



E15 Judicial and Jury Bias in the United Kingdom: An Analysis of Recent Cases

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After attending this presentation, attendees will gain knowledge of recent cases relating to judicial and jury bias in the United Kingdom and an appreciation of their application in other common law jurisdictions.

This presentation will impact the forensic community and/or humanity by providing insight into some of the extrajudicial factors that can influence judicial proceedings and the way that British Courts try to minimize them.

Judicial and Jury bias in the United Kingdom is a topic that has been litigated in a number of interesting cases in recent years. Presented here are some of those cases and drawn conclusions that will be of interest to and helpful to Jurists and Advocates in other common law jurisdictions.

- What happens when a Politician becomes a Judge?

This is something that is relatively rare in the UK, but is probably more common in the United States where a significant number of Judges have to actively engage in the political process in order to reach, and stay on, the Judicial Bench. In *Davidson v. Scottish Ministers* [2004] UKHL 34, the House of Lords held that Where a government minister who had drafted or promoted legislation subsequently became a judge and was required to give a judicial ruling upon the effect of that legislation, there was a real risk of apparent bias because, despite the judicial oath, there was a very real possibility that the judge would subconsciously strive to avoid reaching a conclusion that would undermine the assurances he had previously given to Parliament.

- What happens when a Judge is a member of an organization with a political agenda?

In 1998, General Pinochet, the former Chilean Head of State was arrested whilst visiting London for medical treatment on an International Warrant alleging crimes against Humanity. Hardly surprisingly, litigation followed. Amnesty International was a party to some of the litigation. The House of Lords Appellate Committee hearing one of the cases included Lord Hoffman, a Director of Amnesty International. In ordering a fresh hearing, a differently constituted Court somewhat briskly concluded "Once it was shown that the judge had a relevant interest in the subject matter, he was disqualified without any investigation into whether there was a likelihood or suspicion of bias unless he had made full disclosure."

- What happens when a Juror falls in love with an Advocate?

This has been litigated on a number of occasions; in *R v. HM Coroner for Kingston – upon Hull* [2001] EWHC Admin 352 a number of issues arose. This was a Judicial Review following a contentious inquest into the death of an Afro-Caribbean ex-paratrooper in police custody. One of those issues was that a juror had apparently had a torrid affair with one of the advocates. The Administrative Court found that in fact the affair had started after the Jury had returned their unlawful killing verdict. The Court nonetheless reviewed the law relating to jury bias and the test that had to be applied. The same test was applied in *R v. Alexander & Steen*, two court of appeal cases heard in July 2004, the Court heard how the female foreman of the Jury had sent champagne and a dinner invitation to the prosecution counsel after the unanimous guilty verdict had been returned.

- Does membership of a Masonic or Quasi-Masonic organization constitute judicial bias?

It can, as held by the European Court in *Remli v. France*, ECHR 1995/510/593. Norman Robertson, an ardent Scottish Nationalist, who changed his name by deed poll to Robbie The Pict engaged in a long series of cases in the Scottish Courts related to his disinclination to pay the toll charged to drive over the bridge to Skye. In one case, *Robbie the Pict v. HM Advocate* [2003] ScotHC 12, he took issue with the fact that many members of the Scottish Judiciary are members of the Speculative Society, a quasi-Masonic organization, and that this could create an impression of bias in fair minded people. His arguments did not cut much ice with the Court who in their judgment commented "we can see no reason why any reasonable onlooker could suspect that the loyalties and friendships that typify any society of this kind should in this case override the obligations of the judicial oath."

Judicial and Jury bias is a practical and ethical issue in all jurisdictions. The British approach with vigorous supervision by the Higher Courts, who are, on occasion invited to judge the conduct of their own members, is instructive.

Ethics, Bias, Triers of Fact