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Benjamin Bestgen: Twenty-first Century Lie Detection – Part Two

[Trials for Sexual Offences Rules of Evidence. In criminal trials, including of offences of historical sexual abuse, rules of evidence do not permit the Crown to call evidence of the good character of a prosecution witness in order to bolster their credibility. The law assumes victims to be truthful and credible, and restricts the ways in which their veracity and credibility can be challenged by the defence; evidence of a victim's good character is therefore not relevant to what is in issue, and is not admissible. Defendants also are assumed to be of good character unless there is evidence to the contrary. Where the prosecution does rely on bad character evidence against the defendant (and there are fewer restrictions on the admissibility of evidence of a defendant's alleged bad character than there are in relation to a witness' bad character), then character evidence might be relevant to contradict it.]

Psychologist Aldert Vrij, a specialist on lies and deceit, identifies viable lie detection options which do not involve technology, torture or chemicals. Looking at lying clinically, he finds that: lying may be cognitively more demanding as the liar may have to plan the lie – anticipate possible questions, fabricate plausible information, remember what he told to whom and maintain his story consistently; liars make conscious efforts to appear credible by monitoring their behaviour and speech to appear honest, which is cognitively demanding too; liars invest more energy into observing the reactions of the person they lie to, ascertaining whether they are being believed; liars may have to roleplay their lie and at the same time suppress the truth, which requires further mental resources; and lying is generally more intentional and deliberate, which again needs extra attention compared to truth-telling, which is more automatic.

Based on this, Vrij and fellow researchers found that certain interview and communication techniques can increase the probability of spotting lies accurately. Increase cognitive load: making additional requests might strain the mental resources of a liar more than for a truth-teller. Asking a liar to tell his story in reverse order runs counter the natural "forward" order of narrating events and also disrupts any rehearsed schema the liar has prepared. Demanding to maintain eye contact with the interviewer further taxes mental resources, because it is distracting when we try to concentrate on telling our story. This method indicated a lie detection success of 60 per cent, slightly better than our "natural" abilities.

Drawing and asking strategic questions liars do not expect: a person pretending to have met somebody else at a restaurant might struggle to answer questions about the interior or how far away they sat from the bar. The suspect can also be asked to draw the layout of the restaurant and include the position of specific objects like an aquarium or sculpture in it. Drawing prevents the liar from beating around the bush verbally. Drawings of liars will generally be less detailed and prone to omitting things truth-tellers can readily recall. The drawing request can also discourage a liar from maintaining his lie, as the liar may feel it's too risky or impossible to comply with the request convincingly.

Play devil's advocate: when trying to uncover if a person is lying about beliefs they claim to hold, asking "devil's advocate" questions can help to discover what somebody really thinks. First, a person is asked a question inviting them to argue in favour of what they claim to think. Secondly, the person will be then asked to argue for the reverse position, in a "Playing devil's advocate here, could you say anything against"? style.

People tend to think more deeply about and provide more reasons for beliefs they support, so the response to the question about their favoured perspective is likely to be longer and more detailed. A truthteller will struggle more to argue against her favoured view and be shorter and more general in her response to the "devil's advocate" question. A liar likely shows little difference in length or detail to either question: he will rehearse his detailed lie in the first question but also find it easy to argue at length and in detail the "devil's advocate" question which may be closer to what he actually believes.

In experiments comparing the responses of people to this style of questioning, 75 per cent of truth-tellers and 78 per cent of liars were identified correctly. Strategic use of evidence (SUE): police and, to a degree, lawyers and journalists will be familiar with the SUE technique. When being questioned, a guilty suspect is concerned about interviewers not learning the truth while an innocent person usually wants to tell everything as it happened. A truthteller will likely be forthcoming while a liar will use avoidance strategies and denials.

Armed with whatever evidence they have, the interviewers will not reveal their knowledge but use it as background to ask questions a liar will struggle to answer. Questioning may start with an open question "What did you do on Sunday 14 June in the afternoon?", followed by a specific one: "Did you or anyone else drive your car on that Sunday afternoon?" (Interviewers will not disclose that they have CCTV showing the suspect's car being driven on that date and time). Truthtellers will usually mention the car being driven either spontaneously or after being prompted ("Tell it like it happened, please."). Liars are more likely to avoid mentioning the car spontaneously or will utilise denial or deflection strategies when prompted, which may contradict the evidence.

Why we Cannot Tell if a Witness is Telling the Truth

Adrian Keane, OUP Blog: Imagine that you are a juror in a trial in which the chief witness for the prosecution gives evidence about the alleged crime which is completely at odds with the evidence given by the accused. One of them is either very badly mistaken or lying. On what basis will you decide which one of them is telling the truth? And how sure can you be in your conclusion? Perhaps demeanour, way of speaking and body language are high on your list of relevant factors to look at to decide if someone is being honest. These are probably the weakest indicators as to whether a witness is credible. A witness who is confident and spontaneous may be thought to be worthy of belief. But the impression of confidence and spontaneity may come from an honest witness because she has prepared carefully for trial, using her earlier truthful statement. Or it may come from a lying witness, who has also prepared carefully by learning his false story by heart. Lying is a cognitive skill and so the more you practice, the better you get.

A witness who is nervous and hesitant may not be very convincing but may well be telling the truth; many witnesses, even if they have prepared carefully, find the giving of evidence in court an unnerving experience, especially if they are young or otherwise vulnerable. Demeanour and delivery are not a reliable way of assessing credibility. Perhaps you have other indicators of likely accuracy and veracity. Was the witness' account consistent or inconsistent; and was it a full and detailed account or did it have gaps? However, all these factors can mislead.

People often think that consistency with what the witness has said previously or with what is agreed or clearly demonstrated by other evidence is a strong indicator of reliability. But it may stem from deliberate deceit, including collusion, as when two corrupt police officers fabricate a case against the accused. Equally, consistent evidence may be unreliable because it is the result of innocent and accidental contamination, as when two witnesses find themselves talking about the event that both have just witnessed. Later, they may well find it difficult to

distinguish between what they observed for themselves and what they were told by each other. When a witness has made a previous inconsistent statement, this is thought to indicate a lack of credibility, but it is often normal or explicable and may even be brought about by the nature of the interview process or the vulnerability of the witness when under cross-examination. The risk is particularly high in the case of a child victim of an assault, who may be questioned over and again. At some stage, the child may well take the line of least resistance and agree to whatever is being suggested, just to bring the whole process to an end.

A witness whose account has gaps and lacks detail is often regarded as an unreliable witness, whereas a witness who gives a full and detailed account is often thought to be reliable. However, gaps and lack of detail are the norm for most ordinary people doing their best to tell the truth as they remember it. A high degree of specific detail in long-term memory is unusual. Memories of experienced events are always incomplete. This is especially true in the case of adult memory of childhood events and witnesses to traumatic events when the brain, quite healthily, blocks out some of what the person witnessed.

Remember With 'Pride' the Stonewall Riots

In the early hours of 28th June 1969 police unremarkably raided a gay bar in Greenwich Village, New York City. But those in the bar did something unusual, something which changed history. They fought back, and so began a six day uprising, now widely referred to as the Stonewall riots. We should use this month to commemorate those who fought back and particularly those who were criminalised for fighting for their right to exist.

Nine pages of police records were published for the first time in 2009. Seven pages were released after a Freedom of Information request. They were obtained by Jonathan Katz (Director of OutHistory.org), with help from David Carter (author of 'Stonewall: The riots that Sparked the Gay Revolution'). Two pages had already been obtained by Michael Scherker in 1988 who sued the city to obtain some police records of the uprisings. In June 2019, Tim Fitzsimmons, a reporter for NBC News, published one completely new and differently redacted documents based on a Freedom of Information request for Stonewall police reports. You can read the police records in full here.

It will come as little surprise to anyone with experience of dealing with the police that many historians and commentators have criticised these records for poorly and incompletely documenting the events; however, they do help us put some names to the six day uprising of those who were criminalised for taking a stand: Raymond Castro, Vincent DePaul, Marilyn Fowler, Wolfgang Podolski, Thomas Staton and David Van Ronk. Many eyewitnesses from the Stonewall riots recalled that the arrest of a Queer woman, thought to be Marilyn Fowler, intensified people's resistance to the police.

Raymond Castro, a Puerto Rican semi-retired baker who lived with his partner for 30 years, died in 2010 at the age of 68. He previously spoke about his experience of police harassment and Stonewall before and after the uprising: "We went to the Stonewall because it was one of the few places where you could be yourself. You could dance, you could hold hands with someone you liked. In most other places, you could not show any signs of emotional expression. If you were walking along the street and you put your arm around somebody else the police would harass you. They would pull you over, see if you had drugs. And if a gay guy was beaten by a straight guy nothing happened, you couldn't even press charges".

The fear that many Queer people felt towards the police has been well-documented. In his book on the riots, David Carter wrote, "it was considered so outrageous for gay men to gather on the street. It was common for a police officer to take a club out and hit a gay man on the

legs and say 'Move on, f****t.' Carter added that in some cases, "Undercover cops chatted up the men, even followed them from bar to bar. When a gay man accepted a 'drink' or an invitation, they were arrested. In the mid-1960s, more than 100 men were arrested every week in New York City for gross indecency and public lewdness. After some of these arrests employers would get calls; many lost jobs, were disbarred or had licenses taken away."

This was the context of being Queer in 1969 USA, making the resistance to such treatment in the early hours of 28th June 1969 all the more remarkable. "When the police raided the place, I was outside," Raymond Castro remembered. "Then I remembered a friend inside who did not have a false ID and he was going to get in trouble, so I went inside to give him one." Many of the police raids, he explained, would result in arrests for underage drinking. "Once I got inside, the police wouldn't let us out, they held us hostage. It got really hot. I remember throwing punches and resisting arrest." Castro recalled one officer saying to him, "You must be some kind of animal!" Raymond spent the rest of that night in jail. He was given a weekend court date, the day after which was Sunday 29th June, but luckily his lawyer managed to adjourn the case hoping to get a more sympathetic judge and a later trial date, distanced in time from the uprising. Raymond said he was urged by the police to plead guilty and be pardoned, but he was defiant and pleaded "not guilty", citing that officers had pushed him around and he had not read him his rights.

David Carter provides a vivid account of the resistance to police harassment and violence that night. He describes there being around 200 people in Stonewall at 1.20am, the time of the raid. As soon as people realised what was happening many ran for windows and doors but the police immediately blocked them. However, the raid did not go as the police planned. Standard procedure was to line everyone up, check their IDs, and have female police officers take some individuals to the bathroom to verify their sex, upon which anyone identifying as being transgender or cross dressing would be arrested. Trans-women, that night, began to refuse to go with the officers. Many in the line refused to produce their IDs. The police decided to take everyone present to the police station, after separating those considered to be "cross-dressing" from the others. Maria Ritter, who was known as Steve to her family, recalled, "My biggest fear was that I would get arrested. My second biggest fear was that my picture would be in a newspaper or on a television report in my mother's dress".

It is clear from eyewitness accounts that a sense of discomfort spread very quickly, spurred on by the police who began to assault some of the Queer women present, by sexually assaulting them while frisking them. By the time the first patrol van arrived, a crowd consisting mainly of Queer people had gathered outside Stonewall and had grown in size to at least ten times the number of those who had been arrested. The crowd had become very quiet. As people were led out of the bar a member of the crowd shouted, "Gay power!" and someone began singing 'We Shall Overcome'. An officer shoved a trans-woman, who responded by hitting him on the head with her purse as the crowd began to 'boo' the police.

Writer Edmund White, who had been passing by, noted that, "Everyone's restless, angry, and high-spirited… something's brewing." Coins then beer bottles were thrown as a rumour spread through the crowd that customers still inside the bar were being beaten. A scuffle then broke out as a woman (believed to be Marilyn Fowler) was struck around the head by police because, according to one witness, she was complaining her handcuffs were too tight. She then shouted to the bystanders, "why don't you guys do something?", which is alleged to have sparked the explosive scenes of the Stonewall uprisings, as she was thrown into the back of a police van.

One of the most important driving forces to emerge from the Stonewall riots was the political organising which followed. Queer Activists such as Mary Shelley immediately proposed a

demonstration in the aftermath of the riots and she co-founded the Gay Liberation Front within weeks. The name was inspired by the National Liberation Front fighting the US in Vietnam. Mary Shelley has repeatedly said over time, "the riots would've done nothing if we hadn't organised afterwards".

This Pride month we remember all those who fought back; those who were criminalised, brutalised and marginalised by the police for nothing more than being themselves. The uprisings are recognised, by many of us, as the first in a series of protests against a system which persecuted people on the basis of their sexual orientation and gender. They ignited a new way of politically organising around LGBT liberation, transforming previously polite requests for reform into radical demands for change. When we remember the Stonewall riots we should remember that they were made up of ordinary people, galvanised into action by intolerable police harassment and state persecution.

During this Pride month, we also remember George Floyd, a 46-year-old black man who was murdered by the police in Minneapolis on 25 May 2020. In the wake of his death, tens of thousands of people in the US, the UK and across the world have taken to the streets to stand against state violence and the insidious systemic discrimination against Black people all over the world. But more than that there are, just as there were in 1969, demands for radical change, including calls to defund the police and prison system, which seemed to many unattainable only a month ago.

Now as in 1969, we must fight for change, for a better and fairer world. We would do well to remember that struggle has always begun, and will always begin, on the streets, and we must defend our right to be there as we begin to organise for our futures and the world we are beginning to imagine may be possible. "We've come a long way, but we still have far to go" – Raymond Castro.

Trial Collapses of Three Britons Accused of Aiding Man to go to Fight In Syria

Dan Sabbagh, Guardian: A controversial terror trial of three Britons accused of helping a fourth to travel to Syria to fight with the Kurdish YPG has collapsed at the Old Bailey after the Crown Prosecution Service abandoned the case. Had the three men – a man, his son and a former paratrooper – been convicted it would have been the first time any Briton would have been guilty of terror offences relating to the YPG, which fought alongside the UK against Islamic State in Syria's civil war. But after a short hearing at the central criminal court on Friday 03/07/2020, Mr Justice Sweeney directed the court to enter not guilty verdicts on all the charges against Daniel Burke, 33, and father and son Paul and Samuel Newey, 49 and 19 respectively. Simon Davis, for the crown, said there was "insufficient evidence to sustain realistic prospect of conviction" but declined to give any explanation as to why the prosecution had abandoned its case. They had been accused of helping Paul Newey's son and Samuel Newey's older brother, Daniel Newey, travel to Syria to rejoin the YPG last November. Burke had fought alongside Dan Newey on a previous trip to Syria in 2017-18.

Speaking after the hearing, Paul Newey said he was "disgusted and angry" with a situation that he had found bizarre. "There was no crime committed because it's not terrorism – because my son is not a terrorist. "He was there fighting with the allied forces against Isis. He was doing the right thing – he has gone to put his life at risk for other people for no gain to himself." The YPG is not banned in the UK, although Syrian Kurdish forces have become increasingly embroiled in conflict with Turkey, after Ankara invaded last October to create a 20-mile deep security zone in northern Syria, where the Kurdish population was concentrated.

Defence lawyers for the three had been planning to argue that the prosecution was politically motivated by a desire by the British authorities to support Turkey, which is strongly opposed to Kurdish

separatism in its own country. Burke, the former soldier, from Wythenshawe in Manchester, was arrested in Dover last December and had been accused of wanting to travel to Syria himself as well as helping Dan Newey leave the UK, a month after the Turkish incursion began. The ex-paratrooper had previously fought with the YPG in Syria in 2017 and 2018 against Isis at a time when the Royal Air Force was involved in bombing of the Islamist group and British and other special forces were secretly deployed on the ground, training Kurdish forces to take on Isis.

Paul Newey, from Solihull, had been accused of funding terrorism because he had lent his son Dan £150 through Paypal last November at a time when his son was travelling to rejoin the YPG – although the father denied he knew at the time where his son was or what his intentions were. Samuel, a younger brother of Dan, was also accused of helping his brother secretly leave the UK. All three men appeared in court via videolink and spoke only to confirm their names. After the hearing, Paul Newey said the arrest had turned his life upside down. "I had to move workplace and I haven't been able to coach sports. It has touched every part of my life. There was no law broken and they took me to court on nothing."

The consent of the attorney general is usually required to bring the prosecution of terror offences involving another country such as Syria. Suella Braverman was appointed to the job in February, taking over from barrister Geoffrey Cox. In the hearing, Sweeney said he would rule subsequently on whether to force the CPS to give a more detailed explanation as to why it had abandoned the case. "This it not the first occasion where this has happened," the trial judge said. Dan Newey, from Nuneaton, had decided to leave the UK in 2017 to join the YPG having followed the Syrian conflict in the news. He previously worked in insurance and had no military experience but said he was trained by British and US special forces shortly after he arrived in Syria.

The young man returned to Britain the following year and, in common with standing policy for anybody returning from the Syrian conflict, was subject to an investigation by counter-terror police to assess if posed any risk to the public. Armed police conducted a raid on Dan Newey's home but no charges were brought, and after some months his passport was returned to him – which family members say give him a "green light" to travel back to Syria. Vikki, Dan Newey's mother and Paul Newey's former partner, said she was relieved the prosecution had collapsed because of the impact the terror prosecutions had had on her extended family. But the 46-year-old said she thought the decision to drop the case was ultimately political. "I don't think the government have had a change of heart and think, gosh, these Kurdish people, that's awful for them. It's either a political manoeuvre or there is something that the government doesn't want to come out on public record," she said.

Appealing a Refusal of Permission For Judicial Review in Scotland

Bilaal Shabbir, Freemovement: Scottish litigation would not be the same unless we had fancy words for everything. "Judge"? – too plain. We have "Lord Ordinary". "Appeal"? Pah! We have the "reclaiming motion". "Court of Appeal"? Too simple. We have the "Inner House". This brief lesson on Scots litigation terminology is by way of introduction to the Inner House decision in PA v Secretary of State for the Home Department [2020] CSIH 34. The judgment sets out how an appeal court will consider appeals against refusals of permission to proceed in applications for judicial review.

Background: Judicial Review in Scotland: The Courts Reform (Scotland) Act 2014 brought substantial changes in the procedures for bringing applications for judicial review in Scotland. One of the main changes was a requirement to obtain permission which required an applicant to show they had a "real prospect of success". This was an unsurprising reform because previously any judicial review, regardless of how rubbish it may be, could be brought in the Scottish

courts. This meant that organisations and bodies defending these applications went to massive expense to instruct counsel, prepare written pleadings and notes of arguments to fend off unmeritorious claims (or see them be ditched as the last minute). The permission stage was intended to stop all that. To stop people for arguing for hours and hours about whether permission should be granted, our court rules introduced a 30 minute time limit (15 mins each) after which the judge would come to a decision on granting permission to proceed.

Resolving Questions About The Permission Stage: The PA case raised two important questions: 1. Is a judge entitled to reach a view on the merits and essentially determine the application at the permission stage, as opposed to just deciding whether the case has a real prospect of success? 2. If an appeal is brought against a refusal to grant permission, is the appeal court deciding whether the judge was wrong or can it re-decide the issue of permission afresh?

These points were very important and affected every type of judicial review, not just immigration and asylum cases. Until now, we had been a bit unsure of how these questions were to be answered and everyone ended up taking slightly different approaches. The petitioner in PA was a Pakistani asylum seeker who claimed asylum on the grounds of her sexuality. The problem was that she had already been refused asylum on the same grounds and when she appealed the decision, a judge found she had fabricated her homosexuality. The judge found inconsistencies in PA's account, including not being able to say what her partner's job was despite claiming to be in a relationship since 2015. After her fresh claim was refused, the application for judicial review came before the Court of Session.

At the permission stage, the judge said: Overall I am clearly of the view that there is no merit in any of the reclaimer's challenges… there are no realistic prospects of success before another immigration judge. The test in terms of section 27B of the Court of Session Act 1988 I believe is clearly not met. The Inner House found that the judge had not gone too far. It found that in the permission process, the judge: will inevitably have to make some form of preliminary assessment of the merits. In this case, the Lord Ordinary concluded that there was no merit in any of the petitioner's challenges. He reached that view in the context, as he expressly phrased matters, of whether the test in section 27B of the 1988 Act [as inserted by the 2014 Act] had been met. That was an entirely legitimate approach to take.

Analysing the wording of the 2014 legislation, the Inner House found that the appeal court needs to decide for itself whether there is a real prospect of success. In doing that: Although it will no doubt afford the opinion of the Lord Ordinary due respect, it does not have to find an error, whether of law or fact, in that opinion before allowing an appeal and granting permission to proceed. Since the question is one that depends to a significant degree on impression informed by experience, it will be open to the Division simply to form a different view from the Lord Ordinary on whether the case has a real prospect of success. Ultimately, the court decided that the Lord Ordinary had got it right, but the case is very important in highlighting that someone refused permission has a second bite of the cherry. There is no need to prove that the Lord Ordinary somehow made a mistake in refusing permission; the appeal can be decided by the Inner House afresh on the evidence that was before the Lord Ordinary.

How Long Should Such Appeal Hearings Last? There are definitely advantages to appealing (or "reclaiming") a decision refusing permission; you get to have another shot in front of three judges in a hearing where you usually get a lot more than 30 mins to persuade the judges. This is a disadvantage from the Home Office point of view, and the department asked the court to "express a view on the time to be allocated for the hearing of an appeal against a refusal of

permission to proceed", given that notes of argument and grounds of appeal should distil the issues in dispute. Taking its customary restrained approach, the Inner House said: The court will allocate appropriate time for such appeals, which will take into account the preliminary nature of the exercise which is being carried out by the court and the court's previous statements (Wightman v Advocate General for Scotland (supra)) that whether there is a real prospect of success is something which should be clear from the facts and the propositions in law contained in the petition itself. Which seems a subtle way to say "you shouldn't be spending more than half an hour on this because it should be bloody obvious what the issue is by now!".

New Guidance to Prison Services on Humane Treatment of Inmates

The Committee of Ministers of the Council of Europe has adopted a Recommendation which updates the 2006 European Prison Rules. The rules, which contain the key legal standards and principles related to prison management, staff and treatment of detainees and are a global reference in this field, guide the 47 Council of Europe member states in their legislation, policies and practices.

The revision concerns the rules on the record keeping of information about inmates and the management of their files, the treatment of women prisoners, foreign nationals, as well as the use of special high security or safety measures such as the separation of prisoners from other inmates, solitary confinement, instruments of restraint, the need to ensure adequate levels in prison staff, inspection and independent monitoring.

The recommendation regulates in greater detail solitary confinement (i.e. being locked up for more than 22 hours a day without meaningful human contact). Decisions on this measure should always be used as a last resort and take into account the state of health of the prisoner. Due to the very negative effect such a measure may have on one's physical and mental health, it should be imposed for a strictly specified period of time, which should be as short as possible.

The revised rules establish that states should set in their national legislation the maximum period for which solitary confinement may be imposed. Furthermore, inmates concerned should be visited daily by the prison director or an authorised member of the prison staff, as well as by the medical practitioner. Read a lot more: https://is.gd/M7m1pF

ECHR: Forced Prostitution Covered by Article 4

Freemovement: S.M. v Croatia (application no. 60561/14) is an odd case to read. It is very long, running to 356 paragraphs and several concurring judgments, and refers to a wide variety of international law sources. But its conclusion is straightforward: forced prostitution falls within the scope of Article 4 of the European Convention on Human Rights, either as an instance of trafficking or as an instance of forced labour, slavery or servitude, depending on the facts. The court went on to find that the Croatian criminal justice system had failed SM in a variety of ways, violating her Article 4 rights.

SM is a Croatian woman subjected to forced prostitution. A former police officer contacted her via Facebook claiming to be able to help her find a job. Instead, he forced her to have sex for money and kept half of it. He used a variety of means to coerce her into having sex with clients, including force, threats of force and close monitoring. The man also made all the arrangements for her meetings with clients and lent her money. It was pretty clear from the outset that the three elements of trafficking were present. The act of recruitment had taken place, various coercive means were used and the purpose was exploitation and forced labour.

The court began its judgment by confirming that trafficking under Article 4 ECHR does not

need to be transnational in nature. It explained that the wider definition of trafficking used in the European Convention Against Trafficking should be preferred to the more limited decision in the Palermo Protocol, which was drafted to specifically target trafficking by transnational organised crime groups: this is dictated by the fact that excluding a group of victims of conduct characterised as human trafficking under the Anti-Trafficking Convention from the scope of protection under the Convention would run counter to the object and purpose of the Convention as an instrument for the protection of individual human beings, which requires that its provisions be interpreted and applied so as to make its safeguards practical and effective.

The court then went onto to decide that forced prostitution would fall within Article 4 ECHR either because it amounted to trafficking or because it fulfilled the explicit requirements in the text of Article 4 of forced labour, servitude or slavery. It stressed the distinction between these two routes to engaging Article 4: the question whether a particular situation involves all the constituent elements of "human trafficking" (action, means, purpose) and/or gives rise to a separate issue of forced prostitution is a factual question which must be examined in the light of all the relevant circumstances of a case.

But the judgment does not identify the circumstances in which forced prostitution would not amount to trafficking. Judges O'Leary and Ravarani point out in their concurring judgment that far from clarifying what difference if any exists between the two, the Grand Chamber's judgment adds to the confusion. The big issue which the Grand Chamber did not comment on is whether non-coercive involvement in the provision of sexual services should be permitted under the Convention. As Judge Pastor Vilanova pointed out, the vast majority of Council of Europe states already criminalise it. The countries that do not are Germany, the Netherlands, Slovenia, Spain and Switzerland — perhaps the court is waiting for a case involving one of those countries before addressing the issue.

Home Office Pay Over £100,000 Compensation For False Immigration Detention

Duncan Lewis: The County Court has determined that the Home Office must pay our client £106,840 in compensation for a period of false imprisonment amounting to 13 months and two weeks which equates to 410 days. In the court's previous judgment in January 2020, the court determined the following: The initial three months that the Claimant spent in immigration detention were lawful, however when approved premises became available on 19 July 2017, the Claimant should have been released and from this date until his release on 3 September 2018, the Claimant's detention was unlawful under Hardial Singh ground (ii).

The Claimant's detention was also unlawful for an additional two month period within the above time period because it was apparent that the Claimant could be deported within a reasonable period (Hardial Singh ground (iii)). During this particular timeframe, Her Majesty's Coroner had asked the Home Office not to deport the Claimant on the basis that he could be an important witness to the death of his friend in Brook House IRC. While in immigration detention, the Claimant suffered from moderately severe PTSD. His detention was the cause or the main cause of this condition. He also underwent a moderate depressive episode while in immigration detention. This was also caused by his immigration detention.

The County Court today decided the following: The Claimant should be awarded a total of £106,840 in damages. This could be broken down to £70,000 in basic damages (mainly due to the length of time he spent in detention), £33,000 for personal injury (mainly accounting for detention being the cause of his PTSD) and £3,840 in special damages to pay for the necessary treatment for PTSD and depression. The Defendant should pay 100% of the Claimant's costs. The Defendant argued that we should only be awarded 60% of our costs as we did not win on every ground. However, the judge made it clear that costs are not determined on the basis of winning every single point raised but should be judged on the basis of who is the 'successful' party. In this case, he said that the Claimant had set out to be substantially compensated for his false imprisonment and on this point, he was undeniably successful.

Why Does Culture Behaviour Among Prison Staff Matter?

The complex concept of culture has played a crucial role in human development and evolution throughout the history of humanity. To the extent that, every human organization, group or society has its own unique socio-cultural system of bonding and communication.

Primarily, a dominant culture occurs when its integrated pattern of human knowledge and experience challenges and overcomes the culture system of another. In this regard, the Prison Service is no different. Pandering to a captive audience with its universal rules and regulations, the Prison System and its staff invariably have total control of the dominant culture. The Prison Service, however, is currently going through a substantive period of change and reorganization, the latest being the Coronavirus lockdown. Therefore, a vibrant and robust culture among prison staff matters, in the sense that, it is vital for staff morale and the smooth management of the prison system.

The main ingredients of the dominant culture are based upon the prevailing beliefs, customs, rituals and language. For example, we have the Prison Service flag; Director-General; prison uniform, black boots, jangling keys, telescopic batons and the booming commands which all form part of the national prison experience. The dominant culture is further bolstered by its dominant operating culture of security and containment; discipline and control and its allegiance to the Crown to protect and safeguard the public.

A prime example of the dominant culture in action and its impact on prisoners can be seen daily when staff depend upon each other for physical help and assistance at any time during their shift. More particularly, when staff run pell-mell to a false alarm; a prisoner-on-prisoner dispute or god forbid, an attack on one of their own. We learn staff are paid to meet force with force and are required to restore the dominant culture en bloc, forthwith.

As a consequence, the prevailing culture of prison staff, therefore, has come under immense stress and strain over the last decade (2010-2020), as seen in the exponential growth of violence and aggression between prisoners and staff. Whereby assaults on prison officers in England and Wales have risen to their highest level on record. Official figures show, there were 5,423 assaults on prison staff in the 12 months to the end of March 2016 --- a rise of 40% on the previous year.

Of equal relevance, prison staff have had to grapple with an increasing number of controversial long-term prison sentences handed down by the courts, such as those sentenced under the Joint Enterprise and Indeterminate Sentence for Public Protection (IPP) provisions. Despite IPP being abolished in 2012, bizarrely IPP prisoners still serve double, treble· or even quadruple their minimum tariff. Official figures recently released by the Ministry of Justice under the Freedom of Information provisions, state since the inception of IPP on 4 April 2005 and 31 December 2019, there were 194 deaths of IPP prisoners where 63 of those were self-inflicted.

Arguably, widespread change in the Prison Service has been brought on by the infamous Spice-era and attendant violence, contentious prison sentences self-inflicted deaths and now the behemoth called Coronavirus. Not surprisingly, such negative behaviour and events across the board do not provide an ideal environment for staff and their culture to flourish. The previous

notion that once you joined the Prison Service, it was a "job for life" has now given way to alternative employment in other careers, such as the security industry and the emergency services.

The rapid turnover of staff within the Prison Service, what with the old heads seeking early retirement and new staff fresh off the street. Patrolling the landings has left a considerable lacuna of knowledge and experience on the front line. For instance, at one end of the spectrum, we have long-term streetwise prisoners serving 30-years plus with nothing to lose pitted against novice Prison Officers fresh from the local Job Centre at the other end of the spectrum. Inevitably, the gaping abyss in knowledge and experience within the prison system between these two divergent groups may ultimately lead to a possible breakdown in the prison regime. What is needed is the fusion of cultures between the groups where they socially interact to the benefit and advantage of each other.

The desensitization of the dominant culture toward a more prisoner friendly approach can be seen in the new Key Worker Prison Officer Scheme that has been introduced across the prison estate with some success. Inasmuch as, unlike the previous Personal Officer Scheme which was dependent upon the personal attentiveness of the staff. Now Key workers are excused regular duties to chase-up individual prisoners to discuss their progress and problems. Entries are then placed on the P-NOMIS case file database which can be viewed by all and sundry within the Criminal Justice System and; indeed, prisoners through a formal Subject Access Request application to the Ministry of Justice for a printout of the personal data.

Alternatively, there are times when the dominant culture of a particular hostile prison can become so detrimental and corrosive to its incumbents that it radically undermines the favourable treatment of prisoners being carried out by prison management. For instance, in October 2019, the former Prison Service Chief Sir Martin Narey addressed an International Conference on imprisonment in Argentina. At the Conference, he said there was: "a not insignificant minority of prison staff that were brutal towards prisoners". Moreover, he argued, "Staff, casually and openly, spoke contemptuously about men for whom they were caring". More disturbingly, he proclaimed, " the challenge of preventing abuse and brutality is never-ending". Quite clearly, most Bien Pensant observers would agree, such treatment of prisoners is not only reprehensible but repulsive and repellent.

Taken altogether, culture matters among prison staff as it provides a safe social framework for the treatment of prisoners. Similarly, culture matters as it promotes and generates morale for staff sometimes to the detriment of prisoners. Finally, as Martin Narey declares, "A prison which respects prisoners is much more likely to be a prison that succeeds".4

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Thousands of High-Risk Offenders in UK 'Freed Into Homelessness'

Jamie Grierson, Guardian: Thousands of high-risk convicted criminals, including those classed as violent and sexual offenders, were being released from prison in England into homelessness, increasing the likelihood of their reoffending, inspectors warned. Her Majesty's Inspectorate of Probation (HMIP) said in a report that it was "particularly disturbed" to find that at least 3,713 people supervised by the National Probation Service, which is responsible for high-risk offenders, had left prison and become homeless from 2018 to 2019. Ministry of Justice figures show 11,435 people were released from prison into homelessness in 2018-19, and 4,742 homeless people started community sentences in the same period. The inspectors said this widespread homelessness was jeopardising the rehabilitation of offenders.

The chief inspector of probation, Justin Russell, said the case of the serial rapist Joseph

McCann highlighted the importance of appropriate housing for high-risk offenders. The probation services had been unable to find McCann a bed in approved premises on two occasions and he had ended up in unsuitable housing that did not facilitate close monitoring and management. Russell said: "Many individuals are homeless when they enter prison and even more are when they leave. Individuals need a safe place to call home, it gives them a solid foundation on which to build crime-free lives. 'It is difficult for probation services to protect the public and support rehabilitation if individuals are not in stable accommodation. A stable address helps individuals to resettle back into the community, to find work, open a bank account, claim benefits and access local services." Russell has called for the Ministry of Justice, and Ministry of Housing, Communities and Local Government to develop a national cross-government strategy addressing the housing needs of offenders. In all, 116 offenders released from prison were studied for the inspection report on accommodation and support for adult offenders in the community and on release from prison in England. Twelve months later 17% were found to be still homeless and a further 15% remained in unsettled accommodation.

For former prisoners released to settled accommodation, the number of those recalled or re-sentenced to custody was almost half that of those who did not have such accommodation upon release, the report said. Many offender-specific schemes have closed or been merged with generic homelessness services where higher-risk individuals, such as those with convictions for sexual offences or arson, were less likely to be accepted, the inspectors said. The report warns of "many substantial barriers to obtaining settled accommodation" for offenders. HMIP said that most offenders did not have priority on the housing register, and some were excluded because of previous behaviour, rent arrears, being classed as "intentionally homeless", or being without a local connection, while some social housing providers excluded "risky" service users. "Overwhelmingly, we heard from service users that homelessness is tough, it is mentally and physically draining, often coexisting with similarly draining issues such as substance misuse and mental ill-health. We heard how some find it easier to be in prison than navigate housing services following release," the report says.

The shadow justice secretary, David Lammy, said: "By failing to provide adequate housing, the government is setting up former offenders to fail. "It is inevitable that some released from prison will fall back into crime if they have no option but to live on the streets. This creates more victims of crime, as well as greater expense to the tax payer as they end up back in prison. To break the cycle of re-offence for former prisoners, the government urgently needs to address the housing crisis, as well as re-investing in a proper, publicly-funded probation service." The inspectors visited probation services in Northamptonshire, Cleveland, London, and Essex, across both publicly-run and privately-run providers.

Peter Dawson, director of the Prison Reform Trust, said: "No amount of good work in prison will achieve rehabilitation if the basics of support after release are ignored. If the government is serious about both rehabilitation and public protection it must take this opportunity to invest in a coherent plan. Spending billions on new prisons but peanuts on accommodation for the people they release is obviously futile." A Ministry of Justice spokesperson said: "Having a safe and secure place to live is a crucial factor in cutting reoffending, and the probation service works closely with councils to fulfil its duty to help prison leavers into stable accommodation. Since this review we have also introduced new teams dedicated to finding housing, are increasing spaces in approved premises, and our £6.4m pilot – part of the government's rough sleeping strategy – has helped hundreds of offenders stay off the streets. We are also reviewing our referral process to help prevent homelessness."

Denial of Women's Concerns Contributed to Decades of Medical Scandals

Hannah Devlin, Guardian: An arrogant culture in which serious medical complications were dismissed as "women's problems" contributed to a string of healthcare scandals over several decades, an inquiry ordered by the government has found. The review of vaginal mesh, hormonal pregnancy tests and an anti-epilepsy medicine that harmed unborn babies paints a damning picture of a medical establishment that failed to acknowledge problems even in the face of mounting safety concerns, leading to avoidable harm to patients. Instead, women routinely had symptoms attributed to psychological issues or it being "that time of life", with "anything and everything women suffer perceived as a natural precursor to, part of, or a post-symptomatic phase of, the menopause", the inquiry heard. "For the women concerned, this was tantamount to a complete denial of their concerns and being written off by a system that was supposed to care," the review, chaired by Baroness Julia Cumberlege, concluded.

The Independent Medicines and Medical Devices Safety Review was ordered by the then health secretary, Jeremy Hunt, in 2018 amid concerns about vaginal mesh operations. The implants were marketed as a less invasive treatment for urinary incontinence and prolapse – conditions that are commonly linked to childbirth – but the Guardian revealed that many women were left with traumatic complications following the surgery. The review also focused on Primodos, a hormone pregnancy test taken by women between the 1950s and 1978, associated with damage to children born to mothers who took it, and sodium valproate, a treatment for epilepsy known to cause harm to babies if taken during pregnancy. Cumberlege said the pain experienced by so many women and their families was beyond anything she had previously encountered. "Much of this suffering was entirely avoidable, caused and compounded by failings in the health system itself," she said. "We couldn't believe that people had gone through so much agony and suffering and had been ignored. We did believe them." It was notable that all three cases primarily affected women, she added. "As women, we know when things are not right with our bodies," she said. "We are the first to know. When that information is ignored, it is simply belittling and adds to the suffering."

The report makes wide-ranging recommendations, including the appointment of an independent patient safety commissioner, an overhaul of the Medicines and Healthcare products Regulatory Agency and the expansion of the General Medical Council register to include a list of financial interests for all doctors. A common theme was the systemic failure to collect data on patient outcomes. The inquiry could not establish rates of mesh complications or how many women had taken sodium valproate while pregnant. The review recommends the establishment of a central medical device database and a registry of all women of child-bearing age who are taking sodium valproate. A recent survey by the Epilepsy Society found that one in 10 women currently taking the drug remain unaware of the risk of birth defects.

The report stops short of recommending a ban on the use of pelvic mesh, but says that such surgery should take place within specialist centres, and only in rare circumstances, after other conservative treatments have been tried. Kath Sansom, who founded the Sling the Mesh campaign in 2015, welcomed the recommendations, saying: "The report is hard-hitting, harrowing and recognises the total failure in patient safety, regulation and oversight in the UK. It also makes it very clear that our medical establishment is deeply entrenched in institutional denial and misogyny." Sansom, whose group has more than 8,000 members, said women had consistently had their voices ignored and medical complications downplayed. "At every step of this campaign I've been treated as though I'm overhyping something that really isn't that bad," she said.

Prof Derek Alderson, president of the Royal College of Surgeons of England, said the government should act swiftly to mandate a new central database for devices by including it in the medicines

and medical devices bill that is going through parliament and will regulate medical implants after Brexit. "Most people would be astonished to know that when they have an operation and a medical device or implant is used, there is no systematic way of tracking that implant over the following months and years," he said. Alderson said the surgical profession was working to improve its culture on equality and diversity, including through training to surgeons. "We cannot under any circumstances ever support surgeons who are dismissive of their patients' complaints," he said. "If that was a prevalent attitude at the time of most of the surgery, I'd hope there's a lesson that is being learned as we speak."

The health minister, Nadine Dorries, said the experiences of patients and families affected by mesh, sodium valproate and Primodos made for "harrowing but vital reading and have left me determined to make the changes that are needed to protect women in the future". "While the NHS is a beacon of brilliant care and safety in the majority of cases, as this report demonstrates, we must do better," she said. "Our health system must learn from those it has failed, ensure those who have felt unheard have a voice and, ultimately, that patients are better protected in future." The government would set out its full response after giving the review "full and careful consideration", Dorries said.

Criminal Procedure Rules – Not Just for Decoration

Paul Canfield, Broadway House Chambers: The recent case of R v Smith [2020] EWCA Crim 777 highlighted just how important the Criminal Procedure Rules are, and how, despite the pressures that practitioners face, they must be complied with to deal with any disputes surrounding evidence or procedure that may arise. The Court of Appeal heard that having been convicted of a sexual assault that took place in 1969, 48 years before his trial and subsequent conviction in November 2017, the evidence used to convict the appellant had contained extensive hearsay material. Before the trial, the prosecution had not served any hearsay application in breach of criminal procedure rule 20.2(2), despite hearsay being present within the complainant's ABE interview and some of the witness statements.

Notably, the hearsay evidence specifically went to an apparent confession made by the appellant at the time after being confronted by the complainant's now-deceased mother. That 'confession' was contained in both (1) the complainant's ABE interview and (2) a statement from the complainant's sister. After the judge had pointed out that the confession in the ABE was hearsay he was told by the Crown that the defence had agreed that the material could go in for the jury. The defence then highlighted that the admission into evidence of the confession was not agreed. Despite both pieces of evidence having been identified by the judge as multiple hearsay, no formal ruling took place prior to the evidence being called following oral submissions and neither advocate reminded the judge of the need for such a ruling before any evidence was called. The confession hearsay was then adduced when both the complainant and her sister gave oral evidence.

When summing up the hearsay aspect of the case to the jury, the judge warned that it was not exactly clear to what subject or act the 'confession' went towards. The court was not fully aware of the context of the conversation held between the parties several decades earlier because the complainant's mother, who had been the source of the hearsay, was deceased. The appellant had maintained throughout that he had patted the complainant on the knee in an effort to comfort her one evening, and the judge highlighted that any confession made at the time may have related to that action alone, especially as the appellant's former wife had given evidence that he had denied doing anything more.

Appellant's Submissions: During the appeal, the appellant's submissions, inter alia, focused on the admissibility of the hearsay confession, namely that because the prosecution had failed to make a written notice of hearsay application the defence had been unable to provide

a considered and detailed response. The absence of both notice and response then led to haphazard discussions of the hearsay statements and no proper ruling from the judge. Furthermore, the hearsay was multiple hearsay within the meaning of section 121 of the Criminal Justice Act 2003 and was not admissible pursuant to section 121(1)(a) or (c) and therefore, it had not been admissible by agreement between the parties. Had the judge received adequate submissions, a proper analysis would have been possible with the likely outcome being that the hearsay would not be admissible or that it would have been excluded under section 78 of the Police and Criminal Evidence Act 1984 ("PACE").

Respondent's Submissions: The respondent submitted in response that because the defence had assisted in the editing of the ABE interview before the trial they had been aware of its contents, and as they had not opposed the edited contents the hearsay confession had been agreed. Therefore no written application had been necessary. It was also submitted that the judge had made a ruling regarding the hearsay contained in the ABE interview in so far as he stated he would not exclude the evidence under section 78 of PACE, and therefore had ruled in favour of the Crown. In relation to the hearsay contained within the sister's statement, the defence had verbally conceded the admission of the evidence during oral submissions.

Conclusion: In quashing the appellant's conviction for indecent assault the court ruled [50-51]: 'The Criminal Procedure Rules are not decorative. They are there for a reason. The structure and language of the rules, if complied with, should ensure that tricky questions of procedure or evidence are addressed by the parties in time, so that, where dispute arises, the parties have developed positions which can be laid clearly before the judge who must resolve the problem. That is the point of the Rules. This court is acutely aware of the pressures upon practitioners. But in our judgment, this case represents a good example of the problems which can arise when the rules are not complied with.

It is simply not sufficient, where complex hearsay evidence is sought to be introduced, for the Crown to remark that the evidence was in a record of an ABE interview or in a witness statement and that no explicit objection has been taken by the defence upon whom such evidence has been served. The notice requirement on the Crown is not implicitly waived by defence silence, or even where, as here, the defence have made suggestions for editing the ABE interview. The purpose of the rules is to ensure that both sides give their minds properly to what can be technical and difficult issues of admissibility'.

The Appeal Court went on to highlight that it had been the procedural failure by the Crown that led to a disjointed approach as to the admissibility of the hearsay by the defence, both before and during the trial, which then placed the judge in a difficult position. Had both parties laid out their arguments in an articulated manner, the judge would have been able to address the issues properly with the likely outcome being that the evidence would have been excluded. Although the submissions and the judgment also went to the Crown's justification for introducing the evidence and the guidance given to the jury by the judge in summing up the case, the main learning point for practitioners and students alike focusses on the need, not only to comply with the Criminal Procedure Rules but also to ensure that complex arguments are presented clearly and cohesively

Immigration Detainees Held In Prison Challenge Access to Legal Aid

The High Court has granted our client permission to seek judicial review of the failure to secure his access to publicly funded legal representation while he was detained under immigration powers in prison in the case of R (SM) v the Lord Chancellor. SM was detained under immigration powers in a prison for over nine months without access to a legal aid immigration adviser. As a result he was unable to challenge the lawfulness of his detention, and suffered severe detriment in relation to his immigration case. Immigration detainees held in Immigration Removal Centres (IRCs) have access to the Detained Duty Advice Service (DDAS). The DDAS ensures that legal aid lawyers visit each IRC on a regular basis to provide legal advice and representation. SM, like all detainees in IRCs was held by the Home Office under immigration powers. The fact that he was held in prison meant that he could not benefit from the DDAS, or from the more favourable arrangements in place for providers of legal aid representing clients in IRCs. As a result, he found it impossible to find a legal representative and was forced to represent himself in his asylum claim, further submissions, a bail hearing, and an appeal to the refusal of his further submissions.

SM's case is that the Lord Chancellor, who is responsible for securing people's access to legal aid, has unlawfully discriminated against SM, and in doing so, he has breached SM's rights under Article 14 of the European Convention on Human Rights, taken with Articles 2, 3, 5, 8 and 6 of the Convention. In his grant of permission, Mr Justice Linden held that the case was reasonably arguable and that it raises an important issue. At any given time, there are around 400 immigration detainees held in prisons, so this litigation may result in improved access to justice for a large and particularly vulnerable group of people, enabling them to properly challenge the lawfulness of their detention, and to properly advance their asylum and human rights claims. SM is represented by Toufique Hossain and Jeremy Bloom at Duncan Lewis Solicitors, and counsel Chris Buttler of Matrix Chambers and Ali Bandegani of Garden Court Chambers.

No Jail Time for G4S Blatant Criminality

Rob Davies, Guardian: Security firm G4S has been fined £44m by the Serious Fraud Office (SFO) as part of an agreement that will see it avoid prosecution for overcharging the Ministry of Justice for the electronic tagging of offenders, some of whom had died. The SFO said G4S had accepted responsibility for three counts of fraud that were carried out in an effort to "dishonestly mislead" the government, in order to boost its profits. Former justice minister Chris Grayling asked the SFO to investigate G4S and rival Serco in 2013, after a departmental review found they had overcharged for tracking the movements of people who had moved abroad, returned to prison, or died.

G4S agreed to compensate the Ministry of Justice in 2014, reaching a settlement worth £121m.But it remained under investigation by the SFO until Friday, when it announced a deferred prosecution agreement, pending approval by a judge at a hearing scheduled for next Friday. Under the terms of the agreement, G4S will pay a £38.5m penalty and £5.9m to cover the SFO's costs. The company was given a 40% discount on its fine after co-operating with the SFO. It has also agreed to enforce new controls, including a programme of "corporate renewal" to prevent a repeat of the scandal, which took place within its G4S Care & Justice division. "G4S Care & Justice repeatedly lied to the Ministry of Justice, profiting to the tune of millions of pounds and failing to provide the openness, transparency, and overall good corporate citizenship that UK taxpayers expect and deserve from companies entering into government contracts," SFO director Lisa Osofsky said. "The terms of this deferred prosecution agreement will provide substantial oversight and assurance regarding G4S Care & Justice's commitment to responsible corporate behaviour."

G4S chief executive Ashley Almanza said: "The behaviour which resulted in the offences committed in 2011 and 2012 is completely counter to the group's values and standards and is not tolerated within G4S.We have apologised to the UK government and implemented significant changes to people, policies, practices and controls, designed to ensure that our culture is underpinned by high ethical standards and that our business is always conducted in a manner which is consistent with our values. We have made significant progress in embedding these standards throughout the group and we are pleased that this has been acknowledged by the SFO and the UK government."

The £44.4m in fines and costs takes the total paid out by outsourcing firms involved in the prisoner tagging scandal to more than £250m. Serco reached its own £22.9m agreement with the SFO last year, six years after repaying £68m to the Ministry of Justice. The SFO said its agreement with G4S was made possible by factors including the company's disclosure of evidence and its "overall – albeit delayed – substantial cooperation" with the investigation.