

The Right Hon Michael Gove MP
Lord Chancellor and Secretary of State for Justice
Ministry of Justice
102 Petty France
London
SW1H 9AJ
United Kingdom

22nd January 2016

Open Letter to the Lord Chancellor and Secretary of State for Justice Michael Gove MP

Dear Mr Gove,

We are writing as a group of concerned organisations, bodies and individuals working in the field of criminal appeals. As you are aware, there have been significant cuts to legal aid over a number of years. This has had a detrimental effect on criminal appeal work.

You may be familiar with the US documentary *Making a Murderer*, available on Netflix, and the podcast *Serial* first broadcast at the end of 2014. For all the serious issues these two documentaries reveal about the US justice system, they highlight a criminal justice process that is far more accountable and transparent than our own. The ban on cameras in our courts means that we will never have access to the kind of 'open justice' that *Making a Murderer* depicts. In the US, court transcripts are easily accessible and frequently vital in successful appeal work.

By contrast, in England and Wales court transcripts are routinely destroyed after five years, and audio recordings after seven years, unless they have been placed under a preservation order. Once destroyed, the important verbatim record of what was said in court is lost forever. In some cases even the judge's summing up is destroyed and no copy is retained, which means that no record of the trial exists and there is no chance of a fair review of the case. This leaves a situation where commonly, only the stale and fragmented mess of documents from case files, often limited to police interviews, statements and reports given prior to trial, are available to those working on criminal appeals.

In the search for the new evidence needed for an appeal, this is highly problematic.

Consider the case of Omar Benguit, convicted of murder in 2005 after three separate trials on the same murder charge. The court transcripts from these three trials would have provided an invaluable insight into what actually happened in the court room for the third jury to find Benguit guilty beyond reasonable doubt. Benguit has been in prison trying to clear his name since 2003 but despite this, all three sets of court transcripts were destroyed several years ago.

In this new digital age, it is both reckless and irresponsible to systematically destroy the record of court proceedings. Being able to access a record of what was said in court will work towards a more accountable criminal justice system. Appellants in our jurisdiction deserve a justice process that is both open and transparent. It is inexcusable to promote a secretive process where records of important criminal proceedings are allowed to be destroyed within an unrealistic period of time.

We respectfully ask that you, as a matter of urgency, intervene to stop the destruction of court transcripts after five years and audio recordings after seven years, as these should be accessible to an appellant indefinitely. We will also invite the Criminal Cases Review Commission to support this request.

Yours sincerely,

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Dr Ros Burnett, research associate at the Centre for Criminology, University of Oxford

Dr Damian Carney, senior lecturer, Cardiff School of Journalism

Stephen Christopher, lecturer, De Montfort University

Joanne Clough, senior lecturer in law, Northumbria University

Amanda Crutchley, pro bono co-ordinator, University of Law

Stephen Cutter, legal advice clinics manager, BPP University

Dr Dennis Eady, case consultant, Cardiff University Law School Innocence Project

Laurie Elks, former commissioner, Criminal Cases Review Commission

Georgina Firth, lecturer and convenor, Lancaster University Innocence Project

Margaret Gardener, director, False Allegations Support Organisation

Luke Gittos, solicitor, Hughmans Solicitors

Dr Andrew Green, co-ordinator, INNOCENT

Holly Greenwood, researcher, Cardiff Law School Innocence Project

Nicholas Griffin, chairman, Falsely Accused Carers and Teachers

Paddy Hill, founder, Miscarriages of Justice Organisation (MOJO)

Chaynee Hodgetts, lecturer, Bangor University

Diana Kirsch, lecturer, BPP Law School

Glyn Maddocks, founding trustee, Centre for Criminal Appeals

Dr Bharat Malkani, director of the criminal appeals assistance unit, University of Birmingham

Michael Mansfield QC, head of chambers, Mansfield Chambers

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Dr Carole McCartney, reader in law, Northumbria University

Professor Claire McGourlay, manager, Sheffield School of Law miscarriage of justice review centre

Cathy Molloy, project manager, MOJO

Gloria Morrison, co-ordinator, Joint Enterprise Not Guilty by Association (JENGbA)

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