ANATOMY OF AN IMPOSSIBLE TRAIL FOR CHILD EXPLOITATION

LESSONS TO BE LEARNED

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BACKGROUND

V is an eastern European girl aged 16 years. She has an IQ of 55. She was abused sexually when aged 12 years in her native country. A number of young men were convicted of having sex with her as a minor. She spent time in a psychiatric hospital.

In a psychological report prepared in 2011 in her country of origin the psychologist reported that V *"has great tendencies to lies and suggestibility. She has tendencies to distort reality....to confabulation..".*

Her condition made it difficult to investigate what was later to happen to her in the United Kingdom.

She came to the United Kingdom in late 2012 with her family. She was a profoundly damaged young woman. The family first lived in the north of England where her sexual behaviour was problematic. The family moved south where her unpredictable and sexualised behaviour continued at and outside school.

THE ALLEGATIONS

V was without doubt prostituted in this country.

The criminal trial was intended to consider the issue whether she was being provided to men for sex and to determine who was involved.

If she was right she had been taken from her home by a number of men, drugged with "Pika" or Crystal Meth, by injection, threatened with injury to her and her family and the burning of her family home; she was taken around a number of towns where she was given to men (sometimes up to 15 or 20) mainly at kebab shops for sex.

She disappeared for days at a time. When she returned to school she was seen by social workers and Police and the story emerged, painfully, with enormous difficulty and with the inconsistencies which were to prove fatal to the criminal case.

The Police operation was huge. It involved (as the Court was told) 300 officers. Advice was taken from various Police Forces as to how to gain the confidence of V and get from her the evidence which would be necessary for a successful prosecution.

There were seven defendants. The indictment included charges of rape, sexual activity with a child, administering substances and causing child prostitution

THE TRIAL

The trial judge directed verdicts of Not Guilty in respect of two defendants at an early stage after it became clear that the allegations made against them were flawed.

The jury was sent away for almost two weeks whilst an enormous amount of work was undertaken refreshing V's memory. A recording was made of what she said as she watched her ABE interviews. Everything had to be translated into English.

At the same time all Counsel were involved in considering vast swathes of records, including those of the Police and social services from the south and north of England, drafting schedules of inconsistencies, admissions and preparing detailed cross examination of V with the help of the intermediary.

Whilst there can be no doubt but that V had a very low IQ it would have been a mistake to treat her as having a commensurate chronological age of say 10 years because her life experience was such that she gave the appearance at least of being able to understand many of the questions asked of her. Despite the fact that she became irritated when questions were formulated in a simple and easy to understand form, it became abundantly plain that when Counsel inadvertently departed from the agreed form of questioning she failed to understand what was being asked of her.

The trial continued for two months.

At the end of the Prosecution case submissions of no case were upheld and the remaining defendants, three males and two females were acquitted.

THE INVESTIGATION

In many respects this was a unique case involving as it did a vulnerable young person with such a low IQ, history of abuse abroad and elsewhere in the UK, and such a large number of narrative records.

The Police officers in the case were decent and caring. They at all times sought to protect the vulnerable.

They also had to obtain the evidence.

They had the *"missing person"* records which started in the Spring of 2013. Officers spoke to V after she was reported missing by her family. She reported going willingly with individuals whom she named but who were never arrested. She spoke of the voluntary or willing (in so far as she could ever willingly agree) injection of cocaine and other substances. She spoke of a girl who again was never charged who she said had introduced her to boys who did *"nice"* things to her (buying her ice cream). A hint of what she was later to allege appeared in the notes where she is recorded as saying that she was injected with PIka and *"the male who had injected her was A" (*one of the defendants).

It was not until February 2014 that the detailed investigation started in earnest.

The Police considered that it was not possible to go straight to Achieving Best Evidence recorded interviews because V was unlikely to cooperate. The problem with that approach, however well intentioned, is that the notes of any such interview were not verbatim. The notes taken in her first language were missing. Thus it was not possible to know exactly what had been said by V. In any case the report of the joint visit by the officer and social worker was a narrative report. The later ABE interviews demonstrated that the narrative provided by V was unlikely to be wholly accurate.

Thus by way of an example one of the notes read that V:

"disclosed that between 2011 and 2012 she was sexually abused by several men of differing nationalities; that these men would give her drugs and do whatever they liked with her. She spoke of abuse taking place in (two towns); that she was sexually and physically abused by A (one of the defendants)… B (another defendant), a male with nickname C… and D..."

Those named individuals could not have been abusing her in 2011 and 2012 when she was arguably not in the country; on one reading of the notes they could not be the ones giving her drugs; they may not have been the ones abusing her in the two towns as was later to be alleged; there was no detail of the abuse. More important she was later to withdraw her allegations against C and D and in one case told the Police that she had made the allegations against one such individual because she was jealous of his going with another girl.

A home visit on 20th February resulted in another narrative note in which she recalled "*A.. B and D.. taking her to this Kebab shop and between them and the staff at the kebab shop being sold for sex to unknown males..*"

That was the extent of the allegations against B. The allegations were to grow like "Topsy" as she came to give evidence.

In March she went with the Police on a drive round when she identified various places of interest. This was intended to be recorded as well as filmed save that the camera's batteries failed and some of what she said was not recorded so that in the case of one defendant an abuse argument was (unsuccessfully) made.

ABE interviews started in March 2014, continued interspersed with visits which were not recorded and finished in April.

Things started to disintegrate when, during a joint social services/Police visit, V refused to make eye contact, declared that she did not want to see the Police again and declared that *"if we gave her £20 she would do what we wanted her to do..".*

On 7th May she received another home visit and spoke of B. According to the notes *B "tried to have sex with me but I gave him another girl. (It was in a particular town) when I was 15....He was touching my thigh and started to kiss me. I slapped him. His sister came over (and) shouted at me.."* These notes were translated into a witness statement which was read to V and signed by her.

The reason for quoting this note is that she was, two months later, to allege that B had raped her. Again there was a written statement in which she simply said "*(B) once raped me in a car".*

The reason why we had the two witness statements is that a decision had been taken to pre prepare statements for her to sign in case she might refuse to engage with the ABE process. That meant putting together information which she might have provided on earlier occasions. The problem with that process is that V did not sensibly engage in the Section 9 written statement procedure. We know that because when it came to her refreshing her memory during the trial she had to be recorded doing so because we could not guarantee that she would make no relevant comment during the process. She did so in the case of one defendant which resulted in that defendant being lost to the trial.

When it came to the written statements they were read to her and whatever was written she simply agreed with their contents.

In those circumstances it was impossible to say whether she was alleging rape or an attempt at sex against B. It is plain from other evidence that V knew what *"rape"* was.

A decision was taken to ABE interview V again in October. By then it was plain that V was not cooperating. She was recorded as being "*very distraught, crying and shouted that she was not going to help Police or social services anymore".* The Police wanted to obtain a chronology of events from V. It was a failure. Thus *"I've forgot everything..It's lost in my mind...I really cannot remember all of this..I have forgotten everything and I don't want to talk about it..You've got all the evidence by video recording and statements, that's enough".* The meeting was put off for two weeks.
The resumed meeting proved a disaster. The interviewing officer was with an intermediary. It was plain that V was flagging; that she was becoming confused and irritated. Thus she gave information which was contradictory and plainly wrong. In order to help her, extracts from her witness statements were pinned to a board and read to her so that she might refresh her memory. That meant that where previously she had made errors in her statement, what she said in the interview simply led her into confusion. Thus *"I can't tell.. Just hang on I met with B..no no its not right. It doesn't fall in...It just doesn't seem right..I feel like I am giving you wrong information and its all..kind of..mingled together...I can't remember..that will probably complicate my argument because they will win...B.. came, arrived in a car. No no it wasn't like that. It was like this...or wasn't it like that because I can see that it doesn't fit....Now it's all getting mingled up in my head".*

<u>THE FAILURE TO CHALLENGE</u>

One of the problems with the inquiry was that a decision was taken not to challenge V. Thus when she gave inconsistent information, when one minute she alleged rape against one man and then withdrew the allegation, when she said that B had tried to have sex but then two months later she alleged by sideswipe that he had raped her, she was not challenged. No doubt the decision was made for good reason because when challenged she might withdraw from the process but it did mean that the first challenge came at trial. Even then, because of the ground rules the challenge was kept to a minimum but the jury had a very large document setting out a substantial number of inconsistencies in her various accounts. Rather than challenge, the process became a congratulatory

process with those interviewing encouraging *"disclosure"* with "*high fives*" when helpful information was given.

In the case of B the failure to challenge resulted in the interviewing officer refraining from asking V about Face Book contact with B which had been extensive. It utterly undermined V's allegations that B was a party to violence, threats and forcible prostitution. It might however on one view have supported an allegation of *"grooming".* There was talk of *"business"* or *"deals"* which on one view might be a reference to V being sold for sex. The first time she was asked about the contact was in cross examination by the Defence. That cross examination was a hostage to fortune because the Defence had no idea what she might say. By the time V was asked about this contact she was committed to her allegations of violence and forced prostitution and so we suspect felt compelled in the main to deny that the contact was sex related. V's explanation for the reference to *"business"* was that it related to the selling of cosmetics. Whilst that might have been derided, by that time V was constrained to say that it might be so connected and it fitted with a piece of evidence that she and her mother had been selling commodities and so could not be simply dismissed. The judge held in the ruling on the submission of no case that the failure to check what V was saying and to challenge the inconsistencies "*..denied them (the police) and the authorities ..an opportunity to make a realistic assessment of her overall reliability"*

THE INTERMEDIARY

A psychologist in the UK and with whom V had refused to engage reported that *"If it is the case that (V) confabulates at times when she is asked about traumatic events this needs to be considered within a court situation to ensure that the stress/distress involved in her speaking about difficult and traumatic events does not affect the accuracy and strength of her evidence".*

This was a case in which an intermediary was appointed.

Ground rules were established.

The intermediary was invaluable. Many hours were spent not only discussing the sort of questions but exactly how they should be framed. It worked and obviously worked because when an agreed question was modified inadvertently, the witness declared herself unable to understand. The intermediary not only helped with the drafting of the questions but sensibly and unobtrusively intervened when she felt the witness was confused.

The questions worked on with the intermediary were not disclosed to the judge or the Prosecution and the intermediary remained carefully independent of the parties.

Cross examination was limited. V was not asked about her experiences in her country of origin.

COMMENTS ON THE INVESTIGATION

There can be no doubt but that it was necessary to speak to V in order to establish a degree of trust before proceeding to ABE interviews.

The judge when ruling on the submission of no case commented *"I appreciate that it was a difficult and challenging process dealing with a young person with N's psychological profile".*

She had little trust of the authorities. That process was however fraught with difficulty because where there were such meetings they tended to be recorded in narrative form by the officer and social worker. Just as problematic, the notes were obviously taken in her native language and then translated in the narrative by the interpreter on site with the officer and social worker. There were any number of roads to confusion.

ABE INTERVIEWS

There is much guidance on the interviewing of children (see Cleveland report 1987; Pigot report 1989; Criminal Justice Act 1991; Memorandum of Good practice on Video Recorded Interviews with Child witnesses for Criminal proceedings 1992, replaced by Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses, including Children 2002 replaced by Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses and Using special Measures 2007 updated in March 2011 etc. The process is again being reviewed.

There is an emphasis on interviewer experience, skills and training; the need for shorter rapport stages including preliminaries, neutral topics and ground rules; getting to the heart of the matter as soon as possible; no routine summaries of what the witness has said, but only to clear up ambiguities.

The judge commented that there were too many ABE interviews.

There was little structure. That part of the process provided scope for inconsistency and contradiction not because V was necessarily lying but because her memory was flawed and by reason of her low IQ. It also meant that she had to refresh her memory before giving evidence and was likely to say things which appeared at first blush to be a contradiction of her interview.

Whilst it is easy to criticise the interviewing officers for such breaches, the fact is that by reason of the very nature of the victim such breaches were almost inevitable.

The breaches resulted in an application to stay as an abuse (Section 78 PACE). That application failed but played a role in the judge's decision on a submission of no case. He found that *"It was very clear to me that there were failings by the police to comply with the rules and guidance and in my judgment these failings have contributed to the unreliability of V's evidence .."*

The problems arose from the leading questions; a failure to consider the tendency to confabulate; failure to restrict the number and length of interviews; a serious "*lack of neutrality" eg "I know you have told the truth…it's awful what you have been through..if I was in your position now I would be giving evidence like you are…You are doing really well…that's good..";* failure to take into account the psychological reports; failure to keep full and proper records; taking a witness statement the content of which was a word for word reproduction of notes taken of an oral disclosure when lines *"were being fed to her";* the failure to disclose to the Family Court judge that statements had been pre prepared.

The judge took the view that the ABE interviews were not well conducted. He commented that *"The codes of practice are important where special measures exist to assist the prosecution in presentation of the evidence of vulnerable witnesses…The more procedures, the more the serious inconsistencies, largely unchallenged, the more the confusion. At the end of the day there is still no sense of the order in which things happened or any sort of beginning, middle or end. It is clear that those investigating failed to obtain advice from the outset. They should have got early advice from senior experienced and specialist Counsel. They did so by the end when it was much too late..The multiplicity of interviews did not work here either as to the credibility of N or for the presentation of a coherent case".*

The judge commented that one of the problems was that V was in the witness box for a long time. This was unfortunate he said but there was no other option. The judge had made ground rules taking into account the advice of the intermediary. It was necessary to have breaks. The cross examination was, he said, appropriate and proper in tone and content.

CONCURRENT PROCEEDINGS

One of the complications in the case is that there were two concurrent sets of proceedings, one set in the Family Division, the second in the Crown Court. The Family proceedings were designed to protect a number of children.

It is now unusual for Family proceedings to be heard after the criminal case because of the principle in Children Act 1989 S1(2): *"In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child."*

There are cases where such proceedings will be delayed pending the outcome of the criminal proceedings (see eg **Re L (Care proceedings: Risk Assessment 2009 EWCA Civ 1008).**

The Family Court proceedings were held in private as they must be and there were restrictions on the information made available to the lawyers (both Prosecution and Defence) in the criminal proceedings.

The two sets of proceedings were conducted in the same court centre which might enable a more convenient flow of information where essential (see **Re W (Care order: Sexual Abuse) 2009 EWCA Civ 644** and the remarks of Wall LJ about the importance of close liaison between the courts conducting concurrent Criminal and Family proceedings) although it is plain that as regards the Criminal proceedings nothing was done or said which might impact on the Criminal Court's independence or might provide the Crown Court judge with information which might impact on the running of the Criminal trial. In so far as there was a "Chinese Wall" it remained solid.

In fact where the High Court judge considered matters to be relevant, transcripts were made available. The process created some difficulty in that one of the defendants appeared in the Family and Criminal proceedings. Thus she and her lawyers had access to material which was not available to others (see **Family Procedure Rules 2010 Rule 12.73(1)(a) and Re B (A Child: Disclosure of evidence in Care Proceedings) 2011 Family Law 1200)**

The judge in that court delivered a judgment in which she criticised the investigation and evidence gathering process. Those criticisms were made available to those involved in the criminal case and were referred to by the judge in the ruling on the submission of no case.

The Family judge refrained from having V called in those proceedings. She had the advantage of the ABE interviews.

There is no longer any presumption against calling a child in family proceedings. There is a tension between a defendant's Article 6 and the victim's Article 8 rights **(see Re W (Children)(Abuse: Oral Evidence) 2010 UKSC (2010) 1FLR 1485 and SN v Sweden (Application No 34209/96) 2002 39EHRR 304).**

The Family judge must have taken the view that striking the balance V should not be called in those proceedings to give evidence.

Baroness Hale in Re W "*The quality of any ABE interview will …be an important factor (in deciding whether the victim should give evidence in the Family proceedings)…Where there are parallel criminal proceedings, the likelihood of the child having to give evidence twice may increase the risk of harm…"*

Baroness Hale spoke of video interviews in the following terms *"…video recordings of "Achieving Best evidence" (ABE) interviews are routinely used in care proceedings if they are available. The near contemporaneous account given in response to open ended questioning, in relaxed and comfortable surroundings, is considered inherently more likely to be reliable than an account elicited by formal questioning in the stressful surroundings of a courtroom months if not years after the event."*

The ABE interviews in this case were not such as envisaged by Baroness Hale.

RULING ON THE SUBMISSION

The judge's ruling at the end of the prosecution case recognised that the case depended wholly or substantially on the evidence of V. He recognised that V had had a traumatic and unfortunate young life. The issue he said was whether *"there is sufficient reliable credible evidence*" of guilt. He spoke of the flaws and inconsistencies in the accounts of traumatised victims which might be expected and the constitutional primacy of the jury's role. The issue he said was whether this was one of those cases where *"the evidence is so extremely unreliable, contradictory and unsatisfactory that the trial judge is required to consider whether a properly directed jury could convict and if the answer is no withdraw it from the jury".* He referred to the cases of **GALBRAITH, CIRO GALLO and SHIPPEY.** The psychological reports had not been adduced before the jury but were referred to in the ruling. He dealt with the flaws in the evidence gathering. He then looked at the evidence given by V. Importantly V had made allegations against various people which were wrong. He commented *"It is clear that..based on sound and undisputed evidence/disclosure, by mistake, confusion or sheer lies V has implicated 8 men of serious crime and in evidence has withdrawn the allegations or robustly rejected them as being wholly wrong..".* She admitted making allegations of rape against one man out of jealousy because he had transferred his affections to another. According to the judge one of the most alarming aspects of the evidence was what happened to V in the north of England where she had been living with her parents. There she had accused her parents of selling her for sex which she was to deny at trial. V had taken drugs (whether forced or not) and the judge considered that "*they may tend to explain unreliability and memory problems and the defendants if they did (force her to take drugs) should not get the benefit of it"*. There was however considerable evidence that she had taken drugs and become addicted well before, on any view meeting the defendants. There was a video of V taking drugs and demonstrating how to use them. The judge held that in the light of the north of England evidence *"..(there is) clear evidence (that) the Police and (the interviewing officer on instructions) effectively turned a blind eye to these matters in their zeal to pursue the allegations against these defendants.."* He made it clear that the officers were decent and honest. The approach of the Police *"was significantly affected by a laudable determination not to make mistakes made by agencies in the past of not listening or being dismissive of complaints of this nature…".* He made it plain that the "*the flaws in the investigation are not definitive of themselves of this ruling which is based on that to some extent but also more particularly on the serious and in some instances breath taking flaws in the credibility/reliability of V".*

FINALLY

It is difficult to know how to deal with this type of case. It is a misfortune and a disaster for criminal justice if those involved in this type of criminality escape justice. On the other hand, when one has such a vulnerable victim and the process is so complex, there are those who consider that we should consider the remedies available in the civil jurisdiction (including under the Sexual Offences Act 2003 and the Modern Slavery Act 2015).

There is no doubt but that a judge in the civil jurisdiction would have made orders against all the defendants in this case restricting contact with any number of potential victims, offenders and if necessary geographical areas. The allegations need to be established on the balance of probabilities, not to the criminal standard. Once in place, should the orders be breached the contemnor would inevitably be imprisoned. In this case the young victim was subjected to the trauma of the criminal trial process and we simply do not know to what extent that process contributed to her suffering.

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