



JUDICIARY OF
ENGLAND AND WALES

IN THE CENTRAL CRIMINAL COURT

**R -v- W & M
(ATTEMPTED RAPE OFFENCES)**

GENERAL OBSERVATIONS OF MR JUSTICE SAUNDERS

18 AUGUST 2010

This case has generated an informed debate about the way in which young defendants and young witnesses are treated in our courts and I am grateful for the various observations that I have received and the way in which it has been considered.

A number of the questions which arise from the case are not for a judge to comment on. For example the issue of the proper age of criminal responsibility is a political question and one which Parliament has already decided. Similarly, questions as to whether to prosecute and if so, for what charge, are questions for the CPS, not for judges.

What is of concern to judges is that justice is done if and when it is necessary to bring young people to court - and that includes how they are treated. The Court of Appeal has already expressed its surprise that this case was tried in the Crown Court rather than in the Youth Court, which is better equipped to deal with cases involving young children. That question involves the identification of and the proper application of the statutory requirements. The Court of Appeal has reminded those who have to make those decisions what the proper test is. Without adding to what the Court of Appeal has said about this case, there will be very rare cases involving allegations against young children which have to come to the Crown Court for trial. It is important that we learn from this case what lessons we can ensure that where that is necessary the trial is dealt with as fairly as is possible.

Further, this case has raised an issue which does recur in the Crown Court, which is how best to receive the evidence of very young children to ensure that the jury has the best possible opportunity to assess the accuracy of their evidence and that the least possible harm is done to the young witness by the process of giving his or her evidence.

I shall therefore be submitting a report to the Lord Chief Justice on what lessons I believe should be learned from this case. The problems created by cases such as this are not easy to solve and no one should try and minimise them, but we should try to learn from experience.

Before I end, can I make two pleas in relation to those who may comment on this case. First and most importantly, I ask that the young participants please be left alone to recover as quickly as is possible from what has happened to them. Secondly can I urge everybody to remember that hindsight is a wonderful thing and what might seem perfectly obvious in retrospect may have appeared less obvious at the time.

Finally, surprise has been expressed that this case was tried at the Central Criminal Court rather than another Crown Court. In practical terms, no other Crown Court would be any different. Again I do not wish to express any further comment on this. However, I do wish to pay tribute to the work of the staff at this court in doing their utmost to help the young people – defendants and witnesses - involved.