

JCW(s) - 14

Avey, Lisel

From: Whalley, Justin
Sent: Tuesday, 13 December 2011 4:29 PM
To: CDW
Cc: Avey, Lisel
Subject: RE: Retrial of CDW

Dear CDW

Thank you for your email. Addressing the points raised therein in the order in which they appear:

I note your comments regarding CDX. I will contact him before the end of this week and will be happy to discuss any aspect of the proposed retrial with him.

CGY's evidence at the first trial was recorded and it is anticipated that we will simply replay this in any retrial without the need for CGY to give further evidence. Accordingly the question of whether or not CGY will proceed with any retrial doesn't arise for consideration.

The jury will not be told why the convictions were set aside. They may not even be told that they are involved in a retrial although often we agree with the defence that they should be told since it is likely to become obvious anyway. If that happens then the jury will be told that the fact that it is a retrial is irrelevant and that they should not speculate on the reasons for it.

I do not presently intend to call Professor REDACTED to give evidence in any retrial. I have no doubt that she is a well-qualified expert in her field but we are confident that jurors understand the reasons why a child victim may not make an immediate complaint of sexual offending. There is a statutory requirement for any trial Judge to inform the jury that there may be good reasons why a victim may hesitate or refrain from making a complaint. It is the experience of this office that calling experts to give evidence of child behaviour simply leads to the defence calling their own expert to rebut the State's evidence. The trial then has the potential to become a 'battle of the experts' with the focus being taken off the complainants and their evidence. The previous jury in this trial appeared to have had little difficulty in making due allowance for the delayed complaints in this case, there is no reason to suppose that any new jury, even if given a stronger warning about the effect of delay, will have any greater difficulty.

There is no realistic possibility of Mr CDV successfully appealing against his convictions that were allowed to stand after the recent Court of Appeal decision. He has exhausted all realistic avenues of appeal in relation to those offences.

REDACTED

In a criminal trial we have a legal obligation to call witnesses whose evidence is relevant to issues arising in that trial. We have a corresponding obligation not to call witnesses whose evidence is not relevant. I understand that there are many answers that you would like from Mr REDACTED and his alleged failure to act on warnings will no doubt be central to your civil action against the school. That alleged failure by Mr REDACTED is however of negligible relevance to the issue of the guilt or innocence of Mr CDV in respect of the criminal offences with which he has been charged. It would be inappropriate for us to call Mr REDACTED to give evidence in any criminal trial because he may have evidence that might assist either party in an unrelated civil action and I can advise that it is not presently our intention to call Mr REDACTED to give evidence in any retrial.

I am a little concerned by your statement that "we absolutely want REDACTED to be called up this time." Whilst this may have been no more than a statement of aspiration it does suggest a possible misunderstanding about our respective roles which I should briefly address. The Office of the Director of Public Prosecutions conducts prosecutions on behalf of the community, not individual victims and unlike civil lawyers we do not take instructions from victims as to the manner in which a trial should be conducted nor what witnesses should be called. You are

always welcome to make suggestions but ultimately the manner in which a trial is conducted will be dictated by legal principles not the wishes of victims nor of any other party with an interest in the case. I'm sure you understood that anyway but I thought it worth mentioning to ensure that there is no possible confusion as to the nature the D.P.P.'s relationship *vis-à-vis* [REDACTED] or any of the other victims in this case.

Please continue to contact myself or Lisel if you have any further queries.

Regards,

Justin Whalley

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REDACTED

From: [REDACTED] [mailto:[REDACTED]]
Sent: Monday, 12 December 2011 7:27 AM
To: Whalley, Justin; Avey, Lisel
Subject: Retrial of [REDACTED]

Dear Justin and Lisel,

[REDACTED] uses the following email address,

[REDACTED] his mobile phone number is still the same - [REDACTED]

[REDACTED] is still happy for you to communicate to him through me when necessary.

It is really important that you speak to him and reassure him that he will be OK. He was pretty upset when I told him that he has to go through a retrial because the judge made a mistake. He does understand that [REDACTED] will be facing the retrial as a convicted paedophile though.

What needs to be clear is that [REDACTED] and the rest of us have serious trust issues ... the school let us down and now the courts have let us down.

He gave me the impression that he is determined to go through with the retrial and that he will do his best. He is going to need a lot of support but the 'fall-out' on our family, already, has been enormous.

Will the case be weakened if [REDACTED] does not proceed? What happens to those charges that came out of [REDACTED]'s evidence if he doesn't go ahead with the retrial? Do they get dropped because the convictions were set aside, only because the judge erred? Can a jury be told that [REDACTED] is too upset to have to go through this all again.

Will the new jury be told the reasons why the convictions were set aside? Will [REDACTED]'s counsel be able to raise all the points of his appeal that failed in the retrial?

We are in negotiations for a settlement with the school and have been working with our own barrister and professional consultants. It is likely at this stage that we will be proceeding with civil action against the school in the immediate future.

The school is insisting that the boys are psychiatrically assessed in order to establish our claim. We have had a great deal of conflicting advice on this.

All of this, now on top of a retrial, is creating a great deal of pressure.

Please do not suggest, like so many other people have, that we should be happy enough that [REDACTED] will no longer teach, that he is now a convicted paedophile, that that should give us satisfaction. It is [REDACTED] who came forward to the police - he is the one who needs the conviction against his abuse to stand more than anyone.

Lisel explained to me that the Courts understand why victims take so long to come forward (when I was asking her about using Professor REDACTED , but our concern is that jurists don't.

We absolutely want REDACTED to be called up this time. He was the author of the second formal warning (Feb 2001), the recipient of REDACTED's letter (Dec 2001) and REDACTED's complaint (Nov 2004). We want to hear why he didn't act on his warning. We were told that the reason he wasn't called upon was that he was not found in time to make a statement. We have also been told that so many complaints were made to him about CDV between April 2000 and September 2009.

If we fail to secure convictions against CDV in this retrial, is he likely then to appeal again against the standing convictions?

Kind regards

CDW

REDACTED