ulation combined with a rise in the illegal trafficking of New Psychoactive drugs was fuelling gang-related violence. The prison was not out of control and action was being taken in response to these threats - but I accept the situation at the time wasn't acceptable. Since the inspection we have worked with the police to provide extra support to the prison to tackle drug supply and gang activity - including moving perpetrators to more secure gaols as necessary. I visited Guys Marsh myself last month. It is now stable, operating safely, and providing a consistent and decent regime for prisoners. Staff have responded to the concerns with professionalism and the new Governor supported by his Regional Manager has a robust plan in place to achieve the sustained improvement required." Inspectors made 102 recommendations *Report on an unannounced inspection of HMP Guys Marsh 10 – 21 November 2014*

Unannounced Inspection of HMP & YOI Styal

HMP Styal serves courts in the north-west of England and north Wales. It holds a complicated mix of women including those remanded by the courts, women serving both short and long sentences and those with indeterminate sentences. Like other women's local prisons, the population is further complicated by high levels of self-harm, physical and mental health issues and drug and alcohol abuse. The physical layout of the prison was unusual. Waite wing was a large, traditionally designed cellular unit for those women deemed unsuitable for the houses. The main site enjoyed a very open regime where women lived communally in houses and had a degree of autonomy.

However, inspectors were concerned to find that: - as reported elsewhere, many women had long delays in court cells while waiting for transfer to the prison, and shared escort vehicles with male prisoners; - some women with severe mental health issues and related challenging behaviour were held in segregation, and more thought needed to be given to how these women should be cared for; and - queuing for medications often happened outside with no cover, even in very inclement weather.

Nick Hardwick said: “Overall, Styal was a very good prison where outcomes for the women held were strong in all four of our healthy prison tests. We were particularly impressed with the efforts made to give women more independence and responsibility, and although this was a problem to some, it was aimed at better equipping women for life back in the community. Relationships were strong and these, alongside very good activities and resettlement work, supported a positive focus on rehabilitation. Challenges remain but this is a good inspection of a successful institution.”

Defendants Freed After 18 Years in Prison

Derrick Wheatt, Laurese Glover and Eugene Johnson had their convictions for the 1995 murder of Clifton Hudson Jr. thrown out after nearly a decade of legal advocacy from the Ohio Innocence Project (OIP).All three have been released from prison, pending a retrial.

Hostages: 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 Romero Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Thomas Petch, 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, Ihsan Ulhaque, Richard Roy Allan, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Ray Gilbert, Ishtiaq Ahmed.

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MOJUK: Newsletter ‘Inside Out’ No 523 (02/04/2015) - Cost £1

Younis Masih - Conviction for Murder Quashed

[A man who bludgeoned his friend with a brass statuette before throwing him from an eighth-floor balcony has been jailed for life.BBC News, 23/06/2014]

Younis Masih Appellant - and - The Queen Respondent

1. This is an appeal against conviction brought with the leave of the single judge. It follows the appellant's conviction for murder on 23 June 2014 before His Honour Judge Griffith Jones at Warwick Crown Court, sitting at Leamington Spa. The appellant was sentenced to life imprisonment. The minimum term set under section 269(2) of the Criminal Justice Act 2003 was 15 years less 198 days spent on remand in custody before sentence.

2. There is a single ground of appeal, namely that the trial judge should have acceded at the close of the evidence for the prosecution to a submission of no case to answer.

3. *(The Essential Question):* The prosecution case was based upon circumstantial evidence. There is no dispute between the appellant and the respondent as to the correct approach in law to a submission of no case to answer when all the critical evidence is indirect and inferential. The ultimate question for the trial judge is: - Could a reasonable jury, properly directed, conclude so that it is sure that the defendant is guilty? - It is agreed that in a circumstantial case it is a necessary step in the analysis of the evidence and its effect to ask: - Could a reasonable jury, properly directed, exclude all realistic possibilities consistent with the defendant's innocence?

Matters of assessment and weight of the evidence are for the jury and not for the judge. Since the judge is concerned with the sufficiency of evidence and not with the ultimate decision the question is not whether all juries or any particular jury or the judge would draw the inference of guilt from the evidence adduced but whether a reasonable jury could draw the inference of guilt. These propositions are derived without contention from the decisions of this court in Galbraith [1981] 1 WLR 1039, Jabber [2006] EWCA Crim 2694 (approved by the Privy Council in Goring [2008] UKPC 56 at paragraph 22), Hedgcock, Dyer and Mayers [2007] EWCA Crim 3486, Darnley [2012] EWCA Crim 1148 and G and F [2012] EWCA Crim 1756.

19. *(The Summing Up):* The appellant elected not to give evidence but to rely on the explanations he had given in interview with the police. No complaint is made about the summing up. HH Judge Griffith Jones reminded the jury of the points made by Mr Atkins QC to the effect that other evidence in the case appeared to be consistent with the account given by the appellant in interview. The judge summarised the prosecution case as follows: "The prosecution say to you, so far as the phone is concerned, you be careful with that, its last usage of it is at a time when we do not even know whether it was brought to the scene by the deceased. You are entitled to consider the circumstantial evidence here. You look at what happened before, look at what happens afterwards. Why clear out? If this was just an accident which he wasn't responsible for, why does he behave in the way he does afterwards in trying to clear out and get away from the scene and walk past someone who...he's been associating with...walk past...assuming that he was going to be all right after a fall like that. The prosecution say all this is nonsense. If you look at what happened before, what happened afterwards, the clear inference is that that man went over the balcony by reason of what the defendant did."

We do not underestimate the probable effect on the minds of the jury of the judge's perfectly proper invitation to consider drawing adverse inferences from the appellant's election not to give evidence

20. *(The Inferences Invited):* Mr Grieves-Smith submits that the account given by the appellant in interview could properly have been rejected by the following line of reasoning: The appellant had, after attacking Mr Mazorodze, attempted to eject him not just from his flat but also from the building. Mr Barrow had heard nothing to suggest that Mr Mazorodze had attempted to regain entry to Flat 44. The design of the building, which the jury saw for themselves at a view, made it highly improbable that even a man affected by drink and drugs would attempt to scale it from the balcony. It was unlikely that the appellant knew of the fall only because he heard a bang through his closed upstairs window. Knowing that his friend had fallen 75 feet to the pavement below the appellant set about cleaning the flat and the balcony of bloodstains. He also threw his trainer after him. He then left Paradise House passing within feet of Mr Mazorodze's prostrate body without enquiry and shortly afterwards disposed of his own trainers. The jury could safely conclude that the appellant's later actions were designed to avoid detection of the fact that he had pushed, manhandled or thrown Mr Mazorodze off the balcony to his death.

21. *(Discussion):* The reasonably possible alternative to deliberate, unlawful action by the appellant was accident. It was this possibility that the circumstantial evidence was required to exclude before the appellant could be convicted of murder. The issue for the judge was whether on the evidence a reasonable jury could safely exclude the possibility of accident and draw the inference of guilt so that they were sure.

22. For present purposes it must be assumed in favour of the prosecution's case that the third man and the use of the deceased's telephone were irrelevant distractions. It must also be assumed that the appellant lied in his interview under caution about the degree of violence to which he had subjected his victim inside his flat. Finally, we shall assume that there were other features of the appellant's account in interview that the jury had cause to doubt, including that an attempt to climb the exterior of the building was palpably dangerous. Nonetheless, the question for the judge was whether the jury could safely exclude an accidental fall whether it took place precisely as the appellant claimed or not.

23. We are troubled by the following features of the evidence: First, Mr Mazorodze had resisted the appellant's attempts to remove him from the flat and into the lift. He did return to the vicinity of the appellant's flat. The only purpose of doing so could have been to regain entry or to confront the appellant, perhaps to retrieve his clothing or other property. Second, no-one saw or heard the appellant on the walkway outside the flat during the critical minutes after the lift incident. Had the appellant been outside when Mr Mazorodze was lying on the ground or standing on the walkway looking out over the balcony rail, Mr Barrow could hardly have missed him. The walkway was just over a metre wide and there was no obvious hiding place. Third, there was blood at a high level on the left hand pillar where you would expect to find it if Mr Mazorodze had needed leverage to climb onto the balcony rail or to hold his balance while standing on it. There may have been other possible explanations but none could unequivocally exclude the appellant's account. Fourth, Mr Mazorodze had suffered a head injury and had consumed a quantity of alcohol and narcotic drugs. It could not be assumed that he would be responding rationally to his ejection from the flat. Fifth, there was no evidence adduced that might have cast doubt on the appellant's claim to have heard Mr Mazorodze's fall. Unlike Mr Barrow and Ms Parnell, if his claim was true, the appellant had seen Mr Mazorodze in a precarious stance on the balcony rail and was anticipating the very acci-

In his letter to Khan, Selous acknowledged there had been a rise “in deployments of the National Tactical Response Group, which provides specialist national resources to assist both public and private sector establishments in safely managing and resolving incidents in prisons, in 2013 and 2014”. Selous said: “There has been no rise in the number of serious incidents being attended, and last year the overwhelming majority of callouts were for minor incidents – including occasions where they attended as a precautionary measure and the situation was resolved by prison staff. Violence in our prisons is totally unacceptable and the rate of assaults taking place now is lower than it was in 2008.” Khan said there was a need for a “truly independent” prison inspection regime to ensure conditions in the country’s jails were subject to adequate supervision. Last year the chief inspector of prisons, Nick Hardwick,said that he would not be reapplying for his job after the justice secretary, Chris Grayling, revealed his contract would not be renewed when it expires in July. *Jamie Doward, Guardian, 28/03/15*

HMP Guys Marsh - A Prison In Crisis

Managers and staff had all but lost control of HMP Guys Marsh. The inspection of HMP Guys Marsh was brought forward because of concerning intelligence. The prison faced challenges common to many prisons. The governor said the prison was short-staffed and that the arrival of staff from neighbouring prisons which had closed in 2013 had unsettled the culture. There was a relatively new management team and the prison was overcrowded. The prison drew much of its population from Bristol and Gloucester. The governor believed that the reorganisation of prisons in the region meant that Guys Marsh was holding a significant number of men who were involved in rival gangs and serious organised crime without sufficient flexibility to split them up by dispersing them elsewhere.

Inspectors were concerned to find that: - levels of violence in the prison were very high and many prisoners were frightened; - the violence was driven by the supply of drugs, particularly synthetic cannabinoids such as Spice, which led to debts which were enforced by violence or threats of violence to prisoners or their family outside the prison; - there had been a number of medical emergencies associated with the consumption of Spice; - gangs operated openly in the prison, although security staff and managers were well focused on these challenges and worked hard to address them; - there were frequent 'incidents at height' where men climbed onto dangerously high structures in the belief that they would then be taken to the segregation unit where they would be safe; - some prisoners self-isolated on the wings, hiding in their cells in squalid conditions with abuse shouted through the door;- the high levels of bullying and debt were linked to high levels of self-harm, although care for men at risk was generally good; - training provision had deteriorated sharply since the last inspection and the overall effectiveness of learning and skills work was inadequate; - despite the fact that Guys Marsh was a training prison, only 16% of prisoners were on education or training courses; - the overall management of resettlement was disjointed and inadequate; and - offender management was exceptionally poor and arrangements for protecting the public from high-risk prisoners after release were weak.

Nick Hardwick said: “At a time when we are seeing some overall improvement in the system, HMP Guys Marsh stands out as an establishment of great concern. Regional managers began to take decisive action during the inspection but real risks remain and turning the prison round will take sustained support from the Prison Service nationally. The failures of the prison at the time of the inspection posed unacceptable risks to the public, staff and prisoners and this cannot be allowed to continue.”

Michael Spurr, Chief Executive Officer of the National Offender Management Service, said: "Inspectors visited Guys Marsh during a particularly difficult period. Changes in the pop-

Kercher's mother, Arline, said she was "surprised and shocked" at the ruling and added it was too early to know what the family would do next. They had previously expressed confidence in the Italian justice system.Before Friday's verdict it had been widely anticipated that the court would order a retrial, even if it overturned the previous convictions. The decision by the five-judge panel to clear the pair definitively ends the long-running saga. Speaking outside the courtroom on Friday, the family's lawyer, Francesco Maresca, said: "The judges said there is a lack of proof and whoever acted with [Rudi] Guede [the only person found guilty of the murder] has not been found." Guede, from the Ivory Coast, is almost halfway through a 16-year prison sentence after his trial was fast-tracked in 2008. *Mark Townsend & Daniel Boffey, Guardian*

Prison Unrest latest Available Data

Hostage incidents and disturbances across the country's jails are rising sharply, intensifying fears that Britain's prisons are at crisis point. The mounting unrest has seen a corresponding increase in the deployment of specialist teams sent in to the prison estate to quell riots and protests. Figures cited in a letter from prisons minister Andrew Selous to shadow justice secretary, Sadiq Khan, reveal that in 2010, the year the coalition took power, there were 16 hostage incidents in which a prisoner held either another prisoner or a prison officer against their will. For the year June 2013 to May 2014, the most up-to-date figures cited in the letter, the number had increased to 73. Contrasting the two periods shows there was also a large rise in the number of "concerted indiscipline incidents", from 104 in 2010 to 154 between June 2013 and May 2014. The figures also show there has been a significant rise in the number of "incidents at height" – disturbances on rooftops or in the protective netting erected on wings to stop prisoners falling. They show that there were 136 incidents in March 2014, the latest month available for analysis, compared with 80 in the same month the previous year.

Callouts of the National Tactical Response Group, the prison service's anti-riot squad, have almost doubled between 2010 and the end of 2014. In 2010 the group was sent to prisons on 118 occasions. Last year this had increased to 223, an 89% rise in four years. The group was called out 15 times to Nottingham last year, 11 times to Ranby in Nottinghamshire and eight times to both Lindholme in South Yorkshire and Hewell in Worcestershire.

"This massive surge in the number of hostage incidents and incidents on high is further proof that this Tory-led government are leaving prisons in a worse state than they found them," Khan said. "Our jails are more violent than they were in 2010, with prison staff in perpetual fear of assault. Suicides and self-harm are up and prisoners are spending more and more time idling in their cells or on the landing instead of on training courses, education or working. This is not the rehabilitation revolution that was promised. Instead we have a full-blown prisons crisis. As a result, offenders are being released from prison unreformed, meaning too many reoffend, creating more victims of crime and a revolving door in our prisons."

Frances Crook, chief executive of the Howard League for Penal Reform, said many of the disturbances were triggered by prisoners' disquiet over seemingly little things, such as shortened visiting hours and cuts in the prison food budget. "These figures indicate the sheer desperation felt by prisoners, some of whom spend weeks locked up in their cells, hardly ever getting out," Crook said. Last week Lord Woolf, the former lord chief justice who led the investigation into Britain's biggest prison riot, at Strangeways in 1990, called for a new inquiry into the state of the country's prisons. Woolf said conditions were now as bad as they were in 1990 and warned Britain was again "heading for a crisis".

dent that befell him. Sixth, while the behaviour of the appellant after the fall was consistent with the actions of a man who was guilty of murder it was also consistent with a man who knew he had committed a serious offence of violence and might well be blamed for his victim's death. Either way, he was engaged in a hopeless quest for self-preservation. There was nothing about the evidence that tended to exclude the motive the appellant gave in preference to that suggested by the prosecution.

24.In our judgment, it is the absence of the appellant from the walkway once, which was not disputed, he had regained his flat that created a lacuna in the evidence that inference could not fill. The jury was being invited to infer that, at the very moment Mr Barrow turned away from his window to speak to Ms Parnell, the appellant had emerged from Flat 44 and propelled his victim over the balcony. That was, of course, a theoretical possibility but as a conclusion we consider that it was no more than speculation that filled a critical gap in the evidence.

25. *(Conclusion):* In our opinion this case should have been withdrawn from the jury. The jury could not safely exclude the possibility that Mr Mazorodze's death was an accident. For that reason the conviction was unsafe. The appeal is allowed and the conviction is quashed.

http://www.bailii.org/ew/cases/EWCA/Crim/2015/477.html

Why is the Crux of the Incedal Case a Secret? You're Not Allowed to Know

Ian Cobain, Guardian: Erol Incedal twice stood trial on terrorism charges. Last year he was convicted of possessing a bomb-making manual, but the jury failed to reach a verdict on the more serious charge of plotting a terrorist attack. After a four-week retrial, he was acquitted of that charge on Thursday 26th March 2015. On each occasion, the evidence was carefully presented in one of three sessions. Parts of the case were in open court, with the press and the public free to come and go; other parts were held behind locked doors, before a jury whose members were warned that they could go to jail if they ever divulged what they had heard; and parts were held in intermediate sessions, in the presence of the jury and a small group of journalists who are prohibited – at least for the time being – from reporting what they learned. As a consequence, members of the public have no idea what lay at the heart of the prosecution of Incedal; nor the evidence that resulted in the jury clearing him of plotting terrorist attacks.

The media is not allowed to explain why a man who was found guilty of possessing a bomb-making manual was not convicted of preparing acts of terrorism. Incedal claimed to have a "reasonable excuse" for carrying the document around with him. What was that excuse? By law, and on pain of prosecution, that small group of journalists who know the answer cannot disclose it. Nor, currently, can the public be told why all these matters are being concealed from them, or by whom. While the jury heard all the evidence, the crux of the case of R v Erol Incedal remains an official secret as far as the wider public is concerned.

These unprecedented arrangements were imposed on the trial judge, Sir Andrew Nicol, by the court of appeal. Nicol had originally acceded to a demand from the prosecution that the entire trial be heard in secret, and that Incedal, and the man arrested with him, Mounir Rarmoul-Bouhadjar, be identified only as AB and CD. The Crown Prosecution Service had maintained there was a serious possibility that the prosecution could not go ahead unless these measures were in place. The reasons for that claim cannot currently be reported. However, the appeal court's judgment, a public document, noted that national security was "the raison d'etre" of MI5 and MI6, and that "from time to time, tensions between the open justice principle and national security will be inevitable".

So unusual was the proposed departure from the common law principle of open justice that it

was denounced by MPs and civil rights group Liberty as dangerous and draconian; lawyers representing a dozen media organisations, led by the Guardian, mounted a challenge. This led to the court of appeal ruling in June last year that that while "the core of the case must be in camera", a number of journalists selected by the media organisations behind that challenge should be "invited to attend the bulk of the trial". After hearing further submissions from crown prosecutors, thre defence and lawyers representing the media, Nicol will now review the secret evidence and decide what may be made public.

Throughout each of those intermediate sessions, the small number of journalists allowed into court nine at the Old Bailey were expected to surrender their mobile phones, which were locked in soundproof boxes. At the end of each session, the journalists were obliged to hand their notebooks to a police officer, to be locked in a safe at the back of the court. Police officers watched closely to ensure the journalists did not attempt to remove any notes from the court. There was a comic moment when a detective accused the man from the Express of surreptitiously making a second set of notes and attempting to smuggle them out. The journalist dutifully handed over the crossword he had been completing during lulls in the proceedings.

After the jury retired to consider its verdict, the journalists were told they would not be permitted to remove their notebooks from court unless certain words were "completely excised" from their pages. The identity of the people responsible for making this demand cannot currently be reported. After Incedal's acquittal, the police officers in court told the reporters that they may never see their notebooks again. Whenever the court went into a fully secret session, one of the police officers would lock the doors from the inside. Nicol told the jury that the evidence heard during these sessions would never be made public. Although the journalists were not threatened with imprisonment, the implication was clear: if they breached the reporting restrictions, they would be held to be in contempt of court, and could face prosecution. Many of the journalists found the process objectionable. Sean O'Neill, crime editor of the Times, described it as "a deeply unhealthy process", adding: "In my view there was very little in those sessions that should have been kept secret but an awful lot that should have been exposed and scrutinised."

The restrictions did not end at the exit from court nine. The reporters were warned that if they wished to take legal advice about the case, and the secret evidence that they had heard, they could do so only in "a confidential meeting". This was defined in a court order handed down by Nicol as "a meeting that takes place in a room in which the door is closed and it is clear that no one can overhear from outside the room what is being said during the meeting". The order further stipulated that "mobile phones must be switched off and any telephone landlines must not be connected [ie the line open] to any internal or external other telephone. No part of the meeting can be recorded and no notes made." A proposal that the order should also decree that the door to the meeting room should be locked, and that there should be no CCTV in the vicinity, was dropped. If Nicol does lift the reporting restrictions on significant parts of the secret evidence, parliament and the public will be able to judge for themselves whether the open justice principle was torn up in the case of R v Erol Incedal to protect national security.

It may be that there will then be questions for Theresa May, the Home Secretary, and William Hague, the former Foreign Secretary, each of whom signed ministerial certificates supporting the application for all-embracing secrecy. There may also be questions asked of the crown prosecutors who had insisted on the need for complete secrecy, and of those instructing them, on whose behalf this demand was made. As a consequence of the reporting restrictions, and the way in which the evidence was carefully divided between the three parts of the trial, the identity of those instructing the prosecution is also currently hidden from view.

Convicted Murderers Become First Gay Couple to Marry in Prison

Mikhail Gallatinov, 40, and Marc Goodwin, 31, held a modest service in the top security jail's visitor centre, the Mirror reported. It is believed to be the first same-sex marriage or civil partnership to have taken place in a prison since the equal marriage act was introduced last year. Gallatinov is a convicted paedophile who was sentenced in 1997 for murdering a man he had met through a gay chat line. At his trial, Judge Rhys Davies QC said it had been a "cold-blooded, well-planned, callous, chilling and apparently motiveless killing". Goodwin was jailed 10 years later for a homophobic killing on Blackpool seafront that was described by police as "a savage, senseless homophobic attack that resulted in the death of a harmless man". Both men are serving life sentences at Full Sutton prison in East Yorkshire.

At their wedding ceremony, the pair exchanged personal vows they had written in front of a congregation which included relatives, a few fellow prisoners and four prison officers who had also been invited. A source who visits Full Sutton regularly previously told the Guardian that the relationship had been well known inside the jail. "These two guys were on separate wings at Full Sutton and used to meet – and have sex – in the prison library. Then they managed to get on the same wing and had sex regularly," she said. A Prison Service spokesman confirmed the wedding had come at no cost to the taxpayer. "We are very clear that if prisoners do get married, the taxpayer does not foot the bill for the ceremony and they are certainly not allowed to share a cell," he said. Under the terms of the Marriage Act 1983, all prisoners can exercise their right to marry under civil law in the place of their detention. Gay inmates are now legally allowed to marry in jail following the introduction of the Civil Partnerships Act 2004 and the Marriage (Same Sex Couples) Act last year.

Patrick Lumumba: Amanda Knox is Free Because She's Rich & American

The Congolese bar owner falsely accused of killing Meredith Kercher has said the decision to quash the conviction of Amanda Knox was a triumph for being "American and rich" rather than for justice. Patrick Lumumba, 42, said the surprise ruling by Italy's supreme court to annul the murder convictions of Knox and her former boyfriend, Raffaele Sollecito, was motivated by political and diplomatic reasons. He told the Observer: "This is not good for justice, I think it shows the power available for rich people – she's American and rich. For a country like Italy this is not good. I think there were diplomatic problems with the US and it makes things difficult with the US so they let her free. Knox and Sollecito have always maintained their innocence and Friday's decision by the court of cassation marks the end of a lengthy legal battle.

Lumumba was arrested in November 2007 and spent two weeks behind bars after Knox told Italian police he had killed 21-year-old Kercher, from Coulsdon, Surrey. Kercher's throat was slashed and she had been sexually assaulted while she was on an Erasmus year in the medieval hill town of Perugia. At the time Knox, now 27, told investigators that she had "covered her ears as he [Lumumba] killed" Kercher in the bedroom of the flat the two women shared. Knox's claim – which Italian prosecutors alleged was intended to direct suspicion away from herself – was later proved to be false and Knox was given a three-year sentence for it. She has since admitted to struggling with guilt over the false accusation.

But Lumumba, who said his life and business were ruined by the allegation, said: "Amanda lied to me. I am feeling very bad [about the acquittal]." Speaking from Krakow in Poland, where he now lives with his wife after losing his bar in Perugia and struggling to find a job in the wake of the false murder accusation, Lumumba said that despite the final ruling, he still believed Knox held the answer to the case. "What Amanda did I don't know, but I think she knows why Meredith died."

Complexity of Immigration Law Faces Judicial Criticism *Gherson Immigration*

When publishing a landmark report on overhauling the civil justice system in the United Kingdom Lord Woolf stated that 'in order to ensure access to justice' the system should, amongst other things, 'be understandable to those who use it'. There has been growing concern that the manner and speed in which Immigration law has been changed has put it beyond the comprehension of many of those who are governed by it; not just applicants who must comply with it but members of the judiciary who are adjudicating upon it.

In December 2012 Lord Lester of Herne Hill a renowned Barrister sitting in the House of Lords stated that "My wife is an immigration and asylum judge and... she and her colleagues... find themselves in a quite terrible situation in trying to understand the Kafkaesque material that flows out of the Home Office." He described the law governing immigration as "a network of regulations that it is quite impossible for ordinary men and women, including Members of this House, to understand". Lord Taylor acknowledged in response that "no area is more complex than the whole business of the Immigration Rules and the procedures surrounding them".

Since these calls for reform, the parliamentary criticism has been echoed by the judiciary; in Pokhriyal v Secretary of State for the Home Department [2013] EWCA Civ 1568 Jackson L.J. stated that the "provisions have now achieved a degree of complexity which even the Byzantine Emperors would have envied". In the recent case of Singh v Secretary of State for the Home Department [2015] EWCA Civ 74 Underhill L.J. explained that there was a problem with the complexity of the rules, and they were not readily "understandable by ordinary lawyers and other advisers". The drafting was described as "rebarbative".

Unfortunately, this criticism appears to have fallen on deaf ears. The most recent Statement of Changes released on 26 February 2015 stretches to 243 pages. The President of ILPA, Alison Harvey, stated that, Immigration Act 2014 (Commencement No. 4, Transitional and Saving Provisions and Amendment) Order 2015 (SI 2015/371 (C.18)), which was released on the same date "could not have been more confusingly drafted". Despite calls from all quarters to consolidate and simplify the legislation, the Secretary of State is making the regime of immigration control increasingly inaccessible to those using or reforming it.

Compulsory Confinement Without Diagnosis Not Unjustified

In its decision in the case of Constancia v. the Netherlands (application no. 73560/12) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final. The case concerned Mr Constancia's complaint about being detained as a person of "unsound mind" in the absence of a precise diagnosis of his mental state. On 1 December 2006 Mr Constancia entered a primary school in Hoogerheide and, finding one of the pupils alone, cut his neck and throat several times and left him dead.Mr Constancia, was convicted of the violent manslaughter of an eight-year old boy, but refused to be examined, making an assessment of his mental condition impossible. The Court found in particular that Mr Constancia's trial court, in the face of his complete refusal to cooperate, had been entitled to conclude from the information obtained – notably via existing psychiatric reports drawn up on previous occasions, the opinion of a psychologist and a psychiatrist on Mr Constancia's complete case file, including the audio and audio-visual recordings of his interrogations, as well as the trial court's own investigation of the case file – that he was suffering from a genuine mental disorder which was of a kind or degree warranting compulsory confinement. This is the first case in which the Court allowed other existing information to be substituted for a medical examination of the applicant's mental state.

When Anonymous Hearsay Can Get You Deported *Frances Webber, IRR News*

Operation Nexus allows for deportation on the basis of fundamentally unreliable and untestable material. Foreign nationals convicted of serious crime can reasonably expect to be deported. But what of those acquitted of crime, or never charged? Or victims of crime? Human rights lawyers are becoming increasingly concerned about the extensive use of police intelligence in deportation appeals, and the potential it brings for miscarriages of justice.

The use of intelligence material, rather than criminal convictions, to justify deportation has become routine in cases involving national security. A frequent justification is the inability of the security services to present intercept evidence (on which they rely) to the criminal courts. Until a couple of years ago, though, deportation on grounds of (non-terrorist-related) criminality invariably depended on conviction by a jury following a criminal trial. Two years ago, the first high-profile case of 'deportation on suspicion' saw an alleged but unconvicted multiple rapist deported on the basis of police files. We warned then of the consequences of widespread adoption of this approach – and as the practice of using police intelligence in deportation cases has become increasingly routine, concerns have grown.

The aim of Operation Nexus, the police-Home Office partnership targeting foreign offenders, was to 'maximise intelligence, information and world wide links to improve how we deal with and respond to foreign nationals breaking the law'. According to the Home Office, since its 2012 launch with the Met police, Nexus-type collaboration between police and immigration enforcement has been extended to the West Midlands, Greater Manchester, Scotland, Merseyside, Cleveland, Kent, West Yorkshire, Cheshire, Wales (with Avon and Somerset, East Midlands and Lancashire to follow in spring 2015). Immigration enforcement staff stationed in police custody suites and in remote 'command and control units' (CCUs) check the nationality and immigration status of all those arrested, and the two agencies increasingly work together. Police refer to the Home Office any foreign suspect meeting their definition of 'high harm' (although, as the Independent Chief Inspector of Borders and Immigration complained in a 2014 report, there is no common definition of the phrase),[2] and increasingly, the agencies bypass prosecution and go straight for deportation, relying on police intelligence – saving the time and the expense of criminal trials.

Anonymous Hearsay Rules: According to the Met, police files include 'details of relevant arrests despite no charges being brought, where they have been accused of breaking the law, cases where they have been victims or witnesses to violent crimes but refused to cooperate with police and an important list of gang or violent offenders associations'. What this means is that in Nexus appeals, someone facing deportation may be confronted with several lever-arch files full of bits of gossip, irrelevant scraps of information and unsubstantiated allegations. The material often includes records of stop and searches, even where nothing was found. It may include records of arrests where no further action was taken, or of charges brought and subsequently withdrawn, or of trials resulting in acquittals. Or it might be 'I saw X standing with Y, known to be a member of Z gang', or 'X was in a group of young men congregating, making noise and intimidating residents of the flats'. In some cases, it is the fact that the person was the victim of violence which provokes an allegation of gang membership.

Reliance on such material could be said to license police racism. In the 1970s, large numbers of black youths were hauled before magistrates, and found themselves with a criminal conviction, on the word of two police officers that they were 'loitering with intent to commit an arrestable offence' (sus), The sus law was abolished in 1981 following a long community campaign, but police racism has not gone away – evidenced by the continuing tally of deaths

resulting from stereotyped beliefs in BME violence and criminality,[3] and the continuing disproportion in stop and search figures. The use of stop and search, arrest and withdrawn charges as indicators of criminality is an egregious example of self-fulfilling discriminatory police action. In this situation, the ability of the Home Office to use these indicators to bypass the machinery, and the safeguards, of the criminal courts altogether, with potentially far more serious consequences, is a matter of acute concern.

Safeguards Bypassed: A briefing paper by solicitors Luqmani Thompson on deportation hearings relying on Nexus intelligence, published in September 2014, sets out the safeguards of a criminal trial, including the jury, who must be satisfied of guilt 'beyond reasonable doubt', the right to cross-examine witnesses, the right to publicly-funded representation and strict rules governing the use of hearsay evidence.

As the briefing paper points out, none of these safeguards exists in deportation appeals based on Nexus material. There is no jury – just immigration judges, familiar with and often sympathetic to Home Office priorities and prejudices. The police need only prove that it is 'more likely than not' that the person did what is alleged in the file. The evidence is usually anonymous, making it virtually impossible to challenge; officers refuse to identify the sources of allegations of criminal activity, on the ground that it is necessary to protect those sources. It is always hearsay. Hearsay evidence, strictly controlled in other judicial arenas, has always been admitted in immigration and asylum cases, as a practical necessity, enabling asylum seekers (for example) to speak about threats or information passed on by others. But the use of anonymous hearsay allegations of involvement in criminal activity is of a different order. Finally, there is generally no legal aid for deportation appeals, despite the obvious forensic difficulties for non-lawyers. It is not surprising, then, that according to the Home Office only ten appeals have succeeded in total.

The lack of safeguards in deportation appeals is compounded by the fact that since July 2014, many appellants have been deported before their appeal, and so have been unable to attend. From that date, deportation appeals only suspend deportation if the appellant can demonstrate a real risk of serious irreversible harm. In practice, for those without the means to instruct solicitors, this provision of the Immigration Act 2014 denies them access to the tribunal. The situation has got even worse since then. From October 2014 someone being deported has no deportation appeal at all, either inside or outside the UK, unless there is an asylum or human rights claim (ie, a claimed risk of persecution, torture or other serious human rights violation). Although appellants in these cases ought to get access to legal aid for representation. In cases where there is no such claim, there is simply no recourse against deportation on the basis of Nexus intelligence.

Courts Uphold Nexus Approach: One of the first cases in which the use of Nexus police files was challenged involved a 25-year-old Sierra Leonean who had been in the UK since he was 7-years-old.[5] He had a number of minor criminal convictions, but police intelligence provided in evidence on his appeal persuaded the tribunal that his degree of criminality was far higher – that he was a part of a violent gang whose members were engaged in serious crime including murder, robberies and the sale of Class A drugs, making him a 'clear and present danger' to the community. arrestDismissing his appeal, the Upper Tribunal ruled that criminal convictions were not a prerequisite for deportation to be 'conducive to the public good', and deportation could be precautionary or preventative. Information about someone's actual or potential activities, and activities falling short of criminal activities, was relevant and should be admitted, the judges said, and the fact that it might be difficult to challenge because of its nature was not a reason to exclude it. Deportation decisions could be based on a reasonable likelihood that the person would be a future danger to the com-

assertions were completely wrong. She was given an opportunity to retract, but she declined to do so. NOMS has to bear in mind the welfare of prisoners, the families who would be concerned about such misinformation, and the morale of prison officers.

Lord Beecham (Lab): My Lords, last Thursday, the process of appointing a successor to the highly regarded Chief Inspector of Prisons, Nick Hardwick, ground to a halt when Mr Grayling refused to consider the candidate put forward by the appointment panel. Moreover, on the same day the Justice Committee objected to his appointment of two so-called independent members of the selection panel—of four—who just happened to be Conservative Party activists. One of them is an adviser to that paragon of political impartiality, Grant Shapps. Today, the noble Lord, Lord Ramsbotham, has raised serious and legitimate concerns about a ban on visits to prisons by Frances Crook of the Howard League for Penal Reform. Incidentally, I understand that G4S, which runs the prisons, had no objection to her going to them. What reassurance can the Minister provide that during what remains of the Lord Chancellor's tenure of office, Mr Grayling will desist from pursuing his career as a serial offender against the interests of justice?

Lord Faulks: That is a large question, and perhaps I can answer some of the many sub-questions in it. The Secretary of State had nothing to do with the decision taken by NOMS, but I of course, as a Minister, take responsibility for that decision, which was an operational one. As for the appointment process, this is under way. The noble Lord seems to be very well informed about the process, and an announcement will be made in due course. There is no question that Nick Hardwick has not been allowed to act independently. The Government's preference is that all public posts are re-competed at the end of the fixed term, with that incumbent free to apply.

Lord Dholakia (LD): My Lords, does my noble friend agree that the conditions in our prisons will impact on control and discipline but are also a matter of serious concern for the families of those who are detained in some of our institutions? Has the noble Lord studied the recent lecture given by the noble and learned Lord, Lord Woolf, in which he talked about prison conditions when he undertook a review of Strangeways prison some years ago? He mentioned that many of his recommendations are still to be implemented and also suggested that a further inquiry ought to be undertaken. Does my noble friend agree with that suggestion?

Lord Faulks: The noble and learned Lord's report on Strangeways, some 25 years ago, identified a number of things that were wrong with our prison system. I am sure that the noble Lord would agree, as indeed would the party opposite, that there have been significant changes and improvements in our prison system since. For example, there is no slopping out, there are much better conditions in cells, overcrowding is at its lowest level since 2007, prisoners are doing more purposeful activity and participate more in education, and the number of people absconding has been reduced. There is no room for complacency—there will be always be challenges in the Prison Service—but I am afraid that we simply do not accept that there has been no improvement in 25 years.

Lord Dubs (Lab): My Lords, is the Minister seriously saying that people who are critical of private prisons are not to be allowed to visit? Is that what the Government's policy amounts to?

Lord Faulks: It certainly does not. The Government welcome constructive criticism of all sorts. We want constructive and objective criticism by the monitoring board, the inspectorate, the press and academics—all of whom are regularly given access to our prisoners. But objectivity and fair criticism, as I am sure the noble Lord will agree, are vital.

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establishment stitch-up 42 years ago, and for 42 years it has been an establishment cover-up. Does the Minister not realise that there cannot possibly be any state security reasons why the records of an industrial dispute should not be made public?

Mr Letwin: My hon. Friend is also suffering from a misconception. The bulk of the papers involved were released. The bits that were not released relate to security and make specific references to the security services and their activities. Those are being reviewed, and a decision will be made. He is absolutely right that the crucial point is that the people involved deserve justice, so the CCRC needs to see the unexpurgated version, and it has. It has been given full sight of all the papers.

Lisa Nandy (Wigan) (Lab): It is increasingly clear that there is simply no justification for the delay in the review or for the refusal to release the full papers about the case. The Minister may refuse to act, but a Labour Government will act. We will release those papers with the urgency that the situation demands. Justice delayed is justice denied. Why is he so determined to ignore the will of Parliament, ignore the public and ignore the urgency of the situation, and why will he not release the papers now?

Mr Letwin: I am sorry that the shadow Minister wrote that question before she heard my previous answers. If, as I hope she will not, she finds herself a Minister after the election and has to make this decision—[Hon. Members: "Hear, hear."] If she finds herself in that position, I hope that she will discover the truth, which I have already told the House—that the CCRC has already seen the papers, so there is no question of justice being either delayed or denied.

Prisons [Howard League for Penal Reform Banned From Prisons]

Lord Ramsbotham to ask Her Majesty's Government why G4S was told to retract an invitation to the Howard League for Penal Reform to visit HMP Birmingham and HMP Oakwood.

Minister of State, Ministry of Justice (Lord Faulks) (Con): My Lords, a wide range of organisations and individuals independent of the Prison Service, including inspectors, monitoring boards, parliamentarians and researchers, are frequently given access to our prisons. It is right that prisons should face scrutiny and are subject to public debate. Our priority is the welfare of prisoners, their families and those who work in prisons. Inaccurate and irresponsible criticisms undermine their welfare. NOMS has the right to refuse access to those who voice such criticisms.

Lord Ramsbotham (CB): My Lords, I sympathise with the Minister for having to try to defend the indefensible. In the future, the Secretary of State for Justice will be remembered and blamed for the havoc that he has wrought in less than three years on the entire criminal justice system, which will take years to resolve. Only those who fear the truth need to try to suppress it, which the Secretary of State is trying to do as regards a long-established, independent, voluntary organisation whose only crimes have been to oppose him and to expose untruths. Can the Minister please assure the House that this shameful instruction will be instantly withdrawn and never again repeated in a free United Kingdom?

Lord Faulks: My Lords, when the noble Lord became the Chief Inspector of Prisons in 1995, I am sure that in the course of inspecting prisons, he was anxious to be fair and objective in his inspections regardless of whether they were private prisons or public prisons. These two prisons are private prisons. Unfortunately, the chief executive of the Howard League for Penal Reform, Frances Crook, disapproves of private prisons and has been quoted as saying that, "making money out of punishing people is both reprehensible and immoral and it is on these grounds that we have opposed the private management of prisons". Just before Christmas, she said on "Newsnight" that for a three-week period over Christmas, young offenders would be locked in their cells while there was a 40% reduction in staff numbers. Both these

munity, although past conduct should be proved on the balance of probabilities. And crucially, the Tribunal ruled (in relation to reliance on anonymous hearsay) that appeals against deportation do not have to be fair – or at least, they don't attract the safeguards of criminal or civil trials – because of the European Human Rights Court ruling, decades ago, excluding immigration cases from the ambit of fair trial guarantees.

In that case, and the 2013 case involving Lincoln Farquarhson, the Tribunal offered some crumbs of due process: immigration judges should not act on speculation, police must serve their evidence in time to allow appellants to prepare, and legal aid should be granted in the interests of justice. But these do not begin to remedy the essential flaw of Nexus – deportation from the country, perhaps after virtually a lifetime's lawful residence, perhaps entailing long-term or permanent separation from UK-based family, perhaps to serious risks – on the basis of fundamentally unreliable, untestable material.

Foreign national offenders have a bad press, and it is comparatively easy to remove or dilute their rights to basic legal safeguards without public outcry. But as we have seen in the national security context, once basic rules of due process and justice are eroded for one unpopular or demonised minority, the creeping erosion of fundamental rights is virtually impossible to stop.

Release on Temporary Licence (ROTL) Failures

Nick Hardwick, Chief Inspector of Prisons, has published a redacted version of his review of the very serious failures of three prisoners released on temporary licence from prisons in 2013. The review was submitted to the Secretary of State in January 2014. It was hoped to publish the full report once all the criminal proceedings related to these cases were concluded. However, the trial in one case has yet to take place and rather than delay any longer, the report has been published today with some details of the case still before the courts redacted. In September 2013, the Justice Secretary asked the Chief Inspector of Prisons to undertake an independent review of three recent ROTL failures at three different open prisons to determine whether temporary release was appropriate, to identify lessons to be learned and to make recommendations to strengthen the ROTL system. The review found that, while ROTL is an important part of preparing prisoners for release if properly managed, the temporary release of all three men in these cases was inappropriate.

Nick Hardwick said: "My review found that release on temporary licence (ROTL) was an important tool in the rehabilitation process but these three cases were catastrophic failures and the system as a whole needs to be much better managed. My report and recommendations were submitted a year ago and the victims of the crimes these men committed while on ROTL are entitled to reassurance that the major improvements required to the system have been made." Ministry of Justice data suggests that in 2012, fewer than 1% of releases on temporary licence were recorded as failures, and the proportion of failures resulting from an arrest was 6.1%, or around five arrests per one hundred thousand releases on temporary licence. However, the system for agreeing and managing ROTL has not kept pace with the increase in number and increase in risk of eligible prisoners. The yearly total of releases on temporary licence grew by 10% to approximately 485,000 between 2008 and 2012, while the number of releases of prisoners serving indeterminate sentences more than doubled from 38,000 to over 90,000 over the same period.

The review sets out the following flaws in the current ROTL process: - the systems for managing indeterminate sentence prisoners in open conditions lack clarity and are insufficiently robust; - there is a general presumption in favour of granting ROTL, the purpose of individual releases is not clear and there are insufficient safeguards to manage risks presented by

some prisoners;- MAPPA levels are not routinely reviewed when prisoners transfer to open prisons; - OASys assessments are not routinely reviewed and updated when prisoners are transferred to open prisons; - opportunities to share information which might influence risk-based decisions are missed; - failures to comply with mandated decision-making procedures and lack of competence contribute to indefensible releases.

Nick Hardwick said: "ROTL is an important and cost effective part of preparing prisoners for release. For low risk prisoners, it enables them to put something back into society while completing their sentences, through community placements or paid work, and helps them to maintain important family and other community links. For prisoners who are coming to the end of longer sentences for serious offences, ROTL, properly managed, contributes to their acclimatisation to life beyond prison walls and tests their readiness to live in the community without reoffending. As such, ROTL has an important part to play in protecting us all from the harm offenders might do if they reoffend because they have been released from prison at the end of their sentences without adequate preparation.I made a number of recommendations to address the shortcomings found in my review. These involved major changes to ROTL processes, staff training and the allocation of resources to open prisons. These three men should not have been given temporary release. The risks they posed were not accurately assessed or managed. The system failed the public it was supposed to protect with awful individual consequences. The public has a right to expect that, while it cannot be completely risk free, it is administered as safely as possible and that the robustness of the process, competence of staff and resources involved are commensurate with that."

Mark Duggan Whitewash Should be Death Knell for the IPCC *Stafford Scott, Independent*

The police watchdog's latest report is little more than a rehash of the police version of events. The organisation is clearly unfit for purpose. The results of the long-awaited investigation into the death of Mark Duggan by the Independent Police Complaints Commission have finally been released. But the 500-page report, which took three-and-a-half years and is meant to be the definitive account of what actually took place in Tottenham on 4 August 2011, has been dismissed by Mark's family as a "whitewash".

It is difficult to understand why this report was so long in the making. It appears, on first reading, to be merely a rehash of the police's initial version of events. The one significant addition to the report appears to be the fact that the IPCC believes Mark Duggan was in the motion of throwing away the gun when shot twice by "V53", the officer who killed him. This conclusion flies in the face of the inquest jury's verdict that Duggan had thrown the gun in the seconds before, or immediately upon, exiting the mini cab in which he was travelling.

The irony for the IPCC is that all of the highly paid experts they enlisted during this investigation were told to work on the hypothesis that Duggan had the gun in his hand pointing it at the officers at the moment of the shooting. Despite its conclusions, the IPCC says there is no evidence to undermine the testimony of V53's "honestly held belief" that Duggan was about to shoot at him and his colleagues. This is an interesting take on events, as V53 was adamant throughout the two trials of Kevin Hutchinson-Foster, the gun supplier, and also during the inquest into Duggan's death, that he could clearly see the gun, which he described in great detail.

The officer said it was in Duggan's right hand when the first round was fired, and claimed that the injured Duggan had turned and pointed the gun directly at him, so he then fired the second fatal round. On three separate occasions V53 described the moment that this occurred as "a freeze

37. The appeal against conviction in respect of counts 2 and 3 (rape) and 4 and 5 (assault by penetration) will be allowed.

38. The sentence of 10 years imprisonment falls with the convictions. We shall make a few observations upon it.

39. The judge regarded the rape counts as falling within the middle category of the Guideline then in force suggesting a starting point of eight years. He referred to the fact that at some stage A sustained a black eye before she was raped. On the assault by penetration counts he referred to the fact that A was tied up, that she was caused pain and bled. He considered that the familial context was an aggravating factor and also regarded what happened as a deliberate and manipulative breach of trust of a father towards a daughter.

40. Mr Cleeve submitted that the judge should not have moved the rape offences from the third category of the Guideline (with a starting point of five years and range of three to eight) to the middle category. He also submitted that the judge made more of the breach of trust and familial relationship that was appropriate. In the round, he submitted that 10 years was too much.

41. On the evidence before him and in the light of the convictions, the judge was entitled to approach sentence on the basis that the appellant was the dominant player in the relationship and that A was confused and needy. In respect of one point that the judge found to be aggravating, namely that on 2 June A was tied up and wearing a tight collar, it is clear from the text exchanges that A made the running in suggesting bondage. The question is whether a total sentence of 10 years imprisonment was within the appropriate range. We consider that it was at the top of the range available to the judge. A shorter sentence would have been equally justified.

42. Mr Cleeve took a technical point against the SOPO, namely that it was designed to protect A and nobody else. But that is not impermissible.

43. In this case both a SOPO and Restraining Order were made in identical terms. They prohibit the appellant from contacting A, her husband or mother and from going to where she lives. There is no justification for both. In our judgment, the convictions for rape and assault by penetration having gone, the Restraining Order is the more appropriate mechanism to prevent unwanted contact. In those circumstances, we grant leave to appeal against sentence, quash the SOPO and amend the Restraining Order by deleting the references to conviction for rape and assault by penetration.

Building Workers: Shrewsbury *House of Commons: 25 Mar 2015 : Column 1415*

David Anderson : If he will expedite the review of papers held on people convicted in 1973 in relation to alleged incidents during the national building workers' strike at building sites in the Shrewsbury area so that the review is completed as soon as possible. This House overwhelmingly agreeing on 23 January last year that the papers would be released—and that Ministers would assist in getting the papers released—they have not been. The campaign has consistently met blockages. I am calling on the Minister to bring forward the release of these papers as quickly as possible and to stop the 43-year cover-up, which will see innocent men going to their graves as convicted criminals to protect the Tory Ministers of 40 years ago. It is a disgrace.

Mr Letwin: I am afraid that the hon. Gentleman is unaware of the actual situation. The review of which he speaks is under way at present, but the papers—and the particular parts of those papers that were kept back on security grounds—have all been given to the CCRC, which has looked at them and is using them in the course of its review. There is no question of any injustice of the kind he describes occurring as a result of the lack of those papers being present.

Sir Bob Russell (Colchester) (LD): Mr Anderson asked a serious question. This was an

3. The direction on consent contained the sentence: 'Was the complainant freely consenting to sexual intercourse or was she submitting to a demand that she felt unable to resist.'

The complainant's case in the DVD interview was that she was a reluctant participant in all sexual activity, albeit in the light of the text exchanges the Crown accepted that most of the sexual activity was consensual. It is unclear how the complainant dealt with the texts in cross-examination. On the facts of this case the direction undermined the explanation elsewhere that reluctant acquiescence is nonetheless consent."

Grounds 2 and 3: Reasonable Belief in Consent and the Direction on Consent

31.It is strictly unnecessary to consider the remaining grounds although we do so briefly.

32.The appellant's case was that all and any sexual activity with A was with her freely given consent. The judge gave an impeccable direction relating to reasonable belief in consent which he explained to the jury was something that they should consider if the prosecution had made them sure that A did not consent to any material act. It would be usual in the course of a summing up to draw together the threads of evidence that might support the contention that, even though there was no consent, the defendant concerned might reasonably have believed that there was. As regards the sexual activity on 2 June 2010, the content of the text exchanges during that day, which we have touched upon but not set out in detail, show A suggesting bondage and sadomasochism and perhaps hinting at expanding the boundaries of their sexual exploration. In the context of this ingredient of the offence we consider that some attempt in the Summing Up to identify the issue by reference to the evidence should have been made. This point reinforces our view that this conviction is unsafe.

33. We also consider that the sentence in the Summing Up referred to in the grounds upon which leave was given was apt to confuse, namely: "Was the complainant freely consenting to sexual intercourse or was she submitting to a demand that she felt unable to resist." Earlier in the Summing Up the judge had said to the jury that consent "can take many forms from willing enthusiasm to reluctant acquiescence". He had summarised the statutory definition of consent to the jury, as follows: "A complainant consented if and only if she had the freedom and capacity to make the choice and she exercised that choice to agree to sexual intercourse." These parts of the judge's direction followed closely upon the formula found in The Crown Court Bench Book at page 373. He then repeated that agreement could be reluctant.

34. Be that as it may, the sentence of which complaint was made was the last thing said about consent by the judge to the jury. They did not receive the directions in writing. The dichotomy set up by the judge (free consent/submitting to a demand that she felt unable to resist) did not accurately summarise what had gone before and does not reflect the law. It is possible for a person to submit to a demand which he or she feels unable to resist, but without lacking the capacity or freedom to make a choice. That is an example of reluctant consent.

35. When considering any direction of law given to a jury it is it necessary to consider the particular words complained of in their context; and to resist the temptation to isolate particular phrases and then subject them to over-refined analysis. An example of a sentence in a consent direction which, if taken in isolation, was problematic is found in Doyle [2010] EWCA Crim 119. But in its context there was no misdirection.

36. In the appellant's case the central issue for the jury was consent. The potential vice of the formulation complained of it is that it set up a clear choice for the jury which did not accurately reflect the law. Despite earlier parts of the summing up on consent being correct, we conclude that this was a material misdirection which provides further support for the conclusion that the conviction is unsafe.

frame moment that I will remember for the rest of my life". The jury at Duggan's inquest did not accept that version, and disregarded this part of his testimony; and now it's clear the IPCC doesn't accept it either.

Duggan's family believe that, given the outcome of the inquest last year, the IPCC should have used their powers to compel V53, along with W42 and W70 – the only other officers among the 11 present who claimed to have actually seen the gun – to be interviewed by IPCC investigators. The IPCC did invite V53 to be interviewed after the inquest, but he declined. He simply drew on the police's historic get out of jail free card, which has allowed officers to walk free in so many cases where civilians have ended up dead: that is, they say they acted on an honestly held belief. This is virtually impossible to challenge in court as how can you disprove what thoughts the officer held in his mind at the time of the incident.

Black people in Tottenham, and wider afield, will not be surprised by the report. We expected nothing from the IPCC, as it has shown where its priorities lie ever since the first day, when it briefed the media that Duggan had shot at police officers. David Rose in the Mail on Sunday, using the same evidence that's been available to the IPCC for years, cited examples of police malpractice that go to the very heart of this investigation, but little was said of this in the IPCC report.

Nothing was mentioned of the fact that Operation Trident, the specialist police unit that focuses on black gang crime, were aware, two days before they killed Duggan, that they knew Hutchinson-Foster was in control of three handguns. Serious questions are now being asked by everyone, apart from the IPCC, as to why he was not arrested until 14 weeks later, by which time he no longer possessed any of the guns.

The IPCC wishes to close this episode with a clean bill of health to all parties, themselves included. However, it should be noted that Justice Keith Cutler, who presided over the inquest, later wrote in a report: "I am concerned that fatal police shootings are not as rigorously examined as they could be." And talking of the collection of evidence at the scene of the shooting, he said:: "I was left with an impression of some uncertainty about precisely what was being investigated, on whose behalf, for what purpose, and by what means."

It seems the IPCC does not consider this significant. But in Tottenham we believe these words are particularly damning, and exemplify what the Duggan family, and many other families unfortunate enough to have to depend on the independence of an IPCC investigation, think of the IPCC. That is, that it is unfit for purpose. Anyone serious about justice and impartiality for those killed by the police should demand the body's abolition.

Met Must Pay £400,000 for Tasering Daniel Sylvester *BBC News*

The Met Police has been ordered to pay £400,000 in legal costs after it "unreasonably" used a Taser on a man. Daniel Sylvester, 53, was stopped three times in nine months by police. On the second time occasion, when Mr Sylvester was near his home in Edmonton Green, police used a Taser, sending him falling to the ground in agony. A jury at Central London County Court awarded him damages of £8,200 for false imprisonment and assault, and for post-traumatic stress disorder. The court heard the Met's own legal costs of defending the claim are about £150,000 and that Mr Sylvester's will come to at least £250,000. The Met would have to foot the entire bill, the judge ruled. The Met said it was giving "serious consideration" to appealing against the decision.

Earlier the court heard Mr Sylvester was stopped three times between 2007 and 2008 by heavily armed police. His car, a Mercedes 4x4, used to belong to a "violent drug-dealing gangster", the court heard. Mr Sylvester, a 29-stone (184kg) security company boss, said he

was boxed in by police officers near his home who Tasered him when he got out of his car. A Taser stun gun uses a 50,000-volt charge to incapacitate its target. Police did not find anything during any of the searches of Mr Sylvester or the car. Mr Sylvester told the jury: "The pain was nothing like I have ever had before. It was like all your nerves and nerve endings have electricity going through. It's like you're going to explode, all through your body, from the head to the toes. He sold the vehicle after he was followed and stopped a third time in Dalston.

Judge Simon Freeland said the father-of-seven had been successful in "establishing the tort of false imprisonment" which he said was of "real constitutional importance and significance". He added: "The deprivation of his liberty may only have lasted for a few minutes but it was strenuously denied by the police. Mr Sylvester has established that he was assaulted. In my judgment, he has established it in a very significant way." The judge said the jury was "not satisfied" the use of the Taser was a reasonable response. Mr Sylvester said: "I'd give one of those officers my compensation if they agreed to have done to them what they did to me, to know how it feels."

Deaf Man Fined for Calling a Police Officer A 'Pig' In Sign Language *Telegraph*

Court heard the officer who arrested Linley Hassan, 25, after reports of a man 'causing difficulties' in Kendal, Cumbria, understood the insult. He had been called to McDonalds in Kendal, Cumbria, after reports of a man "causing difficulties", South Cumbria Magistrates Court was told. Hassan, 25, of no fixed address, refused to leave the restaurant and became "confrontational" with the police. Peter Kelly, prosecuting, said: "He was making a sign that the officer, who understood sign language, knew to mean 'pig'." In mitigation, John Batty said Hassan had had a volatile existence of late and had been going to great lengths to reduce his alcohol intake. Hassan pleaded guilty to being drunk and disorderly. He was given a conditional discharge and ordered to pay a £15 victim surcharge and a £30 contribution towards court costs.

Offenders With Learning Disabilities Not Getting Help They Need

Prison and probation staff were failing to identify people with learning disabilities, meaning opportunities to help those offenders were missed, according to independent inspectors. as they published the second report of a joint inspection into people with learning disabilities within the criminal justice system. The report, A joint inspection of the treatment of offenders with learning disabilities within the criminal justice system: phase two in custody and the community, reflects the findings of HM Inspectorate of Probation and HM Inspectorate of Prisons. The first inspection, published in January 2014, looked at what happened when someone is arrested and in police custody through to when someone first appears in court and is sentenced. Inspectors noted the poor quality of services, inefficient processes and confusion among police, court service and probation staff about what constituted a learning disability. This second inspection presents an equally bleak picture about the experience of offenders with learning disabilities in prison and while subject to supervision in the community.

The first inspection found that no clear definition or agreement exists across criminal justice and health organisations about what constitutes learning difficulties or disabilities. Although believed to be a sizeable minority, possibly as high as 30%, there is no way of knowing the number of people with such conditions within the criminal justice system. Adequate provision is, consequently, not always made by the agencies involved to cater for their specific needs. The second inspection found that within probation and particularly in prisons, identification of offenders with learning disabilities remained a problem and as a result, the needs of people with learning disabilities were often missed.

designed to protect A following the appellant's release from prison.

3. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these proceedings to protect the identity of the complainant.

4. The circumstances in which the offences were committed were very unusual. The appellant was approaching his 52nd birthday at the material time. When he was 17 he had fathered a child who was immediately given up for adoption. That child, who is the complainant in this case, made contact first with her natural mother and then with the appellant very shortly before the material events.

5. Her first contact with the appellant was on 9 May 2010. They quickly arranged to meet. On 21 May the appellant travelled from London to stay with A in her home where she lived with her husband and children. A was 34 years old at the time. A few days later, A returned with the appellant to London. Almost immediately an intense and enthusiastic consensual sexual relationship developed between the two. That sex included bondage. The prosecution case was that during a sexual relationship which was consensual for the most part, on the three dates identified in the indictment the five offences were committed by the appellant because in respect of each of those sexual acts, A did not consent.

Grounds of Appeal: 12. The original grounds of appeal can be summarised as:

i) The judge should have stopped the trial at the close of the prosecution case;

ii) The consent direction given by the judge was inadequate;

iii) The review of evidence in the summing up was deficient because it did not go into the detail of the text messages sent by A to the defendant. It was fundamental to his case that they were inconsistent with any suggestion of non-consensual sexual activity. More generally there was insufficient emphasis upon the unreliability of A.

iv) This case called for a discretionary corroboration warning of the sort discussed in Makanjuola [1995] 2 Cr. App. R 469.

13. At the renewed application for leave to appeal against conviction the first and fourth of these grounds were both rejected by the full court. As to the first, there was plainly a case to answer. As to the second, no suggestion had been made to the judge at the time that a corroboration warning was necessary and it was impossible to suggest that the judge was wrong not to do so. In the course of the judgment given on that occasion, the court reformulated the grounds of appeal to identify the real potential issues:

“1. The learned judge failed adequately to bring together the applicant's case concerning the inherent weakness in the evidence given by the complainant by identifying, at least,

(i) That her account given in interview, especially as regards her acquiescence in a sexual relationship with the applicant, failed to mention the substance of the extensive text exchanges between them and painted a picture inconsistent with the text messages exchanged up to 8 June 2010;

(ii) That the text messages either side of the incidents which occurred on 29 May and 2 June were inconsistent with the suggestion of non-consensual sexual activity;

(iii) That the complainant may have been motivated to lie by a revulsion at her having engaged in an incestuous liaison, or at least realisation that it was wrong, and thus sought to minimise her responsibility;

(iv) That the complainant may have been motivated to lie by a desire to save her marriage and because of concerns relating to her own children, together with a suitable warning about the quality of her evidence.

2. The learned judge failed to summarise for the jury the evidence which might support the proposition that even if the complainant did not consent to the acts in question, he might have had a reasonable belief that she had.

those men to mutiny. The system was overcrowded, with two or three prisoners sharing cells designed in the 19th century for one person. Within that space (12ft x 8ft) prisoners would eat, sleep and perform all their bodily functions, urinating and defecating into open buckets, to be “slopped out” when the cells were opened. Prisoners were allowed one bath or shower a week. They could write one letter a week and receive visits monthly. But those conditions alone did not engender the rage that swept through Strangeways that day. The prison was notorious, along with Wandsworth and Dartmoor, for being a “screws’ nick”. The governor was in charge in name only. The uniformed officers ran the place and they let prisoners know it.

Woolf’s inquiry made many reforming recommendations. Slopping out was abolished, cells now have toilets (though they are unscreened and do not allow much dignity); inmates are allowed daily access to showers and telephones were installed on the landings. Calling the prison system an “affront to our definition of civilisation” a Guardian leader at the time concluded: “Woolf – by his recommendations – has turned that negative shame, at last, into a positive force for change.”

His report was regarded as a blueprint for a safe and decent prison system and, for a while, there was an air of optimism in penal circles as his measures were put into place. Then along came Michael Howard and his “prison works” mantra, and the system started to go backwards. Howard was followed by New Labour, who added 20,000 to the prison population without providing the resources to decently accommodate, let alone rehabilitate, the swelling numbers.

With the prison system again in turmoil, who will listen to Lord Woolf now? Certainly not Chris Grayling, the justice minister, who ignores the evidence that shows a system in crisis and who is, in effect, sacking the chief inspector of prisons for speaking the truth. We are unlikely to see another Strangeways; the system would never allow prisoners to congregate in such numbers as they did in the chapel that day. But once again, prisoners are being merely warehoused, and society will pay the price for the failure of politicians to learn from history.

Eric Allison & Nicki Jameson co-authors ‘Strangeways: a Serious Disturbance’

Nicholas Watson - Appeal Allowed, Conviction Unsafe - Material Misdirection

1.On 16 August 2012 the appellant was convicted after a trial at Preston Crown Court on two counts of rape and two counts of assault by penetration. He appeals against conviction with leave of the full court. His application for leave to appeal against sentence was adjourned to be heard at the same time. The indictment contained eight counts:

i) Count one alleged rape (anal) of the complainant (whom we shall call A) on 29 May 2010;

ii) Counts two and three alleged rape (vaginal and anal) of A on 13 June 2010;

iii) Counts 4 & 5 alleged assault by penetration using a sex toy (vagina & anus) on 2 June 2010;

iv) Counts 6, 7 and 8 alleged sex with an adult relative. Count six covered a period of three weeks to 12 June 2010 and related to oral sex. Count seven covered the period 23 May to 28 May 2010 and related to vaginal sex. Count eight concerned vaginal sex on 29 May 2010.

2. The appellant had earlier pleaded guilty to the 3 counts of sex with an adult relative. The jury returned majority verdicts of 10 to 2 on the two counts of rape alleged to have occurred on 13 June 2010 and 11 to 1 on the two counts of assault by penetration alleged to have occurred on 2 June 2010. They were unable to reach a verdict on Count One. The appellant was sentenced to 10 years' imprisonment concurrent on each of the counts on which he was convicted. A sentence of nine weeks' imprisonment concurrent was imposed upon the three counts of familial sex. He was made the subject of a Sexual Offences Prevention Order (“SOPO”) and a Restraining Order pursuant to section 5(1) of the Protection from Harassment Act 1997, both

Inspectors were concerned to find: - screening tools were not used routinely by probation officers or in prisons, and there was an over-reliance on disclosure of the existence of learning disabilities by the offender/prisoner or their family; - information about prisoners' learning disabilities was rarely appropriately shared with relevant staff; - practitioners were frustrated by the lack of support from social and health care agencies; - some prisoners had learning disability nurses but, generally, offender supervisors did not consult them regularly; - although some initiatives and guidance were being developed by national and local leaders, frontline staff and some managers were either unaware or unable to implement it; and - the Equality Act 2010 makes it clear that public authorities have a duty to make reasonable adjustments to meet the needs of service users with a disability (including a learning disability), but in most cases managers and staff in prisons or probation services were not doing this.

However, inspectors also found that: - there were pockets of good practice and examples of staff developing supportive relationships and 'going the extra mile' but these were the exception, rather than the norm; and - offender managers and supervisors working in the community were keen to receive advice and guidance and those with direct access to community psychiatric nurses felt supported, however, most community psychiatric nurses were not trained or experienced in working with people with learning disabilities.

The chief inspectors made recommendations for improvement, which included: ensuring that prison and probation services comply with the requirements of the Equality Act 2010 by making necessary adjustments to services delivered to those with learning disabilities, introducing a screening tool across the prison estate for learning disabilities and adapting interventions for people with learning disabilities to help reduce the risk of reoffending.

Chief Inspector of Prisons Nick Hardwick said on behalf of both inspectorates: “In prisons we were alarmed that there were extremely poor systems for identifying prisoners with learning disabilities; in one prison we were even told that they could not identify a single prisoner who had a learning disability. This lack of identification is unacceptable. Even where a learning disability was identified, it was not always sufficiently taken into account in prison processes such as behaviour management or anti-bullying measures. Not surprisingly therefore, some prisoners with a learning disability told us about getting into trouble with staff or being bullied because of their learning disability. We are also concerned that little thought was given to the need to adapt the regimes to meet the needs of prisoners with learning disabilities who may find understanding and following prison routines very difficult. In the community, the position was slightly better, however, there was still scope for significant improvement.”

Sue May: ‘She Lived the Injustice Every Minute of Every Day’ *Christabel Mccooey, Justice Gap*

Susan May was convicted of murdering her elderly Aunt Hilda Marchbank in 1997 after she was found beaten and suffocated in her home. The crux of the prosecution case against May rested on ‘bloody’ fingerprints found on the wall. However, after uncovering a series of botched tests and police inadequacies, including the failure to disclose the sighting of a red car used by a known heroin addict outside Marchbank’s house on the night of the murder, forensics later showed that the handprint was in fact sweat, and made before the murder. May’s case was referred to the CCRC in 2010 and now remains with the watchdog ‘under investigation.’

May maintained her innocence throughout the 12 years she spent in prison, despite warnings that she would not be released by the parole board unless she showed remorse. When May was eventually freed in 2005, she continued her battle to clear her name. Dorothy Cooksey, one

of the founders of campaign group, Friends of Susan May (FOSM), recalls: 'Susan and I were just ordinary small town wives and mothers when she was thrust into this world of prisons and courts and barristers. We couldn't believe our justice system was so flawed it could have made such a mistake, we trusted it completely.' In one of her final interviews with the BBC, May commented on the impact of her conviction: 'It's destroyed my health. I've had a few scares. But I'm hoping the fight to clear my name will help me overcome my health problems because I'm determined to see it through. I can't give in. I can't let it go.' However May lost her battle with breast cancer shortly afterwards and died on 12 October 2013.

Asked whether they would continue their efforts to clear May's name now that she passed away, Cooksey comments: 'There was never any question that we, her family and friends, wouldn't carry on the fight. While that wrongful conviction still stands Susan's name is tarnished in the records and history books, and her children and grandchildren live under that dark cloud.' 'What we've been fighting for over 20 years is the unfairness, imbalance and lies embedded in the criminal justice system – all these things are still there and the danger that they could affect another innocent person's life in the same way is still there.' Dorothy Cooksey

The miscarriage of justice watchdog the Cases Review Commission (CCRC) first became acquainted with May's case shortly after its inception in 1997. Whilst the Court of Appeal is the only body with the power to formally overturn wrongful convictions, the CCRC has become a gatekeeper and place of last resort for those maintaining their innocence. Tasked with reviewing possible miscarriages of justice, the CCRC refers cases back to the Court of Appeal where it finds there is a 'real possibility' that the conviction would not be upheld.

The watchdog found May's case passed the 'real possibility' hurdle and referred it back to the Court of Appeal in 1999, though the Court ultimately dismissed it in 2001. A second application shortly afterwards was unsuccessful. However, in 2010, having gained access to previously undisclosed police records and forensic expert reports, May and her supporters made a final application to the CCRC, which affirmed the existence of enough 'fresh evidence' to warrant a new investigation. However, five years later and the CCRC has still not reached a final decision: 'We find the length of time it is taking extremely disturbing and distressing,' says Cooksey, 'Susan expected every day to hear positive news from the CCRC.'

'At the moment, the CCRC seems to have slowed to a virtual stop,' comments Eric Allison, the Guardian prisons correspondent and long-time supporter of Susan May. 'If you look at the case of Eddie Gilfoyle, his lawyers submitted compelling evidence of his innocence in 2010 and the CCRC are still sat on it. Eddie has been released from jail of course; but like poor Susan, he will never be "free" while his conviction remains in place. What can possibly cause the CCRC to wait so long before deciding to refer back or not? It's a disgrace.'

Richard Forster, chair of the CCRC recently reported to the Justice Committee that the body had suffered more cuts than any other part of the criminal justice system; he added that the CCRC 'needed just £1m – 0.1% of the Ministry of Justice's £9bn budget or the price of a Tomahawk' – to clear the growing backlog of prisoners alleging to be victims miscarriages of justice.

Are the funding problems to blame for the long delays? 'Yes, the government are to blame for the cuts, including legal aid, which are bound to lead to more miscarriages. But the CCRC have never been pro-active, have never really investigated cases. And I have always had the impression they look for reasons NOT to refer.' Eric Allison 'Susan lost 12 years in prison; she missed the birth of her grandchildren, her mother's death and so many other things. She deserves to have her name cleared no matter how long it takes.' Dorothy Cooksey on Susan May

Remember Strangeways 1990? The Bad Old Days of Inhumane Prisons are Back

When prisoners are merely warehoused, society suffers as a whole. If only politicians had learned the lessons of recent history This week is the 25th anniversary of the longest, bloodiest riot in British penal history. For it was on April Fools' Day, 1990, that prisoners at Strangeways prison in Manchester disrupted a service in the prison's chapel and ejected staff. The disturbance lasted 25 days and claimed two lives; a prison officer suffered a heart attack and a prisoner, on remand for alleged sex offences, died from wounds inflicted when prisoners ran amok throughout the gaunt Victorian jail.

The men who started the protest that morning had no intention of taking over the prison. After turfing the staff out of the chapel, they began using pews to barricade themselves in, expecting riot squads to attack. Some men made their way into the chapel roof space from where they could see inside the main prison. To their surprise, they saw staff evacuating the wings and landings. The barricades came down and mayhem ensued.

On that first morning, a Sunday, I made my way down to the prison to show my solidarity with the men on the roof, and did so for most days of the protest. The riot was a very personal affair. In the 1960s, 70s and 80s, I served time at Strangeways and was continually at war with my keepers. This was then a prison where some staff openly wore National Front badges on their uniform, in a jail with a large black and ethnic minority population. And I spent several spells in the segregation unit, the jail within a jail, where beatings by staff were commonplace. I also escaped from the place once, by virtue of a forged high court bail warrant, so my card was well and truly marked within those walls. I later co-authored a book on the riot, which fostered the notion that I could perhaps use the pen to make the case for penal reform.

The riot was a watershed in penal history. It sparked the most far-reaching inquiry into prison conditions this country has seen and, initially at least, created long-needed reforms in a system that had, for far too long, been ignored by politicians, the public and the media. But shamefully, the anniversary of the Strangeways riot comes at a time when prison watchers agree the system is once again at breaking point; experiencing the type of decline in conditions which led to the uprising. With the prison system again in turmoil, who will listen to Lord Woolf now?

This week, Lord Woolf, who headed the inquiry following the riot, spoke out again. He said the system was back where it was at the time of Strangeways and that "prisoners are again being kept in conditions that we should not tolerate". The evidence supports this. Overcrowding is rife – at the end of 2013, 69 of the 124 prisons in England and Wales were officially classed as overcrowded. Last year, virtually all inspections of young offender institutions reported rising violence and enforced idleness among young prisoners. And at the other end of the scale, inspectors found elderly prisoners unable to bath or shower for weeks or even months on end. The suicide rate in male prisons is up, especially by younger prisoners. In the past 10 years, 156 18- to 24-year-olds have ended their lives in prison custody. Last year, the chief inspector of prisons, Nick Hardwick said the number of self-inflicted deaths in prison were "not acceptable in a civilised country". Just today, an inspection report on Guys Marsh prison, Dorset, revealed that managers and staff there have "all but lost control of the jail". The prison is short staffed and overcrowded. Violence levels there were three times higher than at the last inspection and drug taking was rife. Guys Marsh is meant to be a training prison, but only one in six inmates was in work or training.

The events of those 25 days at Strangeways will no doubt be revisited by commentators next week – and it is worthwhile, in the current climate, recalling the conditions that drove