

*"The only thing necessary for the triumph of evil is for good men to do nothing." (Edmund Burke)*

DIANE STEWART (48) has had her conviction, for assaulting a teenage girl, quashed at the Court of Appeal. Diane had been convicted of pulling a teenager's hair during a disturbance outside a pub in December 2007. Ruling on the appeal, Judge Batty said that one of the young witnesses said that Diane may have been pulling the complainant away from her, rather than assaulting her, as claimed. "In our judgement, this charge of common assault is not made out," said the judge, accepting the argument, put by barrister Natalia Cornwall, that there was no case to answer. Speaking after the case, Diane said: "I'm elated that my name has now been cleared. After I was accused of this, I had a mini-stroke. It's been a horrendous experience but I was determined to clear my name."

TRACY BROOKS (26) has admitted making false allegations of rape against two friends. In 2001 and 2002 she also made complaints against two former boyfriends and in 2004, she told police she had been raped by a friend's boyfriend. Judge David Hodson said he could not take the 2001, 2002 & 2004 incidents into account in passing sentence because she had never been formally cautioned or charged in relation to them. Brooks was given a 32-week suspended prison sentence and a three-month night-time curfew. Judge Hodson said, "The effect of your false complaints was that two men were subjected to a substantial degree of humiliation and a colossal amount of anxiety that they were being charged with an offence that could have resulted in a very lengthy sentence of imprisonment." After the case, Brooks apologized for her actions, saying: "I feel devastated and ashamed of what I have done. On top of my mental health problems, I have had a drink problem for a very long time, though I haven't drunk now for five months. Giving up booze has given me clarity of mind and now I feel I am a better person." SAFARI's view is that *all* false claims of sexual assault or rape should result in, at least, a caution, so that serial accusers can be realistically sentenced.

THE FOLLOWING ARTICLE was kindly provided to SAFARI by Amy Pickvance of Swain & Co Solicitors, Oakwood Court, 62a The Avenue, Southampton SO17 1XS (Tel: 023 8063 1111).

*APPEALS BASED ON FRESH EVIDENCE. This is the most common ground of appeal and the Court has very wide powers to deal with these sorts of cases. This way the Court can get to the bottom of things. Often we have to go the extra mile to try to unearth new evidence and the Court of Appeal can, in the interests of justice, help by ordering the production of documents. It can also order a witness to turn up to be examined by the Court, whether or not he or she was called originally. It can receive any new evidence. Some new evidence can help and some can't.*

*We need to look at whether receipt of the fresh evidence is "necessary or expedient in the interests of justice". This is not easy to sort out. When considering cases the Court looks at whether the evidence appears to be capable of belief and whether it appears to the Court that the evidence could amount to a ground for allowing the appeal. It also looks at whether the evidence would have been admissible in the proceedings and is on an issue which is the subject of the appeal. The Court will look at whether there is a reasonable explanation for the failure to use the evidence at the original hearing.*

*When it comes to an appeal the Court can include matters which have arisen only after conviction. What the Court must not do is "usurp the role of the jury". It can't simply disagree with the jury and an appeal won't succeed if the argument is simply that the jury got it wrong. The appeal can include evidence of events or matters which relate to an irregularity at the trial and can be used to deal with any complaint as to the conduct of the Trial Judge. It is unlikely that you will be able to use evidence in support of a defence which is completely different to the one advanced at trial.*

*Similarly it is unlikely that you could use evidence relating to the jury's deliberations. The Court will not inquire into what occurred in the jury room while the jury were considering their verdict. Fresh evidence must be admissible.*

*With new evidence the Courts expect a "reasonable explanation for the failure to adduce the evidence in those proceedings". In a case it was said, "What was the purpose of a trial if the jury are deprived of evidence which a defendant could well call, and he chooses not to call it". It stops you having a second bite at the cherry. A Court would be most unlikely to conclude that it was "expedient in the interests of justice" for a witness to be called to give evidence of an alibi where the witness had been able and willing to give evidence at trial, albeit upset, and a deliberate and informed decision had been made not to call her.*

*Nevertheless there is still a discretion (reluctantly used) for receiving fresh evidence irrespective of the existence or otherwise of a reasonable explanation for not calling the evidence at trial. This is because of the overall need to meet the "interests of justice" under the Criminal Appeal Act. The law is complex and expert advice should be sought before embarking on an appeal or referral to the CCRC. We can sift through all the evidence and advise on all grounds for appeal and not just the ground of new evidence."*

Note the difference between having grounds for appeal and having a likelihood of actually *winning* an appeal. The CCRC generally won't move forward with a case that is unlikely to be successful.

SAFARI is always happy to consider articles submitted by professionals for inclusion in the newsletter.

PRISON APPROVES SAFARI NEWSLETTER. Julie Bradshaw, of the Business Support Unit at HMP Full Sutton, has confirmed that the SAFARI newsletter had been discussed via a number of committees, including the Security Department and the Prisoner Consultative Committee, and was also able to confirm that there were "no problems in having the SAFARI newsletter sent in to prisoners at HMP Full Sutton in its current design and material content." If you find your copies of the SAFARI newsletter are being withheld from you by your prison, or if letters you're sending us are being blocked, please let us know – if necessary by asking a family member to write to or email us.

Donations very much appreciated at: a/c name: 'SAFARI', Sort Code: 30-92-02, a/c No.: 2702360



...or hit the button on the website! (We can accept no responsibility for errors in this newsletter as we only share information received)

JOHN CARRUTHERS (72) HAS BEEN CLEARED of sexual assault charges against him. John was a school bus driver and had been falsely accused by two 15-year-olds who claimed he had assaulted them while driving to and from school. After the verdicts, John said school bus drivers were an easy target for such false allegations because they are alone with more than 60 children - many of them badly behaved.

RICHARD MATTHEWS (35), a deputy head teacher in charge of child protection, has spoken of how his career was destroyed after two pupils falsely accused him of sexual assaults. Richard had been suspended from his job and was prosecuted after two girls had been overheard talking about how they were touched, tickled or cuddled. The trial lasted 16 days and cost the taxpayer £160,000. He was eventually found not guilty of 21 charges of sexual assault and four charges of indecent assault. He said he was too scarred by the experience to return to teaching, adding: "I've gone through two years of hell waiting to prove my innocence. I am an experienced teacher. I have dealt with similar complaints against staff - but you never think it is going to happen to you. I am guilty only of doing my job. When I touched a child it was only in the proper context. It was more than just a profession for me. It was a way of life. I gave 200 per cent." Richard said innocent teachers ran a daily risk of having their lives destroyed by vindictive children and over-zealous social workers. The allegations came from a 10-year-old girl and her 11-year-old friend.

SAFARI would recommend that any teacher concerned about false allegations should contact the excellent support group FACT (Falsely Accused Carers & Teachers) on the web at <http://factuk.org>, via email on [info@factuk.org](mailto:info@factuk.org), by post at FACT UK, PO Box 3074, Cardiff, CF3 3WZ.

PRISON SERVICE REDEFINES 'REFUSAL'. SAFARI has long been in discussions with the Prison Service, arguing that they are wrong to set someone falsely convicted of committing a sexual offence the unachievable target of attending the Sex Offenders Treatment Programme (SOTP) when they are not *allowed* to attend it. (The Prison Service's own rules state that all Sentence Plan targets must be 'S.M.A.R.T.' - **S**pecific, **M**easurable, **A**chievable, **R**ealistic and **T**ime-bound). Incredibly, the Prison Service has come up with their own 'solution' simply by redefining the word 'refusal'.

They've now claimed to SAFARI that "*the denial of an offence through maintenance of innocence or otherwise is a 'choice' the prisoner is making and so is considered as 'refusal'* (to attend the SOTP)". Worse still, they are then using that alleged 'refusal' to withhold Enhanced Status. SAFARI is astounded that they have taken this view and is investigating the option of launching a legal challenge. If you have had your (sexual offence) conviction successfully overturned at appeal, but were denied enhanced status in prison for 'refusing' to do SOTP, please write to us, as your acquittal on appeal proves that the SOTP target was indeed unachievable, and will always be unachievable for the innocent. 'Redefining' the English language seems popular with the authorities, as the term 'proved guilty' has also been redefined to mean 'a jury must be *persuaded* of guilt'; this is why someone's (false) word is now enough to convict, as long as the jury can be 'encouraged' to believe it.

JACK GILLETT (22) HAS BEEN CLEARED of sexually assaulting a fellow student after a late-night drinking session. He had been accused of pinning the girl down and simulating sex. Judge Hawkesworth also told the jury: "This is a story as old as time itself. Boy meets girl. Then the kissing starts. There are two irreconcilable accounts and that is all you have to decide. Be cautious when taking into account discrepancies in motive. False accusations can be made in revenge. Sometimes they're made for no reason at all. People's fantasies can be boundless." He also pointed out that the girl waited five months before lodging a formal complaint and that in her police statement, when asked how she had resisted Gillett's advances, she said: "I don't clearly remember how I was resisting what he did or what I did." After the judge's comments, the jury went on to acquit Jack.

AMANDA LANG (21) HAS BEEN CONVICTED of attempting to pervert the course of justice by making a false allegation of rape. This is an odd case because while she admitted making the false allegation of rape, she later claimed the admission itself was untrue, and she only made that admission as the evidence against her alleged attacker was not strong enough. She said she could not handle the prospect of having to attend the trial. So is she guilty or innocent? We'll probably never know. However, this story does highlight an important glitch in the legal system.

Many victims feel their only option is to *pretend* to be guilty to avoid a big sentence. Our advice is **never** to make an untrue statement. Even if you end up with what you consider to be a worse 'result', at least you can then fight to prove your innocence without being labelled as 'guilty by your own admission'. *Nobody* should be pressurised into making a false 'admission' of guilt at any time.

IN OUR JANUARY 2008 NEWSLETTER we said you should get all your 'unused evidence' and we stated 'You have the right to see everything (*with a few exceptions such as paperwork which is confidential to someone else*) in that bundle'. One reader has asked us to point out that section 35 of the Data Protection Act 1998 states "Personal data are exempt from the non-disclosure provisions where the disclosure is required by or under any enactment, by any rule of law or by the order of a court, and personal data are exempt from the non-disclosure provisions where the disclosure is necessary (a) for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), or (b) for the purpose of obtaining legal advice, or is otherwise necessary for the purposes of establishing, exercising or defending legal rights." In short, this means *some* evidence is available to you even if it is personal to someone else.

SAFARI E-PETITIONS: Please get everyone you know with Internet access to sign our on-line Government ePetitions. Please visit:

<http://safari-uk.org>

..to view all our ePetitions.

Thanks to Terry McCarthy (Parole Board for England and Wales) for supplying us with the statistics of those granted release on Parole despite maintaining innocence.			
Figures for month of February 2008			
<i>Non-lifers:</i>			
All offences	7	of 52	13.5%
Rape	3	of 19	15.8%
Indecent Assault	0	of 2	0.0%
Other Sex	0	of 4	0.0%
Violence	1	of 15	6.7%
Property	1	of 7	14.3%
Drugs	1	of 2	50.0%
Others	1	of 3	33.3%
Total Sex	3	of 25	12.0%
Total Non Sex	4	of 27	14.8%
<i>Lifers only</i>	0	of 0	n/a
[ There were no lifer applications this month ]			