

DANIEL FINKELSTEIN

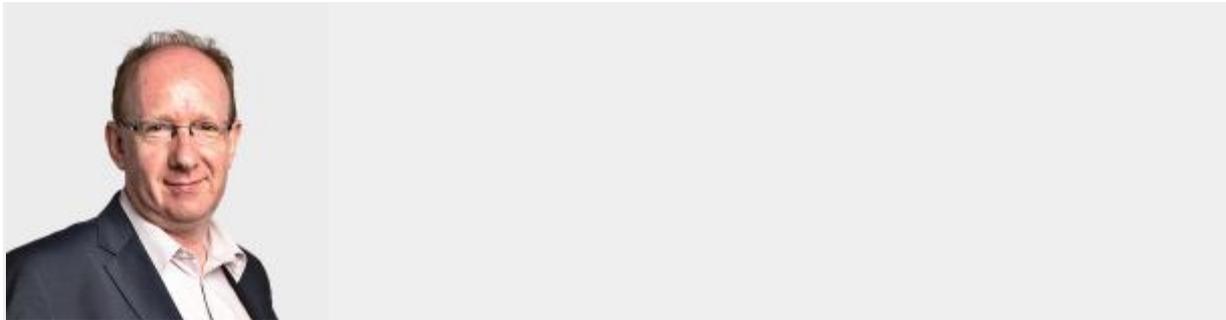
January 23 2018, 5:00pm, the times

<https://www.thetimes.co.uk/article/prosecutors-don-t-know-how-biased-they-are-l957bw7nv>

Prosecutors don't know how biased they are

[daniel finkelstein](#)

Recent scandals show how dangerous the authorities' blinkered approach to justice can be for innocent citizens



I wonder whether [Alison Saunders](#), the director of public prosecutions, has heard this story.

It's about Dorothy Martin, who was sure that on December 21 a flood would destroy the world. Aliens from the Planet Clarion told her it would. But she, and other true believers, would be rescued by a flying saucer. People gave up their jobs, sold their houses, joined Ms Martin and waited.

And then? Nothing. No saucer. Eventually the cultists realised that the moment had come and gone. The obvious conclusion was that the whole thing was nonsense. But that wasn't how the cult reacted.

Instead they called the newspapers. Previously averse to publicity, they now proclaimed their message to everyone. They had received another message from Clarion. There wouldn't be a flood because their devotion had saved the world.

There are two things worth knowing about this story. The first is that it was the basis for one of the most famous books in the field of social psychology *When Prophecy Fails* by Leon Festinger, Henry Riecken and Stanley Schachter. The second is that the December 21 in question was in 1954 and the book was published in 1956.

In other words, we have had more than 60 years to absorb the lessons from Festinger and his colleagues, yet it seems some are still struggling to do so.

Several prosecutions have recently collapsed at the last minute after it emerged that information in the possession of the police, but not disclosed to the defence, cast strong doubt on the complainant's story.

There was the rape charge against Liam Allan, where police failed to disclose evidence that supported his story, and demonstrated that his accuser pestered him for "casual sex". There was the

case of Oliver Mears, who spent two years on bail accused of rape before evidence emerged that his accuser had lied.

And there was the case of the family doctor Stephen Glascoe, who faced a series of charges, including the alleged rape of a young girl, before they were dropped just before the trial opened. The accusations derived from so-called “recovered memories”. The accuser claimed the doctor had performed a forced abortion on her, although her accounts appear to have been based on watching *Call the Midwife*.

During the 18-month investigation into Dr Glascoe, police developed a close relationship with the woman involved, with one officer exchanging more than 1,000 texts and 500 emails with her.

The DPP has described these failures as “disappointing and irritating”, stressing the need to get the job done properly. She has added that she is confident that no innocent person has been jailed as the result of such an error.

That response isn’t good enough. I’m not suggesting that Mrs Saunders is unconcerned about people who have been unfairly accused. But has she learnt anything from academic research of the past 60 years into how human beings think?

Festinger’s work on the cult was the pioneering study in what is now a vast field. It suggests that once we develop a theory, it is very hard to shake. Indeed the stronger the counter-evidence, the harder we work to save our original idea. And the bigger the disaster brought about by being wrong, the harder we work to convince ourselves and others that we are right.

One piece of work on university fraternities showed that the more humiliating the initiation ritual for a fraternity, the more likely students were to value joining it. Who wants to think themselves the idiot who went through all that for nothing?

Understanding this is vital to gaining an insight in the behaviour of police and prosecutors. Police do not behave like Morse on television, piecing the puzzle together, before revealing the improbable killer right at the end. They develop a theory and then build a case.

Our “confirmation bias” — an elementary part of social psychology — explains how we seek comfort in every piece of evidence that confirms we are right and find a way of excluding anything that suggests we are wrong. Or even turning it around in our heads so that it becomes supportive. How does someone get it wrong after exchanging 1,000 texts with an unreliable complainant? Precisely because they’ve exchanged 1,000 texts with her.

As a result, police and prosecutors will not wish to disclose evidence that undermines their case and, crucially, may not even appreciate that it does. They may genuinely, but incorrectly, see the new material as irrelevant. That’s what confirmation bias does to you.

The failure to disclose crucial evidence to the defence is not just happening in a few cases. A report last summer from HM Inspectorate of Constabulary and HM Crown Prosecution Service Inspectorate suggests that the process is “routinely poor”.

So I was disappointed that Mrs Saunders suggested that no innocent person was in jail because of it. This would appear to add to the social psychology failure, a failure to think in statistical terms as most social science now does.

Only if the probability of wrongly convicting someone was virtually zero, and there was almost no randomness in results, can it be true that in a vast sample of convictions no one was wrongly imprisoned because of poor disclosure.

Indeed, Mrs Saunders comically misses the point when she suggests that anyone who feels they have been wrongly convicted because of disclosure failures should speak out. They are unlikely to know if there is vital evidence in their favour if they were never told about it.

Still, it's not surprising that she sticks to the untenable theory that nobody has been wrongly jailed as a result of such failure. She is the DPP after all, so she wouldn't want to accept an idea, however compelling, that prosecutions can be wrong. Festinger would understand her.

There needs to be a better internal system for challenging police officers and prosecutors as they become committed to a theory, and some external judgment about what material should be disclosed.

And, given that prosecutors seem to be relying on recovered memories despite all the work that Elizabeth Loftus has done to show how unreliable they are, it might be a good idea if everyone involved had some extra classes in social science.

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Arguably, no-one knows how biased they are.

Gerryco Jan 23, 2018 [Recommend](#)19

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TDM Jan 27, 2018

Alison Saunders complacent. Keir Starmer useless. There must be an awful lot of dead wood within the CPS if these are the best they can do.

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pdboxer Jan 25, 2018

There should be a version of that book about all the unemployment we were supposed to get from austerity... or even about the promise that we would ever actually get austerity... or that our economy would fall apart immediately after the brexit vote...

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polderntman Jan 25, 2018

Good article Daniel but I'm concerned that Alison Saunders remains in post after the recent abject failings of the DPP and various Police Forces. If this had been a man....no surely not!!

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Mr Andrew Dickens Jan 24, 2018

Confirmation bias - we're all guilty of it. To take the most glaring example, the BBC and global warming. It's hot so global warming is to blame. It's cold so global warming is to blame Etc.

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Wanderer Jan 24, 2018

The prosecutors don't want to know how biased they, the police and judges are. Police create, distort, hide, both information and events to suit their choices, its not only disclosure of evidence. These issues are enabled by multiple pieces of poor legislation which allow and encourage the police /DPP to behave as they do sometimes in partnership with other agencies. The DPP and the courts are designed not to allow unhelpful statements from being heard, instead the police are believed. Magistrates have their targets too and are ignorant of the tricks employed amongst grains of truth. So what do you expect when these people have all been recruited, trained, cultured to behave like this.

Perhaps Daniel can, with fellow Lords, devise and promote a system to provide immediate, straightforward and free remedies to those convicted by underhand methods. The Denning style appeal's process and other existing channels are too limited, slow and expensive.

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2RecommendReply

John Adsett Jan 24, 2018

"Groupthink"

The accepted solution for combatting it is to task one member of the group with the role of trying to find flaws in the hypothesis. Checks and balances?

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Barry Faith Jan 25, 2018

@John Adsett

The jargon from team theory for such a member of the group is 'iconoclast' – breaker of icons. The problem is when the group leader sees such behaviour as not being a good team player and so getting rid of the iconoclast. This typically happens when the group leader feels insecure. However the result of getting rid of the iconoclast can be bad decisions by the leader and/or the team. Dictators are famed for eliminating iconoclasts. Getting rid of iconoclasts can lead to public and commercial disasters. Viscount Allan Brooke was a good example as the iconoclast and so foil to some of Churchill's more naive ideas during WWII. I have seen such poor leadership behaviour by insecure leaders within the NHS where the 'greater good' is seen as more important than the truth.

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RecommendReply

M E MacCormack Jan 24, 2018

Terrific article, thank you. There's a list of cognitive biases on wikipedia - literally hundreds of them.

https://en.wikipedia.org/wiki/List_of_cognitive_biases

Makes you feel like giving up on reasoning altogether!

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4RecommendReply

Wilf Jan 24, 2018

A really good article. Even with little or no confirmation bias in play, just statistically there would have to be some innocent people in prison and to suggest otherwise is actually rather idiotic.

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12RecommendReply

M Fishman Jan 24, 2018

If Daniel Finkelstein headline is correct, and he is rarely wrong, then we have moved stealthily from our much vaunted, "Innocent before being proved guilty" "to guilty before being proved innocent".

It has been happening for years, but now has come into the public domain, due to the various sexual misdemeanours; albeit many cases are being thrown out, but at what cost to the innocent accused.?

It is happening both in the public and private sectors where being suspended, being put on garden leave, "pending the enquiry " is all too common. The victims are now the accused, and the accusers get away almost scot free, having wasted hours of police and the court's time, because they made an error, or it was pure maliciousness and mendacity. The new Puritan era has gone too far. justice is being ill served.

They did away with hanging, because hanging one innocent person was one too many. Should we not be applying the same rules with too many false accusations from far past most people's memory bank, we are destroying lives by a far more vile method

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16RecommendReply
Snowball Jan 24, 2018

Danny you are being far too generous to the police and prosecutors when you explain their behaviour as extreme confirmation bias . The truth is that they are just playing to the SJW gallery.

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4RecommendReply
Ivor Blight Jan 24, 2018

"The DPP has described these failures as "disappointing and irritating", stressing the need to get the job done properly. She has added that she is confident that no innocent person has been jailed as the result of such an error."

Well, I've found one without much difficulty. Danny Kay spent more than two years in prison.

<https://www.thetimes.co.uk/article/sex-assault-conviction-quashed-after-new-evidence-2bjmfwdmc>

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7RecommendReply
Metlo Jan 25, 2018

@Ivor Blight It must be comforting for innocent people in prison to know Alison Saunders feels disappointed and irritated.

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1RecommendReply
Prabhat Jan 24, 2018

Thank you, Lord F. Succinctly put and persuasively argued.

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Andrew Porter Jan 24, 2018

Alison Saunders' assertion is reminiscent of Lord Denning's backward (in both senses) argument in the Birmingham Six civil case regarding injuries alleged to have been inflicted by the police:

"If the six men win, it will mean . . . that the convictions were erroneous. That would mean that the Home Secretary would either have to recommend they be pardoned or he would have to remit the case to the Court of Appeal . . . This is such an appalling vista that every sensible person in the land would say it cannot be right that these actions should go any further."(<https://www.theguardian.com/news/1999/mar/06/guardianobituaries>)

I have always been worried about the entire culture behind the "Prime Suspect" concept. If there is a blue team working on the prime suspect, shouldn't there be a red team working on other theories/suspects?

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Henry Adam Jan 24, 2018

@Andrew Porter Indeed, the scientific method (which should definitely not be applied solely to scientific endeavour) requires the search for evidence that disproves the current hypothesis.

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Newminster Jan 24, 2018

Henry Adam —

Tell that to the climate science “establishment”!

Remember Jones’ famous reply when asked for data, “why should I give it to you when all you want to do is find something wrong with it?”

Er, yes! Precisely! That is why I want it and what you should be doing yourself, Professor!

Confirmation bias has become pandemic because everyone these days has a vested interest (financial, psychological, whatever) in being **right**, even if they’re wrong. Facts/truth become what you want them to be.

One possible solution is to go down the continental route of an investigating judge but the core of the problem is the plethora of data — emails, messages, phone logs, Facebook postings, CCTV, tweets — such that investigators simply can’t keep up.

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Henry Adam Jan 24, 2018

@Newminster I don't disagree with you except that it isn't right to tar them all with same brush. Some are much better than others in all of the scientific community and climate science is like all others. While they depend on each other to a degree, they are also in tough competition. Any climate scientist who could provide convincing evidence that the majority is wrong would be very famous.

Confirmation bias hasn't become pandemic - it always was. It is, though, a frequently used phrase these days and therefore there is more awareness and recognition of it. That is good. I don't accept the excuse of too much data.

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Nicole Langlois Jan 24, 2018

Good article but I think the criticism of the DPP is a touch unfair. Imagine the public outcry if she were to concede even the possibility that some people might have been convicted unfairly?

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Phillip Wicks Jan 24, 2018

@Nicole Langlois So you are suggesting that it is preferable that innocent people languish in prison rather than that the DPP admits that it is overwhelmingly probable that some innocent people have been wrongly convicted due to lack of disclosure?

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19RecommendReply

John Adsett Jan 24, 2018

@Phillip Wicks @Nicole Langlois and a great cost to the exchequer in compensation

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Hazel Coates Jan 24, 2018

@Nicole Langlois Ever heard of Rachel Nickell? The police were completely sure they had the right man until they were proved wrong. They were so convinced that they stopped looking for anybody else and the real killer was free to kill again.

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17RecommendReply
BullFinch Jan 24, 2018

@Nicole Langlois Nicole - that's the whole point. The prosecution service must admit this possibility now because they have quite clearly omitted to give the defence the information they should have given them. If it's a choice between a public outcry and a cover-up, a responsible DPP must always accept the first (even if they end up having to resign).

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3RecommendReply
bc Jan 24, 2018
Great article

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12RecommendReply
John Hooton Jan 24, 2018

A good thought provoking article. I can't help feeling that not all the errors in our legal system can be laid at the door of the DPP.

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3RecommendReply
Brian Cope Jan 24, 2018

It would be useful for the errors identified by Douglas Nicoll in 1982 (Times obituary here <https://www.thetimes.co.uk/article/douglas-nicoll-mtsiv3ltp>) to be circulated widely. They include:

Perseverance, mirror-imaging, transferred judgement and coverage.

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RecommendReply
Brian Cope Jan 24, 2018

That should read perseveration - see how persistent an idea is.

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1RecommendReply
rgm Jan 24, 2018

I fear the reality is a little more prosaic.

Disclosure officers are poorly trained and have vast workloads. The reality is not that they are looking at disclosure material and deciding not to disclose it although they know it undermines the prosecution or assists the defence.

The reality is they either do not have time to review it properly and often do not have a proper understanding of the case and the issues in it.

The solution is not in psychology but in resources and training.
Nice article though.

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7RecommendReply
Gerryco Jan 24, 2018

@rgm Lack of police resources and time are indeed the main problem, and the same is true to a certain extent of CPS prosecutors reviewing cases and relying on an officer's declaration that there is nothing else to disclose.

Both police and CPS have suffered huge cuts to their staffing levels and as always happens when stretched, even well-intentioned individuals are forced to cut corners or divide their attention between competing tasks.

Unfortunately when asked to defend or explain mistakes by their staff, neither senior officers nor the DPP will admit that they are under funded, because I suppose that's not something acceptable to their political paymasters.

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RecommendReply
Andrew Raiment Jan 24, 2018
@rgm how about both?

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1RecommendReply
Metlo Jan 25, 2018
@rgm The simple answer is if you have not investigated properly, don't name someone.

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RecommendReply
Mr Gerald McDermott Jan 24, 2018
When the facts change you have to change your theories, unfortunately far to many think they can change the facts to support the theory.

Over the past 100+years science has unearthed enough facts to undermine long held theories and fantasies, yet there are still people who cling on to their theories.

Just because facts have changed it does not always mean ancient wisdom was wrong.

Rape is an outstanding example. I was told when I was young that rape is impossible, but I understand overwhelming force makes nonsense of that

But now most cases of so called rape seem to be social occasions over which the people concerned had different interpretations, plus an unhealthy hysteria about the subject.

There was a case where a 30 year old woman met a 17 year old worker at a hotel who had been off sick after being mugged, he was sharing a room with a colleague. She agreed to sleep with him, and whilst he went to tell his friend she went up to the room took all her clothes off and lay on the bed with her legs open. When the young man started she changed her mind and they had an argument. He carried on biting her all over, she ran screaming to a police station. The jury refused to consider it rape and one woman with pins all over her face said she would have enjoyed being bitten.

The jury decided he should be found guilty for inflicting such horror on her. It was 11-1 the woman refused to accept even that.

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RecommendReply
Charlotte Malmberg Jan 24, 2018
Considering how often the Crown Prosecution Service decides to not pursue a case hours before trial she might be right.

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RecommendReply
Brian Hogan Jan 24, 2018
Saunders' claim to be certain noone was wrongfully convicted is belied by the recent case of Mr Kay, who was convicted but release on appeal thanks to Facebook messages the prosecution failed to obtain (the defence found them after 3 months but it took 3 years for the appeals process to get him out of jail) <http://www.bbc.co.uk/news/uk-england-derbyshire-42453405>

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4RecommendReply
Andrew Raiment Jan 24, 2018

A couple of misquotes:

Torture the data it will confess to anything.

Experts are people who make mistakes in a very narrow field

Flag

3RecommendReply

John Doy Jan 24, 2018

Could not anyone holding an opinion be accused of bias?

I presume that Mr Finkelstein can argue and justify to himself by some means and presumably to the other 799 members, that the unelected hol (lower case intended) is a bastion of democracy.

But then the very fact of his acceptance of his unelected membership and the £300 a day remuneration for attendance could very easily be the basis for any accusation of bias.

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R Jowett Jan 24, 2018

@John Doy

What does Daniel Finkelstein's status/membership of the Lords have to do with the subject of this piece?

Flag

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John Doy Jan 24, 2018

@R Jowett @John Doy

It might help to explain if you read the first four lines of the 16th paragraph of the piece up to 'so that it becomes supportive'.

Flag

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Gordon W Jan 24, 2018

Change the legal system from an adversarial one, where winning at all costs is the aim, to an inquisitive one, where full disclosure of all evidence on both sides is designed to reveal the facts.

The only investment in 'confirmation' is the need to confirm the truth of the matter.

It wouldn't serve the financial interests of the legal industry, of course.

Flag

1RecommendReply

Brian Cope Jan 24, 2018

@Gordon W And the inquisitorial system is

perfect? <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.685.5460&rep=rep1&type=pdf#page=57>

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RecommendReply

bluearmyfaction Jan 24, 2018

"She is the DPP after all, so she wouldn't want to accept an idea, however compelling, that prosecutions can be wrong. Festinger would understand her."

The other conclusion one can draw is that she obviously knows prosecutions can be wrong because people are acquitted. And the reason why there is nobody innocent in gaol is because juries acquit the innocent. Or, at least, those not beyond reasonable doubt.

But are you drawing conclusions from the facts without looking into what goes behind them? Indeed, the prosecutions you single out include a couple that were dropped (albeit

belatedly). Does that not show that the prosecution will change its case theory when it finds out new facts? And how many prosecutions get nowhere near that before withdrawal? If it turns out that 999 out of every 1,000 rape accusations do not make it beyond a prosecutor's initial perusal, then surely there is no inherent bias in prosecutions?

Flag

RecommendReply

Michael Askew Jan 24, 2018

@bluearmyfaction "the reason why there is nobody innocent in gaol is because juries acquit the innocent." I am assume you are not arguing that this is true, because there are many cases of wrongly convicted people who have spent years in prison before evidence proving their innocence becomes available.

Flag

2RecommendReply

Prabhat Jan 24, 2018

@bluearmyfaction You appear to be arguing that where prosecutors and police may fail the court will acquit an accused where prosecutions are wrong. You assume that all trials that are conducted have involved presentation of all evidence for there to be that final check and balance at the court level to work. If the evidence itself is selectively applied and produced to achieve an intended goal, I doubt the court can do anything.

The blame lies squarely with the police who are guided by the stated intentions of the DPP on rape matters and in the process evidence is suppressed. This is no secret.

Flag

RecommendReply

Metlo Jan 25, 2018

@bluearmyfaction If one woman was named and treated as brutally by our "justice system" as all these recent cases against men, Parliament would immediately bring in anonymity for the accused. In the Yewtree inquiry at least two women had allegations made against them and guess what, they were never named.

Flag

RecommendReply

Ihatearmchairexperts Jan 24, 2018

" It suggests that once we develop a theory, it is very hard to shake. Indeed the stronger the counter-evidence, the harder we work to save our original idea. And the bigger the disaster brought about by being wrong, the harder we work to convince ourselves and others that we are right."

Very interesting article. The above might also explain the cult that is the Labour Party. Despite years of failure they never give up their barmy ideas

Flag

10RecommendReply

RECH Jan 24, 2018

I am not sure if this is really an analogy, but the remarkable safety record of commercial airlines (2017 was the first year ever when no one died as a result of a crash of a commercial jet) is surely, at last in part, down to the long tradition of non fault reporting, which leads pilots to recognise and report their own errors and failures, so that systems can be developed to gradually eliminate human error.

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3RecommendReply

John Russell Jan 24, 2018

@RECH You've read Syed's book then? (edit: I see others have made the same comment)

Flag

1RecommendReply

RECH Jan 24, 2018

@John Russell @RECH I haven't actually, although I admire him a lot and read all his columns (including today: really interesting about performance improvement and tennis). I've been interested in the astonishing safety of air travel and the culture that supports it for a long time.

Flag

1RecommendReply

Mr Nettleford Jan 24, 2018

Brilliant piece today and you are read right in your statement 'They develop a theory and then build a case.' My ex-wife didn't look like an abuser, ask Nigel Dyer QC and Dr Hamish Cameron! He said to me, "She's very pretty isn't she I think you should leave your house." I asked him to ask her about the marks on Harry's neck and he said it wasn't relevant. So he didn't defend me, I was forced out of my souse and she murdered Harry 20 years later in 2011. When I proved in Court that my lawyer (who wasn't a lawyer) Hazel Crosthwaite had lied to the Judge about the psychiatric evidence (my ex-wife has brain damage which causes her violence), the lawyers hid the evidence from the Judge and I bought it in person in 1996.

Judge Wilcox rightly said, "Who's looking after Harry?" (apart from me)

Answer no one and when he gave his Statement of Abuse to the Police in 1997, they sent him back to her to be killed 14 years later after years of abuse from her and her husband saying I had put him up to it.

Hence my book to be published soon 'Trial By Deceit.'

The one man who did see through her was my expert Dr Malcolm George who said she was the best she had seen!

It's about stereotypes and the legal profession is diving for cover. Suicide (which was faked in 2011) suited everyone part from me and Harryas they could say I was partly to blame for his death.

I have proved murder.

Flag

2RecommendReply

edward burke Jan 24, 2018

brilliant article, gets into the heart of a serious and very troubling issue.

It could get even worse than this, think of Salem., when you get confirmation bias entrenched into a society. A witch hunt or a baying lynch mob.

Flag

11RecommendReply

LarryC Jan 24, 2018

@edward burke

...or "Twitter" as it's better known.

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Dr. Eli Joseph Jaldow Jan 24, 2018

Surprised that there is no mention in Daniel's article of Matthew Syed's recent excellent book "Black Box Thinking", that elaborates on the very points mentioned in the article.

Flag

1RecommendReply

AleBeHonest Jan 24, 2018

Get Matthew Syed on it. This was all discussed in his Black Box Thinking book. It appears that the hospitals are starting to accept that occasionally errors are made, and MS is working with them. Perhaps Mrs Saunders and the rest of the DPP could do with reading a copy.

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4RecommendReply

Anthony Tamburro Jan 24, 2018

Are esteemed times columnists exempt from confirmation bias, or perhaps having reviewed m many of the prosecutions the DPP does not think that any disclosure errors have not contributed to erroneous convictions.

Flag

RecommendReply

Mr P Voelcker Jan 24, 2018

The DPP is wrong above - the case of R v David Bryant (easily googleable) clearly demonstrates a wrongful conviction and wrongful imprisonment for three years in Dartmoor. This was based on poor police work, falsification of evidence, which was then promoted by the CPS, and he has only recently been released on the orders of the Court of Appeal, following strenuous efforts by his wife, and pro bono lawyers to redo the police work. There are overtones of a false witness and attempted blackmail (all in the press) and as yet no charge for perverting the course of justice. Perhaps the DPP is unaware of this utterly shameful miscarriage of justice and wrongful conviction?

Flag

9RecommendReply

A G Wynn Jan 24, 2018

@Mr P Voelcker Yes, David Bryant's case is a shocking example of wrongful conviction and lengthy false imprisonment resulting from police belief of and incompetent investigation into a historic sex complaint. I dare say Alison Saunders would be... what... oh yes, "disappointed and irritated", so that's all right then.

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1RecommendReply

Nick Tilley Jan 24, 2018

It is of course true that beliefs are hard to change and that evidence is produced to reinforce the belief. Not only is this true in the English Justice system, but a consequence of having a dedicated Crown Prosecution Service, invented, primarily to save money, but both inexperienced and inclined to favour conviction over truth.

Interesting how the same argument could be applied to the past 40 years of science where while we have seen increased specialisation and compartmentation but while lots of ideas have been exploited extensively and speedily, there has been a paucity of revolutionary discoveries, perhaps for a similar reason. While in politics too, we seem locked into a rose tinted past, with all sides massaging statistics to serve their belief and electoral survival.

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RecommendReply

James Jan 24, 2018

Why the huge delay? 2 hours +isn't acceptable

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Germann Arlington Jan 24, 2018

"...It suggests that once we develop a theory, it is very hard to shake...."

That is a fallacy in itself.

The whole point of the theory is that it is meant to be shaken and changed all the time until it is proven and explains **all the facts**.

If the theory fails to explain even one fact then the theory is wrong and it is time to go back to the drawing board.

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LarryC Jan 24, 2018

@Germann Arlington

Isn't that the very point DF is making? That rather than accepting new facts derail the theory, people are prone to skew their interpretation of those facts in order to support the existing theory. People rarely enjoy being proved wrong, even scientists are often guilty of confirmation bias.

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2RecommendReply

JCinUSA Jan 24, 2018

She is a shining example of someone promoted due to politics - PC ideology, rather than competency. Thanks Blair, Cameron, Clegg etc. You really have poisoned the governance systems of the country.

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RECH Jan 24, 2018

@JCinUSA You mean like most of Trump's appointments?

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JCinUSA Jan 24, 2018

@RECH @JCinUSA Yes indeed. I do not vote for or support Trump, no matter what witless liberals on here write.

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Saint John Jan 24, 2018

The confirmation bias has been supporting free market economics for a couple of generations despite all the evidence of the damage it does

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Peter Iden Jan 24, 2018

If police name someone they must not be allowed to just drop the case. They must be forced to explain in front of a judge why they named someone on zero evidence. An apology and declaration of innocence should be made and compensation decided.

If this happened and police had to take responsibility for their actions, the lazy attitude of naming before investigating would stop immediately.

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8RecommendReply

LarryC Jan 24, 2018

@Peter Iden

It seems to me they often name someone precisely because they have zero evidence in the hope on flushing out other accusers who might be able to provide some. The current approach of "no smoke without fire" is appalling.

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65ti Jan 24, 2018

It seems Alison Saunders is the butt of everyone's criticisms, including Times reporters who have just read Psychology for Dummies. The public prosecutions office do a very difficult job and unfortunately have made mistakes. The police have to act on claims of serious crimes.

However. The prosecuting officers must be challenged more on the 'water tight' cases they hope to take to court. Defending council must be part of the review team at the DPP before the case gets to court.

Maybe defence lawyers should promote a Department of Public Defence (DPD) In order to assess the evidence.

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1RecommendReply

Michael Stringer Jan 24, 2018

@65ti Alison Saunders made it her personal crusade to increase the number of rape convictions. There was noting about better investigation of criminal complaints or getting to the truth, only increasing convictions. Even official documentation from the CPS routinely refer to a rape complainant as the 'victim' - something I always believed was up to the jury to decide. Of course lets not get into the movement that wants to do away with juries in rape case and instead have cases decided by a judge with two expert lay advisors; those with degrees in Gender Studies, I guess. Ms Saunders deserves every criticism she has received.

Flag

7RecommendReply

brian wright Jan 24, 2018

A lot of posts to this newspaper are living proof that theories, once developed, are impossible to shake.

Flag

4RecommendReply

Virtuoso Jan 24, 2018

I have been told by a recently serving Met policeman that he had to deal with lazy, third-rate people at the Crown Prosecution Service who habitually only sought the hard evidence for the legal case shortly before the court trial. Hence, poor legal preparation by the prosecution leading to undeserved acquittals. So, systematic failings by the prosecution service are not only leading to false convictions but also to wrongdoers getting away with their crimes.

Flag

RecommendReply

LarryC Jan 24, 2018

@Virtuoso

"Lazy" and "third-rate" or simply understaffed?

Flag

1RecommendReply

MJK Jan 24, 2018

The very fact she made such a bizarre, half witted and patently incorrect comment is proof enough she should be out on her arse immediately.

How many miscarriages of justice have occurred or almost occurred over the last decades and indeed under her watch?

Flag

9RecommendReply

David Spence Jan 24, 2018

Many years ago I wore jeans, tee shirt and long hair but drove quite a nice car. One night I was stopped by the police for "Routine check. Sir" they went over every detail of the car technical. mechanical and the paperwork too. Everything all in order.

"Nice car for someone like you to own" they disappointedly concluded. A good half hour wasted as they vainly tried to prove their assumptions.

Flag

5RecommendReply

Michael Jones Jan 24, 2018

Surely the decision to prosecute is based on the evidence. The CPS have the job to decide which cases to proceed to court. Surely it is the job of the police to gather evidence and provide that evidence to the CPS. Surely by deciding to withhold evidence to the CPS they are making the decision on what is and what is not relevant to the prosecution and thereby perverting the course of justice?

Flag

2RecommendReply

LLE Jan 24, 2018

What breaks me is that prosecutors/Police are naive as to the motives why people make up allegations; leverage in family courts, immigration issues and revenge for break ups are just some of the ones I have seen..

Flag

4RecommendReply

Andrew Holliday Jan 24, 2018

Exactly the same dysfunctional psychological phenomenon is seen across a range of contemporary issues.

Remainers, convinced that Armageddon would arrive the day after the referendum, still convinced that the end of the world is nigh.

Trumpophobes who knew for certain that the American economy would implode if the Donald were to be elected.

Climate alarmists, ever more convinced that we are doomed in spite of the mounting evidence against them and typified by Al Gore's claim that the recent cold snap is proof of global warming.

Channel 4 presenters who know that all the ills of our society are the fault of an oppressive paternalistic hierarchy.

Never let the facts get in the way of an impending catastrophe when you and your friends have the cure.

Flag

9RecommendReply

BL Jan 24, 2018

@Andrew Holliday Excellent point. Let me add to your list:

* Leavers, convinced that everything will be alright, although there was no plan (and still largely isn't).

* Trump fanboys (and girls) who believe that everything negative said about him, including the infamous "pussy-grabbing" incident is "fake news".

* Climate change deniers, who claim that all of this CO2 going into the atmosphere can't be changing the climate (although scientists know that some climate change is naturally occurring and cyclical).

* Fox News presenters who misrepresent facts and selectively report whatever suits them, knowing that they're preaching to a Republican audience and that to do otherwise would result in near-instant commercial death.

Indeed, never let the facts get in the way of an impending catastrophe when you and your friends have the cure.

My point: cognitive dissonance and confirmation bias are not afflictions only of the Left. Your examples suggest that they are. You would be wrong.

Flag

7RecommendReply

cecile Jan 24, 2018

@BL @Andrew Holliday You saved me writing - thanks.

Flag

2RecommendReply

Andrew Holliday Jan 24, 2018

@BL @Andrew Holliday The most egregious and obvious examples of the phenomenon facing us today certainly come from the Left, especially the post-modernist neo-Marxist variety.

I'm sure there are examples from the right, too, although the examples you gave are relatively weak ones. Perhaps a better one would be the Creationists of the American religious right.

Flag

3RecommendReply

BL Jan 24, 2018

@Andrew Holliday @BL I do feel you've missed the entire point of Mr Finklestein's article. All humans are biased, and to say that "the other side" is more biased, apart from exemplifying extreme arrogance, merely serves to prove the point.

Flag

RecommendReply

Jon Quirk Jan 24, 2018

A timely article; group-think, and PC thinking crushes valid, independent thought which is so necessary to communal well-being.

Flag

RecommendReply

John Fleming Jan 24, 2018

We don't have a Justice system in this country.

We have a legal system run by the lawyers for the benefit of the lawyers. The regular daily news proves it.

Flag

4RecommendReply

Saint John Jan 24, 2018

A very good piece. For the life of me I don't understand why both sides lawyers don't get all the evidence to look at as a matter of right. And any policeman who withholds important evidence should be summarily dismissed.

Alison Saunders is the problem however . Her utterances show her unsuitable for holding that office .

Flag

3RecommendReply

Saint John Jan 24, 2018

Why has this been pending for over an hour ?

Flag

3RecommendReply

Jared Dann Jan 24, 2018

Danny - such a system already exists. It operates by way of having cases prosecuted by barristers (who are self-employed, independent and not beholden to the CPS or the police) rather than by in house CPS lawyers. Unfortunately in recent years the CPS has tried to do more and more work in house rather than instructing the independent bar (mainly for reasons of cost).

Flag

RecommendReply

James Jan 24, 2018

There may be some innocent people behind bars but what is for sure is that there are far more guilty ones not behind bars because of the establishment whether it be political parties, all religious groups, organisations and families putting pressure on the victim to shut up and finding ways to shelter the guilty from the police.

This has been and still is the greatest of these two evils as it involves people covering up for people who are "like them" and they not wanting the world to know that their creed, race, political group have such perverts amongst them.

Always easier to jump on a bandwagon when its another group and become self righteous and demand "they" are punished whilst ignoring what is going on within your own group.

It would be refreshing if just for once you looked at and revealed what you know about politicians from all parties or within your own Jewish community how these perverts have been protected by the very people who should be better than that.

It is difficult enough to gain convictions without those in authority with power siding with the guilty to protect them from the police.

It seems every group is guilty of this.

Flag

RecommendReply
Oakley Jan 24, 2018

Well Said. Right now we are in quite dangerous territory - where Rape Accusers have to be taken seriously (Good) which has segued into believed without question (Bad). The same for abuse accusers and other cases.

It has elements of the Salem Witchcraft trials

Flag

5RecommendReply
it'sme Jan 24, 2018

2 Questions to Investigating Officer, prior to submitting case;

'Has ALL evidence and all materials, whether deemed relevant or not, obtained since commencement of the investigation,now submitted along with case papers.

Yes/No
Sign.

Is ANY evidence or materials , whether deemed relevant to the case or not , obtained since the commencement of the investigation, being withheld.

Yes/No
Sign

Copies served on defense and court.

Flag

2RecommendReply
Stephen Skinner Jan 24, 2018
Festinger's theory applies to Brexiteers.

Flag

1RecommendReply
Andrew Raiment Jan 24, 2018
@Stephen Skinner they are apply to everyone, or are you the only person never to have been "played" by cognitive dissonance.

Flag

1RecommendReply
Christopher Gage Jan 24, 2018
One of the most interesting columns in a good while.

Flag

2RecommendReply

Damian Plant Jan 24, 2018

I thought the DPP incredibly complacent when recently interviewed on the Today Programme when she tried to argue that it was reasonable for telephone text messages to be searched but that it was not necessarily the job of the prosecution to look at the photo history one of which showed the two persons concerned in a recent cuddling pose for the camera.

I appreciate resource may be an issue but the above distinction is ludicrous!

Flag

1RecommendReply

Michele A Jan 24, 2018

I was disappointed that Mrs Saunders suggested that no innocent person was in jail because of it. This would appear to add to the social psychology failure, a failure to think in statistical terms as most social science now does.

I too was absolutely astounded that the person entrusted with criminal prosecution at the highest level could even make such a statement. Her self-satisfaction is almost beyond belief. How was it that a person with so little propensity to question has been put in a position where judgment is so essential?

Flag

7RecommendReply

Julian Beardsworth Jan 24, 2018

A possibility is that with the apparent increasing incidence of non-disclosure the potential for there having been non-disclosure might be used to pass the threshold for reasonable doubt. Alison Saunders has to deny that non-disclosure has facilitated convictions as otherwise she would be strongly supporting such a line of defence.

Flag

RecommendReply

Ytongs Jan 24, 2018

"...It suggests that once we develop a theory, it is very hard to shake...."

But it can happen. I was once a rabid supporter of both the EU and climate change.

Flag

8RecommendReply

Robert Bruce Jan 24, 2018

@Ytongs Welcome back to the light.

Flag

1RecommendReply

Paroles Jan 24, 2018

This issue highlights just how vital it is to have a vigorous and properly funded independent and objective Criminal Bar - both defence and prosecution.

Flag

RecommendReply

BigJim Jan 24, 2018

The CPS in its current guise appears to struggle with post-Enlightenment science and modern technology.

The mystery is why the DPP insists on taking innocent citizens to Court when there evidence that no crime occurred is not just available, but often already in the possession of the prosecution.

Alison Saunders, during her watch, has introduced fear, doubt and uncertainty about the CPS and its now questionable charging and prosecution decisions. A nationwide, independent (of both the Police and CPS) investigation into any case of rape/sexual assault since 2015 (when the DPP's influence began to be felt) is urgently required to identify those incarcerated who shouldn't be there. Based on what we know from recent cases I suspect the figures will be rather high.

We need to recognise that the Crown Prosecution Service is now effectively a busted flush; it no longer has the confidence of at least a sizable minority of British citizens, and likely a majority. As-a-consequence the organisation is no longer able to command respect and its ability to pursue prosecutions has been adversely impacted - to the point that in jury trials at Crown Court, we have to accept that jurors will be increasingly suspicious of any case put before them.

In most Western countries that would see the removal of the head of the prosecution service, in England and Wales that being the Director of Public Prosecutions. That would be seen as an effort to restore confidence and start the CPS on a course of recovery.

That Alison Saunders remains in the job suggests that she and possibly others (including the Solicitor General) feel she is performing adequately and is pursuing the executives (the governments) vision of how a prosecution authority in England and Wales should be run. If that's the case, it reveals rather more about the Solicitor General and The Prime Minister (who would likely make the decision) than they would perhaps have wanted to reveal.

What is going to happen is that with the current DPP remaining in her role, things won't be improving anytime soon. Saunders has been making 'duff' decisions for years now. She started prominently with the decision to prosecute Michael Le Vell ('Kevin' from Coronation Street) in a case of alleged repeated child rape which depended on recovered memory therapy and a belief in 'magical healing'. Keir Starmer, the previous DPP had already rejected pursuing a prosecution. Saunders though accepted it and authorised it to be sent to Court. The prosecution was a farce, and without any medical or forensic evidence ('magical healing' isn't an accepted scientific theory) Le Vell was found not guilty in February 2016.

What the Le Vell case though did reveal has become a 'feature' of Saunders' time-in-office; she will happily authorise or as DPP be ultimately responsible for prosecutions which depend on a belief in 'cod science' or a belief in the supernatural, or prosecutions where the accused couldn't possibly have committed the offense within the bounds of what we know through modern physics.

The persistence with a belief-in and a dependency on 'recovered memory therapy' is perhaps the most disturbing element of the Saunders regime. Recovered memory therapy is the curse of spectral evidence from the 17th century in a modern guise, using pseudo science to reveal visions and dreams of things which didn't happen. An excellent investigation into Recovered Memory Therapy can be found in the book *Spectral Evidence* (2001) by Moira Johnson, which examined the Ramona v. Isabella case in the Napa Valley.

Although we can determine that under Saunders the CPS has engaged in prosecutions using dubious science and sometimes, extremist religious beliefs, we can't yet say if she holds those beliefs herself. We don't know if she simply believes that prosecutors should have access to any means to achieve a conviction, including depending on the jury believing in witchcraft (the Mark Pearson case) or a reliance on spectral evidence/RMT (the Le Vell farce and Stephen Glascoe scandal). That's why I try to encourage an enterprising journalist to ask such questions if they ever get the chance to interview her.

Flag

8RecommendReply

cecile Jan 24, 2018

//They develop a theory and then build a case//

I know this to be true from personal experience but it's a very depressing fact.

Learnt the first time that innocence, openness and frankness is no protection when dealing with the police - how naive to think it could be. In respect of a fatal road accident they quickly decided my husband was responsible then tried to find facts to fit their narrative. Despite negative forensics they ploughed on to a prosecution - six months of hell for us. Not guilty - costs awarded against the prosecution. A narrative with no supporting evidence - how did this ever come to court?

The second time was with our youngest son, who was finding the noise and activity at primary school stressful. Referred to a child guidance clinic we saw a nurse who quite quickly formed the view that family dysfunction was causing the problem. I knew that wasn't so and acted fast, obtaining the help of an educational psychologist. She suspected an autistic spectrum disorder and advised the test I should ask for. The nurse was not best pleased, told me it was expensive and we'd have to wait a year. She insisted on meeting the whole family before she's reconsider her theory [she called it that]. We presented ourselves, she saw our youngest in context and grumpily referred him for the test I'd requested. Last we saw of her, thank goodness.

Yes - a Police Inspector and a nurse - both with 'theories' - came far too close to causing real harm. We were lucky. But these people have real power over us and that power needs to be exercised with some humility - an appreciation at all times that they might be wrong.

Flag

22RecommendReply

j h Jan 24, 2018

Of course innocent people will have been jailed.

Flag

44RecommendReply

Andrew Lee Jan 24, 2018

The only way to deal with this is to make police and prosecution disclose everything, and pay the defence team properly to review it all.

Flag

18RecommendReply

Paul Sharp Jan 24, 2018

@Andrew Lee no. The only way to deal with it is to make the individuals responsible for their own actions and personally pay the penalty if they are wrong.

Flag

RecommendReply

Hugh Maund Jan 24, 2018

Is that not what is supposed to happen. The police submit all the evidence to the CPS who use it to assess whether the the case should proceed and the defence should be similarly informed. The police should not decide who sees what.

Flag

RecommendReply

tom jones Jan 24, 2018

@Andrew Lee "properly"

Flag

RecommendReply

watsonsdad Jan 24, 2018

@Andrew Lee ha. Yes of course but that means paying solicitors and barristers properly and Labour, the Lib Dems and Tories are all rabidly against that. They are united in their intention to destroy the independent publicly funded Bar. All of them united with the Civil Servants at the Treasury and MOJ.

Flag

RecommendReply

Grumpy Pensioner Jan 24, 2018

@Andrew Lee Nice idea, but Utopian tosh.

If every electronic (or any other form of) communication were examined for ALL interested parties' in every criminal investigation, transcribed, annotated and forwarded to all defence teams (ie multiple defendants) then the time and costs incurred would be incredible. This would also give rise to the equivalent chaff being ejected to confuse an incoming missile.

I suppose there would be no necessity for the defence to forward any evidence they have of their client's guilt ?

Flag

RecommendReply

sumwot Jan 24, 2018

I'm afraid that the problems at the DPP run much deeper than a failure to understand the lessons of social science. To that I would add the inclination to chase prosecutions not on their merits, or the seriousness of the offence, but rather the publicity value.

Whenever I hear Alison Saunders in a news report, I am immediately suspicious but she seems impervious to criticism and rides through failure after failure, apparently protected in a magic pc bubble.

Maybe C4 could arrange for Cathy Newman to interview her?

Flag

60RecommendReply

BigJim Jan 24, 2018

@sumwot

I suspect Newman would stay mute for the ten minutes set aside for the interview, fearful that Saunders would accidentally reveal something which pricked a hole in the bubble universe they both share.

Flag

6RecommendReply

John Hush Jan 24, 2018

@sumwot Good points all, nice sideswipe at the end.

Flag

RecommendReply

ScorpionBoris Jan 24, 2018

Aren't they all. Baroness Scotland anyone?

Flag

1RecommendReply

Flashmob Jan 24, 2018

Here's an informed opinion for you. It is based solely on my watching Spiral on BBC4.

In the French system, it appears that a judge is attached to a police case from the beginning; it can only proceed with his/her agreement - ie every police operation or action must be pre-approved. The judge is responsible for the evidence, so its value is weighed as it is procured.

Dramatic licence apart, this looks a better system than ours, if only because it requires a disinterested pair of eyes on the police and their case at all times.

Here both the police and the CPS have a vested interest in a case succeeding, almost guaranteeing confirmation bias.

Flag

40RecommendReply

Ytongs Jan 24, 2018

@Flashmob Of course the examining judge can be subject to an incorrect fixation as well, ignoring the pleas from the police, which can have the same effect on the innocent (Spiral series 5 Judge Roban).

Flag

1RecommendReply

Flashmob Jan 24, 2018

@Ytongs @Flashmob Absolutely. See my response to A Firswell. If Saturday night telly could fix all our problems, we'd never need to go out.

Flag

RecommendReply

A Firswell Jan 24, 2018

@Flashmob

Sadly, in "Spiral" the judge has just been presented with new evidence which he seems reluctant to take since it makes his previous decision of "case closed" look foolish. A natural human reaction, no matter what your rank. This is exactly the symptom Miss Saunders constantly displays. It's going "la la la" with fingers in ears and eyes shut. "I'm in charge so it MUST be right".

Flag

RecommendReply

Flashmob Jan 24, 2018

@A Firswell @Flashmob

Agreed, and he previously closed the case for unprofessional reasons too, to misguidedly protect an underserving colleague. And ideally the judge in question wouldn't have a brain tumour either and be unable to pour himself a cup of tea. But he did accept the new evidence, because he's essentially a goodie. As I say, dramatic licence rules here, but at least there is a nominally impartial set of eyes on the case at each point, and the earlier anomalies can be picked up, the less likely confirmation bias can take hold. It also makes the police question the validity of their case. Until AI takes over the justice system we are stuck with human fallibility, and must tweak our systems accordingly.

Flag

RecommendReply

Chris Miller Jan 24, 2018

@Flashmob Those French judges are often political appointments, and the entire French legal system is heavily politicised - for an example see François Fillon in the run up to last year's elections for a good example.

Flag

RecommendReply

BigJim Jan 24, 2018

@Flashmob

I've never been enthusiastic about the magisterial system of investigation. Only because it mixes-up the judiciary (the judge) with the executive (the police) in the course of an investigation.

We should be able to trust the executive, in the form of both Police and CPS to pursue investigations, make correct charging decisions and enact prosecutions with a comfortable degree of confidence. Being able to introduce quality into prosecution cases is the CPS' original *raison d'exister*, stemming from a desire to improve matters after the Birmingham Six and Guildford Four scandals.

Now if anything we are in a worse state than before the CPS was established, in 1986, in parallel with PACE (the Police and Criminal Evidence Act) of 1984.

The current long-running series of farces involving the CPS reflect badly not just on the CPS and DPP, but also on the Attorney General for England and Wales (presently Jeremy Wright) who is responsible for her continuing appointment, and who reports directly to The Prime Minister.

Since the passing of the Law Officers Act 1997, any duties of the Attorney General can be delegated to the Solicitor General for England and Wales, which is significant in some cases, such as the Mark Pearson 'witchcraft' case when both the CPS and Solicitor General issued statements that the defendant (who had been found not guilty) had been prosecuted because there had been evidence. That evidence though (presumably of witchcraft/supernatural powers) wasn't presented in Court during the trial as the CPS were unable to present any useful evidence of an offense having occurred, let alone the defendant being guilty of one.

Flag

1RecommendReply

Flashmob Jan 24, 2018

@BigJim @Flashmob I knew I'd regret making this point based on a tv drama and having my ignorance shown up by those with better knowledge!

I raised the matter specifically in relation to the cognitive dissonance and confirmation bias pointed out in the article that seems to be a problem for our system.

Assuming both systems worked perfectly, the point about the judiciary having earlier sight of the evidence being an advantage still holds, doesn't it?

By the way, I'm not suggesting that the police procedures as shown in Engrenages are exemplary, either!

Flag

RecommendReply

Jared Dann Jan 24, 2018

@Flashmob The problem with this Flashmob, is that in France the Judge in question (the Juge d'instruction) is also the prosecutor. France has an inquisitorial system which assumes that the state always acts impartially (rather than the adversarial system in England which is based on the idea of equality of arms between prosecution and defence). I would not want to tangle with the French legal system, and you shouldn't believe everything you watch on tv...

Flag

1RecommendReply

Flashmob Jan 24, 2018

@Jared Dann @Flashmob Is that so? I thought the 'juge' in Spiral liaised with the prosecutor and they merrily stabbed each other in the back (one of the adversarial points in the drama).

Certainly I haven't seen him in court - the slimy equivalent of barristers seem to perform that function.

Sound warning about tv reality, but I thought the difference worth pointing out given the concern over CPS and bias. And not only is tv acting as a filter here - I also have to rely on the subtitles!

Don't worry, I won't be sitting my bar exams on the basis of this knowledge.

Flag

RecommendReply

Alan Hawkes Jan 24, 2018

@Flashmob Post-Brexit vote, don't you think that you should stick with Morse?

Flag

RecommendReply

Flashmob Jan 24, 2018

@Alan Hawkes @Flashmob Only the Morse as depicted in Endeavour, with Fred Thursday in attendance. Far better than Rowan Atkinson's Maigret, at least!

Flag

RecommendReply

Philippa Rees Jan 24, 2018

@Flashmob I thought exactly the same thing about the judge's participation early in a case in France. The weighing of evidence, the allocation of resources to the police means that at every stage an 'objective' evaluation is at work (providing there is no collusion between judge and police).

Our competitive, statistically sensitive system of police pressures to deliver convictions must skew objectivity ab initio.

Flag

RecommendReply

Flashmob Jan 24, 2018

@Philippa Rees @Flashmob Thank you, Philippa, for not pointing out the holes in my contribution! Happy viewing.

Flag

RecommendReply

Grumpy Pensioner Jan 24, 2018

@Flashmob Excellent series - fortunate, though, that the unfortunately cancer-ridden Judge is so honest and admiral. Judges, being the same as the rest of us are mortal, good, bad and indifferent.

Flag

RecommendReply

Mrs Ruth Bruce Jan 24, 2018

@Flashmob

The problem with that is that the judge is unlikely to be, or to remain, impartial. He becomes part of the case-building process and is as liable to confirmation bias as the police or the CPS.

Flag

RecommendReply

Leni Jan 24, 2018

@Flashmob Also enjoy Spiral.

Yes, also noted the magistrate overview.

Flag

RecommendReply

Alistair Speirs Jan 24, 2018

@Flashmob

Thank you for reminding me that I have not downloaded Engrenages this week.

Flag

RecommendReply

Mary Kennedy Jan 24, 2018

@Flashmob

Not quite right, but it is more or less impossible to make direct comparisons between the English and French systems, since they are so different, even to the extent of relying on different underlying jurisprudence.

But roughly speaking, a juge d'instruction (whose status is approximately the same level as that of a magistrate) is appointed, by a more senior legal official, to make a preliminary investigation into allegations that are either extremely serious or extremely complicated. Not all allegations are subject to such a preliminary inquiry.

The juge d'instruction will hear witnesses, and may call for any further evidence he deems necessary. His role is to decide whether there are sufficient grounds to proceed to a full hearing. So you could perhaps equate the role of a juge d'instruction to that of the CPS in deciding whether or not to prosecute any one individual case.

If the decision is taken to prosecute, the juge d'instruction will decide which level of court should hear the case, and all the evidence gathered by himself/herself will be made available to both prosecution and defence.

Flag

RecommendReply

Flashmob Jan 24, 2018

@Mary Kennedy @Flashmob Thank you for the insight. But the role does appear to allow more impartial investigation of a case - eg assessing evidence and hearing witnesses at a much earlier stage.

Flag

RecommendReply

Mary Kennedy Jan 24, 2018

@Flashmob @Mary Kennedy

Yes, I agree. It has been fascinating for us, over the years we have so far lived in France, to learn how the French legal system really works (my husband was a barrister in England). Some make an automatic assumption that because French law is codified rather than based on the principle of common law (ie to a large extent on precedents) it must be very rigid, but in fact it seems to be very flexible. One of my favourites is the possible verdict (actually quite frequently used) of 'guilty-but-without-penalty'. Honour satisfied!

Flag

1RecommendReply

Robert Baker Jan 24, 2018

It only the prosecution side of the legal system that is subject to confirmation bias. Politics is subject to it too. Just think Brexit/Remain.

Flag

2RecommendReply

cecile Jan 24, 2018

@Robert Baker Of course. Which is why we are all still so entrenched in our views.

As a Remainer, I realise that no amount of economic bad news will shift a Leaver because they did not vote, in the main, on economics.

To abandon Leave they'd need to form the view that voting to 'take back control' gave them no more control, say - and even that would be a long shot.

Flag

RecommendReply

John Sheard Jan 24, 2018

Intriguing piece but, for me, it avoids an essential point: the pressure that political correctness imposes on our judicial system.

It was, I believe, Harriet Harperson when in office who insisted that men accused of rape should be publicly named, even if found not guilty, whereas their alleged victims should remain anonymous, which in itself is a major injustice.

Since then, rabid feminism has taken over most of our political and media lives. Even when women like 100 highly respected French actresses and intellectuals say this frenzy has gone too far, they are crucified in the press, TV and social media ... by other women.

We are all entitled to our views on this subject - even men! - but when our centuries old system of justice is captured I begin to fear for the rule of law. I am afraid that this Director on Public Prosecutions is unfit to protect that rule.

Flag

67RecommendReply

Hugh Maund Jan 24, 2018

I would go further. If a woman is proved to have made up the case against a man out of spite she should face draconian punishment. IT seems that at present she is not even named.

Flag

2RecommendReply

ThePipster Jan 24, 2018

@JohnSheard - absolutely! The DPP is so very clearly prejudiced and bigoted to an extent that affects her job and her applied process. Well past her sell by date. She has to go!

Flag

1RecommendReply

Bajan Scottish Chips Jan 24, 2018

"Disappointing and irritating" - probably the understatement of the week.

Flag

12RecommendReply

John Cameron Jan 24, 2018

"Festinger's work on the cult was the pioneering study in what is now a vast field. It suggests that once we develop a theory, it is very hard to shake. Indeed the stronger the counter-evidence, the harder we work to save our original idea. And the bigger the disaster brought about by being wrong, the harder we work to convince ourselves and others that we are right."

Its not just Ms Saunders who is caught in this nightmare - Prince Charles, Al Gore and the whole congregation of climate alarmists have circled the wagons over the increasing lunacies of "global warming".

Flag

19RecommendReply

ThePipster Jan 24, 2018

@John Cameron - that's an interesting take on Remain's Project Fear. Brexiteers are happy to engage on that subject as real-world evidence continues to discredit the doom mongers at every turn, and yet Remainers grow ever more desperate as they realise that it's the only weapon they have which fits their assumed philosophy. Despite all the evidence to the contrary they just carry on trying to make it stick!

Flag

RecommendReply

Peter Humphreys Jan 24, 2018

This article is important not just for its exposure of the DPP's blunders, but for reiterating the pernicious influence of confirmation bias in general. I appreciate that at the moment it's *de rigueur* to have a go at social media for almost anything, but those who are automatically corralled into groups of 'like-minded' people are almost guaranteed to meet only opinions that they already see as fact. I am, at last, beginning to see that my inability to decide whether Brexit will be good or bad is a positive thing: it means that I can still see both sides of an argument.

Flag

16RecommendReply

Andrew Davies Jan 24, 2018

The problem we have in so many areas of life seems to be this. Yes abuses or misjudgements occur which nobody can support. However, then we find the media picks up on them, focusses on them, magnifies them and before we know it a whole new picture is drawn up, not based on the real situation, but built on the errant few. It then leads to an eccentric (off centre and skewed) system and society. It is where the voice of the aberrations shouts very very loudly and drowns out all other voices. Therein lies the power of the press and the media; having that ability to distort reality and create a society to be dominated by political correctness and where a proportionate response to abuses and misjudgements is lost.

Flag

7RecommendReply

Thecaveartist Jan 24, 2018

DF has missed the point if he believes that this is a matter of mere incompetence. It is also the result of the corrupting nature of political feminism in national life. This information was suppressed not only through incompetence but the career threat that would have come about through disclosure. As in the USSR officers are promoted not only through competence but also through adherence to a political agenda.

Flag

16RecommendReply

David Craig Jan 24, 2018

Useful article. But I wish some journalist would deal with the real damage Alison Saunders is doing to British 'justice'. Here is her definition of a 'hate crime':

"Any criminal offence which is perceived by the victim or any other person, to be motivated by hostility or prejudice based on a person's race or perceived race; religion or perceived religion; sexual orientation or perceived sexual orientation; disability or perceived disability and any crime motivated by hostility or prejudice against a person who is transgender or perceived to be transgender."

The key idea here is that this new definition means the police don't need to "prove hatred". It's enough that any person claims they perceive hatred or even just hostility for you to be automatically guilty.

What happened to the idea of "innocent until proved guilty" which has been the basis for British law for hundreds of years?

Oh dear, comment marked "Pending" as usual due to possible political incorrectness.

Flag

67RecommendReply

it'sme Jan 24, 2018

@David Craig

From what you say above- the act in question must already amount to 'a criminal offence'?

So the 'offender' is off to a bad start to begin with is s/he not?

Flag

RecommendReply
james murray Jan 24, 2018
@David Craig

David

I am pleased your post got through the censor.

Quite right, and Saunders' definition flies in the face of the legislation - section 28 of the Crime and Disorder Act 1998.

<https://www.legislation.gov.uk/ukpga/1998/37/section/28>

This says nothing about how the victim of an offence feels - some poor deluded and paranoid people see prejudice and hate towards them everywhere for reasons of their race, colour, disability or because they have a wonky nose but that does not make their imagined hate real.

No. The evidence of the words or actions of the offender must show hostility towards the victim of the offence based on the victim's membership of a racial class etc

In other words, nothing whatsoever to do with the victim's views.

How does the top prosecutor get this wrong?

Jim Murray

Flag

1RecommendReply
Mr John Bridger Jan 24, 2018
@David Craig If only AS was bright enough to realise that her job is to act on the law not establish or interpret it.

Flag

RecommendReply
Stephen Follows Jan 24, 2018
@David Craig In which case, Liam Allan and co should turn this back on her: Saunders's regime has been responsible for numerous criminal offences against them, based on the fact that they are young, heterosexual (and mostly white) men.

Flag

RecommendReply
Families Need Fathers Jan 24, 2018
@David Craig Why is a malicious allegation not a 'hate crime'?

Flag

RecommendReply
Michael Jones Jan 24, 2018
Daniel raises a point in his excellent analysis that went through my mind the other day when yet another case collapsed, and that's how detectives and their like are so frequently depicted in their characters on tv wherein the detective or forensic pathologists go to the ends of the earth to catch the right person or disprove an incorrect theory. It looks like these colourful sketches are so far from the truth now doesn't it?
Methinks Ms. Saunders thinks her stance is fireproof.

Flag

7RecommendReply
bbhants Jan 24, 2018

Except in Silent Witness episodes where you see a caricature of both police and forensic scientists but mainly the police who dislike having their theories junked by forensics. Why on earth was this comment put in Pending?

Flag

RecommendReply
Mrs Ruth Bruce Jan 24, 2018
@Michael Jones

Methinks Ms. Saunders thinks her stance is fireproof.

She is clearly fireproof. Were she not, she would by now have been standing in line at her local jobcentre.

Flag

1RecommendReply
JOHN BALL Jan 24, 2018

As usual Lord Danny has written a thought provoking and important article. I just wonder why he does not comment on the possibility that the drive to improve statistics, i.e. get more convictions, has no effect on Mrs Saunder's strange views.

Flag

10RecommendReply
Alistair Speirs Jan 24, 2018

It does bring to mind those who marched up Hill Brexit with Farage after predictions of sunny uplands, having and eating cake, taking back control, money for the NHS and independence.

Flag

3RecommendReply
Alien Looking Down Jan 24, 2018

@Alistair, but you are guilty of the same type of bias: the central tenet of the article was that people seek to reinforce their own beliefs by disregarding any opinion that doesn't match their own. Most Brexiteers and Remainers display this bias, and yet at present it is unknown what the eventual outcome of leaving the EU will be, so an open mind should be kept. Brexit may prove to be 'stupid', but at present it would be stupid (biased) to state it as a fact.

Flag

1RecommendReply
Alistair Speirs Jan 24, 2018
@Alien Looking Down
Brexiteers do it much more though.

Flag

RecommendReply
Andrew Raiment Jan 24, 2018
@Alistair Speirs @Alien Looking Down oops, fallen into that trap again. LOL

Flag

1RecommendReply
Andrew Raiment Jan 24, 2018
@Alistair just like Stephen Dunne earlier, you have projected your bias on to this article and have fallen into the very same trap.

Flag

RecommendReply
Alistair Speirs Jan 24, 2018
@Andrew Raiment

Oh but it does fit so well doesn't it. One day all the Brexiters are saying "the EU will have to whistle for our money" and three days later "50 billion is a good deal". LOL.

Flag

RecommendReply

Andrew Raiment Jan 24, 2018

@Alistair Speirs @Andrew Raiment just highlighting the fact you had to shoehorn Brexit into an article that was about the justice system and cognitive dissonance... LOL.

Flag

1RecommendReply

Atticus99 Jan 24, 2018

"She has added that she is confident that no innocent person has been jailed as the result of such an error. . "

The degree of misunderstanding of both the criminal justice system and statistics that this comment displays surely disqualifies her from a senior position in the law.

Flag

30RecommendReply

Richard Jozefowicz Jan 24, 2018

@Atticus99 You are right. If she thinks that then she is a fool.

Flag

1RecommendReply

Richard Rryan Jan 24, 2018

Excellent article, well done Danny. But why are these false accusers not being prosecuted? If you want people to have faith in the system then show us it's working.

Flag

15RecommendReply

de Selby Jan 24, 2018

Good article. Until Alison Saunders recognises her abject failure to do her job properly and resigns, you should keep them coming.

Flag

17RecommendReply

Questioner Jan 24, 2018

The problem really started when the CPS began to employ full time advocates to prosecute their cases; such an employee must necessarily become very prosecution minded if that is all he or she does, day after day. In the old days advocates from the private sector, who routinely both prosecuted and defended, were briefed to prosecute from time to time; the load between prosecution and defence was evenly spread with much more objectivity and much more fairness in Court.

Flag

7RecommendReply

Avicenna Jan 24, 2018

Saunders turned innocent until proven guilty by 'believing' accusers in he said she said cases. This is motivated by hateful misandry which has become acceptable. Men have been unfairly demonized and innocent young men have been damaged by vengeful liars.

Flag

11RecommendReply

Mr Barry Grant Jan 24, 2018

There was much talk following the case of Liam Allan of the police's failure to disclose evidence to the defence and the implication was that if the police got their act together and behaved correctly all would be well.

But it occurs to me that Liam Allan was very fortunate in having an accuser who was foolish enough to provide evidence on her mobile phone that she had pestered him for casual sex. Presumably, if that evidence had not existed he would have been equally innocent, but would have been convicted.

One wonders how many innocent men have been convicted, not because of non-disclosure of evidence of innocence, but because such evidence just did not exist. And is their not a problem that the system seems to sometimes require proof of innocence rather than proof of guilt?

Flag

43RecommendReply

Suzanne Wilson Jan 24, 2018

@Mr Barry Grant

And given this publicity, someone intending to make a malicious accusation in future may well edit the content on their phone.

Flag

2RecommendReply

David Edwards Jan 24, 2018

In everyday life "confirmation bias" is an efficient and quick way of getting an answer that is quite likely correct to any problem. It's probably hard-wired. So avoiding it is going against nature and requires real logical discipline.

Flag

4RecommendReply

Nigel Currie Jan 24, 2018

It (confirmation bias) reminds me of the Trotskyist theory of the imminent collapse of capitalism, which was rigidly held on to by seemingly intelligent people despite the evidence of stability and economic growth (it's round the corner!). More sophisticated Marxists developed versions of conspiracy theories ('permanent war economy') to explain the non-occurrence of the collapse.....rather like the 'devotion' explanation of the cult leaders....

Flag

8RecommendReply

Families Need Fathers Jan 24, 2018

"The DPP has described these failures as "disappointing and irritating", stressing the need to get the job done properly. She has added that she is confident that no innocent person has been jailed as the result of such an error."

If someone is wrongly convicted it is beyond anything most people can imagine. But even if someone wrongly spends months or even years on bail, without being convicted, that is not "disappointing or irritating", it is abusive. It is the state needlessly damaging it's citizens. It is unforgivable. To accept it as a disappointment or an irritation is simply unacceptable.

It is dreadful too that 'confirmation bias' is not isolated to criminal proceedings. Many of those who are familiar with the workings of social services or of Cafcass (Children and Family Court Advisory and Support Service) will have seen how in family matters professionals often become too close to one side in a family dispute, exchanging calls, texts and emails with one side and not verifying or challenging statements made. Many simply abandon their critical faculties. And when facts are presented that don't fit the presumption, all too often they are buried. And when that is challenged by the targeted parent such social workers often become defensive and seek to justify their positions rather than learn from mistakes.

Parental Alienation (PA) in family disputes particularly prone to 'confirmation bias'. PA involves the psychological manipulation of a child into showing unwarranted fear, disrespect or hostility towards previously loved parents or other family members. It is disturbingly common affecting thousands of separated families. Professionals frequently don't trouble to ask 'Why is this child behaving this way

or saying this?'. Some judges spot such professional failures, many don't. The consequence - the permanent loss of a parent from a child's life. The short and long-term harm done to the child tremendous. To the targeted parent such systemic failures are every bit as traumatic as of failures of criminal justice. Possibly they are worse as targeted parents experience what they often describe as 'a living death' for the rest of their lives, just as a parent whose child dies. The phenomenon of professionals with such situations and siding with the abusive parent is well known to experts in the field. The response of many inadequately trained social workers is denial and defensiveness.

These failures are also indefensible cannot be tolerated. Effective systems for challenge of family professionals who commit to a theory are every bit as important as in relation to policing.

Flag

6RecommendReply

Stephen Follows Jan 24, 2018

@Families Need Fathers I think she really meant that she was disappointed and irritated that they hadn't managed to jail the b*stards for the crime of being straight young men in the first place.

Flag

RecommendReply

Alan Simpson Jan 23, 2018

"Police do not behave like Morse on television, piecing the puzzle together...." As a retired detective superintendent with 25 years of hard policing under my belt, I find that remark too sweeping.

I should qualify this by having to agree that on occasions some police do indeed form a theory, frequently false, and go to great lengths to prove it. Operation Midland is a classic case in point. It takes a deal of courage for a detective, often junior, to stand up in such instances and point out where an investigation seems to be heading down the wrong track. However, it does happen and a good senior investigating officer gains great respect if he/she takes this on board and alters course.

I worked on hundreds of investigations and believe it or not many of my colleagues and I found immense satisfaction in proving that a suspect was innocent and going on to find the real culprit(s).

Many will the following controversial, but during my service, I found that too many detectives had little or no ability for genuine detective work. They got by on processing criminals caught by our uniform colleagues or in easy cases where, for example, there had been a stabbing and the assailant remained at the scene dripping in blood.

Having said that I'm sure that in all occupations and professions there are people who are just not up to the job.

Personally, I have a horror of an innocent person going to prison and I frequently gave talks on the subject to new detectives on their initial training courses.

I have often argued in the past that the selection procedure for entry to the CID should be much more rigorous and that investigations into serious cases should be reviewed at regular intervals by an independent team.

Flag

132RecommendReply

Daniel Finkelstein Jan 23, 2018

Thank you for commenting. I read it with great interest, learnt from it and will reflect on your points. I am glad that we are not too far apart in our conclusions.

Flag

69RecommendReply

NICK N Jan 24, 2018

The Times didn't cover the HBOS scandal court case in December at Southwark Crown Court where the convicted fraudsters' law firm's head of Commercial was being tried for hiding his client's money. The defendant had to wait over SIX YEARS on evidence that was incredibly flimsy before being found not guilty. Saunders should have stepped in long before but she doesn't because, so I am told, dropping a case before it reaches court is more embarrassing than losing in the courtroom. Saunders is not fit to do her duties. The CPS is underfunded, underresourced and the calibre of its lawyers are generally poor, and although one could use that as a defence of Ms Saunders' performance, she should know the quality and realise the risks of her approach. But she ignores it to the detriment of natural justice.

Flag

6RecommendReply

Brian Cope Jan 24, 2018

@Daniel Finkelstein The problem of the junior detective not being able to point out possible errors by her superior could be solved by the adoption of crew resource management. Matthew Syed, another columnist, wrote Black Box Thinking on the subject.

Flag

RecommendReply

James Croft Jan 24, 2018

@Alan Simpson

A very well put and very thought-provoking comment.

Respect for your many years of service and your commendable stance.

Have you ever considered canvassing for public support in applying pressure on the powers that be with the aim of achieving more appropriate CID standards and more effective screening procedures for entrant detectives?

You seem genuinely suited to helping bring about such changes.

Or am I being too naive?

I certainly wish you well and every happiness in your well-deserved retirement.

Flag

2RecommendReply

Michael Jones Jan 24, 2018

@Alan Simpson

Alan what puzzles me from your comment most is that you do admit that some police do indeed form a theory, frequently false, and then go to great lengths to prove it. This must ultimately mean that that suspects are frequently falsely accused, but the thing that puzzles me is that you then say that it is often a junior detective that points out that the investigation is heading down the wrong track. What does that say about the manner in which the investigation is being managed? No wonder we have the nightmare scenarios for many that are wrongly accused.

Flag

2RecommendReply

Alan Simpson Jan 24, 2018

@Michael Jones Thank you for your reply. I spotted my error shortly after posting my comment and it should have read "and go to great lengths to TRY and prove it".

In relation to your second point, it's normal procedure to have a full conference at the beginning of each day where the SIO brings everyone up to date with the progress of the investigation. He/she

knows the enquiries each detective has been allocated and gets a verbal report on how they are going.

The floor is then open for a general discussion and it is at that point when detectives at different levels of experience can raise relevant points and make recommendations.

Human nature being as it is, not all SIOs take too kindly to this as I discovered to my cost in the early years of my service. Some can build a grudge as the result of a junior detective coming up with something he/she hadn't thought about.

It seems there was quite a large number of detectives working on Operation Midland and I am amazed that some didn't point out that the whole enquiry was going beyond the realms of reality.

Flag

RecommendReply

EknowsUknow Jan 24, 2018

@Alan Simpson Excellent first hand feedback Alan. I may suggest that in order to 'help' the relatively junior detective who senses something does not 'fit', that there is a formal challenge process built into investigations. Similar to what academia do before accepting a proof or engineering companies go through in design processes before laying out large amounts of cash to proceed with construction. There should also be a vehicle whereby the defence lawyers are given access to ALL Evidence not just that 'thought' relevant by the police.

Flag

2RecommendReply

Robert Hughes Jan 24, 2018

As someone with a particular interest in wrongful convictions, I am delighted to read of your attitude to the question of a suspect's guilt or innocence.

-

But can it be right that the police are permitted to assess what material is disclosed and what is not? Shouldn't the entire product of a police investigation be routinely available to the defence, immediately?

Flag

RecommendReply

Robert Hughes Jan 23, 2018

On the Glascoe case:

-

"Christopher Clee, QC, defending Dr Glascoe, wrote that the woman had "throughout manipulated the proceedings, disclosing incidents of alleged abuse as and when it suits her purposes; these allegations emerging through counselling sessions which in themselves are of dubious standing". He added: "She has found a powerful ally in the police, who have acted upon her allegations without question, ignoring obvious lines of inquiry and seeking to undermine potential evidence that contradicts her allegations.""

-

<https://www.thetimes.co.uk/article/cps-failings-paedophile-trial-collapses-over-lurid-claims-of-serial-fantast-dv7dzd5r2>

-

And here's the MP Jess Phillips on the approach she thinks should be taken in sexual assault and rape cases:

-

"We have a solution, it's simple – believe us when we say it happens and prosecute the perpetrators."

-

<https://inews.co.uk/opinion/comment/women-dont-need-segregated-train-carriages-need-believed/>

-

I think the problem is understandable.

-

Whether activists like it or not, when a woman makes a complaint about a sexual assault, the police cannot start their investigation with an assumption that an assault has taken place. It is not safe to do so.

-

Enquiries must be evidence led, from the very beginning.

Flag

87RecommendReply

Avicenna Jan 24, 2018

Jess Phillips is misandrist, she is as bad as a racist, why hate someone because they have a Y chromosome?

Flag

8RecommendReply

Andrew Daws Jan 24, 2018

“Enquiries must be evidence led, from the very beginning.”

Yes, but unlike in murder cases there’s is often very little evidence, and in many cases no certainty that a crime has even been committed. I have the greatest respect for those who manage to come up with safe convictions. I worry, because on the only occasion I was on jury duty, the accused was close to conviction on wholly insufficient evidence. How much worse in a case of ‘he said she said’.

Flag

2RecommendReply

Philippa Rees Jan 23, 2018

This has interesting overtones of the Channel4 interview of Jordan Petersen by Cathy Neuman. She went to prove the man a far right reactionary, and despite him showing no grounds for that assumption, persisted.

Her arch feminism was determined to exact from him evidence that supported her groundless assumption. She set up a straw man and tried to set fire to him. Fortunately he proved inflammable. She proved unintelligent.

Rather than concede his clean rationality she kept putting words in his mouth that he had never uttered.

It seems to support DF's analysis, not just in relation to prosecutions of the innocent but in the wider context of politically correct distortions of almost everything.

Flag

119RecommendReply

Vicious Hippo Jan 24, 2018

@Philippa Rees I thought Cathy Newman did ok, such as asking questions like whether - if corporates are focused on a male perspective of advancement, then would corporates run by females be different. Fair point, and his answer was basically sound - that there was no evidence. CN's argument was we wont know unless we force the issue, JP's was fine but there is no evidence that it would work (and by implication a risky strategy to prove an assumed dogma). Neither point was extreme or unreasonable.

I think both came out quite professional. She wasn't easy, neither was he. It's worth watching.

Flag

RecommendReply

Stephen Follows Jan 24, 2018

@Vicious Hippo @Philippa Rees No. The point, as many have already demonstrated, was that she kept attributing things to him that he hadn't said so that she could attack those, instead of the completely different things that he had said. When he pointed this out, she did the same thing again.

The only question is whether this was because she is a fool or a knave.

Flag

4RecommendReply

Michael Jones Jan 24, 2018

Well said. She did more to undermine her own cause than if you had paid assassins doing it for her.

Flag

5RecommendReply

Paul Bickerdike Jan 24, 2018

@Philippa Rees " Fortunately he proved inflammable"

Non - inflammable surely.

Flag

5RecommendReply

Colin Morris Jan 24, 2018

@Paul Bickerdike @Philippa Rees Non-flammable.

Flag

2RecommendReply

Philippa Rees Jan 24, 2018

@Paul Bickerdike @Philippa Rees I did reply to this and acknowledged your correction, but the reply was not shown, so do so again.

Thank you, you are quite correct and I am grateful! Obviously a long standing misconception and misuse. I have always thought 'flammable' meant likely to burn and inflammable was the opposite-like violate and inviolate!

Thank you!

Flag

RecommendReply

Eric Jan 27, 2018

JP interviewing Trump anyone?

Flag

RecommendReply

Gerald Collins **Featured**

Jan 23, 2018

Arguably, no-one knows how biased they are.

19RecommendReply

Charles Borthwick Jan 23, 2018

@Gerryco I would recommend but don't want to display partisanship.

Flag

7RecommendReply

GenericScientist Jan 23, 2018

It is pretty depressing that the head of the CPS has such a poor grasp of statistics that she thinks it unlikely that there are innocent men behind bars for sexual crimes. The numbers involved make it close to a statistical certainty that there are innocent men behind bars for rape. There are literally thousands of people in jail for these offenses and we know that the criminal justice system is far from perfect.

Flag

92RecommendReply

Tom Bloomfield Jan 24, 2018

@GenericScientist

Obviously, and she has thereby demonstrated her unsuitability for her job.

Flag

10RecommendReply

SixG Jan 24, 2018

@GenericScientist I have personal knowledge of an innocent man who spent years in jail for sexual offences he did not commit. The prime witness admitted in court that she was a fantasist and an habitual liar. Her family confirmed she was.

At the time of one claimed offence, the defendant proved that he was on the other side of the world.

But he was a man so he was imprisoned. He is still branded as a sex offender and is unable to visit some of his family.

Flag

4RecommendReply

BullFinch Jan 23, 2018

Alison Saunders is a plausible and fluent lawyer who usually comes across very well in broadcasts. But she is utterly right-on and completely convinced that she knows best about everything. She and the CPS have wrecked people's lives with these false allegations and they don't give a stuff about it. Their expressions of regret are pathetically hollow. They want more rape convictions and they care too little about how they get them. How many men are wrongfully in jail because of them? I fear for the young men I know who are in danger of being falsely accused by mentally ill women or women who regret a misguided shag when they were out of their heads on drink or drugs. And that doesn't excuse for one second a man who takes advantage when he shouldn't, which is just as contemptible.

Flag

112RecommendReply

Vicious Hippo Jan 24, 2018

@BullFinch Men who are mentally ill also get taken advantage of, sometimes with a greater consequence, eg an unwanted (by them) pregnancy. But that situation is simply never discussed. As if men aren't allowed to be mentally ill or vulnerable, despite statistics on suicide etc that clearly prove they can be, at least as much as females.

Men are just as vulnerable as women. The narrative of our age is way behind the evidence.

Flag

3RecommendReply

BullFinch Jan 24, 2018

@Vicious Hippo @BullFinch Agreed.

Flag

RecommendReply

Stephen Follows Jan 24, 2018

@BullFinch Never trust anyone who is plausible and fluent. Classic signs of psychopathy.

Flag

RecommendReply

BullFinch Jan 24, 2018

@Stephen Follows @BullFinch You are close to saying 'Never trust a lawyer'. Dangerous ground!

Flag

RecommendReply

Colin Parker Jan 23, 2018

What I find particularly interesting and worrying about this article is that each and every one of us is subject to confirmation bias once we have taken a position. It applies to Mr Blair over Iraq on which

he continues to believe he was right to support invasion. It applies to Brexit on both sides of the argument.

Flag

13RecommendReply

Mr W Garside Jan 23, 2018

Another newspaper reported that there were 2689 convictions for sexual assault, a rate of 7.5% of recorded allegations.

This type of case often involves one persons word against another, and my guess would be that more people get away with sexual assault than get convicted.

The rules of evidence of necessity favour the defence (limited admission of past offences etc)...overall the chances of an innocent person getting convicted must be extremely small...as it seems is the chance of a victim getting a successful prosecution.

Flag

2RecommendReply

Jack Jones Jan 24, 2018

Possibly true but definitely irrelevant. If there are systemic problems, or outright corruption, which may lead to innocent people being jailed, that needs fixing urgently. The fact that you suppose it only affects a few doesn't change that at all.

-

Also - what is a 'small' number of blatant miscarriages of justice? One seems like a large number to me.

-

A broken system is also more likely to undermine valid prosecutions. If juries know police are biased, or lie, or are chasing targets, they are less likely to convict genuinely guilty defendants.

Flag

6RecommendReply

Mr W Garside Jan 24, 2018

Jack Jones.....The statistics quite amazed me....out of every 100 allegations of sexual assault only 7.5 are successfully prosecuted.....Surely 92 out of every 100 allegations of sexual assault are not false accusations.

The rules of evidence provide that it must be proved beyond all reasonable doubt that a person is guilty of a criminal offence, however when the burden of prove moves to the defendant to prove a fact ,the standard of prove changes to the civil one of on a "balance of probabilities".

Like you I hate the thought of an innocent person being convicted of a criminal offence, but the criminal standards of evidence all favour the accused.

It seems when people (including men) are advised of the chance of a successful prosecution for a sexual offence and the rules of evidence ,favouring the defendant,many simply drop the allegation rather than face a court case .

Flag

1RecommendReply

Peter Iden Jan 25, 2018

@Mr W Garside No one gets named charged or prosecuted for burglary or murder unless the police can show a crime has been committed. The problem with sexual assault is that there is often no evidence that any crime has occurred.

Flag

RecommendReply

Brian Cope Jan 23, 2018

Institutional Dunning-Kruger pervades the CPS.

Flag

5RecommendReply

Mr Robin Kempster Jan 23, 2018

The very last thing the police and the CPS should do is pay any attention to social science gobbledegook.
Far better to collect and assemble evidence more efficiently than they do at the moment.

Flag

7RecommendReply

Vicious Hippo Jan 24, 2018

@Mr Robin Kempster I promise you there is nothing gobbledegook about social science. Try looking up the work that has been done in the name of social science on the misidentification of Thomas Brewster which was almost an appalling miscarriage of justice. In a nutshell, a cold case was reopened and a suspect identified in a line up by a victim who felt he looked familiar. The police were always convinced it was him who was guilty, and he was almost convicted on that basis. The reason? Because the suspect had been shown to her in a police line up 10 years earlier (when she had rejected him as a suspect). DNA tests later proved it was not him, but it shows how witnesses can be coerced (by well-meaning police). Social science is actually vital I promise you. People and their memories are extremely open to suggestion.

A victim wants someone punished, and the police want to close a case. A dangerous cocktail.

Flag

7RecommendReply

Jack Jones Jan 24, 2018

Total nonsense.

-

Understanding how people's minds work is fundamental to police work. Psychology is not 'gobbledegook' except to people determined to be ignorant. Human beings simply do not 'assemble evidence' like automatons. They decide what evidence IS for a start, where and how to look for it, how to interpret it, and its implications for guilt or innocence. In rape cases, in particular, judgment on whether an accuser is believable is fundamental. Ignoring psychology would make a detective basically useless.

-

Read 'Thinking Fast and Slow' by Daniel Kahneman. It will open your eyes. And in particular do some of the psychological exercises in that book on yourself. You will soon understand psychology is not gobbledegook. It's unlikely they'd hand out nobel prizes to people like Kahneman if it were.

Flag

5RecommendReply

ArtemisiaFranklin Jan 23, 2018

"There needs to be a better internal system for challenging police officers and prosecutors as they become committed to a theory". What about a kind of 'devil's advocate'? An old idea but one that could be used in this situation; probably the person should not be in the police, and they would need to be open and independent in order to avoid any cosy collusion with them. Better still - all evidence should be available to prosecution and defence. The problems have arisen from picking and choosing what information to release. Miscarriages of justice are then almost inevitable. What a mess.

Flag

5RecommendReply

John Jan 23, 2018

Every police investigation should be "an ethical search for the truth". But how does society enforce such a high minded ideal?

Aye, there's the rub!

Flag

1RecommendReply

Granny's Trifle Jan 23, 2018

I actually had to look Mrs Saunders up because I was beginning to wonder if her title was just honorary but it turned out she has some legal experience.
What she lacks is understanding the concept of Justice. You begin to wonder if leaving the jurisdiction of the ECJ is wise with a clown like this running things here.

Flag

20RecommendReply

Chris Jackson Jan 24, 2018

@Granny's Trifle I think you may be demonstrating a pro-EU bias here. Mrs Saunders can, at some point (and particularly if she continues to act in an arrogant partisan way) be "managed" out of her job and replaced. The ECJ cannot ... unless we leave the EU.

Flag

2RecommendReply

Sir Desmond Glazebrook Jan 24, 2018

The ECJ doesn't have anything to do with criminal law. The ECtHR does, which is totally separate from the EU, and we're not leaving it though there are those who wish we would.

Flag

1RecommendReply

John Snodgrass Jan 23, 2018

In Victoria, Australia a few years back a rape conviction was overturned after it was discovered by a persistent defence team that crucial DNA evidence was compromised by serious mishandling procedures at the DNA laboratory. The wrongly accused man had served over a year of the resultant prison sentence before this was corrected. Rather than assure the public that this was a one-off case the DPP announced an immediate review of all cases where this laboratory had provided crucial DNA evidence. This is the proper response. The DPP has an overarching duty to promote justice not protect a befouled political agenda or any fragile ego.

Flag

38RecommendReply

Robert Highfield Jan 23, 2018

From the headline, I was planning to disagree, but on reading the piece, I can say you are 100% right. I was a police officer for 34 years. I have seen this time and again. I think, actually I know, that I was not susceptible to this bias, because I am also a skeptic and like to see evidence before I believe anything, but too many police officers do indeed form a theory and then work to prove it. Interestingly, after retirement, I sailed a yacht all over the Pacific. There were a number of accidents to yachts, over 20 lost in three years in the Central Pacific alone. In almost every case it should not have happened, but somehow experienced sailors persuaded themselves that all was well when it wasn't. They had adopted a view of the situation and ignored mounting evidence that things were not as they imagined. Seems to be the same human failing.

Because of my experience, and because I looked into these losses, and not least because I was responsible for my inexperienced wife and two young children, every day I would ask myself if I was making any assumptions that I should not make. Pity the police and the CPS don't do this.

Flag

46RecommendReply

Daniel Finkelstein Jan 23, 2018

Fascinating. Thank you for commenting.

Flag

7RecommendReply

Paul Bentley Jan 25, 2018

@Robert Highfield

Mr Highfield,

I was fascinated by the example you give about the accidents to so many boats in the Central Pacific. I tried to find more information by Googling '20 yachts lost over three years in Central Pacific' - but nothing relevant comes up.

If you have the time, will you be kind and point me towards some source of information on the subject?

Paul Bentley

Flag

RecommendReply

Robert Hughes Jan 23, 2018

On the Glascoe case:

-

"Christopher Clee, QC, defending Dr Glascoe, wrote that the woman had "throughout manipulated the proceedings, disclosing incidents of alleged abuse as and when it suits her purposes; these allegations emerging through counselling sessions which in themselves are of dubious standing". He added: "She has found a powerful ally in the police, who have acted upon her allegations without question, ignoring obvious lines of inquiry and seeking to undermine potential evidence that contradicts her allegations.""

-

<https://www.thetimes.co.uk/article/cps-failings-paedophile-trial-collapses-over-lurid-claims-of-serial-fantasia-dv7dzd5r2>

-

And here's the MP Jess Phillips on the approach she thinks should be taken in sexual assault and rape cases:

-

"We have a solution, it's simple – believe us when we say it happens and prosecute the perpetrators."

-

<https://inews.co.uk/opinion/comment/women-dont-need-segregated-train-carriages-need-believed/>

-

I think the problem is understandable.

-

Whether activists like it or not, when a woman makes a complaint about a sexual assault, the police cannot start their investigation with an assumption that an assault has taken place. It is not safe to do so.

-

Enquiries must be evidence led, from the very beginning.

Flag

10RecommendReply

Andrew Daws Jan 24, 2018

Whenever I try to post the same content twice as I think it hasn't worked, Livefyre rejects the second attempt, drolly saying that however much I like what I am saying, once is enough. This post appeared twice 3 hours apart. Naughty Robert.

Flag

2RecommendReply

JMcL Jan 24, 2018

@Robert Hughes Agreed about the assumption, but there's bit more to it. When a victim (not just a woman - there's no shortage of male victims too, and let's not forget it) makes a complaint, there's a statement associated with it. That is, of course, evidence.

Flag

RecommendReply

Robert Hughes Jan 24, 2018

It is evidence, of course. But it is, at that point, untested. Furthermore, in sexual assault and rape cases there are unusual complexities. One of the defences a suspect can mount is a "reasonable belief" of the existence of consent - and even where that consent is thought unlikely to have been forthcoming, no crime has been committed if the suspect had such reasonable belief in it.

-

Indeed, it is apparent that in cases of rape where there is and can be only one suspect, in the vast majority of cases, sexual contact is not denied. The defence is consent.

-

And in the Ched Evans case, of course, we entered the twilight zone. There was no complaint of rape, no use of rape enabling drugs and an attending, exonerating witness. On the face of it, the case was incapable of sustaining a prosecution. Yet there was a successful prosecution!

Flag

RecommendReply

JMcL Jan 25, 2018

@Robert Hughes Absolutely. I agree with everything you say.

Flag

RecommendReply

anyfool Jan 23, 2018

It suggests that once we develop a theory, it is very hard to shake. Indeed the stronger the counter evidence, the harder we work to save our original idea. And the bigger the disaster brought about by being wrong, the harder we work to convince ourselves and others that we are right.

Global Warming to a tee.

Flag

7RecommendReply

Robert Highfield Jan 24, 2018

Indeed. How deniers can dismiss the mountain of evidence for AGW is a source of puzzlement partially explained by this article.

Flag

1RecommendReply

anyfool Jan 24, 2018

The trouble with the mountain of evidence, is that large swathes of it are compromised, by data corruption and plain outright lies ockey stick and old trees.

Flag

1RecommendReply

Mike Mcpherson Jan 23, 2018

Yes indeed. The very same confirmation bias that afflicts politicians , especially those in parliament, and political commentators.

Flag

8RecommendReply

Daniel Finkelstein Jan 23, 2018

Absolutely. And including me (and of course you).

Flag

11RecommendReply

Mike Mcpherson Jan 24, 2018

@Daniel Finkelstein Agreed.

Flag

1RecommendReply
LuckyJack Jan 24, 2018

@Daniel Finkelstein Thank you for this thoughtful piece. I am fortunate to have had a full career as a detective but also studied the psychology of investigations. It is vital that officers are more aware of the mechanisms that can derail what they believe to be an ethically conducted investigation. The insidious nature of confirmation bias can infect at every level from first to last and Ms Saunders is deluding herself if she believes that no mistakes have been made.

Flag

2RecommendReply
Plah22 Jan 23, 2018

This is just a very elegant way of saying the DPP is (criminally?) incompetent and should resign immediately.

Flag

28RecommendReply
Adrian Turner Jan 23, 2018

I am surprise, David, you did not mention the case of Chedwyn Evans. The complainant in that case did not go to the police to complain of rape, but that was the construction that was put on what had happened and once the case was so characterised that was how it proceeded.

Evans was ultimately acquitted (though only after completing the five-year sentence) because of fresh evidence - admitted in the teeth of strong objections by the prosecution - from others who had had casual, consensual sex with the complainant and described their encounters with her in strikingly similar detail to the account Evans gave to the police in his interview. Without this, he had nothing to corroborate his claims.

It is vitally important to encourage genuine complainants to come forward and to give them every practical assistance and support, but it is essential that this is accompanied by objectivity and impartiality in the investigation and any subsequent prosecution. As David rightly points out, this has not happened in a number of recent cases, and this is a serious setback to attempts to improve how the law works in these cases.

Flag

29RecommendReply
Andrew Daws Jan 24, 2018

But then you have to publish both names, and we don't like doing that.

Flag

RecommendReply
BigJim Jan 24, 2018
@Adrian Turner

The Chedwyn Evans has a little sting-in-the-tail.

The complainant had detailed that she was very intoxicated at the time of the offense and the CPS was of the opinion that she was unable to consent or not consent one-way-or-the-other.

Both the accused and the complainant had blood samples taken. The complainants had traces of cocaine (she denied its usage) but no alcohol absorption trace in her blood.

The rates of blood alcohol absorption are very well documented in scientific research (together with the variance). That the complainant could have expelled all of the alcohol she had allegedly consumed in such a short time before the sample was taken would break new scientific ground.

In such instances I think that when prosecution authorities introduce evidence, or where there is evidence which contradicts their evidence but is still irrefutable, that evidence should be presented for scientific analysis and peer-reviewed for a journal article. In the Chedwyn Evans case, the CPS prosecution indicated by implication that the scientific evidence on blood alcohol absorption was incorrect. There should be a requirement for the CPS to fund and document the necessary research to back that assertion.

Flag

1RecommendReply
OldManDJ Jan 23, 2018

The same effect works in many other ways too. There are those who claim to know better than the experts, or to be certain that some accepted fact is untrue. No matter how much time and effort is used to show that their views are foolish, no matter how clearly that the "facts" that they continually quote are shown to be untrue, they continue to believe their fantasy.

Try to argue with believers in flying saucers from space, in the faking of the moon landings, in the "conspiracy" to foist climate change on the world and the same old tired and long discredited claims are trotted out.

Flag

1RecommendReply
Mustangmarek Jan 23, 2018
Excellent, well done.

People in authority should always have their certainties pricked in public when there is a danger to citizens.

Flag

3RecommendReply
Paul Bentley Jan 23, 2018

I quote: "The DPP has described these failures as "disappointing and irritating", stressing the need to get the job done properly. She has added that she is confident that no innocent person has been jailed as the result of such an error. . . . That response isn't good enough. I'm not suggesting that Mrs Saunders is unconcerned about people who have been unfairly accused. But has she learnt anything from academic research of the past 60 years into how human beings think?"

Lord Finkelstein, the DPP's response is not only 'not good enough', it's irrational. You don't go that far but I have no qualms.

You quote her as finding the 'failures' as "disappointing and irritating".

They were failures only from her unique point of view. In fact they were successes for the innocent accused and, please God, for justice, now and in the future.

As for 'stressing the need to get the job done properly'. What does this phrase say about her mind set? That the DPP prosecutes a case not to establish guilt or innocence but to achieve a conviction? By fair means and foul?

Paul Bentley

Flag

25RecommendReply
Growltiger Jan 24, 2018

@Paul Bentley Yes, her stance amounts to saying that the prosecutors were failing in their duty to fit up the accused properly.

Flag

2RecommendReply

Sinverguenza Jan 23, 2018

Very few people care about justice.

Flag

1RecommendReply

Chris Jackson Jan 24, 2018

@Sinverguenza Rubbish.

Flag

1RecommendReply

JMcL Jan 24, 2018

@Sinverguenza Oh yes they do. What they each may mean by it of course is another matter.

Flag

RecommendReply

Iain Sanders Jan 23, 2018

Another female at the Top totally unfit for her responsibilities blanking-out ample & *frequent* proofs carrying on regardless. Remind you of anyone in the vicinity of Downing St? Dorothy Martin was a women. As it began, so it continues..

Flag

3RecommendReply

Chris Jackson Jan 24, 2018

@Iain Sanders I think you are showing your own bias here. There are plenty of duff (and dangerous) men in top jobs too.

Flag

3RecommendReply

Stephen Dunne Jan 23, 2018

"Festinger's work on the cult was the pioneering study in what is now a vast field. It suggests that once we develop a theory, it is very hard to shake. Indeed the stronger the counter evidence, the harder we work to save our original idea. And the bigger the disaster brought about by being wrong, the harder we work to convince ourselves and others that we are right."

BREXIT?

Flag

6RecommendReply

Andrew Raiment Jan 24, 2018

@Stephen Dunne you didn't understand the article at all.

Flag

RecommendReply

Sir Desmond Glazebrook Jan 24, 2018

Both sides of the Brexit debate have been feverishly searching for evidence for their cause and ignoring all else.

Flag

2RecommendReply

NombaNinshi Jan 24, 2018

@Stephen Dunne You seek to malign those with whom (I presume) you disagree, by assigning to them a homogeneity and stereo typicality that rarely exists in any group, based on the assumption of the inevitable rightness of your own positioning.

This is precisely the point that DF is making. You have the equivalent position of assuming all who accuse are bona fide victims, and so you are falling into the very trap you suggest Brexiteers have fallen into.

The moment you stereotype any group into a homogeneity that does not exist, you lose track of reason, whichever side of the divide you are on.

Flag

RecommendReply

Dick Stroud Jan 23, 2018

Great article. Until there is some penalty for police and prosecutors for such unprofessional behaviour, other than issuing a 'lessons have been learnt' statement, the problem will continue. Well publicised cases of police and prosecutors being sacked might make the rest of them take the problem seriously.

Flag

11RecommendReply

Nigel Currie Jan 23, 2018

It's not often that we see a Conservative columnist calling for more attention to the social sciences, but justified in this case.

Flag

RecommendReply

Orsen Kaht Jan 23, 2018

It seems to me that most of the problematic cases involve the non-provision by the police to the CPS of evidence which might assist the defence. I'm not sure that this article makes sufficient distinction. Nor does it fully acknowledge the immense pressure that both arms of the prosecution function are under due to spending cuts. It does not chime with my experience of the criminal justice system that the CPS would themselves withhold evidence in these circumstances. And in any event, in my time, where evidence was deemed not to be relevant to the case, its existence still had to be made known to the defence via the schedule of unused material, which was a legislative requirement. I'm therefore sceptical of how big a part confirmation bias has played in some of the cases which have caused problems.

Flag

3RecommendReply

Andrew Daws Jan 24, 2018

In the last case it was a question of the police not wanting the mind numbing tedium of ploughing through the contents of a mobile phone.

Flag

RecommendReply

Ian Lumsden Jan 23, 2018

I'm often a little disappointed when articles commence with a story possessing at best tangential relevance to the subject. This time Daniel's tale of Dorothy Martin bears a striking similarity to that of Alison Saunders. I watched her interview at the weekend and was struck by a rigidity of mind that is chilling when one considers the proven miscarriages of justice over which she presides. I quite appreciate she has a formidable brief, I also realise we have to support rape victims but one cannot improve convictions by placing men at a severe disadvantage because of their gender.

Flag

11RecommendReply

Andrew Middlemiss Jan 23, 2018

Which explains quite neatly, Daniel, how religion has been cited for so long. Thank you.

Flag

2RecommendReply

NombaNinshi Jan 24, 2018

@Andrew Middlemiss No it doesn't. People follow religion for a wide variety of reasons, and your comment merely stereotypes, a bad approach to any group, whether you agree with them or not.

Flag

RecommendReply

Pelican Brief Jan 23, 2018
A very good and timely piece.

Flag

4RecommendReply
walter mears Jan 23, 2018

Given that the current starting point is always to believe the complainant and even to grant them the status of victim, there is always going to be a hefty dose of confirmation bias at work. Would it not be better to revert to Blackstone's dictum that it is better that 10 escape punishment than one innocent suffers a failure of justice and thereby assume that the accused is innocent until there is strong evidence to the contrary? That way the confirmation bias would properly act in favour of the accused.

Flag

6RecommendReply
David Tallboys Jan 23, 2018
It is actually really serious.

There has not only been the shift from "innocent until proven guilty" to "guilty by accusation alone" but there is also the withholding of evidence by the police that would enable the accused to show their innocence.

There have been enough cases reported in the press over the last 12 months or so to believe that there has been a serious number of miscarriages of justice in recent years with many of the victims of this still in jail.

I used to get irritated by sanctimonious lawyers saying it was "better that one hundred villains to go free than one innocent man be convicted" - now I'm irritated that it is a hundred innocent men going to jail just to make sure Alison Saunders gets her conviction rate up.

Flag

37RecommendReply
Omo Ode Jan 23, 2018
From the above:

'Indeed, Mrs Saunders comically misses the point when she suggests that anyone who feels they have been wrongly convicted because of disclosure failures should speak out. They are unlikely to know if there is vital evidence in their favour if they were never told about it.'

It's rather unbelievable that the DPP could say such a thing. But, sadly, I believe it, going by her form and past statements.

As I asked in response to an article in yesterday's edition of this paper, where Mrs Saunders was reported to have said rape complainants should not keep quiet, otherwise they may not have a case, I ask the same question again: Is she really a lawyer?

Flag

37RecommendReply
Gnasher Jan 23, 2018

Social science apart, Mrs Saunders' suggestion is deeply flawed and illogical. As pointed out by Daniel;

"Indeed, Mrs Saunders comically misses the point when she suggests that anyone who feels they have been wrongly convicted because of disclosure failures should speak out. They are unlikely to know if there is vital evidence in their favour if they were never told about it."

Is this what passes for intelligence in the CPS these days?

Flag

56RecommendReply

London Resident Jan 23, 2018

Saunders should resign. Immediately. If she does so with a gracious resignation message then she would be entitled (following a suitable leave of absence) to resume her legal career with a clean slate.

If she tries to hang on, and moreover fails to concede that anything is wrong in the way the DPP is conducting such prosecutions in cooperation with the police then the Attorney General should sack her.

One of her headline policies has been to increase rape convictions. She has presided over a culture that has been target driven and is now revealed to be slipshod and not particularly interested in thoroughly preparing cases and dropping those that lack a common sense evidentiary basis never mind a credible beyond reasonable doubt.

As a result of that multiple people have spent long periods of time in prison, had their reputations destroyed, careers ruined only to have cases dropped when the lack of, or contradictory, evidence was presented.

It is not good enough to say that you lack resources or mistakes were made when you have set the tone from the top that prosecutions for this crime are all that matters.

As for the claim that there are no innocent men languishing in prison as a result of trial errors and selective presentation evidence. As absurd as suggesting that there are no unconvicted rapists at large in society.

Flag

57RecommendReply

Adrian Turner Jan 23, 2018

@London Resident Some facts, please. For example, what is the 'target' you are referring to?

Flag

RecommendReply

Richard Stout Jan 24, 2018

@Adrian Turner @London Resident

Clearly he is referring to the target of increasing rape convictions.

On objective that has been pursued regardless of the evidence and to the significant detriment of the notion of justice, and the rights of an accused to the presumption of innocence and a fair trial.

This ghastly woman and her supporters have to be dismissed.

Flag

1RecommendReply

Jon Jones Jan 24, 2018

@Adrian Turner @London Resident It seems there are targets for convictions based on a 'points' system. Police funding is then based on this system. No conviction = no points. Might that not lead to inherent biasing...? If there is to be a target-based funding it should be points for expeditious dealing with the case.

Flag

1RecommendReply

London Resident Jan 24, 2018

@Adrian Turner @London Resident Adrian, see below Saunders' statements from 2014:

https://www.thetimes.co.uk/article/6c14def6-005b-11e8-a2b0-4e5c7848ab02?hubRefSrc=email&utm_source=lfemail&utm_medium=email&utm_campaign=lfnotification#lf-content=228217327:768799916

Now one could argue that "more" isn't a formal target but the direction of travel and the results she wants to see from her department are set out quite clearly as a mission statement.

Flag

RecommendReply

Anthony Groom Jan 23, 2018

It's not really confirmation bias it's just sloppy and biased policing.

They're not looking for evidence to confirm their view, they're often not sharing evidence with the defence.

We deserve better from the DPP and the police.

Too many innocent men made victims by lying women.

Flag

34RecommendReply

rue de remarques Jan 23, 2018

You are right "confirmation bias" is extremely strong.

The Police know their word is generally taken as gospel in court and take great advantage when on the back foot.

Flag

11RecommendReply

SandH Jan 23, 2018

"As a result, police and prosecutors will not wish to disclose evidence that undermines their case"

The police shouldn't have a case, that's why there's an independent prosecutor. The police should investigate objectively and disinterestedly, then pass all the resulting evidence to the prosecutor.

Flag

27RecommendReply

Jon Jones Jan 24, 2018

@SandH A point well made. When is it ever right that the investigating officer is also the disclosure officer? This should NEVER be the case. Unfortunately it is the case and any independence is compromised from day one.

Flag

1RecommendReply

BL Jan 23, 2018

I was surprised and deeply disturbed to find that testimony resulting from recovered-memory therapy is admissible in our courts. I thought the unreliability of this therapy had been established long ago.

Flag

103RecommendReply

Jon Jones Jan 24, 2018

@BL It's worse than that - police interview methods used when obtaining statements exploit inexperienced interviewees. When you see a 'statement' you are only seeing one side of the 'interview', i.e. the responses to a particular line of police questioning.

For example:

Police: were you shocked when you learned about the allegation?

Juvenile response: yes I was shocked.

Witness statement: Fred stated he was shocked to learn about the allegation.

Adult response: No, I wouldn't say I was shocked, however I was surprised

Witness statement: Fred stated he was surprised to learn about the allegation.

Compare 'shocked' with 'surprised' and this is several degrees more severe a statement and would have a greater impact on the jury.

Flag

RecommendReply

Barry Faith Jan 24, 2018

@Jon Jones @BL the question and answer example shows the problem with such closed questions. An alternative and open question would be, "What were your feelings when you learned about the allegation?"

I suppose one should also consider the relevance of the question and so the answer to such a closed question could be, " Would you mind informing me of the relevance of that question; why are you asking me if I was shocked?" Goes to show why one needs a solicitor present.

Flag

RecommendReply

Jon Jones Jan 24, 2018

@Barry Faith @Jon Jones @BL All interviewees should have a solicitor present, for many that might be a duty solicitor. I would not wish to cast aspersions at all on what is an onerous task, however it is clear that closed questions can be used to steer the resulting 'statement'.

Flag

RecommendReply

Robert Jones Jan 26, 2018

@Jon Jones @BL In any case it's a leading questions surely, it's too easy to answer "yes". Shouldn't it be put as, "What was your reaction to the allegation?"

Flag

RecommendReply

Barry Faith Jan 26, 2018

@Robert Jones @Jon Jones @BL Yes, 'leading' is better than 'closed' to describe the type of question; and 'reaction' is better than 'feelings'. Very astute. Thank you.

Flag

RecommendReply

Brian Burnell Jan 23, 2018

As always, a remarkable and brave piece from DF.

Flag

39RecommendReply

David Jaundrell Jan 23, 2018

@Brian Burnell Brave....?

Flag

7RecommendReply

Lucy Butler Jan 23, 2018

Spot on

Flag

10RecommendReply

colinus Jan 23, 2018

Surely if total disclosure of everything was mandatory then this would solve the problem.

It would be the defence only to make the decision on relevance. Police and CPS taken out of the loop.

Am I being too simple?

Flag

11RecommendReply
JIngsCrivens Jan 23, 2018
It is in Scotland

Flag

1RecommendReply
The Woodster Jan 23, 2018
@colinus Your not being simple, rather the idea is too simplistic. Major cases continue to gather evidence, even as the trial progresses. There is no point in which you can say, 'There you go, that's everything in the case.'

That's just a practical consideration. The other is that your idea would not change what appears to have happened. The Police, for whatever reason, did not disclose evidence to the CPS. Total disclosure would not have changed what the police allegedly did/didn't do.

Another issue is that defence solicitors and counsel could effectively grind everything to a halt with trivial demands for utterly irrelevant evidence.

It's complicated but it seems to me if everyone in the system does their part of it we largely have as good a justice system as can be expected.

I also question why the columnist feels that the police liaison officer continuing to provide support the the victim via text and email is sinister? Lack of liaison was identified as one of the main reasons sexual assault victims'drop their cases.

Flag

3RecommendReply
Ulysses9 Jan 23, 2018
@The Woodster @colinus One point to make is that even describing the complainant as 'the victim' presupposes that a crime has taken place, and by implication implies that there is substance to the accusations, especially if all parties acknowledge sexual contact, but disagree over whether it was consensual. This is different to other crimes such as assault or murder, where there us usually objective evidence of injury or death, and the debate is about who did it. It could be argued that the police investigating a complaint should not be the same people providing support, for the close bond that the latter establishes will surely undermine the impartiality of the former.

Flag

14RecommendReply
NombaNinshi Jan 24, 2018
@The Woodster @colinus "I also question why the columnist feels that the police liaison officer continuing to provide support the the victim via text and email is sinister?"

I would suggest that the reasons that such a high level of interaction by text is inappropriate in particular revolves around:

1. Texts are by nature informal and 'chatty' and suggest an emotional closeness which should not exist.
- 2.. There are plenty of more formal structured methods of liaison
3. Liaison is one thing, social interaction is quite another and texts are primarily social.
4. how much 'liaison' did the police officer have with the accused? Was it equivalent in volume and in use of media? If not there is clearly the possibility of the police officer building a relationship only with the accuser (not the victim until so proven) and thereby creating a conflict of interest that puts at risk the actual and perceived impartiality of that police officer.

Flag

1RecommendReply

Adrian Turner Jan 23, 2018

@colinus The old common law rules, though not requiring total disclosure, went much further than the current statutory code, enacted in 1996, and they were exploited by defence lawyers to wear down prosecutions, particularly in fraud cases where the volume of material gathered during an investigation can be vast. That is why the law was changed.

Material must now be disclosed if it could undermine the prosecution case or assist the defence case. This is a fair and balanced test, but, like any other code for disclosure it depends, ultimately on the objectivity and integrity of those responsible for disclosure.

The recent cases highlight the need for better training and supervision of disclosure officers.

Flag

8RecommendReply

John Peter Hindley Jan 23, 2018

@colinus No you are not. If all evidence were disclosed in these sort of trials it would be for a jury to decide, as guided by the presiding judge.

Thank you for this excellent article Daniel.

Flag

2RecommendReply

Graeme Harrison Jan 23, 2018

All relevant evidence ought to be disclosed to the jury but no irrelevant evidence should be.

Flag

RecommendReply

livefyre 

Ref.: Prosecutors don't know how biased they are.docx
26/04/2018 10:36