



In conversation
Bill Waddington: I've been in criminal law for decades. Morale has never been lower
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Disclose evidence early, police told

Jonathan Ames

Police and prosecutors must stop seeing the disclosure of evidence to defence lawyers as an administrative burden if they are to avoid miscarriages of justice in rape allegations, the attorney-general has said.

The harsh message from Suella Braverman, QC, the country's top law officer, comes as she promotes her office's recently published disclosure guidelines, which were drafted in response to several high-profile cases.

Arguably the most prominent was the saga of Liam Allan, a student who was put on trial for rape two years ago after police failed to disclose evidence that proved his innocence. He spent almost two years on bail and three days in the dock at Croydon crown court before his trial was halted when the police in London finally handed over the crucial evidence. The Metropolitan Police and Crown Prosecution Service (CPS) apologised to Allan, who is now 25 and has become a campaigner on miscarriage of justice matters.

Speaking exclusively to *Times* Law this week, Braverman says that "disclosure has been a challenge and an identified problem for many years — I'm by no means the first attorney-general to be wrestling with this matter".

Braverman, 40, who took over from Geoffrey Cox, QC, in February, and was promoted to silk as a result, adds that "there has been pressure on practitioners, investigators and prosecutors to deal with the ever growing volume and complexity of digital material". She says the guidance is "the first confident step in trying to address some of the challenges which have been identified".

Braverman is frank about past attitudes among the police and prosecutors that she says need to change. "There has been a view that disclosure



Suella Braverman says that her guidelines will head off some cases before trial

is an administrative and unnecessary add-on, which is done very much at the end of the process and is often seen as quite burdensome to police," she says.

"It has been seen as an add-on rather than an integral and core duty running through the life of an investigation."

But Braverman is anxious not to focus the blame purely on the police, saying that problems with disclosure have been "an issue for all the parties involved" including prosecutors and defence lawyers. She believes that the route to avoiding further Allan-style miscarriages lies in the updated guidance on the handling of digital and sensitive material.

"[The rules] introduce earlier engagement between the prosecution and the defence so that issues can be identified as early as possible," she says. "That is a significant change because it really encourages prosecution and

defence to engage before charge to try and identify issues and avoid surprises".

Braverman says that the guidance gives certain types of material precedence for disclosure.

"It makes it clear to the parties what should be on the table at an early stage, with a view to narrow the issues for trial," she says. But she acknowledges that the disclosure guidelines are just that — voluntary guidance that aim to achieve "best practice".

For example, none of the parties will be penalised if they do not participate in pre-trial engagement. "It is voluntary and it can be terminated at any time," she says. "But it doesn't really happen at the moment and what I'm trying to encourage with these guidelines is a change of practice and a change of culture. A behaviour change."

The attorney-general envisages tangible benefits if pre-trial engagement

becomes embedded. "Suspects who maintain their innocence will be aided by early identification of lines of inquiries that point away from them or towards another suspect," she says. "The process will inform charging decisions — so it might avoid a case being charged that will otherwise be stopped later in proceedings. It can help narrow the issues so some lines of inquiries are not pursued. Early resolution of cases will reduce anxiety and uncertainty for complainants — and the costs of the criminal justice system will be saved."

Braverman is adamant that the disclosure guidelines should not be seen as diminution in prosecutors' desire to bring more allegations of rape and sexual offences to trial.

She acknowledges that disclosure problems have a particular bearing on defendants in those cases, but that "driving up rape prosecutions is a major focus for the CPS".

Braverman claimed that she was not familiar with demands last year by some campaigners for the role of juries in rape trials to be reviewed and possibly ditched. Harriet Wistrich, a lawyer who represented two victims of the so-called black cab rapist John Worboys and founder of the Centre for Women's Justice, argued that juries in rape trials were biased against alleged victims.

"I would be very wary of any suggestion that juries should be abolished," Braverman says. "The jury system is a fundamental feature of our criminal justice system."

She has received significant criticism from lawyers over her alleged inexperience and an apparent willingness to make overtly political comments on social media.

However, her aides were quick to remind Braverman not to veer into wider subjects during her discussion with *The Times*.

OUT OF COURT

The cases, the chatter, the chaos: what's really going on in the law

Farewell to court watcher

Among the legislation and leading cases to be found on the website of the British and Irish Legal Information Institute, there is now an unusual eulogy. Not for a retiring judge or barrister, but for Andrew Mollison, who died last month aged 74, and who is thought to be the longest-serving "court watcher".

In his unofficial position, Mollison observed proceedings at Sheffield crown court for 42 years and travelled around the country to support his favourite barristers and judges. The Recorder of Sheffield, Judge Jeremy Richardson, QC, told those who had gathered virtually to salute him that Mollison fulfilled an important role, representing the public as observers of the administration of justice.

Watchdog on guard

The solicitors' watchdog is examining how it treats ethnic minority lawyers after it admitted investigating complaints against them proportionately far more than white counterparts.

A report by the Solicitors Regulation Authority showed that 32 per cent of the cases that it investigated involved lawyers from ethnic minority backgrounds, but they make up only 18 per cent of the overall profession. Those figures were more or less repeated in relation to convictions in the solicitors disciplinary tribunal.

Anna Bradley, the authority's chairwoman, said that it would examine "why we are seeing so many more concerns about BAME solicitors reported to us than should be the case".

Counting the cost

Property, immigration, crime and general litigation have been the legal practice areas hardest hit by the coronavirus pandemic and the overall market has shrunk by nearly 7 per cent, according to a report from the researcher LexisNexis. Property work is the worst-hit single practice, down more than 30 per cent compared with the same point last year. The furlough scheme appears to have been a boon to employment law experts; the field grew 4 per cent.

Talking in riddles

Andrew Leatherland, who in the spring was ousted from his job as chief executive of DWF, the biggest legal services company on the London Stock Exchange, has joined the board of Summize, which has one of the most bonkers descriptions in the business.

The company claims to be "a lightweight assistant to the contract lifecycle used by both in-house and private practice legal teams, as well as SMEs". Let's hope Leatherland understands that.

Queen's Counsel

Alex Steuart

The Queen's Counsel Official Lawyers' Handbook, Biteback, £14.99



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Lawyer of the week Brian Altman, QC

Brian Altman, QC, at 2 Bedford Row, is lead counsel to the Independent Inquiry into Child Sexual Abuse. Its public hearings, which have now ended, have led to 53 recommendations of ways to protect children from sexual abuse. The inquiry was set up in 2015 and will publish its final report in 2022.

What were the main issues in this inquiry? The inquiry's terms of reference are to consider past institutional failures to protect children from sexual abuse and exploitation. Its central axiom has been to put victims



and survivors at the heart of its work. We hope we've achieved it.

What is the best decision you have taken as a lawyer? Agreeing to join the inquiry in 2017. It was a wonderful opportunity to become involved in a public inquiry of great value and purpose.

Who has inspired you in your career? The fictional barristers in *Justice*, the 1970s TV drama series, made me believe that the Bar was something even a northeast London comprehensive schoolboy could aspire to. My daily inspiration is

my wife, Charlie, who has taught me so much.

What is the funniest thing that has happened to you in the law? My client, having had enough of the judge — the late, great Henry Pownall, QC — constantly ruling against him, stood up in the dock and marched towards the cell door. Henry, who had a keen sense of humour, inquired of him courteously: "Won't you even say goodbye?" My client retook his seat and justice took its course — a conviction for armed robbery.

What is the best advice you have received? "An old dog can learn new tricks." You're never too senior to learn something new.

Which three qualities should a lawyer have? Judgment, empathy and stamina. If you possess all three, you've the makings of a decent barrister.

What law would you enact? The Bolivian Law of Mother Earth, modelled on the indigenous Andean appreciation for the Earth deity, Pachamama, giving nature legal rights. It's transformative.

How would you like to be remembered? For contributing to an important public inquiry that made a difference to child protection, and as a devoted husband and father.

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