ing on certain statistical percentiles the interpretation of the data focusses on. They conclude that while their model allows a clinician to estimate whether a child presenting with ALTE and nosebleed was abused (e.g. versus a child with ALTE but without nosebleed), a wide margin of uncertainty certainly admits reasonable doubt. Statistical uncertainty must therefore always be considered when presenting statistics in court or explaining them to a jury.

Mathematical Ethics: Disciplines like Jurimetrics or Law and Economics try to analyse legal issues using statistical, probabilistic and microeconomic methods. Such methods and quantitative results achieved can be useful but arguably put additional ethical and professional obligations on the experts generating and explaining their work in court, advising financial institutions or the media. The prestige and perceived objectivity of mathematics and statistics in society is high but comparatively few can fully understand or readily challenge them. The risk to be misled by numbers or drawing unsound inferences from them is considerable. Ultimately, statistics are not empirical facts. They are considered opinions of the people who generate them, ideally using their best available data, methods and judgement. As lawyers, we should remind ourselves that empirical evidence remains best: cases shouldn't be decided on opinions, no matter how authoritatively they may present.

Downing Street Plans Rape Prosecution Targets for Police and CPS

Downing Street is planning a controversial intervention to reverse the record decline in rape prosecutions by imposing targets on police and prosecutors, the Guardian has learned. In a highly unusual move, the prime minister's crime and justice taskforce is planning to set targets for police to make more "high-quality" referrals of rape cases to the Crown Prosecution Service and for the CPS to prosecute and bring more rape cases to trial. It paves the way for a row with the CPS, which is likely to oppose the change for impinging on its independence. The service has in the past set its own targets for different crimes, but this is understood to be the first time it would be subject to a government-imposed target for rape prosecutions. The cross-government crime and justice taskforce, led by Boris Johnson, is set to call for the service to prosecute a greater volume and proportion of rape cases year on year. It is expected to announce the targets later this year. The move follows steep annual declines in the number of cases referred by police to the CPS and the number and proportion of rape cases prosecuted. Less than two weeks ago, rape prosecutions were revealed to have fallen to their lowest level since records began, 2,102 prosecutions – a 59% decline since 2016-17 – and 1,439 convictions in England and Wales in 2019-20. Meanwhile, reports of rape increased by a third to 55,130. Referrals from police to the CPS have fallen 40% since 2016-17. Amid growing anger fewer rape cases have been passed from police to prosecutors, but the fall in the number of rape cases prosecuted by the CPS has been even more marked. The average time for a report of rape to be charged is 395 days, the longest of any crime type. Government is carrying out an end-to-end review of the crime.

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

Miscarriages of JusticeUK (MOJUK)
22 Berners St, Birmingham B19 2DR
Tele: 0121- 507 0844 Email: mojuk@mojuk.org.uk Web: www.mojuk.org.uk

MOJUK: Newsletter 'Inside Out' No 807 (19/08/2020) - Cost £1

Terence Allen - British Justice is Concerned with Results not Justice

Terry Allen has maintained his innocence of a murder conviction for 35 years, yet remains in prison to this day. He has made numerous applications to the Home office and to the CCRC over the years. He has now renewed his application to the CCRC with the assistance of the Cardiff University Law School Innocence Project. His new application details serious new concerns about the quality and integrity of the scientific evidence used in his case, his treatment in police custody, his medical condition at the time and the fairness of his trial in the light of these factors.

In 2003 Terry wrote to MOJUK: On the 8th of May 1986,1 was convicted at the Reading Crown Court of the murder of my friend, Anita Kirkwood. I was sentenced to life imprisonment with a tariff of 14 years.I have now served 30 years and there is no doubt that my protestations of innocence has led to my having served beyond the tariff period and that I remain in B category conditions with no foreseeable prospects of release. My appeal was heard by the full court of appeal in November 1987 and was quickly dismissed and from thereon it has been one long struggle in trying to clear my name.

In 1998, the CCRC refused to refer my case back to the Court of Appeal in spite of compelling reasons that there were many serious questions which remained unanswered and continue to be so. Following this decision I made an application to the European Court of Human Rights. But found that the rules of that court stipulated that I must submit an application to them within 6 months of the last judicial decision. It was therefore to late for me to submit my appeal to the ECHR as my dismissal of my appeal at the Court of Appeal was some 11 years before. Up until the CCRC came into being in early 1997, the only way back to the Court of Appeal was on a referral by the Home Secretary. The ECHR was one avenue to challenge the fairness of my trial, but it was limited, for they have no powers to quash a conviction. Their powers are limited to issuing a declaration of incompatibility with the European Convention on Human Rights against the UK Government, Which can add strength to one's argument in challenging a conviction.

The road to successfully overcoming a miscarriage of justice is met along the way by all the obstacles which the state are experts at creating. The first obstacle is that the wrongly convicted prisoner is not a legal expert. He or she is therefore likely to be ignorant of the legal procedures, processes and the red tape involved in successfully challenging one's conviction. The second obstacle is in finding a solicitor who is interested enough to take on one's case, which gives rise to the biggest obstacle of all, legal aid. Very few of us are in the OJ Simpson league with the funds necessary to undertake complex and often very lengthy legal work and investigations. What is available is state funded legal aid and as is the case so very often, unless one's case is high profile and has a potential for some financial benefit to the players, legal aid buys no more than legal aid justice.

I remember very little about my arrest, which took place in hospital. I remember even less about the police interviews, which gave rise to many contradictions at trial. At the time of my interviews with the police, I was suffering from carbon monoxide poisoning. This was due to me trying to take my own life, because I had just caught my common law wife in bed with another man. No police surgeon was called to see if I was fit, enough to be answering questions. I had no help at all for the two days that I was in police custody, I was completely in their power, and they could do whatever they liked

to me. I was totally defenceless against them. My friend, Anita Kirkwood was stabbed, beaten, bitten and raped, over a period of some 40 minutes, whilst the police were actually inside her block of flats. Though I was the only person charged, there was ample evidence before my arrest that two persons were involved. Both attackers left their DNA samples on her body.

It took me many weeks of studying the police statements and forensic evidence to possibly identify one of the assailants. It took me a further 6 years to possibly identify the second person involved. This is because my own defence team withheld evidence from me, until I forced them to hand it over to me via the legal ombudsman. No one, to date, has seen fit to put those forensic samples to a DNA test. No one, it seems is interested in justice, just a conviction, be it a right or wrong one

Messages of Solidarity/Support:

Allen A6119AD, HMP The Mount, Molyneaux Avenue, Bovington,HP3 0NZ

Loss of UK Prisoners' Rights is ihe Forgotten Injustice of the Covid-19 Crisis

Nick Cohen, Observer: At the start of the pandemic, any fool could see where the virus would strike. Any fool, that is, except the fool in Downing Street. “Few outsiders care about the care services,” I wrote on 4 April. “They are as neglected as the prisons, another Cinderella service that could be ravaged.” We were right about care homes becoming mortuaries, but the virus spared the prisons. Or, rather, it appeared to spare them. Instead of taking lives, it has taken liberties and made the practices of our criminal justice system resemble those of a police state.

As always, the scandal is that there is no scandal. The Crown Prosecution Service shrugs its shoulders and our allegedly liberal judiciary sits on its hands as uncounted thousands are imprisoned without a court convicting them and ordered to stay in their cells 23 hours a day, with one shower a fortnight until… No one knows. Their plight echoes the wider plight of the UK. We have the highest excess death rate of any country in the world because the Johnson administration lacks courage. It would not lock down in time or stop flights from Covid-infected countries because it would not take hard and unpopular decisions for fear of looking bad. Its dilettantism has infected the whole public sector.

All free societies place limits on how long the state can hold a suspect before bringing him or her to trial. The government cannot just imprison citizens indefinitely. The legal time limit that a defendant can be held in custody – the time between being charged with an offence and bring brought to court for a criminal trial – is 182 days, unless there are exceptional circumstances such as a witness falling ill. England, which gave the world the presumption of innocence and habeas corpus, would never tolerate imprisonment without trial stretching on indefinitely. Suppose the jury found you not guilty, but you had been punished by spending years in a cell on remand as if you were a guilty man. No government should have the power to lock you up and forget your existence. Fair Trials has heard of people having to wait in prison for cases postponed until December 2021

Covid-19 has given this government precisely that power. As courts closed and jury trials stopped, the CPS deemed the pandemic an “exceptional” circumstance. Fair enough, I hear you say. But for how long would the exceptional circumstance last, how many people were to be held indefinitely and what would the government do if the “exceptional circumstance” became the norm? I have been able to find just one judge who asked these questions. Unfortunately for the state of English liberty, he wasn’t the lord chief justice, but a lowly justice at Woolwich crown court. Last month, Judge Keith Raynor released an alleged drug dealer who had been held way beyond the 182-day limit. Refusing a CPS request for a third extension to his incarceration, the judge warned that “many defendants in custody will not be tried until well into 2021”. Maybe longer than that. Fair Trials, a global criminal justice watchdog, has heard of people having to wait in prison for cases postponed until December 2021, with no guarantee that they will be heard even then.

lawyers, we like things to follow a logical order. The approach taken thus far towards parental alienation is an antithesis to our way of working: seeking to solve a problem that we do not yet fully understand or are able to define in the vain hope that the problem will be addressed. If we do not understand what parental alienation is, how can we possibly hope to determine allegations of parental alienation and then what can we do to solve the problem?

Benjamin Bestgen: Pitfalls of Statistics and law

Being falsely convicted for murdering one's children is likely amongst the worst experiences any person can have. In 1998, solicitor Sally Clark was convicted of the murders of her two babies, each dying a few weeks after birth at home. The defence’s assertion of Sudden Infant Death Syndrome (SIDS) was rejected after a medical expert for the prosecution argued with the help of statistics that murder was more likely. The conviction was upheld on appeal in 2000. Mrs Clark served about three years of her sentence. Only a second appeal, challenging the statistical evidence and other issues with the prosecution’s case, led to the conviction being quashed. Mrs Clark’s position as solicitor and conviction for child murder made her prison time particularly difficult. She never recovered from her complex trauma, developed psychiatric problems, alcohol dependency and died in 2007.

Sound Reasoning: Common wisdom says lawyers and law students suck at maths, though at least one study from 2013 suggests this may not be entirely true. But numeracy skills aside, an appreciation for logic and asking the right questions is arguably a must-have in the profession. Sound reasoning involves the ability to be less prone to succumb to cognitive biases, logical fallacies or framing effects. In the Clark case, the prosecution’s expert witness relied on what he called “a rather crude aphorism but a sensible working rule” that one cot death is a tragedy, two is suspicious and three is murder until proved otherwise. He presented self-made statistics to claim that the probability of two cases of SIDS in an affluent, non-smoking family like the Clarks was exceptionally low (1 in 73 million), implicitly suggesting murder was more probable. His probability analysis was decisive in Mrs Clark’s conviction, seemingly convincing the jury “beyond reasonable doubt”.

Statistics is a scientific field concerning the collection, analysis, interpretation, explanation and presentation of data. Each stage – from collection to presentation – is a complex sub-discipline on its own. What a statistic can really tell us depends on what exactly was done, assumed, in- or excluded, fact-checked and reasoned at every stage of the statistic’s creation. And while professionals like doctors normally learn some statistics, they are generally not expert statisticians. Neither was the prosecution’s expert in Clark: in 2001, The Royal Statistical Society felt compelled to publish a statement of concern, declaring his statistical approach invalid and its interpretation prone to logical errors, including the Prosecutor’s Fallacy.

Uncertainty: When considering the likelihood of an event with the help of probabilistic reasoning, a core problem is how to communicate and interpret uncertainty. Statistician Nicky Best and colleagues (2012) presented a statistical model to help clinicians calculate the likelihood of child abuse in infants who experienced an acute life-threatening event (ALTE) in combination with nosebleeds. They concluded that estimating the probability of a child having been abused versus alternative innocent explanations is far more uncertain than expert advice or common literature on the subject suggests and depends heavily on assumptions made in individual cases. On their best estimate, the probability that an infant presenting with ALTE and nosebleed was abused lies between 15 per cent and 26 per cent, depending on the assumptions made. They also flag a non-negligible possibility of abuse as low as three per cent or as high as 51 per cent, depend-

tions of parental alienation. The concept of parental alienation can trace its roots back to the 1970s, but real debate did not actually start until Richard Gardner[1] sought to introduce parental alienation as a syndrome in 1985, in which he defined it as a 'disturbance in which children are obsessed with deprecation and criticism of a parent – denigration that is unjustified and/or exaggerated.' Since then, there has been a steady stream of literature across a number of disciplines seeking to examine the effects of both parental alienation and parental alienation syndrome [2] and how to manage such issues. Much of the literature on the subject, however, is predicated upon the reader already having an awareness of what parental alienation is, or upon an acceptance of what others believe parental alienation (or Parental Alienation Syndrome (PAS)) to be.

In recent times, CAFCASS have identified the need for a greater understanding of parental alienation as they are called upon by the Family Court to assist with such cases. CAFCASS have adopted a working definition of alienation. However, it is argued that this working definition highlights a significant difficulty in moving on the debate on parental alienation or offering meaningful assistance to the Court. CAFCASS' working definition is: "When a child's resistance/hostility towards one parent is not justified and is the result of psychological manipulation by the other parent." The use of the phrase 'psychological manipulation' conjures up connotations that parental alienation is a psychological issue. This would tend to align CAFCASS' understanding of the concept with Gardner's assertion that parental alienation is a syndrome. Indeed, proponents of Gardner's work have also found their research the subject of criticism and, in some cases, judicial rejection in this country. Against the backdrop of criticisms which Gardner's work has generated from psychological and legal spheres and despite calls to include parental alienation syndrome in the ICD-11 and DSM-V having been rejected due to, amongst other reasons, a lack of research on the subject, it is submitted that the adoption of such a working definition by an organisation that is a major player in the Family Justice System further muddies the water. This is particularly so when considered alongside the findings of a review commissioned by CAFCASS Cymru [3] that there is no agreed definition of parental alienation.

During the initial stages of my research in this area, it is apparent that parental alienation and parental alienation syndrome are different beings. Yet even those who claim to be experts in the area appear to use the terms 'parental alienation' and 'parental alienation syndrome' interchangeably. Indeed, the working definition adopted by CAFCASS appears to merge the two concepts, with the reference to 'psychological manipulation'. This, it is asserted, adds to the need for a clear definition that does not appear to conflate the two. This must be avoided, not least as calls to include parental alienation syndrome in the international directories for mental illnesses have been rejected. It has been acknowledged by the courts that cases where alienation is asserted place a huge demand on the court's resources [4] and this is particularly so at a time when the Family Court is facing significant pressures. The fact that many of the reported cases in which parental alienation is said to be a factor take the form of a 'post-mortem of the lost parental relationship' provides further support for the argument that more work is required in order to arrive at a clearer, less controversial definition and one that will offer the court and the families it serves the opportunity to manage such cases effectively, yet efficiently. However, the burden placed upon the courts is unlikely to lessen whilst arguments persist as to what parental alienation actually is.

Allegations of parental alienation are not going away. There is a body of research which tells us that a fractured parental relationship can create difficulties for children which pervade their life and future relationships; in order to ensure better outcomes for those children and families served by the Family Justice System, greater understanding of the concept is required. As

It is impossible to find out how many of the 11,000 or so in jail awaiting trial are being held under “exceptional” measures. I asked the CPS. It didn’t know, even though its lawyers are meant to know. The activists at Fair Trials have submitted freedom of information requests. They have not been answered. MPs have tried in parliament. No luck again. Fair Trials, like everyone else who understands the public sector, emphasises that the suspension of due process is being inflicted on a criminal justice system that was already “underfunded and crumbling”. Ten years of Conservative rule meant that it was in crisis before the Covid crisis. Courts were closed, legal aid and the police cut, and the backlog of cases allowed to grow to unprecedented levels.

Most prisoners awaiting trial in England are not dangerous: The government is not being entirely idle. It promised trials could be heard in “Nightingale courts”, but to date has announced only 10 new sites. Johnson promised money to “digitally upgrade” 100 courts. But no one knows when the work will be finished or, given the government’s record on IT, whether the digital upgrade will actually work. In any case, what Johnson gives with one hand, he takes with another. The government is spinning that it wants to end plea bargains and reduced sentences for defendants who accept their guilt. This will lead to more not-guilty pleas and more delays as defendants clog the system by demanding full hearings on the off-chance they might get lucky.

The one measure it won’t take is the measure that governments across the world are taking: releasing non-violent offenders. Most prisoners awaiting trial in England are not dangerous. Only 25% of those on remand are facing charges of murder, rape and other forms of violence. The government could release many of the rest under supervision and allow them to live free until the day it could get round to organising a trial. In April, it said 4,000 low-risk prisoners would be fitted with GPS tags and let out to stop the spread of the virus in prison. At most it freed about 250. The home secretary, Priti Patel, was “uncomforta ble” with the idea, the Times reported. She could see how it would dent the Conservatives’ attempt to pose as party of law and order. PR concerns overrode all else.

You may not care about suspects presumed innocent until found guilty in solitary 23 hours a day. But perhaps you care about losing a relative to Covid or losing your job because the Johnson administration was so frightened of being accused of running a nanny state that it delayed taking the essential measures to protect the population. Perhaps you will then realise that the trouble with having a government run by second-rate Tory journalists is that it cares more about bad headlines in the second-rate Tory press than the lives and liberties of its luckless subjects.

Number of deprivation of liberty orders for children and young people triples in two years:

BBC News: The number of children in care in England and Wales subject to deprivation of liberty orders has tripled in the last two years, research by BBC News has found. The BBC report said freedom of information responses from 91 of 170 local authorities in England and Wales had shown the number of deprivation of liberty orders for children and young people went from 43 in 2016-17 to 134 in 2018-19. The report said deprivation of liberty orders were increasingly being used to detain children in homes when suitable accommodation cannot be found. It added that more than a quarter of orders granted over the last five years were made primarily because of concerns about the child or young person going missing, without relating to mental capacity. The BBC report follows a number of expressions of concern from judges about the lack of secure placements for young and vulnerable children. The latest comments came from Mrs Justice Judd in Z (A Child : DOLS: Lack of Secure Placement) [2020] EWHC. In that case the Department for Education told the High Court that there was nothing that could be done and the local authority concerned would have to keep searching in circumstances where there was no suitable placement.

Romanian Grandmother Wins Appeal Against Extradition For Shoplifting

A Romanian national has succeeded in appealing an extradition order that would have seen her returned to Romania to serve a 13-month prison sentence for a conviction of aggravated theft. The appellant, referred to as DV, argued that her rights under article 8 of the ECHR would be breached by extradition, due to the fact that her youngest child had given birth to a baby daughter, to whom DV was in effect the primary carer, in the middle of extradition proceedings. The appeal was heard in the Appeal Court of the High Court of Justiciary by Lord Brodie, Lord Glennie, and Lord Turnbull.

Failed to Attach Sufficient Weight: The appellant was convicted of aggravated theft in a court in Bucharest in 2017. The theft was committed in November 2014 when she stole several food products from a mall store in Napoca, Romania. The appellant had a criminal record in several different countries for analogous offending, including in Scotland. She had travelled to Romania from Scotland to attend the trial but had returned to Scotland following her conviction. Following her sentencing in December 2017, the Romanian authorities sought to extradite her by means of a European Arrest Warrant issued in January 2018. The appellant was arrested and appeared at Edinburgh Sheriff Court on 19 April 2018. She opposed extradition, with a hearing taking place in May 2019 after a series of adjournments. At the hearing, the sheriff ordered that the appellant be extradited.

The appellant's youngest child, CV, born in 2006, resided with her mother and father in Scotland. In June 2019, Glasgow City Council social workers were made aware that CV was pregnant. Following the birth of the child, the appellant and CV shared parenting duties and the appellant remained the main carer for both of them to allow CV to continue to attend school. Following the birth of the appellant's granddaughter, AV, the application was amended to include an article 8 challenge, which was accepted by the respondent as competent despite its lateness in proceedings. It was therefore submitted that new evidence had come to light which would have resulted in the sheriff deciding the question differently in that he would have been required to order the appellant's discharge. The appellant submitted that there was a strong public interest in ensuring that children are properly brought up, and that the meeting of both CV and AV's practical and emotional needs would be significantly affected by the removal of their primary caregiver. Further, the nature of the offending behaviour was at the lower end of the spectrum of criminal behaviour, which would be a significant factor in weighing up the public interest in extradition.

Trivial nature: The opinion of the court was delivered by Lord Brodie. After being satisfied that the court was required to determine the issue de novo, he said: "We have regard to all the factors referred to by [the respondent] as favouring extradition but, with one exception, we have not given them much weight. A requested person may be extradited even where, in the opinion of the requested court, the offence for which that person has been convicted does not appear to be very serious. The seriousness of the extraditable offence is nevertheless relevant; where the offence is serious that weighs the balance in favour of extradition, where it is not serious it does not. What we have in the present case is a conviction for shoplifting of some items from a food store a number of years ago which attracted a custodial sentence of 13 months. If anything, the trivial nature of this offence points away from extradition, albeit we noted and have had regard to the point made by the solicitor advocate for the respondent that were the appellant to be extradited her absence from her home in Scotland should not be for more than 13 months."

On the appellant's arguments regarding her children, he said: "The crisis which arose when the thirteen-year-old CV gave birth to AV, would appear to have been satisfactorily managed by the appellant taking on the role of principal carer of AV while continuing to look after CV. To withdraw the childcare provided by the appellant would amount to an interference with the children's article 8

law to compel an answer from an overseas recipient in Country B where Country A could criminalise their conduct. A notice under a disclosure order could not therefore be sent to persons out of the jurisdiction. The SFO argued that Perry did not preclude the making of a disclosure order where the subject of the investigation was outside the jurisdiction. It was only a notice made under authority of the disclosure order that could not be sent to an overseas person. The SFO also argued that although Mr Faerman was named as the subject of the investigation, a notice under a disclosure order could be sent to any person who had relevant information. As to the allegations of breach of the duty of full and frank disclosure, the SFO accepted that Perry was not brought to the attention of the court, but maintained that the non-disclosure was inadvertent. It was submitted that the court would still have granted the disclosure order, but may have made clear a notice could not be served on Mr Faerman. There was no male fides and there was a compelling public interest in the disclosure order remaining.

What did the court decide? The court considered that the test for the granting of a disclosure order had been met. It considered Perry and agreed that Perry was authority for the proposition that no notice could be issued pursuant to the disclosure order to persons outside the jurisdiction. The fact that Mr Faerman was the only named respondent did not limit those to whom the SFO may send notices, including those within the jurisdiction. The court did not therefore consider the disclosure order itself was unauthorised or defective. However, the court was critical of the SFO serving a notice and a copy of the disclosure order on Mr Faerman's solicitors with the penal notice redacted. The court rejected the SFO's submission that this ensured the notice complied with Perry. There was no power to issue a notice requiring information from Mr Faerman who was resident in Brazil. The court noted that once objection had been raised by Mr Faerman's solicitors, the SFO withdrew the notice. Although the court dismissed the application, it marked its displeasure at the attempt to serve the notice on Mr Faerman in this way by making no order as to costs in favour of the successful respondent. The court considered that although there had been non-disclosure it would not be appropriate to discharge the disclosure order because: had the judge been told about the Perry case the disclosure order would still have been made, but the court would have noted that a notice could not be served on Mr Faerman outside the jurisdiction the SFO did not act in bad faith, there was no prejudice to Mr Faerman, as he did not answer the notice sent by the SFO, there was a compelling public interest in maintaining the disclosure order

Parental Alienation: the Enigma of Family Law

Ian McArdle, Barrister Atlantic Chambers, Liverpool, calls for an agreed definition of 'parental alienation'. In recent years, the concept of parental alienation has provoked much debate amongst academics and practitioners alike, all seeking to offer guidance on how cases involving parental alienation should be managed. Indeed, CAFCASS have sought to devise strategies for their Family Court Advisors to assist in the identification and management of cases involving alleged parental alienation. All those involved in these debates have laudable aims: they seek to secure better outcomes for children and families who are exposed to harmful behaviours. However, there is a significant handicap to these efforts. Before anyone can begin to manage a problem, surely they must grapple with what the problem actually is? And if they cannot identify the problem, then how can they possibly manage it? And if they cannot manage a problem, how do they solve that problem so that it does not reoccur?

This, I argue, is the conundrum facing the Family Justice System when dealing with allega-

instance if rights to mental integrity and psychological continuity should be absolute or relative. Philosopher Julian Savulescu argues for obligatory moral enhancement to improve the minds and behaviour of violent offenders, if such biomedical technologies are safe and effective. Others disagree. In times of hype, hysterics and kneejerk reactions, nuanced, considered public debate of neurotechnology with all its benefits and risks is all the more important. It should be worth our time.

Proceeds of Crime Act 2002 Disclosure Orders, Notices and Overseas Recipients

James Fletcher, barrister, at 5 St Andrews Hill: Corporate Crime analysis for Lexis Nexis PSL: Although the Serious Fraud Office (SFO) did not bring to the court's attention a Supreme Court decision (that held a notice issued under a disclosure order could not be sent to someone outside the jurisdiction) that did not invalidate the disclosure order itself and the non-disclosure was not sufficient to merit the discharge of the disclosure order. Faerman v Director of the Serious Fraud Office [2020] EWHC 1849 (Admin)

What are the practical implications of this case? This case is a reminder that: if the sole purpose of an application for a disclosure order is to serve a notice to obtain information from a person outside the jurisdiction, then the application would be impermissible; however, if the disclosure order is to be used to obtain information from a wide variety of persons within the jurisdiction then, notwithstanding the subject of the investigation is resident overseas, the disclosure order would not be invalid; furthermore, law enforcement cannot seek to get around the prohibition on serving a notice on someone outside the jurisdiction by simply removing the penal notice from the disclosure order and suggesting that compliance with a notice is voluntary; the case is also an example of non-disclosure which, on the facts and surrounding circumstances, was not sufficient to merit discharge of the order

What was the background? The Administrative Court considered an application to discharge a disclosure order. The SFO was conducting a civil recovery investigation into assets held by Mr Faerman, a Brazilian national, to decide if those assets had been obtained through unlawful conduct. As part of their investigation they made an application for a disclosure order. Disclosure orders are investigative tools available in different types of investigation under the Proceeds of Crime Act 2002 (POCA 2002). Disclosure orders may be sought from the court to authorise an appropriate officer to give written notices to any person whom they consider has relevant information. Upon receipt of the notice, that person has to provide information, answer questions or produce documents relevant to the investigation. A disclosure order is a powerful tool as it provides a continuing power for the investigator to require persons to give information without further recourse to the court. The power to grant a disclosure order is discretionary. To grant a disclosure order in a civil recovery investigation, the court has to be satisfied that there are reasonable grounds for suspecting property has been obtained through unlawful conduct, information which may be provided would be of substantial value to the investigation and the application is in the public interest (POCA 2002, s 358).

The application for discharge was made on two bases: Firstly, that pursuant to the judgment of the Supreme Court in Serious Organised Crime Agency v Perry [2012] UKSC 35, the court had no jurisdiction to grant the disclosure order as it only named Mr Faerman as a respondent and he was resident outside of the jurisdiction: Secondly, it was submitted that failing to bring the authority of Perry to the attention of the judge amounted to material non-disclosure. In Perry the Supreme Court held that because it was a criminal offence pursuant to POCA 2002, s 359 not to comply with a notice issued under a disclosure order, it would be contrary to international

rights in a way which will inevitably be damaging and probably very damaging." We can see that there may be cases where because of the seriousness of the offence of which the requested person has been convicted, damage to dependent children's welfare may have to be accepted, but this does not appear to us to be such a case. The appellant's conduct may not have been exemplary but one cannot avoid the fact that the conviction in respect of which extradition is sought was in respect of shoplifting in circumstances which attracted a 13 month sentence. To imperil the chances of two children growing up into well-functioning adults by extraditing their primary carer at what are critical stages in their respective lives because of a conviction for shoplifting is, in our opinion, clearly disproportionate"l. For these reasons, the appeal against extradition is allowed.

Number of deprivation of liberty orders for children and young people triples in two years:

BBC News: The number of children in care in England and Wales subject to deprivation of liberty orders has tripled in the last two years, research by BBC News has found. The BBC report said freedom of information responses from 91 of 170 local authorities in England and Wales had shown the number of deprivation of liberty orders for children and young people went from 43 in 2016-17 to 134 in 2018-19. The report said deprivation of liberty orders were increasingly being used to detain children in homes when suitable accommodation cannot be found. It added that more than a quarter of orders granted over the last five years were made primarily because of concerns about the child or young person going missing, without relating to mental capacity. The BBC report follows a number of expressions of concern from judges about the lack of secure placements for young and vulnerable children. The latest comments came from Mrs Justice Judd in Z (A Child : DOLS: Lack of Secure Placement) [2020] EWHC. In that case the Department for Education told the High Court that there was nothing that could be done and the local authority concerned would have to keep searching in circumstances where there was no suitable placement.

UK: Successful Legal Challenge Against Police Use of Facial Recognition Technology

Human rights group Liberty has won a ground-breaking legal challenge in the UK against police use of facial recognition technology. In a judgment handed down today Tuesday 11th August 2020, the Court of Appeal agreed with Liberty's submissions, on behalf of Cardiff resident Ed Bridges, 37, and found South Wales Police's use of facial recognition technology breaches privacy rights, data protection laws and equality laws. The judgment means the police force leading the use of facial recognition on UK streets must halt its long-running trial. The court held that there were "fundamental deficiencies" in the legal framework and that Ed Bridges' rights were breached as a result. The ruling also states: "The fact remains, however, that SWP have never sought to satisfy themselves, either directly or by way of independent verification, that the software program in this case does not have an unacceptable bias on grounds of race or sex."

Mr Bridges said: "I'm delighted that the court has agreed that facial recognition clearly threatens our rights. This technology is an intrusive and discriminatory mass surveillance tool. For three years now South Wales Police has been using it against hundreds of thousands of us, without our consent and often without our knowledge. We should all be able to use our public spaces without being subjected to oppressive surveillance." Liberty lawyer Megan Goulding said: "This judgment is a major victory in the fight against discriminatory and oppressive facial recognition. The court has agreed that this dystopian surveillance tool violates our rights and threatens our liberties. Facial recognition discriminates against people of colour, and it is absolutely right that the court found that South Wales Police had failed in their duty to investigate and avoid discrimination. It is time for the government to recognise the serious dangers of this intrusive technology. Facial recognition is a threat to our freedom – it needs to be banned."

In September 2019, the High Court found that South Wales Police's use of facial recognition was not unlawful, but that facial recognition interferes with the privacy rights of everyone scanned by a camera, and 500,000 people may have been scanned (by May 2019) by South Wales Police. The court found the current legal framework to be adequate, while warning that it would have to be subject to periodic review. Liberty challenged that ruling at the Court of Appeal in June 2020, arguing that it did not fully account for the ways in which the technology breaches our privacy and data protection rights and discriminates against people of colour.

Today, the Court of Appeal overturned the previous ruling, finding that the legal framework relied upon by South Wales Police does not protect privacy rights. The court also found that South Wales Police had failed to adequately take account of the discriminatory impact of facial recognition technology, and had failed to meet its obligations under equality laws. Finally, today's decision said that by scanning our faces, the technology processes our unique and sensitive data, and that South Wales Police breached requirements for that processing under data protection legislation. The Metropolitan Police began regularly using facial recognition earlier this year, despite a review of its own trials finding the technology may be unlawful for similar reasons to those Liberty and Ed Bridges are raising. Liberty's petition calling for a ban on the use of facial recognition technology in public has been signed by nearly 50,000 people. Dan Squires QC and Aidan Wills of Matrix Chambers were instructed by Liberty on behalf of Ed Bridges.

Get a Cell Upgrade

Government officials and politicians in Ukraine have reportedly been encouraged to pre-book "VIP cells" in the event of their arrest. Remand centres in over a dozen cities are now offering gift certificates for "luxury cells", which are valid for six months from purchase, the BBC reports. Justice Minister Denys Malyuska insisted that all would remain equal in the eyes of the law because convicted prisoners would share the same facilities. However, those awaiting trial in the VIP cells will enjoy three meals a day, 24-hour security and lessened risk of exposure to COVID-19. Mr Malyuska suggested that others could buy access to VIP cells as a birthday present for officials and politicians worried about their future amid a crackdown on corruption.

Benjamin Bestgen: Neurolaw – 'Brainhacking' and 'Memory Engineering'

Scottish Legal News: In the "Morty's Mindblowers" episode of the cartoon series Rick and Morty, viewers first encounter a device Rick (described by friends and foes as the smartest being in the universe) has constructed to capture and extract distinct memories from a person's mind (in this case from Morty's, his dim-witted grandson). Rick collects these memories to replay them for entertainment. In a later episode ("Claw and Hoarder"), he uses the device again to remove a particularly disturbing memory from his son-in-law Jerry's mind but does so against Jerry's will. Likewise, the agents from the Men in Black franchise use their Neuralyzer device to make people forget any interactions with the MIB or alien presences encountered. Erased memories get supplanted with trivial narratives, including unsolicited life-coaching advice from Agent J if he thinks the person they neuralized could benefit from his input on self-care, fashion or interior design. As a rookie, J once enquired if repeated use of the Neuralyzer causes harm to the people MIB 'neuralises', but his supervisor seems unsure and doesn't care.

Mental integrity and psychological continuity:In the previous Neurolaw articles (part one, part two), we noted some existing and developing technologies which could violate a person's mental privacy. But technology that can access a person's mind can also potentially alter

it. Altering somebody's mind may be done for beneficial or nefarious purposes. Even well-meaning interventions could carry a risk of harmful side-effects. They could threaten a person's mental integrity. Additionally, technology could also alter a person's neural functioning itself, so it changes their identity. Our perception of "who I am as a persisting being through time" is called psychological continuity. Mental integrity and psychological continuity overlap somewhat but the former is primarily concerned with direct harm to the mental integrity of a person while the latter addresses a person's core identity, irrespective of any harm.

Technology: Potential threats to mental integrity and/or psychological continuity arise from (examples only): "Brainhacking", where a person's brain-to-computer interface is maliciously accessed to alter electric signals the victim's brain receives from their device to neurologically control prosthetics or machinery (civilian and military applications) Transcranial Magnetic Stimulation (TMS) can be used to enhance or suppress electrical traffic in selected brain areas Deep-brain stimulation (DBS), while still experimental, manipulates electrical signals in a person's neural processing through electrodes implanted surgically into the brain Memory engineering makes progress in erasing or boosting memories in a person's mind by selectively strengthening or weakening synaptic connections with optical lasers – this technology could become useful for treating PTSD or dementia-type illnesses but the potential for criminal or military misuse (brain-washing) could be considerable.

TMS demonstrated, medical uses aside, that it can assist in temporarily modulating a person's political or religious beliefs: by enhancing or shutting down certain brain areas, subjects became more open to criticism of their country and showed increased belief in an afterlife. DBS shows promise in the treatment of complex neurological disorders but researchers also reported feelings of self-alienation and changes in impulsivity, aggression and sexual behaviour in some individuals after treatment. And not all neurotechnology requires invasive equipment: various smartphone apps, sugar, tobacco or gambling/gaming already play on our brain chemistry to get us hooked. Political parties, aided by media pundits, generate and exploit fears and prejudices for votes. Neuromarketers can go further by subtly modulating our preferences and attitudes so that we will seek out the hook more often and more reliably, while falsely believing we are still making an informed and conscious decision.

The Law: Article 3(1) of the EU Charter of fundamental rights enshrines "respect" for the mental and physical integrity of a person as a legal principle. Particular emphasis lies on the biological and medical fields: Article 3(2) prohibits eugenics, reproductive cloning and the commercialisation of the human body or its parts. It also grants a right to free and informed consent. Articles 22 and 29 of the Universal Declaration of Human Rights expressly note that the free and full development of one's personality is a fundamental right every state should foster and protect. But given the age of these statutes, they are silent on neurotechnology. Bioethicists Ienca and Andorno (2017) note the rapid increase of neurotechnology in our digital environments and infospheres. Existing laws around mental and physical health should be updated to address actual and potential threats to persons' brains and neural computation. They propose that legal rights protecting mental integrity and psychological continuity from unconsented and harmful interference should be adopted by states worldwide.

The Future:Neurotechnologies challenge our understanding of what it means to be human. They can alter our preferences and perceptions, memories, attitudes. They impact our political and judicial systems, the way we do commerce, learn, compete in sports, educate ourselves, raise our children. They affect our very core: our neural networks, our brain chemistry. They pose questions, for