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-v-

Coulson, Goodman and Others

Mr Justice Saunders Ruling on Application to discharge the jury on counts 2 and 3

25 June 2014

Application has been made to me to discharge this jury on the basis that it is no longer possible for Andrew Coulson and Clive Goodman to have a fair trial on the remaining two counts that the jury are considering. The application is based on the publicity last night and this morning following the verdicts delivered yesterday on count 1. Immediately after the verdict the PM issued a statement apologising for employing Mr. Coulson. That statement has been followed by pronouncements by a large number of politicians from all parties. I have not considered and will not consider anything that has been said in Parliament as that is covered by parliamentary privilege and is the sole prerogative of Parliament.

I asked for an explanation from the Prime Minister as to why he had issued his statement while the jury were still considering verdicts. I received a response from his principal private secretary which said 'the Prime Minister was responding to the guilty verdict on hacking charges that had been delivered in open court. He did this in the light of the intense media coverage and understandable public interest. The Prime Minister was careful to make no further comment about any matters that might still be before the court.'

I accept that that was the Prime Minister's intention but I am afraid that to an extent his explanation misses the point. He has now told the public and therefore the jury that he was given assurances by Mr. Coulson before he employed him which turned out to be untrue. The jury were not aware of that before and it is a matter which is capable of affecting Mr. Coulson's credibility in their eyes. Mr. Coulson's credibility is a matter which is in issue on the final two charges that the jury have to consider.

Other politicians have chosen to comment about Mr. Coulson and as a result the jury have heard of matters which were not admitted at the trial for legal reasons. I am certainly not seeking or intending to single out the Prime Minister. Politicians from across the political spectrum have seen fit to make strong comments about Mr. Coulson despite the fact that the jury are still deliberating. The Chairman of the parliamentary committee which investigated phone hacking has told the public that Mr. Coulson lied to them in the evidence that he gave. Evidence of what Mr. Coulson said before the committee could not be given in court as it would amount to a breach of parliamentary privilege. That was the view of parliamentary counsel which was conveyed to the court and which I accepted. Again that information is capable of affecting the jury's view of Mr. Coulson's credibility.

Mr. Langdale who made powerful and well argued submissions to me relies on the public importance of those who made the comments and the increased likelihood therefore of the jury being influenced by them. This was a significant factor in the court of appeal's decision in the case of McCann and as he says, while the decision is an old one, the principle has not changed.

My sole concern is to ensure that justice is done. Politicians have other imperatives and I understand that. Whether the political imperative was such that statements could not await all the verdicts, I leave to others to judge. The issue for me now is to decide whether I am satisfied that Mr. Coulson will receive a fair trial on the other two counts or whether the prejudice is such that that is impossible.

I have been referred to the decision of the administrative court in contempt proceedings brought against parts of the media following the partial verdicts in the case of Levi Belfield. I am satisfied that the revelations in those reports were considerably more prejudicial to the fair trial of Belfield on the remaining counts than is the case here.

The decision in this application is entirely fact specific. Not merely is it fact specific but it is also specific to this jury who we all have been watching at work for eight months. First this jury have shown that they are entirely capable of putting out of their minds prejudicial material in reaching their decisions. At the start of this trial I heard two days of submissions on behalf of Rebekah Brooks to the effect that there was so much prejudicial material about her in the public domain that the jury would inevitably convict her and it was impossible for her to have a fair trial. She has been acquitted of all the charges against her. I trust that no-one will maintain that complaint now. Everyone who has watched the jury have been impressed with their dedication and their ability to concentrate on the evidence and follow directions of law. Our legal system is based on the premise that juries comply with directions of law given by the Judge.

We should not forget the stage of the case that we have reached. The jury at the moment are deep into an analytical discussion of the evidence on counts 2 and 3 and have been for sometime. I am fortified in that belief by consideration of the notes that I have received from them. There is no reason to suppose that they will be diverted from that course. We underrate juries, and particularly this one, at our peril.

It should also be born in mind that by virtue of the verdict that the jury have already returned, they are sure that Andrew Coulson has lied to them about his involvement in phone hacking. Therefore, while important public figures in defence of their own position or to attack another's have revealed other lies told by Andrew Coulson, those revelations will have less effect on the jury.

I watched a fair amount of the news coverage last night in anticipation of this application. I have considered other material which has been referred to me. As I have made clear, I have also considered the cases of AG –v- Associated Newspapers and R –v- McCann.

I have decided that the jury should not be discharged as I am satisfied that the jury will continue to try Mr. Coulson and Mr. Goodman on the evidence that they have heard in court and solely on that evidence.

That does not mean that I am not concerned about what has happened in this case. I consider that what has happened is unsatisfactory so far as justice and the rule of law are concerned. The press in court have been extremely responsible in their reporting of this case but when politicians regard it as open season, one cannot expect the press to remain silent. I accept that this case is very unusual if not unique, but the situation could occur again and I would urge that discussions take place to try and set up a better system of dealing with it.

I have considered whether, in the light of what has happened, I was correct to take partial verdicts. I am fortified in what I did by the fact that no counsel has suggested I was wrong even with the benefit of hindsight and by the fact that what I did accords entirely with the Practice Direction which lays down the procedure for taking verdicts and emphasises the necessity for the same procedure to be followed by all Judges.