

Criminal Justice Alliance Members Meeting

Tuesday 3 July January 2018

The Foundry, 17 Oval Way, London SE11 5JH

Summary of speech by Richard Burgon MP, Shadow Secretary of State for Justice

It's great to join you all today. You represent such a broad range of expertise and experience and I hope to work with you for a long time going forward, hear your ideas, drawn on your experience and actually feed that into the policy approach that Labour sets out not only in opposition but hopefully one day in government too.

I'd like to outline the set of principles which inform what a Labour government would do in the Ministry of Justice. I think the Conservatives have failed when it comes to the criminal justice system. There's been a real churn with the Secretary of State for Justice – five in two years – and no department at the same time has faced as much cuts as the Ministry of Justice has. It's 40 per cent cuts by 2020, £4,000 million per year – so £20,000 million in cuts cumulatively between 2010 and 2020. Those cuts obviously have consequences.

For many politicians, unfortunately, they think that the justice sector is 'out of sight, out of mind', so when it comes to where cuts shall fall, I think too many politicians see the Ministry of Justice as an easy option. In their view, most people probably don't think about the CJS very much unless they've been a victim of crime or there's an ongoing trial. For many politicians they believe the only time the CJS ever permeates the consciousness of people is if there's a prison riot or a controversial release from prison or a very high profile trial of an alleged terrorist or an alleged murderer.

I think we as politicians have got to make the case that what happens in the Ministry of Justice and what happens in the criminal justice system affects us all, whether or not we ourselves have contact with the criminal justice system itself. We've got to make clear that if we want to improve the lives of people around the country, we've got to make sure, that rehabilitation works. I want to reclaim the concept of rehabilitation, because in Parliament it's often been seen as a choice between a 'liberal' approach or an 'authoritarian' approach and I think that's a false choice. Whilst rehabilitation is about assisting somebody who is the criminal justice system, it's also the only way to properly protect society. It's essential, whatever somebody's political perspective, we should all start to agree that rehabilitation is practical and necessary for the whole of society.

I mentioned the cuts – that's also another reason I can't commit today to huge investment in the Ministry of Justice and I'm honest about that because it depends what happens in the next two years. Every pound that we can prevent *now* from being cut is a pound that we can use in Government to rebuild in the future. That was a point I made yesterday in the House of Commons chamber where we discussed the spending plans for the Ministry of Justice.

What are the values driving our approach to the Ministry of Justice and the justice system? One of our values is an opposition to what I call the 'Americanisation' of the justice system. By that, I mean the ever-increasing role of the private sector. I've made clear, though it's not an opinion that all share, is that the incarceration of human beings for profit is immoral. That's no criticism of people who work in the private sector in the justice system, but I'm really troubled by the idea of making profit from incarceration of human beings. I believe, as we have seen in the United States, that supply creates its own demand. It leads to ideas of 'super prisons' for example. Super prisons can lead, as they have done in the United States, to small towns, particularly in industrialised areas, becoming over-dependent in terms of jobs and the local economy on super prisons and so therefore, if at a future point a government has a determination to reduce the prison population, it comes up against other factors, if there's a super prison in a small town employing literally thousands of local people and being the main driver of their economy.

The other value driving our approach is keeping our society safe. That has got to be the primary purpose of the criminal justice system. Putting people in prison shouldn't be the purpose of the criminal justice system. Putting people in prison is necessary in many cases, but putting people in prison can be the worst option for some and it should only be seen as a means to an end and not an end in itself. We all know that super short sentences don't work. In fact they do more harm than good: more harm to the individual prisoner and more harm to the society that the individual prisoner returns to not very long after their sentence.

We also think it's very important to defend our right to freedoms. Justice has to be about that. If people don't have access to legal advice and representation, if we have legal advice 'deserts' in many parts of our country, then actually the rights and freedoms that we have, often hard-won by progressive social organisations and campaigns, aren't even really worth even the paper that they are written on. If people don't know that they have a right then they may as well not have it. If people can't take action to defend and preserve that right then they may as well not have it. Rights may as well be theoretical if you don't know you have them or even if you do know you have them, if you're unable to enforce them or defend them or assert them.

In terms of the values that inform our approach, we want a criminal justice system that doesn't entrench inequality and discrimination. I think David Lammy's report really has been an eye-opener, even for many seasoned activists and campaigners, who were shocked to see that in our criminal justice system there is a greater disproportionality of black citizens than there is in the USA. There has always been a tendency for us to go 'well things are bad here' and then to look quite smugly across the water and think 'at least things aren't as bad as they are in the United States. I'm not sure that we can be as complacent as that for much longer at all.

Another example of work we have been doing is work to support the very positive change in the law to make the practice of so-called upskirting a specific sexual offence. I have been supporting that campaign since last August. It's great that under pressure the Government is going to facilitate that becoming a specific sexual offence, therefore closing a loophole in relation to that and hopefully deterring people from carrying out that intrusive act against women.

I do think of course that it's important we have a more representative judiciary. Change has been 'on its way' for a long time and I don't think we should be taking anything off the table when it comes to making our judiciary more representative as soon as possible.

I've already mentioned our opposition to the Americanisation of the justice system. I wanted to use, as an example of the practical problems it causes to democracy, an answer I was given to a written Parliamentary question recently in relation to Oakhill child prison – people will be aware how bad things are at Oakhill. I wrote to the Minister to ask about the work that G4S is doing there and its contractual obligations and how many it's meeting and the answer was very interesting indeed. The answer said:

'The Contract for Oakhill STC is between the Secretary of State for Justice and STC Milton Keynes Ltd (the Contractor), of which G4S is their Operating Sub-Contractor. We therefore do not have information on the proportion of contractual obligations that G4S has met.'

I find it very disturbing that by a process of privatisation and sub-contracting it means the Government doesn't have information on this. This illustrates that my position to the Americanisation of the justice system isn't just a moral principle, although I do have a moral problem with the incarceration of human beings for profit, it's not even just about money being transferred from the State to the private sector to do a bad job, it's also a democratic question. How are campaign groups, how are MPs, how is the Justice Select

Committee meant to hold the MoJ and the Secretary of State for Justice to account, if even the Secretary of State for Justice doesn't have this information because of the way these contracts are constructed?

We are going to end the privatisation of probation. I think that is a case study of failure of privatisation. These Community Rehabilitation Companies aren't doing a good job and have actually had to be bailed out to the extent of £300 million extra public money in December. They're not doing a good job at all. In Parliament on Thursday, the Chair of the Justice Select Committee was presenting his report into the Probation Service and I asked if he could shed any further light on whether or not when a private probation company is failing and not performing, if the Government ends the contract early as a result of under-performance or non-performance, does the Government have to pay compensation to that private company. His answer was that he didn't know the answer and he thinks it's a shame that he doesn't. He thinks that governments all too often hide behind the shield of commercial confidentiality and it's not right and we need more transparency. It makes it harder for us to plan the future of a probation system that works to reduce offending, turn lives around and protect society.

So in terms of actions, we'd bring back outsourcing of maintenance works in prisons. We'd return all PFI prisons at the earliest opportunity to public ownership. This is a big piece of work and we are working closely with the Shadow Treasury team on this. We are starting a review on the future of the probation service and what *form* that probation service would take in public ownership. There's different models that the probation service and public ownership could take. It *may* involve local authority, it *may* involve PCCs, it *may* involve a more traditional role of national government. It may be a mixture. In relation to keeping our society safe and putting people first, overcrowding and understaffing in my view is the real reason for the emergency in our prisons, the emergency of violence prisoner against prisoner, of violence prisoner against staff member, and self-harm and suicide and attempted suicide. Now, the government has said that the main reason is to do with drugs and mobile phones. I appreciate that's significant factors but I think the root cause is overcrowding and the reduction in numbers of staff. It's no secret that prisons are disgracefully overcrowded. There's 10,000 more people in our prisons as compared to the spaces available. Now if you look at the prison population itself, the prison population in England and Wales is around 83,000 and the incarceration rate in our society is just over 148 prisoners per 100,000 of the population. That's 50 per cent higher than the rate in France, which is just over 98, and it's twice the rate it is in Germany, which is just over 77 people per 100,000. That's really causing us to ask big questions as politicians, as governments, as oppositions, and as society as well.

I believe that we need to get real about super short sentences. By that, I mean sentences that are less than three months. We should be honest that they are completely counter-productive. I've been to Scotland recently and found it very interesting there to hear about their presumption against short custodial sentences. I believe that that case study in Scotland can be a stepping stone to an actual wider debate about the effectiveness of England and Wales having the highest imprisonment rate in Western Europe.

Women are disproportionately affected by prison sentences of less than one month. A quarter of women who were sentenced to prison last year were actually sentenced to 30 days or less in prison. Almost 300 of them were actually only behind bars for less than two weeks. When you think about the disruption that causes to somebody's life, if they're in a job it probably means they lose their job; if they're defaulting on rent; and also problems in terms of childcare; problems in relation to family relationships; and of course the ongoing sentence that most people who go to prison have. The prison sentence doesn't end when somebody leaves prison. Far too often people always say 'that person was in prison' when they're described, so it's an ongoing prison sentence after the sentence, the ongoing sentence of the stigma of having been in prison.

Overall, it's 36% of prisoners, male and female, who are sentenced to less than three months, and it's 55% of women who are sentenced to less than three months. Of course most of them serve only half of the amount they were sentenced. That's 37,000 people a year in our prison system for super short sentences. Let's be clear about this. It costs a lot of money, £35,000 on average per year for a prisoner in the male estate and £43,000 per year for a prisoner in the female estate. It's a lot of expense, puts a strain on the system, doesn't do much to help the individual or society, things aren't in place to turn these lives around. There's people coming out of prison with serious addictions they didn't have when they went in. And, of course, people going in there sometimes have such a relationship with the criminal justice system and the state that becomes irreparable almost and sets them on a kind of path of reoffending on almost a revolving door basis. And of course, we've got to look at people on ROTL and IPPs as well.

We've really got to start talking up the value and purpose of, what they call in Scotland, 'community payback'. As I said, I think there's a false dichotomy between a liberal approach and an authoritarian approach. I think decent community sentences that are rigorous and worthwhile are what will work as an alternative to super short sentences. I think there would be public support for it if it was explained properly. I think many people would like to see people, rather than doing nothing in prison at great public expense, to see people doing productive things in the community. In Scotland, I learned about a project of community payback where people – as an alternative to prison – had helped to sort out a local graveyard that was in disrepair, and some of the people who had been given that as their community sentence actually carried on doing that work with members of their local community *after* the sentence had finished. I think it challenged local people as well, because with the best will in the world lots of people have preconceptions about people who have had dealings with the criminal justice system. It also gave local people confidence in community sentencing. They arrived at this idea of a project by consulting the community about what's important and what they thought needed doing in their area.

I think we do need to have a holistic approach in the justice system. The concept of 'smart justice', where the Ministry of Justice isn't left there in a silo that doesn't get many votes and isn't very interesting or popular but is a vital part of cross-departmental coordination. So for example, Labour's National Education Charter has to, in my view, take into account the education of people in prisons. Similarly, when we are talking about health, health in prisons is very important. We can't see these things as divorced from our policies for the rest of society. Prisons are part of society. People in the criminal justice system are part of society. Obviously, it is different and it brings its own significant challenges but it shouldn't be seen as something which is completely separate.

We've got to understand that half of the people who end up in a children's home later end up in prison. So now for various reasons – the creeping cuts to youth services in my view – we have the highest number of children in care than at any point since the 1980s. We are looking at our prison population, which is too big. If the logic follows, then there's a time bomb on its way – if the number of children in care is the highest it's been since the 1980s, then unless we do something pretty positive pretty soon then that's going to be storing up more people for a negative engagement with the criminal justice system.

Another good example from Scotland was where youngsters had been engaging in pretty unacceptable antisocial behaviour by chucking stones at firefighters. The previous approach would have been to send the police around to their house, but what they did instead was to arrange a meeting with the local firefighters. By the end of the meeting, rather than wanting to chuck stones at firefighters, quite a few of the youngsters wanted to be firefighters. As soon as you get into the habit of unnecessarily having police officers knock on your door, it kind of creates an 'us' and 'them' relationship between the young person and the state, which only builds up hostile engagements. It doesn't build up trust and it actually contributes to people going down the wrong path. We need to divert some people from the criminal justice system. Diversion work is very important.

Similarly, and this is another important point about smart justice and cross-departmental coordination. I'm very disturbed to read, and Angela Rayner our Education Secretary has spoken about this this week, schools unnecessarily excluding pupils and putting them in barbaric forms of solitary confinement. We need to get a grip of that as well, because that's putting people on the wrong form of relationship unnecessarily with the state and public bodies and that is storing problems for our criminal justice system and our society in the future.

In terms of rights and freedoms, when I talk about legal aid, I've talked in the past about legal being one of the pillars of the welfare state. By returning it to one of the pillars of the welfare state, I don't mean that justice is a commodity. I mean that just after the Second World War, it was really established that every citizen has the right to health, to education, as human rights. I think we have to reclaim the idea that access to justice – legal advice and legal representation – are human rights and citizen's rights too. The reason it has been so easy for successive governments to undermine legal aid and access to justice is because we've forgotten, or let it drop from the debate, that legal aid and access to justice are a pillar of the welfare state. When it comes to health and education, you don't get any politician from any political party really saying 'national health isn't that important, we can cut it'. Everyone agrees, at least rhetorically, that they need to be properly funded. The debate then is what does proper funding mean. But when it comes to legal aid, we have to make the argument in the first place that it should be properly funded, before we get into arguing about what does proper funding mean. So I think we really need to return to seeing it as a pillar of the welfare state so that we can all agree that it needs properly backing and *then* we can get into an argument about what does properly supporting it mean.

In our manifesto for the last general election, we announced we would return family law to being in the scope of legal aid. A few months ago at an event organised by Manchester Law Centre I announced that Labour would return housing legal advice to within the scope of legal aid – helping 50,000 households a year. We are exploring changes in relation to immigration, welfare and other areas as well. I also want to make an announcement in the future about how we should properly support law centres. I think law centres are a really key means to access to justice. As a Member of Parliament, I know very well from my advice sessions for constituents, how many people can't get to a lawyer. MPs' advice sessions are full of people who should be seeing a lawyer, but because they can't find a lawyer they come to see a MP. Finally I'd say that, because we believe in justice even where injustices were committed years ago, we back public inquiries into historic injustices, such as blacklisting. Just a quick point on the Grenfell inquiry: we pushed from the start for the Prime Minister to use her powers as a nominated minister under the Inquiries Act 2005 to ensure there's a panel on that Grenfell inquiry, not just a judge sitting alone. We should learn lessons from the Stephen Lawrence inquiry. She agreed at least to a formal panel and I hope that becomes an ongoing dialogue with the survivors and the bereaved families. We've also supported the Prime Minister, again using her powers under the Inquiries Act 2005, to ask the judge to expand the terms of the inquiry to include the role that race, religion and class played in the run up to the fire, the possible preventions of the fire. That hasn't been accepted yet but we hope it will be in due course.

That's just some of our principles we uphold when it comes to how we deal with criminal justice in government. I am very interested to hear your perspective. Questions are great but please don't hold back from giving me your ideas, perspectives and opinions. And after this meeting that dialogue can continue. We always welcome people emailing us their views as well.

Questions

John Samuels: You have not said anything about the advantage of judicial monitoring. I'm sure you are well aware of the efficacy of judicial monitoring. I wrote a paper with Jonathan

Aitken only last year which was introduced in this room. My question to you is how far could the use of sentencers mitigate the consequences of the present problems that we face? I'm not suggesting you supplant the role of prison officers, you just place a judicial officer in a supervisory capacity throughout the period of the sentence, so that sentencing ceases to be a snapshot moment.

RB: It's an important point you have made about having to avoid it being a snapshot, because if sentences are going to be rehabilitative and work, then of course taking a snapshot isn't the best idea. That's a really interesting point about a judicial officer having a supervisory role and informing and empowering magistrates and judges to mitigate the consequences of the current problem.

Mark Blake (BTEG): I wanted to pick up particularly around children and stopping the criminalisation of children. I'd like to hear a bit more around vulnerable children and particularly if you could pick up the aspect around the MoJ Youth Justice Board developing the secure schools. I wrote a blog for BTEG a few weeks ago highlighting concerns in terms of how that process is being developed, in terms of learning from things like the Lammy Review, and the current sense that we could end up with a model which is really a huge missed opportunity. And then the other aspect is really around women – certainly with the Local Authority – in order to get children's services interested in what we do, we've got to highlight the link with the care system. The violence within our prisons and youth estate also absolutely links back to the violence out in the streets.

RB: I suppose one thing I didn't mention was the age of criminal responsibility. You're talking about the criminalisation of children. Again if you compare us to the rest of Europe, we compare unfavourably in relation to the age of criminal responsibility as well. And you're saying that some of the council officers don't make the link between preventing women going to prison and the effect of their children?

MB: Yes, I think they work in silos. I don't think they 'get it' as to the intersectional nature of inequality and it runs rights across policy. That's I think a huge challenge, particularly when you come into local multi-agency arrangements.

Gemma Buckland (Justice Select Committee): Rory Stewart came to committee last week and was saying that he thought there would be upward pressure on the prison population, which was essentially out of the control of the government to deal with because it is a matter for Parliament in relation to legislation. I just wondered what you see as your role, both in opposition and as an MP, in creating the context in which a debate could be had about the size of the prison population.

RB: We very much welcome that debate. I think the Government's been making some positive rhetorical flourishes about the need to consider alternatives to the shorter sentences and that's very welcome, but at the same time they are saying that despite them wanting to reduce the prison population, as it stands it is inevitably going to increase. We are happy to work with the government on trying to ensure we have a sensible debate on trying to reduce the prison population. I think it's something that all politicians need to work together on. We want to see fewer people in prison, we think the way to start with that is not only talking about some people on IPP sentences, of course sentences which should never have been created in the first place, but also start to look at replacing super short sentences with proper workable rigorous community sentences. Catherine Heard (ICPR): You mentioned the Americanisation that's led to an ever-rising number of prison numbers in this country. One of the harder nuts to crack politically, which we have also adopted from America, is the increasing sentence length and reducing judicial discretion around sentences. I don't think the focus should all be on cutting out short sentences alone. The much harder job is to work out how to turn around the sort of 'juggernaut' of ever, ever increasing lengths of sentence and the harder cases are the mandatory starting

points for manslaughter cases and ever longer sentences of an indefinite nature, coupled with extreme difficulty of proving that you're safe to release at your parole hearing.

RB: It's a good point you make that replacing the super short sentences with non-custodial alternatives won't in itself sort this problem, and you're right when it comes to sentencing escalation. The problem is that lots of these suggestions come on their own and people feel political pressure to accept them. Like 'do you think people who skin animals alive should get that long in prison' or 'do you agree that women should be protected more' – yes of course, and then before you know it, the cumulative effect of all of these things is damaging. It's never presented as a big package of sentence escalation really. I think we need to have a difficult but serious conversation about what the purpose of prison is and what good prison can do. There's an assumption, often driven by elements of the media, amongst much of the public that – in the words of Michael Howard – 'prison works'. We need to have a discussion about that and ask 'does prison work?'. What are the positive things that prison can provide to society, to people going to prison, and what are the things it can't in any form provide? Judges should have, in my view, more discretion when it comes to sentencing. One of the ways I justify this if I'm asked about it is this really interesting survey by ICPR where members of the public were given a potted, anonymised history of a real life criminal case and also were given a number of options as to what sentence they would give if they found the person guilty. It was fascinating that the judges gave tougher sentences than the members of the public, as people would think 'oh these judges are giving slaps on the wrist, letting people off scot-free and the public are outraged' but actually it was the other way around.

Rod Clark (Prisoner's Education Trust): Can I just ask about joining up and in particular joining local services up with diversionary agendas and supporting agendas to prevent people from getting caught up in this system. If local authorities had more skin in the game in terms of the costs of the criminal justice system, they might pay more attention to some of those up-stream effects to prevent people drifting into the system and to ensure that where people did get caught up in the criminal justice system, information is available to sentencers about the full circumstances of their case so that appropriate, proportionate sentencing happens. That all comes under the agenda of justice devolution, which wouldn't necessarily mean devolving the running of prisons but might involve devolving the costs of somebody sentenced to the local authority from which they've come, to which they're going to resettle. Is justice devolution something which is on your agenda?

RB: My initial instinct is to be cautious, but I'm happy to be persuaded otherwise. Firstly local government have cuts of around 50 per cent so adding an additional cost to them when they're struggling to run their basic services may not work. Many of the services that local authorities are meant to provide which stop people falling into bad habits which lead to them ending up in the criminal justice system have been cut, and that is causing problems.

RC: Looked at the other way, there is billions of pounds being spent on a prison system which is a waste of money in terms of the positive effects that it produces in the vast majority of cases. And if local authorities can just get a piece of that action to divert that expenditure into the front-end services, then it's justice reinvestment.

RB: I see what you mean.

Laurie Hunte (Barrow Cadbury Trust): We have spoken a lot about how people start their relationship with the criminal justice system. I want to focus on how people *end* their relationship. Recently the Supreme Court had a case regarding criminal records disclosure and I just wondered if you have any thoughts on what reform of criminal records regime could and should look like.

RB: David Lammy's made some positive suggestions around this in the Lammy Report. His proposal was sealed records and I think that's a welcome step. I'm open to other ideas and I do recognise that there has to be an end to the sentence and some people are actually serving sentences which become life sentences, the life sentence of unemployment. If you are imprisoned, your sentence should end when you leave prison and we've got to do something to stop that because if people can't be reintegrated into society, if people can't develop a stake into society, if people can't get employment, then it's much more likely that they are going to reoffend.

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