

## **JUSTICE COMMITTEE**

### **VULNERABLE WITNESSES (CRIMINAL EVIDENCE) (SCOTLAND) BILL**

#### **SUBMISSION FROM GOLNAR NABIZADEH AND CHRISTOPHER MURRAY**

Golnar Nabizadeh is Lecturer in Comics Studies at the University of Dundee, and represents the School of Humanities in this submission. Her research expertise is on visual culture, and specifically on the representation of memory and trauma in comics. Chris Murray is Professor of Comics Studies at the University of Dundee and works on public information comics. He is director of the Scottish Centre for Comics Studies and Dundee Comics Creative Space.

Together we lead a research initiative on ‘Public Information Comics’, working with a range of colleagues and partners, notably in education and law. We produce original comics designed to raise awareness on selected themes and issues, such as organ donation, suicide awareness, fibromyalgia, archives and memory, and heart disease. We are working with the Leverhulme Centre for Forensic Science on comics that communicate legal information, and have also recently been awarded £18,000 from the Scottish Universities Insight Institute for a forthcoming project on comics and bereavement (with University of Strathclyde). For the latter project, we will work with young people who have experienced traumatic bereavement to contribute to policy and support strategies for bereaved youth across Scotland and the UK. We prepare this submission in our capacity as scholars in Comics Studies.

#### **Executive Summary**

We are in favour of the Bill. The “new rule” under the Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill, offers a meaningful way to support vulnerable witnesses, such as children, present their evidence, and to do so in a more streamlined manner. This submission focuses on the manner in which vulnerable witnesses may choose to present their evidence, and particularly on the option of using visual materials to supplement other forms of testimony.

#### **Response**

Q1: We agree with the introduction of the “new rule” as a strategy to support the provision of evidence most effectively from child witnesses, for the reasons stated in the policy document accompanying the Bill.

Q2: We agree with the approach for the new rule to be extended to other vulnerable witnesses in the future. This extension could potentially apply to people with communication difficulties, individuals who have fled persecution or hold significant fears for their safety, and victims of sexual and other serious crimes.

Q3: We support the introduction of a ground rules hearing, and note section 5(2) of the Bill would amend section 2711 of the Criminal Procedure (Scotland) Act 1995 by,

among other things, allowing the commissioner to direct steps be taken to allow child witnesses to participate more effectively in the proceedings, where considered reasonable to do so, under subsection (IZD)(d). We offer Recommendations 1 and 2 as measures to further support child witnesses:

### Recommendations

1. That the Committee consider the use of visual communication tools to support, and supplement the gathering of evidence from vulnerable witnesses, in the first instance children, as an evidentiary aid.
2. That where visual communication aids are offered to vulnerable child witnesses, a trained child psychologist, art therapist, or other appropriately qualified person be present to help the child draw or depict their memories relevant to their testimony.

The invasive and overwhelming nature of traumatic incidents means that witnesses may struggle to piece together a ‘coherent’ narrative when relaying the incident.<sup>1</sup> The narrative may be fragmented, circuitous, and non-linear, and may be difficult to convey through oral or written evidence alone. Research has demonstrated that the structure of comics or drawn sequences can provide useful insights into traumatic representation because the form utilises the tension between word and image to generate meaning.<sup>2</sup> This means that the creation of a comic (a sequential visual narrative) presents an opportunity to reflect upon a sequence of events, cause and effect, in a way that is organic and discursive. We suggest that the medium of comics has particular mnemonic value because witnesses can visualise and verbalise their memory of events through an external form, which allows them to shape and test their memories. The opportunity to draw their memories may also provide a scaffolding from which witnesses can then explain how they remember a sequence of events. There is evidence to suggest that drawing can act as a mnemonic prompt, and may allow witnesses to access embodied or implicit memories that they may otherwise remain unnoticed.<sup>3</sup> The use of visual communication as an additional support mechanism would also be useful for witnesses with speech difficulties, speaking disabilities, as well as witnesses from different cultural backgrounds.<sup>4</sup> Also the way that the story emerges, is represented,

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<sup>1</sup> See for example, Cathy Caruth, *Unclaimed Experience: Trauma, History, and Narrative*. Baltimore: Johns Hopkins University Press, 1996, pp. 11, and Chapter 3 ‘Traumatic Departures’ more generally.

<sup>2</sup> Chute, Hillary. *Disaster Drawn: Visual Witness, Comics, and Documentary Form*, Cambridge and London: The Belknap Press of Harvard University Press, 2016; Chute, Hillary and Marianne DeKoven. “Introduction: Graphic Narrative.” *MFS Modern Fiction Studies* 52.4 (2006): 767-782

<sup>3</sup> Blue Knot Foundation – Memory Factsheets (<https://www.blueknot.org.au/Resources/Fact-Sheets/Memory-factsheets>); Gilmore, Leigh and Elizabeth Marshall. “Trauma and Young Adult Literature: Representing adolescence and knowledge in David Small’s *Stitches: A Memoir*.” *Prose Studies* 35.1 (2013): 16-38.

<sup>4</sup> Australian Law Reform Commission, “Seen and heard: priority for children in the legal process” (ALRC Report 84, 1997). Section 14, ‘Children’s evidence’.

and described by the witness, may prompt recall that other forms of evidence capture might not.

Q4: We agree with the introduction of a simplified notification procedure for standard special measures.

Q5: No comment.