

The truth, but not the whole truth, about perjury



What is it about perjury cases? They are so few and far between and when someone is stung for not telling the truth under oath, you will probably have heard of them already. John Forsyth reports.

The prosecution services do not like perjury cases. The general public seems to like perjury cases rather a lot and cannot understand why there are not a lot more of them; thousands more of them.

If Paul Burrell was caught boasting that he laid “a few red herrings” during his evidence under oath in the Princess Diana and Dodi Fayed inquest, why didn't the ceiling fall in on him?

It was never clear why no perjury prosecutions followed the eventual liberation of the Birmingham Six or the Guildford Four. The list of overturned convictions is rather long.

After all, the reasoning goes, if someone is specifically sworn on oath to tell the truth, the whole truth and nothing but the truth, before giving evidence in court and then promptly lies through his teeth, then something should happen. If nothing happens, what is the point of the oath?

The man or woman on the Clapham bendybus is really at a loss to understand why the criminal

justice system appears to shrug its shoulders and move on, still wringing wet from the

torrent of mendacity that daily floods through the courtrooms of the land.

The professionals will patiently explain the combination of legal requirements involved in bringing a prosecution for perjury (and its close bosom friend, perverting the course of justice) and shameless pragmatism that stops only one in a hundred courtroom fibbers in their tracks.

The crucial requirement of proving any criminal charge is to establish the *mens rea*. It should be properly applied in suspected perjury cases. However, there is a distinct sense that there are weasels loose in the room when considering the *mens rea* in alleged perjury. Was the false witness given knowing that it was false and uttered with the intention of misleading the court? The benefit of the doubt is liberally dispensed.

But if everyone else in the courtroom knows the witness is delivering a false alibi or suffering a bout of 24-hour amnesia, how can the legal professionals square inaction with their often-stated priority of sustaining public confidence in the integrity of the criminal justice system?

The prosecution services also have to make their customary assessments of the likely prospects for a successful prosecution and whether it is in the public interest to begin a prosecution in the first place.

The public interest calculation is rather vague when it comes to perjury and brings in an unusual philosophical consideration. A

barrister friend told me: “If we prosecuted every liar then most cases

would never end. You have to draw the line somewhere.” All very well, but why pick on Jeffrey Archer and Jonathan Aitken and ignore a regiment of workaday fibbers? Could profile have something to do with it?

There are specific thresholds to clear in the Perjury Act. Did the false witness materially affect the outcome of the case?

It may be punishment enough for Paul Burrell to discover that despite laying red herrings for the inquest, he was considered to be too insignificant for his evidence to have influenced the outcome.

It is easier to tell that the outcome was affected if the accused is convicted and sent to gaol when he or she was in fact innocent. The prosecution for perjury in 2007 of four witnesses who had lied in the original trials for the murder of Lynette White in Cardiff in 1988 may have helped the men wrongly convicted as a result - Stephen Wayne Miller, Yusef Abdullahi and Anthony Paris - ‘find closure’ after their two years in gaol.

In reality, that makes successful false witnesses for the prosecution more liable to prosecution than successful false witnesses for the defence, whose success is acknowledged by a cheery wave from the accused as he walks free from the dock.

Yes, the jury was the final arbiter of the facts and yes, the prosecution had full opportunity to cross examine the witness providing the false alibi. But in other areas of our lives, from form filling to child rearing, governments lecture us that lying is lying. My granny told me that the seriousness of a lie is not contingent

on the consequences. She did not say ‘contingent’ but the idea was literally ringing in my ear for a long time after.

Although they are bizarre examples in themselves, the successful prosecutions for perjury in separate cases this year of ‘expert witnesses’, Jim Bates and Gene Morrison, for claiming qualifications and expertise that they did not have, demonstrate what a ragbag of stories false witnesses throws up.

That may be because the finger on the perjury trigger belongs to the judge. Perjury cases are overwhelmingly initiated by the judge in either a civil or criminal case who considers the line to have been crossed.

At a time when sentences for perjury are edging downwards - curiously 14.1 months for male perjurers, but only 9.1 months for female perjurers in the 2006 figures - and judges are being informally guided to keep prison overcrowding in mind when considering their disposal, it may increasingly be that the perjury referrals are influenced by the profile of the case.

Even the majesty of the bench cannot be immune to the style of current media reportage that picks the occasional story out and contrasts the defence and prosecution evidence in such a brutal way that inconsistencies that cannot be explained cannot be ignored.

No one will argue that perjurers in cases with public profile should not be visited with the consequences of their actions, but it is presently difficult to pin down many principles among the undergrowth of pragmatism. I don't think weasels are a protected species. 

