

CCRC's extreme delays, by Bob Woffinden, July 2009

The origin of the phrase "Justice delayed is justice denied" is not entirely certain. Some think it can be traced right back to Magna Carta in 1215, and its fundamental undertaking that, 'To no one will we refuse or delay... right or justice'.

A firm belief developed that if legal redress was too late in arriving, then that was the equivalent of having no redress at all; justice needed to be as swift as possible, otherwise it was worthless.

From 1969 until 1986, Warren Burger was chief justice of the US Supreme Court. He'd been appointed by Richard Nixon, so he was hardly a raving liberal. He famously stated that, 'Confidence in the courts is essential for a free people'. One of the key factors underpinning that confidence, he argued was that justice needed to be timely. There would be 'incalculable damage to society... if people come to believe that inefficiency and delay will drain even a just judgment of its value'.

The phrase 'inefficiency and delay' naturally brings me to the Criminal Cases Review Commission. The CCRC was set up in 1997 in an effort to address the alarmingly high number of miscarriages of justice that concerned the British public. The Commission has lately been considering the case of Karl Watson, which I recently wrote about in *Inside Time* (Issue no.??)

To recap briefly: in December 1993, Watson was convicted of the murder of John Shippey, who was stabbed to death a year earlier after being abducted. His body was found in the boot of a burned-out Ford Sierra. Virtually nothing is known of the circumstances in which he was killed.

The only evidence against Watson was provided by a man named Bruce Cousins. In return for giving evidence, some outstanding charges against him were dropped and he received a suspended sentence in respect of others. Cousins' evidence about how the murder was carried out was at odds with the account given by the pathologist, the late Dr Iain West. Cousins changed his account every time he related it and, by the end of the trial, the judge observed that he was simply assenting to whatever was put to him: 'this is really the words of counsel which he adopts'.

Even so, Watson was convicted. The defence then asked whether there was any psychiatric material about Cousins, to which the CPS replied that, 'We do not have such a report'. The Lord Chief Justice, Lord Taylor, dismissed Watson's appeal, pointing out that, 'The Crown put the case on the basis that Mr Cousins as a witness could be relied upon'.

Time passed. Watson was both tireless and ingenious in finding ways to pursue his case. He had a breakthrough. The defence got hold of documents concerning Cousins's mental health. A psychiatrist at Belmarsh had written to the CPS, in the year before the trial, that he 'may be easily led in terms of statements'. She emphasised, as if it needed emphasis, that this would have a 'major bearing' on court proceedings.

This led to a full report on Cousins. The clinical psychologist wrote that he was 'abnormally susceptible to leading questions' and that 'his anxiety in response to negative feedback is such that he will change nearly all his answers, regardless of his memory for the facts'. Again, this was prepared before the trial.

Unfortunately, the CPS had not only not disclosed this for the trial or appeal but had misled everyone in the criminal justice process – up to and including the Lord Chief Justice – by claiming that material such as this did not exist.

So in July 1998 the matter was spelt out for the CCRC by the leading practice of Birnberg Peirce, who then represented Watson. The practice clearly explained that the information passed on by the CPS had been 'false'. The solicitor wrote confidently to the CCRC that 'the issues are not very complex' and that 'your investigation would probably not need to be wide-ranging'.

Despite the lack of complexity, however, nothing happened.

More time passed. In November 2005, Harriet Harman, who was then at the Ministry of Justice, acknowledged on behalf of the government that the CPS actually had had some of the controversial material they had claimed not to have; and that it had not been disclosed to the defence.

Still more time passed. In May 2008, Mr Justice Owen, in the civil courts, ruled that on the basis of all this Watson had seemingly not received a fair trial.

In addition, he said, 'I am going to direct that there should be a transcript of my judgment which will be at public expense. I suspect it is something which [Watson] will wish to deploy'. In other words, he naturally anticipated that his ruling would be advantageous to Watson in his continuing battle for justice in the criminal courts.

Even more time passed. Then, after the intervention of Watson's MP, Richard Ottaway, the CCRC announced that, at the end of April this year, they had put the case before their prioritisation committee and, joy of joys, the prioritisation was granted! The case was to be fast-forwarded through their system. The argument was exactly the same as it has been in 1998, but it was finally full steam ahead at the Commission. Watson was elated – who wouldn't be?

Things seemed to get even better. The CCRC said that they were arranging a committee to discuss the case 'without further delay'.

So then they had their meeting. It took place in mid-July. It was eleven years almost to the day since Birnberg Peirce had first carefully explained the matter to them.

However, Watson's solicitor, Maslen Merchant, was stunned to be informed that the Commission had decided that 'further work' was necessary in relation to Watson's submission; they were not able to take any decision at the present moment.

They suggested that the fresh work might take about three months but, given the CCRC's lack of understanding of the concept of time, this could mean anything.

It is remarkable that, after the lifetime of cruelties that has already been inflicted on Watson, the CCRC should be prepared to add to them by giving him fleeting hope, only to snatch it away at the last moment.

It seems to me that the CCRC has fewer and fewer friends left. Lawyers, campaigners and others who were originally enthusiastic about its establishment have become increasingly disillusioned with its performance in recent years. The Commissioners may argue that they are frustrated by budgetary constraints, but such protests are unlikely to attract sympathy when they are still carrying out otiose work on a case like Watson's, which any competent commission would have resolved more than a decade ago.

Certainly, in the twelve years it has been in existence, the CCRC has never even begun to grasp the age-old principle that justice delayed is justice denied.

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