Sordid but Not Guilty

What a criminal trial of two soccer players says about British society.

by Theodore Dalrymple

A single case can illuminate a whole society, as a flash of lightning lights up a landscape on a dark night: not that the case of Ched Evans told us anything about British society that we did not already know, or could not have been known by anyone with the most minimal powers of observation.

Ched, or Chedwyn, Evans was a Welsh professional soccer player, not yet of the highest rank but still, at 23, earning $1.5 million a year. He decided to have a weekend in his hometown of Rhyl, a seaside resort on the north coast of Wales, accompanied by a friend from earlier in his career, a soccer player of the same age named Clayton McDonald, as well

as by another few friends and his half-brother. They went to a club called the Zu Bar—an appropriate enough name in view of what some of them were about to do—but split up after leaving at about 2:30 AM.

Evans had booked a local hotel room for McDonald, who later sent a text informing him that he had taken a girl there. Evans decided to join him in the hotel. He managed to persuade the receptionist to let him have a key to McDonald's room, which he then entered without knocking. McDonald was having sex with the young woman and, according to Evans, asked her whether his friend could join in. (McDonald claims that it was Evans who asked.) They both maintained that she consented.

A charming feature of the story is that Evans's half-brother and one of his friends went with him to the hotel, where they attempted to film the sexual proceedings on their cell phones from outside the bedroom window. But they didn't get far: Evans was delicate enough to close the curtains before he undressed.

When McDonald had finished with the young woman, Evans took over, as in a relay, and McDonald left the hotel room. Then Evans, who, according to his own later account, said not another word to her before, during, or after his intercourse with her—though she asked him to go harder at it—suddenly remembered that he was betraying his girlfriend of 18 months, desisted from sex, dressed, and left by the hotel fire escape. Practically everything in Britain that happens outdoors is now captured on closed-circuit television, in a vain attempt to promote public order in a population that feels little or no internal restraint, and he was seen on film, slinking away like a thief in the night.

The young woman, 19, woke naked in bed the next morning, unaware of where she was and not remembering how she had gotten there. Her amnesia for the second half of the previous evening was total, but as she had drunk "only" two large

glasses of wine (amounting to two-thirds of a bottle), four double shots of vodka, and a Sambuca, she thought her drinks must have been spiked to have produced this degree of amnesia. She had drunk more than this on other occasions, she said, without blacking out.

She was distressed in general by waking up in a strange place with no knowledge of how she had gotten there, and now she discovered that her bag was missing. It was of this that she went to the police to complain. She made no allegations of rape against the two men (how could she, if she remembered nothing?), but the police soon traced both Evans and McDonald. Interviewed by the police, Evans volunteered an account of the sexual escapade and told the police that they could have had any of the girls in the bar that evening because they were soccer players and rich, and that that was what the girls liked. As a sociological generalization, this observation might have been at least partly true; but in the circumstances, it was an unwise, as well as a crude, thing to say. The police charged the two men with rape, on the grounds that the young woman was in no condition to give consent to sexual intercourse, and that they either knew, or ought to have known, that this was the case.

The impetus for the charges came entirely from the prosecuting authorities; the alleged victim at no point claimed to have been raped. Toxicological evidence was unilluminating: by the time blood was taken from the young woman, her blood-alcohol level had declined to zero; no substance with which her drinks might have been spiked was present. She exhibited traces of both cannabis and cocaine, compatible with her having taken them several days before the night in question.

The first trial produced a verdict that at first might seem puzzling: McDonald was acquitted and Evans found guilty. There was no plausible pharmacological explanation of how the woman might have been able to give consent to McDonald but not to Evans: but this does not settle the matter. To secure a

verdict of guilty in such cases, it must be shown not only that the woman was incapable of giving consent but that the accused had no reasonable grounds for belief that she could give consent. In McDonald's case, the alleged victim had gone back to the hotel with him in a taxi, which she had voluntarily entered; this gave him some reason for believing that she had consented to having sex, which Evans, who entered the room unasked and unannounced, lacked. This was so even if McDonald was mistaken in his belief; and this might have been the decisive difference between the two men in the jury's mind.

Evans received a sentence of five years' imprisonment, which means, in our deceiving times in which nothing means what it appears to mean, that he would be let out after two and a half years, as, in fact, he was. From the first, he maintained his innocence, and, because he refused to acknowledge his guilt and jump through the prescribed hoops that sex offenders must jump through, he endured a harder prison regime than he would otherwise have been subjected to.

Meanwhile, his girlfriend, Natasha Massey, with a fortitude out of the ordinary, stuck by him. The daughter of a rich businessman, she funded a sophisticated campaign on Evans's behalf. It included a website that showed a video of the young woman entering the hotel not in such a state of intoxication that she would have been obviously incapable of giving consent: and drunken consent is still consent. Another video, taken before she arrived at the hotel, purportedly showed her urinating in the street. A cousin of Evans not only named her on social media (which was illegal) but also called her "a drunken slut."

Judges twice refused Evans's request for an appeal of conviction; they saw no new grounds for overturning the verdict. On his third attempt, he was granted a retrial because new evidence had come to light. Two men came forward to testify that the young woman had earlier behaved with them

in a very specific sexual way, precisely as Evans had claimed during the first trial.

Normally, a woman's previous sexual activity is not admissible in rape trials: promiscuity does not imply a general consent to all and sundry. The appeals court ruled in this case, however, that the evidence was so specific that it was admissible and, if offered to the jury, might result in a different verdict—as, in the event, it did. The fact that one of the new witnesses described the alleged victim behaving sexually exactly as Evans had described—she had demanded certain practices of the three men—as well as being amnesic the following morning, was particularly useful to the defense. It contradicted her own testimony that she had never had amnesia before.

Evans did not substantially alter his original evidence at his retrial. The prosecution tried to cast doubt on the testimony of the two men because Massey had offered a reward of $70,000 for any evidence leading to Evans's acquittal, but the jury, composed of seven women and five men, either believed the evidence or at least placed enough credence on it to conclude that the prosecution had failed to prove its case beyond a reasonable doubt. Both the judge and the defense counsel at the retrial were women, incidentally; the prosecutor was male. Evans was acquitted by unanimous verdict after only two hours' deliberation. He is thus no longer a rapist and will not have to spend the rest of his life on a registry of sex offenders.

Throughout its five-year duration, the case revealed many troubling cross-currents in British society. When Evans was released from prison, still a convicted rapist, his former soccer club, Sheffield United, proposed to reemploy him. This caused considerable outrage, and an online petition soon garnered 160,000 signatures. Prominent supporters of the club threatened to withdraw their support.

The tone of commentary was mostly vengeful, rather than

thoughtful or analytical, and exposed the limits of the vaunted un-censoriousness of our society. Just as a secret is what you tell only one other person, so every penological liberal has just one crime that he wants severely punished, cannot forgive, and for which there can be no adequate penance. Evans had committed it, or so it then seemed; he was therefore to be prevented from pursuing his career.

I can think of a reason that a man convicted of a very serious crime should not be able to continue a lucrative public career once he has completed his punishment; this has to do with social seemliness rather than vengefulness. In other respects, however, he should be allowed to get on with his life as best he can, and not be hounded. But that vengefulness was the main motive of the objection to Evans's playing soccer again is suggested by the fact that Clayton McDonald's career was more comprehensively and finally ruined than was Evans's. Unlike Evans, McDonald had been acquitted at the first trial—yet he had, in effect, been convicted by the public of a crime from which there could be no exoneration. As a well-known political figure once said, if you sling enough mud, some of it sticks.

Yet those who maintained Evans's innocence were no less vengeful. Despite the fact that the allegations against him came entirely from police and prosecuting authorities, which Evans himself has always recognized, the young woman at the center of the case faced a barrage of abuse and insult on social media. No evidence ever came to light that she was seeking to make money from the sordid affair, as commonly stated by her critics, some of whom revealed her whereabouts, so that she felt it necessary to move and change her identity five times. Evans never took part in or sanctioned any of this horrible activity.

As alarming as was the unreflective viciousness of many people, even worse was the revelation of how little people either understood or cared about the rule of law. A minor manifestation of this phenomenon: many seemed unable to

distinguish between acquittal and innocence, suggesting that they did not fully appreciate that the prosecution must prove its case beyond reasonable doubt. The man acquitted on this basis is to be treated as if he were innocent, which does not mean (in many cases) that he *is* innocent. But in a civilized society, the acquitted must not be made to suffer because we believe the not-guilty verdict to be wrong.

Some feminist pressure groups and their journalistic supporters seemed to want conviction for rapes, come hell or high water, and never mind due process or fair trials. The *Guardian*, normally of the forgive-them-for-they-know-not-what-they-do school of justice, published several articles in the wake of Evans's final acquittal that indicated that the authors would prefer someone to be wrongly imprisoned and to carry a legal stigma for life, even though found to be not guilty, than that he should be able to bring the best defense he can to the charge of rape, if it entails embarrassment of the victim, or alleged victim. In other words, a man charged with rape should almost be considered guilty ex officio.

A *Guardian* journalist specializing in crime (especially sex crime), Sandra Laville, wrote:

> *So for the past fortnight [during the trial], the young woman, who has had to move house because of the social media campaign against her, has been subjected to the kind of criminal dissection of her morality and sexual behaviour campaigners hoped were long gone.*

And an advocacy group, Women Against Rape, stated:

> *This [trial] sets a dangerous precedent to allow irrelevant sexual history evidence, which the law was supposed to prevent, opening the floodgates to trashing the woman's character in any rape trial once again. This trial is a throwback to the last century when women who reported rape were assumed to be lying and their sex life was on trial.*

These passages contain such blatant misrepresentations of the case that the authors must have deemed, consciously or otherwise, that the importance of their cause obviated any moral necessity to cleave to the truth. Let me mention a few of the more serious misrepresentations.

The appeals court specifically stated that the new evidence in the Evans case would not have been admissible if its purpose had been to cast moral aspersions on the alleged victim. Rather, it was allowed because it was relevant to the question of whether Evans could reasonably have believed that the alleged victim was consenting. And, in the event, the jury (including the seven women) found—presumably, for one cannot know for certain—that the new evidence helped to make a finding of guilt beyond reasonable doubt impossible. To call what happened "a criminal dissection of the [alleged victim's] morality" is therefore grotesquely, and, I would say, maliciously, wide of the mark.

The appeals court specifically stated that the admissibility of the new evidence carried no implication that the alleged victim was lying in her evidence. To allow the testing of her evidence was not to accuse her of lying: unless, that is, every alleged victim's evidence is to be accepted without demur, and any challenge to it whatsoever amounts to such an accusation. It is also important to note that, *pace* the pressure group's statement, the young woman herself never reported rape and, in a sense, was therefore never a complainant.

The lynch-mob mentality of the *Guardian* writers was further shown in an article contrasting the economic situation of the alleged victim and that of the alleged perpetrator. The former was a 19-year-old waitress living at home with her mother, and the latter a millionaire footballer whose girlfriend was the daughter of a millionaire. But what has this to do with the allegation? Does a 19-year-old waitress living at home with her mother ipso facto not have capacity to give or withhold

consent to sexual intercourse? This doctrine, if adopted, would play havoc with the lives of millions. And is a millionaire footballer necessarily a rapist if the woman has less money than he?

The article alleged that Evans was acquitted only because he was well funded. In practice, this may have been so: but if true, what did it actually mean, and what followed from it? I think it is a fair presumption that the jury did not acquit him on the grounds that he was rich but on the grounds that the prosecution failed to put its case beyond reasonable doubt. The lesson, if any, might then be that in cases of rape in which the evidence boils down to one person's word against another's, all other evidence for the prosecution and defense having canceled each other out, convictions are likely to be unsafe, but only the rich have the means to prove them so. This is an unpalatable and disturbing conclusion.

Again, feminists argued that the case flew in the face of recent efforts to destroy what is now frequently, and dishonestly, called the myth that the promiscuous are more likely to give their consent to sexual intercourse than the chaste. This is surely no myth: indeed, it is almost, by definition, true. No one in his right mind would suggest that a young woman of proven promiscuity is not more likely to give her consent to intercourse than, say, an 80-year-old Catholic nun. The supposed destruction of the myth mistakes entirely the reason that evidence of previous promiscuity should not be admitted in rape trials: the question is not whether the woman consented on 100 previous occasions but whether she consented on *this* occasion. Not content with this, the feminists demand the acceptance and internalization of an obvious untruth, as totalitarian dictators once did.

My own view is that Evans should not have been convicted in the first place, for I find it difficult to believe that there was no reasonable doubt in his case, even without the new supportive evidence; but irrespective of its final legal

outcome, this supremely sordid story was emblematic of a prevalent aspect of contemporary British culture (I use the word “culture” in its broad anthropological sense). No one who has gone down the main street of a British town at midnight on Friday could really have been much surprised by the incident. Feminists have tried to paint it as an illustration of a general misogyny, but it is nothing of the kind. On the contrary, it is illustrative of the sub-Gomorrah nature of many contemporary British enjoyments, in which women participate as enthusiastically as men. Evans has acknowledged that his behavior was bad, though (perhaps understandably) without recognition of just how disgusting it was. But it would be implausible to say that the conduct of the alleged victim was on an altogether different and higher moral plane from his.

My guess is that both the principals in this story have learned their lesson, but it is a lesson that they ought not to have needed, and certainly the law ought not to have been their teacher—or, for that matter, the teacher of our own moral philosophy.

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