

FALSE ALLEGATIONS OF SEXUAL OFFENDING

A PAPER PRESENTED BY DR DONALD STEVENS QC TO THE NEW ZEALAND LAW SOCIETY CRIMINAL LAW SYMPOSIUM AT WELLINGTON IN NOVEMBER 2004.

Men and women have equal capacity for both good and evil. Some men do rape, but some women cry rape when it has not happened.¹

On 14 August 1997 Deborah Wood – who was 20 years old - mutilated herself with a house key, inflicting deep wounds on her breasts, neck and back. She staggered into the Hutt Valley Polytechnic, having ripped her bra and with her jeans and body suit in disarray.

She alleged she had been dragged from her car and sexually attacked by a fellow student.² The subject of her allegation was a young man who had done no more than park his car near hers, and have a brief conversation with her in the car park.

He was arrested and charged with assault with intent to commit sexual violation and indecent assault. He was remanded in custody for 15 days before being granted bail on strict conditions, which included a curfew and thrice weekly reporting to the police.

Seven months after the alleged attack the young man, the victim of the false allegation, went on trial. Deborah Wood gave impressive and convincing evidence; the tears flowed, she wept when asked to identify her attacker. She underwent cross - examination and maintained her story.

But, two days later, as the trial neared its conclusion, Ms Wood's mother approached the police and told them she believed her daughter was lying. However, Ms Wood, when confronted by police, stood by her story. It was only later that she finally confessed that she had gouged herself with a house key and that her story, maintained over seven months and throughout her evidence in court, was a fabrication.

And her explanation? She said she had done it because she was suicidal and wanted love and attention from her mother and friends after the end of a romantic relationship.

¹ Dr Felicity Goodyear-Smith, MB, ChB, DipObst, MRNZCGP, senior lecturer, Department of General Practice & Primary Health Care, University of Auckland, *Victim-orientated law reforms: advantages and pitfalls*

² For details of the case see *Dominion*, 26.09.98; 18.03.99

According to the police she demonstrated no remorse.

Deborah Wood was prosecuted for perjury and sentenced to two years imprisonment. This was perhaps less than the sentence her victim could have expected had he been convicted. And convicted he could well have been, but for Ms Wood's recantation.

This, of course, is not an isolated case.

The same year a false allegation of rape was made against a Hamilton law student, Nick Wills.³ The woman had bruising on her body that helped her credibility, and she cried readily. Not only was Mr Wills looking at an 8-year jail sentence, but also the end of his professional aspirations and a shattered life. Fortunately, he had used an ATM machine at the time it was alleged he was raping the complainant. The record of that transaction proved that he could not have been where the complainant said he was. But, in the meantime he lost his job, and the flat that went with it, at Waikato University and had to deal with malicious rumours on the campus, including suggestions that he might be a serial rapist.

Then there is the case of a 45-year old Whakatanae farm worker, Allen Collier, who served 10 months of a five-year sentence for rape before new evidence saw the conviction overturned.⁴ This was an historical allegation: the woman alleged a rape 16 years earlier. What secured Mr Collier's release were the efforts of his wife and two friends who located evidence seriously calling into question the complainant's account of events. They obtained records kept by Mr Collier's former landlord, which established that Mr Collier, at the time of the alleged rape, no longer lived at the address the complainant claimed. The landlord had kept meticulous records on his rental properties since 1949. He had died but fortunately his wife had retained the records. This case dramatically demonstrated the dangers of historical allegations. But for luck the records would have been lost.

False complaints of sex offending are nothing new. Indeed, perhaps one of the earliest on record is to be found in the book of Genesis. Joseph, of Technicolor dream coat fame, had been sold into slavery by his brothers. He found his way, as a slave, into the household of an official in the Pharaonic court. The official's wife took a fancy to him and made sexual overtures. Joseph resisted the wife's attentions. She reacted with a false complaint of sexual impropriety. He was thrown into prison.⁵

Even Prince Charles has been the subject of a false allegation. A former royal servant claimed to have witnessed the prince engaged in a sexual act with his valet. He made the allegation after being paid 60,000 pounds by a Sunday newspaper. He

³ *Dominion*, 06.02.97

⁴ *ibid*

⁵ Genesis, chapter 39

later offered to rescind the story for a similar sum and then admitted that he had concocted the story because he was angry with another royal servant.⁶

Perhaps the most celebrated case in recent times, which made headlines around the World, involved former British Conservative cabinet minister Neil Hamilton and his wife. They were arrested after allegations were made that they had taken part in “lewd sex acts” with a Ms Milroy-Sloan as she was allegedly raped by a second man.⁷ The Hamiltons maintained that mobile phone records and shop bills provided them with a “cast-iron alibi.” As well, they told police that they had been drinking with friends in Claridge’s at the time of the alleged attack. The case against the Hamiltons and the alleged rapist was dropped.⁸ Ms Milroy-Sloan had never met the Hamiltons. She was charged with perverting the course of justice. She had, the Crown contended at the Old Bailey, concocted the allegation because she craved money and fame. She had been told that she could make up to 100,000 pounds if the story proved true. She had learnt that Mohammed Al Fayed, the owner of Harrods, was in a dispute with the Hamiltons and “interested in any material relating to them.”⁹

The public record in New Zealand continues to disclose examples of false allegations. They seem to surface with monotonous regularity, albeit in somewhat more prosaic circumstances than those just described. During one week in August 2002 three different women made false allegations of sexual assaults to the police at Upper Hutt.¹⁰ Two falsely alleged that they had been kidnapped and sexually violated. One of the complainants proffered an explanation for the false complaint: she wanted a ride home in a police car. The police said at the time that false complaints were a growing concern.

In the space of a month in late 2003 the police at Wellington dealt with a spate of about 12 false sexual assault complaints¹¹ while in January 2004 Detective Sergeant Dave Clifford, of the Palmerston North Police, was reported as having told the *Dominion Post*¹² that police in that city were dealing with at least one false rape or sexual assault complaint every week. “It’s out of control and it’s frustrating as hell” he remarked.

And these, of course, are the cases where the falsity is readily apparent.

⁶ *Dominion Post*, 14.06.04

⁷ *The Times* 29.08.01

⁸ The case contained an interesting twist. Ms Milroy-Sloan’s name was suppressed under British law. Ms Milroy-Sloan, however, accepted 75,000 pounds from the *News of the World* to waive her right to anonymity, prompting Mr Hamilton to observe that she had used the anonymity granted by Parliament as “a tradeable commodity”: *The Times*, 21.08.01

⁹ *The Times* 01.04.03

¹⁰ *Dominion Post* 16.08.02; 17.08.02

¹¹ *Dominion Post*, 13.01.04

¹² *ibid*

Figures released by the office of the Commissioner of Police show that during the year ended June 30, 2003 the police charged 471 people with making a false statement.¹³ It is not known how many of these cases relate to alleged sex offences. Police sources have told the media, however, that most false statements are allegations of sexual offending.¹⁴

Obviously any attempt to determine the extent to which allegations are false will be difficult. Anecdotal accounts from police officers and estimates given by others involved in this type of case vary considerably.

One experienced English woman police officer suggested in the mid-1980's that 90% of allegations were false.¹⁵ She derived some limited support from one British study,¹⁶ while another suggests that the figure is between 29% and 47%.¹⁷ A study conducted among British police surgeons found that 31% of some 1,379 complainants "were laying the basis for false allegations."¹⁸ But, the "more experienced surgeons" in the survey thought the figure was just under 25%.¹⁹ Another survey over a five-year period conducted with "a rather larger sample" concluded that 29% "were definitely false allegations and a further 18% probably so."²⁰

A study that is supported by feminist writers, however, came up with a very different conclusion. The New York Sex Crimes Analysis Unit found that over a period of two years the rate of false allegations in sex cases was around 2%.²¹

Obviously when the studies produce such disparate conclusions there will be issues about the soundness of the research methodology and, indeed, the terms of reference. Does the term 'false complaint', for example, relate only to a deliberate fabrication, or does it extend as well to a complainant who is mistaken about what happened, for example a complainant who in fact consented to sex, but subsequently comes to believe that she or he did not consent?

Dr Felicity Goodyear-Smith (a medical practitioner who worked in the 1980's with the police examining the victims of sexual abuse and who was involved in

¹³ *ibid*

¹⁴ *ibid*

¹⁵ *Daily Mail*, 17.06.85

¹⁶ C H Stewart, *A retrospective study of alleged sexual assault cases*, *Police Surgeon*, November 1981 (this was a study of limited value because the sample surveyed was small.).

¹⁷ *ibid*

¹⁸ R Geis and others, *Police Surgeons and rape: A questionnaire survey in Police Surgeon* pp. 7-14

¹⁹ See the discussion of all of these surveys in Morton, *Sex, Crimes & Misdemeanours* (1999) at p. 150

²⁰ N M MacLean, *Rape and false accusations of rape in Police Surgeon*, 15, pp 29-40

²¹ Report of the New York Sex Crimes Analysis Unit quoted in P Pattullo, *Judging Women* and referred to in Morton, *op cit* 151

establishing the HELP Foundation for sexual abuse victims but who later became president of Casualties of Sexual Allegations Inc²²) writing in the *New Zealand Law Journal*²³ in 1995 expressed the view that most false allegations were likely to be the result of mistakes, rather than intentional lies. She wrote:

There is now considerable evidence that a woman may come to believe she has been sexually assaulted when in fact this has not occurred.²⁴

This could arise from any one of several different circumstances. The first, described by Dr Goodyear-Smith, is recovered memory. After noting that “many women with poor self-esteem and dysfunctional lives feel that something is terribly wrong in their lives and wonder if it has been caused by childhood abuse which they have repressed”²⁵ the author observed:

The basis of repression theory is that episodes of sexual abuse in childhood can be robustly repressed (instantly banished into the unconscious) and then recalled intact through memory recovery techniques or in other circumstances where the anxiety surrounding the event is removed.²⁶

But, said the author, there is “no scientific research which verifies this theory.” She continued:

There is however substantial evidence on how easy it is to implant false memories which come to be believed as true. Memory is a process in which new details can be added to old images or old ideas, changing the quality of the memory which is reconstructed rather than reproduced.²⁷

Listing factors which can influence or distort memories, the doctor included passage of time, post-event misinformation, interviewer or therapist expectations, thinking, writing or talking about an event, group sharing, confusion of real event with dream or fantasy and current beliefs and values.

Recent research supports Dr Goodyear-Smith, and develops her point to a frightening extent. Professor Giuliana Mazzoni of Seton Hall University, New Jersey, and Dr Amina Memon of Aberdeen University reported, in 2003, research demonstrating that people can develop a memory of an event that did not happen

²² COSA was set up in 1993 to offer support to people falsely accused of sex offences. It had in 1997 350 members, “two-thirds of whom are people directly involved with false allegations” – *Dominion*, 02.12.97

²³ *Review of “Was Eve merely framed; or was she forsaken?”* [1995] NZLJ 230

²⁴ *idem* 231

²⁵ *ibid*

²⁶ *ibid*

²⁷ *ibid*

to them by simply imagining its occurrence.²⁸ “This study demonstrates that memory is easily malleable” said Professor Mazzoni. He continued: “Simply imagining an event made 25% of the participants [in the research studies] develop a memory for it and a belief that it had happened.” In something of an understatement it was observed: “For legal cases that depend upon the reliability of someone’s memory, these results have worrying implications.”

The *New Scientist* similarly reported in 2003 on the unreliability of memory.²⁹ It recorded that it has long been known “that our memories are easily embellished. We add imaginary details through wishful thinking or to make a more logical story.” It continued: “Simply retelling a tale may be enough to change that memory for good. Long-term memory is effectively a myth.”

At Harvard University, Professor Richard McNally has been carrying out experiments to test mechanisms of how people either forget and then recover memories of traumatic events, or develop false memories of them. While not completely dismissing recovered memory the research has indicated that in most cases, recovered memories are probably false memories, generated from imagination.³⁰

Of course the memories, even though they are the result of imagination, are all too real and vivid to the people who have them and the distress that they cause is certainly not imagined. Hence, a person recounting such memories in a witness box can be a very convincing witness.

Dr Goodyear-Smith described psychotic illnesses as sometimes being responsible for false allegations. The allegation can be the result of a delusion, a symptom of the illness. Thus:

The content of paranoid delusions is derived from ambient social phenomena, and in recent times sexual abuse allegations are likely to become incorporated into these delusions, just as in different eras, paranoid delusions might have involved a belief in being possessed by witches³¹ or being persecuted by Communist spies.³²

Thirdly, there is the concept of misinterpretation of consent. Justice Thomas has described consent as a “decidedly malleable concept” ranging from “failing to demonstrate some form of resistance” to “active participation or encouragement of another’s approach.”³³ Cases where a woman feels coerced by threats or where

²⁸ *New Zealand Herald*, 17.05.03

²⁹ *New Scientist*, vol 178 issue 2393, 03.05.03, p 26

³⁰ *New Zealand Herald*, 17.05.03

³¹ Frances Hill in *A Delusion of Satan, The Full Story of the Salem Witch Trials* (1995, Hamish Hamilton, London) provides an instructive example.

³² *op cit* 231

³³ *Was Eve merely framed; or was she forsaken?* [1994] NZLJ 426,429

harm is actually inflicted to achieve sexual connection are only a small minority of rape cases. Dr Goodyear-Smith observes that: “Most rape cases involve situations where there are no threats of physical violence or actual force used by the man and the woman demonstrates no resistance to sexual intercourse.” She continued:

A woman might have actively participated in sexual activity ‘in the heat of the moment’, especially if influenced by the disinhibitory effect of a drug such as alcohol. After the event, however, she may regret her actions, and feel she was ‘taken advantage of.’ The issue of consent then becomes a value judgment. From the man’s perspective, he may have interpreted her actions as ‘freely given consent’. From her perspective, however, she may retrospectively interpret his sexual advances as unsolicited and subsequently believe that the experience constituted sexual assault.³⁴

Thus, it will be in the nature of things that false allegations will be made. And, unfortunately, they will be made more frequently than some would like to accept. Because of systemic failings too many such cases are proceeding to trial and to verdict and, because a trial is a somewhat arbitrary and by no means perfect process, too many innocent men are being placed at risk of conviction.

Twenty years ago, many police treated allegations of rape with skepticism (this may explain the position of the experienced English female police officer described earlier). Rape victims were often openly doubted. While there was a need to address that approach, the pendulum over the following two decades swung to the opposite extreme. This gave rise to the first systemic failing: a mindset on the part of official agencies and others that complaints must be genuine. This came to influence the other failings, to be discussed shortly. Despite evidence to the contrary, an attitude developed amongst agencies including the police, DSAC doctors, social workers, psychologists and therapists that it was very unlikely for a sexual allegation to be false.³⁵ There was an emphasis on the importance of the police, and others working in the area, believing a complainant. Criticism was made of the police when they approached a case skeptically and when they focused on the gaps in the evidence, rather than supporting the complainant. It became customary to treat every complaint as genuine, so as to minimize the distress of the complainant. A reflection of this approach was the practice that developed of using the terms ‘victim’ and ‘offender’ synonymously with ‘complainant’ and ‘accused’ before a verdict had determined the case. One example of this is the term used to describe the person who accompanies the complainant to court and sits near her (or him) when giving evidence. He or she is the ‘victim support person’ rather than the ‘complainant support person’.

³⁴ op cit 231

³⁵ See for a discussion of this issue Goodyear-Smith, *Victim-orientated law reforms: advantages and pitfalls*.

Dr Goodyear-Smith described the impact of this approach in a paper she prepared³⁶ in the late 1990's:

...this practice of advocacy for sexual offence complainants which has been adopted by people working in forensic roles, seriously undermines the impartiality of the investigation and trial procedures. Inherently believing that all allegations are genuine means there is a presumption of guilt, and that police, doctors, counselors and lawyers have therefore already effectively conducted the trial in their heads. The effects of confirmatory bias are well documented, and an initial belief in the guilt of the accused can colour how the police, the doctors and other professionals conduct their investigations and look for evidence which might demonstrate that the defendant is innocent.³⁷

In 1986 the requirement that a judge in a sex case warn the jury of the dangers of convicting on the uncorroborated evidence of the complainant was removed. Section 23AB of the Evidence Act 1908 now provides that “no corroboration of the complainant’s evidence shall be necessary” for there to be a conviction and “the Judge shall not be required to give any warning to the jury relating to the absence of corroboration.”³⁸ This legislative amendment has given rise to the second systemic failing.

Prior to 1986 the police were reluctant to prosecute a case alleging sexual offending based on uncorroborated evidence, because they considered the judge’s warning would make a conviction unlikely.

The law change altered significantly the police approach. Thereafter a case based solely on the unsupported or uncorroborated word of a complainant would likely be prosecuted. All it took, and all it now takes, for a prosecution to proceed was, and is, an unsupported allegation. As a result cases are now common where the prosecution is based solely on one person’s word with no supporting evidence.

The consequence of this is that any deceitful or disturbed or mistaken person can go into a police station and make a false allegation, and that allegation alone can be sufficient to put the person against whom it is made on trial. Often the allegation will relate to something it is claimed happened many years before.

Associate Professor Greg Newbold, of the Department of Sociology at Canterbury University, has described the situation in these terms:

³⁶ *Victim-orientated law reforms: advantages and pitfalls.*

³⁷ *idem* 4

³⁸ It is still open to the judge to comment on the absence of corroborative evidence in an appropriate case. In this respect see subs (2.)

...the police don't need much more evidence than a complaint. They listen to the accuser and the accused and then, if they think the complainant will stand up in court, they prosecute. And they tend to err on the side of the complainant.³⁹

The professor put the position rather powerfully:

If you're innocent and accused of rape, you're in for a terrifying experience. You will have the trauma of being investigated. If you are charged you will have the massive cost of your defence and if you're convicted, which can happen if the jury finds the woman a better witness than you, then you are facing a minimum sentence of eight years. Your life will be destroyed.⁴⁰

The impact of the change to the law was assessed 10 years later by Dr Goodyear-Smith when she concluded that it had "resulted in large numbers of cases coming to trial and resulting in convictions which the police acknowledge would not have got beyond the front counter ten years ago."⁴¹ Many of these were historical allegations, which were frequently bereft of any corroborative component.

When one considers that memory is readily malleable and that simply imagining an event can for significant numbers of people produce a memory for it and a belief that it has happened, the dangers of cases proceeding based on nothing more than the evidence of the complainant are obvious. They are just as obvious when one considers the potential for delusion, as a symptom of psychotic illnesses, and also when one considers the potential for misinterpretation of consent. The witness who genuinely, but mistakenly, believes that the events described actually happened, and who is, as a result, a convincing witness, exacerbates these dangers.

It was no doubt for these sorts of reasons that Nigel Hampton QC, when addressing the Canterbury Branch of the Royal Society in 1995, lamented the loss of "that sensible rule built up over centuries about corroboration: a time honoured and solemn warning given by judges to juries that it is dangerous to convict without the presence of corroboration, that is evidence coming from a source independent from the complainant's own mouth."

This reflects the wisdom of the Ages, which can be found described in several places in the Bible. Second Corinthians urges that "...all facts must be established by the evidence of two or three witnesses."⁴² The same injunction is to be found in First Timothy⁴³ while in the Old Testament, Deuteronomy directs: "One witness is not enough to convict a man accused of any crime or offence he may have

³⁹ *Dominion*, 31.07.00

⁴⁰ *ibid*

⁴¹ Goodyear-Smith *op cit* 5

⁴² 2 Corinthians 13:1

⁴³ 1 Timothy 5:19

committed. A matter must be established by the testimony of two or three witnesses.”⁴⁴This was to guard against the “malicious witness.” To that we could add the mistaken witness.

This writer is not suggesting that sex cases should come into a special category where corroboration should be required when it is not required in other types of case. Rather, the suggestion is that it is dangerous to convict a defendant *in any type of case* where the prosecution is based solely on an uncorroborated description or account of events given by only one person. Where courts routinely convict on such uncorroborated evidence miscarriages of justice are invited.

Police failure to properly exercise the discretion to prosecute can give rise to a further systemic failing. It has been said that:

Deciding whether to prosecute is among the most important steps in the prosecution process. Considerable care must be taken in each case to ensure that the right decision is made. A wrong decision to prosecute and, conversely a wrong decision not to prosecute, both tend to undermine the confidence of the community in the criminal justice system.⁴⁵

There are two issues to be considered in the exercise of the discretion. The first is whether the evidence is sufficient to justify the institution of proceedings. It must demonstrate a reasonable prospect of conviction. To be considered in this context are issues including the credibility of the witness or witnesses. The second issue is whether a prosecution would be in the public interest.

While there may be regional differences, it is the writer’s impression that in some parts of the country the discretion to prosecute is not always properly exercised in cases involving sexual allegations. A practice seems to have developed of automatically charging a person against whom a complaint has been made, even though the case is based only on the unsupported account of the complaint. The view seems to be that it is easier to let the court decide the matter than for the police officer in charge of the case to make a decision on whether it is an appropriate case for prosecution.⁴⁶ This can be the result of three factors. First, the current mindset that assumes complaints to be genuine, in the absence of something suggesting otherwise. Secondly, a concern on the part of police officers, who undertake investigations into allegations of sex offences, or their superiors, to avoid complaints from organizations that advance complainants’ rights. Complaints are sometimes made where prosecution action is not taken. A failure to

⁴⁴ Deuteronomy 19:15. New International Version of the Bible (2000 ed)

⁴⁵ The Canadian Federal Prosecution Service Deskbook.

⁴⁶ Former Auckland police chief Bryan Rowe, now a private investigator, has deplored this state of affairs. He criticized “a system where police often arrested a man solely on a woman’s word, then leaving it to the courts to sort it out.” (*Dominion* 31.07.00) He suggested in 2000 that police investigations are “not objective.” (ibid)

prosecute is taken to mean that the complainant was not believed. This is not acceptable to such groups.

Thirdly, the departure from the police force of significant numbers of experienced police officers has resulted in investigations into alleged sex offences being conducted, in many instances, by inexperienced officers. Not only does this impact on the proper exercise of the discretion to prosecute, but it also influences the quality of the investigation. Fundamental lines of inquiry are too often not undertaken in the police investigation.

This was the complaint of former Olympic boxer Tone Fiso who was charged by the police in 2003 with raping, on several different occasions, a young female relative. The allegations were historical. Mr Fiso – a father of five, who at the time of his arrest was about to graduate from a social work course and whose world “was turned upside down” by his arrest - spent two months on remand in custody before the police withdrew the charges. They withdrew them after they discovered that the complainant had falsely accused a former teacher of similar offences in 1999. Mr Fiso criticized the failure of the police to assess the credibility of the complainant before arresting him and opposing bail.⁴⁷

In some parts of the country there appears to be reluctance on the part of crown solicitors to halt a prosecution that has little prospect of success.

The media quoted the Wellington Crown Solicitor as saying in 2002 that his office’s discretion is confined to deciding whether the charges are appropriate, or whether there should be other or additional charges. He said: “Basically, once the system gets going, and it has been determined there is evidence to put the accused on trial, we don’t have any input to say you can’t go ahead.”⁴⁸

With respect, this is not entirely correct. Crown solicitors should review the decision to prosecute in light of emerging developments affecting the quality of the evidence and the public interest, so as to be satisfied at each stage that there continues to be a reasonable prospect of conviction. This is not, however, always happening. Cases are proceeding to trial where there is not a reasonable prospect of conviction.

Where there is a failing in this respect, other areas of the criminal justice system should afford a remedy. But it cannot be assumed that they will.

The Court’s power to discharge under s 347 of the Crimes Act does not always provide the protection that it should.

⁴⁷ *Dominion Post*, 04.09.03

⁴⁸ *Dominion*, 22.6.02

The power can be exercised where “witnesses may appear so manifestly discredited or unreliable that it would be unjust for a trial to continue.”⁴⁹ This contemplates cases where the evidence is of a tenuous character because, for example, “of inherent weakness or vagueness or because it is inconsistent with other evidence.”⁵⁰ Naturally, an assessment of whether a case comes within this category will often involve a value judgment. And so also with ‘borderline cases’⁵¹, a type of case which, it has been said, can “safely be left to the discretion of the judge.”⁵²

The exercise of this discretion can be influenced by undue caution, whereby it is felt safer or easier to leave the matter to the jury. Maybe this position is influenced by the ‘all complaints are genuine’ mindset actively promoted by certain groups over the last two decades. As a result too many cases where a conviction would be unsafe are allowed to go to the jury.

With failings occurring elsewhere in the system judges need to take a more robust approach to the exercise of the discretion conferred by s 347.

The trauma experienced by rape victims is often emphasized. That is understandable. Not so frequently emphasized is the trauma resulting from false complaints. The case of Deborah Wood illustrates how profound it can be. Her victim’s mental and physical health was affected. Before the false allegation he was working during the day to support his young pregnant wife. At night he was studying to improve his skills and job prospects. He lost his job. He had to borrow thousands of dollars to support his wife and newborn daughter and to meet other costs. He became ill. During the time he was awaiting trial a close relative had died overseas; he could not attend the funeral, because, of course, he was not able to leave the country. Even after his ordeal was over he continued to suffer unexplained physical pain, had difficulty sleeping and had poor concentration. He could not return to his studies. He was tormented by a fear that the same thing could happen again. He described himself as being “...like a dead body, like a ghost walking around not knowing what happened.”⁵³

⁴⁹ *Parris v Attorney-General* [2004] 1 NZLR 519,522

⁵⁰ *R v Galbraith* [1981] 2 All ER 1060,1062; applied in New Zealand in *Re Fiso* (1985) 1 CRNZ 689 and discussed in *Parris*. See also *R v Flyger* [2001] 2 NZLR 721.

⁵¹ A borderline case comes somewhere between the position where it would be unjust for the trial to continue and the position where the strength or weakness of the Crown evidence depends on the view to be taken of a witness’s reliability (a matter within the province of the jury.)

⁵² *Galbraith* at p 1062

⁵³ *Dominion* 26.09.98

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