

Interview

Michael Mansfield QC is a distinguished, campaigning barrister who successfully argued for the release of Judith Ward and others imprisoned as a result of miscarriages of justice. He has presented the programme 'Law Matters' on Granada Television.

Dr Wilson I have, in true fashion, prepared millions of questions but I'll never be able to ask them all, especially as most go on for two paragraphs. However, I was going to start by asking about the Law itself, which seems to be going through a period of a transformation. Everything from Solicitors advertising and losing their conveyancing monopoly, to a Royal Commission on the Criminal Justice System. Could you sketch for me the background and forces that have made that transformation possible?

M Mansfield I don't think those are the real questions about the transformation that should be or is taking place. I think at the heart of all this, and the reason why I think things are on the move, and for the first time in my career, are the miscarriage cases, and not just because I've been involved in them, but I think the public had been so appalled by the extent of the implications. I mean one case here, one there, they'd put up with, but with so many, they know that there's something wrong. Of course what is wrong is the attitude behind the investigations of the police, which has been built up consciously and unconsciously - sometimes with good intentions and more often than not with bad intentions - where short cuts in justice have been taken as a matter of

currency. So, for example, the idea of confession which lies at the heart of the system is seen as the easy way through to a conviction and the Courts have supported that line. Essentially the police make presumptions and assumptions in the way that they investigate. For example, they make assumptions about who as an individual or group may be responsible for what happened, and then they go out to fit the facts to the target. Then the machinery comes into play, and they, I think, frequently get the wrong person and they know they've got the wrong person but it's easier and quicker. I also think the courts have got corrupted and that's got to change as well, mainly because they have thought that the 'blue uniform' meant that the Police could do no wrong. It's only very recently that the courts have begun to recognise that the police force is human like every other profession and that they are corrupt like any other profession. As far as the judges are concerned, they're as bad. I think two thirds of all high court judges are now Oxbridge; one or two black judges, that's all, and the Lord Chancellor says well it's a start and maybe in the next 10 years, we might get 20 per cent women, well that's ridiculous! You have to have a different structure and a different college and career structure that is open to a cross section of the community. The Lord Chancellor says 'No, no, we don't want a judiciary representing the community, that is not our function that's the politicians,' well I disagree.

DW Well you've opened up several areas there to pursue. If I keep with the law first, the use of uncorroborated evidence is of course something that doesn't happen in Scotland, so it's interesting to see if they try

and introduce that down here. However, there was corroborated evidence in some of the Guildford Four and Birmingham Six cases. The Lord Chancellor, who is of course Scottish, seems to be unpopular with everybody - the old fogies dislike him and he seems to be unpopular with the young radicals.

MM *He's far better than any Lord Chancellor that we've had to date, but that's not saying a great deal. However, he is bringing about changes of the legal profession through market forces which is not the way I would want to bring about the change, but he's threatened the legal profession the way no other Lord Chancellor ever has. As for corroboration, I think the Scots system has a lot to recommend it and I think that is a step in the right direction, but the Scottish rule of corroboration isn't quite the one I'm looking for. I want corroboration to be unutterably independent of the defendant. In other words it's not just looking for evidence that may be thrown up in a statement. It's much more than that, it's evidence that comes from a quite independent source, such as fibres, glass, fingerprints, eye witness, and so on, which tie that person into the incident. We must have learnt by now that confessions are the most unreliable sort of evidence so before you push the thing into court in front of a jury, the Director of Public Prosecutions has to look for something else. The independent corroboration I'm talking about, now that is a pretty radical suggestion because what the lawyers are now saying is 'Oh my goodness the system will fall apart' because confession lies at the heart of the criminal system. Of course the Royal Commission is supposed to be looking at all this but I am worried that they may feel that they can't be courageous because there are too many factions*

pointing and pulling in too many directions. They know they have to do something because there's so much public disquiet, but will they go far enough?

DW That's an incredibly wholesale critique of what's wrong and what should be done to put it right, obviously the Royal Commission is happening, are you able to contribute to that process?

MM *Yes but I haven't made a written submission. What I did was last year the BBC kindly commissioned a film called 'Presumed Guilty,' which was my analysis of what was wrong with the system, I'm better at the spoken word than written. And I sent as my contribution to the Royal Commission, a copy of the film saying actually what I want to say is in this film. I indicated I would try and pursue it with a written submission, but in fact I haven't got round to that. However, what I have done is I have had somebody else, a writer, write it all down in a book, which Heinemann will publish in '93. When the book is finalised, I intend to send the Royal Commission a copy of the book, and then it is all in there as well. In the book, I choose an ordinary case, and I just say look at this everybody, look at what went wrong in this ordinary case. And so I am going to send them that and I have also been asked to present Liberty's submission.*

DW The Woolf inquiry into prisons was seen by prison governors and penal commentators alike as a really useful way forward for the Prison Service, so in a sense, there is hope in what can be done with the written word. Yet in some way, we don't seem to have gone forward with the Woolf Report at all.

MM *Oh absolutely. And what is the bottom line? Money. It will*

be the same for the Royal Commission. The Home Office themselves will say 'oh wait a minute, where is the money?' And what they have already done is put a marker to say 'well you know, whatever you say, there is not going to be the money to cover this.'

DW But given your analysis of the kind of structural changes necessary in the Law would you say, it is just not money, but also the colour of the Government that is in power which has an effect on whether some of these changes will be put through?

MM *No. Whilst I'm a socialist I have found that it was depressing to say the least that the Labour Party has in fact distanced itself from some of the more radical solutions. So at the end of the day, I am very disillusioned. I don't think that it will make a lot of difference whether it is a Labour Government or a Conservative Government, when it comes to far reaching change, and it does require far reaching change. Basically both parties are now attempting to be attractive to the same electorate or what they perceive as the main electorate, which is middle class white people. Of course, some Labour politicians are very good and in fact so was one of the Conservative MPs, but the parties as a whole, the party machines as a whole, were they in the forefront of the miscarriages campaign? No they weren't, they came along afterwards and started to say 'Ah yes well something is fundamentally wrong, and you know the White Papers on Criminal Justice' and so on. At the end of the day, even if it were a Labour Government now, and the Royal Commission said 'x y z' I think they would look at it closely. And the kind of lawyers that were in power within Government, whether Labour or Conservative, are not the kind of*

lawyers, who are going to say to themselves, let's be in the forefront of change.

DW Change is one of the themes that has recurred throughout the conversation that we have been having. I want to pose a very popular question to you, but I think one which for me suggests perhaps a structural weakness about getting forward some of the changes that you would like to see happen. You are pretty stateless in a way if you don't see the Labour Party as a credible alternative, but equally, there is a credibility thing there, Michael, isn't there, because one of the changes that you are now popularly associated with is your recent call for the legalisation of cannabis, which I know was one of the things that you were interested in in the 1960's. Doesn't that kind of undermine your credibility about taking forward some very, very serious issues.

MM *Well I suppose the easy answer to that is 'Yes,' there is that risk, but I think that my credentials to be pompous....*

DW Oh be pompous, we quite like pomposity in the Prison Service, off you go.

MM *There will be people who will say, 'What are you doing, you are doing all this for publicity,' but that isn't the case and the cannabis one is a very good example of why I think I have got a track record for the principles I have stood by for many years. It has been quite difficult because there had been a lot of criticism, some hostility, some of it I suppose towards somebody for spouting those ideas all through those years and now they are saying, 'Ah, well you are right after all, maybe you are right, we are going to listen.' The good thing I have got I think is that I am not wedded to a*

political party in Parliament. I am not part of a party machine and if it is a Labour Council closing a Law Centre, I am going to have a go at them as well. They shouldn't be doing it. As far as cannabis goes, I've been speaking out about legalisation for years.

DW Presumably because you were smoking cannabis.

MM *No, never touched it, won't touch it. Not interested. I think it was a friend asked would I like to help with addicts in Covent Garden. Not many people knew much about drugs and I thought well, I would like to know a bit more about what is going on here, why are so many people getting involved, heroin addicts and all the rest of it. And so I did get involved in the Association for the Prevention of Addiction. Then I got interested in the legal aspect of it, and I thought there was a very interesting political point in the sense of, what is really going on in the drug world. Cannabis probably, I say probably, would do no more harm, I am not saying that everybody should go out and smoke it than the usual comparison, a bottle of Claret that Roy Jenkins goes for or other substitutes. I thought why are we locking people up for long periods of time. I mean then possession of a small amount, you ended up with four years inside or three years I think that had changed, but then, people saw it as a kind of social disease. Also, why are they not getting so upset about Valium, barbiturates or alcohol? It's pure hypocrisy.*

DW Today, a Barrister friend described you as the Victor Sueventes of Chancery Lane and I asked some of the inmates what they would like me to ask the Barrister. They said, ask the Barrister why they never tell the truth, and whilst that obviously wasn't aimed at

yourself, but it was aimed generally and I think there is an issue about the public image of Barristers, which seems incredibly bad.

MM I agree.

DW Why should that be so?

MM *I think the initial problem is that Barristers or Lawyers are seen as 'rip off's.' In other words you know they charge huge amounts of money for next to no work, or it is seen to be next to no work, that is the first point. The second point is that they live in a world, particularly Barristers, they live in a world which is socially remote. The question of they don't tell the truth, I am not sure that the public think that Barristers are not telling the truth. I would have thought that the public saw the Bar in that regard as people who have to put forward a case whether they believe in it or not is besides the point, they are representing somebody who has said, the truth is x. Now the truth actually may be very difficult to ascertain. Barristers are employed to put forward that truth as the client has indicated and the Barrister on the other side the opposite case.*

DW The inmate may have had an axe to grind. But then there are notorious Barristers who go off the rails. The former DPP, I imagine, was a Barrister at some stage and he was responsible for prosecuting criminals yet finds himself caught kerb crawling. I imagine that has something to do with the kind of public attitude towards barristers and the utterances of Judges who often seem to be totally out of touch at times.

MM *I think Judges are out of touch, I have made that point already. I think Judges are sometimes not prepared to face the truth, that is a different question.*

Let's take the former Director of Public Prosecutions. As far as Alan Green is concerned, I have great respect for him, I still do actually. I mean the incident concerned was unfortunate, it was reprehensible and all that of course and he was quite right to resign.

DW Do you think you could ever prosecute?

MM *Oh yes. I have never made any secret that I could. I am not keen because you know I don't think that it is my skill. There are cases where I have been very keen to prosecute, such as rape, fascism, landlords that are mal-practising or practising fraud on their tenants. Those kind of cases. I am not over keen to do it on behalf of the State, they don't actually need me to do that. My skill is defending.*

DW Maybe if I could just finish by asking about prisons and in particular Woolf. At the heart of the Enquiry, Woolf talked about Justice in the prison. It spoke about good prisons being ones in which the prisoners felt that they got a fair deal, that there was justice inside, particularly relating to the role of the prison disciplinary system. At times it seemed to be advocating a greater role for the Law generally inside. Would that be something that you would support?

MM *Yes. The fact of imprisonment and custody is really the punishment. I agree with that. As for the Law, it should be applicable in the prison just as in the community. Just as there are outside legal standards which can be enforced, there should be standards inside which can be enforced. As far as the Law in prisons is concerned its achievements have been minimal. You know a prisoner should be allowed to be represented, cross examined and all the rest of it;*

should be allowed to be told reasons for decisions. I am also very keen on the European code being applied to the prison system. Also, from what I understand, the quality of prison officers seems to be improving.

DW Of course the problem is that prisons and prisoners don't exist in isolation, they exist in an environment, a public environment which actually would far rather reintroduce hanging than have better conditions inside for prisoners. No matter how naive and short term a view that is, that actually is the view of the vast majority of people in this country and to an extent, therefore, you can't make change. How do you make change when the vast majority of people involved in the status quo, are involved in not making any change at all?

MM *It is the vital question and I believe it is education again of course at the end of the day. I am not an armed revolutionary but I do believe in revolutionary thought and I think that education is the key. I actually don't believe, and you may be right, you may be more right than me, but I actually don't believe and I don't want to believe, the great British public who ever they are, are keen on capital punishment. I mean the tabloids would have us believe that that is what they are, but I don't believe that really, I really don't.*

DW Michael, at Woodhill Prison, where I am currently, we had a weekend during which the Prison was thrown open to the public. So everybody in Milton Keynes could come and have a look at the place, because there has always been this mystique about prisoners behind the prison wall, and all that kind of stuff, and 16,000 came to see it in those two days. 15,999 of

those people must have, at some stage, said to me 'when can I book in, this is better than a five star hotel.'

MM *Oh dear really. Of course there are conditions outside prison that are almost as bad, or worse for some people, and when they go inside it is better. But, of course, for those people, that 15,999 who say that, they are only looking at the surface, they are looking at the grass, the landscape is probably well planned, it has probably got white walls, there were inmates wandering about and all that stuff. However, you know they haven't understood the fundamental concept that, you can't just walk out. At the end of the day, you can't decide whatever it is that you like. You can't have a normal sex life with somebody you are living with, man or woman and do all the other things that really make life worth living. It is a good idea to*

open up the Prison but I think when one does that one should be able to say right now you have come round, you must also appreciate that you wouldn't want to come in here. Because the things that you treasure most, things that you don't notice, that you take for granted, about when you go to bed and when you get up, what meals do you eat, where you go and those things you will miss most. At the end of the day, it is not about conditions or integral sanitation, but something more central to the human spirit.

DW Most of the prisoners would say now that they don't want to sleep in a toilet, would you? It is nice to be able to speak to a Barrister for as long as I have done without mentioning Rumpole of the Bailey!

MM *Oh my God, tell me about it! Thanks very much ■*

Criminal Records

In 1991, 62,604 people went to prison on remand.

In 1991, 72,313 people went to prison under sentence.

In 1991, 2,791 people went to prison as civil prisoners.

In 1991 60% of those remanded in custody did not subsequently receive a prison sentence.

Average cost per place for new prisons opening in 1992 was £130,000 including both living accommodation and other facilities.