

CANADIAN BAR ASSOCIATION

THE SEARCH FOR TRUTH AND JUSTICE FOR TWO BRITISH NURSES IN
SAUDI ARABIA

I have been asked to come and tell you something of what has come to be known as the Saudi Nurses case. The timing of the speech is perhaps significant. It arises at a time where there is a loss of confidence in our adversarial justice system. The cases of Rodney King and O J Simpson in the United States and the equally infamous cases of the Gilford Four and the Birmingham Six in England are but a sample of the cases pointed up by our critics as miscarriages of justice symptomatic of our legal system which on the one hand fails to find truth and deliver justice and where our accusers say lawyers have hijacked the system.

It was only last year that I was in the United States defending the Contingency Fee System against what I considered ill-informed criticism against those who were prepared to blame the legal system and lawyers for all evils of society without a proper understanding of the role of the lawyer or the true nature of the problems underlying the criticism.

I arrive here in Canada at a time when attacks on the legal profession and upon lawyers have never been greater. These attacks come from all quarters, from Government, from interest groups, from the business community and from what are sometimes termed informed commentators. To the public eye we, as lawyers, are not just part of the problem, we have become the problem. I think it is fair to say that in the United Kingdom and in North America at large public confidence in our system of justice is at a low ebb. It is said to be a lottery, the rich are said to be able to buy justice and the system of trial no longer seeks truth but is a contest of trickery and acrobatics between lawyers.

We all of course see the world from our own point of view. If I might indulge in a little trickery I would say that I come not to bury our system of justice but to praise it. I have always understood what I do in law as being an "equalizer". I have always been for David against Goliath. I have always sought to ensure that David had a sporting chance.

Before we give it all up, close down the Courts, do away with juries and seek to resolve all disputes before lay tribunals or through cups of coffee and mediation we need some perspective. Such a perspective can be gained by looking at what happens elsewhere. Even within Europe traditions vary. The inquisitorial system of justice, which is to be found in France and elsewhere, is far removed from that which you and I are most familiar. This is also true for the case of the two nurses convicted of murder in Saudi

Arabia. It is quite irrelevant to condemn or extol one system of justice over the other. It is important to acknowledge that miscarriages of justice can occur in all systems. What is important is the role of the lawyer in fighting for justice and making the system of justice work, wherever that may be.

The arrest and conviction of two British nurses in Saudi Arabia for the murder of their Australian colleague Yvonne Gilford has inevitably caught the public's attention. The arrest of any 'Western' in an Islamic country is always news worthy bringing with it the prurient interest of tabloid newspapers, readers seeking out every detail of a modern day "Midnight Express". This case has it all. It is not the usual case of drug traffickers facing execution or amputation but rather it centres on three professional carers, three nurses accused of being caught in a lesbian love triangle with passions overflowing in the implacable face of Islamic justice and tradition. Murder, love, women and lesbian sex with the possibility of non-certainty of death by a sword.

At another level the case throws into sharp focus differences between two cultures, two legal systems and the way in which they search for truth and justice. Inevitably we apply a Christian if not increasingly secular Western value in an attempt to understand if not judge Islamic justice. Yet in all of this it is important to remember that prejudice is born of ignorance. Any moral superiority from a Western perspective which seeks to compare then judge one system against the other must first examine whether what we have is any more effective at delivering truth and justice. Islam is no stranger to judgement from the west, or to being characterised as backward if not barbaric. Islamic commentators are not slow to point up what are seen as the failings in our own adversarial system. O J Simpson and Rodney King in the USA and the Birmingham Four and the Gilford Six in the United Kingdom are token examples. They would say of the public's increasing dissatisfaction with our adversarial system and clear and obvious examples of its inability to deliver truth and justice. From that they would argue that a decay is delivered to society which is seen in the whole range of social problems out of control not least of which are crime and drugs.

I think there is little value in comparing one system against the other. Throughout this case the British legal team were reassured that whilst there were many differences in approach, content and philosophy between the two legal systems, Saudi Law requires that the prosecution must prove its case beyond a reasonable doubt and where there is satisfactory evidence before the court which casts doubt on the reliability of confessions then that confession cannot be relied upon. Indeed there is said to be an important principle of Islamic Law going back 1400 years that a conviction based solely on a confession made to the police may be unsafe or unsatisfactory.

Even within the European tradition there are differences yet for all systems the goal is the same, to find truth and justice.

We are accused even in our own community of being arrogant about our system. Some say adversarial justice is just as likely to hide or corrupt the truth and that it is optimally suited to ferment hostility and rancour. In this analysis law and lawyers are seen as hijacking the system where the search for justice becomes a casualty or at least takes second place. No doubt many of you are familiar with the reputed remarks of a US Supreme Court Justice when he said, "This is a court of law young man not a court of justice" and I can corroborate this approach in my own training when I confronted a Senior Partner in my own firm challenging the approach he took to a case as missing what I saw as the essential "truth". I was reminded sharply and appropriately, "Cases are not decided on the truth but on the facts proved".

Our means of Dispute Resolution, our system of adversarial justice, has developed over centuries characterised by the contest of opposing interest, vigorous advocates and judicial impartiality and usually, but not in all cases, a jury or peers. The parties retain control of the dispute, the facts which are to be put in dispute and thus define the dispute. The Judge sits aloof determining the issues raised by the parties. It is said the trial becomes not a search for justice but a contest between lawyers.

Against this background how do we understand what happened to two British nurses? Was the treatment fair, are we critical simply because it is different? Is our view or judgement based on a heavy cocktail of ignorance and Western arrogance? Our critics point to a system unable to control the tide of crime and moral decline. A system increasingly disowned by those it seeks to serve. It is said we fail to deliver justice. We seek not the truth but are content with a gladiatorial battle of egos. It is said justice is bought by the rich who employ the energies and services of lawyers of greater talent and in greater numbers than those who prosecute. Juries are said to be unequal to the task of the trickery and magic of Counsel who beguile and mislead them with theatrics, which cheat justice, discredit the system and leave them unable or unwilling to seek the truth. This is certainly the view of Islamic critics and it is a view, I regret to say, which is held within the community we serve.

Well here I am, a Scottish lawyer, at the scene of another disaster unfolding as our system of adversarial justice and our profession are in what can only be described as a winter of discontent attacked by Government and consumer groups and informal commentators. I think it is time to strike a note for sanity and tell them "you have never had it so good".

The case of the two British nurses illustrates a simple truth that each system is judged, not against another, but by its ability to do justice according to the standards recognised by all. All religions and philosophies contain at their core the simple truth of justice according to the law.

What do we know of the system of justice in Saudi Arabia? Probably more than you would imagine. Notwithstanding a marked reluctance on the part of the Saudi authorities to allow the public let alone the international legal community to examine it much is known. A cursory search on the Internet will reveal a huge amount of information, including US Congress Reports.

The system is based on Sharia Law, that is the Law of Islam. The law prescribes the independence of the judiciary. Judgements are based on writings in the Koran and in the Shunna. Cases involving minor matters are tried at summary courts with more serious cases decided in general courts. Appeals are heard in Mecca and Riyadh. There is a Supreme Judicial Council which is not a court but they refer matters back to court for further consideration. Members of the Council are appointed by the King as are senior jurists and muftis. There is also a Council of Senior Religious Scholars which consists of 15 jurists and the Minister of Justice. They establish legal principles which guide the lower courts. Thus far you can see there is little to criticise in what must be readily recognised as a clear well developed system. One marked difference is the role of the lawyer.

The accused normally appear unrepresented before a Judge who decides the case according to the principles of Sharia law. The role of the defence lawyer, a species rarer than a hot day in Calgary in January, is usually limited to pre-trial advice or acting as an interpreter for foreign accused. There is no public defender, no legal aid and evidence of one man is held to be equal to that of two women. In the absence of at least two witnesses in criminal cases a confession before a judge is the usual basis of conviction. This has the unfortunate effect of encouraging the police and those prosecuting to approach the investigation of crime by seeking first a confession rather than seeking the evidence. Since the only evidence which is admissible is witness evidence, there is no role for a forensic investigation, expert opinion or the panoply of forensic tools and investigation seen regularly in the courts in the Western World. It has been observed and recognised by those who have examined this system that this has given rise to a system which is characterised by police confessions often, it is thought, coerced from suspects by the use of threat, psychological and physical abuse.

Sentencing is far from uniform but in cases involving murder or wrongful death the courts may award "blood money" to relatives

depending on the nationality, religion and the sex of the victim. The King can only commute death sentences with the request from the victim's next of kin who can pardon the murder in exchange for compensation.

There has been much written about the abuse of human rights and denial of fair trial in Saudi Arabia. The United Nations Human Rights Report on Saudi Arabia in 1996 concluded that there had been a sharp increase in executions. It suggested that some 70% of those executed in the last three years were foreigners. It was noted that those facing the death penalty are denied the right to defence lawyers, confessions are reported as having been obtained by torture and then accepted by the courts as evidence. The legal proceedings are judged not to conform to international safeguards guaranteeing a fair trial. Yet the principles of Islam are rooted in justice and in truth. What is missing? Miscarriages of justice are not the unique preserve of Islamic or indeed Saudi justice. In my view the role of the lawyer in protecting his client, in challenging the accusers, in testing the evidence which comes before judges with the responsibility in seeking the truth and delivering justice. In seeking some measure to examine the case of the two British nurses I look to the Universal Declaration of Human Rights which provides as follows:

Article 5: No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment.

Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11: Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to the law in a public trial at which he has all the guarantees necessary for his defence.

The case of the two British nurses witnesses a case where no witnesses were called and not a question was asked.

In looking at what happened in this case it is important to state and restate that it is not Islamic justice which is criticised. I repeat what I seek to expose is not a critique of the Saudi Judicial System but a miscarriage of justice every bit as abhorrent as any which has taken place in the west. The Saudi system may in some respects have great merit but its validity in practice depends upon demonstrating not just a commitment to truth and justice but an ability to deliver this and where it fails to, acknowledge such a failure not as a matter of shame, but as a recognition of its strength, and to learn from it. As I have said before and say

again, the notorious miscarriage of justice pointed to in the west are ones that are an acknowledgement of the strength of our system rather than its failures. We are able to criticise, we do criticise, we seek to correct that which is wrong and in identifying that which is bad we emphasise that which is good.

A conviction, imprisonment or execution of someone who is innocent is an affront to all legal systems and all religions.

Turning now to the case itself. Let me pose and answer the question which I am asked most often. Are Lucille McLauchlan and Deborah Parry innocent of the murder of Yvonne Gilford? Without a crystal ball I cannot answer this. I can say one thing with complete certainty. I have neither seen nor heard of any evidence which would justify their conviction in any court of law which adhered to the principles of natural justice and accept the principles laid down in the Universal Declaration of Human Rights. For the first time ever I am proposing to take you through the case.

Yvonne Gilford's body was found on Thursday 12th December 1996. A murder investigation was completed by late December 1996. There followed an extraordinary series of press leaks in the Arab press, both in Saudi Arabia and elsewhere but particularly in the United Kingdom. It is difficult to conclude other than that information was being leaked by the Saudi police. In these press leaks it was claimed there were four key factors which condemned both nurses as guilty of this terrible crime.

The first was that the murder scene had been "wiped clean".

The second was that the nurses had confessed voluntarily to the police.

The third was that there was a video recording of one or perhaps both nurses using Yvonne Gilford's cash card.

The fourth was that Lucille McLauchlan had been detained at a bank and then arrested shortly thereafter, caught red handed in the use of Yvonne Gilford's bank card.

Given the nature of press freedom in Saudi Arabia you will no doubt wonder why these leaks happened? Was it a crude but effective attempt to manipulate public opinion? An attempt to divert an anticipated British public backlash over two innocent nurses? To divert criticism that the police had failed to investigate this case properly? That indeed there was no evidence?

If the evidence against the nurses was strong then such a press leak would serve no purpose. Indeed it may well be counter-productive.

In the months that followed the legal team in the UK and Saudi pressed the authorities to release the police evidence and allow this to be independently examined and then accepted or challenged. To this day the defence team remains in ignorance other than in two respects: the disclosure of the alleged confessions and the post mortem report. Each of these "pieces" of evidence has exposed the police case as a case built upon straw. The confessions are false and the post mortem report provides nothing to connect the death of Yvonne Gilford with either accused and is indeed contradictory of the confessions.

We had gathered together a team of internationally respected forensic experts to assist us in the analysis of any evidence revealed. The families were warned that such an independent examination could well confirm rather than challenge the guilt of their relatives - they accepted this. We waited, but waited in vain.

As to the first element of the police case which had been carefully leaked to the press namely that the crime scene had been "wiped clean" it will come as no surprise to you, although apparently it must be to the Saudi police, that a crime scene cannot be wiped clean. Apparently those investigating the case have the novel concept that a duster, mop and washing machine could clean a crime scene and therefore answer any criticism from the British defence team that there had been a failure to carry out DNA sampling and many other routine forensic tests. We took the opportunity to point out that since it was possible to carry out DNA tests on the Shroud of Turin forensic testing of a crime scene, even one apparently cleaned to the naked eye, would provide little difficulty to those trained in the technique. We obtained forensic reports from a Professor of Forensic Science who enjoys an international reputation confirming all of this. These reports were made available to the Saudi Authorities and the issues were directly brought to the attention of the Saudi Ambassador in London, all to no avail.

As to the confessions there was much more we could do. We had sight of them and the versions which preceded the one eventually relied upon. Perhaps it is important to note that so far as Lucille McLauchlan was concerned she was arrested on 19th December 1996 but was unable to obtain consular access until 24th December. During that period several purported confessions were extracted from Lucille. Immediately upon obtaining consular access she withdrew her confessions and pointed out that she had been subjected to physical and sexual abuse. It is clear that during her period of custody the entire police investigation was centred upon obtaining confessions. This in itself is extraordinary. The nature of this murder involved multiple stab wounds. It is difficult to understand

the role or significance of confessions in a case where the opportunity to recover and ingather forensic evidence which inevitably would point to the perpetrator of the crime leaving a trail so indelible that not even a blind man could miss. It is difficult to conclude that this trail was not followed because no one was prepared to look. There is no blindness greater than those who will not see. Around the world confession based convictions are accepted as notoriously unreliable, recognised (almost) everywhere as one of the major causes of miscarriages of justice. In my own country, Scotland, a confession on its own, no matter how full, can never be the basis of a conviction unless there is independent corroboration, that is a second source of evidence unequivocally pointing to guilt. Yet in Saudi Arabia in the absence of eye-witness evidence, preferably male, the only other source of evidence apparently considered is confessions.

The police interrogation in this case took place without any of the safeguards regarded as fundamental and indeed elementary in most countries. There was no tape recording of the confessions. Neither nurse was allowed representation, whether legal or by Consular Official. Both would have been readily available. I will take you through Lucille's story.

When Lucille was first interviewed in Dahrán Police Station on 19th December she was placed in an Interview Room with six male police officers. She was subjected to physical and sexual harassment and abuse. She was wrongly told that Deborah Parry had confessed. She was touched sexually. She was humiliated. She was threatened that she would be raped. She was told what she would have to write and if she co-operated and was a "good girl no one will touch you or fuck you". She was told she would have to accept that she, Debbie and Yvonne were lesbians and that if she did as she was asked she would be deported to the United Kingdom.

I can conclude this chapter by advising you that an internationally renowned expert in the area of forced confessions, a Professor of Forensic Psychology, concluded "Given the evidence available to me in this case and the evidence I have of 'coerced-compliant' confessions in cases that I have dealt with for both the Crown and the Defence in the United Kingdom I must conclude that Miss McLauchlan's confession must be regarded as being totally unreliable and completely unsafe. I would therefore respectfully ask the Court to conclude that the confession is unsafe evidence on which to convict Miss McLauchlan". The position for Deborah Parry is not the same, it is worse. Deborah suffered then and suffers now from psychiatric problems. Despite the report from experts and despite Deborah Parry's condition these confessions were relied upon and indeed accepted as unchallengeable.

Turning now to the third leg of the evidence leaked by the police, an apparent video tape of the use of the cash card. Despite repeated requests this has never been produced nor have we been able to identify anyone who has ever seen it.

The final leg of evidence against Lucille McLauchlan was that she was arrested shortly after using a cash card at a bank. This, you would imagine, is a relatively simple element of the case to prove but no evidence of any type has ever been brought forward or exhibited to us which would substantiate this in any way. What we know is her handbag was taken from her in the Police Station during confession and returned to her and in it for the first time a cash card was produced.

What we are left with is police confessions obtained from two nurses who were kept in isolation and denied representation. Confessions full of contradictions and inconsistencies and judged by experts of international repute as bearing the hallmarks of being forced. Add to all of this the apparent absence of a competent police investigation.

We know of a metal bracelet found at the crime scene which belonged to neither accused nor the deceased.

There was an established history of nurses being harassed by security guards in the hospital.

There is an unsolved murder of a female nurse which happened two years prior to this murder who worked in the same hospital.

Immediately prior to Yvonne Gilford's death she was known to have been harassed by security guards. We know nothing about what was done to investigate this.

Prior to Yvonne Gilford's murder she and other nurses had their wallets stolen only a matter of weeks prior to Yvonne's death. The obvious question is was her cash card taken then?

The practice of the police in extracting confessions is recognised and recorded by all Human Rights Organisations and indeed by the US Congress in a report on Saudi Arabia.

The questions are endless, the answers are either unavailable or non-existent.

What is not understood about this case is - this was a murder trial where the accused were not told what the evidence against them was, not one witness gave evidence, no cross examination took place, no defence evidence was heard and judges considered a secret folder of police evidence the contents of which were known only to the police

and the judges. Of the evidence which was revealed, the confessions were obtained under duress and inconsistent with the post mortem report.

What is clear is all of these are questions which lawyers routinely ask and explore daily in our adversarial system of justice. What is missing in the case of the two British nurses was the role of cross-examination which is the greatest engine in the search of truth. A system of justice unable or unwilling to challenge the accuser or to acknowledge miscarriages of justice needs no critic, it condemns itself.

Lucille McLauchlan and Deborah Parry remain innocent until proved guilty in the eyes of the world.

PW/MOR

21st January 1998