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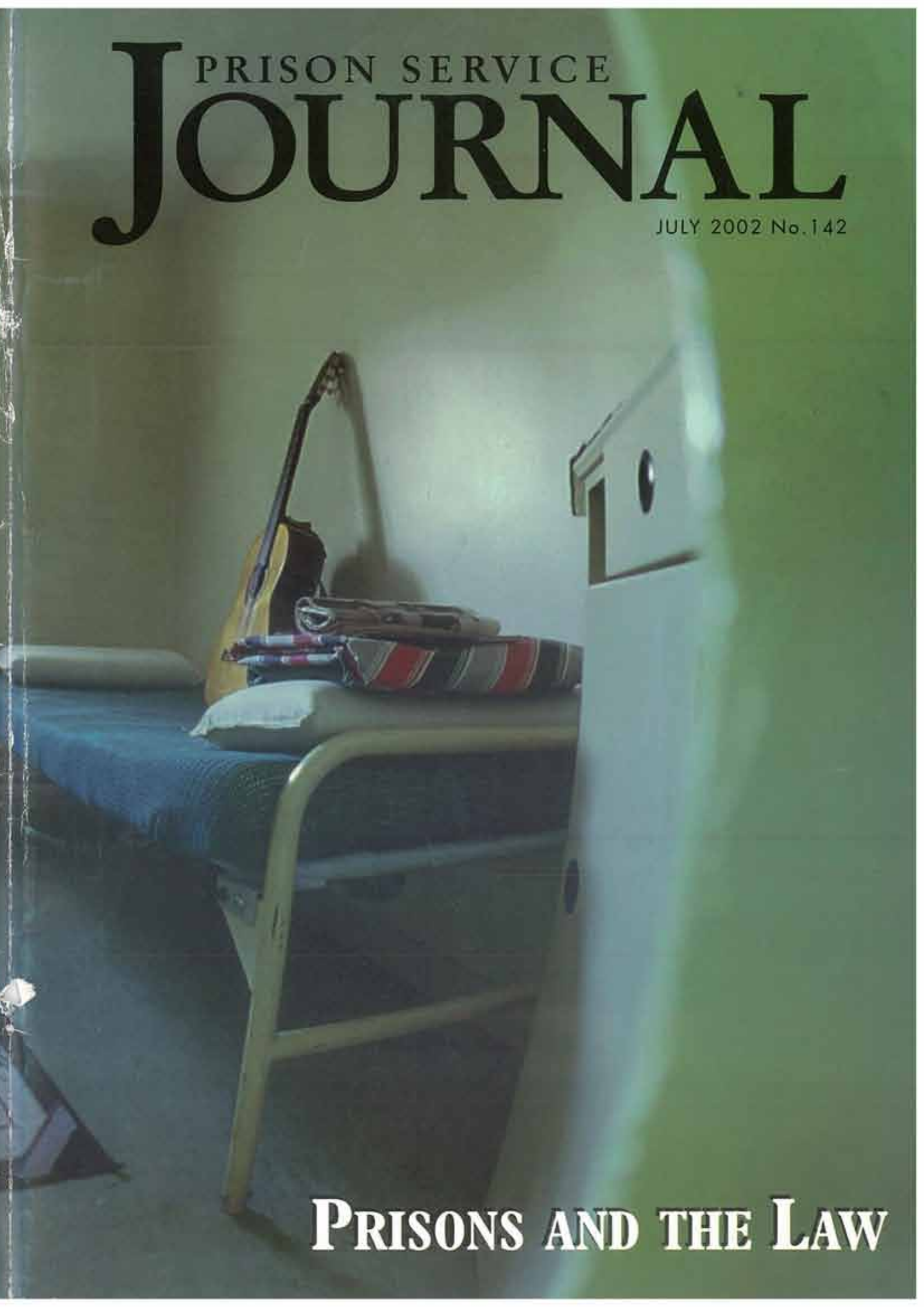

PRISONS AND THE LAW

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Content

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COMMENT

Prisons and the Law

In his speech to this year's Prison Service conference the Home Secretary, David Blunkett, urged us to think anew: "Don't let the 1952 Prison Act get in the way of anything we want to do. It is 50 years old and is completely irrelevant to what we need to do in the 21st Century. So I will amend the 1952 Act in any way that allows you to do your job better and more effectively so that probation and prison can actively be integrated." What opportunities might this provide?

At the outset it is greatly to be hoped that the clear alignment of the Home Secretary and the Lord Chief Justice against the inexorable rise in the prisoner population, is influential. But as the 1990s and the first months of this year have shown, the prison population can increase, and increase dramatically, without any change in the law.

Lord Woolf, the Lord Chief Justice, who also spoke at the conference and whose address is included in this edition, regretted that his comments on the punishment of mobile phone muggers (which had been inaccurately reported) had overshadowed what may come to be regarded as a truly radical judgement. In an appeal by a single mother against her sentence of eight months imprisonment for her first ever conviction (one of fraud), Lord Woolf ruled that where, as in this case, imprisonment was not absolutely required, judges should take account of the size of the prisoner population before sentencing someone to custody.

But what of the Home Secretary's remark that the Prison Act should not get in the way? Refreshing news for those who have urged for some time that we need a new Prison Act. While it will be profitable to re-establish our statutory foundation, we must not forget that a number of our problems have stemmed from misinterpreting or in forgetting the Act rather than in the Act's antiquity. There appear, broadly speaking, to be two options for a new Act: either one which provides an enabling framework — much as the 1952 Act provided — which leaves to secondary legislation (Prison Rules) and to the internal prescriptions of the Prison Service (Standards, Instructions etc) the determination of the detail. To some extent Prison Rules and Standards will provide the detail but the current type of prison Act is too vague in important areas and if a similar model were to be produced it would lack rigour and life. The alternative is an Act which, perhaps starting from has been learned from the introduction of the Human Rights Act, prescribes the principles which determine which rights prisoners forfeit and which they retain; and the principles which underpin the punitive, the retributive and the rehabilitative purposes of imprisonment.

However, ultimately what will matter more than the text of any statute is the means by which the Prison Service gives it life. The writers of policy and drafters of Standards tend now to prescribe less *how* operational requirements are achieved and concentration more on *what* they should ensure. Interestingly the National Probation Service's recently revised Standards also signal a shift away from a detailed prescription of the 'means' and a sharper concentration on the 'ends'. Perhaps the Criminal Justice and Court Services Act (2000), which established the National Probation Service, might serve as a template for the creation of a new Prison Act — defining as it does the basis of the new Service's authority and its principal aims.

The cynic will mock and refer to the increasingly litigious nature of society as a reason not to bother changing the statute because case law will change it incessantly. But served, as we currently are, by an antiquated Prison Act, we are actually more vulnerable to legal challenge. The driver of change must not be that principle of craven, unimaginative and mean-spirited administration, the need to 'cover our backs'. Instead, the motive for change must come from the need to establish good practice on good principle; both of which are grounded neither in the intricacies of legal jargon and convoluted argument nor in recriminatory and accusative accountability but in humanity, commonsense and trust.

A Little Legal Knowledge

A dangerous thing or a key management tool?

Nicola Padfield, *Law Lecturer, Cambridge Institute of Criminology.*

For each of the last five years, up to 20 senior Prison Service managers have enrolled to take a two-year part-time Masters (MSt) degree in Applied Criminology and Management (Prison Studies) at the University of Cambridge. Within the legal strand of the MSt course we discuss the philosophy of punishment; prisoners' rights; the law on how people get in and out of prison; the legal status of the prison governor; and the law relating to the unconvicted, the mentally ill, lifers, immigration detainees and other 'categories' of people in prison. We also try to disentangle thorny questions of political and legal accountability by looking at the role of coroners, inspectorates, ombudsmen, Boards of Visitors, the Parole Board and so on. Since the legal response to a given problem is heavily influenced by the context in which the issue is disputed, we look briefly at issues raised in the context of contract, tort and employment law. But the legal strand of this taught Masters course makes up less than a quarter of the whole: devising a course involves asking fundamental questions about what is really important.

Some four or five years ago, when I started 'teaching' senior prison managers, I was uncertain about the level or depth of knowledge that they would want or need as part of a part-time Masters course in applied criminology. I am now much clearer in my own mind: it is very important that senior prison managers understand the place of prisons with in the criminal justice system, and indeed the limited role that the law can play in resolving practical management, social and moral questions. Unsurprisingly, there have been mixed responses from the students themselves. In this article, I have chosen to present three caricatures[1] from amongst the 100 or so Prison Service students who have been to Cambridge:

(i). Hopeful Harry — who has an unreasonable expectation of what the law can achieve, hoping that the law has ready answers to complex problems.

(ii). Negative Norma — who has only had difficult relationships with lawyers, and has a hostile attitude to judges who she perceives to be interfering and ignorant.

(iii). Disengaged Dora — who sees the law at best as an irrelevance to her daily life as a prison governor. Legal problems to her are a pain to be handed over to lawyers.

Dispelling the myths

I start from the premise that everyone should have some understanding of the law[2]. Not only should people know their rights and responsibilities, but they should also not be daunted by the mythology of the law. It was Negative Norma who made the strongest impression on me to begin with: convinced that judges were leaning over her shoulder, breathing down her neck, and that lawyers were motivated purely by their nose for profit. My position, as a 'libertarian' academic lawyer, was very different: lawyers motivated by money would not be doing prison work. And judges appear to me wary of interfering in areas outside their area of expertise and leave prison experts to run prisons, unless something clearly legally 'wrong' takes place. There may be an increasing number of applications for judicial review, but the likelihood of success remains small. In 2000, there were a total of 4,257 applications for leave to apply for judicial review and 782 successful substantive applications (of which 409 were immigration cases)[3]. The number of successful prison-related cases is, I believe, tiny.

Ascertaining the law

Lesson number one might be that law, especially prison law, is far from clear-cut. Parliament, to my mind, has been shockingly lax in setting down the ground rules. The Prison Act 1952 (which has the 'feel' of the 1950s hanging over it) is largely irrelevant in giving guidance. What are prisons for? What are the minimum standards we should expect them to reach? What are most important outcomes to be measured?

1. The reality is of course a much more discerning body of students!
2. Ideally, Law GCSE should be taught in every school, legal issues should be part of the national curriculum.
3. See *Judicial Statistics* 2000, Table 1.13.

The Prison Rules 1999 may be more detailed but they are difficult to analyse, often appearing more as descriptions of general policy or of administrative functions, rather than as real 'rules' providing individuals with specific, legally enforceable, rights. The interesting questions for the thinking prison administrator surround the interpretation of these Rules, and the wealth of Prison Service Orders, now (largely?) thankfully in the public domain.

How does a judge interpret an Act of Parliament, or indeed the Prison Rules? Because of the failure of Parliament to deal with prison law head on, examples of judicial techniques of statutory interpretation are more likely to be taken from the wider context of the criminal justice system. A classic example, which is doubtless remembered by both prisoners and Prison Service staff, was the problem of calculating release dates (that is, interpreting section 67 of the Criminal Justice Act 1967) which caused such uncertainties in prisons in summer of 1997 as the courts anguished, and changed their minds. Eventually the House of Lords decided in *R v Governor of Brockhill, ex parte Evans (No 2)* (2000) 3 WLR 843 that a prisoner who was not released on her due date was entitled to damages even though the failure to release her was a consequence of the application of what was at the time widely understood to be the correct interpretation of the relevant statutory provisions.

A recent and fascinating example of the difficulties of discovering the 'intention of Parliament' is the House of Lords' interpretation of section 71 of the Criminal Justice Act 1988. This provides that a confiscation order may be made where the offender has 'benefited' from any relevant criminal conduct. A person benefits from an offence if he obtains property as a result of, or in connection with, its commission and his benefit is the value of the property so obtained (section 71(5)); if he obtains a pecuniary advantage from the offence, he is to be treated as if he had obtained a sum of money equal to the value of the pecuniary advantage from the offence (section 71(6)). Mr. Smith brought cigarettes into the UK by boat without paying excise duty. Up river, beyond the customs post where excise duty became payable, the boat was discovered, and the cigarettes were forfeited to Customs and Excise. The House of Lords held that Mr Smith had derived a 'pecuniary advantage' from the evasion at the moment of importation even though he never realised the value of the goods before they were forfeited. The duty payable would have been £130,000, and so that was the pecuniary advantage he had obtained. Does that make sense? Perhaps not to Mr Smith, but what was the intention of Parliament in creating confiscation orders? That was what the House of Lords had to decide. Hopeful Harry has learnt the lesson that nothing in law is ever straightforward.

In this area, the 'law' is to be found as much in cases (precedents) as in statutes and delegated legislation. In order to understand the system of binding precedent students have not only to understand the hierarchy of the courts, but how to use previous cases. Only the *ratio decidendi* (the reason for the decision) is binding in subsequent cases. How do you find the *ratio decidendi* of a decision? When is a precedent binding, and when is it simply persuasive? A useful example is *R v Secretary of State for the Home Department, ex parte Hirst* (2001) EWCA Civ 378 (8 March 2001). Here we learnt that a post-tariff lifer is entitled to be given reasonable opportunity to make representations against recategorisation. The decision is not entirely clear-cut. For a start, the Court of Appeal overruled the Divisional Court which had held that the courts should be wary of imposing procedural standards upon the internal workings of the prison system in so sensitive a context. However, the Lord Chief Justice, in the Court of Appeal, recognising that the recategorisation of a prisoner significantly affects the prospects of his being released on licence, concluded:

> *... the rules of fairness and natural justice are flexible and not static; they are capable of developing not only in relation to the expectations of contemporary society, but also to meet proper operational requirements. The ability of the Prison Service to meet both their operational needs and the needs for prisoners to be treated fairly can usually be achieved within the panoply of the requirements of fairness.*

The Court of Appeal therefore made a declaration that a post-tariff discretionary lifer is 'entitled to be told prior to his category being changed retrogressively, the reasons for the proposed change and given a reasonable opportunity to make representations as to the change'. (They added that the fact that a decision to change the category of a prisoner has not been made does not prevent a prisoner being moved for operational reasons). This case was followed in *R (on the application of Blagden) v Secretary of State for the Home Department* (2001) EWHC Admin 393, 11 April 2001. The Home Secretary acknowledged that although the Prison Service was entitled to move Mr. Blagden, an arsonist serving a discretionary life sentence, from an 'open' prison back to 'closed conditions', it had failed formally to reclassify him. He undertook to return Blagden to open conditions within ten days. Blagden was complaining of his recategorisation from D to C, whereas Hirst's was from C to B. Clearly the courts did not think this was a relevant distinction. What is a relevant distinction in this context?

Harry, Norma and Dora struggle with the implications of the decision (though Dora has probably already decided that this exercise is a waste of her time!). For example, would *R v Secretary of State for the Home Department, ex parte Allen* (2000) The Times, 21

March, be decided differently now? At first instance in *ex parte Allen*, on 31 January 2000, Mr Justice Hidden had held that fairness required that a prisoner being assessed for release on a Home Detention Curfew should be given the information on which the assessment is to be made and allowed the opportunity to make representations, oral or written, before the decision is taken. But the Court of Appeal overruled this on 21 March: fairness did not require that a prisoner should be given the information but did require that he be given an opportunity to put his case where, following an assessment that he should not be released early, he appeals to the governor. If at that stage he were given the gist of the material on which the assessment was made and the actual documents are produced, if requested, the requirements would be satisfied. What is the difference between this case and *Hirst*? Would it be differently decided today?

There is a danger now that Dora becomes more disengaged, Norma more switched off. Harry, ever the optimistic, may be deciding that the law is usefully flexible. We now add in the difficulty of interpreting the European Convention on Human Rights. What do they make of *R (Daly) v Secretary of State for the Home Department* (2001) 2 AC 532 where the House of Lords explored whether the contours of judicial review had changed as a result of the Human Rights Act 1998? This case is clearly a landmark: the highest court in the land signposting the way the law will in future be interpreted. It concerned a prisoner's challenge to the policy which required prisoners to leave their cells even when their legally privileged correspondence was being examined (but not read!) during cell searches. Lord Bingham delivered the main speech.

Having decided that such cell searches infringed the prisoner's right to legal professional privilege, Lord Bingham had to consider whether the policy could be justified as a necessary and proper response. To do this, he explored the policy in detail, as well as looking at the policy as applied in Scotland, and at a report of the Prisons Ombudsman. He concluded that the policy provided for a greater degree of intrusion than was justified. He agreed with the additional observations of Lord Steyn on the differences in approach between the traditional grounds of review and the proportionality approach, which must be applied in cases involving Convention rights. In a Convention case, the court must be able to decide whether the interference was really proportionate to the legitimate aim being pursued. The important difference, their Lordships stress, between the 'traditional' heads of judicial review and proportionality is the question of balance. With proportionality, as Lord Steyn made clear, the reviewing court may have to assess the balance that the decision-maker has struck in weighing the relative weight to be accorded to different interests and considerations. Having admitted that the different approaches could sometimes lead to different results[4], Lord Slynn ended rather enigmatically by saying that the respective role of judges and administrators will remain fundamentally distinct and that the intensity of the review will depend on the subject matter in hand: 'In law context is everything'[5].

Understanding the judge's role

So what are prison managers to make of this? Another important lesson in understanding the legal context in which prisons exist is to understand the limited function of the judge. This varies enormously. In a judicial review case, which is of course what *Daly* was, he or she may be deciding on the legality of a decision taken by a representative of the Prison Service or Home Office. The traditional ground here is that the decision can only be quashed if it is shown to be illegal, irrational or procedurally improper. The 'new' human rights standards are challenging these grounds: now the court is asked to decide whether a particular Prison Service response is 'proportionate', and some might argue that the lines between judicial review and appeal are beginning to blur. As Lord Cooke put it in *Daly*, the standard of review must be robust: 'it may well be that the law can never be satisfied in any administrative field merely by a finding that the decision under review is not capricious or absurd'[6].

It is important to remember that in a criminal appeal, the Court of Appeal is simply deciding whether a conviction was 'unsafe', applying the test of section 2 of the Criminal Appeal Act 1968 (as thoroughly amended by the Criminal Appeal Act 1995). In most civil cases, on the other hand, the judge plays umpire deciding on a balance of probabilities whether the plaintiff has proved his case. In a classic negligence claim, for example, the plaintiff has to prove only that the defendant owed him a duty of care, that he was in breach of that duty of care and that 'damage' resulted from that breach. But the contours of negligence are in reality not that simple: take *Reeves v Commissioner of Police of the Metropolis* (1999) 3 All ER 897. At first instance, Mr Justice White held that, on the facts of the case, a man who had committed suicide in police custody was 100 per cent responsible for his own death and so his partner was unable to win damages. However, the Court of Appeal overruled this decision, holding that the police were responsible, and she was awarded £8,690 by way of compensation. The House

4. A clear example is the decision of the Court of Appeal in *R v Ministry of Defence, ex parte Smith* (1996) QB 317 and the decision of the European Court of Human Rights in *Smith and Grady v United Kingdom* (1999) 29 EHRR 493. The European Court applying a test of proportionality struck down the policy ban on homosexuals serving in the armed forces whereas the domestic courts had not done so.
5. at para 28.
6. at para 32.

of Lords, by a majority of four to one, held that he was 50 per cent contributorily negligent and so his partner was entitled to only £4,345. The case is a good example of the difficult tasks faced by HM judges: role-playing, or acting out, judicial decision-making can help students understand the nature of the judicial role.

The Government was understandably concerned not to give the judges too broad a role when the European Convention on Human Rights was incorporated into domestic law. This constitutional concern, to protect the 'sovereignty of Parliament', resulted in the device created in the Human Rights Act 1998, the 'declaration of incompatibility'. Judges may now declare an Act of Parliament incompatible with the European Convention on Human Rights, but this declaration is no more than that: a declaration. It is, astonishingly, for the Government to provide the remedy by order (delegated legislation). The first example of the Government amending primary legislation by way of delegated legislation took place in November 2001, with remarkably little fanfare. The Court of Appeal in *R (ex parte H) v Mental Health Review Tribunal, North and East London Region and the Secretary of state for Health (interferon)* (2001) 3 WLR 512 had declared that section 72(1) of the Mental Health Act 1983 was incompatible with the Human Rights Act 1998 in that it put the burden of proof on to a restricted patient applying to a Mental Health Review Tribunal to prove that he satisfied the criteria for release. Statutory Instrument 2001 No 3712 has now amended the Mental Health Act 1983. It will only be a matter of time before the question of the burden of proof at Discretionary Lifer Panels of the Parole Board come under a similar spotlight.

The wider political and legal context

Not only that is it useful for those who run prisons to understand the lawyer's task in predicting the outcome of possible challenges, but it is also vital to understand the political context within which both the judiciary and the Prison Service operate. The case of *R (P) v Secretary of State for the Home Department* (2001) 1 WLR 2002 is a good example, where the Court of Appeal allowed one mother's challenge to the Prison Service's mother and baby policy (on the grounds that it was unduly rigid), and rejected a second challenge. The disappointed applicant has been refused leave to appeal to the House of Lords and the Prison Service has not appealed the case it lost. Where does this leave the Prison Service's policy? One analysis of the decision might be that the Court trespassed further than usual (or even proper) into an analysis of policy. But others have welcomed the decision, as provoking a much-needed review of policy in this difficult area.

One of the attractions of the MSt course is that it allows academics of different disciplines to come together with policy makers and practitioners to discuss the wider implications of both legal decisions and policy changes. It is particularly when the students reach the second year of the course that they find that that the legal context is unavoidable. Each student has to submit an 18,000 word thesis. These have covered a huge range of subjects from investigations into deaths in custody, to the role of the area manager; from the request and complaint system to children's attitudes to crime and punishment. You cannot, for example, consider reforming Boards of Visitors without considering the statutory framework. Although most students on this course are interested in considering the policy and practical implications of their chosen thesis subject, this can hardly ever be achieved without a wide-ranging analysis of the legal and political context in which prisons exists.

Conclusion

Harry, Norma, Dora and their colleagues are deeply impressive students, with a great capacity for hard work and studying[7]. They are also inevitably a group of varied people with different perspectives and backgrounds. The MSt course aims to allow them the time and space to think, and to challenge their own assumptions and prejudices. Harry comes to understand the limited role of the law: it is a blunt instrument for resolving disputes; it lays down only minimum safeguards; Norma realises the importance of the law (in theory if not always in practice) in upholding certain minimum standards or at least laying down the ground rules in an uncertain and unpredictable world; Dora may even start to enjoy using the law as a new weapon in her managerialist armoury. My own assumptions have also been challenged: a class of prisoner governors and managers can ask most challenging questions! My knowledge of law in law reports has been augmented by a wider understanding of law in practice: cases which settle out of court are unlikely to reach the law reports. My interest in law reform no longer stops with the enactment of change: law reform is an empty vessel without the commitment of those who have to administer the changes. A new Prison Act, with clearer rules (and decent standards) for prison administrators to apply in practice, would be no panacea. In reality, as important as a vigilant judiciary is a Prison Service truly committed to strong ethical and moral principles. It is exciting to be part of a course which allows senior prison managers a breathing space in which seriously to explore the ethical and legal responsibilities imposed on them.

7. And not only for studying prisons: to my knowledge there are impressive medieval historians and 19th century railway enthusiasts in top positions in the Prison Service.

Making Punishments Fit the Needs of Society

Speech delivered to the Prison Service Conference in February 2002

Lord Woolf, *Lord Chief Justice of England and Wales.*

I am delighted to be attending my first Prison Service annual conference. It provides me with an opportunity of expressing on behalf of the judiciary, the judiciary's recognition of the difficulties which the Prison Service faces in caring for those whom the courts send into their custody and our appreciation of what you achieve bearing in mind these difficulties.

When I look back over my career as a judge I regard the fact that I was asked to conduct the Strangeways inquiry as one of the most rewarding assignments I have had as a judge. While conducting that inquiry I was immensely impressed by the help I received both from governors and prison officers. I was convinced then and still am that the great majority of members of the Prison Service want to be part of an effective Prison Service and will embrace change as long as they are convinced that the change will bring about improvements. Furthermore you cannot have been involved with the Butler Trust has long as I have without knowing that members of the Prison Service are often responsible for excellent initiatives within the Service. Based on my experience, I feel confident that the members of the Prison Service will welcome the opportunity to endorse the theme of this conference: 'Delivering Decency'.

The title of my talk is meant to make a point. The title is based on Gilbert and Sullivan's Mikado's delightful song in which the Mikado sings that the punishment must fit the crime. It is suggested that this would be 'an object all sublime'. With this I agree, but it is only part of the court's objective when it imposes imprisonment on someone who has been found guilty of a crime. The punishment is not intended to be confined to retribution and deterrence. It is intended do more. It is intended to meet all the conflicting expectations of punishment. What are these expectations, other than that those who commit crimes should be justly punished? They are that the punishment should protect the public by reducing crime and in particular violent crime. That it should rehabilitate the offender by making it less likely that the offender will offend again. In this way it is hoped that punishment will restore, maintain and enhance the public's confidence in the criminal justice system.

In the case of imprisonment that includes making the statement that 'prison is an expensive way of making people worse' obsolete. There was a time when I thought that this was more likely to be the just result than not of a prison sentence. Prison remains expensive, very expensive. But I now believe that it can be an expensive way of making people better. This does not mean that I want to see more people going to prison or spending longer in prison then they do now. On the contrary, I think it is essential that we should send less people to prison and should in general send them to prison for shorter periods. Prison should be and should remain the last resort. Whenever a person is sentenced to imprisonment the sentence should be for the shortest period that is possible in all the circumstances. This would enable the Prison Service, as it should, to focus on the long-term prisoners in their custody since, as John Halliday has pointed out, very little can be achieved during short sentences.

Prison Service's dilemma

The conflicting expectations as to what can be achieved by punishment creates a real dilemma for the Prison Service. The fact that prison is meant to be a punishment makes it more difficult for the Prison Service to tackle prisoners' offending behaviour. The courts do not send prisoners to prison for punishment but as a punishment. Imprisonment is a punishment because the prisoner loses the control over his activities which the ordinary member of the public enjoys. But tackling offending behaviour involves recognising that you have a choice and of making the right choice but unfortunately unless a sentence is for a fairly substantial period a prisoner never begins to tackle his offending behaviour.

While I accept that positive things can and are done in prison, they can be done more effectively and more economically in the community. That is why if there is an option of imposing a community sentence or a prison sentence, a community sentence should always be imposed. Today too few community sentences are imposed and too many and too long

prison sentences are imposed. The consequences are doubly destructive of the needs of Society. It means that the best opportunity of tackling an offender's offending behaviour is lost. Why should there be too few community sentences? There are a number of reasons but at the forefront is the regrettable fact that neither the public nor sentencers have sufficient confidence in the community alternative. This lack of confidence is usually unjustified and is the product of a lack of information which can and should be tackled. The reality as to what prison can and cannot achieve needs repeating again and again and again. We need to show by independent research what can be achieved in the community and what cannot.

Research into sentencing

I hope a contribution to achieving this will result from an imaginative initiative of the Prison Reform Trust (PRT), funded by the Esmee Fairbairn Foundation, which is about to be launched. PRT are going to discuss with sentencers at the different levels from recorder to High Court judge actual cases on the borderline for a custodial sentence and find out why they felt compelled to choose the prison option. In this way is hoped to identify what was required to enable them to choose the non-custodial option. Pragmatic research of this nature may enable us to improve the acceptability of punishment in the community. In addition we need to establish more imaginative community punishments. Without committing myself to the detail, and the devil is always in the detail, this is why I warmly welcome the Home Secretary's third way. If we can find the third way then the Prison Service will be able to tackle in a wholly different manner the offending behaviour of the serious criminals, who are the criminals with whom only the Prison Service can deal.

The Prison Service's admirable Statement of Purpose points the way forward, you all know it, but it bears repeating;

> *Her Majesty's Prison Service serves the public by keeping in custody those committed by the courts. Our duty is to look after them with humanity and help them lead the law-abiding and useful lives in custody and after release.*

It begins by making the obvious point that the Prison Service has a responsibility for 'keeping' those whom the courts send to prison. I have repeatedly made the point that the biggest challenge facing the Prison Service is overcrowding. Since I became Lord Chief Justice, two years ago, I have naturally been conscious of my responsibilities to provide leadership as to the correct approach to sentencing. A sense of responsibility which Mr Narey underlined by providing me with compelling statistics of how even a reduction in all sentences of a few months would make a real but modest contribution to reducing overcrowding.

Sentences for violent offences

However I have become acutely conscious that within our existing structures there is little the judiciary can themselves achieve. Guideline judgments can help to achieve greater consistency. The Sentencing Advisory Panel does provide the most valuable information for achieving better sentencing. But greater changes are necessary which will not be provided by attacking the present sentencing policy. To reduce sentences for violent crime at the present time would be to undermine further the public's confidence in the criminal justice system. For offences of dishonesty which do not involve violence, I do believe that the courts do not now usually impose prison sentences unless they believe there is no alternative.

I am of course aware that my judgement last week has been largely regarded as increasing sentences for mobile telephone muggers. I do not regret the extensive publicity that the judgement received. The publicity means both the public and muggers will be under no illusion as to the stand which the courts are taking as to this class of offence. However at the beginning of the judgement of the court I made it clear that I was not setting out new guidelines increasing sentences, rather I was restating the effect of the existing sentencing policy which the courts have been adopting for some time.

Rightly in my judgement, the courts have been imposing deterrent sentences to tackle prevalent offences. The great majority of the public felt they were in need of protection against these offences, the victims of which were all too often vulnerable members of the community. The courts have a responsibility to make their contribution to tackling the serious problem that these offences are creating. The courts have been meeting that responsibility and I hope that my judgement had the effect of making those who are tempted to commit these offences aware of what the price will be if they are brought to justice. It is no use imposing deterrent sentences if those who should be deterred are unaware of how the courts are responding to these offences. I have no doubt that the courts have a responsibility to assist in resolving this problem.

Sentencing precedent

As it happens, on the very same day as my judgement in relation to telephone mugging was published, a report appeared in *The Times* law reports which sent out a different message. It was a case which concerned a woman who had two children and had not been before the courts before. The offences were two in number and involved filling in forms dishonestly in order to obtain credit. The amount of credit eventually obtained was substantial. However the woman had

been in real need and had done her best to repay her indebtedness.

We said that to send her to prison for eight months was wrong in principle. We emphasised that sending her to prison would result in harm to children of whom she was the sole carer. **We emphasised, and in this respect the case may have broken new ground, that it was good sentencing practice to take into account the explosion which there has been in the female prison population.** We set out the statistics and gave an equally clear steer about the need to avoid sending a person to prison in those circumstances. We added that if it had been necessary to send her to prison a sentence of one month's imprisonment would serve exactly the same purpose as the sentence of eight months.

The distinction between the two situations is that to impose a custodial sentence in the case of the offence of dishonesty would not undermine the public's confidence in the criminal justice system. While it is for the judiciary to impose the sentences which they consider are just and the public cannot dictate what sentence is appropriate in particular case, it is a responsibility of the judiciary to take into account in establishing the guidelines the needs of Society as a whole and the victims of a crime in particular in determining what punishment suits the crime.

Prison Service's rehabilitative purpose

Turning to the second part of the Statement of Purpose, dealing with the manner in which the Prison Service should look after those whom the courts commit to the custody of the Prison Service. I would lay particular stress on the need of the Prison Service to 'help them lead law abiding and useful lives in custody and after release'. Since I became Lord Chief Justice I have had an insight into the work which the members of the Prison Service perform in preparing reports to assist those who have responsibility for determining whether lifers who have completed the tariff part of the sentence, are ready to be released on licence. The same is true in relation to the reviews which I am required to make as an interim measure in the case of young offenders detained during Her Majesty's Pleasure. I find the reports of prison staff are prepared with immense care and that they are a great help. The reports also make clear the quality of work which is taking place to prepare for the return of these young offenders to the community. Of course it is inevitable that on occasions mistakes will be made, but fortunately, thanks in part to the work done by the members of the Prison Service the mistakes are rare.

What has particularly impressed me is the work which the Prison Service admirably performs with those young offenders who have committed the most serious offences and so constitute the gravest risks for the future. As you read the successive reports, often by prison officers, a picture emerges of a young offender who is not only maturing but his attitude, values and behaviour is being transformed. It is this which enables me to reduce their tariff.

Judicial involvement after sentence

The judiciary make a significant contribution to the work of the Parole Board. However, apart from the work with lifers and their contribution to the Parole Board, the judiciary's involvement with those whom they have sentenced ceases with the conclusion of the court proceedings. A change which I hope we will see in the future is a continued involvement between the sentencer and the sentenced. The introduction of IT should enable the judiciary at least to receive feedback as to the progress a prisoner makes during a sentence. But more is needed: I would like to see the judiciary having a continued responsibility for a prisoner until he is returned to the community. **If and when the necessary resources including IT become available, I would like the sentencing judge to retain responsibility for monitoring a prisoner's progress and, if that progress justifies this, authorising the prisoner's release on licence.** This could provide a real incentive to the prisoner to strive to improve himself while in prison. It could reduce the likelihood of his reoffending and again becoming a number in the prison population.

Returning to the Home Secretary's speech [*made the day before Lord Woolf's speech*], I hope you found it as encouraging as I did. While it is always necessary to be careful to ensure that initiatives do not have unintended consequences more flexibility as to the manner in which a sentence is served must be desirable. In my report after Strangeways I commended the community prison as a way of reducing those consequences. But the rise in the prison population made this a pipe dream. If what the Home Secretary discussed were to become a reality this would be a significant step forward. I read with equal interest Stephen Pryor's paper on *The Responsible Prisoner*. He is undoubtedly right when he says that imprisonment inevitably results in some loss of responsibility on the part of a prisoner and that the Prison Service should seek to ensure that that loss is kept to a minimum. More importantly, he is right to emphasise the need for the Prison Service to ensure that at the end of his sentence 'the prisoner can once again take up the responsibilities of free citizenship', and if it fails in doing this it not only fails the prisoner but it also fails the public it is paid to protect.

Work with other Agencies

I do not believe that the Prison Service can achieve this last responsibility by itself. It needs the help of the other agencies. They can ensure that the ex-prisoner receives the help he needs after he is released from prison to ensure that he can properly take

responsibility for himself. The truly depressing figures as to reoffending and reconviction rates of those released from prison underline the need for this. The Prison Service cannot control the behaviour of an offender once the offender has left prison. The Prison Service can and must do what is within its power to ensure the necessary support is in place in the community when the prisoner is released. There needs to be more effective links between the Prison Service and the Probation Service and the other agencies who have to take the primary responsibility as to what happens to released prisoners than they are at present. Again, this important role of the Prison Service would be facilitated by the closer links which a community prison could foster with the community to which the prisoner is to return.

Society needs punishments which will reduce offending. Most objective onlookers recognise the limits of what can be achieved by deterrence and retribution alone. We have to focus more than we have in the past on rehabilitation. Punishment has not only to fit the crime but also must meet the needs of Society. Given the right resources, the voluntary sector could achieve wonders by the provision of education and training. This is what is likely to increase responsibility and with increased responsibility will come a reduction in reoffending. Human rights is all about human dignity. Prisoners are entitled to retain their dignity. To do so they must be treated with decency and the courts and the other agencies involved in the criminal justice system must help the Prison Service in its efforts to ensure that the Prison Service meets its own Statement of Purpose.

Thank you for listening to me so courteously. I have a suspicion which I hope proves justified that I may have been indeed fortunate in being invited to attend the Prison Service conference which will mark a turning point in the Prison Service's history. If the Home Secretary is able to change the prison situation in the way he outlined yesterday that this could mark a new beginning. The cancer from which the Prison Service has been increasingly suffering, overcrowding, could be conquered. If this were to happen with the advantages of modern technology the contribution of the Prison Service to the community could be that which I am sure all its members would like to see. The Prison Service could be a constructive force within society playing its full part in a just an effective criminal justice system supporting and supported by the courts and the Probation Service. This is a truly 'sublime' prospect of which the Mikado would be proud.

Prison and the Magistrates' Court

A Case for the Defence

Dr Eric Cullen, *JP and Consultant Forensic Psychologist.*

I have been invited to record my experiences as a freshly minted magistrate given that I had worked in UK prisons, public and private, for 28 years. My brief is how the latter informs the former. A topical starting point is the current vexatious issue of whether magistrates' use of custody is contributing to the current record prison population.

Prison overcrowding should never be a reason for changing the policies of the courts, never influence judges toward greater leniency. If the opposite obtained and there were significant drops in prison population, should we be more punitive? All Courts, Crown and Magistrates, should be able to adjudicate free of political, or transient penal, pressures. We are trained, and provided with Structured Guidelines for considering cases and sentencing, in order to best use our judgement independent of bias or wider circumstance. Yet for at least the past century, overcrowding has often exerted undue pressures, from the 1907 Probation of Offenders Act to the Criminal Justice Act of 1997. 'Alternatives to imprisonment' continues to run parallel as the preferred option when an inexorably growing prison population exerts pressures: the Great British Public on the one hand exhorting courts to ever-increasing prison sentences while on the other, the current demands from certain quarters of the police and the 'decarceration alliance' to remove custody from magistrates' options altogether! In between lie variations on the rise and role of alternatives to custody.

Magistrates' views of prison

Magistrates, at least those in my court, seem to have a generally consistent view of prison and it is almost unreservedly bad. They see prison as the last,

and least positive, option: something to use when all else fails. It is the resort to which we turn when the drug addict or habitual young offender has failed/abused every relevant community-based option. On a procedural point, this may seem appropriate as the Sentencing Guidelines clearly advise magistrates to use custody only when all other options are inappropriate and when the offence 'is so serious that only custody is appropriate'. My colleagues on the bench view prison as an undifferentiated negative environment. That is, they rarely indicate that there are good and bad prisons, or that some prisons offer treatment programmes for offenders with drug, drink, or behavioural problems which might be addressed in the relatively short terms of imprisonment available to them.

Of course to a large extent, they are right; these courses are predominantly for those serving longer sentences. The point is, magistrates in my experience are already reluctant to use custody. It is the behaviour of the convicted offenders which determines the use either because they offend in such severity or frequency to oblige this use or because, having been given non-custodial options, they breach them, failing to complete community rehabilitation or punishment as if to dare the courts to imprison them. This form of contempt for the court's ruling serves to exacerbate the matter and, I suspect, significantly diminish any mitigation the magistrates might have felt towards the defendant.

I sometimes wonder if we have not gone too far in our orientation towards concern for offender rehabilitation at the expense of reparation and punishment. When someone addicted to drugs habitually funds this by theft and burglary, the normal response of the court is to request a report from Probation outlining sentence options where the presumption is to address the addiction rather than punish the offending. While this is understandably appropriate in terms of addressing the apparent cause, it does little to address the *effect* — the costs and damage to the public who must foot the bill.

While their view of prisons may be naive in that it is uninformed, magistrates themselves are not naive or gullible, neither are they liberal or reactionary. In my experience, taken as a group, they possess a refreshingly impressive combination of experience, intellect and judgement. There is also a populist criticism that magistrates are unrepresentative of the public. This too is at least a pinkish herring, as magistrates are selected from those who apply and the people who apply tend to be older, middle-class and white. What they also have in common are a desire to do voluntary, unpaid public service, and the time to do it. I wonder at the logic that says a magistracy that was more representative of the public would be an improvement because they could identify more readily with the defendants. Surely the defendants are, taken as a group, not a model of behaviour we wish to reflect. A surgeon need not have suffered from the condition to know how to operate.

Magistrates and custodial options — some facts

The longest custodial sentence magistrates can impose is six months or 12 months for two separate offences. Sentencing guidelines indicate that custody would certainly be considered for crimes like affray, assault occasioning actual bodily harm or assault on a policeman, burglary, possession or supply of a Class A drug, indecent assault, possession of a bladed or offensive weapon, wounding and violent disorder. These are 'either way' cases: cases which may be dealt with in either the Magistrates' or the Crown Court. Even if magistrates deal with such cases, magistrates may refer them to the Crown Court if they think their powers of sentencing are insufficient.

In my experience some of the most difficult considerations for magistrates concern remanding in custody. The presumption is that there is a general right to bail. Exceptions to this are when a person is charged with murder or attempted murder, manslaughter, and rape or attempted rape (although even then bail may be granted in 'exceptional circumstances'). Bail may be refused if the court is satisfied there are substantial grounds to believe the defendant would do one or more of the following:

- fail to surrender to custody;
- commit an offence while on bail;
- interfere with witnesses; and/or
- obstruct justice in some other way.

The magistrates may also refuse bail where the offence is serious and the defendant was on bail at the time of the offence, or in circumstances where the defendant should be kept in custody for his/her own protection. The courts must give reasons in public for remanding someone into custody and they have the right to appeal against the decision. The right to bail does not apply to defendants whom magistrates commit to the Crown Court for sentence or breech of their orders, on appeal or when being proceeded against as a fugitive offender. The difficulty for magistrates is in establishing the degree of confidence necessary to justify withholding bail for people as yet innocent in the eyes of the law but where one or more of these conditions would seem probable, that is, the substantial grounds argument.

A day in the life

The experience of going into court as a magistrate carries with it an appreciation of a venerable tradition. Although the days when the magistrates were the landed gentry overseeing the judicial as well as moral vicissitudes of the local populace are long gone, being a magistrate does carry an element of social status and responsibility. Representing the Crown, visually symbolised by the royal coat of arms over the bench,

magistrates always sit in threes. The central magistrate is the Chair, more experienced and specially trained, with a 'winger' either side. Winger magistrates are mute that is, we do not speak in public court but refer matters to the Chair, who will in turn ask our questions for us. New magistrates must sit for at least four years (in Buckinghamshire at least) before applying to be trained as a Chairman.

A typical day begins about 9.30 am when we arrive to find the day's Listing of cases printed out for us. Occasionally, police officers arrive requesting authorisation for a search warrant, often before we begin our first cases at 10 am. The common listing is adult court, but there are specialist courts as well for Family, Youth and Fines matters. The daily business of the court is run by the Clerk, a qualified solicitor or barrister. The lawyers for the defence and prosecution play other leading roles.

The defendants have, by and large, a non-speaking almost peripheral role. Most, if new to the experience, appear nervous even daunted. There is a large minority however all too familiar with the process. It saddens me to hear so many variations on the apparent theme of offence mitigation but which is all too often a variety of disingenuous attempts to escape punishment by trying to provoke sympathy. Too often defendants' attitudes can best be characterised as defiant, dishonest, desultory or detached. A mercifully small but disproportionately troublesome minority seem to understand the procedures as well as the magistrates and seem actively determined to delay and undermine the process as long as possible. Apart from a directive to consider compensation first where appropriate, the victims can sometime seem the forgotten, and absent, part of the equation.

Passing Judgement

The reality is that the Criminal Justice System will continue to expand as will the use and range of sentences.

When criminals fail prison, it only affects the public after they are released. When they fail community-based sentences like Community Punishment Orders, Fines and Curfews, they are able also to continue offending. Although it may sound cynical, the past two years in court have confirmed my prison experience of just how dishonest, manipulative and egocentric many repeat offenders can be. Human nature is not at its best in the dock. We modify our legal system to accommodate a more self-centred society at our risk. The quixotic nature of public opinion, especially as 'represented' in popular press, offers a dubious arbiter for a magisterial system which has served us so well for so long. It is a system worthy of our confidence and respect.

The Work of the Sentencing Advisory Panel

Professor Martin Wasik, Chairman of the Sentencing Advisory Panel.

Introduction

As many readers of this Journal will know, the role of the Sentencing Advisory Panel is to assist and advise the Court of Appeal in producing sentencing guidelines for the criminal courts. Established under statute, the Panel is independent of the Court, and independent of government. Although our remit is confined to sentencing, Panel members are drawn from across the criminal justice system and beyond. Members are appointed to the Panel on a part-time basis, and are a mix of sentencers, sentence providers, academics, and people from outside the criminal justice system. One of our founder members was Sir Richard Tilt, former Director General of the Prison Service.

The Panel proceeds on the basis of discussion and wide consultation. Our work is therefore an excellent example of different perspectives on criminal justice being brought together, to achieve understanding and consensus in a very important area of policy. We very much welcome the views of both organisations and individuals from within the Prison Service.

Our work so far ...

The Sentencing Advisory Panel began work in the summer of 1999. I was pleased to address delegates at the Annual Conference of the Prison Service in Harrogate in January 2000. At that early stage the Panel had just submitted its first piece of advice to the Court of Appeal, on sentencing for environmental offences, and we were in the process of consulting on offensive weapons sentencing. Much has happened since then, and a great deal has been achieved. The Panel has now produced six sets of advice for the Court of Appeal, on sentencing for:

- environmental offences (Jan 2000);
- offensive weapons (April 2000);
- importation and possession of opium (May 2000);
- racially aggravated offences (July 2000);
- handling stolen goods (February 2001); and,
- extended sentences (October 2001).

It remains the function of the Court of Appeal to issue sentencing guidelines, and it is for the Court to decide whether to adopt our advice or not. However, the last four of these documents have all been acted on by the Court. Sentencing guidelines based on the Panel' s advice have so far been issued on:

(i) the importation and possession of opium[1]

This was a matter which the Court referred to the Panel for assistance. The purpose of our advice was to ensure that offences involving opium are sentenced fairly in relation to those involving other, more common, drugs for which sentencing guidelines were already well established. After considering a number of different possible bases for guidelines on opium, the Panel concluded that they should be based on weight, cross-checked with street value to ensure that at least an approximate equivalence with heroin and cocaine was maintained. In the Court of Appeal in *Mashaollahi*, Mr Justice Rougier acknowledged the Court's indebtedness to the Panel for its work. The Panel's advice was substantially adopted.

(ii) Racially aggravated offences[2]

The Panel proposed to the Court of Appeal that it should frame a sentencing guideline on this important subject, following the creation of specific new offences of racially aggravated assault, harassment and criminal damage. The proposal was that sentencers should indicate what the sentence for the offence would have been without the element of racial aggravation, and then indicate the extent of the addition to the sentence brought about by the racial element.

Lord Justice Rose said in *Kelly and Donnelly* that the Court had found the Panel's advice 'extremely helpful'. The Court adopted its general approach (which built on *Saunders* (2001) 1 Cr App R (8) 458), and adopted all the aggravating and mitigating factors proposed by the Panel.

(iii) Handling stolen goods[3]

This offence covers a very broad range of circumstances, from the otherwise law-abiding individual who makes a one-off purchase, perhaps of a stolen video recorder or a mobile phone, for personal use, to the professional criminal who regularly provides an outlet for the proceeds of major bank robberies and other very serious offences. The Panel attempted in this proposal to assist sentencers in both the Crown Court and in Magistrates' Court in the exercise of their discretion when sentencing for this offence. We drew together the relevant sentencing principles, identified the factors which made a particular offence of handling more or less serious (including those features which identify the work of a professional handler) and indicated the threshold for a community or custodial sentence.

In *Webbe and Others*, Lord Justice Rose said that 'This Court is greatly indebted to the Sentencing Advisory Panel for the advice which they have tendered'.

(iv) Extended sentences[4]

The sentencing courts have a range of powers, when dealing with persistent or dangerous sexual and violent offenders, to impose a sentence which reflects the risk of future offending by the offender as well as the seriousness of the offence itself. One of the options available is an extended sentence, which provides for additional supervision of the offender under licence after his release from custody. The Court of Appeal indicated to the Panel that it intended to issue guidance on the use of extended sentences, and asked the Panel for its advice. When we began work on this topic it soon became clear that the legislation in this area was extremely complex, and sometimes sentencers were not well informed about the options available to them.

We proposed that guidance from the Court should start with a general overview of the powers available for dealing with violent and sexual offenders (including longer than commensurate determinate sentences and discretionary life sentences, as well as extended sentences) and an explanation of the practical implications of an extended licence period. In our advice the Panel also tried to identify the types of case in which an extended sentence would be the most appropriate option. These include sex offences where the offender is at high risk of offending but where the nature of the offence does not in itself justify a long custodial sentence; and at the other end of the scale, vases involving serious violent offenders who represent a continuing danger to the public. In *Nelson* Lord Justice Rose said that the Court was 'very grateful for that advice which, as will appear, the Court, for the most part, accepts'.

Research conducted for the Panel

At the time of writing, the Panel has just completed, and is expecting soon to publish, advice to the Court on three further important and controversial topics: the setting of tarrifs in murder cases; sentencing

1. See the Court of Appeal's judgement in *Mashaollahi* (2001) I Cr App R (S) 330.
2. See the Court of Appeal's judgement in *Kelly and Donnelly* (200 1) 2 Cr App R (S) 341.
3. See the Court of Appeal's judgement in *Webbe and Others* (2002) 1 Cr App R (8) 82.
4. See the Court of Appeal's judgement in *Nelson* (2002) 1 Cr App R (S) 134.

for domestic burglary; and, sentencing for rape. In the course of its work on the last two of these topics, the Panel commissioned detailed independent research to assist its deliberations.

For domestic burglary, research was carried by Research Surveys of Great Britain out to ascertain the views of a large and representative sample of members of the public on a range of issues relating to the offence of burglary. In particular, the researchers explored how far members of the public agreed with the aggravating and mitigating factors which had been identified by the Court of Appeal in the leading sentencing case on domestic burglary[5]. The Panel believes that this research has made a significant contribution to our understanding of public attitudes to sentencing, and to how those views are founded.

In respect of the offence of rape the researchers, from the University of Surrey, set up 28 discussion groups, chosen to reflect age, gender, ethnicity, social class, sexual orientation and geographical location, in which various issues about the sentencing of rape offences were considered. In particular, discussants were asked to consider to what extent, if at all, a pre-existing relationship between the offender and the victim should make a difference to the sentence for rape. The findings of the research have assisted the Panel greatly in formulating its advice to the Court. At the time of writing, the report of this research has not been published, but it will in due course also appear on our website.

Consultation

The Panel has recently completed a consultation on sentencing offences involving child pornography on the Internet; and are currently looking at sentencing offences involving evasion of the duty on cigarettes and alcohol. Consultation is central to all the work that the Panel does. Before putting a proposal to the Court of Appeal, we formulate an initial view on the basis of any relevant information about the category offence in question, including sentencing statistics and other research findings. We then set out our provisional views in the form of a consultation paper, inviting comments on specific questions, such as the features which would make an individual offence more or less serious, and the choice and length of sentence. We encourage respondents to let us have their views on any other matters they consider relevant.

We consult widely, and any individual or organisation is free to let us have their views on our consultation papers, or to draw our attention to areas of sentencing which might benefit from new sentencing guidelines or the amendment of existing ones. The core of our consultation, however, is with 28 organisations which have designated by the Lord Chancellor, with whom we must always consult. These organisations range right across the criminal justice system and beyond. They include HM Prison Service, the Prison Governors' Association; and the Prison Officers' Association. Other consultees on the list who have special interest in prison-related matters include the Prison Reform Trust and the Parole Board. We also regularly consult a range of other interested bodies, including the Prison Service Trade Union Side. Our normal consultation period is three months, which is the period recommended by government. Sometimes it has to be shorter where, for example, the Court of Appeal has adjourned the hearing of an appeal against sentence in order to refer the general issue to the Panel for our advice.

We have received some very helpful responses from our Prison Service consultees to some of our consultation papers, but I would like to encourage more regular input from the Service. Of course I understand that your organisations receive many different requests for response, and that there is pressure on time and resources. In that context, replying to a consultation paper on a particular area of sentencing policy may not seem as much within your areas of concern as some other issues. To do its job effectively, however, and to retain the confidence of the Court of Appeal, the Panel needs the views and advice of the people on the ground about the sentencing issues which impact on the way that you do your work.

We value comments from individuals as well as organisations, and will always treat responses in confidence if you ask us to. Any suggestions for improving the exchange of information between the Sentencing Advisory Panel and prison service organisations would be welcome. At present, we regularly send copies of the Panel's annual report to all our consultees, and invite them to attend the launch of the report, which takes place in London in June.

Getting in touch with us

The easiest way to find out what the Panel is doing, and to check on current sentencing areas under consultation, is to visit our website, which is on www.sentencing-advisory-panel.gov.uk. The site, which has recently been redesigned, is updated regularly. It contains an archive of all our previous advice, and our annual reports, as well as the full text of current consultation papers. You can use the website to respond to our consultation papers by e-mail if you wish.

The Panel Secretariat, which is based in London, can be contacted by phone on 020 7271 8336, by fax on 020 7271 8400, or you can write to: Sentencing Advisory Panel, Room 101, Clive House, Petty France, London SW1H 9HD. The Secretary to the Panel is Miss Brenda Griffith-Williams.

5. *Brewster* (1998) 1 Cr App R (S) 181.

Prisons and the Law: National Rules and Local Discretion

Stephen Shaw, *Prisons and Probation Ombudsman for England and Wales.*

Most of us go through life trying to give the impression we are cleverer than we are. The secret of success for Willie Whitelaw, the bluff, affable and much-liked former Home Secretary, was to pretend he was dumber than he actually was.

Lord Whitelaw was once famously accused of going round the country stirring up apathy. I think he saw himself as promoting harmony. Whitelaw wanted to emphasise the benefits of One Nation Conservatism, with which he was unfashionably associated during Mrs Thatcher's reign, and which he saw as a necessary corrective to her individualistic philosophy. Who now says there is no such thing as Society?

The very opposite charge to that levelled at Lord Whitelaw is directed at those of us who talk about prisoners' rights. We are thought of as making problems where there are none, accused of putting ideas in people's heads, and criticised for creating a formalised legal structure wholly unsuited to the day-to-day realities of an operational service. Running a prison, it is said, is an art not a science. What staff (and prisoners) need is common-sense, not the ability to cite the Prison Rules by rote.

As an example of this view, here is an extract from a recent Board of Visitors' (BoV) annual report. After noting the number of foreign language books lying unread in the prison library, the public's watchdog bemoaned that:

> *The ethnic books and tapes are rarely used as is all the Home Office literature which the library is obliged to have so that prisoners can have access to information regarding penal affairs.*

I am not encouraged by the BoV's apparent intolerance of 'ethnic' literature. But its central message seems to be: no prisoners are interested in anything but getting through their sentence — all this guff about rights is so much liberal do-gooding claptrap. The time and money spent on law books would be better directed to things that really matter like work and decent quality training.

It is a viewpoint which speaks to many parts of prison and public opinion. It clearly plays to those who believe that prisoners abandon all their rights when they decide to commit crime and infringe the rights of others — witness the media criticism when any prisoner has the effrontery to cite the provisions of the Human Rights Act. But even those who take a less extreme position may doubt that the positive assertion of rights on behalf of rapists and murderers ranks very high on the Richter scale of social concern. (Even I, whose working life has mostly been spent promoting the rights of prisoners, do not believe this is a more important cause than ending child poverty, or stopping the use of land-mines, or finding a cure for cancer.)

The view that an excessive regard for legal rights is out of place in prison also reflects the opinions of those whose approach to prison management — while progressive and benign — is intensely practical. Some of the best governors of my acquaintance fit this bill. Indeed, I can hear the voice of one of them in my head as I pen these words. From this perspective, running a prison is about muddling through, doing the best you can on limited resources and limited information, making one hundred decisions a day and — in effect — making one hundred compromises. The law, the rules, the audit teams, may have their place, but they are something of a distraction from the real tasks.

Indeed, so say this group, excessive obeisance to the rules (the PSOs, the manuals, the Standards) is actively impossible. No-one has the time or inclination to read all the rules, let alone remember them. But it is also undesirable to apply the rules religiously. Prisons are acutely human institutions, so relationships matter more than regulations. Good sense and experience count more than abstract legal theorems.

I may have a surprise for you. I have a lot of sympathy for this view myself. Given the choice between a rule and doing the right thing, I have no hesitation in opting for the latter. I encourage my colleagues in the Ombudsman's office to take a flexible view of our own terms of reference. And I try to bring the same approach to my assessment of prisoners' complaints. I have just reviewed a decision concerning a prisoner's place in the Incentives and Earned Privileges scheme (IEP), which played fast-and-loose with the regulations but which resulted in a hugely sensible outcome. Far from overturning it, I praised the

governor concerned. Another example: I once witnessed an adjudication which broke every rule in the book. The adjudicator even discussed the best outcome with one of the staff witnesses during an adjournment. Virtually nothing was put down on the Record of Hearing. However, the actual outcome was a triumph of decency, creativity and good sense. It is just a good job no lawyer got to learn about it.

Ah, lawyers. Now there is a profession to raise the hackles of many prison staff. The first thing to do, wrote Shakespeare, is kill all the lawyers. I bet that strikes a chord with many readers. Indeed, hand on heart, how do most staff feel about the solicitors lining up at the gate for legal visits? As fellow criminal justice professionals? Or as over-paid shysters with smooth tongues and sharp suits? It is all right, I know the answer.

Since the extension of my remit to the National Probation Service, I have spent quite a bit of time explaining why probation — which has never had many complaints, save for the Family Court Welfare work it has now lost — should positively welcome the involvement of an Ombudsman and a growing complaints' culture. The reason I give is that an openness to customers' views, and a willingness to learn when things go wrong, is a characteristic of the most successful organisations. Witness Tesco — the most successful retailer of the last decade. The first thing you see on visiting a Tesco store is not an array of special offers or new products but a Customer Services desk where you take back the goods that do not work, or the bill that does not add up. (As ever, the language is significant: note this is 'Customer Services' not a 'Complaints Department'.)

A modern, effective, accountable public service — so I tell my probation audiences — is one which encourages and empowers its users (customers, clients, offenders) to make their views known. The converse also applies: the least effective agencies are those which are unaccountable, which discourage consumer feedback, or in which there is a view amongst all parties that there is no point complaining since nothing is going to improve. I take this to be one of the characteristics of so-called 'failing prisons'. (In a vain claim to immortality, you may have encountered this phenomenon in other articles as Shaw's Law: only sick institutions have no complaints.)

This is not to suggest I am blind to the impact which a growing consciousness of prisoners' rights has had on establishments. A small number of prisoners are serial complainants and make a disproportionate claim on the time of my office as they do on the prisons which hold them. I suspect most members of the public would be appalled to learn that, such is the volume of legal claims by prisoners, there are now some gaols obliged to employ full-time litigation managers. Recent developments may have exacerbated this trend. The Data Protection Act, for example, is a very necessary piece of legislation. But the demands it is making on some prisons, as prisoners queue to pay their £10 for access to their records, do seem disproportionate to the benefits to society and to the prisoners themselves.

But once set free, there is no way of putting this genie back in the lamp. However much one may rue the development of a complaints and compensation culture, it is the way we live now. Prisoners, no less than prison (or any other) staff, see themselves first and foremost as individuals possessing inherent rights. Indeed, who has cost the Prison Service more in recent years through compensation claims — prisoners or prison staff? It is alright, I know the answer to that one too.

Although the courts may not be unduly willing to intervene on major issues of prison administration (decisions in Human Rights Act cases have been notably cautious, reflecting the conservatism of recent judicial decisions in prison cases in the United States), more and more individual decisions are likely to be challenged — either in the courts, or in complaints to the Prisons and Probation Ombudsman. One of the many advantages of Ombudsmen is that we offer a quicker, cheaper and more expert alternative to the adversarial ethos of the courts. I know that many of my decisions are unwelcome to governors and area managers. But do you really think you would be better off chancing your arm with the judges?

The tension between a rule-bound approach and the exercise of discretion reflects the different perspectives of Headquarters and establishments. Prison Service Headquarters tends to want certainty, consistency and procedural fairness. Prison governors tend to want the freedom to manage in the light of local circumstances, to exercise flexibility and choice, and be concerned with fairness of outcome. This is an age-old conflict, the balance between which is the result as much of fad, tradition and happenstance as of objective criteria. In the Prison Service the localities are increasingly in the ascendant. The current Headquarters review is underlining this point. In probation, the opposite is happening and the National Probation Directorate is calling the shots. Indeed, I have come across considerable dissatisfaction amongst members of probation boards who have discovered how little influence they actually exercise.

As Ombudsman, I try to take a balanced view between these two approaches. The rules come first, but there is a proper discretion as to how they are applied. My prisoner-complainants have a high threshold to overcome so long as decisions which affect them have been arrived at reasonably.

But that is the crux of the matter. Decisions should be reasoned. It is perfectly proper for a governor, say, to prevent a sex offender having access to particular material which may undermine his achievements on the sex offender treatment programme. I have no problem with individualised decisions arrived at in a deliberative manner. But bland assertions of 'security objections' or 'local

circumstances' will not do. Devolved responsibility does not mean the right to behave irresponsibly or illogically or without regard to fairness.

I began by quoting a BoV and I am sorry that a Board of Visitors should apparently mock the Prison Service for making its regulations and procedures available to prisoners. The law matters, especially Human Rights law. And procedural fairness and legitimacy matter a great deal too.

My limited international experience suggests that the Prison Service in England and Wales is far ahead of most prison administrations in terms of the quantity and quality of information it publishes and disseminates. I celebrate that fact, and the absence of cynicism in most governors' commitment to the Prison Service's values. No-one who has seen Martin Narey's brave and moving video on Decency could doubt the strength of his personal commitment to the highest international standards of conduct.

In any case, what is so wrong if information is freely available but rarely referred to? I have a dictionary, thesaurus and guide to English usage on my bookshelves. But wordsmith that I am, there's nuffink I need to look up. Just like some prison staff and Boards of Visitors in their attitude to Prison Rules eh?

The Prisons and Probation Ombudsman for England and Wales can be contacted through its website: www.ppo.gov.uk

Investigations into Deaths in Prison Custody

Steven Bramley, *Legal Adviser to HM Prison Service.*

Last year, 72 prisoners died an unnatural death in prison custody. The vast majority of these took their own lives. Comparing this statistic with figures for recent years, this was a relatively encouraging result. No prisoners were killed by other prisoners. Each of these unnatural deaths is likely to have taken place while the prisoner was alone, unattended by prison officers, doctors or nurses, and far from his (occasionally her) family. What needs to be done is to discover how and why the death occurred.

This article explores these questions by running through the varied forms of inquiry that may or must take place. It then discusses the most recent, and still unfolding, legal developments before summarising the substantial changes that have taken place in law and practice over the past five years or so.

Prison Service investigation

All unnatural deaths in prison custody are investigated by a senior investigating officer from another prison establishment. This officer will be commissioned by the area manager responsible for the prison where the death occurred to produce a thorough, comprehensive and prompt report into how the prisoner died. Prison officers interviewed during the course of the investigation are required to offer all reasonable co-operation. The family of the deceased is given the opportunity to be kept informed with the progress of the inquiry. Once it has been concluded, it will be disclosed to the family. This however is subject to the views of the coroner.

Inquest

A coroner will always be involved. Section 8 of the Coroners Act 1988 requires that there must always be an inquest when there is a death in a prison. And in such a case the inquest must always be held with a jury. The coroner might sometimes object to disclosure to the family of the internal Prison Service investigation into the death. He might feel that the conduct of the inquest would somehow be compromised if the family were to see the investigation report before the inquest has taken place. But this is rare, and is becoming more unusual.

The jury's verdict is certified in writing by the coroner and those jurors who agree with the verdict (some might dissent from it). This certificate is known as an inquisition. It sets out, so far as has been proved in the inquest, who the dead person was and how, when and where he came by his death. It does not identify any person as bearing responsibility for the death. There is currently a review of the coronial system, conducted for the Home Office and expected to conclude around early next year.

Criminal proceedings

Aside from the Prison Service investigation and the inquest, there will sometimes be criminal proceedings arising from a death in custody. This is

very rare because killings of prisoners are very rare. But in March 2000, Zahid Mubarek was killed by his cellmate Robert Stewart in Feltham Young Offender Institution. Stewart was tried and convicted of murder on 1 November that year. The inquest into the death was formally opened and then adjourned on the same day until the conclusion of the criminal proceedings, so as not to hear evidence before it had been given at Stewart's trial. After the conviction, the coroner had the discretion to reopen the adjourned inquest. She considered this would serve no useful purpose and did not exercise this discretion.

Unusually in that case, there was also a police investigation into the Prison Service's responsibility for the death in custody. If it can be shown that individual staff, with a responsibility to care for the prisoner, were grossly negligent so as to cause the death, then they may be guilty of manslaughter. There is gross negligence where, having regard to the risk of death involved, the conduct of the member of staff was so bad in all the circumstances as to satisfy a jury that it was criminal. This carries with it a maximum of life imprisonment. Alternatively there may be evidence of a serious offence under section 3 of the Health and Safety at Work Act 1974. The police concluded that there was insufficient evidence of either offence at Feltham.

Non-statutory inquiry

There are other ways to investigate deaths in prison custody. In November 1994, Christopher Edwards was stamped and kicked to death by Richard Linford in the cell they shared at Chelmsford Prison. Linford pleaded guilty to manslaughter and an inquest was adjourned and then closed in the light of the conviction. The Prison Service, Essex County Council and the Local Health Authority set up an inquiry. This sat in private and heard evidence for 56 days. Those who established the inquiry did so voluntarily, rather than under any specific power in or under an Act of Parliament. Those who gave evidence to the inquiry did so because they were asked to. They could not be required to give evidence. Two prison officers decided not to give evidence, and one of these may have been able to make a significant contribution to the inquiry.

Statutory inquiries

Under section 5A of the Prison Act 1952, the Chief Inspector of Prisons can be directed by the Home Secretary to inquire into and report on specific matters connected with prisons or prisoners. There seems no reason why this power could not be exercised in relation to deaths in prison custody. But the power has not been used in this way. As with a non-statutory inquiry, the Chief Inspector could not compel a prison officer to co-operate. This is not the position in other areas, such as inquiries under section 49 of the Police Act 1996.

In relation to the murder of Zahid Mubarek, there is another type of statutory inquiry. At the time of writing, this has still not been published. In late 2000, the Commission for Racial Equality was required to investigate racism in the Prison Service. Its terms of reference include general considerations but also grounds for belief that it is necessary to inquire into some specific issues in particular prisons. One of these is the murder at Feltham. In certain closely defined circumstances, there is a power under the Race Relations Act 1976 to require a person to disclose information to such an investigation. That power has not been used in relation to this inquiry.

Civil proceedings

Not all deaths in prison custody are self-inflicted and killings are thankfully extremely rare. But prisoners die of other causes. In 1996, Paul Wright died in Leeds Prison after a severe asthma attack. There was no question of criminal liability. An inquest was held which indicated that there was no unnatural element to the death.

All the investigations looked at so far have been established by 'the authorities'. Whether it is the Prison Service, the coroner, the police or local authorities, some body with public responsibility has initiated the inquiry into how a prisoner came by his death while being detained by the Prison Service on behalf of the State. In Paul Wright's case, which occurred before the introduction of regular internal investigations into deaths in custody, none of the authorities indicated anything irregular in the circumstances of his death.

The case of Paul Wright

When Paul Wright died, his mother was chronically ill. She depended upon him to look after her when he was at liberty. Because of this dependency, she was able to bring civil proceedings against the Prison Service. She said that Leeds Prison had been negligent in their care of her son. Consequently, he had died and she had suffered financial loss. This was because of the expense in obtaining care facilities which her son, had he remained alive, could have discharged for nothing. She initiated these proceedings together with Paul Wright's aunt.

The Prison Service investigated the circumstances of the death thoroughly. It concluded that the better course was to compensate Paul Wright's mother and his aunt. A substantial payment was made which had the effect of concluding the civil proceedings and no hearing took place. As a result, there was no public airing of the issues raised by the claim. So the claim was revived as a challenge to the Prison Service's failure to disclose an account of its internal investigation and to convene a public inquiry into the death.

This revived claim was decided in summer 2001. By the time it came to court, the Prison Service had disclosed the investigation report to Paul Wright's mother and aunt. At the hearing it was accepted that this disclosure was sufficient for the claimants' purposes. But they still sought a public inquiry which could effectively, independently and (some years after the death) promptly investigate how Paul Wright had died. The court decided such an inquiry should take place. This was the first time an English court had had to consider whether there was a human right to have an unnatural death in custody publicly investigated in an inquiry. The significance of this will be explored later.

As with Christopher Edwards, there was no relevant statutory power to establish an inquiry into the death of Paul Wright. In both cases, the inquest had been, or turned out to be, inconclusive. But the court nevertheless required the Home Secretary to set up a public investigation into the death of Paul Wright, and issues surrounding the quality of his health care at Leeds Prison.

This has been done. Dr Jon Davies was appointed to conduct the inquiry and a two-day hearing took place in Leeds towards the end of last year. No witnesses were, or could have been, compelled to attend by Dr Davies. However, all Prison Service witnesses who were asked to attend, did so.

European Court of Human Rights and the case of Mark Keenan

Mark Keenan killed himself in the segregation unit of Exeter Prison in May 1993. He was 28 and had been on anti-psychotic medication for the past seven years. When close to the point of release, he was found in an adjudication to have assaulted a prison officer. Cellular confinement was ordered and 28 days were added to his sentence, delaying his imminent release. The next day he hanged himself.

His mother could not bring civil proceedings against the Prison Service in relation to its treatment of Mark Keenan. Since he was aged over 18 and she was not financially dependent upon him, the Fatal Accidents Act 1976 effectively prevented her bringing proceedings in England and having her concerns about the death independently examined. So Susan Keenan brought proceedings against the UK in Strasbourg under the European Convention on Human Rights. There were essentially three claims. The first was the most serious of all claims that can be made under the Convention, article 2.

Article 2.1 provides that:

> *Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which penalty is provided by law.* [The death penalty for treason and mutiny in the UK has relatively recently been abolished. Capital punishment for murder was repealed in 1965.]

This right goes further than the duty not to take life unlawfully, as was alleged in the case of *McCann v UK* — this was the case involving three IRA members shot dead by the British Army in Gibraltar in 1988, the so-called 'Death on the Rock' case. The article 2 right extends to the duty to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another, as in cases involving allegations of RUC collision with Loyalist paramilitaries and police taking insufficiently seriously threats to kill made by a deranged individual.

The European Court of Human Rights considered the application of article 2 in the Keenan case. They concluded not that it could not apply to suicide cases, but that on the facts it had not been breached because Mark Keenan had not been at immediate risk of suicide throughout his detention. The implication was that, if he had been, then there might have been a breach of article 2 because of Exeter prison's decision that he was fit to undergo disciplinary proceedings and to be given cellular confinement.

The next claim brought by Susan Keenan was a breach of article 3, another extremely serious issue. Article 3 provides, simply:

> *No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*

The court found that this article had been breached in the standard of care with which Mark Keenan had been treated in the days before his death. It considered that there had been a lack of effective monitoring of his condition and a lack of informed psychiatric input into his assessment and treatment. In the light of this, the imposition on Mark Keenan, nine days before his expected date of release, of seven days in segregation unit and 28 days added to the time he had to serve in custody constituted inhuman and degrading treatment.

The final issue in this case arose under article 13. This article is the most important right in the European Convention which is not incorporated into English law by the Human Rights Act 1998. This means that no complaint of a breach of article 13 can be entertained in our domestic courts. It provides:

> *Everyone whose rights and freedoms as set forth in this Convention [such as articles 2 and 3] are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.*

The court found a breach of article 13. It considered that the article requires, not only the payment of compensation where appropriate, but also a thorough and effective investigation. Without this, the court held that the right to an effective remedy could not be satisfied, whether in relation to an alleged breach of the right to life or the right not to be subjected to inhuman or degrading treatment.

Any case in Strasbourg brought against the UK is heard by a chamber of judges which must include a British judge. In Keenan's case, Lord Justice Sedley held that what was required to provide an effective remedy was a 'proper and effective inquiry into responsibility for the death'. The inquest that had taken place and the fact that no effective civil proceedings could be brought meant that article 13 had been violated. This decision was delivered in April 2001. Susan Keenan was awarded a sum of compensation to reflect the court's findings that her rights under articles 3 and 13 had been breached.

Judicial review

Judicial review is the means by which many sorts of administrative action or inaction can be legally challenged on the grounds that they are unlawful, procedurally unfair or wholly unreasonable. So it has long been possible to challenge the conduct of an inquest and thus the inquisition on the basis that the coroner has erred in some way in the evidence he has admitted or the view he has taken of the relevant law.

On 2 October 2000, the Human Rights Act 1998 came fully into force. This makes it unlawful for any public authority, including a court or a coroner, to act in a way that is not compatible with 'the Convention Rights'. These are the majority of the human rights set out in the European Convention on Human Rights which the UK has accepted the European Court of Human Rights can apply in cases brought against this country since 1966. We have seen that the Convention rights do not, however, include the right to an effective remedy under article 13. They do include the right to life (article 2) and article 3 which concerns the right not to be tortured or treated in a degrading or inhuman way.

The case of Colin Middleton

Colin Middleton hanged himself in January 1999 while in custody in Bristol Prison. He was aged 30. An inquest held that May was later quashed as being an inadequate investigation. A second inquest was held in October 2000. It examined the death very thoroughly and, unusually for inquests at that time, the family, as well as the Prison Service, was represented by a barrister. It was clear that this was a suicide. A note had been left by Colin Middleton in his cell. The family was however concerned that there were sufficient warning signs for a 'self-harm at risk form' to be raised before he died. One had been opened, but later closed, and despite some evidence that the prisoner was still at risk, a fresh form had not been opened.

The coroner ruled that the issue of whether the death had been contributed to by 'neglect' could not be considered by the inquest jury. But he told them that if they wished they could give him a note regarding any specific areas of evidence about which they were concerned. The coroner undertook to consider this when deciding whether to make any recommendations. Where the coroner believes that action should be taken to prevent the recurrence of similar deaths, he may recommend such action to the authority which has power to take it. The coroner further told the jury that any such note would not be published.

The jury did produce a note, but the coroner did not publish it — though he showed it to the lawyers acting for the family and for the Prison Service. He refused to publish the note when asked by the family and they consequently brought judicial review proceedings.

The requirement to investigate effectively

The family's case was that article 2 required not simply that the State must put in place adequate safeguards to protect the life of those in its custody. It also required an effective investigation into the circumstances of the death. This is a critical point. If article 2 does require such an investigation, and it applies to a coroner, then because the article is now part of English law the standards laid down in cases in Strasbourg can affect the way English courts require coroners to conduct inquests into deaths in custody. The fact that cases decided by English courts before the introduction of the Human Rights Act strictly limit the role of the inquest and the range of possible verdicts will not hamper a coroner if the Convention rights require him to conduct a fuller investigation into the circumstances of a death.

The European Court decided in the McCann case that there was a duty to investigate deaths which resulted from the use of force by the State, under article 2. There had been an inquest in Gibraltar following the killings of the three IRA members. The families had been afforded full legal representation and the court decided that article 2 had been satisfied. As the case law on the extent of article 2 developed to include the use of force by non-State bodies, with or without State collusion, the corresponding duty to investigate such deaths extended alongside. The English court which heard the Colin Middleton case decided that article 2 did extend to suicide in prison custody (as the Keenan case had shown), and (which Keenan had not decided) that there was a corresponding duty under that article to investigate such deaths.

The court held that in order for the inquest to be sufficiently effective so as to satisfy article 2 it was

necessary for the jury's findings to be made public. The court rectified what it saw as this omission by making two parts of the note public. These expressed their concern at the closing of Colin Middleton's self-harm at risk form and their belief that sufficient information existed to warrant a fresh form being opened.

In this way the judicial review proceedings themselves contributed to the completion of the investigation into Colin Middleton's death.

Legal developments in 2002

We have seen, particularly in the last two or three years, a very substantial range of ways that unnatural deaths in custody can be investigated in whole or in part. These include:

- Internal Prison Service investigations
- Inquests
- Prosecutions
- Inquiries, whether statutory or not
- Civil proceedings
- Applications to the European Court of Human Rights
- Judicial reviews

How best to make sense of this variety? Are some investigations only suitable for some sorts of death? Is there a choice between different types of inquiry? These and other issues came to a head before the Court of Appeal in February this year. The court was considering two appeals brought by the Home Secretary.

The first concerned the death of Zahid Mubarek and a judicial review case brought by his uncle Imtiaz Amin. He had successfully challenged the current Home Secretary's refusal (following his predecessor's refusal) to hold a public inquiry into that death. The court at first instance did not consider that the internal Prison Service investigation, the trial of Robert Stewart, the police investigation into the Prison Service and the CRE inquiry to have discharged the State's duty to investigate under article 2, whether individually or cumulatively.

The second appeal concerned Colin Middleton. The Home Secretary originally argued that article 2 did not require a investigation into the circumstances of a death in prison custody that did not involve any use of force by any officers, or indeed any suggestion of involvement or collusion in the death. This argument was discarded after the decision of the European Court of Human Rights in the Christopher Edwards case. It was held that there had been a duty to investigate that killing and that the inquiry had been inadequate because of the inability to compel to give evidence a witness who might have a significant contribution to the investigation, and because of the limited involvement of Christopher Edwards' family.

It was further argued by the Home Secretary in the appeals that it was not necessary for there to be a satisfactory investigation into an unnatural death in custody for the issue of neglect or other fault to be determined or otherwise made public by the coroner, the jury or the inquisition. What was necessary under article 2 was a thorough examination and marshalling of the facts. It might be that these would enable a criminal prosecution to take place, but that would be a separate matter. It might also enable the family, in the case of a death after October 2000, to bring civil proceedings relying on the Human Rights Act and arguing that there had been a breach of article 2 or 3. This again would be a separate matter, to do with remedies.

The Court of Appeal decided, in relation to Imtiaz Amin's case, that the nature of an investigation into an unnatural death in custody would depend on the facts of each case. The law did not lay down a rigid set of rules to be followed slavishly. It might be appropriate to hold an inquiry in public in some cases. In others it could be sufficient for the family of the deceased prisoner to participate in private.

In relation to the death of Zahid Mubarek, the investigations that had taken place and still underway, taken together, were sufficient to discharge the legal requirements. This was not least because of the Director General's straightforward acceptance of responsibility. He had written to the parents straight after the death:

> *You had a right to expect us to look after Zahid safely and we have failed. I am very, very sorry. What I am determined to do now is to ensure we are completely open with you. If mistakes have been made we shall not conceal them from you.*

The Service had not pretended it was not to blame and the formalistic requirement that investigations should be independent did not prevent the subsequent internal investigation by senior investigating officer Ted Butt (praised by the court) from contributing to the overall inquiry into the death. It is not clear at the time of writing whether Imtiaz Amin will bring any appeal against this decision.

In relation to Colin Middleton, the Court of Appeal did not rule any of the English law on coroners to be incompatible with the European Convention. Nor did they strike down any part of the Coroners Rules, as they had the power to do. But they did reinterpret that law. They held that, where the coroner knows that he is the means by which the duty to investigate under article 2 is being carried out, and he considers that there was a systemic failure on the part of the Service as opposed to human error by an individual, then he must allow the jury to reach such a finding. This is in order to prevent the recurrence of similar deaths.

There is currently a petition before the House of

Lords to appeal this part of the judgement, lodged by the Home Secretary. In the meantime at least, it should be noted that the judgment represents the law of the land.

Some reflections

Law and practice surrounding the investigation of unnatural deaths in custody have developed considerably since, say, the death of Paul Wright in Leeds Prison.

- Internal investigations by Senior Investigating Officers from outside the prison are now carried out routinely. They have expert help when they need it.
- Family participation into these inquiries is regarded as important and the investigation report is usually disclosed to them before the inquest.
- The family is, since the end of last year, more likely to be afforded legal representation at the inquest.
- If the Service has been at fault in the systems it uses to minimise self-harm, the jury can say so.
- If the inquisition finds unlawful killing, then there is an expectation that the CPS will consider criminal proceedings (this follows the death of Alton Manning at Blakenhurst prison).
- In cases where the deceased prisoner is an adult and his family is not financially dependent on him, they may nevertheless be able to bring proceedings against the Prison Service under the Human Rights Act, though this has yet to be tested.

It appears likely that, in most cases, the contribution of the availability the internal investigation, the inquest and possible criminal proceedings will be sufficient to discharge the requirement to establish and conduct an effective investigation promptly.

S-21 The Heart of the Cambodian Nightmare

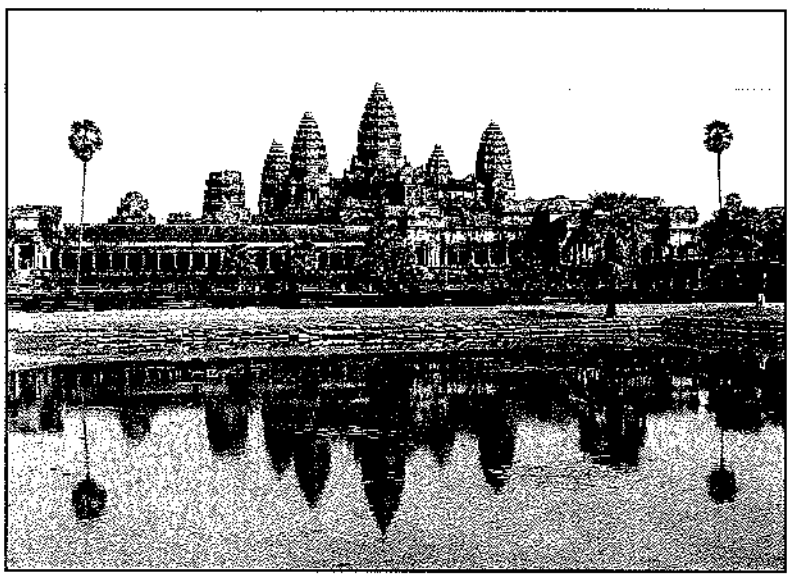
Jamie Bennett, *Head of HMP Whitemoor's Dangerous, Severe Personality Disorder (DSPD) Unit.*

In the UK, the second half of the 1970s saw Callaghan as Prime Minister, Margaret Thatcher as Leader of the Opposition, the Rhodesian declaration of independence, the discovery of North Sea oil, the punk phenomenon and the Queen's Silver Jubilee. In the rest of the world, figures such as Idi Amin, Jimmy Carter and Anwar Sadat made headlines, whilst critical events included the death of Mao, the Iranian Revolution and the murder of Steve Biko.

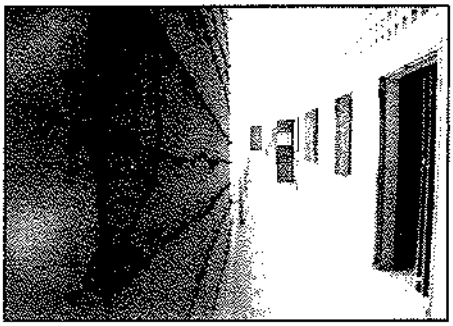
This period also brought Cambodia, or as it was then known, Kampuchea, into the public consciousness as it descended into a nightmare from which it is only now beginning to awake. The rule of Pol Pot and the Khmer Rouge, 1975 to 1979, resulted in the deaths of 1.7 million people, one in five of the population, and left a generation scarred. This horrific legacy stands alongside the Holocaust, the Russian purges and the apartheid regime in its barbarity. The acts of this regime have been termed 'autogenocide' reflecting the sense of a country indiscriminately destroying itself.

Cambodia was previously famous for the glorious Angkorian empire, the most powerful in South-east Asia between the ninth and sixteenth centuries. The spectacular remains of this empire are a major attraction to both archaeologists and tourists. These remains cover an area of 60km^2 and include Angkor Wat, the largest religious site in the world. Prior to and since the Khmer Rouge this has been the symbol of the glorious Cambodian culture.

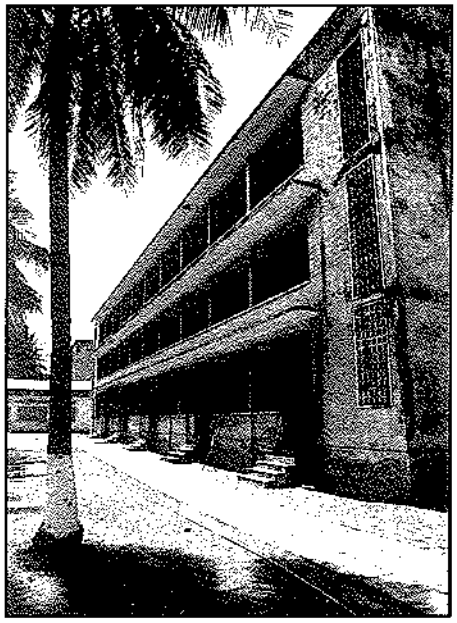
The huge scale of destruction between 1975 and 1979 has been directly attributed to the policies of the



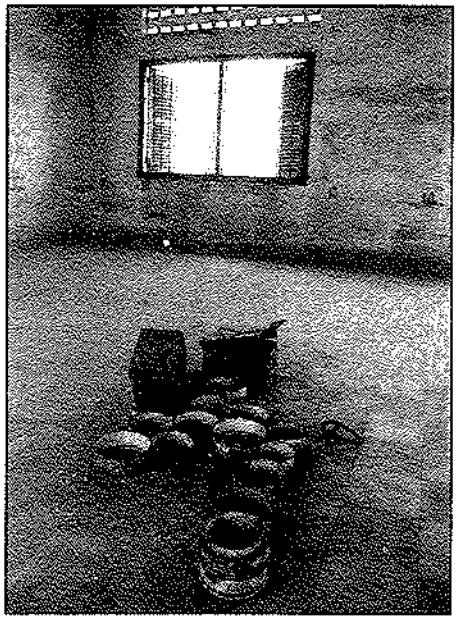
Below: Angkor Wat, the largest religious site in the world and the symbol of the ancient and modern Cambodia.



Above: The corridor in the first floor of Block C. Only the barbed wire indicates the sinister nature of the events that occurred in this building.



Centre: External of Block C, the interrogation Units, at S-21. The building looks innocuous from the outside, like the municipal school it once was.



Above right: Communal cell on the first floor of Block C. This cell would hold 60 or 70 prisoners. They would lie, 20 or 30, along the length of an iron bar to which, one or both of their legs would be shackled. The pots and buckets pictured were the only sanitation available to prisoners. They would have to gain permission before using them, failure to do so resulted in severe punishments.

regime. This included the forced evacuation from all of the cities; the forced labour of all citizens in rice production; the abolition of modern medical practice; and the purging of opponents of the revolution. This indiscriminately affected all people: farmers, labourers, lawyers, doctors, journalists, politicians, clergy and civil servants.

S-21 was the main prison and torture centre of the regime, the heart of the purges. It saw the torture and execution of at least 14,000 people. Only seven are known to have survived. It was known locally as 'the place where people went in but never came out'. It is housed in a former school in the Tuol Sleng area of Phnom Penh, Cambodia's capital. Its corruption mirrors that of Pol Pot, who started his professional life as a teacher.

Staff

The Khmer Rouge regime promoted the virtues of young people's ignorance and inexperience, following the Maoist preference for the 'poor and blank'. During its height, about 80 per cent of those employed as guards at S-21 were aged between 17 and 21. These people were malleable and could be developed for the role that they would be required to play.

This corruption was the new education of the young, who were taught slavishly to obey instructions. The institution of family was systematically destroyed as everyone became part of one collective group. The revolution even brought with it the capital offence of 'Familyism' — missing one's family. It could be argued that the staff at S-21 were also victims of the regime, taught to be murderers in the corrupted school by the corrupted teacher.

The prisoners

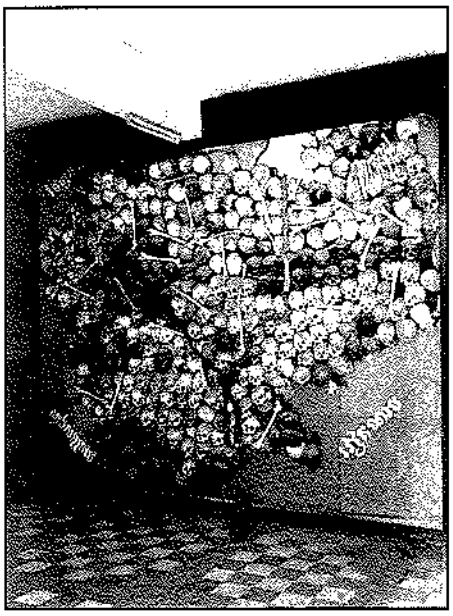
The prisoners at S-21 were not there for conventional crimes, but were there because of real of imagined counter-revolutionary activity. In many cases, the prisoners did not even know why they were arrested. One of the survivors, Vann Nath, has given an account of his first interrogation session:

> *'What is the problem that caused them to arrest you?' the interrogator asked. I said I did not know.*
>
> *'Angkar (the Government) is not stupid', he said. 'It never catches people who are not guilty. Now think again — what did you do wrong?'*

In many cases, no specific charge was ever laid, but it was accepted that the Party could declare guilt or innocence. As one prisoner wrote in his confession, 'Only the Party knows my biography'. It was if, as in Milan Kundera's words, there was a 'punishment seeking the crime'. Other prisoners were there for overtly political reasons. Purges of members of the pre-Revolutionary regime and later of intellectuals and outspoken party officials provided a central role for S-21.

One former commerce official, arrested due to his connections with another high profile prisoner, eventually confessed to shirking combat in the civil war, encouraging subordinates to 'lose faith in the Revolution' and planting fruit trees without permission. Another official in the North West confessed to

Right: the notorious memorial map of Cambodia made of the skulls of victims, displayed in Block D of S-21.



Top right: The memorial stupa at Choeung Ek. This was built on the site where 8,985 bodies were exhumed from 86 mass graves in 1980. A further 43 mass graves on the site have been left untouched. The stupa contains over 8,000 skulls, arranged on glass shelves.

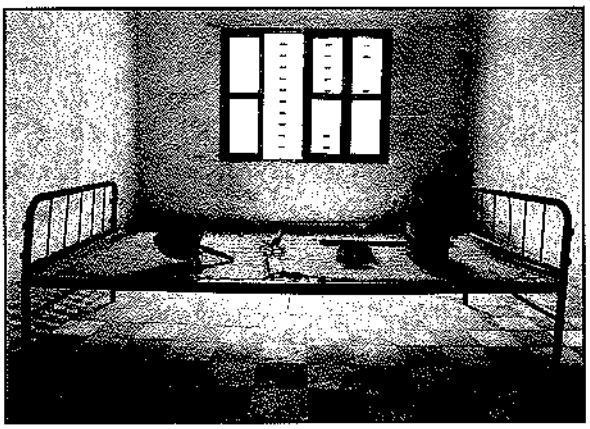
wrecking the harvest when it failed to meet the required quotas. All confessions had appended to them 'strings of traitors', often running to hundreds of names. These would detail people who had allegedly coerced, persuaded, tempted or joined them in committing their crimes against the Party.

In this atmosphere, a paranoia started to grow where the Party leadership became increasingly suspicious and everyone else became increasingly fearful. It eventually undermined the whole of the Party. S-21 was becoming a self-perpetuating source of counter-revolutionary crime until it reached the point where 'Everybody was accusing everybody of treason, and nobody knew what was really happening'.

The process

The operation of S-21 had a perverse procedural order to it. There were prison rules, procedures for interrogation and all prisoners were processed and their confessions logged. It was almost as if these processes gave a feeling of legitimacy to those responsible. The prisoners would usually be held in large rooms, shackled by their ankles to each other. As many as thirty could be shackled together at any one time. Whilst there, they were expected to obey the following rules:

1. You must answer accordingly to my questions. Do not turn them away.
2. Do not try to hide the facts by making pretexts of this and that. You are strictly prohibited to contest me.
3. Do not be a fool for you are a chap who dares to thwart the revolution.
4. You must immediately answer my questions without wasting time to reflect.
5. Do not tell me either about your immoralities or the revolution.
6. While getting lashes or electrification you must not cry at all.
7. Do nothing. Sit still and wait for my orders. If there is no order keep quiet. When I ask you to do something, you must do it right away without protesting.
8. Do not make pretexts about Kampuchea Krom in order to hide your jaw of traitor. (Kampuchea Krom is an island disputed with Vietnam).
9. If you do not follow all of the above rules, you shall get many lashes of electric wire.
10. If you disobey any point of my regulations you shall get either ten lashes or five shocks of electric discharge.



Left: Large cell on the ground floor of Block A. This block, a former classroom, was used for both general workers and important prisoners. Important prisoners would be held alone and usually chained to the bed. They would be subject to much longer interrogation sessions in order to gain as much information as possible. They would often be held for 6-7 months before execution, twice as long as normal.

These rules make clear the barbarity, cruelty and torture endemic in the daily treatment of prisoners.

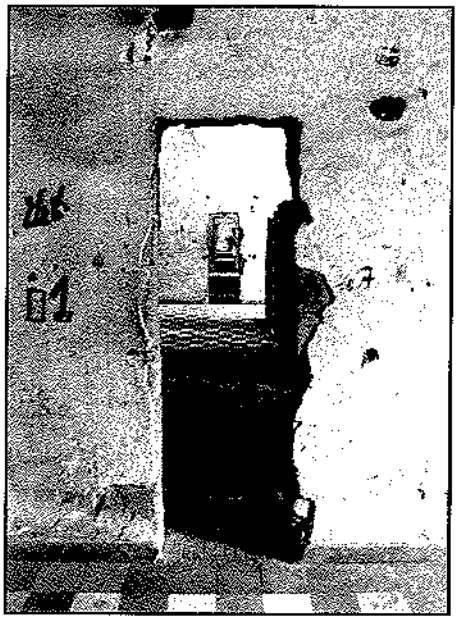
The details of the prisoners were collected and a biography was compiled on each of them. They were also all photographed and the confessions recorded and stored. Vast documentation was recovered and is now held in the Tuol Sleng museum, providing an insight into the regime. The photographs of the victims are also displayed in the museum, a harrowing reminder of the real cost of this era.

The interrogation process was incremental:

1. First, extract information from them.
2. Next, assemble as many points as possible to pin them down with and to prevent their getting away.
3. Pressure them with political propaganda.
4. Press on with questions and insults.
5. Torture.
6. Review and analyse the answers so as to ask additional questions.
7. Review and analyse the answers so as to prepare documentation.

Right: Converted classrooms in Block C. These classrooms have been converted into cells. All the way along each side are tiny cells used for interrogation.

Far right: Skulls in the memorial stupa at Choeung Ek.



The process escalates, from questioning (1-2) to 'doing politics' (3-4) to torture (5). The final two points show how this has been formalised and proceduralised so as to make it an accepted part of the bureaucratic process. This strangely replicated the Orwellian depiction of interrogation. 'Doing politics' is the confusing use of sympathy, bullying and persuasion in order to disorientate and make vulnerable, before using torture to force the fullest possible 'confession'.

Vann Nath survived S-21 as he was an important worker, an artist put to work painting portraits of Pol Pot. He has subsequently painted scenes of his memories of the prison including torture of prisoners. This included everything from removing fingers to electrocution, whippings, beatings, drowning and being hanged by the arms or legs for long periods. The guards conducting this torture are always depicted in a way that suggests their casual approach to such barbarity.

Following their confessions, the prisoners were finally executed. This did not take place at the prison, but took place at the 'killing field' in Choueng Ek, just outside Phnom Penh. Regularly, a truck-load of prisoners would be taken there and beaten, clubbed, stabbed or shot until they were dead; men, women and children.

Conclusion

S-21 stands as a symbol of Pol Pot and his government. The corruption of a school mirrors this teacher's personal corruption. The site of such extensive and barbaric 'autogenocide' is also a powerful reminder of those years and the victims of that era. S-21 started as an enforcement centre, but eventually contributed to the downfall of the regime. By doing what they thought was expected in extracting confessions and 'strings of traitors', they fed into an increasingly paranoid government and national psyche. The prison moved from peripheral enforcement to being a self-perpetuating destructive force.

S-21 also provides a lesson on how individuals and groups of people can be corrupted into committing the cruellest acts on the pretext of carrying out orders or bureaucratic process. Established procedures are not always or automatically right. S-21 stands as the heart of the Pol Pot era as well as its eventual demise. It is a painful illustration of the potential abuse of criminal justice process in corrupt and oppressive regimes.

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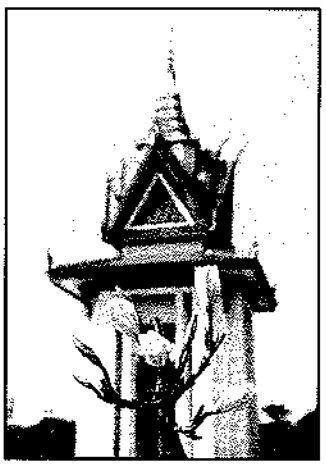

Human Rights, Decency and Social Exclusion

Martin Narey, *Director General of HM Prison Service. This is the text of an address Martin Narey gave to the British Institute of Human Rights in March 2002.*

I would like to start with an obvious reality: prison can be a negative and a terrible place. After the right to life, we are, after all, in the business of taking away the most fundamental of liberties and so because of that I do not need any persuading, in so far as is consistent with the deprivation of liberty, that prisoners' human rights should be protected. But prison should do much more than that because prison can, occasionally and more often than it used to, restore human rights to those who, for whatever reason, are effectively denied the broader rights that we all take for granted including education, work and ultimately family life.

Let me start with some basics. The prison population this morning was 70,108. My staff now tell me on a morning if the prison population has *not* reached a new record. It has reached a new record almost every day for some time now. Less than ten years ago at the end of 1992 the prison population was 40,700 and most experts at that time, in the wave of optimism following the Woolf report on the 1990 prison riots, believed the population was set to fall, not grow. I became very troubled towards the end of last year about the rise in the population and, particularly, in the rise in the number of women prisoners which reached 4,000 for the first time. As the population began to fall, as it always does before Christmas when the courts are not sitting, I was grateful for the reassurance from my statisticians in the Home Office that the population would not increase from January and would not begin to increase until later in the spring.

In fact since 1 January the population has grown by 4,000: the use of remand has increased, the use of custodial sentencing for all offences has increased, and the length of custodial sentences has increased. Nobody knows why. According to NACRO we now imprison a greater proportion of our population than any country in Europe, having over-taken Portugal in the last few weeks as the leader of that unfortunate table.

Prison and human rights conflicts

Imprisonment, whatever number we lock up, inevitably presents a series of human rights conflicts. Let me just give three examples. First of all, and most basically, by failing to deprive prisoners of their liberty we would be infringing the rights of many members of the public including, in the most serious cases, the right to life for those who would be in danger from the most dangerous prisoners. Secondly, in prison today and every day I will have some hundreds of prisoners whose privacy will be invaded by keeping them under constant sometimes continuous supervision to try to stop them from killing themselves. We are, by any measure, invading their right to privacy but we are trying to retain their right to life.

A third example, and a painful and personal one, concerns the catastrophe of nearly two years ago at Feltham when a young Asian boy called Zahid Mubarek was murdered by his psychopathic and racist cellmate. The failures which led up to that murder were very many but if, on the wing on which his murderer had lived, we had routinely read all the letters the murderer wrote and received, then the wing staff would have known that they had a very serious and dangerous racist on their hands. In fact we no longer do that. When I joined the Service we read every letter incoming and outgoing to every prisoner and censored them. We now just look at a sample of letters. But that development in human rights in respecting the privacy of mail was one reason, not the only reason by any means, but one reason which led to our failing to keep someone alive and led to an appalling murder.

So protecting human rights in prison can sometimes require a very delicate balance. My view is that the incorporation of the European Convention on Human Rights into English law helps to ensure that that delicate balance is maintained and I welcome the Act unequivocally. We will be and are a better Prison Service while our rules and regulations can be routinely challenged at court — and since the Act became part of English law, applications for judicial review have, not surprisingly, doubled. Some actions have already been won by prisoners: for example those relating to the frequency of parole hearings. More will be won by prisoners in the future not least because the Court is view of what is proper under the Act will change over time.

On the other hand some judicial reviews have supported our stance on some important issues; most controversially perhaps our ability to add days onto a prisoner is sentence in response to unacceptable

behaviour. What is important is that prisoners can use the Act to challenge us — it would be a very unhealthy Prison Service indeed, as many around the world are, if that freedom was not allowed. All societies accept that the deprivation of liberty of a minority of people is necessary to protect the rights of a majority. We can argue, as I would, that we imprison too many in this country including some who pose very little threat to the rights of others — but that is a matter for the courts. However many people are sent into custody this evening or tomorrow we have to take them all. There are no waiting lists — they all have to be absorbed.

Purpose of imprisonment

For those who come into custody prison can have three roles. First it can deter. Most of us in truth regulate our behaviour in part because of the threat of sanctions, the most dramatic of which is imprisonment. Although, interestingly, there is no evidence to sustain the often argued theory that more austere or impoverished prisons act as an additional deterrent. A second role of prison is to provide retribution. Victims and society want to see people punished for wrongdoing. When punishments are seen to be inadequate public anger soon wells up; although general research shows a surprising conclusion that when members of the public are given details of particular cases the sentences they would use if they were given a choice, would be lower or less harsh than those used by sentencers.

But a Prison Service which only dealt with deterrence and retribution would not be a service in which I wanted to work and neither would it be a service, I am glad to say, in which the overwhelming majority of my staff would want to work in. People do not grow up wanting to join the Prison Service and if they did I doubt very much whether I would want them. Most of the 44,000 people who work in the Prison Service in England and Wales join for all sorts of curious reasons. In my case, 21 years ago, it was because I was fascinated by a documentary about Strangeways prison made for the BBC by Rex Bloomstein. When I saw an advert for assistant governors to join the Prison Service I had no intention of applying — I was enjoying a career in the NHS but, lured by a promise of a visit to a prison, I went along to Lincoln prison in 1981 and was hooked. I joined, as most people join the Prison Service, not to deter, not to inflict retribution, important as they are, but because of a belief which I held 20 years ago and which I hold passionately today and with more optimism today, that prison can also rehabilitate.

Obstacles to rehabilitation

Racism

I should say from the outset that the obstacles to us doing that at the moment are numerous. Let me mention just four. First of all we have a real problem with race. Twenty per cent of prisoners in England and Wales are black or Asian and there is a wealth of evidence over many years that they have suffered discrimination in the Prison Service. A whole wealth of impressive policies have not translated themselves into the fair and equal treatment of black or Asian prisoners on the landings. And the institutional racism of the Service cannot be denied. No-one on my Board of Directors is black, none of my area managers or heads of policy group throughout the Prison Service is black. I have 138 prison governors. One of them is Asian.

There are some promising signs, particularly recently in recruitment and promotion. In recruitment for example about eight per cent of new recruits have been black or Asian over the past two years. And for the first time those promoted within the Service from a black or Asian background are outstripping their representation in the Service. And I know and am encouraged that staff who wondered about our commitment to putting things right in the Service have started to take us seriously, and take me seriously, as we have begun to sack staff for unacceptable racist behaviour: at prison officer training school last year, at Brixton prison last year, at Feltham and at Frankland prison, we have stepped in to sack staff when they have behaved unacceptably and we have forced the resignation of many others.

We remain (and arguably we are breaching a human right in doing this) unique as the only organisation that I know of in the public or private sector, which has now made it clear that membership of racist groups like the BNP, National Front, Combat 18 is on its own punishable by dismissal. Everyone who joins the Prison Service now has to sign an agreement that they never have been and never will become a member of one of those organisations. But despite these improvements we have much more to do yet before I can be confident that we are giving black and Asian prisoners a fair deal.

Overcrowding

The second area of real worry is the one I have already mentioned: overcrowding. Seventy thousand prisoners in custody, 4,000 more than a few weeks ago. Overcrowding has, as Lord Woolf has called it, become the AIDS virus of the Prison Service. And the reality of over-crowding is this: this morning 13,000 men were sharing a cell built for one. And in that cell today they will have to eat together in that cell, they will have to defecate in front of one another. By any measure that is gross. And there is no sign of it disappearing. The population crisis also has a massive and negative effect on our attempts to make prisons decent places. It disrupts education and other courses, it disrupts our attempts to keep people close to home as we try to fill every bed. We are moving people from one prison to

another disrupting everything that is practical and constructive.

We have tried for many years to increase what is called purposeful activity, activities such as education, PE, social or legal visits — things which might contribute usefully and are certainly helpful to the prisoner — and I think we have done pretty well. Since 1993 the numbers of purposeful hours of activity delivered each year have risen by 23 million hours a year. Every single bit of that has been absorbed by the increasing denominator and the amount of purposeful activity per prisoner over that period has risen by about ten minutes simply because the population has overwhelmed, or kept pace at least with, all our efforts to make prison a more constructive and decent place.

Mentally ill prisoners

Thirdly we have a grave problem with the mentally ill. Since the development of care in the community in the late 1980s the proportion of my population who show signs of mental illness has risen seven-fold. For them care in the community has become care in custody. Last year I did the BBC's *Back to the Floor* programme and I returned to Parkhurst to be a prison officer for a week. During the week I was asked to search a cell in the prison hospital where I met a wretched man who had been causing a great deal of distress to two young female members of staff. He had been abusing them and threatening them and causing real anxiety and there was some belief that he might have secreted some sort of blade in his cell. Before going into his room I talked to him. He had been waiting for a bed at Rampton for six months having been sectioned under the Mental Health Act. In that time his place on the waiting list for Rampton had fallen from number three to number six and there was little sign of him going.

When I searched his cell I found that this was a man who had taken pictures of page three girls and put them on every wall and had also cut out from the newspapers all those tiny lingerie adverts, anything with a female figure, and stuck them on his wall too. But he had not used glue, he had used his semen. And this was a man we were trying to care for at Parkhurst prison, who six months previously had been found to require care in a psychiatric hospital. At anyone time I have about 300 prisoners who require secure psychiatric care and the NHS cannot take them. But I do have what I see as the cavalry coming over the hill in the form of 300 psychiatric nurses from the NHS coming into prison hospitals to offer in-reach services to those who are ill. But the problem is near overwhelming. Quite rightly we cannot medicate prisoners against their will — and God forbid if that were ever to happen — but some of the mentally ill for whom we care will not co-operate and will not take their medication, leaving medical officers and nurses in an impossible position.

Suicide

And fourthly, and related to my anxieties about mental illness, is the scourge of suicide. In my first year in this job there were 91 deaths in custody; last year there were 72 but believe me 72 is still a huge number. Seventy-two times a year I am told that someone else has managed to kill themselves. Although the rate is falling relative to the increasing population, the numbers are still quite appalling. Sometimes it has to be said, that those deaths occur because we fail: we fail to identify those who might be actively suicidal, we fail properly to care for them. We have trained, or I should say the Samaritans, a body about whom I cannot speak too highly, have trained thousands of prisoners to act as Samaritans in prisons, 'listeners' we call them. But sometimes we do not get the help to the right prisoner in time. Suicide is sometimes the end of a desperately sad road for an individual.

Very recently I spent a Saturday morning trying to console a particularly distressed prison governor who had just had a second suicide in a number of weeks. The young victim concerned had been in custody for some months but before being in custody and since the age of about three he had been in care. While in care he had, apparently, been sexually abused. He had no contact with his parents, his father had not seen him for many years, his mother was a psychiatric in-patient and some weeks after his tragic death his mother was still not able to comprehend what had happened. A few days before he was due to leave one of our institutions his social worker came to visit him to tell him that he could not go back into care. Two days before he was due to be released he came to see prison officers and asked if he could stay. The prison officers did all the right things, knew he was distressed, put him on a watch, he was watched every 15 minutes, but during the night, immediately after one 15 minute observation he hanged himself.

That is what we inherited in this and similar cases and that is what we will continue to inherit unless we get a grip on the people in prison who should not be there. There is simply nothing more important to the Prison Service, to my governors or to me than keeping people alive. And all my governors know that this year and next year I will put a much greater premium on reducing deaths in custody than in reducing escapes. But the burdens facing us are immense.

Reasons for optimism

So why, you might ask, am I so optimistic? Well I am optimistic because we are getting a grip on mental illness. Suicides, while still horrendous in number, are at last beginning to fall and we are making remarkable progress in some other areas; let me mention three of them. First of all, we have stolen from the Canadians, who first developed them, things called offender behaviour programmes. These programmes address the

cognitive skills of offenders, particularly young men, and teach them to think less impetuously. They are expensive: they have to be very intensive. We have to have psychologists or equivalently qualified staff as treatment managers and they cost me a lot of money but there is an increasing evidence that they work by getting prisoners to think through the consequences of their actions (and you should know just how impetuous such a lot of offending is).

Reconviction evidence on people who have been released having completed these courses is now showing a small but very significant reduction in re-offending. Particular forms of these courses for sex-offenders are also proving to be very encouraging. For sex-offenders they address the twisted thinking which lies behind a great deal of sexual offending, for example the belief held by some paedophiles that a child can consent to sex, or can enjoy sex. By addressing and changing that twisted thinking we are making some reduction in the dangerousness of people when we have to release them.

Secondly, drugs. I am forever told by very many people that prisons are of course, awash with drugs. Well they certainly used to be but over the last three or four years, on the back of some very significant investment that I have been fortunate to have as Director General, we have hugely improved security in visits to stop drugs coming into prisons. But most importantly of all, as well as introducing detox into every local prison, we have spent about £75 million on drug treatment programmes. The result of that has been over the last three or four years the number of those abusing drugs in prison has more than halved, from about 28 per cent to about 12 per cent currently. It may be that we cannot get that down much further. While we continue to have visits which are reasonable and civilised, where a man can embrace his spouse or partner or have his child on his knee, then drugs are still going to come through that route. That may be the price we have to pay for trying to keep visits as civilised as they are at the moment. I for one think it is probably a price worth paying.

Thirdly, and the area about which I think I feel most passionately, I think we are doing some remarkable things with education. A very worrying proportion of young people in prison have been permanently excluded from school. At some establishments that figure is more than 75 per cent. At Stoke Heath in Staffordshire, 11 per cent of the boys there have never been to school beyond primary school and 78 per cent never beyond the age of 13. According to a poll that David Ramsbotham took at Feltham last year, the figure at Feltham might be nearer to 90 per cent. So when I hear, as I frequently do, that prison disrupts education, I wonder what that means because so many of our people have not had a chance in education. Three quarters of people in my custody, because of their low levels in literacy and numeracy, are effectively unemployable and if we continue to send them home in that position then there is no doubt what will happen to them: they are going to go straight back to crime. But let me just cheer you up with three real examples of young men who left the Prison Service this summer.

A boy called Carl arrived in custody two years ago with the basic skills of an eight year old: last summer before leaving us he got GCSEs in maths and English. Peter, permanently excluded from school at the age of 14 left this summer with qualifications in English, maths, cookery, history and parent-craft, the first qualifications he had ever obtained, and he is now in a joinery apprenticeship and doing well. Tony, excluded from school at the age of 13, arrived not able to read or write: he is expected to get qualifications in literacy, numeracy, IT and bricklaying. And last summer, using the IT and literacy skills which he had to go to prison to get, he wrote a book for his nephew which won the Puffin book of the year award at the Koestler awards. We changed his life and that of many others like him.

We still need to do a great deal more in education, in getting people off drugs, and in other areas. In particular we need to make massive strides in getting prisoners into employment. But with the benefit of some serious investment I have enjoyed as Director General this Service is, I believe, for all the inadequacies that it has in very many places, improving quickly. We desperately need more investment and I know that David Blunkett will be doing everything he can in the current spending review to get it for me. With that investment there is no reason at all why we cannot have in England and Wales a Prison Service which routinely takes offenders into its care, keeps them securely but simultaneously gets them off drugs, reduces their impetuousness and their dangerousness, and gives them an education to make them employable usually for the first time. And in doing so gives them a unique opportunity to leave their social exclusion behind them. That I suggest would be to really make human rights for prisoners a reality.

The Home Office Children's Department Inspectorate 1948-1970

John Croft CBE *who served in the Home Office 1952-1983. After 14 years as an inspector in the Children's Department he became Head of the Research and Planning Unit. He was formerly Chairman of the Scientific Criminological Council of the Council of Europe.*

Introduction

This article describes the function, organisation and method of work of the Children's Department inspectorate. It also makes an assessment of its contribution based on both published documents and documents which I retained following my secondment to the Home Office Research Unit in 1966. The Children's Department existed for 22 years (1948-1970), and had three chief inspectors, before it was absorbed into the Social Work Service of the then Department of Health and Social Security. Insofar as the inspectorate was the arm of a major Department of State, the legislative and administrative content is briefly described but no attempt is made to trace in detail the post-war political history of juvenile justice, or of social policy affecting children and their families.

Historical background

The origins of the Home Office inspectorate of this period can be traced back to two events. The first, in 1857, was the appointment of the Reverend Sydney Turner as the first inspector of reformatory schools. The second was the addition in 1860 of the industrial schools to Sydney Turner's remit. By the turn of the century the Home Office had oversight of some 30,000 children in these establishments. Other important milestones include the consolidation of various strands of child protection procedure in the Children Act 1908; the establishment of the Children's Branch in 1914; and the incorporation of the Reformatory and Industrial Schools Department in 1924. The inspection team remained small, despite the increase in both schools and inmates until the expansion of 1947/48.

Following public concern about the care of children deprived of a normal home life, the Government set up an inquiry in 1945 under the auspices of the Home Secretary, the Minister of Health and the Minister of Education. This Committee, known as the Curtis Committee, reported the following year but its recommendations were not put into statutory form until the Children Act 1948. This brought the responsibility of inspection arrangements for the majority of children maintained under the Poor Law and those currently under the care of the Ministry of Education, under the Home Office, in addition to its existing responsibilities. As well as the 1948 Act, inspectors also drew their statutory authority from the Children and Young Persons Act 1933, the Criminal Justice Act 1948 and the Adoption Act 1950.

Administrative foreground

The inspectorate was a departmental inspectorate. It was accountable only to the Secretary of State and inspectors were not appointed by the Crown, unlike — for example — inspectors of constabulary or of education who carried the prefix HM. The chief inspector's grade equated to today's Senior Civil Service (SCS), but he did not have parity of pay. The Children's Department in 1948 consisted of four divisions each headed by an assistant secretary (now SCS) with a complement of principal (now Grade 7), executive and clerical officers. The assistant secretaries, along with the chief inspector, reported to an assistant under-secretary of state who also had charge of the probation division and the probation inspectorate.

In brief, the function of the administrative divisions was to administer the Acts of Parliament; to issue advice to local authorities and other bodies by means of circular letters; to exercise oversight over expenditure; and to initiate, subject to Ministerial direction, new legislation. Home Office administration thus had a firm grip on policy, and on financial control — particularly of the approved schools. Although inspectors were described as the Department's professional advisers, their function was perceived as largely regulatory and their direct influence on policy circumscribed.

The task

Following the 1948 Children Act the Home Office

issued circulars summarising the main provisions of the Act for the benefit of local authorities and voluntary organisations together with memoranda on a variety of subjects: reception centres, residential nurseries, children neglected or ill-treated in their own homes, as well as the increase in juvenile delinquency which after the war was causing concern. Meanwhile the inspectorate, which had hitherto worked from London, was being expanded and decentralised in six territorial groups situated in Birmingham, Cardiff, Leeds and Manchester, with two in London, whilst at the same time retaining a small number of senior and specialist inspectors at headquarters. A third London region was established after the London Government Act 1963.

The inspectorate's caseload thus consisted of 63 county councils and 83 county borough councils, with numbers in care varying between 40 in Radnorshire to over 8,000 in London. The total number of children in local authority care in 1949 amounted to some 55,000, 35 per cent of whom were boarded-out with foster parents. Over 28,000 children were in the care of voluntary organisations — a peak which was to decline over the next two decades. By 1959, over 64,000 children were in the care of local authorities with an annual turnover in excess of 40,000; by 1967, however, this figure had risen to almost 70,000 (of whom 50 per cent were now boarded-out) with a turnover of some 53,000.

As regards residential establishments, in 1954 there were 1,100 local authority and 600 voluntary homes, as well as 130 approved schools, most of which were run by voluntary managers. Apart from a reduction in numbers during the 1950s, the approved school population remained fairly stable at just under 10,000. The remand home population (of which there were 58 such institutions in 1966, only two of which were under voluntary management) increased from about 12,000 admissions in 1957 to almost 20,000 by 1966. At a rough estimate the Home Office had oversight through the agency of local authorities and voluntary organisations, of about 100,000 children by the late 1960s.

Organisation and function

A memorandum, dated January 1958, described the function of the inspectorate in the following terms:

'(a) To ensure that the duties and responsibilities laid down by the relevant Acts of Parliament are complied with and that the Regulations made under those Acts are observed.
(b) To give information, by means of reports to the Chief Inspector, on how these duties and responsibilities are being carried out in the field.
(c) To offer advice on professional matters to Division.
(d) To encourage suitable standards and policy in the field and to disseminate new ideas.'

The memorandum includes a rider to the effect that the inspectorate would not offer advice on financial or legal matters, questions involving interpretation of Acts of Parliament, or discuss matters of major policy without reference to administrative divisions of the Home Office. The memorandum concludes that the inspectorate acts 'to some extent as the local agent of the Secretary of State' and as 'intermediary between the central government and those responsible for the day to day care of the children.'

Personnel

From what sort of professional background were inspectors recruited? Recruitment, for which the preferred age limits were between 28 and 40 years, was handled by the Civil Service Commission although the small selection board, chaired by the assistant under secretary, consisted of the chief inspector and one or two external members. In 1951 the annual starting salary for an inspector was £700 for a man, £575 for a woman, while the chief inspector earned £2,000 (£1,850 for a woman). Salaries for those serving outside London were abated by between £15 and £80. Numerically, the balance of men and women was more or less equal. Leaving aside those medically qualified, and the very small number with a background in child development, domestic science or agriculture, inspectors were mostly recruited from the teaching and social work professions.

The majority were graduates and a small number had higher degrees. A few of the new recruits with educational backgrounds had had teaching experience in approved schools and several had previously been heads of special or other schools. Both deputy chief inspectors came from educational administration; while in the earlier years two out of the six superintending inspectors possessed a qualification or experience in social work. The preponderance of senior staff, therefore, came from the educational field and to a limited extent this determined the intellectual culture of the inspectorate.

Routine

Unlike HM inspectors of education, Home Office inspectors did not operate from their own homes but were expected to attend the office for the purpose of meetings, report writing and dealing with matters referred from administrative divisions or queries from children's officers and heads of approved schools. Additionally, one inspector in a regional office had to act as a duty inspector for the week. Since most visits to children's homes took place during the afternoon and early evening so as to ensure that the staff were available and to see the children, this often meant that two out of five and a half days — for some years after the war the civil service worked on Saturday mornings — were spent in the office. Longer periods of absence

depended on geographical circumstances and whether a 'full inspection', by a small team of inspectors supplemented from other regions and London headquarters, of an approved school, a local authority children's department or a large voluntary home was involved.

Schedules of inspection drawn up in the 1950s illustrate the range of topics, dealing with all aspects of a child's life and living conditions, to be covered. Inspections were far more practical than those of, for instance, inspectors of education, and included such duties as ensuring that all the toilets flushed properly. For an inspection of a local authority children's department, covering administration and casework, more than two dozen headings are listed; in the instance of a large authority, at least two inspectors might be occupied for several days especially if visits were made to foster children.

Pressure of work, and a shortage of inspectors, caused the visitation rate to be revised from time to time but the general aim was to inspect each residential establishment at least once a year and, in the case of approved schools and remand homes, up to three times. Junior attendance centres (the senior ones were the concern of the probation inspectorate) were inspected quarterly, on Saturdays, and probation hostels twice a year. Contact with children's officers and their staff was based on a three year cycle — four visits to children's officers, one to child care officers but rather more to voluntary organisations. Visits to institutions, except for full inspections, or where some particular matter needed to be discussed with the head, were usually made without notice.

The Home Office Culture

The Home Office prided itself on a high standard of draughtsmanship and this tradition permeated through to the inspectorate. Inspector's reports were detailed — not just notes but polished prose. There was considerable pressure on each inspector to cover his or her commitment within the allotted workload and timescale. Although over the years, some of the inspection cycles had to be relaxed, by and large commitments were adhered to despite minor fluctuations in the number of inspectors available.

The Home Office was an hierarchical institution and a considerable degree of formality was observed in reporting procedures and the minuting of official files. It may be of interest to current civil servants to consider the minuting and drafting practices of the time. Only officials of the rank of assistant secretary (Grade 7) and above could initial minutes or memoranda on files. Below that, the names of rank had to be written in full. The use of coloured inks was forbidden — green or red being reserved for the Home Secretary. In addition, bishops of the Roman Catholic Church were not addressed in official correspondence as 'My Lord Bishop' (they were not of the established church), doctors were not addressed as 'dr' unless they had the degree of MD, and 'JP' was never added after a person's name, since serving as a justice of the peace was regarded as a duty and not an honour.

A regional inspector's report addressed to the chief inspector, was submitted through a more senior inspector to the superintending inspector who took local action (for example, a letter to a children's officer or head of an approved school) as appropriate. In turn, he forwarded the report to a deputy chief inspector, who might pass it on, if of sufficient import, to the chief inspector. The report was then sent under cover of a further minute, to the administrative division where it was considered, at first instance, by a senior executive or principal officer before being passed upwards, if the substance of the report warranted it, to an assistant secretary for 'official' action, that is a letter to the clerk of a local authority or the secretary to the board of managers of an approved school. This mandarin culture permeated the whole system and meant that rank and file regional inspectors rarely had contact with senior officers in the administrative grades, and thus led to a formality of communication which, while it did not exist within the small groups of regional inspectors, tended to dictate relations in general.

Relations between inspectors and 'the field' (as it was known) were less formal. Indeed if the confidence of children's officers, child care officers and houseparents, as well as the heads and staff of approved schools and remand homes, was to be obtained and secured, it was necessary to adopt a less formal approach while retaining something of the authority of central government, even if criticisms had to be made. Some also needed advice, as a chief officer, how to handle their relationship with the clerk to the authority, usually a lawyer in the era before the new breed of chief executives became the norm, and of whom some children's officers stood in awe.

Similar and no less delicate support was required for the heads of institutions, often of a religious order, in negotiations with the mother house or diocesan administrator. There were also a number of officers (after care agents and NSPCC inspectors) who were somewhat outside the mainstream in child care and who were encouraged by friendly discussion and advice from a Home Office inspector. Finally, it was important for an inspector to be able to get on easily with children and young people. Observation of their demeanour, response and activities, as well as attitude to staff, and what they said (or did not say), was more often than not indicative of the conduct of a children's home or school, and sometimes of the quality of a foster home placement.

Assessing performance

Given the central direction and control exercised by the Home Office, and that (for almost two decades, at least) the inspectorate's prime function was

perceived as more regulatory than advisory, it is pertinent to pose two questions. First, what contribution, if any, did the inspectorate make to the formulation of Departmental policy? Secondly, what specific impact did the inspectorate have on the development of juvenile justice and child care?

The inspectorate was the bridge between 'the field' and the Whitehall administration. Thus its influence tended to be dual although, in my opinion, it probably made a greater mark on 'the field', perhaps because of the shared professional background, than on policy makers. The academic and professional orientation of senior administrators was rarely, at that time, based in the social sciences and consequently they did not always appear entirely sympathetic to some of the ideas suggested by inspectors. In addition administrative civil servants were subject to a wide range of political, parliamentary and other pressures that did not impinge directly on the inspectorate.

The changing climate of opinion

The contribution of the inspectorate also needs to be seen not only in terms of the internal Home Office culture but in the context of the intellectual ethos of the period. Whereas the first decade following the Children Act 1948 was one of consolidation, a mood for change and development if not outright reform was more evident in the 1960s. The impetus came from a variety of sources: university departments of social administration and social work; the more progressive local authorities; voluntary organisations that were free to experiment with new methods and techniques because they were less restricted by statutory requirements; and a small number of influential individuals. These catalysts for change, external to Whitehall, were contributory to a series of inquiries, prompted by political, intellectual and practical considerations, starting in the early 1960s which were to shape the future pattern of social welfare services. The most important single review was the Ingleby Committee, which reported in 1960. It looked at juvenile jurisdiction, the treatment of juvenile offenders and the co-ordination of existing services to prevent the neglect of children in their own homes. Some of its recommendations were incorporated in the Children and Young Persons Act 1963.

Although previously the managing committee of the inspectorate did not discuss long-term developments and concentrated almost exclusively on issues of the moment, it is not unreasonable to suggest that by the later 1960s the inspectorate began to assume a more innovative role, largely through the agency of its own development group. It was to be involved in the pre-legislative planning of community homes and intermediate treatment. The impetus for much of this came from within the inspectorate, encouraged by an assistant under-secretary of state, whose approach was more attuned to forcing the pace of policy development than some of his predecessors.

In the 1950s and 1960s social policy had largely been made by committee, with Ministers taking the decision to set up the committee and then standing back until they came to consider the report. It is not obvious that the inspectorate's contribution to committees had a significant impact but, as Ministers began to adopt a less 'hands-off' approach, senior administrators began to involve their professional advisers more in the policy making process and thus gradually brought about a change in attitude and to a limited extent of function.

Juvenile delinquency and the approved schools

Between 1947, when a master was murdered at an approved school, and the late 1960s, the image of the schools was somewhat tarnished by public inquiries which revealed defects in management and pastoral care. By contrast during the same period the child care service of only one local authority was the subject of a special published report. Nevertheless, much sustained effort had been put by the inspectorate into what one might describe as the humanising of the approved schools. Most approved schools were run on lines that, despite the adverse circumstances of the boys and girls committed to them by the courts, did not differ greatly from other residential schools or the larger children's homes.

Educational and technical facilities were improved, pastoral care was emphasised, and the buildings and furnishings made less austere, while considerable attention was paid to after care upon release and closer liaison with the social services was encouraged. At the same time there was a movement, originating mainly from within the approved school service, for a more individual and less regimented approach to the treatment of juvenile offenders which was to lead ultimately to the establishment of community homes under the Children and Young Persons Act 1969.

The Home Office published between 1959 and 1968 a series of White Papers which aimed to reform the criminal justice system and which, in the longer term as far as juveniles were concerned, had the effect of transforming and integrating what hitherto had been rather separate approaches to young offenders and to deprived children. It does not seem, however, that the inspectorate played much part in the wider debate about the relative merits of the justice model against the welfare model of dealing with juveniles which preoccupied, amongst others, the Scots. Also the trend towards unified and comprehensive statutory social and family services, although the subject of discussion in professional circles, does not seem to have been reflected in any immediate policy initiatives encouraged by the English inspectorate.

Child care

Much of the inspectorate's early effort was directed towards the break-up of large children's homes (formerly known as orphanages) into smaller family group homes. These would accommodate six to eight children and a married couple as houseparents. This was a problem for voluntary organisations many of which had a heavy investment in old premises which were not easy to convert into small homes, located on housing estates, more or less indistinguishable from the accommodation of ordinary families. Local authorities were less handicapped in this regard because after 1948 many of them, especially those steered by more foresighted children's officers, had virtually made a fresh start in the provision of residential care.

While not neglecting homes and hostels run by local authorities, the inspectorate emphasised the need to board out more children with foster parents, whether short or long term. The full inspections carried out in the 1950s paid considerable attention to this aspect not only in terms of the quality of placement and supervision of the children but in strengthening the administrative structure needed to manage the expanding teams of child care officers.

It was the received wisdom, going back to the Curtis Committee, that children should where possible be kept in their own homes. But local authorities, and most voluntary organisations, were so preoccupied with the day-to-day running of the children's service that for some years little attention was paid to this aspect. Preventative work, moreover, required social workers to co-operate closely with many other services and organisations. Not only were the co-ordinating arrangements lacking, or at best uncertain, but additional field workers needed to be recruited, for which not many voluntary organisations either had the resources or were limited by the terms of their trust deeds. Despite the emphasis laid on preventive work by the Ingleby Committee, evidence is lacking that the inspectorate put much effort into encouraging this development, particularly by local authorities, before it was highlighted by the Children and Young Persons Act 1963. Thereafter it loomed larger in the inspectorate's priorities.

Conclusion

In 1970 the inspectorate, and the administrative divisions which it served, was transferred from the Home Office to the then Department of Health and Social Security and was absorbed into the Social Services Directorate which, as the title implies, had a wider remit than just children. At the same time, at local level, children's committees and their officers, were merged into all embracing social service committees of which the chief officers were designated directors of social services.

In the two decades of its existence one can conclude that the inspectorate played a positive part in supporting the efforts of local authorities and voluntary organisations. It also guided the Home Office, without asserting dramatic innovations, in the direction of modest reforms — with consequent adjustments to the pattern of child welfare. One can only speculate whether progress would have been accelerated had major reports and thematic reviews by the inspectorate been published. It was said at the time of the transfer — not altogether fairly — that thereby the Home Office lost a human face, to which the inspectorate had, despite the occasional frown, contributed a smile.

Non-violent Communication for Prison Officers

Building value-based relationships

Patricia Dannahy, *PhD., and* **Josephine McHale** *M.Phil., C. Psychol. TOUCHSTONES: taking NVC into prisons.*

Our starting point

We start from two premises. First, we believe that part of the function of a prison is to pursue values such as justice, tolerance, respect, humanity and non-violence and that these should be at the core of its role rather than perceived as something that gets in the way of it being effective and distracts it from its real goals. Secondly, we believe that both prison officers and prisoners value a prison culture in which the emphasis is on establishing order through relationships, rather than the use of force or 'power over'.

In *The Prison Officer* (by Alison Liebling and David Price), we read, for example, that:

> *staff are highly motivated towards, and drive considerable satisfaction from, 'getting relationships right'. They are proud when they manage to 'create a pleasant atmosphere on the spur'.*

Staff seem to find it easier to support this relationship-based approach with prisoners when their own needs are met. They describe their ideal working environment as one in which they are 'seen, heard, respected, rewarded'. When they experience this, they feel 'safe, supported and nurtured'.

Moreover, 'relationship-building behaviour establishes credit' with prisoners. When prisoners were asked what they valued in officers, one said:

> *you have got to try and develop your interpersonal relationships with others so that you can control an environment without resorting to violence every minute of the day.*

Another prisoner was reported as saying:

> *I think you need somebody who is very comfortable with themselves so that they feel secure enough.*

We further suggest that by modelling relationship-based approaches, officers are demonstrating to the prisoners, ways of interacting with authority figures and others that could support prisoners restoratively. Prisoners may themselves learn communication skills that will serve them better both within prison and beyond.

The NVC process

Relationship-based approaches can be explicitly learned as well as 'picked up on the hoof'. We are now going to focus on one learnable process: Non-violent Communication (NVC). This process is already supporting many thousands of people across the world to live more harmonious lives. In the March edition of this Journal, we wrote about the impact of Non-violent Communication on the lives of two prisoners: Rusty and Walter. We described Rusty's dialogue with prison custody staff, and Walter's internal dialogue, which later enabled him to survive in his community without resorting to violence. Through their stories we illustrated the key principles of the NVC process. These are summarised in Box 1.

In this, our second, article, we focus on ways in which NVC might support prison officers in

Box 1: Key principles of the NVC process

Our **ATTENTION** is directed at what is happening in and around us in the present.

Our **INTENTION** is to relate to, and connect with, ourselves and/or others rather than to judge, criticise, blame, etc.

It is more likely that we will be able to sustain our relationship and connection with ourselves and others if we remain aware of the following **FOUR STEPS**, whether or not we explicitly verbalise them.

Observation	What am I seeing, hearing, feeling and remembering right now?
Feeling	What feelings are triggered by my observations?
Needs	What met or unmet needs underlie my feelings?
Requests	What specific actions can I request of other people or of myself that might help me get my needs met?

strengthening their relationships with prisoners without compromising either security or their own personal safety. We do this by looking at an imaginary incident from two points of view. First, we show how it might have escalated 'violently'. Then we explore how the NVC process, and its underlying beliefs and values, could have transformed the situation so that it proceeded in a 'non-violent' way.

The incident we have described in Box 2 is set in a training workshop in an adult prison and involves a 'flare up' between the tutor and a prisoner. The left hand column describes the actions of the two protagonists as well as their internal thought processes. The right hand column is the dialogue that we imagine would result. Similar situations could equally well arise in classrooms in Young Offender Institutions or in other settings both inside and outside prisons. Whatever the context, we believe that NVC provides a practicable, learnable way of handling such incidents that can contribute to a humane culture such as that described in our opening paragraph above.

Changing the outcome by using NVC

If the Tutor had internalised the NVC process and developed skills in using it, we predict this interaction would have taken a different course. First, he would have directed his attention to the present instead of getting trapped in the pain of memories of the past. Secondly, he would have checked that his intention towards the Prisoner was to relate and connect rather than to issue commands and exert power and authority. With his attention and intention thus focused, he would have taken a moment to separate his observations (what he was seeing and hearing in the workshop, and what he was remembering at that moment) from interpretations that he might be making based on his previous encounters with the Prisoner. He would then have turned his awareness to feelings and needs — his own and those of the Prisoner. He would have been able to remind himself that throwing the pencil across the room was the Prisoner's way of expressing feelings and needs, rather than a personal attack on the Tutor.

If he had had the presence of mind to respond from this NVC consciousness immediately the pencil was thrown, his internal dialogue might have gone something like this:

My heart's beating. My hands feel clammy. I feel sick with foreboding and frightened. What's going on here? OK, I see. I am remembering other times when this guy and I have had a dust up and how it usually ended, and I am wanting a different outcome. And I'm interpreting him as attacking me whereas he's simply doing it as a way of expressing his feelings and needs.

OK, let's get myself back into the present. Check body posture; get my feet firmly on the ground; take a couple of deep breaths.

What actually happened? He threw a pencil.

Box 2

Participants' actions and reactions	What was actually said
A Prisoner is in a training workshop, feeling fed up and wanting some attention. He picks up a woodwork pencil and throws it across the room.	
The Tutor is aware of his past relationship with that Prisoner and of all the times when an incident like this has 'got out of hand'. These memories lead him to interpret the Prisoner's action as a challenge to his authority; he feels fear and foreboding; his heart rate increases and his hands become clammy. These reactions come through in his tone of voice, his posture and his choice of words.	Hey, you, do not throw stuff around like that!
The Prisoner has a mixture of reactions: he is pleased now to have created a diversion, and is aware of his peers watching him. Simultaneously he remembers the many times when others were telling him 'what to do'; and interprets what the Tutor has said as criticism and as an attempt to control him. His heart rate increases and he gets a surge of adrenaline. He feels resentment and adopts an attitude of bravado. He too expresses his reactions through words and tone of voice and body language.	Who do you think you're talking to, you ******* ****!
The Tutor's initial interpretations are confirmed; his feelings intensify; added to this, he now hears the Prisoner's words as rude and feels animosity. He consciously attempts to restore his authority.	I will not have language like that in my workshop!
The Prisoner interprets this as a challenge, and probably feels excitement.	You want me to punch your lights out instead?
At this point, he experiences himself as in a dilemma. Following through on his threat to hit the Tutor would be a step too far, and yet he does not want to lose face with his peers.	
He can see only one option.	Screw this — I'm off!
With a backward grin at the other prisoners, he walks out, slamming the door behind him.	
The Tutor now feels sick and uptight. He is also wondering what to say to the rest of the class right now and how to later mend his relationship with the Prisoner.	

What am I feeling? I feel concern.

And my needs? I'm needing safety and order — I wish he would tell me directly, rather than throw something.

What's going on for him? I guess he's fed up and wanting a change of some kind.

In an experienced practitioner, this would have taken no more than a few seconds. The relationship between this alternative dialogue and the four steps of the NVC process is described in Box 3.

What the Tutor says next reflects his desire to relate to the Prisoner, rather than to criticise or punish him. He asks out loud:

> *Prisoner, are you wanting to do something different right now?*

At this point the Prisoner may well reply with another statement that the Tutor could interpret as provocative. However, we predict that providing the Tutor chooses to stay with the awareness that the Prisoner's words or actions stem from feelings and needs, as opposed to interpreting them as a personal attack, the situation will not escalate.

Our description shows the tutor having the presence of mind to choose a non-violent response right at the outset. However, a violent response early on does not preclude the choice of a more empathic one at any later point, thereby changing the course of events. Suppose the Tutor did not regain his presence of mind until after the Prisoner had slammed the door on his way out. Even at this 'late' stage, the Tutor could pay attention to his own feelings and needs, thus giving himself some empathy. This would enable him to re-establish his relationship with the rest of the group, and later to restore his relationship with the Prisoner.

We chose a comparatively minor incident to illustrate the possibilities that NVC has to offer in preventing escalation. Had the initial trigger been more serious, (for example, if the Prisoner had thrown a hammer, or had struck the Tutor or a fellow prisoner), the protective use of force might have been a vital and immediate strategy. In NVC terms, what would have been critical in this instance is that force would be used with the intention to protect, not to punish or take revenge. The ability to respond in this way would depend both on the implementation of control and restraint training and a non-violent consciousness. The former would provide the effective means, the latter would inform the intention.

Shifts in thinking

On the surface, NVC is a simple process encapsulated in the four step framework of observations, feelings, needs, requests and informed by having our attention in the present with the intention to relate empathically. However, this apparent simplicity belies its profundity and transformational qualities. To realise this power, NVC asks us to make some fundamental personal shifts, such as:

- *adopting a world view that sees whatever anyone does as stemming from their feelings and needs.* This does not mean that we advocate NVC as **the** world view, nor are we taking a position on whether or not certain people are 'evil'. What we **do** believe is that when we choose to see people's actions, including our own, as strategies for meeting needs, something shifts. We contrast this with what happens when we label people as criminal, evil, etc: this we see as a static view of people in the world which militates against change.
- *recognising that no one can 'make' us feel anything.* The same stimulus will trigger different feelings in different people, so we cannot say that 'X' event causes 'Y' feelings. Instead, the stimulus event triggers feelings in us according to whether our needs are or are not being met.
- *understanding that we all have similar basic needs.* When we focus on needs, we are better able to relate to others whoever and wherever they are. We tap into fundamental aspects of what makes us human.
- *keeping our attention focused on the present.* If we ignore what is going on for us in the moment, reverting instead to former experiences, we lock ourselves into habitual reactions based

Box 3: How the Tutor used the four steps of the NVC process in his alternative internal dialogue

Observations	*(Note the complexity)* **Saw** the prisoner throwing the pencil. **Sensed** his heart beating faster and his hands becoming clammy. **Remembered** the times when he and the Prisoner had had other confrontations and the way they had usually ended.
Feelings	He feels sick with foreboding and frightened
Needs/values/would like	Wanting a different outcome from the last time Wanting to get himself into the present (i.e. needing present awareness as opposed to reliving past pain)
Requests	*(In this case, he is making implicit requests to himself to meet his need for awareness in the present)* Check body posture; put feet firmly on the ground; take a couple of deep breaths.

on past pain.

- *adopting the non-violent consciousness by looking for underlying feelings and needs.*
  If we are aware of when we are in danger of 'violent' responses — that is ... those characterised by blame, judgement, criticism or a desire for revenge — we can transform this thinking into the 'non-violent' alternative.

Predictions

We began this article with a statement of our wish to see the pursuit of values as intrinsic to the way prisons work. We would like to see these values realised day by day in the relationships between staff and prisoners, as exemplified in the Tutor's alternative internal dialogue described above. When NVC informs practice, we predict that the prison community would suffer from fewer incidents and that individuals would enjoy enhanced relationships. As each person becomes more aware of feelings and needs, and increasingly acts from this awareness, so he or she will experience less stress and feel more alive. We know ourselves that NVC takes time and commitment: we also celebrate the clarity, honesty, trust and connection that we experience when we use it.

Throughout this article, the use of the male pronoun includes the female

A list of references is available from the Editor.

Widening the Net

Steve Taylor, *a freelance writer on criminal justice and prison issues. He runs websites for a number of prison and criminal justice related charities and voluntary organisations.*

I spent last December sitting on a BBC Ethics Committee overseeing production of 'The Experiment' [broadcast on BBC2 in May], in which 15 volunteers were incarcerated for ten days to allow psychologists the opportunity to see what happened in such situations. Sitting with a group of participants afterwards, I asked them what their pains of imprisonment had been ... what had they really missed? Three participants gave the same answer in chorus: the Internet.

A government report published in 1999 estimated that, by 2004, as many as 68 per cent of the national workforce will use the internet and e-mail as a tool of their trade. A closer examination of the statistics shows obvious variations: at the one end of the spectrum 98 per cent of people employed in secretarial roles will use such technology, whilst the figure was less than one percent for those employed in the construction industry.

Such reports provide unlimited quandary for the Prison Service. On the one hand, the Service must spend its time ensuring that security targets are met and that all prisoners' communications with the outside world are open to scrutiny. On the other hand, the Service is charged with giving prisoners the skills they require to 'lead a law abiding and useful life in custody and after release'. We know that employment is the most successful route away from offending behaviour ... but how can the Prison Service marry these two conflicting concerns?

For a prisoner, ignorant of the disappointment with which most of us now view the internet, watching television programmes and reading newspapers with endless website and e-mail addresses, must be frustrating. A lucky few do get to use the internet, but these are usually the ones in open prisons who go out to work or to a local college or university. Some prisons have given prisoners the opportunity to build a website for the prison, as a link to the wider world, and in the case of Winchester prison, the results are impressive.

Building a website is one thing. Accessing the internet, and websites designed by other people and companies, is another. Sordid news stories remind us of some of the more insalubrious offerings on the world-wide-web, and the immediacy of it all makes it difficult to monitor the websites being viewed. Instantaneous communications such as e-mail and 'chat' are a prison censor's nightmare. Some argue that it is obvious that prisoners' access to the internet and e-mail is not feasible.

Parents, many of whom use the internet as a means of entertainment for their children, use widely available software for disallowing access to certain websites with content they deem unsuitable. This software works by 'watching' what the user is doing, picking up words and phrases that give a clue to unsuitability. The technology is now available to monitor images and graphics being downloaded and stopping these downloads where required.

The imaginative use of such software by the Prison Service, through the computers already available in education departments, could be used to allow prisoners limited internet access. There are two possible approaches. The first would allow prisoners access to a selected list of predetermined websites, such as the Employment Service or housing associations as examples. The second would be a more liberal use of the software, where certain words trigger a block on

access. Either way, allowing prisoners at least some access to the internet would give them the tools they need to compete in an increasingly technology driven employment market.

Companies quick to utilise e-mail as a means of efficient communication with clients are rapidly purchasing 'firewall' software which monitors the content of e-mails. I recently sent an e-mail – which contained the word 'bitch' – to a friend who works for an insurance company. That company's firewall rejected the e-mail and sent it back to me with a terse warning about 'offensive language'. As an aside, that company, which sells pet insurance, is rethinking its approach to 'bitch'.

E-mail should be an even more appealing prospect for the Prison Service. Increasing postage costs, together with the costs of printing and providing writing paper and envelopes, make prisoners' letters a significant financial burden. Giving prisoners access to e-mail would not only reduce these costs significantly, but also give them experience in the use of such virtual communications. And once again, there are two approaches open to the Service in granting use of e-mail.

The first option would mean that prisoners could type their e-mails on computers not connected to a network. The e-mails could then be saved, transferred to the censor's computer, and go through the normal censoring procedure before being sent *en masse*. Under the second, somewhat more open approach, prisoners could type and send their e-mails, in the knowledge that firewall software is looking out for explicit or otherwise inappropriate content.

Under whichever option, prisoners would be given their own e-mail address so that their communications remain personal. One example of the address format might be oscar.wilde@readingprison.gov.uk.

There are, of course, costs involved in such a project, and so there is a clear need for such access to be tied in with the education provision in individual prisons. Education departments have computers with sufficient technology to handle such changes, and IT and other tutors would be able to use this technology to their teaching advantage. Most colleges now run 'Open Access' courses where members of the public can attend free-of-charge computer tuition, and this is part of wider government attempts to create a nation of computer-literate citizens. 'Open Access' could be easily rolled out to the prison estate at a comparatively low cost.

If the report I quoted earlier is to prove accurate, two years from now more than two out of three British employees will use the internet. To compete in such a labour market, ex-prisoners need to be equipped with the necessary skills to prove their worth. Any prisoner having spent three or more years in prison is unlikely to be cognisant of the intricacies of the internet and e-mail; and other prisoners, such as those from disadvantaged backgrounds, are also likely to be similarly lacking.

Last September, the Home Office research unit published *Building Bridges to Employment for Prisoners*, in which the researchers examined the programmes available in prison to assist prisoners getting work after release. Although 'most prisons and YOIs are doing something to assist with employability and employment', there is a noticeable lack throughout the report of reference to the importance of training in the use of the internet and e-mail either for job searches or for applying for vacancies. This is not due to the researchers not recognising the value of such training ... it is because such training does not exist at present, despite the noble attempts at some prisons (such as Winchester and Rye Hill).

Internet and e-mail access for prisoners is not just about employment, however. As I have said, it would allow prisoners the opportunity to seek accommodation for their release; to seek legal advice and assistance; to explore the benefits system; to maintain contact with families and friends; and, last but not least, simply to remain abreast of current technology.

The risk in not embracing this technology at the earliest opportunity is that we will have a prison estate populated by 70,000 people unable to use and unaware of the possibilities of the internet. The government has ploughed millions of pounds into encouraging people to 'join the internet revolution'. We must hope that this will not be another area in which prisoners are the forgotten citizens.

A Personal Experience of Tagging

Francoise Richardson

Asleep or awake, working or eating, indoors or out of doors, in the bath or in bed — no escape. Nothing was your own except the few cubic centimetres inside your skull.

(George Orwell, *Nineteen Eighty-Four*)

Early in February this year the Home Secretary announced plans for the increased use of tagging. What will these people experience? On 1 December 1999, electronic monitoring (tagging) was accepted as a community sentence in England and Wales and on 28 January 2000 the Home Detention Curfew (HDC) was instituted for the early release of short-term prisoners.

Early in the preliminary trial, towards the end of November 1995, the Responsible Officer for the Reading Pilot scheme asked if I would be willing to wear a Personal Identifier Device (PID or tag) for a short period as a training exercise for his staff. I agreed and although I realise that my experience cannot be said to be identical with that of a 'real' offender, I nevertheless felt I could associate with some types of reaction. The Securicor staff were not aware of my status as an 'experimental monitoree' and therefore did not treat me as a special case. Wearing a tag gave me the chance to understand what it felt like to be tagged, and to see how a monitoree was treated by the monitoring staff. This personal experience is a unique record and a testimony of TAGGING. As Mair and Nee wrote in *Electronic Monitoring: The Trials and their Results* (1990:52), the views of the recipients of punishment must be considered:

There appears to be a certain unspoken agreement that having been sentenced to a disposal, or bailed with certain conditions, or remanded in custody, the views of the individual so dealt with are irrelevant ... But the views of those who, in a sense, constitute the raw material of the criminal justice system should not be ignored and are just as relevant as those of any other.

The equipment for Electronic Monitoring comprises: a tag (the PID), a receiver (the Home Monitoring Unit — HMU) and a central computer. The tag transmits a continuous radio signal to the receiver, which in turn carries the signals via a telephone line to a central computer.

Living with the Tag

On the 4 December at 20.00 hours, two employees from Securicor from the area contractor (a male and a female), after having identified themselves, asked permission to come in. They checked my identity and stated the reasons of their presence in my home. They were polite and informative and subjected me to the same induction procedure and identification as any other offender. My 'shoplifting offence' was the reason of my tagging. I was given a small leaflet entitled *Guidelines for Persons Subject to a Curfew; Agreement Form*, which covered what I had to know as a taggee (information on identification, equipment, warnings for breach, and a 24 hour free telephone number for advice). I was also handed my own *curfew schedule*. My house was to be my place of curfew and the tag was to be fitted on my ankle as per Home Office recommendations (Securicor could only fit anklets). I 'chose my leg' and the tag was fitted on my left ankle by the female employee.

My curfew order spread over two weeks, totalling 116 hours (the minimum could have been two hours and the absolute maximum 2,190 hours — 12 hours per day for six months). I was made aware of the consequences I would have to face for violating my order (*The Home Office 1994 Guidelines for Contractors* gave guidelines on actions to be taken and enforcement rules to be followed in such cases). A violation could result in a personal visit from the contractor within a set time limit (approximately one and half hours for Reading). Three levels of violation were recognised in accordance with their degree of seriousness, and covered acts such as absences from curfew periods, assault on staff, damage to equipment and withdrawal of consent to comply with the order (1994, para. 5.4).

At that time, Securicor and Geografix (later Premier-Geografix) had different set-ups for monitoring offenders. Securicor employed one set of staff to act as co-ordinators at the monitoring centre in Manchester and two other sets who operated as field staff in Greater Manchester and Berkshire to carry out installations, equipment check-ups and follow up violations. In Norfolk, Geografix's staff took on a combined role working in the monitoring centre and

out in the field (Mair and Mortimer 1996:7-8).

The tag resembled a light black plastic box, the size of a small travelling alarm clock with a trapezoidal protuberance in its centre. It had a black plastic-coated strap covering a metal band embedded inside used to detect tampering (Geografix, the other contractor, used an optic fibre running the whole length of the strap). The tag emits a low frequency radio signal to the receiver, which is then relayed and stored in the contractor's central computer (situated in Manchester for Securicor). The receiver stores a minimum of 12 hours monitoring data in case of disruption to the power supply and/or the telephone line. In the trial, all the offenders were continuously monitored during their period of curfew (the 'active system') and also received calls from the contractors (the 'passive system') as back-ups in the event of problems occurring, or for the purpose identifying the offender.

This monitoring system only indicates if an offender is 'within range' of the receiver, a range which can be altered to suit the court's decision: it is not therefore a 'tracking system'. The tag remains in place until the sentence is terminated or the order quashed. It is worn at all times ('in curfew' and 'out of curfew') and it can only be removed intact by the monitoring staff (new equipment with a smaller and lighter tag was used from 1 October 1997).

When the Court curfews an offender to a specified place (sometimes places), it is the contractor's responsibility to set the range of the equipment and to ensure that the offender has access to all or virtually all of the property, without giving any significant access beyond that. The range is also adjusted to eliminate the possibility of 'dead spots' (Geografix have occasionally installed an extension aerial to allow access to the whole of a property, for example, an attic or garden) for large or irregularly shaped houses.

My telephone was removed and replaced by the receiver, a bigger unit than the average telephone, more like the size of a fax machine with a handset at each end, plugged into a standard power socket and linked to the telephone line. The left handset worked as a 'normal' telephone where outside calls could be made and received; the right handset used to 'verify presence', a process involving inserting the tag into a matching depression in the right handset. Offenders without telephones were provided with a free phone line 24 hours a day 'for enquiries and requests to and from the liaison staff exclusively' and removed at the end of the curfew order; private calls could not be made or received on these phones as their number was not disclosed.

I violated my order on the second day when I left home during a curfew period. Within seconds of my return, the telephone rang and I was given my first verbal warning. I was asked to 'verify presence' for the purpose of an identity check. That day I was asked to 'verify' four times within half an hour! However this 'overkill' only happened once. I did not find 'verifying' very easy as it entailed holding two handsets at once while trying to reach and fit the asymmetrical trapezoidal raised central part of the tag with the top of the central depression of the right handset facing downwards. The left handset is used for answering calls from the contractor.

Trousers were a convenient item of clothing for hiding tags from public attention, but not that ideal to 'verify presence'. Although I was subsequently told that verification need not entail holding two hand-sets at once, it possibly reflected the lack of clear instructions for this particular process, and/or the inexperience of new staff at fitting, given the small numbers in Berkshire at the time. The phone rang with each suspected violation as a check to confirm that the equipment was properly working and that the curfew order was obeyed during the imposed curfew periods. My normal irregular work schedule forced me sometimes to be absent during curfew times. The response time by the contractors in such instances was surprisingly rapid. Thus, if I was leaving the house during the curfew I usually heard the telephone ring from outside the front door. Although I ignored it, those still in the house had to choose either to ignore it or to answer it explain my absence. As my order was often breached, those left behind became a little tired of the regular contractor's call, and of me. I soon found myself under pressure to comply: 'Cannot you wait a little longer and not breach your curfew?' 'You know they will ring ... who do you think will answer the phone?' 'Are not you supposed to stay until 11 o'clock today?'.

The phone rang again on my return when I was 'within range', and this time I had to reply. On several occasions, I was still fumbling with the key in the lock, when I heard the phone. I was amazed at the speed of checking. It was as if the contractors were watching and knew exactly my whereabouts — quite an unnerving experience. I was usually asked where I had been, being reminded I was in breach of my court order, and given another official warning. The monitoring staff were always polite and friendly enough, although on some occasions I did notice a little impatience with my 'disobedience', especially with an older gruff, paternalistic voice who 'told me off', explaining that I was a bit 'silly, punishing myself in the end'.

What I felt

It might sound silly, but I found it reassuring to hear a human voice amid invisible and impersonal surveillance. To be told that I was the loser if I did not comply made me think of the consequences and my personal responsibility. If I choose to fool around, society (in the form of the monitoring contractor) was not playing my game: I was tightly and efficiently controlled, there were no two ways about it. Having tried, I knew I could not defeat the system. It was like growing up and being asked to be responsible for my

actions. No lies, no excuses for absences were accepted, 'they' seemed to know all, being recorded in their computers (at the time of writing, the computer printout has not been challenged in a court of law).

I realised that I was knocking my head against a brick wall and I was the one who was going to suffer through my own fault. It was better, albeit really annoying, in this case to follow the system (there was nothing else I could do) to avoid further sanctions (prison?) to be free of them. I did appreciate the almost personal interest by the 'older voice': was there some glimmer of humanity at the end of this sophisticated inhuman monitoring system?

I had, following newspaper hysteria, assumed that a tag would be noticed but it was not. I very quickly became accustomed to wearing it and after a couple of days I was almost unaware of it (except when running, when the rubbing on my ankle was quite painful). I solved this problem by wearing socks and trousers which conveniently hid the tag (a local paper had reported a violent incident involving a taggee mistakenly identified as a paedophile). The slight problem for women was that the tag made a normally simple task like wearing tights difficult (the whole pair of tights had to be thread through the small space between ankle and tag; the other way round was impossible). Boots were almost impossible to wear, being too narrow to accommodate a tagged ankle. Other painful times included inadvertently kicking oneself or one's partner in bed as the hardness of a tag could inflict quite a blow.

On my last 'tagging' day, I went to town by bus wearing a skirt to expose the tag. Although visible, it raised no eyebrows. In fact I had to point out the 'small black box' attached to my ankle a friend who, not being versed in the use of tags, accepted my silly explanation of a new leg-pacemaker!

However, my real punishment as a taggee was the restriction of freedom it imposed on me and the unease — a mixture of fear and suspicion — it brought. Although I knew nothing about my invisible 'controllers', they appeared to know an awful lot about me (did I imagine it?). I felt their invisible presence right into my home, almost like ghosts, observing and reporting on me. It was as if I had lost the privacy of my thoughts, as if they could see through me too. It was as though my invisible self was becoming visible to outsiders. I felt transparent, naked. Not knowing for certain what they knew or did not know, was pretty unsettling. Although I did not mind deceiving them because of their impersonality and non-existence in my eyes, I soon realised that there was no point in me deceiving myself.

It was like being behind a one-way mirror: my movements were recorded by them, but I could not see what they had recorded of my life. I had to admit that they were right about my absences. I realised they threatened my own future having the power to return me to court, but because of their anonymity, I had no hold against them. I was forced to accept that their superiority, and therefore if I liked it or not, made to comply or face the consequences of my breaches ñ my choice in the end. There was no one to blame, no excuse to give. My life was in my own hands. I had to be responsible for myself.

My experience of tagging was very informative. For example, stigma was not an issue: the tag was never noticed (though this might change with its increased use, but it could always be easily concealed, and tags may be smaller in size, as time passes). A possible problem is that could be exploited by young offenders by becoming a badge of honour, but again, with advances in technology, it might also become so small as to facilitate its implantation under the skin.

John Patten once said, referring to community orders, that the punishment was in 'the degree to which the order restricts the offender's liberty and his freedom of choice' (Home Office 1992:29). The tag was certainly both, it also forced me to plan ahead, at least to make sure that I was home on time for my curfew, as lateness (even minutes!) meant warnings and warnings meant a return to court and possibly prison. I appreciated being punished 'part-time', being free to work, be with my family and do what I liked the rest of the time. Afterwards, it was therefore easy to readjust to society, as I had never left it. I saw tagging as advantageous to the offender and society in both the shorter and longer terms. It seemed ideal for non-violent offenders. It is relatively low cost compared to prison, and needs no period of rehabilitation for a return to society, but it is, of course, not as secure as prison for violent and dangerous offenders.

Tagging cannot prevent offending; offences like stealing (burglary, shoplifting, or mugging) drug-taking or drug-dealing, violence (sex-offences) can be committed during the out of curfew period, and some can indeed be committed during curfew periods (drug-taking, drug-dealing, domestic violence, sex-offences, etc). Tagging punishes through restriction of freedom of movement outside a given area for a given period of time; it does not restrict freedom of action or thoughts; monitorees are free to move as they wish in their places of curfew (whether 'in' or 'out' of curfew), and do what they like (watching TV, phoning people, using computers, or nothing). They can receive visits. They are not free to leave their places of curfew during the curfew. Although tagging is not as safe for the protection of the public as prison, it cannot be called a 'school for crime', reducing the likelihood of the prison influences.

With tagging, an offender can:

- take responsibility, and contribute to lesser disruption to family life;
- be seen as a useful member of society though work and responsibility;
- keep contact with the society s/he will return to;
- be independent and not become institutionalised;

- be warned that society does not tolerate their misbehaviour;
- avoid custody and its stigmatising and traumatic effects; and,
- prevent the difficulties experienced by the family of the imprisoned offender.

Tagging is more humane than prison. Being treated with respect and dignity may encourage an offender to act in this way than being in overcrowded prison. Home, despite being controversial as a place of punishment, is a convenient, safe and cheap place of curfew. It was also be advantageous psychologically. The downside was the feeling of being observed and of transparency. There is no doubt that those living with a taggee were involved in it too: disturbances from phone-calls, pressure to comply, frustration, anger and impatience towards an irresponsible breacher. However, most important, they provided moral support.

Telephone checking had been awkward, but this could be minimised by full compliance with the curfew. I was surprised at the lack of stigma associated with tagging. I found it unobtrusive by being easily concealed by conventional clothing. My artificially induced monitoring did not allow me to experience any concurrent counselling or after-care, which could be advantageous in many instances. I presume that this would be in the hands of the probation service. I was impressed by the efficiency of the equipment and the flexibility which a limited curfew allows; the curfew could permit the continuation of everyday life, with little impact on the family, the restriction mostly affecting social/recreational time (or offending time in the case of some offenders). This I considered a fair punishment for certain crimes, as well as an opportunity for reflection by the offender while deterring the offender from re-offending.

The equipment appeared to work well. Two errors occurred during the two weeks of monitoring. I was (wrongly) reported as absent for ten minutes when I was actually at home. Bedding, closed doors, or distance between transmitter and receiver might have interfered with the radio signal from the tag to the receiver. On that particular occasion, being also out of curfew made me resent what I saw as an interfering call, and a breach of my right to privacy. However, it also proved the usefulness of the passive system of tagging: a technical fault could be corrected through verification by allowing the contractor to update their records. Continuous radio signalling raised ethical issues if monitoring could not have a fool-proof guarantee to be restricted curfew periods.

Book Reviews

The Prisons Handbook 2002

by Mark Leech and Deborah Cheney (Eds). Waterside Press. April 2002. ISBN 1872870163. £57.50 (£44.50 to prisoners and their families)

Almost ten years to the day since the first private prison in the UK accepted its first prisoners, the 2002 edition of The Prisons Handbook was launched. It is appropriate, though perhaps by accident, that the cover photograph this year is of Parc, the Securicor-owned prison in south Wales.

A friend recently commented that he was bored with *The Prisons Handbook*. Each year it appears, slightly bigger than the year before, and a touch more expensive than previous editions, and yet it appears to try to appeal to too many audiences. Fair comment perhaps but *The Prisons Handbook* remains an essential and indispensable resource to those of us working in the penal sector, either from the inside or the out.

The 2002 edition is bigger than ever before, running to over seven hundred pages. An interesting addition this year is the inclusion of 'Governor Profiles', giving background to the career of those governing governors who provided the information. The difficulty in such a publication is in keeping it up to date, and apart from a few recent changes, the editors have again managed to provide current information.

The launch of the Handbook, in the grand setting of the Chapel at Wormwood Scrubs, was attended by Martin Narey (Director General of HM Prison Service) and representatives of other prisons, reform groups, academics, and contributors — myself included. For the first time, the Handbook this year includes a chapter on gay and bisexual prisoners, and the launch of 'GALIPS' (Gays and Lesbians in the Prison Service) featured heavily in the speeches at the launch. GALIPS were provided with a free advert in the Handbook.

Perhaps the most significant addition to this edition is a new chapter by Shane Bryans and Rachel Jones on 'Prison Officers and Prison Governors'. It provides a clear explanation of the development and roles of prison officer and governor, and includes interesting information on, for example, the breakdown of governor grades in the Service. The Editor's Award for this year was presented to Bryans and Jones.

Last year's edition was dedicated to HMP Grendon, to mark that institution's fortieth anniversary. Sir David Ramsbotham is the recipient of this year's dedication, with a touching tribute to his efforts whilst Chief Inspector provided by Mark Leech.

'For and Against' is the chapter of real debate, this year considering the issue of a prisoners' union, with the 'for' argument being presented by John Hirst of the Association of Prisoners, and the 'against' coming from Joan Aitken, the Scottish Prisons Complaints Commissioner. It is an interesting debate, but one that Hirst wins. Mark Leech offers a view on in-cell confessions, interesting in the wake of the Damilola Taylor murder trial, and that of Michael Stone. 'Something to Say' this year is provided by Sir David Ramsbotham, on 'The Conduct of Imprisonment'. Together, these three sections make an interesting read in a publication so often seen as being devoted

entirely to the 'facts' of prisons and imprisonment.

If there is criticism to be found in the Prisons Handbook, it is difficult to be convincing. Certainly, the sheer cost of the publication makes it an unlikely purchase for families and friends of prisoners — one group for whom it could be a vital source of information. But then, the costs of producing such a mammoth volume must be covered, and the more recent addition of the Prisoner's Pocket Diary means that some essential information is available directly to all prisoners.

The Director General's standing appreciation for the Handbook should be backed up with an official requirement that every prison library holds at least one copy of the current edition. One prisoner told me last month that his prison librarian had never heard of the Handbook — and a prison officer at the launch commented that he had only heard of the Handbook after speaking to one of the editors at a recent conference. Certainly, a copy in every main public library would give the friends and families of prisoners access to the information they need.

Once again, the editors, contributors and publishers are, to be roundly congratulated for another excellent edition of the Handbook. But it is true to say that if the Handbook gets any bigger, rather than launch it in a bricks-and-mortar prison next year, they will need to launch it off the side of a ship. HMP Weare, maybe.

Steve Taylor, *former prisoner and PRT Council Member*

The Treatment and Rehabilitation of Offenders

by Iain Crow. Sage, London. 2001.

The Treatment and Rehabilitation of Offenders is aimed at the ever-increasing range of university courses that now include modules on crime, justice and the criminal justice system, though with its readable style and relative lack of jargon, it might also appeal to the interested lay person, or even to somebody just starting a career in the prison or probation service. Its ambitious aim is to provide a broad introduction to the treatment and rehabilitation of offenders in just over 200 pages.

Part one provides a good and thorough overview of the history of penal thinking over the past century, from the medical treatment models through the development of the Nothing Works view to the current 'What Works movement'. While this will be a familiar history to many in the criminal justice system, its retelling by an academic from a criminology background introduces some less familiar perspectives.

Part two covers the content of treatment in the prison and probation services and is the most disappointing section of the book. The chapter on treatment and rehabilitation in prisons seems particularly unbalanced and poorly researched. Half a page is devoted to an outdated account of cognitive-behavioural programmes in prisons, while 'education, training and social skills programmes, designed to prepare offenders for when they are released' merit only a passing mention. Following this very brief coverage, seven whole pages are devoted to the therapeutic regime at Grendon. While this is a reasonable treatment of that prison, the chapter makes only passing mention of other prison-based therapeutic communities and contains no discussion of the therapeutic community literature in general. Unfortunately most of the references for this chapter are taken from the mid-1990s, a time when the Prison Service was reeling from the combined onslaught of Woodcock, Learmont and Michael Howard and when the Service's culture and its approach to treatment and rehabilitation were very different from today. While it provides an interesting reflection of how much things have changed in the last six years, the students at whom this book is aimed are likely to come away from this chapter with a distorted and pessimistic view of the treatment of offenders in prison.

The chapter on treatment in the probation service is also disappointing and outdated. It makes no mention of the National Probation Service and only passing reference to such key concepts as Pathfinder programmes and the accreditation of programmes in general. It also misses the opportunity to discuss the central role which the application of national standards and pro-social modelling now have in probation work.

The third part of the book focuses on specific treatment issues, with a chapter each on the treatment of sexual offenders, mentally disordered offenders and drug misuse. These chapters generally provide a brief but good and balanced overview of many of the main issues. For example, the chapter on sexual offenders gives a brief overview of the causes and prevalence of sexual offending an overview of prison and probation-based treatment programmes and the evaluation of programmes, before ending with a discussion of the issues involved in supervising sexual offenders in the community and the registration of sexual offenders. It is a reasonable summary in 20 pages of the key issues in a large and complex field.

This book's strengths lie in its wide-ranging, concise and readable summaries of the issues and debates. To students who know nothing about the criminal justice system or the issues it has to wrestle with, this book provides a good and broad overview of the key issues. Given the breadth of coverage, more experienced readers may also find interesting new perspectives on familiar issues. A useful touch is that each chapter ends with questions and discussion topics and a helpfully annotated reading list for readers wishing to explore the subject further.

At times the book seems uneven in the level at which it is written. In places it provides simple and clear explanations of, for example, the history and function of the probation service or the distinctions between class A, B and C drugs. At other times it glosses over huge areas. The chapter on mentally disordered offenders, for example, makes no reference to perhaps its thorniest issue, the nature and treatment of personality disorders. Tantalisingly, and bizarrely, the very last paragraph in the book finishes with a plea to move towards a more restorative model of justice, and yet there seems to be no other mention of the concept throughout the book, let alone an explanation of what the term means or how its principles are applied to prisons and probation.

Another area where this book disappoints is in the patchy and outdated details of many of the treatment and rehabilitation programmes which are supposed to be its focus. In the author's defence this is, to a certain extent, a reflection of the pace of change in the criminal justice system. Perhaps it is also a reflection of the failure of the prison and probation services to communicate intelligibly with the general public about treatment and rehabilitation.

Phil Willmot, *Prison Service psychologist*

Captive Audience: Media, Masculinity and Power in Prisons

by Dr Yvonne Jewkes. Willan Publishing. 2002. £17.99.

If there is one issue guaranteed to whip up frenzy in the leader columns of the tabloid press, it is the creation of new privileges or facilities for prisoners. We can all remember the media furore when plans were announced for a golf course at an open prison, and politicians wasted no time in roundly condemning such 'molly-coddling'.

The era of Woolfism in the early to mid-1990s brought with it many changes to regimes for prisoners, almost all for the better. In-cell television was one such reform, brought about to allow prisoners a greater feeling of connection with the outside world through television news and other programmes. Radio has been around longer, but by definition lacked the visual stimulus provided by television.

And whilst in-cell television provides the main focus for Yvonne Jewkes' new book, other forms of media use are also explored, considering with each the effects on the media on power and empowerment, masculinity and identity. Research spanning many months was conducted in several prisons, primarily Stocken and Ashwell, and this included interviews and focus groups with significant numbers of prisoners serving a wide range of sentences.

Captive Audience: Media, Masculinity and Power in Prisons begins with a review of existing literature, in which parallels and comparisons are drawn with the seminal works of, for example, Sykes and Clemmer. The formation and maintenance of 'identity' is a central and recurring theme in this work, and Jewkes argues in Chapter One that media access can mitigate the sometimes deleterious effects of imprisonment, especially in younger prisoners serving relatively short sentences. Within this Chapter comes a consideration of Sykes' 'pains of imprisonment' and the extrapolation of these pains to the media context.

'Structuration' and adaptation to the prison condition, and the role of outside 'real world' contacts and relationships are the subject of Chapter Two. Within that adaptation, says Jewkes, is a necessary differential in each prisoner, whereby his or her individual adaptation will involve not only his interaction with family and friends outside of the carceral setting, but also his place within a wider criminal justice arena, where other influences such as the institution's own biography, social attitudes, and the politics of criminal justice, play a part. To quote the book, it is the 'masculine cultural milieu' that is central to the adaptive process.

An explanation of the research methodology, and of the structures and cultures of the prisons in which the research was conducted is provided in Chapter Three.

Chapter Four is titled 'The microsocial contexts of media use', where the fluid notions of time and place, and their relationship with identity, are considered. The Chapter reveals conflicting, and not immediately obvious, differences in the prisoners' own interpretation and use of the media to achieve relative normality.

'I'm in my element now with five weeks of cricket on the telly. I find it very calming. It takes me back to who I really am.'

This comment, from 'Bill', is perhaps the kind of comment one would expect. The escape provided by television allows the prisoner to connect to the person he was, and will probably return to, outside prison. His liberty is denied, but his interests and passions continue. For Bill, the passion is cricket. But other prisoners appear to shun television as it provides only painful memories of the world of which they are no longer a part. To quote 'Neil':

'When the news comes on I flick over, I do not want to hear about it. It reminds me of what I'm missing ... the outside world no longer exists. I do not dwell on what I could be doing. It's an utter sheet waste of time, the futility of being in here. Seeing it all on TV would only make it even worse.'

Chapter Four's theme of the individual leads to the wider prison community — the 'meso-sphere' — and culture in Chapter Five. Largely rejecting some of the earlier studies of prison and prisoner culture, here Jewkes argues that the prison society is much more complex than concluded by prison sociologists such as Sykes. The suspension (or even termination) of the prisoners' pre-prison identity is necessary to conform to the 'performative and excessively masculine prison culture'. Whilst prisoners present a front of solidarity and union whilst in groups, the reality of distrust and dislike between some prisoners is presented acutely here. The private use of the media, and the construction of prison 'masks', is pervasive and all-encompassing. Other influences, such as the 'newness' of a prison wing, are also important:

'... at least I know my cell's not contaminated ... it's had nobody die in it. In fact nobody had even slept in the bed before me.'

The 'macro-social' context of prisons and the media is the subject of Chapter Six. Asking the question of 'where does power lie in prison?', the Chapter looks at the needs of the prisoners against those of the institution in which they are held, and the way in which the media can be a central locus of the power relationships that exist within prison walls. Within this Chapter is also presented the mindset of the prisoners who would prefer not to have in-cell television — and who would therefore run against the grain of the 'scrounging' prisoners presented by the tabloid media:

'I did not want in-cell TV, but in the end I had to have it because I'm on Enhanced. I cannot pretend I do not watch it now that I've got it, but I held out for as long as I could. I enjoyed my eight months here without it though.'

In itself, this poses questions about the autonomy of prisoners and their right to choose how their regime is run within a prison. Perhaps the independence and greater freedoms generally afforded to enhanced status prisoners should extend to a choice of whether or not to have in-cell television? Another interesting quote within the book came from a prison officer, who questioned the 'right' of prisoners to a television in their cell, when he had recently had to pay a significant sum for a relative to have television at her hospital bedside.

As Jewkes herself notes in the Conclusion, this work has brought together two academic disciplines previously disconnected — those of media studies and criminology. Power is not without previous study, and nor is masculinity, but the interaction with the media is, from this book alone, central to any serious consideration of relationships and prisoner identity within the institutional setting.

The undemocratic nature of media use in prisons is reiterated in the Conclusion. The use of the media as a tool on the part of the prison — in a kind of 'carrot and stick' approach — is not insignificant, and there is balance to be achieved between the inactivity of television watching, and the requirements

for activity placed upon the prison service. Nor is power unidirectional and, rather like the media, it can be used as a resource but also as a constraint.

My own current research has led me through the many previous works on masculinity and prisoner identity, many of which are decades old. The pace of change in recent years, both in the development of the media, and in penal policy, has made the publication of this book now most apposite. If there is to be one criticism of the book, it is that it has not considered in any depth the relationship between the consumption of the print or broadcast media, and 'media' in the wider context — such a letter-writing and other communication means.

That said, this is an excellent book — one of the best specialist books on prisons and penology of the last few years. It has transcended the wall between being academic and being practical effortlessly. It should be read by all with an interest in prison regimes, not least the managers of prison regimes, a few of whom appear to struggle with understanding the different needs of prisoners.

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English Prisons: An Architectural History

by Allan Brodie, Jane Croom and James O Davies. English Heritage. 2002. £40. ISBN 1873592531.

It is a sad fact that so few people have any real idea of the real goings-on behind prison walls. The mass media informs — or, some argue, *mis*informs — the public through programmes such as 'Bad Girls' or 'Porridge'. The image of prison in most people's eyes is that of one of the huge Victorian establishments such as Leeds, Portland or the Scrubs.

Prison reformers — myself included — spend much of our time criticising prisons, be it the health care, the regimes, or any other aspect of imprisonment. What perhaps separates me from some prison reform colleagues, is my appreciation of prison buildings. Some, such as Elmley, are built to contain, with little concern for the aesthetic. But others, such as many of the previously mentioned Victorian prisons, are at the same time imposing, magnificent, and fascinating. It is, I accept, a perverse fascination, similar perhaps to my love of medieval churches, despite being an atheist.

In 1999, English Heritage concluded the first part of their architectural survey of English prisons, and published the paperback 'Behind Bars', providing a basic insight to prison buildings in England. The English Heritage team was granted unprecedented access to all prisons, and allowed to photograph any area — except where this may have compromised security. Although many prisons were photographed during the 1870s when prisons all came under central control, this was the very first time such a project had been undertaken in all prisons, and for public access.

The book, *English Prisons. An Architectural History*, opens with the famous Churchill statement: 'The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country'. What becomes clear throughout the 297 pages of this book is that one can actually gauge the mood the temper of the penal *policy* from that time too ... from the religious and reformatory principals popular at the time of the construction of, say, Shrewsbury, through to the purely utilitarian design of newer prisons, such as Swaleside or Full Sutton.

The pages of the book are filled with hundreds of photographs taken as part of this survey, and some older ones also — including a striking photograph of a wing within Newgate. One criticism of the book is that it does not include photographs of *all* the prisons in England. Included are shots of cells, wings, hospitals, governor's houses, chapels and workshops, and an in-depth commentary which serves not only those with an interest in architecture, but also those simply interested in the history of imprisonment in England. It is one of the few publications to cover comprehensively the work of John Howard, and it includes an image of his statue in St Paul's Cathedral.

Long-closed prisons are also documented in some number, including the 14th century gaol at Hexham in Northumberland, Oxford castle, Lydford castle in Devon, and Ripon House of Correction. Photographs of cells and other holding areas in non-prison buildings are included, such as the cells beneath Lambeth Palace, and buildings used by local communities for holding offenders for short periods, such as the conical lockup at Wheatley in Oxfordshire, and a similar building located on a 17th century bridge at Bradford-on-Avon.

Some closed prisons remain intact — Oxford castle and Littledean gaol in Gloucestershire as examples. The plans of the reformers, such as Bentham's panopticon and Byfield's radial designs, are examined and the plans reprinted, together with lists of prisons built in these styles, many of which have now closed or been demolished. The short life of the Millbank Penitentiary is also documented at some length.

It is half way through the book when Du Cane's 1877 Prisons Act appears, and local authorities are divested of their responsibilities for prison establishments. This also marks an interesting turning point in the architecture, and shortly afterwards is seen the building of the first 'telegraph pole' style prison: Wormwood Scrubs in London. Many more utilitarian (in the literal, rather than Benthamite sense) buildings begin to appear, including Norwich and Bristol. Prison architecture suddenly appears to reflect the frugal existence of those held within the walls. The grand gatehouses of Leicester are gone from the plans.

It is after the turn of the twentieth century when the visual change becomes even more apparent. Prison huts begin to appear, many built by prisoner labour, such as Haverigg. Old mansion houses become prisons, as do former military bases. The creation of open prisons brings the building of accommodation resembling municipal housing units, such as those at Ford. There are some that would fuel the 'holiday camp' theorists — I was astonished at the 'chalet' accommodation at Finnamore Wood, closed since 1996. Some prisons, such as Styal, develop 'proper' houses for prisoners to live in, and others build specialist accommodation for specific groups of prisoners, such as the lifer houses at North Sea Camp.

Later still come the ugly buildings such as Featherstone or Highpoint, which resemble warehouses — some would say in more ways than one. Then come the downright ugly — The Verne, Feltham and Belmarsh. There's some photographs from late April 1990 of Strangeways and Pucklechurch, included here perhaps as a reminder of how things can go wrong.

Private prisons bring even more new styles, from the modern design of Altcourse to Parc, where the accommodation blocks appear to resemble aircraft hangers. Indeed, one of the Parc pictures adorns the cover of this year's Prisons Handbook. The story of The Weare is retold here, not many pages

away from the story of the Thames hulks of the 18th and 19th centuries. There might be something in that. And we have 'RTU' units — wooden prisons which arrive in bits on the back of lorries. McDonalds build new 'drive-through' units in much the same way. Perhaps the first McJail is not far away.

With the recent publication of Patrick Carter's report into the future of private and state prisons, this book has come at a time when change may be imminent. To use the American term, Carter recommends the creation of 'supermax' prisons to accommodate as many as two or three-thousand prisoners in one institution, close to major conurbations. One academic recently described the supermax as a 'solution in search of a problem', and talk of bringing such an institution to the UK is unwelcome.

The British public love talk about crime, punishment and prisons, and yet remains singularly uninformed about the inner workings of such institutions. The busiest section on my own website is one containing seventy-odd photographs of English prisons, something I started after the demise of the Penal Lexicon site last year. It is useful to have this book if only to give to people who want an insight and an idea of what prison is really like.

At £40, it is not a cheap book. Nevertheless, the sheer amount of work and effort that has gone into the work makes it well worth the price.

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The Interview

Anne Owers

Anne Owers took over in 2001 from Sir David Ramsbotham as HM Chief Inspectorate of Prisons for England and Wales having previously been Director of Justice from 1992. Her early career was spent researching and teaching in Zambia. She worked at the Joint Council for the Welfare of Immigrants and became its general secretary in 1986. Other appointments and publications reflect Anne Owers' interests in refugees, immigration and nationality, human rights and legal issues.

Interview by **Nigel Hancock**

Anne Owers spoke first of her earliest impressions of prisons and of work with prisoners.

'I remember visiting Brixton when I was doing legal advice work in South London. I had the impression of being in a very strange, unfamiliar and alienating environment, but was of course dipping in and out of it. The first prison I ever visited was Latchmere House when it was holding immigration detainees in the mid 1980s. I was working with the Joint Council for the Welfare of Immigrants and one of our roles was dealing with people who were in immigration detention. So it was an interesting circularity for me that, just as I joined the Inspectorate, we were starting a thematic review of immigration detention following an addition to my post's statutory responsibilities. Fifteen years down the line Latchmere House is much changed.

While I was at Justice I worked with prisoners who claimed that they were wrongly imprisoned. The legal advice to prisoners role was very different to my present one. When I first went there we were dealing with a lot of individual cases that were potential miscarriages of justice. We received about 1,000 letters a year from serving prisoners. That changed partly because we were successful in persuading the then government to set up the Criminal Cases Review Commission which could do the job much more effectively and quickly than we could. Legal officers would go out to see people but a lot of the work was done by correspondence rather than by direct visit'.

Could the new Chief Inspector give her impressions of prisons in England and Wales now and of the overall prison system?

'In the last few months I have inspected about 14 and visited a further 15. So I have seen a good proportion of the growing prison estate quite quickly. I have seen prisons in action as part of my own learning curve and then seen them during inspection. I have been there for the last two days of full inspections and at the debriefs with the governor and the senior management team. I have also done one full inspection with each of our three inspection teams starting from the first day and going on to the fifth day, so that I can get a feel for how the business is done, how the information is compiled and how the teams work. That has been immensely useful.

Prisons are so different, and just talking about a 'prison system' somehow implies a consistency that may not be possible. I do not yet have a full picture of the prison estate, for example of women's prisons or of dispersal prisons. A key impression though is that the prison system is good at coping, and prides itself on doing well with the resources it has. It copes surprisingly well given what is thrown at it: with increased numbers of women and of juveniles; with children in prison; with people who are mentally ill and disturbed in various ways; and with immigration detainees.

There is a stress on crisis management, on fire fighting. Prisons are always conscious that they are on the edge, that they are only a days away from the next disturbing suicide, the next bed watch. Prisons exist in a constant state of anxiety. This coping mechanism

sometimes gets in the way of admitting that there are situations when they cannot cope. Prisons could be saying we cannot cope, we should not be expected to cope. But the mindset is not one that easily allows such messages to be said or to be received within the Prison Service or the Home Office. For example, the health care centre in one prison we visited recently was almost fifty per cent under-staffed, not through the fault of the prison but through difficulties in recruitment and retention. It was coping with 26 patients and out of those about seven were in the view of our doctor, who is a psychiatrist, sectionable under the Mental Health Act. The prison could not provide a safe and decent environment for the people it was holding, nor indeed a safe and decent environment for staff who were looking after them. But the pressure was always to cope, to cope with 24 hour watches of people who were so suicidal that they would take apart a magazine to get a staple to open a wound. At one level that is a testimony to staff dealing with very difficult people. It is no testimony to the capacity of a management system to pass messages back up the line and for something to be done about it'.

Anne Owers spoke about the Inspectorate's role in helping the Prison Service to identify and address such problems, and the factors that affect the strength or otherwise of prison cultures.

'Part of our function is to come in with a template of what is right in prisons, what you should expect to see in a prison that is providing a decent and dignified environment, and to hold that up against what we find in the prison. That is not necessarily an exercise in blame, but in helping people to test what they are doing against what most prisons want to be doing or what they should be doing. The management systems within prisons are often felt to be systems of blame and not systems of support.

Prisons work best where there is a common view of what a prison is for and that view is shared by everyone from the governing governor to the uniformed officer on the landing or the wing. Where there is a sense of shared ownership and belonging, the culture works positively even if the prison cannot deliver ideally what it would like to. A crucial link in that internal culture within prisons is the senior ranks of uniformed officers. They are going to be the ones that are around most of the time, around the longest. They are also going to be the ones who can sit on their hands and think we'll get a new governor in three or four years time anyway, and he/she will have a different business plan so let's just do the least we can and see what happens. For a prison to have and sustain a positive culture, principal officers and senior officers need to be signed up to it. Management of these processes is crucial for the Prison Service to capture. It has to strengthen positive cultures, and to train and support, and that is not always happening. There have not always been good training opportunities for these levels of staff. Very negative cultures can grow where you have a gap between the senior uniformed staff and the lower level of the governor grade. Positive initiatives can fall down this gap.

At present, there is a very positive mood music coming out of the Prison Service, from the Director General and Ministers, about what positively should be expected of prisons including a core resettlement agenda. About prisons being places in which you can work with severely damaged people. This, together with the decency and dignity agenda, and the determination to root out racism, comprise a very helpful public agenda to be coming into, one that my predecessor did not have at all times. Our job as an Inspectorate is reporting honestly and objectively on how that agenda is working out on the ground. I think there is a real danger in something as complex as the Prison Service, an area that does not attract huge public support, huge investment of resources, or public popularity, that there is a gap between the virtual prison system that Ministers are saying that they want, and what the Director General wants, and the real prison system that is operating on the ground. That is one of the reason why as an Inspectorate we do not look at processes, we do not look at ticking boxes, and we do not look at audits. We look at outcomes, we look to see what actually is happening to the prisoners in particular places, and then we try and work out why it is happening.'

We discussed the Prison Service's managerial culture, and the Chief Inspector set out her views.

'It is important for management to be able to monitor and know what is going on in prisons. The problem with performance management, and certainly initially the targets that are set, is that it tends to measure what is measurable and not necessarily what is important. It has been good at measuring process, measuring whether you have a sentence planning mechanism in place or how many escapes you have had. What it is not good at is measuring what differences those things make and whether they operate in practice. Sentence planning is a good example. I have been in prisons where they have wonderful processes for sentence planning, absolutely beautiful sentence planning files. The reason they are so beautiful is that no-one has ever taken them out of the filing cabinet. They do not relate to what the prison needs or what the prison can offer. They contain targets which may not be time bound and which may not be implementable. It is important to have processes in place, but they are only baselines. If people concentrate simply on hitting those targets there is a real danger that they will concentrate on reaching the lowest common denominator of something that is satisfactory but not good.

There are very few incentives to reach what is good so what we look at is the quality of the outcomes that are coming out of those processes. Targets not well set can distort activity in prisons because clearly people target their activity towards meeting the targets. They say we'll offer what the area manager would want to see, what the Deputy Director General would want to see. As a result, the information reported back can be 'optimistic' about what is going on in the prisons concerned. Countless times it does not seem to relate to what is going on in terms of purposeful activity. The result of course is that the area manager will not know the prison is under resourced in certain areas. Information will not get fed back because people try to show that they have hit their targets. Activity is distorted.

A classic example is the concentration in education on hitting level 2 literacy and numeracy skills. It is absolutely right that the Prison Service should say it would like all its prisoners to go out with level 2 because level 2 is the employability level, and that is very important for people to have. But what we find over and over again is that on assessment on entry to prison 60-70 per cent of people are below level 1 literacy and numeracy. If your target is to hit level 2, the real danger is that you skim the people that meet level 2 or who are already above level 2. You hit your targets on what you are not providing. You do not provide the stepping stone, the ladders that the people at those lower levels need. Because performance targets are across the board they do not necessarily meet the individual needs of particular prisoners and the needs in particular prisons. Prisons

should conduct needs assessment and from that work out targets above the level the Prison Service requires'.

At the time of the interview, Anne Owers had not formally inspected a women's prison. She spoke about the organisation of the women's prison system in England and Wales, about the optimum size of prisons, and about young offenders and the mentally ill.

'I have views on the size and deployment of prisons in general and they apply particularly to women prisoners. There are particular issues about holding women in the areas from which they come. Sixty per cent of women in prison have primary care of children under 16 years. The resettlement needs of women prisoners are often very different from those of men. We should be looking at more smaller units and not large units. I would like to see us move closer to the notion that Lord Woolf had in his report about community prisons. The local prisons I have seen working best are small prisons. Locals have an enormous difficulty because they are trying to hit so many targets at once. They are servicing the courts. As the pressure point of the population changes, they have little control over who they get and when. They have very difficult prisoners to manage. But it is much easier to manage a smaller court or prison than a large one. Particularly if you are starting from scratch, we should be looking at smaller units spread more geographically.

Similarly we should not be holding children in prison, in prisons which hold nearly 400 in units of nearly 60. That is simply not an environment in which you should hold extremely disturbed, adolescent young men. Doing so creates very difficult problems. I think it vital that the women's and juvenile estates move towards smaller units.

The Inspectorate can point out what is happening with certain groups of people in prisons. There have been some huge improvements in the juvenile estate following the creation of the Youth Justice Board. That is in some ways difficult for prisons where young people are held because the Youth Justice Board's approach is a very child centred approach and prisons are more accustomed to well organised and controlled regime approaches. There is a clash of cultures involved. My predecessor thought so and I would also say that, ideally, 15-17 year olds should not be held in prisons. If there are circumstances where they need to be detained, there are other more appropriate facilities with much greater staff ratios and clustered resources. The budget for educating a 15-17 year old child in prison is £1,800 a year. For a child in a secure training centre or local secure unit, the budget is £15,000 a year. You start to ask what ought a child to expect growing up in a custodial environment. That's the question you ask of the prison.

We have recently found more seriously mentally ill people in a number of prisons than we did the last time they were inspected. Although people are moving on into medium secure or secure facilities within the National Health Service, there is still a huge blockage. There is still a tendency to accept that if someone seriously mentally ill is in prison, and therefore off the streets, their place towards the top of the waiting list should be taken by someone who is outside the seriously mentally ill category but potentially difficult within the community. Prisons are holding people who should not be in prison but should be in a therapeutic environment. Prisons should not be expected to cope. There is a need for an intermediate estate to hold mentally ill offenders. There is also a need for seminars on particular areas of suicide, self-harm and bullying where people from all relevant prisons can get together and can learn from each others, from their mistakes and successes, and forge links between them. There is too little sharing of information and good practice within the Prison Service.'

How did the new Chief Inspector regard the development of standards in the Prison Service?

'There is a real danger of divorcing policy and standards from people at the operational level. Some policies look wonderful but if you are running them they do not always work in quite the way that you envisaged. In fact they can have the opposite effect. To share good practice and to learn from each other and really start driving standards up is something a good functional manager could do. It is just as important as making sure that the performance targets are met.

We very much welcome the fact that the Prison Service is revising its Standards at the moment and that there is a greater stress on quality. We welcome the very good dialogue that has taken place in the last six months about our Expectations document, the criteria by which we inspect, and the extent to which Prison Service Standards can move closer to our Expectations. There have been considerable movements but inevitably the Standards in the Prison Service for those running prisons will be largely about processes because that is what is easily measurable. It will also be about what the Prison Service knows it can deliver and has the resources to deliver. It is no good requiring a prison governor to deliver something for which there are no resources. No establishment should serve the evening meal earlier than 5pm in the afternoon. We went to a young offender institution where 19 years old lads were having their meals at 4pm, meals which might well have to last them until breakfast the next morning. This is not right, but equally if you cannot staff a prison to do anything else then standards cannot be imposed on them. We will always be in the business of driving up standards and inserting quality and outcome criteria into the Standards'.

PRISON SERVICE JOURNAL

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The *Prison Service Journal* is published by HM Prison Service of England and Wales. Its purpose to raise and discuss issues related to the work of the Prison Service, the wider criminal justice system and associated fields. It aims to present reliable information and a range of views about these issues.

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