that apart from the sentencing remarks (four pages, available for £1.58) the transcripts had been destroyed several years ago. Benguit faced three trials on the same murder charge before the third jury found him guilty of the crime. The court transcripts from the three trials would have provided invaluable information as to what actually happened in the court room to convince the third jury that he was guilty beyond reasonable doubt.

Investigation into Benguit's background has revealed that in 1995, he had been arrested and held in police custody for a few hours for a horrific murder that he had nothing to do with (the real perpetrators were identified, convicted and sentenced). There was no link between this murder and Benguit, so the question of why the police arrested him and searched his flat must be asked. The defence solicitors who had represented Benguit at this time confirmed that, unfortunately, the files relating to this arrest had been destroyed. In the US, full court transcripts are often a major part of any criminal appeal work. For example, in California court transcripts are generally kept electronically for at least 10 years and frequently much longer. This gives appellants a much better chance to fight their wrongful convictions. In England and Wales, legal aid for criminal appeals is very limited, and the additional expenses often involved makes it virtually impossible for many wrongfully convicted to achieve a successful appeal. Being able to access a verbatim record of what was said in court, whether written out or video recorded, will work towards a more accountable criminal justice system. In England and Wales, this 'evidence' is systematically destroyed. In our age of information and technology, this is both unnecessary and unjust. Appellants in our jurisdiction deserve the same accessible and open justice process that can be seen in Making a Murderer. Reforms of policy and practice relating to court transcripts (and cameras in courts) are long overdue.

'Grayling Completed the Destruction of the Probation Service

'When I walked away from my first inspection of Holloway, I found that its problems stemmed from – and still stem from – the lack of a coherent management structure,' recalls Lord David Ramsbotham OBE, cross-bench peer and former Chief Inspector of Prisons between 1995 and 2001. A former general of the British Army, Lord Ramsbotham said that he was 'staggered' to find that no one was responsible, or accountable, for any type of prison or prisoner. He said that this left Governors to do their own thing, provided that they kept within their budget.

Kenneth Baker, as Home Secretary in early 1990s, accepted that regional clusters would be a good idea to ensure that each region had enough prison places to ensure that no prisoner should ever be confined outside their local area. This recommendation was included in the only white paper on prisons – Custody, Care and Justice – published in 1991, but, according to Lord Ramsbotham has never been implemented. 'So instead of having a coherent management structure, governors had no one to go to for advice and help other than a geographical area manager, responsible for budgets, and a prison service operational standards audit team which focused on targets and performance indicators,' he explained. When the Prisons Service complained that they were short of resources, Lord Ramsbotham said that 'they could never say by how much, because no one knew the cost of imprisonment [and] how much was needed to provide every prisoner with the treatment they needed to qualify for release.' Without that coherent structure, Lord Ramsbotham fears that the prison service will be 'unable to deliver what Michael Gove says that he wants to do to improve things.'

All about punishment: Lord Ramsbotham said that the old issues still apply but also said that they have been exacerbated by the 'rushed' and 'un-researched' initiatives of the immediate past minister for justice, Chris Grayling. 'He initiated cuts of on average 33% on staff numbers in every prison.' he says. 'This has meant that already impoverished regimes, including inadequate educational and work training provision, have been compounded by staff saying that, due to shortages, they cannot escort prisoners to activities, including library visits, evening association and the ability to make telephone calls, drug treatment and weekend activities leaving prisoners locked in their cells from Friday mid-day to Monday morning.'

Lord Ramsbotham also takes issue with the watering down of the probation service. He says that Grayling changed its ethos from 'advise, assist and befriend' which, working closely with courts and the police, it had done for over 100 years to 'one of punishment.' 'Grayling completed the destruction [of the Probation Service] by privatising probation support to the lower end of the criminal spectrum, breaking its alignment with existing criminal justice boundaries, and aligning probation with

the Department of Work and Pensions boundaries, and making Community Rehabilitation Companies, paid by results, responsible for planning and organising rehabilitation from prisons.'

The Home Office is incapable of managing immigration: According to Lord Ramsbotham, who had oversight of detention centres during his time as prisons inspector, there are two main things wrong with immigration centres. Firstly, they were not intended for long stays, merely to hold people while problems with identification or nationality were resolved. As a result they lack sufficient facilities to occupy everyone by day. Secondly, they are often used to house people who should not be there, namely prisoners, sentenced to be deported, who have completed their prison sentence and then been sent to a detention centre for their deportation to be actioned. 'Practically the Home Office is incapable of managing immigration. Its case workers are inadequate – witness the fact that 60% of appeals are based on faulty case work – there is a massive millstone of over 600,000 unresolved cases before they even get to today's work, and it suffers from what the Independent Asylum Commission characterised as a culture of disbelief.' The peer argues that 'the whole immigration system is in need of overhaul'. Alongside other peers, he will be pushing the issue of time-limiting detention during the passage of the Immigration Bill.

Lord Ramsbotham is the chair of the Koestler Trust, a charity which helps detainees to express themselves creatively. 'To me the most depressing statistics regarding prisoners are the numbers who either truanted or were evicted from school, and the numbers who can neither read nor write,' he says. 'That is an indictment of our educational system, but it is also an opportunity for the state to rectify when someone is received into either prison or probation. Education is important because, without the basics, no one can really look after themselves, let alone anyone else, and every single job training course demands at least a basic level of education.' There are many studies which suggest that literacy increases self-esteem. Lord Ramsbotham argues that prisons should test everyone when they enter and when they leave, and be judged on the numbers who still can't read when they leave. 'Education is the bed-rock on which all rehabilitation programmes can be built, and so, if rehabilitation really is the aim, every prisoner should be educated to the level required to take part in more job-orientated training.'

Breivik Case Against Norway Over Prison Conditions to Be Heard in Jail

Mass murderer Anders Behring Breivik's court case against the Norwegian state over his prison conditions, which he likens to torture, will take place in the jail where he is being held, a court has ruled. Breivik killed 77 people in a bombing and shooting assault in 2011 because he was opposed to Norway's multiculturalism. He has complained repeatedly about being held in isolation, which he argues is a violation of his human rights. His court case had previously been scheduled to take place from 15 to 18 March, but the question of where the case would be heard had yet to be determined, given the security problems posed by moving Breivik from the prison.

The state had proposed holding the trial in prison, and Breivik's lawyer agreed to the idea. "Practical considerations and security issues justify that the case be heard at the Skien prison [about 62 miles south-west of Oslo]," the Oslo district court ruled on Monday. The prison conditions could be more closely studied on site, it added. On 22 July 2011, Breivik killed eight people in a bomb attack outside a government building in Olso and later murdered 69 people, most of them teenagers, when he opened fire at a Labour Youth camp on the island of Utøya. Breivik, 36, was handed a 21-year prison sentence in August 2012, which can be extended if he is still considered a danger to society. In a report published in November, Norway's parliamentary

ombudsman said Breivik's solitary confinement risks turning into "inhumane treatment".

HMP Low Newton Criticised Over Number of Inmates with Mental Health Issues

Newcastle Chronicle: A County Durham women's prison has been criticised for the second time in 12 months over the number of inmates with mental health issues serving jail time. HMP Low Newton was described as having 'among the most complex' prison populations in the country by Nick Hardwick, chief inspector of prisons, last year. Mr Hardwick raised concerns about some inmates in custody for their own safety and said it was inappropriate. Now, his concerns have been echoed by the jail's Independent Monitoring Board in its annual report and board members have referred their concerns to prisons minister, Andrew Selous. The report on the jail for 2014 to 2015 said: "There are the continuing issues regarding the number of prisoners who are detained and are suffering from mental health problems. "Although the healthcare unit refers prisoners for assessment with a view to their transfer to hospital accommodation the board must question whether these women should have been detained in prison in the first instance and whether prison is the correct location for these women."

The report on the jail, which is home to notorious killer Rosemary West, released by the IMB said there were problems with drugs and a small number of legal highs but did not identify specific incidents. Following a new law anyone involved in smuggling drugs, or other banned items, into the prison system now faces up to two years behind bars. However, concerns have been raised about the arrival time of new inmates to the jail, and the self harm among inmates.

The report said: "The board feels that prisoners are kept in a safe and supportive environment. During visits board members regularly note that there is a good atmosphere within the establishment." The report added there are 'robust' processes in place to help identify and monitor inmates at risk of self-harming. The IMB also said more care should be taken over logging, and returning, prisoners' property. However, food standards, staff enthusiasm and learning at the jail were all praised. The Ministry of Justice has defended the jail and said it works closely with the NHS to ensure inmates are kept safe and have the support needed. A Government spokesman said: "Mental health in custody is taken extremely seriously and the prison service and NHS work very closely to keep prisoners safe. "Progress has been made in the past five years and we work hard to make sure all prisoners with mental health problems have the support they need."

More Lawyers to Review 'Unduly Lenient' Sentences After Complaints Soar

Owen Bowcott, Guardian: More lawyers are to be recruited to a scheme that reviews "unduly lenient" sentences after a sharp rise in the number of complaints about judges' decisions on jail terms. The attorney general, Jeremy Wright QC, is to announce on Wednesday an extension of the legal programme that allows prosecutors to review cases on behalf of the government. The number of sentences considered by his office under the unduly lenient sentence (ULS) scheme soared by 97% between 2010 and 2014, from 342 cases to 674. For a sentence to be reviewed, the attorney general's office must receive a complaint from at least one member of the public. Not every submission results in a referral, but between 2010 and 2014 the number of cases the attorney general's office sent to the court of appeal rose by 35%, from 90 to 122.

Complaints can only be made about crown court sentences imposed for particular types of crime, including murder, rape, robbery, child sex crimes, fraud, drug offences and those committed because of the victim's race or religion. They must be lodged within 28 days of sentencing. Legal reviews are currently conducted by a small number of highly qualified barristers, known as treasury counsel. But other senior lawyers – those classed as grade four prosecution advocates by the

Crown Prosecution Service – will now be recruited to the ULS scheme for a six-month pilot period.

At last year's general election, the Conservative party manifesto included a pledge to widen the scope of powers to refer sentences, in order to include less serious offences. The attorney general said: "It's vital that the public are able to legally challenge custodial sentences and to make sure offences are being properly punished. This trial extension is a great opportunity for experienced lawyers to develop their skills further while preserving the continued effective operation of the ULS scheme. With the number of referrals increasing, it is right that we look at ways to widen the approach." Wright and the solicitor general, Robert Buckland QC, appear in many of the court of appeal sentencing cases. In some cases, prison terms are significantly extended. In one recent case, a sentence for rape was increased from five and a half years to 12 years in prison. In 2014, it has been calculated, more than 100 years of additional jail time was added to sentences reviewed under the ULS scheme. The prison population in England and Wales is currently more than 85,000.

Responding to statistics on ULS cases, the president of the Queen's bench division, Sir Brian Leveson, said: "The number of sentences found to be unduly lenient following consideration by the attorney general or solicitor general continues to be low. In 2013 and 2014, only 166 offenders had their sentence increased, a very small fraction of the many thousands of offenders sentenced for relevant offences in the crown court that year. Sentencing is a complex process where the judge must take into account a number of factors in reaching a balanced decision. In order to maintain public confidence in sentencing, it is important that any member of the public may request a review by the attorney general of a sentence imposed in the crown court."

Danny Major: 'If I Return to Policing. I'm Not Sure I'd Trust West Yorkshire Police

Danny Major always wanted to be a police officer – just like his father Eric. 'Dad was a police officer for 32 years,' Major says. 'Like any child, you see what your parents are doing and you want to be like them.' PC Danny Major's six-year career in the force came to an end in 2006 when he was found guilty of assaulting a drunken teenager in custody, sacked and jailed. Major, who was a uniformed patrol police officer in Leeds, has always denied any involvement in the assault that left a drunken 18-year old badly beaten one night in September 2003. The week before Christmas a report arrived at West Yorkshire Police which, the family hopes, will finally clear Danny's name. They also believe it will expose a shocking cover-up. Almost three years have passed since the neighbouring force, Greater Manchester Police began its investigation – Operation Lamp – into what happened that night. It was tasked with looking into an 'alleged conspiracy to pervert the course of justice' by the officers who gave evidence against Major.

West Yorkshire's Police and Crime Commissioner, Mark Burns-Williamson commissioned the review. In a statement issued to www.thejusticegap.com, Burns-Williamson acknowledged how difficult it had been for the Major family. 'I know they are frustrated at the length of time it has taken to compile this report but it was vital that the investigating team left no stone unturned,' he said. Burns-Williamson said he would take some time to review the report. But he went on to say: 'The evidence supports the premise that there may have been a miscarriage of justice and that there is sufficient "fresh evidence" to support the case being referred back to the Criminal Case Review Commission.'

This miscarriage of justice watchdog has confirmed it has received a copy of the report. The investigation raises a serious question over the competence of a review by the CCRC which refused to refer the case back to the Court of Appeal. In May 2014, BBC Radio 4's File on Four asked the CCRC's chair Richard Foster why the body had not commissioned a police force to investigate the powers. 'I stand by that judgement and if that investigation turns up anything new and it's put to us, we would of course look at it,' Foster said. 'This is obviously an important development in this long running case which has previously been looked into by a number of agencies,' Burns-Williamson said. 'It is important that no one now rushes to judgement and that any legal proceedings resulting from this be allowed to run their course.' Danny Major spoke to the Justice Gap the week before the Operation Lamp report was sent to West Yorkshire police. As for the future, Major hopes to go back to the old job. 'I would certainly return to policing,' he says. 'I'm not sure whether I would trust West Yorkshire police as an employer given what they have done to me already.'

An unorganized rabble: PC Danny Major arrested the 18-year old Sean Rimmington following a fracas in the early hours at Millgarth police station in Leeds. During attempts to make the arrest, Rimmington punched Major twice in the face and, it was claimed, the officer lost his temper. Danny Major was found guilty in 2006, a first trial collapsed when the jury failed to reach a verdict. He was convicted of assault relating to punches thrown outside the Bridewell custody suite, as well as an assault in the police cell. He was sentenced to 15 months in prison, and served four. Major says the experience had been devastating for him and his family. 'It has been all consuming. I still wake up in the night thinking about it. I am very determined to clear my name. I will not ever stop. In fact, everything that I worked so hard for is based upon me clearing my name.' Danny Major has always claimed that he was the innocent victim of a major cover-up. 'I can take one corrupt police officer – you expect good and bad anywhere – but not a corrupt police force,' his mother Bernadette told me.

At the trial, Judge Roger Scott called the Leeds police were a 'shambles' and said that the station was 'not fit for purpose'. 'We saw an unorganised, unsupervised rabble. In my view, it requires further investigation and possible charges against a large number of officers.' Despite everything, Major was confident that Greater Manchester Police would deliver. He reckons that he was 'eliminated from inquiries' as a suspect as long as two and a half year ago. 'A lot of the main players at the top of West Yorkshire Police have gone,' he says. 'There are a lot of people trying to make a name for themselves coming through by taking on their predecessors. It could be a case of old-fashioned patricide.' The fact that such an incident could ever have taken place and gone unrecorded was always astonishing. Despite efforts to get hold of CCTV footage of the Bridewell station on the night, it was only during the course of the last week of the second trial – after the main prosecution witnesses had given evidence – that 13 hours of recording came to light. Major reckons that footage contradicted the evidence of the officer who implicated Major.

'There were so many cameras in the Bridewell,' Danny Major recalls. 'All on the same system but, apparently, none were working. Five tape machines should've been running, but only two tapes were ever seized – all the others were broken or not recording.' According to Major, an alarm would sound when the tapes needed changing. 'It was not possible not to have the tapes recording. The system was set up for that not to happen,' he says. 'It's quite clear what was happening.' What can he remember of the night in question? 'It was all down to laziness, and no particular vice,' he replies. 'The work was way below the standard be expected anywhere, never mind a custody suite. People die in custody suites. Looking back on what was going on, I'm surprised that people were not dying on a weekly basis.' Any why did he end up the fall guy? 'I think when they decided to stitch me up they thought he [Rimmington] was going to die. When it turned out his injuries had not been so severe they had no other option but to run with it.'

'I wanted to do my bit' Major, who has a degree in microbiology from Huddersfield University, had no illusions about the realities of joining the force. He recalls his dad working shifts on Christmas Day. Nor was he oblivious to the dangers of a life in the force. 'Dad was almost killed during the miners' strike.' He was hit by a piece of concrete leaving him with a detached retina, a brain injury and left nearly blind in his left eye. Ironically, his father was briefly a miner before joining the force. So what did it mean to young Danny Major to be a police officer? 'I wanted to do my bit for the community,' he replies. 'I am very proud that my family has been in Yorkshire for centuries. I saw it as only right that I went out and get myself an education and give back to the community.' Major – who is married with two children under the age of three – has been working in a call centre since 2008. Major reckons if he had stayed with the police without progressing he would be on £32,500 a year. 'I am earning just over £19,000,' he says. 'People always say: "You did your four months in prison – and it is done and dusted". But for me, I am still serving a sentence.'

Early Day Motion 911: Naloxone Provision to Prisoners on Release

That this House recognises that the risk of a drug-related death is 7.5 times higher for UK prisoners in the first fortnight following their release; notes that almost all these overdose deaths are potentially preventable with Naloxone; further notes that a significant number of local authorities are still failing to provide access to Naloxone for opiate users in the community, in disregard of World Health Organization and Public Health England (PHE) guidance; further believes the failure to provide Naloxone to prisoners on release to be illustrative of the unintended consequences of localism and fragmented criminal justice and health provision; recommends healthcare provision in all UK prisons should include issue of Naloxone to all on release with a history of opiate use; further believes that NHS England, PHE, the National Offender Management Service, community rehabilitation companies and local authorities should develop a joint strategy and funding arrangements for such provision; and calls on the Government to facilitate and expedite such a strategy to address the current fragmentation of responsibility that is putting lives of vulnerable adults needlessly at risk.

Sponsors: Glindon, Mary / Hopkins, Kelvin / Bottomley, Peter

The Grass is Not Greener? *Keith Rose, Serving Prisoner*

There are very few charities for prisoners that I would take issue with, but one I've always found to be pretentiously named is 'Fair Trials Abroad'. The very name presupposes that English Justice is somehow fairer than that of countries overseas, whereas the reality is with loss of the right to silence, majority verdicts, trial judges 'summing up', and other factors court verdicts are weighted against the accused. The Birmingham 6, Guildford 4 et al are mute testimony to prejudice in English courts. Conviction rates throughout England are recorded as percentages of cases tried and return average scores in the high eighties or into the nineties in hotspots. A few Crown Courts have a notorious reputation for unusually high conviction rates, Winchester, Truro, Exeter, Guildford, Carlisle etc. are examples where the scales of justice may be out of balance.

However, recently reported in the Economist is a country where the conviction rate averages 99.8%, of which 89% in 2014 were confession based. Disturbingly, one lawyer estimates that at least 1 in 10 of those convictions are based on false confessions extracted under duress. Many of those admitting guilt are plainly innocent and there is an extraordinary lack of protection for suspects held in Japanese interrogation cells. At first glance Japan's criminal justice system is an example to the rest of the world. Crime rates are lower in Japan than most other countries

with a murder rate less than a tenth of that of the United States. Less than one in twenty committing an offence are jailed compared with one in three in the States. Penal emphasis in Japan is on rehabilitation rather than punishment with remarkably low recidivism rates, in part due to reformation methods involving offender's families in rehabilitation. Young Offender Institutions resemble strict boarding schools rather than prisons and courts are reluctant to jail first-time offenders. Incarceration rates are far lower in Japan with 48 per 100,000 jailed compared with 148 per 100,000 in Britain and 698 per 100,000 in the United States.

However, the Japanese system places huge emphasis on confessions which is regarded as the first step towards rehabilitation. Prosecutors regard confessions as paramount and put pressure on police to extract confessions, police methods are often brutal. Growing numbers of forced and false confessions have now come to light. An ordinary suspect may be held for up to 23 days without charge and access to a lawyer in this period is limited. Interrogation sessions can last 8 hours or more and police methods are often brutal; stamping on a suspect's feet, screaming in his ears, sleep depravation, enforced painful physical positions are not uncommon.

Iwao Hakamada spent 46 years on death row before his release in March 2014. It was found that police and prosecutors had fabricated evidence in his murder trial and was stated that he was interrogated for 11 hours a day for 23 days, beaten with nightsticks and pricked with pins when he fell asleep. He confessed. Keiko Aoki spent 20 years in prison after confessing to burning her 11-year-old daughter to death. Her police interrogation was so harsh she confessed after one day. She was released in October 2015 after it was found that the fatal fire was a tragic accident.

With such high profile miscarriages of justice, you may expect the Japanese government to review criminal justice procedures with the abolition of the death penalty but prosecutors are powerful and many regard a not guilty verdict as harmful to their careers. Even an investigation into the conviction of Iwao Hakamada is regarded by reformers as unlikely.

If reform is to come to Japanese criminal justice methods it may come from judges. Japan does not have a jury system, verdicts are delivered by a panel of judges. However, judges only develop consciences as they near retirement with no prospect of further promotion. The judge who freed Iwao Hakamada after his 46 years ordeal unusually accused the authorities of fabricating evidence. Campaigners for reform hope that he might overturn other wrongful convictions. Another judge who later criticised police interrogation techniques was one of the panel which originally sentenced Iwao Hakamada to death.

Notwithstanding Japan's laudable approach to imprisonment of first-time and young offenders Japanese prisons are not a soft touch. Japan has had an appalling record of prisoner treatment engendered during the Second World ltJar with such infamous events such as the Bataan Death march where 10,000 allied prisoners died from starvation and ill-treatment in 1942. Japanese prisons are strikingly clean, quiet and orderly. However, prison reformers surveying the worst of the world's prisons state that Japanese prisons rate among the world's cruelest due to the psychological toll they take on prisoners. Former prisoners describe draconian rules where eye contact with warders is forbidden, or when permitted has to be accompanied by a smiling demeanour. Talking is banned for much of the day, reading is only sometimes allowed.

Compulsory prison work can be soul destroying, folding paper into eights; then unfolding them to begin again. Even standing up can require a guards permission with some prisoners being forced to sit cross-legged for much of the time. Solitary confinement requires sitting facing the door all day long. Death row prisoners have it worst. They wait in solitary confinement, often for many years. They are not told when they will be executed so wake each day not knowing if it will be their last.

Exonerated prisoners like Sakae Menda tell of the dread fear when guards stopped at his cell door each morning. More than half of Japan's current 128 death row inmates are seeking a re-trial.

Criminal justice reform seemed possible in 2009 when the Democratic Party took power with the Justice Ministry suggested filming of suspects' interviews. However, few interviews are recorded from start to finish so there is little to stop police using 'traditional' interrogation methods. In 2012 judicial reform was halted when the conservative Liberal Democratic party returned to power standing firmly behind police and prosecutors. Despite crime rates falling, regimes £or juvenile offenders are proposed to be toughened and executions have increased despite the notable miscarriages of justice. Prosecutors are still not required to disclose all evidence to the defence and most prosecutors have NEVER lost a case. On reflection, given the propensity of British politicians to copy the worst of the world's criminal justice and penal systems, it is probably not advisable to disclose the content of this article to the Ministry of Justice.
Keith Rose: A7780AG, HMP Whitemoor, Longhill Road, March, PE15 0PR

Jeremy Corbyn - Right to Legal Aid is 'Basic Human Right' Owen Bowcott, Guardian

Entitlement to legal aid is a "basic human right", the Labour leader, Jeremy Corbyn, has told a rally aimed at defending public access to justice. In a speech at Conway Hall, central London, Corbyn condemned court closures and the withdrawal of legal aid for employment tribunals, welfare benefit cases and other areas of law. The Labour leader, who used to sit on the justice select committee, said that the number of social welfare cases receiving legal aid support had plummeted from 470,000 in 2010 to only 53,000 cases several years later. "We will support and defend the principle of legal aid," Corbyn said. "Courts and law centres are closing down. The opportunity to be represented at employment tribunals has gone. It's a denial of justice. I would not say that legal aid is an economic benefit, it's a basic human right."

Labour has set up a policy review under the former justice minister Lord Bach to look at ways of restoring legal aid. It is due to hold its first session later this month. Corbyn, who explained that he had had "lots of fun" over the past three days organising a shadow cabinet reshuffle, said he was opposed to US-style justice which produced high re-offending rates. "I think there's good in everybody," he said. "Whatever crime has been committed. You should reach out to support them and [provide] rehabilitation not just punishment." Corbyn praised the radical traditions of the venue in Red Lion Square, to which he said he owed his existence: "My parents met in this very hall. They were at a rally protesting about the fascist invasion of Spain."

The Justice Alliance meeting was also addressed by the director of Liberty, Shami Chakrabarti, who said cuts to legal aid were "deeply ideological and spiteful", and the Labour peer Helena Kennedy who said the UK was witnessing "the destruction of one of the iconic" creations of the Attlee post-war government. It also featured a large puppet of the justice secretary, Michael Gove, carrying a list of what he would scrap in 2016.

In a separate development, lawyers representing some of the 90 firms suing the Legal Aid Agency over their failure to obtain a duty criminal solicitors' contract said disclosure of documents had revealed a basic mathematical error had unfairly robbed one firm, Edward Fail, Bradshaw & Waterson (EFBW), of a legal aid contract. Jamie Potter, a partner at Bindmans and the solicitor representing EFBW, said: "This scheme has been dogged by controversy since first proposed by the former lord chancellor, Chris Grayling. The error in this case may have been small, but its consequences were extremely serious."

Paul Harris, a managing partner of EFBW, said: "The LAA has now admitted a basic transcription error that cost my firm a contract. The number of contracts we are awarded significantly affects the extent to which we are able to continue as a business, including as to the number of staff we can employ. Can the LAA realistically say that such errors have not been made in respect of other bids by us or by other firms? … livelihoods should not be undermined by the typing of a 1 instead of a 2 and firms should not be required to bring legal challenges to uncover such errors."

A Ministry of Justice spokesperson said: "We still have one of the most generous legal aid systems in the world, with £1.6bn spent last year alone. The spending review settlement we have reached with the Treasury for the next five years leaves legal aid almost untouched." The department declined to comment on the dispute over duty solicitor contracts.

Hooded Men: Further Delay in Army Torture Allegations Case *BBC News*

The group known as the 'Hooded Men', who claim they were tortured by the Army in the 1970s, are facing another delay in their court action. The 14 men were arrested at the height of the Troubles under the policy of internment or detention without trial. Surviving members of the group are involved in a judicial review. They are challenging the failure of the police, the secretary of state and the justice minister to investigate allegations that they were tortured.

The Northern Ireland Office has said it needs extra time to examine documents. Six of the 14 men attended the High Court hearing in Belfast on Wednesday, during which the judge agreed to a further delay in the judicial review case. The group later expressed anger and said they believe the government is hoping that they all die before the matter is fully investigated. Outside court, their spokesman Francis McGuigan said four members of the group have already died, one has had a heart attack and another has been diagnosed with dementia. "We have been 45 and a half years waiting to get the full truth out," Mr McGuigan told the BBC. "We've been attending this court for a year now to get this judicial review as to why the Royal Ulster Constabulary or the Police Service of Northern Ireland have refused to investigate our claim of torture. We've already been to the European Court way back in 1976 and 1978 and they still won't release the documents to us to let the truth out, to let the truth be heard." He added: "I think they're actually waiting until we all die off and hope that the case dies, but I'm going to tell them it's not going to stop. If we don't make it, our families will keep pushing it." Their solicitor argued in court that time is of the essence but failed to get a firm date for the full hearing. The case is due to return to court on 6 April.

Kevan Thakrar V Secretary of State for Justice Defendant Claim No: A76YP501

"Normally the judgment in such a case would not be put into the public domain either via BAILII or via the Judiciary website. For reasons which will become clear, it appears desirable that the details of the claim and the decision on it, and the reasons for that decision, should be readily available and in the public domain."

" I have received submissions from the Government Lawyer's Department on behalf of the Ministry; I regret to say that I have found them of extremely limited assistance because they lacked objective discussion either of the law or of the evidence" District Judge Hickman

Judgment: 1.This is a small claim which by the very sensible agreement of the parties has been dealt with on written representations. Although technically small claims are decided in public (see Practice Direction 27 para 4.1(1)), normally the judgment in such a case would not be put into the public domain either via BAILII or via the Judiciary website. For reasons which will become clear, it appears desirable that the details of the claim and the decision on it, and the reasons for that decision, should be readily available and in the public domain.

What the claim is about: 2. This is a claim by Kevan Thakrar, who at the time the proceedings were issued was a prisoner detained at HMP Woodhill Milton Keynes. He complains that in the course of his being moved from one prison to another, his stereo was broken, a number of CDs were damaged beyond repair, and four books of his were lost. He further complains that a canteen order which he placed at Woodhill on 10th June 2013 was never fulfilled and that the money concerned was never refunded to him.

3. His claim is for £543.16 in addition to which he seeks general and aggravated or exemplary damages.

What the claim is not about: 4. This is not the first time that Mr Thakrar has brought proceedings against the Ministry of Justice and its predecessors in relation to loss of or damage to his property. There was widespread misunderstanding in relation to one such claim and it is perhaps as well if I make clear certain matters that this claim is not about.

5. It is not a claim under the Human Rights Act 1998. Granted, Article 1 of the First Protocol of the European Convention provides that: Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law but Mr Thakrar does not rely on that provision. He does not need to, because as is generally the case, the substantive English law, which I discuss below, is consistent with the European Convention. Given the extent to which the Convention was drafted by English lawyers and civil servants, it would be surprising if that were not the case.

6. This is not a case where Mr Thakrar has relied on legal aid to bring his claim. He appears to be intelligent and articulate and has been able to advance his claim in writing through the County Court. Indeed, some would say that the fact that a claim of this kind can be dealt with at modest cost through the County Court system is a good advertisement for the civil justice system of this country.

7. This is not a case where lawyers have been involved, on the Claimant's side at any rate. Where one party is represented and the other is not, it is generally considered to be the duty of the legally qualified advocate to assist the court even against his own client's interest. I have received submissions from the Government Lawyer's Department on behalf of the Ministry; I regret to say that I have found them of extremely limited assistance because they lacked objective discussion either of the law or of the evidence.

8. It is as well to be clear at the outset that Mr Thakrar is in the prison system for a reason. That reason is conveniently set out in paragraphs 4 to 6 of the judgment of Mr Justice Hickinbottom in the Administrative Court in Thakrar v Secretary of State [2012] EWHC 3538 (Admin):

4. On the evening of 28 August 2007, Keith Cowell and his brother Matthew and Tony Delieu were shot dead with a sub-machine gun, at the Cowells' home in Bishop's Stortford, in what appeared to be drugs related killings. Two women, who were at the property at the time, were also stabbed. In August 2008, the Claimant Kevan Thakrar was found guilty of possessing a firearm with intent to endanger life, three charges of murder and two charges of attempted murder for his part in those events, and he was sentenced to life imprisonment with a minimum period to be served of 35 years.

5. Since March 2010, he has been serving that sentence in the Close Supervision Centre ("the CSC Wing") at HMP Woodhill, that being a category A high security prison. The CSC Wing is a segregated part of the prison, with a particular regime designed to provide for the long term detention of prisoners whose actions pose a significant threat to the safety of themselves or others, and/or to the good order and discipline of the prison establishment.

6. The Claimant's detention history prior to March 2010 was certainly troubled. From his initial detention and custody in 2007, he complained of both physical and verbal ill treatment whilst

at HMP Woodhill, including an assault by uniformed officers in May 2008 which triggered in him a psychiatric condition later diagnosed as post-traumatic stress disorder. He was transferred for a time to HMP Frankland, where it was alleged that he attacked and seriously wounded three prison officers, for which he was again charged for attempted murder and causing grievous bodily harm with intent, although he was acquitted of those charges at a jury trial in 2011. During that trial, he claimed that he had acted in self defence, because of a fear for his safety following abuse and actions against him by prison officers. He has, indeed, complained from the inception of his incarceration – and he continues to complain – of what amounts to a campaign of bullying, abusive treatment and discrimination on the grounds of his race, by prison staff.

9. It is right to note that Mr Thakrar continues to protest his innocence and that his conviction in 2008 was wrong. That does not and cannot alter the fact that as things stand he has been found guilty by a jury of participation in what the Court of Appeal (R v Thakrar (Miran) & Another [2010] EWCA Crim 1505) understandably described as "by any standards ruthless, brutal offences".

The law which I have to apply: 10. The first and extremely important point to note is that a convicted prisoner, in spite of his detention by the State, retains all civil rights which are not properly taken away from him expressly or by necessary implication (Raymond v Honey [1983] 1 AC 1, especially at page 10).

11. As Mr Justice Hickinbottom observed in the Administrative Court in the case I have mentioned, "That applies to all prisoners, under whatever regime they are detained."

12. Raymond v Honey is a decision of the House of Lords. Even if I disagreed with it, it would simply not be permissible for me to ignore it.

13. So the law which governs the Ministry's duties with regard to Mr Thakrar's property is not affected by the fact that he is a serving prisoner, by the fact that he is a convicted multiple murderer or by the fact that it has been thought appropriate to confine him in the Close Supervision Centre, reserved, in Mr Justice Hickinbottom's words, for "prisoners whose actions pose a significant threat to the safety of themselves or others, and/or to the good order and discipline of the prison establishment."

14. While Mr Thakrar was being moved from one prison to another, it was necessary for his personal property to be packed up and moved by the Prison Service. That meant that the Ministry were, as the legal term is, bailees of his property. And the duty of a bailee is, as set out conveniently in Clerk & Lindsell on Torts (21st Edition) para 17-21, footnote 95: "…to take reasonable care of the goods concerned, the bailee bearing the burden of proof of absence of fault. See e.g. Bullen v Swan Electric Engineering Co (1907) 23 TLR 258; Houghland v R R Low (Luxury Coaches) Ltd [1962] 1 QB 694; Port Swettenham Authority v TW Wu and Co (M) Sdn Bhd [1979] AC 580…"

The canteen order: 15.Mr Thakrar complained that in June 2013 he was charged £31.81 for a canteen order which was not processed prior to his transfer from Woodhill. When he commenced the present proceedings, he said that he had never received the items concerned and that the Prison Service had retained his money.

16. When a defence was filed by the Ministry on 19th January 2015 it was stated that £31.81 was refunded to the Claimant's prisoner spends account on 14th January 2015. While, assuming that that is correct, the matter of the canteen order is now academic, save for the court having the power to award interest, no explanation whatsoever has ever been given for this taking eighteen months after his transfer from Woodhill in June 2013.

17. For reasons which will become clear, I do not propose to spend time on assessing an award of interest which would in any event be very modest, about four pounds or so.

The stereo – my findings: 18. There was an exchange between Mr Thakrar and the prison authorities at HMP Woodhill in October 2014. He wrote: "Officer McFarlane has told me that DST have said that my stereo is broken and therefore not for issue, and I must submit this application in order to receive confirmation that this is the case. Is my stereo going to be issued or is it broken?"

19. He received a reply from Officer Holley: "We received your stereo system in DST, I personally checked it on its arrival, I opened the sealed bag it was in and noticed that the hi-fi was broken. I marked it up not for issue and reception put it in stored property".

20. In answer to this, the Ministry adduce a witness statement from Joanna Trickey, Head of operations at HMP Woodhill. Her evidence is of extremely limited value because as she acknowledges, "I was not present during the packing or unpacking of the Claimant's property and I have not had access to the Claimant's property at any time. I make this statement on the basis of my knowledge of the local Prison policies…"

21. She comments that "…it is possible that the Claimant's stereo could have been damaged whilst in his possession… It is possible that if the stereo was damaged whilst in the Claimant's possession the damage was not noticed (or reported by the Claimant) prior to the stereo being placed into storage…"

22. I also have the statement of Debby Gillman, Reception Officer at HMP Woodhill, She writes that "As far as I can remember, the stereo had been well wrapped and had items around it, cushioning it. When I unpacked the Claimant's stereo whilst processing his property, I found a very small loose piece of plastic (about the size of the fingernail of my little finger) but it was not clear whether it came from the stereo or the remote control or something else. I therefore looked over the stereo with the Claimant but I could not see any obvious damage.

I informed the Claimant that the stereo would be sent to the Dedicated Search Team (DST)… The Claimant seemed to think that the stereo was broken, but I am not sure how he knew this given that we had looked over the stereo together and there was no obvious damage and we had not been able to discover where the piece of loose plastic had come from".

23. What Mr Thakrar wrote in a complaint dated September 2014 was that "upon receipt of my property yesterday, it became immediately apparent that items which had been kept in my stored property in reception at HMP Whitemoor had been damaged., The side panels of my stereo were no longer intact like it had been banged about…"

24. This is a civil claim and falls to be determined on a balance of probability, that is, what is more likely than not. I bear in mind that at all material times the Claimant has been under what the Defendant itself describes as close supervision, and I am not assisted by Ms Trickey's hypothesising as to what is "possible".

25. I also struggle with Ms Gillman's evidence. If, as she suggests, there was no obvious damage other than a trivial piece of loose plastic, it is impossible to understand the response from Officer Holley in October 2014. It is also impossible to understand the annotation on the property sheet exhibited to Ms Trickey's statement reading "Damaged – Not for Issue".

26. If, as now appears to be the Defendant's case, the stereo is undamaged or has sustained only trivial damage, it is impossible to understand why it was not released to the Claimant on his arrival at HMP Woodhill in September 2014.

27. I consider that it is more likely than not that the stereo sustained significant damage – sufficiently significant for the Defendant's officers to decline to release it to the Claimant – whilst in the Defendant's custody. It is for the Defendant as bailee to show that this occurred despite reasonable care on its part.

The Defendant does not begin to do this. This head of the claim must in principle succeed.

The stereo – my ruling on quantum: 28. The Claimant tells me that the stereo he had was a model which is now obsolete. He does not state the specific model. It would of course have been easy for the Defendant to supply this information as well, but this has not happened.

29. The Claimant seeks the cost of a Sony CMT-SBT100B which he says has a list price of £199.99, though I note that this is currently advertised on Amazon at £169.99.

30. Ms Trickey states that her accounts department informs her that a stereo costing £99.99 was ordered by the Claimant in August 2011. That seems to me to be the best evidence I actually have of the replacement cost of the stereo concerned.

31. The defence asserts that the Claimant is not entitled to recover betterment on any item of property; but it seems to me that the measure of his loss is what it would cost him to replace the damaged property, and I am not furnished with any information as to the availability and price of second hand items.

32.The appropriate compensatory award in relation to the stereo would in my judgment be £99.99.

The CDs – my findings: 33. The Claimant complains that some 21 CDs belonging to him were damaged beyond use by shampoo being squirted on them.

34. Quite understandably, the CDs were not packed in their rigid plastic cases. Given the events which occurred at HMP Frankland, it would be most imprudent for the Prison Service to issue Mr Thakrar with such items.

35. What I am told by the Claimant is that he packed the stereo and the CDs in June 2013. "When I packed them… they were in a bag within another bag containing the stereo which was sealed. When I received my property they were in a different bag without a seal which was inside another different bag containing various toiletries which was sealed..."

36. He also observes in his original complaint of September 2014 that "If [HMP] Whitemoor had have issued me my property to pack myself, this could never have happened as I would not have put liquids in a bag with CDs…"

37. Ms Gillman writes that some shampoo had leaked on to the outside of the bag containing the CDs; but the original observation that the CDs appear to have been moved from being packed with the stereo to being put in a bag with the shampoo is not addressed.

38. One thing which is conspicuously not said is that the CDs are undamaged and work satisfactorily. The furthest Ms Gillman goes is to say "I do not recall any of the Claimant's CDs being damaged".

39. The Claimant asserts that the booklets and inserts were irreparably damaged; were this not the case, it would have been straightforward for the Defendant to produce them and show that they were undamaged.

40. As is commonly the case in the Small Claims Track, the evidence is incomplete and less than satisfactory; but I am afraid that it appears to me to be more likely than not that: The CDs were packed by the Claimant along with his stereo; The CDs were moved from there into a bag which contained the shampoo; That can only have been done by the Defendant's officers;

Nobody taking reasonable care of his own property (which is the standard of care properly to be expected of the Defendant) would pack CDs and leaflets and inserts in the same place as liquids; Indeed the only apparent reason why one would re-pack CDs in that way would be a wish that they should suffer damage; The CDs were indeed damaged by the shampoo; The booklets and inserts which accompanied the CDs were damaged beyond repair by the shampoo.

The CDs – my ruling on quantum: 41. The Claimant asserts that the cost of replacing the CDs would be £247.77.

42. He states that "CDs are only able to be purchased from GEMA Records at this

prison which is not the cheapest supplier".

43. Charlotte Capes of the Government Legal Department has gone to the trouble of ascertaining what she says is the cost of replacing these items via Amazon and says that she has been informed by Ms Trickey that CDs may be purchased from this supplier. On that basis, she arrives at a total of £175.20. I am somewhat troubled by her statement that "When it is not clear which album the claimant is referring to within the list annexed to his particulars of claim I have searched for the relevant CD listed on his property card or found a similar title" – either she has found the appropriate item or she has not. But it seems that the damaged CDs could be replaced with, at the least, acceptable substitutes, at that price.

44. So the appropriate compensatory award under this head would appear to be £175.20.

The books – my findings: 45. The Claimant claims for the loss of four specific books. Their subject matter is unsurprising. They are: A Life Inside: A Prisoner's Notebook by James Erwin (sic – the author is in fact the Guardian writer and former life-sentence prisoner Erwin James); Inside: One man's experience of prison by John Hoskison; Dispatches from the Dark Side by Gareth Peirce; Live from Death Row by Mumia Abu-Jamal.

46. What is said about the these items appears from Ms Trickey's witness statement, where she suggests that "it is completely possible that… they were lost whilst in his own possession".

47. I regret to say that I find this deeply implausible. At all material times the Claimant has been under close supervision, effectively in solitary confinement. "It is not uncommon for prisoners to lose property that is in their possession or for this to be lent to other prisoners and not be returned" states Ms Trickey. Again, I fail to see how this is likely to have happened in the case of a prisoner under close supervision. And what I have to decide is what is likely, in the sense of more likely than not, rather than what is possible.

48. What appears more likely than not, I regret to say, is that the books in question have disappeared whilst in the custody of the Defendant. Again, no meaningful explanation for their disappearance is forthcoming.

The books – my ruling on quantum: 49. The situation regarding the books has of course changed since the proceedings commenced, in that the restriction on prisoners possessing or receiving books was removed in May 2015 after being struck down by the High Court. Prior to that change, I entirely fail to understand how it could be asserted by the Defendant as in paragraph 10e of the Defence that "it is denied that the Claimant is or has at any time been unable to replace any of the books, whether by any action taken by the Defendant or at all."

50. Ms Capes claims to have sourced these items on Amazon at a total cost of £20.97 as against the £60 claimed by the Claimant. I accept that Live from Death Row could be sourced at the price Ms Capes asserts, £3.47, but have been unable to repeat her results in relation to the other books.

51. In my judgment therefore the appropriate compensatory award under this head of the claim would be £53.47.

The claim for loss of use: 52. As well as complaining of the loss of his property Mr Thakrar complains of being deprived of its use. It appears plain beyond argument that this claim is in principle entitled to succeed. I test the matter in this way. I take an item of your property. You demand that I return it, but I refuse to do so. A year or more later, I choose to hand the item back to you. Can it seriously be argued that I have committed no actionable wrong which potentially sounds in damages?

53. In my view the Claimant would be entitled in principle to a modest sum for the loss of the use of the items in question in addition to the reasonable cost of replacing them. For a reason which

will appear, however, I do not propose to devote time to assessing such a sum. The Claim for aggravated or exemplary damages: 54. The Claimant in terms alleges that the Defendant Ministry by its servants "keeps acting in an oppressive, arbitrary and unconstitutional fashion."

55. The words are chosen with care. They are the words of Lord Devlin in Rookes v Barnard (No 1) [1964] UKHL 1. Lord Devlin said this: "Exemplary damages are essentially different from ordinary damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to punish and deter…."

56. Lord Devlin discussed authorities such as Wilkes v. Wood (1763) where £1,000 (worth about £130,000 today) was awarded following an unlawful search of the offices of the North Briton, and Huckle v. Money, a case arising out of the same incident where a journeyman printer earning a guinea a week who had been unlawfully detained for six hours and had been "used very civilly by treating him with beefsteaks and beer" was awarded £300. He went on: "These authorities clearly justify the use of the exemplary principle; and for my part I should not wish, even if I felt at liberty to do so, to diminish its use in this type of case where it serves a valuable purpose in restraining the arbitrary and outrageous use of executive power... …there are certain categories of cases in which an award of exemplary damages can serve a useful purpose in vindicating the strength of the law and thus affording a practical justification for admitting into the civil law a principle which ought logically to belong to the criminal. I propose to state what these two categories are; and I propose also to state three general considerations which in my opinion should always be borne in mind when awards of exemplary damages are being made… The first category is oppressive, arbitrary or unconstitutional action by the servants of the government…"

57. One of the "general considerations" to which Lord Devlin referred was that: "…a case for exemplary damages must be presented quite differently from one for compensatory damages… the fact that the two sorts of damage differ essentially does not necessarily mean that there should be two awards. In a case in which exemplary damages are appropriate, a jury should be directed that if, but only if, the sum which they have in mind to award as compensation (which may of course be a sum aggravated by the way in which the Defendant has behaved to the Plaintiff) is inadequate to punish him for his outrageous conduct, to mark their disapproval of such conduct and to deter him from repeating it, then it can award some larger sum."

58. More recent guidance on the subject was given by the Court of Appeal in Thompson & Hsu v Commissioner of Police of the Metropolis [1998]. A jury had awarded an enormous sum, over £200,000, by way of exemplary damages against the Metropolitan Police following outrageous behaviour which involved serious physical assaults. Drastically reducing the award, the Court of Appeal said among things: "Where exemplary damages are appropriate they are unlikely to be less than £5,000. Otherwise the case is probably not one which justifies an award of exemplary damages at all…"

59. That, however, was said in relation to a case of physical assault where the compensatory damages (including where appropriate aggravated damages) are in the nature of things likely to be substantial. I do not see it as excluding a more modest award of exemplary damages in a case where the compensatory damages (including if appropriate aggravated damages) do not adequately mark the court's disapproval of the defendant's conduct.

60. Is this, then, a case which justifies an award of exemplary damages?

61. I am satisfied that the damage to the CDs must have been caused by the deliberate act of one or more prison officers. The circumstances surrounding the damage to the stereo and the "disappearance" of the books are extremely suspicious, but suspicion is not proof and is not a permissible foundation for a court's decision – compare the House of Lords in re B rejecting

the idea that a "real possibility" that a child has suffered harm in the past could be a permissible basis for holding it to be likely that another child will suffer similar harm in the future.

62. So I consider only the damage to the CDs, which, as I say, I am satisfied must have been caused deliberately. Now, in human terms it would be wholly understandable that in the light of what happened to their colleagues at HMP Frankland other prison officers may have wanted to teach Mr Thakrar something of a lesson. But legally it cannot be any sort of justification.

63. Mr Thakrar complains that after his previous claim against the Ministry he was "smeared" by the then Secretary of State for Justice with the intention of discouraging him from making any claim in future. The Ministry's lawyers respond to this in indignant terms suggesting that the allegation is "scandalous and an abuse of process". A more measured response would perhaps have been to observe firstly that it is difficult to "smear" a person who is a convicted multiple murderer and secondly that the allegation is beside the point because not even Mr Thakrar suggests that what has happened to his property, then or now, took place with the personal approval of the then Minister.

64. Mr Thakrar might have been on stronger ground had he drawn attention to the apparent culture of non-compliance on the part of the Ministry. The following is a matter of record in relation to the earlier proceedings: August 2011 Prison Service Ombudsman recommends payment of compensation and an apology; 14th February 2013 Neither of those things having occurred, Mr Thakrar issues proceedings; 26th September 2013 Judgment in Mr Thakrar's favour; 10th October 2013 Judgment payable; 17th October 2013 Time for seeking permission to appeal expires, with no application being made; 19th November 2013 Bailiff's warrant issued. It is of course the case that under the Rules, a warrant cannot be issued against a Government department, the Civil Procedure Rule Committee no doubt considering it unthinkable that in the land of Magna Carta any Government department, let alone the Ministry of Justice, would simply ignore a court judgment which it did not like; 7th March 2014 Payment made. And in the course of these proceedings: 10th June 2013 Canteen order placed, paid for and not fulfilled; 14th January 2015 According to the Ministry, refund made.

65. It is not, however, necessary to go beyond the bare fact of a finding that deliberate damage has been caused to a prisoner's property by those who had the responsibility of looking after it to justify a conclusion that an award of exemplary damages is warranted. Even if I am wrong about that, a similar sized award of aggravated damages would be appropriate.

66. That award has to be modest. The finding of deliberate damage being inflicted relates to the CDs only. I may be, and indeed I am, distinctly suspicious regarding the stereo and the books, but as I repeat, suspicion is not the same thing as proof.

67. In my judgment the minimum award which will adequately mark the court's disapproval of what has happened is £1,000.

68. As pointed out by the Court of Appeal in Thompson that must be inclusive of any compensatory award, not in addition to it. That is the reason why I do not spend time on such matters as the claim for loss of use or the claim for interest.

Conclusion: 69. There will therefore be judgment for the Claimant for £1,000.

70. The judgment is being sent out to the parties rather than being handed down in their presence. Normally the time for seeking permission to appeal runs from the date that the judgment is handed down.

71. There is a limited right of appeal against a judgment on a small claim. An appeal will be allowed only if the original decision was clearly wrong, or unjust because of a serious irregularity in the original hearing. Normally the appeal will not be a rehearing but a review of the decision at the original hearing, and it is not usual for the judge hearing an appeal to hear evidence. He will normally consider the evidence that was before the judge at the original hearing.

72. A party who wishes to appeal must seek permission from the Circuit Judge in his appeal notice. The appeal notice, which is County Court Form N164, must be lodged with Oxford County Court, St Aldates, Oxford (which is the appeal centre for Milton Keynes), accompanied by a sealed copy of the order being appealed from, and must set out the grounds for the appeal. Unless the party seeking to appeal is exempt from paying court fees, there is a fee of £115.

73. It is possible that the Ministry may wish to challenge on appeal the conclusion that deliberate damage to a prisoner's property warrants an award of exemplary (or aggravated) damages. It is, I suppose, possible that the Claimant may wish to challenge my reading of Thompson and say that while exemplary damages are warranted, the award of exemplary damages is impermissibly low. Either way, the parties need to know the time within which they must seek permission to appeal. Normally an appeal must be lodged within twenty one days of the original decision, but the Circuit Judge can be asked to extend that time. Accordingly I shall state that any application for permission must be made to a Circuit Judge sitting at Oxford County Court by 4 pm on 28th January 2016.

74. For simplicity's sake I shall also stipulate that the judgment is payable by that date.

District Judge Hickman - County Court Milton Keynes - Thursday 31st December 2015

Seven G4S Staff Suspended Over Abuse Claims at Youth Institution

Alan Travis, Guardian: Seven staff at a G4S-run young offender institution have been suspended after allegations concerning the use of unnecessary force, including claims that staff punched and slapped teenage children. The private security company has confirmed that seven members of staff, including training centre assistants, team leaders and two duty operation managers, have been suspended at Medway secure training centre in Kent. Kent police have launched an investigation into the allegations, which also involve claims that staff deliberately concealed their actions and used foul language to frighten and intimidate youngsters. The Youth Justice Board (YJB) has temporarily stopped placing children at the centre, which can hold up to 76 young offenders aged 12-18.

A G4S spokesman said the employees were suspended on 30 December after written allegations were received from BBC Panorama, which had been engaged in undercover filming at Medway STC for a programme that has yet to be broadcast. The allegations, understood to date from incidents last autumn, include: • That staff punched a youngster in the ribs and that another was slapped several times on the head. • Staff are alleged to have pressed heavily on the necks of young people and unnecessarily used restraint techniques, including squeezing a teenager's windpipe so that he had difficulty breathing. • Staff used foul language to frighten and intimidate youngsters and boasted of mistreating young people, including using a fork to stab one in the leg. • Staff tried to conceal their behaviour by ensuring they were beneath the line of sight of CCTV cameras or in areas not covered by them.

Paul Cook, the managing director for G4S children's services, said: "We are treating the allegations with the utmost gravity and have taken immediate action to suspend a number of staff members who are alleged to have conducted themselves in a manner which is not in line with our standards. We take any allegations of unacceptable or inappropriate behaviour extremely seriously and are giving our full support and cooperation to the local authority designated officer for safeguarding children and the police as the investigation moves forward."

Lin Hinnigan of the YJB, which commissions places at the detention facility, said: "The

safety and wellbeing of children and young people in custody is paramount for the YJB, which is why immediate steps have been taken to safeguard those who are at Medway STC. We have increased our own monitoring activity and the presence of our independent advocacy service, delivered by Barnardo's." Kent police have confirmed they are investigating the allegations.

G4S has run Medway secure training centre since it opened in 1998. The suspension of staff at Medway follows the announcement last month of the departure of two staff at G4S's Rainsbrook secure training centre, near Rugby, after being involved in incidents of serious misconduct. The private security company lost its Rainsbrook contract in September after more than 16 years running the training centre, following an Ofsted report that disclosed that children had been subjected to degrading treatment and racist comments by staff.

Responding to the disclosures, Deborah Coles, co-director of Inquest, a charity that advises people bereaved by a death in custody and detention, said: "That it took undercover filming to reveal the mistreatment of imprisoned children points to the culpable failure of monitoring and oversight by the YJB and G4S. In any other setting this would be viewed as child abuse. What is so shocking is that the abuse of children continues 12 years after the deaths of 14-year-old Adam Rickwood and 15-year-old Gareth Myatt following the use of force and promises of fundamental change. This points to a lack of accountability and culture of impunity. It is clear these institutions are incapable of reform and must be closed down."

Prison and Probation Inspectorate

Michael Gove: I am pleased to announce that Peter Clarke has been appointed as Her Majesty's chief inspector of prisons for three years, commencing 1 February 2016, and Dame Glenys Stacey has been appointed as Her Majesty's chief inspector of probation for three years, commencing 1 March 2016. Peter Clarke is a retired senior police officer, who served in the Metropolitan Police Service for more than 30 years. He rose to the rank of assistant commissioner and also served as head of the anti-terrorist branch and national co-ordinator of terrorist investigations. In 2014 he was appointed education commissioner for Birmingham, to conduct an inquiry into the allegations concerning Birmingham schools arising from the "Trojan Horse" letter. Peter also served on the board of the Charity Commission until January 2016. Dame Glenys Stacey is currently the chief executive of Ofqual, the exams regulator in England. She is a solicitor by profession and has 17 years' experience leading public sector organisations, having previously served as CEO of Standards for England, Animal Health, the Greater Manchester Magistrates' Court Committee and the Criminal Cases Review Commission. In August 2015 she announced her intention to leave Ofqual when her current term finishes at the end of February 2016.

Kate Osamor Healthcare: Yarl's Wood IRC (Managed by G4S)

Access to healthcare is a human right that is not adequately offered to the women of Yarl's Wood. I formerly worked as a practice manager in the NHS, so I have seen for myself the importance of delivering good quality healthcare to communities, including providing access to consultation rooms where people are treated with respect and dignity. That is particularly important for detainees, who often have to undergo intimate examinations to document past torture. Across immigration detention centres, there have been six High Court findings of inhumane and degrading treatment and nine deaths in custody in the past three years. According to Her Majesty's inspectorate of prisons, the situation in Yarl's Wood has worsened since G4S took over the contract for providing healthcare in September 2014. I want first to highlight the poor standard of healthcare provided, and secondly, to draw attention to the limitations that have recently been placed on independent doctors who are trying to work in Yarl's Wood.

My demands to the Minister are as follows. First, the Government must lift the restrictions on access to Yarl's Wood for independent doctors. The restrictions were put in place in October 2015, in contravention of detention rules. Secondly, they must ensure that legal rooms are refurbished, as has been done in other detention centres, to make up the extra space that Yarl's Wood management says is necessary to accommodate independent medical visits. Thirdly, they must ensure that rule 35 is properly used. Rule 35 processes are meant to protect people from detention when they have been tortured, traumatised or are extremely vulnerable in other ways. I share the British Medical Association's view that rule 35 reports should be written only by clinicians with relevant medical experience or appropriate training in identifying, documenting and reporting the physical and psychological signs of torture. Lastly, the Government must end the detention of pregnant women and those who are detained under the Mental Health Act 1983.

Early Day Motion 930: Freedom Of Information Act 2000

This House believes that the Freedom of Information (FOI) Act 2000 exists to, amongst other things, help hold the Government account and improve the public's understanding of what it does; notes that a 2012 Justice Committee inquiry applauded the Act as significant enhancement of our democracy and that, in 2010, the Prime Minister expressed the intention that the Government should become the most open and transparent in the world; further notes that the existing FOI framework has led to the exposure of significant wrongdoings and information including the MPs' expenses scandal, how care home residents suffer dehydration-related deaths, police use of tasers on children, the degrading treatment of detained migrants, and how many NHS contracts are awarded to private companies; applauds the way in which the FOI Act has been used by newspapers and local and national journalists to shine a light on the workings of government and public authorities; is concerned at reports that the Government wants to water down FOI legislation with measures making it easier for authorities to refuse requests on cost grounds, introducing fees for requests and new restrictions on the release of information relating to internal Government discussions; considers that strengthening the Ministerial veto will not improve the FOI Act but will instead encourage secrecy and undermine accountability; and calls on the Government to drop its plans to amend the FOI Act on the basis that there is no value in fixing something that is not broken.

Sponsor: Lucas, Caroline / House of Commons: 07.01.2016

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.