

## **‘DAVID AND GOLIATH’**

The true scale of the ‘David and Goliath’ battle being fought between Shirley and the Scottish Executive was revealed last Friday when her legal team led by QC Andrew Smith petitioned the Court of Session to allow the evidence of certain key witnesses to be ‘taken on commission’.

For the last 9 months in a series of 17 letters our lawyers have been seeking permission to precognose (interview) certain vital witnesses working at the Scottish Criminal Records Office. Their evidence is important in seeking to understand just what went on in SCRO in 1997 and to the preparation of Shirley’s case.

The net result has been nothing - little co-operation, no precognitions and no statements.

It was against this background that the Court was petitioned. It was hoped that because of the unequal struggle that has developed between Shirley and the Scottish Ministers the judge Lord Nimmo-Smith would be able to rule in her favour and order the witnesses to attend court to present their evidence before next year’s civil hearing.

In an extremely well argued submission Andrew Smith explained the background to Shirley’s case and the difficulties in obtaining the statements from important witnesses. He outlined how after months of negotiation with SCRO and the Scottish Ministers little relevant documentation had been released and showed how this was inhibiting him in the preparation of Shirley’s case. His final plea was that she was being denied equality and justice.

In reply the QC for the SCRO and Scottish Ministers did little to cast light on why the information wasn’t being released but merely argued that the witnesses should not be interviewed at ‘commission’. When as part of his submission he tried to blame ‘technology’ for the SCRO court fingerprint productions being ‘cropped and degraded’ we realised that little insight was going to be gained into just what happened within the SCRO back in 1997.

In finding against Shirley Lord Nimmo-Smith stated that Mr Smith had not made a ‘special case’ as to why the present powers of commission should be extended to cover ‘reluctant’ witnesses. In the final analysis, he stated, all witnesses could be legally cited and would have to attend next year’s civil hearing. If necessary at that stage an adjournment could be requested if further enquiry was indicated by the witness’s evidence. That this will only prolong Shirley’s agony did not unfortunately appear to be an issue.

While you could not fault the ‘legal logic’ of his Lordship’s observations they only served to make it crystal clear that as the law stands when the citizen is fighting for justice against the system the odds are stacked against him or her. What a pity that the truth so often appear to be the victim in our adversarial system.

**The irony of the whole affair is that the Lord Advocate Colin Boyd, a defender in Shirley’s case, has access to all the information he wants. He has all the police reports and witness statements. How nice for Goliath and how unfair to David!**

As Andrew Smith said in court, *‘We are fighting with one arm tied behind our back.’* For the moment it appears as if that unequal struggle will continue.