

Criminal Law

The Louise Woodward trial

by Linda Candler

Did Louise Woodward get a fair trial? Would she have been treated any differently if she had been prosecuted in Britain? What are the differences in the two legal systems?

These questions have dominated the press. Newspaper reports in the UK suggested that the American justice system was too harsh on Louise Woodward. But one has only to pick up the British newspapers to see that someone suspected of causing the death of a child, whether a parent, relative, or stranger, will be brought to trial. Looking at the evidence presented at trial, the fact that charges were filed against Louise Woodward should not be viewed as unusual, unwarranted, or unfair. The manner in which the trial progressed, however, does demonstrate some key differences in the British and the American legal systems, which will be summarised in this note.

PUBLICITY

Both prior to and during the trial, the British and the Americans were inundated with publicity about it. The proceedings were televised. The baby's parents appeared on television while the jury was deliberating and commented on the case, which shocked many in the legal profession here. But this is not prohibited in the US. Witnesses and even lawyers, to some extent, may comment on the case. Television cameras are allowed, at the court's discretion, although to date, the federal courts and the Supreme Court have refused to allow cameras in the courtroom. •

In Britain, the *Contempt of Court Act* 1981 prohibits reporting on an ongoing trial. It is a strict liability offence to publish information about 'active' legal proceedings which would create a substantial risk that the course of public justice would be seriously impeded or prejudiced. Proceedings are considered to be active from the point of arrest, or the issue of an arrest warrant or summons to appear, until the verdict. It may also be a contempt to publish prejudicial matter knowing or having good reason to suppose that criminal proceedings are imminent even if they have not been commenced, for example, where a prosecution is virtually certain to be commenced.

The objective is to avoid prejudicing or impeding the course of the proceedings by influencing the conduct of witnesses or juries in relation to those proceedings. The House of Lords concluded in *Re Lonrho plc* (1990) 2 AC 154 that it is difficult to visualise circumstances where an appellate court would be influenced by public discussion of the merits of the decision appealed against, as the possibility that a professional judge will be influenced by anything he has read about the issues of a case is remote. Thus, the ban only extends until verdict.

In the US, the first amendment to the US constitution guarantees freedom of speech and freedom of the press. For this reason, the press is free to report on the proceedings as they occur. Anything that is said in open court becomes a matter of public record and may be published. The Supreme Court held in *Sheppard v Maxwell*, 384 US 333, at p. 362 (1966), that:

'there is nothing that prescribes the press from reporting events that transpire in the courtroom.'

LAWYERS' COMMENTS

Lawyers may comment on information contained in a public record and the general scope of the investigation including a description of the offence and may also request assistance in apprehending a suspect or give a warning to the public of any dangers. However a lawyer may not, from the time the charges are filed until the commencement of the trial, discuss the character, reputation or prior criminal record of the accused; the existence or contents of any confession or admission of the accused; or give an opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

Although the first amendment guarantees freedom of the press:

'due process requires that the accused receive a trial by an impartial jury free from outside influences.' *Sheppard v Maxwell*, at p. 362.

To avoid prejudice, jurors are carefully screened and they may be sequestered during the trial. The jury will be admonished at the beginning of the case not to watch television reports or read newspaper articles about the case, conduct research on the Internet, or discuss the case with anyone. Assuming the jury follows the judge's strict instructions, extraneous comments by lawyers, victims, or television commentators are not relevant. The jury never hears them.

FREE PRESS

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In cases where there is extensive pre-trial publicity, the defendant may move to have the proceedings transferred to another district. Pursuant to rule 21 of the *Federal Rules of Criminal Procedure*, which applies in all federal cases, the court upon motion of the defendant shall transfer the proceedings to another district for trial, if the court is satisfied that there exists in the district where prosecution is pending so great a prejudice against the defendant that a fair trial would not be possible.

JURY SELECTION

As noted, there are procedural safeguards in the US to ensure a fair and impartial jury. Because pre-trial publicity is not prohibited, the jury selection process is much more time-consuming. As Judge Sobel noted in the Woodward case:

'The effect of pre-trial publicity on the jurors was the subject of a searching, prophylactic empanelment procedure, complete with special

questionnaires and individual interrogation of prospective jurors. All the jurors seated satisfied the Court and counsel that neither the publicity nor any other cause had affected their individual ability to decide the case entirely on the evidence. The publicity gives no cause for a new trial.'

Judge Sobel's description of the lengthy jury selection process highlights another difference in the two systems. In the UK, jury selection may take only five minutes. There is no voir dire. It would be rare to question the jurors about pre-trial publicity; in fact, the jurors may not even be asked if they know any of the witnesses or parties. The first 12 names called may be empanelled. In a recent case at the Old Bailey, counsel for the prosecution gave his entire opening statement, only to learn from a juror that she was a friend of one of the accomplices. She had discussed this with the other jurors during a recess, so the entire jury was dismissed, and the trial postponed to empanel another jury.

US JURIES

In the US jury selection is a key part of the trial. In federal courts, each juror completes a questionnaire, giving his name, address, date and place of birth, marital status, and occupation. Jury psychologists may be employed to prepare a profile of the 'ideal' juror for a particular type of case, or the juror to avoid. It can take weeks to select a jury. In cases where money is no object, mock trials may be conducted, with mock jurors.

Attorneys submit proposed voir dire questions and may conduct jury voir dire directly, usually at the court's discretion. The court also screens the jurors and, in a criminal case, would ask questions such as 'Have you had any prior contacts with law enforcement?' 'Have you ever been arrested?' 'Do you know any of the witnesses or parties?' 'Is there anything about the facts of this case that would make it difficult for you to be fair and impartial?'

AMERICAN JURIES

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Many who have watched American trials may feel that there is more of an attempt to play to the jury, and may find closing arguments more flamboyant or inflammatory. As Judge Sobel reflected in the Woodward case, 'the government's closing argument was tough, but eminently fair.' Also, in the US the prosecution has the final argument, since it has the burden of proof. The prosecution argues first, then the defence, and the prosecution gives its rebuttal argument last.

SAFEGUARD

Perhaps the most significant difference in the two systems is that the US judges don't sum up. The evidence is left to the jury to sort out. Judge Sobel, in discussing the jury's role, put it this way:

'to escape reasonable doubt ... a jury would have to disbelieve all the evidence contradicting the government's hypothesis. The jury would have

to discredit, that is, refuse to accept, the combined conclusions of the defense witnesses ... Given the strength of the defense evidence, could the jury lawfully reject it? Most certainly. As judges always tell juries - as this judge told this jury - evidence is evidence if the jurors believe it; what they choose not to believe is not evidence.'

The judge has discretion, however, to re-examine the case after the jury verdict if the defendant moves for a new trial or judgment notwithstanding the verdict. A judge may not grant a new trial or overturn the verdict simply because as a fact finder he or she might have come out differently. The test is whether there was any evidence upon which a reasonable jury could have found the defendant guilty beyond a reasonable doubt.

The court may defer ruling on a motion for a judgment of acquittal made at the conclusion of the government's case until

on the internet

http://headlines.yahoo.com/Full_Coverage/US/Louise_Woodward_Case

This is a somewhat less partisan site amongst the many devoted to the 'Free Louise' campaign.

Information available is rather more wide-ranging than most.

the close of all the evidence. The judge may also reserve decision on the motion and submit the case to the jury, as he or she has the power to decide the motion even after the jury returns a verdict of guilty. If the judge overturns a guilty verdict, the government may appeal since a reversal would simply result in a reinstatement of the verdict. If the judge dismisses the case before the jury verdict, however, the double jeopardy clause would prevent a retrial.

Because the US courts do not sum up the evidence, the court's instructions on the law are very important and both sides submit proposed jury instructions, particularly on points of law relating to key issues in the case. The courts also utilise pattern jury instructions. A jury instructions conference is held at the conclusion of the case and the court considers the arguments of counsel on the applicable instructions.

The Louise Woodward case, like the OJ Simpson case, raised questions about the American legal system. In this case, the judge's ability to re-evaluate the case after the verdict and reduce the charge to manslaughter certainly demonstrates one of the safeguards of the American legal system. Ⓢ

Linda Candler

3 Raymond Buildings, Gray's Inn

formerly Assistant US Attorney, Southern District of California