

Juries – Communication, the Internet, and Twitter.

By Dr Peter Jepson (November 2010)

After reading the recent Judicial Studies Board Lecture (Belfast) of Lord Judge, Lord Chief Justice, I was transported in my mind to the BBC TV series of Garrow's Law. Indeed, the image of a smooth talking intelligent barrister communicating with an 18th century jury of 12 barely literate members was very much in my mind. That being said, such an observation does not truly reflect what Lord Judge was saying, because his main concern was that of communicating with a jury that is changing due to two features: (1) modern students cannot concentrate for long periods of time because they are not trained to listen to speeches, (2) what they are trained to do, and used to doing, is utilising a computer to search out matters they do not fully understand or need more information on.

In other words, he is concerned that juries, instead of listening to the evidence and the legal direction of the Judge, may be using computers to seek out answers to questions they may have in their mind.

Communicating with Juries.

Lord Judge's assertion, that modern students do not possess the ability to sit for a lengthy period of time and listen, has some validity. Indeed, education in schools and Colleges has moved from the passive learner to the interactive learner, i.e. a student who is encouraged to follow IT class presentations and ask questions, thereby encouraging debate. That being so: would it not make sense if the format of delivery of evidence to a jury could not also be changed? For example, barristers or judges could make use of a white board and Powerpoints to present their information, legal and evidentiary points, to a jury. Likewise, when a jury member has a question they would like answering, instead of passing a written question to the judge, why could they not simply raise their hand and ask the judge if their question could be put to the witness? Such changes are not really radical, but they should make the courtroom more interactive and thereby help make the juries task more informal, interesting, and easier.

Again, as Lord Judge, observes: there is currently nothing in law to prevent a judge from moving away from making a long speech that sums up the law, by moving towards providing the jury with a series of questions that would enable the jury to determine the guilt or innocence of the accused. For example, in a murder case, the jury could be given the following (R v Woollin [1998] Crim LR 890) questions:

- (1) Are you satisfied - beyond all reasonable doubt - that D intentionally stabbed the victim?
- (2) In doing so, are you convinced - beyond all reasonable doubt - that D recognised that death or serious injury was a virtually certain outcome of his actions? If the answer is yes, to both questions, you may find that D is guilty of murder.

Use of the Internet.

The Lord Chief Justice, was very clear on what he feels about juries using the internet to search out answers to questions they may have in their mind.

He cites Thakrar [2008] EWCA Crim 2359 as an example of a case where an injustice was prevented by the fluke occurrence of a jury member putting a question to the trial judge which signified that the jury had some prior extraneous information regarding the defendant. In fact, it turned out that the information, obtained by a jury member from the internet, was false information about previous convictions that could have seriously undermined the defendants case (not surprisingly the trial was halted and the case was tried again). Indeed, Lord Judge observed that such re-trials are not only expensive, but can also create an additional emotional trauma for defendants, witnesses etc. Accordingly, he believes that more needs to be done to educate juries about the dangers of using extraneous information when deliberating on a trial. He referred to the research of Professor Cheryl Thomas of University College London, when she says that in high profile cases 25% of jury members admitted to finding information about the trial on the internet. Clearly, as remarked by Lord Judge, such internet research provides grounds for there being an unfair trial, because the defence lawyer knows nothing about the internet evidence/stories which may be accurate, or inaccurate, and could relate to past arrests or stories that undermine the credibility of the defendant.

Even when it comes to jury members researching points of law or legal technical terms, there is a danger that they may inadvertently research law from other jurisdictions (the US is just one example) or even that they may find law definitions that are no longer regarded as good law. Thus, anything other than reliance on the trial judge, when it comes to a direction of law, must provide grounds for a miscarriage of justice.

According to the Lord Chief Justice,, a trial judge should follow the case of Thomson and others [2010] EWCA Crim 1623 and make it absolutely clear to members of a jury, at the very outset of the trial, that they must NOT under any circumstances be influenced by extraneous material from any source (including via use of the internet) when considering matters associated with the trial (warnings need to be placed on the wall in the jury room etc).

Use of Twitter.

While that makes sense, in terms of controlling where a jury looks for information, it is clear that the use of Twitter could also establish a problem.

For example, what is to stop a person sitting in the court watching a trial and twittering their opinion on the progress of the trial? Seemingly, there is no current legislation that relates to the control of the use of Twitter in a courtroom. However, it is my view that a trial judge could announce at the beginning of a trial, that using telephones, computers etc (without the permission of the judge)

to send out twitter or other similar messages about the trial could constitute a contempt of court – with a maximum sentence of two years imprisonment under the Contempt of Court 1981. While that may control those at a trial, it could not influence the use of Twitter by members of the public, operating outside of the jurisdiction of the courtroom, who may be using Twitter to seek to influence the outcome of the trial and/or the public's perception of the trial.

Concluding thoughts.

In truth, no system of justice is perfect. It seems inevitable that it will be impossible to shield a jury from extraneous material influencing the mind of jury members. Indeed, all jury members will have pre-conceived views and ideas that influence their thinking when it comes to determining guilt or innocence.

Logically, the role of a trial judge is to ensure that s/he directs the jury in accord with the law at the time of the trial and s/he does all in their power to ensure that juries are not influenced by extraneous material and they reach a verdict – beyond all reasonable doubt – based upon the evidence presented to them at the trial.

It is correct to argue that a jury should not be influenced by extraneous material. However it is futile to believe that, in a modern and freedom based society, they are not.

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For the speech of Lord Judge, Lord Chief Justice, see
<http://www.judiciary.gov.uk/Resources/JCO/Documents/Speeches/speech-lcj-jury-trials-jsb-lecture-belfast.pdf>