Scuttlebutt (n -- gossip/rumour)

CL&J Blog

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Felicity Gerry on fairness, budgets and that dress

Rape Must be Properly Proved in Scotland

News that a Scottish rape conviction was quashed on appeal has increased concern at the fairness of Scottish legal procedure and the fallout from the Cadder case which criticized their outdated mode of interviewing suspects without legal representation.

G was convicted after a trial at the High Court in Glasgow and sentenced to five years’ imprisonment. His conviction was quashed on April 21, 2011, after the appeal court ruled that he had not received a fair trial.

The appeal was not opposed. The BBC reported that in November 2008, G was initially detained and taken to a police station where he was questioned and charged with a minor assault on a woman.

Later that morning, he was allowed to see a solicitor but no charge of rape had been mentioned. Hours later he was interviewed again, this time about a rape allegation. He asked for a solicitor and was refused. He said that admissions he made were untrue and that the contents of the interviews should not have been before the jury.
Remarkably, the trial Judge, Lord McEwan, wrote a report to the Appeal Court in which he said, "I maintain firmly of the opinion that this appellant did not receive a fair trial due to a view taken after an evidential hearing." Apparently, another Judge had previously refused a defence objection to the admission of a police interview and, whilst Lord McEwan was of the view that he would have disallowed the interview, he felt he could not overturn that decision.

He referred to the Supreme Court ruling that police interviews without access to legal representation are unfair, unjust and contrary to art.6 of the European Convention of Human Rights.

News agencies expressed concern for other rape victims whose cases may well be affected by poor police procedures. I find it amazing that the procedural rules in PACE 1984 which provide a comprehensive set of fair rules for the police to follow have not been copied north of the border and it takes a Judge's letter, post conviction, to highlight a miscarriage of justice.

That this was a rape case does not absolve the Scottish authorities from ensuring that an offence is properly proved in a fair trial.

**Does the DPP Need the CPS?**

In an interview with *The Guardian* recently, Keir Starmer QC, the DPP said that budget cuts will not affect CPS service to victims of sexual offences and domestic abuse and that restoring confidence so that victims report rape is key to a successful prosecution.

His is on a personal mission having requested that all perverting the course of justice cases that involve retracted rape and domestic violence allegations should be submitted to him for approval after also issuing interim guidelines when a rape victim was released on appeal from an eight month prison sentence for perverting the course of justice by falsely retracting a true rape complaint.

The DPP plainly recognizes that there is a fundamental difference between perverting the course of justice when a false complaint is made as opposed to when a true complaint is retracted and that the fallout from that case has undermined public confidence.

Prosecutors have to be fearless in decisions to prosecute but also in making a decision not to prosecute, regardless of the headlines and, no doubt, Keir Starmer QC has that ability. What springs to mind, however is why there is a need for such a burdensome system of charging offenders when one man is capable of making decisions and improving public confidence.

**Royal Wedding**

I couldn't let this week go by without mentioning THE WEDDING. In 1953 my father lined the route for the Coronation when he did his National Service in the RAF. In 1981, he took me to line the route with his RAF chum and family.

I went to a wedding at St James' Barracks next to Buckingham Palace on the day of Diana's funeral. Lining the Mall is therefore a bit of a family tradition for me. On Friday last we balanced the children on the railings and admired the tops of international heads, sang to the hymns over the loud speakers and hurled ourselves in sufficient time to catch a glimpse of the kisses.

Thanks to all the lawyers out there who tweeted THAT DRESS and all the other details we couldn't see! Great Day!