How the Inquiries into the Birmingham Trojan Horse Affair Misled Witnesses and the Public: A Barrister Explains (Andrew Faux, QC, The Reflective Practice)

On day 6 of the trial Witness "A" appeared on the video screen. She was in a lawyer's office in another part of the country. She had been afforded "special measures" to allow her to give her "best evidence". The application for special measures had been made on the basis that she was fearful and did not want her identity to be revealed. The panel had agreed to a request that she would be referred to as Witness A and would give evidence via video link. On the screen, she appeared troubled and scared. I thought I heard her asking another person in the room about who could see her. The answer was not provided to her. Her question appeared to show that she anticipated being screened from the public and was seeking reassurance that no one at our end of the connection could see her face. In fact, she was being beamed into a public hearing room with an audience of journalists and other members of the public present. This includes leading members of the "Muslim community" of which she claimed to be.

No attempt had been made to secure any of the protections that might have assuaged her fears: there had simply been no application to screen her, nor to exclude the public from hearing her evidence, nor to deny the defendants knowledge of who she was. Without expressing an opinion on whether any such application would have been successful, all those options are legally possible and yet were not explored by the lawyers acting on behalf of the state. It felt at the time as if she was being hung out to dry.

What emerged later was just how comprehensive the state's betrayal of her had been. We had presumed that, in the normal way of these things, lawyers on behalf of the Department for Education had approached her and asked her to cooperate with their enquiry. We assumed that her witness statement had come about as a result of a telephone interview (or, given the importance of the case, a face-to-face meeting) with a junior lawyer or paralegal who had "settled" her evidence before inviting her to sign to say it was true. In the normal course of events such people give a statement in circumstances where they know that they are participating in a process which, in due course, will include the opportunity for those accused within the statement to challenge them. That process is of itself part of conducting a fair hearing. The witness's knowledge of how their evidence is to be used ideally causes them to give considered and careful evidence without exaggeration or hyperbole.

Some 18 months after she gave evidence we discovered that all these assumptions were wrong. She has not given the information contained in the statement to lawyers preparing the case at all. Rather she had been granted an audience with Peter Clarke on quite different terms. It came out that she, like all the others who spoke to the Clarke Inquiry, was explicitly told that her cooperation with the enquiry would be kept secret and that she would never be identified by the state in relation to the information she was giving. In other words, she was offered an opportunity to vent her frustrations in a private conversation with a senior policeman.

It is not hard to imagine that such a promise may lead to evidence which is far from considered, careful and accurate. It is troubling that the Clarke enquiry, which was so damaging to so many reputations and weaponised by the government to further demonise Muslims in the UK and to sow division and hatred for political advantage, offered the complainants secrecy and thus licence to exaggerate and rant rather than to give their best evidence.

I turn to how comprehensively the state betrayed the witness. After the publication of their report and contrary to the promises that had been made to her, the Clarke Inquiry handed a transcript

of her interview to the lawyers working for the Department for Education. They used that transcript to write a witness statement addressing what they viewed as areas of concern within the school. She was then asked whether what was in the draft witness statement was true and asked to sign it. She was told she would have to attend a number of hearings to give evidence against a range of her colleagues and she was told her colleagues would be allowed the opportunity, via lawyers, to question her. Her statement was further edited and rewritten for each of the hearings. Thus, the Department for Education presented her private conversation with a senior policeman as her considered evidence about what had happened in her school. And they repackaged that conversation in different formats for different purposes for different hearings. Not a good start.

It wasn't a good end either. To compound this debacle, the solicitors who took receipt of the Clarke transcripts and used them to write the witness accounts, decided not to tell anyone they had them. As far we discern from how events played out, not even the barristers with conduct of the hearing were told that the Clarke transcripts had been used to prepare the case. When, late on in the case, the lawyers were directed by the panel to disclose the Clarke material, those barristers wrongly asserted that the Department for Education had had nothing from the Clarke enquiry. Eventually, and as documented in the panel's detailed judgment, that all unravelled with the result that the panel brought the trial to a premature end as an "abuse of process". To be clear, it wasn't the failure to disclose material that stopped the trial, it was a persistent misleading of the panel as to the true state of affairs, and the final refusal by the senior solicitor responsible to attend and explain her actions, that wrecked the case.

So back to the poor witness, facing questions from a bank of barristers representing those about whom she had vented in private to a policeman.

Witness A was a teacher at Park View who felt the school was "too religious". This was the central premise of the state's case – the teachers were accused of "agreeing to allow too much religious influence" in the life of the school. The state's approach to proving that the school had too much religion in it included calling staff members to express that view. Witness A was one such staff member. Only the defence sought out the relevant guidance and provided that to the panel. Witness A's evidence was that "they [the assemblies] were completely different to anything I've been exposed to previously in my experience of teaching". I established that no one had ever taken her to the relevant guidance about what schools are meant to do. I gave her the opportunity to read the guidance and read part of it to her before asking her whether what she was witnessing at Parkview was in fact "precisely" what was described in the guidance. She agreed. This went to the heart of the state's case – as I have shown previously, the state wrongly asserted that the school was a "secular" space, whereas their own guidance and the law demands that it is not. Collective worship must take place and it "must in some sense reflect something special or separate from ordinary school activities and it should be concerned with reverence or veneration paid to a divine being or power." Witness A (and I) would prefer schools to be secular. But that is not what the law requires.

I went on to question her about the formation of her statement. I asked her about a subheading within the statement: "teaching creationism" and established that these were not her words, but had been inserted by someone else to describe (inaccurately) the paragraph that followed. My questioning established that in fact she was referencing assemblies where an anti-racism message was delivered through discussion of the idea that God "created us all from the same clay". She further clarified and it was plainly understood that there was no suggestion from her of the teaching of creationism as an alternative to the science curriculum. That suggestion belonged

solely to the lawyer who had inserted the subheading.

My questioning established that although she had a view that the school was too religious, it was not an informed one. Given the chance to read the relevant guidance, she had agreed that what she had seen in the school was in accordance with that guidance. She further undermined the credibility of the state's entire case by showing that what was included in the witness statement was not evidence from her but rather an inaccurate and misleading summary by the lawyer who had drafted it.

All of this should have been headline grabbing stuff. Witness A was a key witness. "Key witness agrees that the school did nothing wrong" would have been a perfect acceptable summary of her account. Unfortunately, I was pressed by the prosecution barrister: was I abandoning an assertion that she had been overheard sounding off in a racist way? If not, I must put it to her! Cross-examination obliges the questioner to put to the witness any allegation that she is lying or acting out with bad motive or in bad faith. They must be given the opportunity to comment on the allegations against them. It can (and does) descend into a "you're a liar"; "no, I'm not", pantomime. One of my clients had reported in his witness statement that he had been told that this witness had been overheard in a restaurant using a variety of racial epithets about the staff and students at Parkhill. The rules of cross-examination meant that I was obliged to either tell her that she had behaved in that way or to withdraw that allegation from our case when we came to present it. Some barristers would have opened their debate with this witness by telling her that she had been overheard declaring, amongst other things, that "Pakistanis are inbred and that's why they are so thick". I didn't. But unfortunately I closed with it, and it proved journalistic catnip: "witness accused of racial slurs".

The real news, that is that the school's culture was consistent with the relevant guidance and that the state's lawyers had been caught manipulating the witness's statement, was missed.