

<https://www.thetimes.co.uk/article/jerry-hayes-treasury-cuts-have-crippled-justice-system-rp2fqd8d7>

Treasury cuts have crippled justice system

Jerry Hayes



I used to be so proud that I was part of the finest criminal justice system in the world. An independent Bar fighting fearlessly for their clients; a Crown Prosecution Service that would carefully review the evidence; a judiciary independent of government; police forces purged of corruption. But in the past seven months I have prosecuted two trials where serious miscarriages of justice were averted at the 59th minute of the 11th hour.

Had experienced lawyers not intervened, two young men would have been given substantial custodial sentences, their lives trashed and their reputations in tatters, with little hope of a successful appeal.

The first case was in May. It involved guns found in a van loosely associated with the defendant, and things were looking bleak for him until the CPS lawyer delved deeper and discovered that the forensic report was misleading. The boy walked free.

Yesterday I offered no evidence to counts of multiple rapes by a young man, Liam Allan, of good character. I had opened my case to the jury and the complainant had given her evidence. The defence had asked me if a disc containing downloads of her phone was in my possession.

I hadn't seen it and neither had the CPS. The officer in charge told me that he had it, but that it was clearly not disclosable as it just contained very personal material; nothing capable of undermining the prosecution case or assisting the defence.

My alarm bells began to ring, as I hadn't reviewed the material personally. I am of the old school and take the view that if the defence want to see evidence they should have it unless it's just a fishing expedition. All 2,400 pages and 50,000 messages were handed over. It blew the prosecution case out of the water. Clearly the officer hadn't reviewed it in any detail. He had failed in his duty of disclosure.

I told the judge that this was the most appalling failure of disclosure that I have ever encountered.

The CPS are under terrible pressure, as are the police. Both work hard but are badly under-resourced. Crown court trials only work because of the co-operation and goodwill of advocates and the bench — but time pressures are making this increasingly difficult.

Because of the swingeing cuts that the Treasury continuously imposes, the system is not just creaking, it is about to croak.

Jerry Hayes was the prosecuting barrister in the case of Liam Allan

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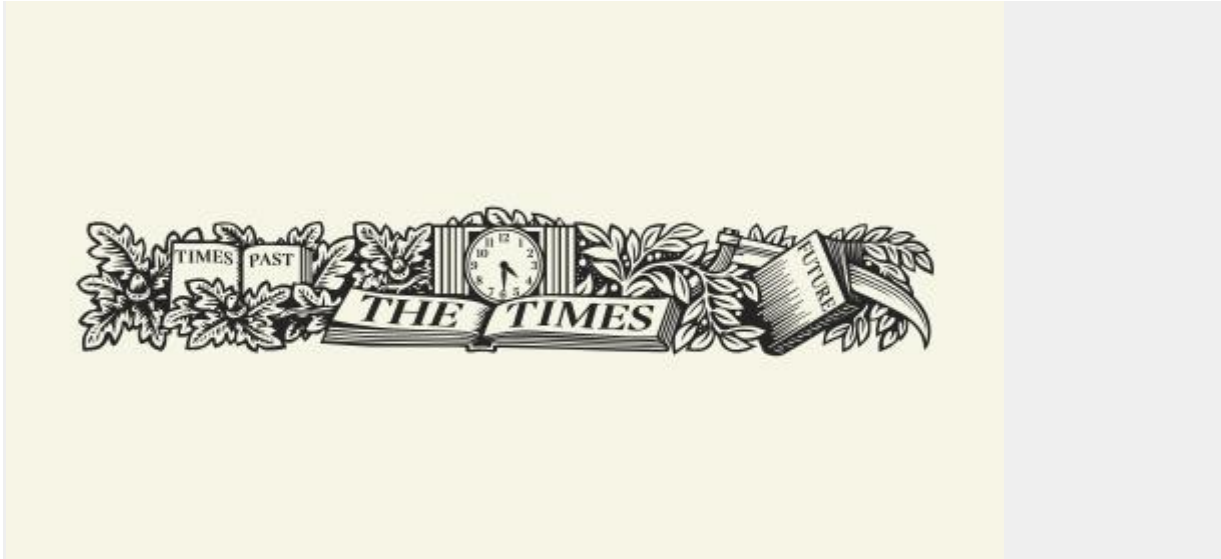
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David Brown

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December 15 2017



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DWT Dec 16, 2017

I am a retired Police Officer and read about this case with dismay. The role of the Police in this instance is to investigate the allegation made and follow all reasonable lines of enquiry in a search for the truth. The Investigating Officer gathers all the relevant material for the case and reviews it for disclosure purposes. In complex cases, often one specific Officer is designated to deal with all disclosure related matters. Any material that is likely to assist the defence or harm the prosecution must be disclosed. This duty is ongoing. If there is sensitive material then Law and procedure dictate what needs to occur. For whatever reason, the Investigating Officer failed in their duty to disclose material. It is their responsibility and theirs alone. The CPS is unaware of what material is available unless they are told by the Police. They should not have to ask. There needs to be an investigation in order to establish the facts. Thankfully, the Barristers involved in this case did their jobs. An innocent man has narrowly escaped wrongful conviction and imprisonment. This should never have happened and must not be allowed to happen again.

Flag

5RecommendReply

mumble Dec 23, 2017

Unfortunately, not happening again requires not only a budget but wise use thereof, meaning proper training, proper supervision and proper auditing.

I'm not holding my breath.

Flag

RecommendReply

C J Delmege Dec 16, 2017

Cuts are only part of the story (and not relevant here). I've lost count of the number of reports of waste and incompetence by the CPS and the Police. This particular case should never have got near a court.

I acknowledge there are many fine coppers out there doing their damndest. "Lions led by donkeys" springs to mind.

Flag

1RecommendReply

John OConnor Dec 15, 2017

The overriding thing in this case is the lack of simple examination of evidence and withholding it by police. This is not dependent on funding, Justice should be served regardless of funding of the fat-cat legal system and police who had evidence and ignored it.

If this innocent man was tried and falsely convicted he would have spent 20 years in jail with sex-offenders. That would have cost the country well over one million pounds. The country can afford that to send an innocent man to prison and police and the legal system complain that lack of funding can cause injustice.

What hope do we have of justice?

Flag

3RecommendReply

Adrian Turner Dec 15, 2017

It is true that budgets and, consequently, staffing levels have been cut considerably, but that does not explain the failure in the rape case. An officer had the material and either failed to look at it properly, or failed or chose not to appreciate its huge significance.

Increasing budgets does not improve competence.

Flag

6RecommendReply

Bryan Weston Dec 15, 2017

And many of our judges, on high salaries etc., are not exempt from giving meaningless judgements. Occasionally, almost a rarity, a judge will override what the letter of the law lays down, and use a bit of common dog.

Why does everything in public life carry the tag, insufficient funds? It can't always be the case.

Flag

1RecommendReply

Ruth Bennett Dec 15, 2017

50,000 messages had already been transcribed onto 2,400 pages...which must of cost £1,000s in staff time. Passing the information onto to the defence council, by e-mail or post would have only taken 10 minutes of staff time. I therefore don't buy the 'cuts' argument and would suggest either incompetence or a PC belief in getting a guilty verdict in a rape case were to blame.

Flag

6RecommendReply

Lazy Dogg Dec 16, 2017

No.....as I understand it the police have IT which assists in mining data . It would not have been a time - cosuming process . This case is an utter scandal . At the very least the contrast between Alison Saunders' non- apology apology in today's Times and Jerry Hayes' (much fuller) account is striking. A truly independent and public review is required at 2 levels

(1) of all those directly involved in this case at police / CPS.
Specifically - who dealt with disclosure both initially and (critically) in response to the Defence team's pre-trial requests ?
(2) CPS senior management - to include disclosure of all relevant internal CPS guidance and communications to / from HM Treasury is required

Flag

1RecommendReply
mumble Dec 23, 2017

Why they were printed out is mysterious to me: if you've got the facility to extract the relevant data from the cell 'phone, as the police clearly have, it doesn't take long to download into a computer file, which could have been e-mailed to the prosecution (We are in the 21st century, yes?) and viewed in a text editor or word processor using the "Find" facility to look for keywords.

It's not intrinsically that big of a task, but it seems that the police put an awful lot of effort into making it time-consuming and difficult.

Flag

RecommendReply
E Mitchell Dec 15, 2017
Jerry,

The police officer lied to you. He pretended her had reviewed the material when he had not. That, or he had reviewed it and wanted to suppress it to "support the victim" (not complainant) and lied to you about it. Either way, he lied to you.

Flag

2RecommendReply
John Adsett Dec 15, 2017

Just what do "cuts" have to do with a copper handing over evidence to the defence?
Jerry Hayes gamekeeper turned poacher?

Flag

1RecommendReply
Lazy Dogg Dec 16, 2017

Surely the answer is blindingly obvious ?But if it is not to youthe answer is - that the Defence team must then read such material And trials are lengthened as a result. This is both literally and metaphorically the price of justice.

Flag

RecommendReply
mumble Dec 23, 2017

I don't think the three-day trial is a bigger deal than the two years waiting for it, with the defendant (called by the police, from Day 1, "the perpetrator" on bail and his life on hold.

And, notoriously, barristers, after such long waits, have been known <cough> to skim through the evidence on the morning of the trial.

Something's wrong there, too.

Flag

RecommendReply
Did You Ring Sir Dec 15, 2017

The treasury have to do their masters' bidding I suppose. But they might be a bit more honest passing up the line (kicking the butts of those they report to) the implications of the cuts they try to impose. In my days of old some Treasury twerp argued that a warship didn't need waterproof communications equipment on its open bridge. One supposes his life experience of the violence of the sea was of a kiddie ride on a seaside fairground. Not nearly to be compared with this appalling circumstance of course. But might illustrate how bad is this country's un-joined-up governance,.

Flag

1RecommendReply

Sameen Farouk Dec 15, 2017

I'm glad for this. But its not just Treasury cuts. Police forces are also funded via the precept. The precepts are not covering the cuts as a result of the changes to the funding formula used for police force funding. Those changes came from the Home Office who administer the grant. The Home Office also set the force iffy targets when it should have been focusing on ensuring the improvement of the recording of crime.

Flag

RecommendReply

Thersites Dec 15, 2017

It's the same old attitude from the Treasury, who know (or think they do) the price of everything and the value of nothing.

Flag

1RecommendReply

David Hope Robertson Dec 15, 2017

'He had failed in his duty of disclosure.'

Actually he had been grossly negligent and he lied to cover that up, showing no concern for the likely consequence that an innocent young man would have his life ruined as a direct result. Not the best example to use to assign blame on Treasury cuts, but consistent with the culture of shifting responsibility to the government for culpable failure by individuals.

Flag

3RecommendReply

mumble Dec 23, 2017

Part of the "Rape victims *must* be believed" culture, here clearly undermined?

Flag

RecommendReply

Saint John Dec 15, 2017

It doesnt cost anything to hand over a file or a disc.

Flag

3RecommendReply

Robert Walters Dec 15, 2017

This is nothing to do with shortage of funds.

The police officer did not review the messages in a very serious case of rape.

It was a failure to follow normal investigating procedure and disclosure.

Maybe the police would like more funds and yes they have to prioritise how they spend the money given to them. But that does not mean failing to carry out a full investigation where a person is charged with 6 rapes and faces a long jail sentence.

Flag

7RecommendReply

Freebooter Dec 15, 2017

@Robert Walters

"The police officer did not review the messages in a very serious case of rape.

It was a failure to follow normal investigating procedure and disclosure."

That would be bad enough. Or, he did review the messages and kept schtum?

Flag

1RecommendReply

mumble Dec 23, 2017

Yup.

Can you say "Rotherham"?

Flag

RecommendReply
Penny Dec 15, 2017
Well done to Jerry Hayes.

Flag

8RecommendReply
Freebooter Dec 15, 2017
@Penny

If you think this correction of justice was anything to do with the writer of this article then think again. The case would have proceeded had the defence not asked for a copy of the disk containing evidence that cleared the accused. Once the defence had that material the prosecution had absolutely no choice but to withdraw the charges. Well done to the defence barrister for doing his job.

Flag

1RecommendReply
Penny Dec 15, 2017

@Freebooter @Penny "His lawyers had repeatedly been refused access to records from the woman's telephone because police insisted that there was nothing of interest **for the prosecution or defence**, the court was told.

When a new prosecution barrister (Hayes) took over the case the day before the start of the trial, he ordered police to hand over any telephone records. It was revealed that they had a computer disk containing copies of 40,000 messages."

No, I think well done to Jerry Hayes still stands. Yes the prosecution should have worked out there was something amiss, but Hayes is the one who asked for the records.

Flag

3RecommendReply
Freebooter Dec 15, 2017
@Penny @Freebooter

No, the defence barrister asked for the records and was almost certainly going to raise the refusal to supply with the judge. Had he not asked for the records we will never know whether prosecuting counsel would have bothered to check was the evidence was.

Flag

RecommendReply
C J Delmege Dec 16, 2017
@Penny @Freebooter I second that.

Flag

RecommendReply
Penny Dec 16, 2017
@C J Delmege @Penny @Freebooter Hayes took over the case the day before. He ordered the release of the records to the defence at that time. The defence lawyer read them the night before and in Court asked for a dismissal. Hayes offered no evidence knowing the case was improperly continued by CPS.

Yes the case would have collapsed but who brought that forward so that the defence could confidently request an immediate dismissal?
Jerry Hayes.

Flag

RecommendReply
C J Delmege Dec 17, 2017

@Penny @C J Delmege @Freebooter I second your original post (all very confusing)
Well done JH !

Flag

RecommendReply
Penny Dec 17, 2017

@C J Delmege @Penny @Freebooter Ah. Good.

Flag

RecommendReply
mumble Dec 23, 2017

The defence barrister had, indeed, asked for the records — several times, I think — and got nowhere. Hayes somehow had more clout.

The defence would probably (certainly?) have raised the omission, but how much weight this would have carried with the judge and jury is a matter for speculation: it would then have come down to the usual he-said/she-said of rape cases, and it's not beyond the realms of possibility that the deciding factor would have been which witness the jury found most sympathetic.

Flag

RecommendReply
Steve Williams Dec 16, 2017

If the defence team had done their job properly they would have got the defendant's phone analysed months before this. He knew the texts were there why weren't they being proactive? I presume legal aid limitations.

This in no way exonerates the police or prosecution but let's not make out the defence barrister as a hero for managing to spot the blindly obvious once it had been received.

Flag

RecommendReply
Rebecca Bartleet Dec 16, 2017
@Steve Williams

.
They were trying to do their job. Quote from yesterday's report:-

.
'His lawyers had repeatedly been refused access to records from the woman's telephone because police insisted that there was nothing of interest for the prosecution or defence, the court was told.'

Flag

1RecommendReply
Freebooter Dec 16, 2017

Read the news before making a comment. The defence team had repeatedly asked for them and the police has refused to hand them over on the grounds that they contained nothing relevant to the case.

Flag

1RecommendReply
Lazy Dogg Dec 17, 2017

This is a disgraceful or at least ignorant observation. What precisely do you say the Defence should have done (having made repeated requests which had been refused) ?

Flag

1RecommendReply
Steve Williams Dec 17, 2017

You are missing the point in your haste to be angry. They have HIS phone, he knows it contains those messages. Take his phone for forensic examination to find the messages. If that wasn't available obtain basic details from the phone company to use as the basis of a s8 application to the court. That takes you further than a disclosure application in the dark and the court will order the production of the records. Maybe it's not me that's ignorant of the law?

Flag

RecommendReply
Rebecca Bartleet Dec 17, 2017
@Steve Williams

No, they didn't not have his phone as he had replaced it. In any event, it would not have included all the messages that she sent to her friends about him, which were also material to the case.

The full phone record existed, and the police had it in their possession. They were quite wrong to withhold it from the defence, and that led to a huge waste of public time and money, and considerable stress to this young man and his family - all of which was entirely unnecessary.

The prosecution barrister has stated in this article that this was the worst case of non-disclosure that he has ever seen, but you apparently know better!

Flag

2RecommendReply
Lazy Dogg Dec 17, 2017
No I am not .

It has been made clear in numerous reliably-sourced observations that his phone or at least the messages on it were Not available.

Flag

RecommendReply
Lazy Dogg Dec 17, 2017
No I am not .

Reliable sources (including the defendant's solicitor) have made clear that his phone was Not available.

It's not me being hasty here.

Flag

RecommendReply
Steve Williams Dec 17, 2017

I agree the police or prosecution are at fault but there are things that the defence could have done and didn't. By getting his records which you can do without his phone it would have provided sufficient evidence to apply for a specific order rather than general discovery. That would have put the defence in control. I know how bad the prosecution can be, I've been fighting them for 25 years. I'm simply saying there are ways to put pressure on which don't appear to have been done.

Flag

RecommendReply
mumble Dec 23, 2017

BTW, the defendant lost his 'phone before the complaint was made, so he asked that her 'phone be examined: it was from her 'phone that the data was drawn.

Flag

RecommendReply
mumble Dec 23, 2017

Not to mention what it costs the taxpayer to keep a convict for 20 years.

Flag

RecommendReply
mumble Dec 23, 2017

Um... It was the *prosecuting* barrister who did the job. Which makes matters even worse.

Flag

RecommendReply
David Jones Dec 15, 2017

Raise the police retirement age to 65 instead of 55 and you have plenty of people to cover all the man hours and paperwork that is claimed to be at the heart of the additional personnel required.

After all, the rest of us have to work until we are well into our 60's so why shouldn't they. Problem solved.

Flag

18RecommendReply

Bryan Weston Dec 15, 2017

@DJ. I thought the 65 retirement age only applies to the private sector?

Flag

RecommendReply

Steve Nesbitt Dec 15, 2017

If I've understood this article correctly, in both cases the miscarriage was averted by the prosecuting counsel. What were the defence counsel doing in both cases?

Flag

5RecommendReply

Penny Dec 15, 2017

@Steve Nesbitt You can only use what you are given by the Police, and in this case not even the prosecution was given the evidence. Don't you get it?

Flag

4RecommendReply

CAK Dec 15, 2017

@Steve Nesbitt Steve, if evidence is not given to the defence how are they supposed to know, whether there is something relevant that has been missed. Unfortunately, as I recall the rules of evidence, the defence is not entitled to receive all evidence, but only that which the prosecution provide them with albeit there are rules about what should be disclosed.

Flag

RecommendReply

mumble Dec 23, 2017

Yes, there are rules. [This article](#) goes into them in quite a lot of detail.

Flag

RecommendReply

Jared Dann Dec 15, 2017

@Steve Nesbitt I'm afraid you haven't quite understood correctly Steve. The issue in both cases was that the CPS have a duty to disclose to the defence any material which they (or more usually the police) have uncovered in the course of the investigation which may either assist or harm the defendant's case. The CPS failed in that duty, because the police had failed to tell the CPS that the material was disclosable. Until the material is disclosed there is nothing defence counsel can do about it, because he/she has not been told by the prosecution that it exists, or been provided with a copy. That is why the situation is potentially so serious.

Flag

5RecommendReply

David T Dec 15, 2017

@Steve Nesbitt

You haven't - in the second, more recent, case counsel for the defendant requested to review copies of the relevant material; there's little the defence can do, however, if the prosecution deny them access. Mr Hayes (correctly) instructed his client to hand over the material, but counsel for the defence first called attention to the matter.

In the former, the issue was raised by counsel for the prosecution, however, lawyers for both sides are required to ensure the material presented to the court is fair and proper. Counsel for the CPS would have had access to the forensic evidence before the defence, and therefore had a duty to flag any problematic material. Remember: trial is costly for the CPS and so counsel for the prosecution would advise its client if a case were unlikely to result in a conviction; the standard of proof is high for criminal matters.

Flag

1RecommendReply
mumble Dec 23, 2017

The CPS are hell-bent on raising the proportion of successful rape convictions, as well they should be, but they have now swung the pendulum too far, and it's plausible that this mindset has percolated. *cf.* Ronald Reagan never having to give explicit orders about, um, Star Wars? Or something. But The System knew what he wanted, so it was delivered. Or, at least, pursued.

[I seem to remember that this was when the phrase "plausible deniability" entered common usage.]

Flag

RecommendReply
Richard Dec 15, 2017

The problem is that the evidence is held by the police. The defence would not have had access to the phone evidence, unless the prosecution disclose the evidence. The prosecution are under a duty to disclose all relevant information. In the rape case the prosecution/investigating officer either didn't review all the information on the phone, or did review and decided it wasn't relevant. The defence appear to have asked for the information previously but it wasn't revealed by the CPS. When it got to court it the CPS barrister decided to review the decision made by the investigating officer and that is when the evidence was revealed.

Flag

RecommendReply
Saint John Dec 15, 2017
@Steve Nesbitt

They asked for it and didn't get it .

Flag

2RecommendReply
talob Dec 15, 2017

@Steve Nesbitt One the face of it, if the Defence are not given full access to the evidence then they are stymied. But I wonder, in the guns-in-van case, if a Defence forensic expert had reviewed the CPS expert's opinions (although this too might have been compromised if primary evidence had been withheld). In the current case I wonder if Mr Allan said to his lawyers 'but what about all those texts'. Perhaps the Defence team did ask for this evidence - some time before. They clearly had some knowledge that a CD might exist even if it was not until during the actual trial.

Flag

RecommendReply
Mjolnir Dec 15, 2017
@Steve Nesbitt

Plainly they will have been involved, but it's a testament to the quality of advocate in such cases that as prosecutors they immediately see that justice needs to be done - and do it.

Jerry Hayes deserves all our gratitude.

And some glasses that suit him. Just saying.

Flag

1RecommendReply
Beazle Dec 15, 2017

@Steve Nesbitt They don't get to see the unused material. Thats the point ! Only the police have it and the CPS have to trust them.

Disclosure in criminal cases has long been a lottery -and it is now at its worst.

Flag

1RecommendReply

Stephen Follows Dec 15, 2017

@Steve Nesbitt The main Times report of the case suggests otherwise:

'Julia Smart, for the defence, said she received the details of the woman's text messages on the evening before she was due to cross-examine her, so stayed up reading them. When she told the court what she had found, the trial was halted.'

Flag

RecommendReply

Josephine O'Carroll Dec 15, 2017

@Steve Nesbitt Repeatedly requesting the data/disk and being refused by the police and CPS...

Flag

RecommendReply

chiaromonti Dec 15, 2017

@Steve Nesbitt The defence were never shown the relevant material. It was never disclosed. They thought she had deleted messages from her phone because none were disclosed as they should have been. Non-disclosure of relevant material is by far the greatest immediate problem in the criminal justice system and can undermine the prospect of juries reaching the right decision. It must be addressed.

There are too many cases - most of which receive no publicity - where important material that should have been disclosed is discovered during the trial as a result of persistent questioning by the defence. Some police officers simply do not understand their obligations and all are working under too much pressure. Short cuts create injustice. Similarly with the CPS, their lawyers are handling too many cases at the same time and they do not check disclosure with sufficient thoroughness.

Given the number of cases where highly relevant material comes to light at the last minute, it must follow that there will be some cases where relevant material has never been disclosed and possibly innocent defendants convicted.

Flag

RecommendReply

Jamie Stevenson Dec 15, 2017

@Steve Nesbitt As I understand from news reports of the Liam Allen case, the defence counsel was persistently requesting - and being refused - access to the mobile phone records.

Flag

RecommendReply

Freebooter Dec 15, 2017

@Steve Nesbitt

In the second case it was the defence counsel who asked for the disk.

Flag

RecommendReply

Lazy Dogg Dec 16, 2017

A - repeated requests were made but were batted aside.

Whether this was merely gross incompetence, financial pressures or willful deceit remains to be determined.

Flag

RecommendReply

John Sheard Dec 15, 2017

Why does everyone in the private sector always blame any dangerous cock-up on cuts?

In this case, the police have a long record of pushing for convictions on doubtful evidence in order to improve their clear-up rates and the CPS has been responsible for so many disasters (like losing files or even failing to turn up to trials) that it probably not fit for purpose.

Could it be that, of occasion, professional incompetence is to blame?

Flag

16RecommendReply
Percy Dalton Dec 15, 2017
@John Sheard public sector

Flag

RecommendReply
Graeme Harrison Dec 15, 2017
@John Sheard

"Why does everyone in the **private** sector always blame any dangerous cock-up on cuts?"

The police are in the public sector. The CPS is in the public sector. Counsel for the CPS and for the Defendant were both in the private sector.

Flag

RecommendReply
Harold Hare Dec 15, 2017
I trust we will see this woman prosecuted for Perjury and Wastng Police Time.

Flag

10RecommendReply
Freebooter Dec 15, 2017
@Harold Hare

And the copper who decided that phone calls which cleared the accused were not revealable?

Flag

RecommendReply
Gary Stapleton Dec 15, 2017
Cuts in the criminal justice service leading, or even perhaps excusing, the unbelievable incompetence within both the Police Force and the legal system. Lawyers are like Doctors, never take them at face value or show complete trust, and always seek a second, or even third opinion. A life interrupted, even destroyed, due to police complacency and idleness, failing to investigate the obvious, combined with the blatant fabrication / lies of the accuser. This woman should be prosecuted for perverting the course of Justice and given a custodial sentence. Justice, going back to the Magna Carta, should be equal for all, with the premise of innocence until proven guilty. I applaud the Lawyer who finally demanded the 40,000 messages from The Police and the judge who rightly hurled the case out of court. However, it gives the public at large little or no faith in The Police Force and Lawyers, the former driven by inane politicians to hit ridiculous targets and the latter most probably by personal avarice, status, reputation and an overriding desire to secure a conviction.

Flag

5RecommendReply
Foreversideways Dec 15, 2017

No I think the police officer alone or in concert chose to hide the evidence to obtain a prosecution. As for cuts, there would be more money if it wasn't wasted on prosecutions like this one.

Flag

13RecommendReply
Brexit Blue Dec 15, 2017

Yes, there are individual errors involved but the point made by Jerry is correct, the CPS and Police are under huge pressure because of the cuts made to the Criminal Justice system and policing.

I've been involved in many prosecution cases over the years and the current situation is worse I've known. Huge delays in getting cases to court, finding a barrister to take a case and no admin support. I'm currently involved in a case where subject has been on bail for 3 years.

The amount of documentary evidence required in complex cases is now mind-boggling particularly newer crimes such as Cyber etc.

Lot of armchair experts on here.....

Flag

RecommendReply

David Jones Dec 15, 2017

@Brexit Blue Armchair experts that read report after report, every day, of inefficiency, corruption, wastage and down right disgraceful work by the police force.

Flag

3RecommendReply

Prabhat Dec 15, 2017

@Brexit Blue You are deliberately missing the point and seeking to obfuscate the issues here.

There was clear material evidence in this case in the form of text messages which clearly showed that the complainant's original claim of rape was false.

The fact that the police did not pass that on to the defence side (and probably didn't pass to the CPS also in the beginning) shows that this shambles of a case is not about funding but simply about incompetence or, worse, deeply skewed policy led mindset (rather than based on evidence).

Flag

2RecommendReply

bluearmyfaction Dec 15, 2017

@Prabhat @Brexit Blue There were 50,000 messages. What if there were 100 messages that blew the case out of the water? You could read 40,000 useless messages and never come across one.

Flag

RecommendReply

gweilow Dec 15, 2017

@bluearmyfaction @Prabhat @Brexit Blue Sorry, this is the digital world - 2017...

The data would be on a memory stick. A few easy searches in the files would have quickly revealed the truth....as the defence team proved.

Flag

RecommendReply

Saint John Dec 15, 2017

@Brexit Blue

Well having been on Jury service and observed the legal processes its hardly surprising they find it hard to get work done. Its shambolic. Acres of paper. Endless interruptions. People dressed up in strange clothes .

Flag

RecommendReply

Ian Burgess Dec 15, 2017

This is not just about cuts. It's also about lack of professionalism in the jobs the police and others are doing. If the police officers cannot be bothered to review evidence then that is the officers' fault.

Flag

6RecommendReply

Rebecca Bartleet Dec 15, 2017

'I told the judge that this was the most appalling failure of disclosure that I have ever encountered.'

I shudder to think of how many other failures might have occurred, and not been revealed.

Flag

6RecommendReply

Prabhat Dec 15, 2017

@Rebecca Bartleet That is the real issue here. I wonder whether there is anyway to find out historic miscarriages of justice on this front.

We shouldn't be here talking about this given the main aim is (and remains) successful prosecution of perpetrators of rape (and other sexual assaults) and based on evidence.

This story does not leave an actual rape victim with confidence.

Flag

2RecommendReply

C J Delmege Dec 16, 2017

@Prabhat @Rebecca Bartleet I would say that is largely down to the behaviour of the complainant. (Sorry ! Victim). She has betrayed all the real victims of sexual assault.

Flag

RecommendReply

MaryR Dec 15, 2017

Stop taking us for fools and blaming 'the cuts'. This was gross incompetence at the very least - but possibly the real reason is much worse.

Flag

6RecommendReply

Harold Hare Dec 15, 2017

@MaryR I'm afraid it probably is cuts actually. CPS lawyers are told to keep as much work as possible in office rather than sending it out to independent Counsel (Such as Jerry Hayes). As a result, they often don't have time to do their job properly.

Flag

2RecommendReply

George Rosenberg Dec 15, 2017

@Harold Hare @MaryR CPS lawyers are also subject to the ethical rules of either the Bar Association or the Solicitors Regulation Authority. If they are hiding stuff they should be disciplined.

Flag

RecommendReply

John Adsett Dec 15, 2017

@Harold Hare @MaryR Tosh!

As I read it, it was down to the police not giving the defence full disclosure.

Flag

RecommendReply

Prabhat Dec 15, 2017

Julia Hartley Brewer wrote this column about the DPP, Saunders, in the Independent on 29 June 2015.

<http://www.independent.co.uk/voices/comment/alison-saunders-should-be-sacked-for-the-janner-case-and-for-her-absurd-views-on-rape-10353802.html>

I think this paragraph from the column is most telling and how CPS may be guided in rape cases:

"She has instructed the Crown Prosecution Service that unless a man can prove a woman has consented, and unless he can be sure that she was not too drunk to give that consent, then he is effectively guilty of rape until proven innocent in a court of law."

Things haven't changed, it appears. Evidence is merely a matter of inconvenience.

Flag

9RecommendReply

Gladismonroykd Dec 15, 2017

Could a lot of the basic organisation and provision of evidence be done online using secure gateways for both the CPS and the defence?

Flag

1RecommendReply

Ian Lumsden Dec 15, 2017

The officer in question should be summarily dismissed. His fellow officers should look at whether or not a prosecution is in order. If what is stated here is correct in that he stated there was nothing of interest in the records then this is deliberate obstruction of the law and liable to legal action.

Flag

8RecommendReply

John Sheard Dec 15, 2017

@Ian Lumsden One cannot know what sort of pressure "this officer" was under to get a conviction. When the woman in charge of the CPS is said of have ordered that a man is guilty until proved innocent, the rule of law is under threat in the nation which invented it.

Flag

3RecommendReply

Ian Lumsden Dec 15, 2017

If what you suspect was true then the disciplinary actions should progress up the ladder.

Flag

1RecommendReply

Dixx Dec 15, 2017

Treasury cuts have crippled all public services. We are in complete disarray. Take Canterbury City Council for example. They would rather spend time persecuting an old man for wanting to have a hobby than clearing up and preventing vast amounts of rubbish in his community. Come on government - wake up. The Armando Martins Campaign said that.

Flag

1RecommendReply

Saint John Dec 15, 2017

Surely these days phone text messages are crucial. They cannot possibly have been inconsequential either way. And all the prosecution team must have known that .

Would they really have prosecuted someone without checking them ? Surely their very absence was suspicious ? And as for relying on a policeman saying they contained nothing - really ? Even if that had not been untrue it was relevant evidence .

Flag

5RecommendReply

Matt Dec 15, 2017

It seems to me that this is nothing to do with money. This is to do with police concealing evidence.

Flag

13RecommendReply

NR Dec 15, 2017

i wonder how much the senior police officer who withheld the critical evidence was paid last year. I wonder if his failure to review in detail will result in administrative action against him and whether

he will have to do a bit of retraining. I doubt it. Sadly another nail in the coffin of a once great police force obsessed with targets, management speak and good PR. Time to rid the force of its hierarchy of bureaucrats and reinstate some proper leadership.

Flag

4RecommendReply

Steve Nesbitt Dec 15, 2017

@NR I wonder how much the defence solicitor and barristers were paid despite their failure to question the prosecution evidence. It's a good job the accused had an honest prosecution counsel.

Flag

1RecommendReply

Cynycas Dec 15, 2017

Treasury cuts are crippling Britain

Flag

2RecommendReply

Steve Nesbitt Dec 15, 2017

@Cynycas The Treasury has its own social policy agenda which implements by increasing or reducing departmental budgets.

Flag

RecommendReply

Bobster Dec 15, 2017

The comments I've just made under the lead story apply equally here after reading this article.

Police and CPS incompetence cannot be blamed on cuts - "most appalling failure of disclosure"

If you want to make cuts, start with overpaid chief constables and close defined benefit schemes to all new joiners and increase the retirement age to 65 from 55.

Flag

14RecommendReply

Ken Broadbent Dec 15, 2017

@Bobster

Yes cheap Chief Constables will fix the problem.

Flag

1RecommendReply

Jenesaisquoi Dec 15, 2017

And what about these police commissioners? Ours follows his own political agenda - hardly independent. Are they really worth their money?

Flag

RecommendReply

John Austin Dec 15, 2017

I suspect what Jerry means here is that Treasury-imposed financial cuts means that there are fewer staff to carry out an increasing administrative workload in the rigorous detail to be expected. This in turn means that staff get used to a culture of skimping on checking evidence, creating a shambolic, "flying by the seat of our pants" climate where the police also look the other way because they can't be bothered.

However, Alison Saunders has not helped matters by trying to bring more rape cases to trial. Fine, if you make sure these cases are meticulously prepared, just inexcusable if she presides over a system where malicious allegations are not uncovered early enough, because the police and CPS can't or won't do their jobs properly.

She needs to explain what went wrong here.

The Justice Minister and Home Secretary both should be asking her some searching questions.

Flag

6RecommendReply

Ian Burgess Dec 15, 2017

They should be giving her the Lord Sugar judgement- You're fired. Whether the Justice Minister has the cajones to do that is highly doubtful. Rudd may have the courage to do it.

Flag

1RecommendReply

Foreversideways Dec 15, 2017

Saunders should have been sacked long ago.

Flag

3RecommendReply

Stelling Dec 15, 2017

Very well done. You are a credit to your profession. But those who withheld this crucial evidence must be properly dealt with. Immediate suspension without pay, and criminal prosecution. Why should we assume laziness and incompetence, when the withheld evidence would blow their case out of the water ?

Flag

17RecommendReply

Gary Byrne Dec 15, 2017

This case is nothing to do with cuts, it's down right shoddy if not criminal by the police or cps.

Flag

13RecommendReply

Jenesaisquoi Dec 15, 2017

Is this really about money? If it is the CPS must have been underfunded for decades. Or is it rather about general levels of competency and the quality of staff in the CPS? Many years ago we attended magistrates court as the victims of a burglary, and witnesses against the defendant. Each time we attended there was some sort of procedural malfunction, so the case was deferred twice, and the third hearing that did proceed was a joke. In all cases the CPS lawyer was different, they didn't even know our names, but rushed into court reading the files as they went in. We got the distinct impression the prosecution knew nothing about the case until the court doors opened. Consequently they were ineffective. The court clerks knew little about anything either, including basic details, which were wrong. I don't work in this system, but it seemed, at that point, run by staff who seemed to know nothing about anything. Perhaps it's the system that creaking because it needs an overhaul not necessarily more money.

Flag

23RecommendReply

David Stewart Dec 15, 2017

Well done Jerry. You're a hero.

Flag

16RecommendReply

Otto Leipzig Dec 15, 2017

"I used to be so proud that I was part of the finest criminal justice system in the world....." Only if you were rich and/or of the right class and background, Jerry.

A former judge claimed the doors of the Courts of Justice were open to everyone "just like the Ritz". The ordinary person under English law is now guilty until proven innocent.

Flag

7RecommendReply

Chris Huckle Dec 15, 2017

Nonsensical,prejudiced drivel. Having to work hard ,be intelligent get good A levels and legal qualification may exclude a lot of the population,especially the feckless but that doesn't mean it is excluded from someone of a working class background who puts in the effort. It seems to have escaped your attention that the accused in this case was studying law. Either it didn't suit your narrative or you were too stupid to notice.

Flag

3RecommendReply

Orleigh Wragg Dec 15, 2017

@Otto Leipzig "The ordinary person under English law is now guilty until proven innocent." Have you evidence for this statement? Have you, for instance, sat in a Magistrates or Crown Court in the last few years to see it first-hand?

Flag

RecommendReply

Otto Leipzig Dec 15, 2017

@Orleigh Wragg @Otto Leipzig Like the evidence rendered in the the prosecution of this case?

Flag

RecommendReply

Orleigh Wragg Dec 15, 2017

@Otto Leipzig So on the evidence of one case you make such a sweeping statement. A fortune could be saved on some of these costly enquiries if they could but put your incisiveness and powers of deduction to use. However, since you didn't answer the second part of my questions, so I assume from lack of evidence that you haven't.

Flag

RecommendReply

mumble Dec 24, 2017

Yes, let's make it about class. That would be helpful.

Or you could make the discussion about the NHS or Southern Rail.

Flag

RecommendReply

ilikewords Dec 15, 2017

Appalling attempt to blame the government for what amounts to simple incompetence and dereliction of duty. Shame on you for such a blatant attempt to politicise and excuse such dishonest behaviour by the police.

Flag

42RecommendReply

James Lawson XIX Dec 15, 2017

@ilikewords

Amazing that anyone who, possessed of the qualifications and experience to do so, criticises what he regards as official neglect is condemned as having a political agenda by those who know nothing of the case or the man.

Nevertheless, it a departure from the usual line of attack which generally involves being labelled as a Marxist Corbynista from Venezuela in the pay of Momentum.

Flag

2RecommendReply

Dixx Dec 15, 2017

Get real. All public services are shot to bits to the point of malfunction. Then trace it back to the banks and the recession....

Flag

RecommendReply

ilikewords Dec 15, 2017

@Dixx You're the one who needs to get real. Yes, public services are struggling since the recession but that does not excuse the investigating officer's behaviour. Had he said, "Sorry I was too overstretched to review the evidence fully" it would have been one thing - but he didn't. He instead stated that the evidence had been reviewed and that it was irrelevant to the case - clearly a blatant lie. Lack of personal integrity and accountability can never, in any circumstances, be blamed on lack of resources.

Flag

4RecommendReply
Erudio Dec 15, 2017

"The officer in charge told me that he had it, but that it was clearly not disclosable as it just contained very personal material; nothing capable of undermining the prosecution case or assisting the defence".

So the officer has misled the court and surely should be prosecuted and dismissed?

Flag

50RecommendReply
bluearmyfaction Dec 15, 2017

@Erudio 2,400 pages, and 50,000 messages. He would have needed a month just on that one case. He probably did a sample trawl and found nothing.

Of course, with more people on the job, better IT to flag up keywords, and better support, then it probably would have been caught earlier.

Flag

RecommendReply
Graeme Harrison Dec 15, 2017

@bluearmyfaction @Erudio I'd be a little surprised if the officer didn't have access to software that could automatically sift the messages and flag potentially relevant ones (eg, those containing references to sexual matters).

Flag

RecommendReply
Neil Barrett Dec 15, 2017

@bluearmyfaction @Erudio The defence solicitor found it all, manually, in one evening. That suggests it wasn't that hard..

Flag

2RecommendReply
thirza woodstack Dec 15, 2017

Is the complainant not now going to be charged with being in contempt of court, all the huge costs she has been responsible for, if charged will she keep her identity secret still?

Flag

38RecommendReply
Saint John Dec 15, 2017

Sorry this doesn't wash . If the police and CPS accuse and charge someone they must do the job properly . They can't charge people with serious crimes and then refuse to disclose crucial evidence to the defence claiming budget cuts.

This case seems to have been driven by the very unsatisfactory pressure being put on the Police to get higher rape conviction rates . This is not justice .

Flag

41RecommendReply
Alien Looking Down Dec 15, 2017

This case had nothing to do with funding cuts: if all the evidence had been handed over in the first place a great deal of money and anguish would have been saved. Furthermore, if all it now takes is for a woman to cry rape for a man to be presumed guilty then we have indeed lost our way: this 'woman' should be named, prosecuted for making false allegations, and sued for libel.

Flag

42RecommendReply
Will Harris Dec 15, 2017

@Alien Looking Down Slander, I'd have thought, if not harassment. But generally I agree with you.

Flag

RecommendReply

Jonathan M Dec 17, 2017

But there was no presumption. The prosecution must prove its own case. To presume as you do that only physical proof will suffice, is to misunderstand the role of the jury in making findings of fact, and would deprive many victims of all manner of crimes, of any hope of redress. That's barbaric.

Flag

RecommendReply

dexey Dec 15, 2017

"Clearly the officer hadn't reviewed it in any detail. He had failed in his duty of disclosure. The CPS are under terrible pressure, as are the police. ... Because of the swingeing cuts that the Treasury continuously imposes, the system is not just creaking, it is about to croak"

It's always the cuts even when it's an idle police officer uninterested in right or wrong.

Flag

21RecommendReply

Graeme Harrison Dec 15, 2017

Hayes was prosecuting this case. It's perhaps unlikely that he'd come out and say that what caused this shambles was a reckless disregard for the duties imposed on the police and the CPS to ensure that cases are investigated properly.

Flag

8RecommendReply

Prabhat Dec 15, 2017

Treasury cuts have little to do with the shambles in this case. The incompetence and malicious co-operation of some in the criminal justice system have something to do with the shambles here.

Flag

19RecommendReply

Josephine O'Carroll Dec 15, 2017

I just do not accept that as a valid excuse whatsoever. How much would it have cost in time or money for the police to have handed over the disk when originally requested? As for insisting it contained nothing of relevance - pressure of work can not justify the police lying to either the prosecution or defence.

Flag

16RecommendReply

den mather Dec 15, 2017

In my lay=man's ignorance I don't see how costs come into this. The disc existed so what would it have cost to run off a copy and give that to the defence lawyer. Or, are we saying that the cost of the policeman examining the disc was prohibitive. When the accused told his lawyer that he had been texted suggestively did she ask the police directly for any material they may have recovered from this woman's phone as a matter of routine?

Some of these messages were to the defendant so he must have known that they were made, even if he thought that they were later deleted (if that's possible without suspiciously destroying your phone). Could they not have been recovered from his phone?

Can the police officers concerned not be sued? Are we sure there was not a criminal conspiracy by the police to pervert the course of justice by deliberate suppression of known evidence?

Flag

12RecommendReply

George Rosenberg Dec 15, 2017

@den mather The police can't be sued. The coalition abolished that right

Flag

RecommendReply

Ytongs Dec 15, 2017

@den mather You have highlighted something not much referred to already. The defendant received these messages and presumably he told his defence lawyer of their content.

Why did the defence lawyers not insist they have sight of the copies of these calls irrespective of what the police said? Given that, as has been demonstrated, proof of these calls proved innocence?

Flag

6RecommendReply

Gerryco Dec 15, 2017

@Ytongs @den mather you are absolutely right: assuming that he told his solicitors about these texts (and did not just wait until he met his trial barrister at court), there should have been much greater pressure brought to bear by the defence to get access to the phone download. This could include a pre-trial application to the judge. The truth of the matter is that corners tend to be cut on all sides because of the lack of funding to police, CPS and to defence legal aid.

Flag

3RecommendReply

Appeasementisfatal Dec 15, 2017

Legal aid has been misused more for the benefit of the legal profession themselves.

Let the frivolous prosecution remain the past time leisure of the privileged.

Flag

2RecommendReply

Prabhat Dec 15, 2017

@Appeasementisfatal I wouldn't taint the legal profession here. It is not clear whether the prosecuting barrister before Hayes were aware of the evidence and whether they decided not to pass that on to the defence side. If that has transpired, the Bar Council Rules are sufficiently robust for the previous prosecuting barrister to be investigated thoroughly and, if applicable, suspended or struck off.

Flag

RecommendReply

Appeasementisfatal Dec 15, 2017

You're are right.

I did not mean to generalise it.

It also reflects my personal experience with with the legal profession. £2 a minute for any contact social or otherwise I found too much.

Flag

RecommendReply

Prabhat Dec 15, 2017

@Appeasementisfatal You are right though. Despite the rules, there always a few rogues and then there is our experiences at the hands of some of these.

Flag

RecommendReply

David Lowder Dec 15, 2017

It crippled itself, with its outlandish costs the appeals procedure and in most cases a judgement that satisfied nobody.

Flag

2RecommendReply

Bryan Dale Dec 15, 2017

Mr. Hayes you are a credit to your profession. Too many prosecutors might have pushed forward for a conviction but you did the right thing.

Flag

13RecommendReply

David Spence Dec 15, 2017

I agree with all he says on this but still fail to see why the copying and passing of the files could cost more than a few pounds.

Flag

11RecommendReply

David H Dec 15, 2017

Not so sure this is about cuts. More likely simply ineptitude.

Flag

18RecommendReply

Erudio Dec 15, 2017

@David H Or a delibertiae attempt to pervert the course of justice.

Flag

16RecommendReply

George Rosenberg Dec 15, 2017

@David H Cuts to the prosecution service. Cuts to the police. Cuts to lawyers' defence fees. Part of the latter are based on the number of pages of evidence they have to review, so these are kept to a minimum with results like this. It's not ineptitude it's deliberate - or shall we say reckless.

Flag

4RecommendReply

Jack Jones Dec 15, 2017

You blame this on lack of resources without having a clue why the police withheld the evidence. How much would it have cost to provide that evidence to the defence anyway?

-

The defendant pointed out that convictions levels are 'like targets'. The police are under huge pressure from women's groups to get the rape conviction rate up. Why do you assume that had nothing to do with it?

-

I strongly suspect that evidence was withheld quite deliberately. And I suspect it's not the first time.

Flag

31RecommendReply

Peter Collinson Dec 15, 2017

Well done to both Counsel for fearlessly pursuing justice

Flag

9RecommendReply

Matt Dec 15, 2017

@Peter Collinson

I'd hold off on the congratulations until the accuser and the police officer who concealed evidence are behind bars.

Flag

3RecommendReply

Parkway Dec 15, 2017

It's not Treasury cuts that are to blame. That's a lame excuse.

It's bad judgements by inept employees in the judicial system that bring about this sort of travesty.

The sooner that reality is faced, the sooner innocent people will be spared trial by political correctness.

Flag

13RecommendReply

Neil McLarnon Dec 15, 2017

Thank you for striving to uphold the principles of justice and fair-play and being a fine example to all barristers.

Flag

16RecommendReply

Alex Ogle Dec 15, 2017

I don't see how cuts in spending stopped someone handing over a very pertinent disc if he knew it existed and was willing to speculate that it's contents were only personal in nature.

This smacks of incompetence, not financial issues.

Flag

36RecommendReply

Garry Banks Dec 15, 2017

@Alex Ogle Neither do I, and I think it is taking a charitable view to put it down to incompetence.

Flag

14RecommendReply

MaryR Dec 15, 2017

I agree entirely. My comment indicating the same is 'pending'. How can telephone records- basic evidence- be discounted?

Flag

RecommendReply

Smoky Ashton Dec 15, 2017

The first sentence says it all but let me rephrase it slightly, "I am so proud that our legal aid system continues to allow us bewigged and silken, talkers to twist and shake and proliferate to our mutual benefit and grow fat to boot. Thank God, we never have to justify our hourly rates against the prism of true commercial competition !

Flag

5RecommendReply

Saint John Dec 15, 2017

Actually prosecuting barristers are not highly paid .

Flag

6RecommendReply

Andrew S Hatton Dec 15, 2017

The Fee from The Times will help take account of that trial going short.

Trouble with old school approach was an avoidance of looking at the big picture.

Advocates not able to use on the day probation reports to beef up their mitigation like a few decades ago.

Reliable foreign language interpreters booked by those running a case.

Probation Officers at court who actually know their clients and can consequently intelligently answer complex questions about the nuances of supervision, etc., etc.

Flag

RecommendReply

Jamie Whitelaw Apr 3, 2018

@Saint John I wonder if the lady who laid the complaints is being investigated in view of what appears to be her false evidence?

Flag

RecommendReply

*Ref.: Treasury cuts have crippled justice system.docx
26/04/2018 11:17*