



Neutral Citation Number: [2009] EWHC 1023 (Admin)

Case No: CO/12411/2008

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/05/2009

Before :

LORD JUSTICE PILL

And

MR JUSTICE SWEENEY

Between :

Her Majesty's Attorney General

Claimant

- and -

Michael Alexander Seckerson

First Defendant

- and -

Times Newspapers Limited

Second Defendants

Mr Phillip Havers QC and Mr Angus McCullough (instructed by **The Treasury Solicitor**)
for the Claimant

Mr Rupert Pardoe (instructed by **Martin Murray & Associates**) for the First Defendant
Mr Gavin Millar QC, Mr Anthony Hudson and Ms Gemma Hobcraft (instructed by **Corker
Binning**) for the Second Defendants

Hearing date: 8th April 2009

Judgment

Lord Justice Pill :

1. This is an application by Her Majesty's Attorney General for an order of committal against the defendants for their contempt of court. The first defendant, Mr Michael Seckerson, was the foreman of the jury at the trial of Ms Keran Henderson on a charge of manslaughter at Reading Crown Court. The case concerned the death of a child who sustained injuries while in the care of Ms Henderson. On 13 November 2007, she was convicted by the jury by a majority of 10-2 and sentenced to 3 years imprisonment. The trial lasted for 5 to 6 weeks, we are told, and the jury deliberated over a period of about 3 days. Ms Henderson has appealed against conviction but the appeal does not turn upon the disclosures complained of.
2. The order is sought on the ground that the defendants were in breach of section 8 of the Contempt of Court Act 1981 ("the 1981 Act"). It is alleged that the first defendant disclosed to the Legal Editor of The Times newspaper particulars of votes cast and arguments advanced (and/or opinions expressed) by members of the jury in the course of their deliberations as to the verdict and that the second defendants, Times Newspapers Limited, published that information, or some of it, in an article in The Times on 19 December 2007.
3. Section 8(1) of the 1981 Act provides:

"Subject to sub-section (2) below, it is a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings."

Subject to one point, it is not suggested that sub-section (2) has any bearing on the outcome of the present application.

The Article

4. The statements complained of appeared in an article on pages 6 and 7 of the newspaper under the name of Ms Frances Gibb, The Times Legal Editor. The article is prefaced by a separate article, on page 1, also written by Ms Gibb, under the headline "Jurors Question Guilt of Killer Childminder". That article began:

"The role of expert witnesses in baby death trials was called dramatically into question last night after two jurors spoke out to challenge the conviction of a childminder for killing a baby in her care. Senior judges and law officers faced calls last night for a fresh review of the role of expert witnesses in baby-death cases . . ."

Ms Gibb reported that the recent conviction was disputed by the jurors "in an unprecedented move". Later in the article it is stated: "The case comes amid increasing concern over cases involving baby deaths that turn on the evidence of expert witnesses".

5. The article on page 6 is headlined:

‘Jurors break silence to insist that childminder did not kill baby
Expert Witnesses

- Foreman says medical evidence ‘contentious’
- MP wants enquiry into role of expert witnesses’

The article again refers to the “unprecedented move” of the two jurors. It continues:

‘But the jury foreman, who cannot be named for legal reasons, has told *The Times* that he does not think the case should ever have come to court.

“A case relying on circumstantial evidence and forensic opinion based on evidential proof from other cases should never have reached a court”, he said. He added: “I think that although the trial was very carefully run, the case in my view was flawed and the accused innocent”.’

6. The second juror is said in the article to be named Carol and to have told BBC Radio 5 live:

“I believe a miscarriage of justice has occurred but there’s nothing I can do about it . . .”

The article continues:

‘Jurors are prohibited by law from disclosing secrets of the jury room and the discussions as to how a verdict was reached. But the readiness of two of the 12 in this trial to speak out are an indication of how strongly they feel.’

7. That is the context in which the words complained of by the Attorney General appear later, as printed in the article:

‘The jury foreman told *The Times* that there was no question, as has been suggested, of the jury being rushed. It was given ample time and the “consensus was taken three minutes after the foreman was voted in. It was 10-2 against, all based on the evidence. After that there was no going back”.

He added: The jury majority voted guilty because it could do no other.

“The medical evidence was overwhelming. All the necessary ingredients of what the experts call the ‘triad’ [a collection of features typically caused by shaking that lead to hypoxic-ischaemic brain injury and death] were there.

“But many expert witnesses vouchsafe that the literature on shaken baby syndrome is contentious and far from complete. And so who caused the death, or whether anyone did, is not proved. The evidence, whether expert or other, was merely circumstantial – probabilities, therefore uncertainties.”

The juror said that the defence was good; but up against “the weight of a dozen medical and forensic experts, was clearly on a hiding to nothing.

“The circumstance were that of amateurs made to do a professional’s job.

“Such a complex case was made easier by the judge’s excellent, well-rounded summary . . . although we were told we could not have a transcript.” Had the jury been given a transcript they might have reached a better verdict, he added.

What was not proved, he said, was who caused the death “or indeed whether anyone did.”

He added: “Ultimately the case was decided by laymen and laywomen using that despicable enemy of correct and logical thinking, that wonderfully persuasive device, common sense.”

The outcome has left him disillusioned with the jury system. “One’s peers, however good and true, are generally not up to the job.”

A call by a Member of Parliament for a review of medical expert evidence was then mentioned.

Submissions

8. For the Attorney General, Mr Havers QC began his submission by accepting that for a juror after a trial to express his own views in a general way about the merits or demerits of the jury system would not be a breach of section 8. Similarly, the juror would not breach section 8 by expressing general views about jurors relying on expert evidence. The disclosures alleged to infringe section 8 are:
 - (a) . . . the consensus was taken 3 minutes after the foreman was voted in. It was 10-2 against, all based on the evidence. After that there was no going back.
 - (b) The jury majority voted guilty because it could do no other.
 - (c) The medical evidence was overwhelming.
 - (d) Ultimately the case was decided by laymen and laywomen using that despicable enemy of correct and logical thinking, that wonderfully persuasive device, commonsense.

It was submitted that the disclosures represent a statement of opinions expressed by fellow jurors, of arguments advanced by them and of a vote cast by members of a jury in the course of deliberations. Mr Havers did not urge the court to take the view that the case constituted the most serious breach of section 8(1). There had, however, been a significant breach of the important principle of the sanctity of the deliberations of a jury. It is important that the principle be strictly observed.

9. Considering the statements in more detail, Mr Havers submitted that the reference to a vote at what was, he submitted, clearly an early stage of deliberations, not only disclosed votes cast in the course of deliberations but suggested that the majority had made up their minds and were not prepared to countenance change. That constituted

a disclosure of statements made or opinions expressed by members of the jury. The reference to the medical evidence and to its impact on the majority amounted to a disclosure of the opinion of the majority about the medical evidence. The reference to common sense also constituted a statement of opinions expressed and arguments advanced by the majority; their reliance on common sense, regarded by the first defendant as the despicable enemy of correct and logical thinking.

10. Mr Havers's submission that it was not necessary for the Attorney General to establish that the defendants had breached section 8(1) intentionally was not challenged on behalf of the defendants. The relevant intention is the intention to disclose (Lord Rodger in *Attorney General v Scotcher* [2005] 1WLR 1825, at paragraph 12), and that intention was not in dispute. Mr Havers submitted that the description of activities in the jury room in section 8(1) of the 1981 Act covers all deliberations of the jury in relation to the case being tried.

11. Enactment of the section followed the decision of the Divisional Court in *Attorney General v New Statesman & Nation Publishing Co Ltd* [1981] QB 1. An application for an order of contempt of court at common law failed. Giving the judgment of the court, Lord Widgery CJ added:

“That does not mean that we would not wish to see restrictions on the publication of such an article because we would.”

12. For the second defendants, Mr Gavin Millar QC, submitted that in construing section 8(1) of the 1981 Act, the court should apply the principle against doubtful penalisation and also the presumption that Parliament does not intend to legislate in a way that would put the United Kingdom in breach of its obligations under the European Convention of Human Rights (“the Convention”). In so far as it is possible to do so, section 8 must be read in a way which is compatible with the defendants' rights under article 10 of the Convention (Human Rights Act 1998, section 3).

13. Mr Millar referred to the right and duty of the press, in the interests of the administration of justice, to tell the public what has happened in court proceedings. In that context, Mr Millar submitted that what section 8(1) prohibits is the disclosure of the detail of things said by jurors in the confidence of the jury room. A purposive construction of the section is required and that involves limiting breaches to disclosures which interfere with the proper administration of justice. Considered in the context of the article as a whole, the first defendant was using his experience of this trial to criticise the way in which cases, based on medical opinion evidence, are tried. It was not a disclosure of confidential information but of information about how the system worked, much of it favourable to the system. Fears were expressed about reliance, in cases such as that of Ms Henderson, on expert medical evidence and the expression of such concern was legitimate.

14. Mr Millar also considered the wording of the article in detail. He submitted that the reference to 10-2 was not a statement of “votes cast” but merely an indication of where members of the jury stood at the outset of their deliberations. Such an indication does not offend against section 8(1), it was submitted. Detailed information about votes cast was required before there could be a breach and there was no disclosure of the way particular jurors had voted. In any event, when the verdict was eventually announced, the majority of 10-2 became public knowledge.

What was disclosed did not reach a damaging level of particularity. Nothing was said about the expressed view or vote of any individual juror, or group of jurors. The second dissenting juror was merely “named as Carol” so that neither her identity, nor that of the convicting majority were revealed. The majority of the jury were treated sympathetically as was the conduct of deliberations.

15. Even taking the wording of section 8 literally, there was no breach by the disclosures made, Mr Millar submitted. In section 8 “expressed” must mean “expressly stated”, “arguments advanced” must mean reasoning put forward and “members” is used in contradistinction to “membership”.
16. The reference to common sense, an attribute which jurors are normally urged to use when considering their verdict, was merely a comment about its value in the jury room as a tool for making decisions. To constitute a breach of section 8(1), there would need to be disclosure of more detail of deliberations in the jury room. There can be no objection to the use of common sense in the vast run of cases, it was submitted, but that approach will not work where the case turns on a mass of expert medical evidence.
17. The juror’s comments were made voluntarily and the juror was not named. No harassment of jurors occurred. No substantial damage to the proper administration of justice, either in the particular case or as a continuing process, could be done by the articles, it was submitted.
18. For the first defendant, Mr Pardoe supported the submissions of Mr Millar. A juror is in breach of section 8(1) only if he crosses a clear line between general comment about the jury system and a specific disclosure of deliberations. The identity of jurors, the identity of the foreman and whether the verdict is unanimous or by a majority are public knowledge and disclosure does not involve a breach of the section. The first defendant did not go beyond disclosing information already in the public field and making general comments about the working of the jury system. The specific submission was made that it was not known when the jury appointed their foreman and that the 10-2 vote mentioned may have been taken only shortly before a verdict by that majority became public knowledge. Because, under section 8(2)(b), disclosures in connection with the delivery of the verdict fall outside section 8(1), the disclosure of the 10-2 vote was not a breach of the section.
19. In reply, Mr Havers submitted that there is no warrant for construing the words in section 8(1) as requiring a minimum threshold. It does not have to be established that the level of detail disclosed was damaging; the damage is in the disclosure.
20. Both Mr Millar and Mr Pardoe also submitted that the order sought by the Attorney General would amount to a violation of the defendants’ rights under article 10 of the Convention. Article 10 provides:

“(1) Everyone has the right of freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

21. There was no “pressing social need” to curtail the disclosures made in this case and, on the facts of the case, the balance between the article 10 right and the general community interest comes down on the side of freedom of expression.

Authorities

22. In *Attorney General v Associated Newspapers Ltd* [1994] 2 AC 238, an article in a newspaper revealed the deliberations of a jury in the course of reaching their verdict in a criminal trial. The article referred to accounts of three of the jurors as to how they had reached their decisions, contained comments by them on the evidence in issue at the trial and gave the opinion of one of them of a fellow juror. The issue was as to the meaning of the word “disclosed” in section 8(1) and it was held to be apt to describe both the revelation of jury deliberations by an individual juror and the further disclosure of those deliberations by publication in a newspaper, provided the publication amounted to a disclosure rather than a re-publication of already known facts.
23. Giving the judgment of the Divisional Court, Beldam LJ referred to the agreement of the Departmental Committee on Jury Service (1965), under the chairmanship of Lord Morris of Borth-y-Gest, with the proposition that if what happened during a jury’s deliberations was to be disclosed, “particularly to the Press, jurors would no longer feel free to express their opinions frankly when the verdict was under discussion, for fear that what they said later might be made public”. Beldam LJ also referred to the *New Statesman* case and added, at page 246F:

“It was against this background that Parliament enacted section 8 of the Act of 1981. If breaches of the secrecy of the jury room had escalated to a degree that Parliament deemed a statutory sanction to be necessary, then its duty was to define clearly the circumstances in which an offence would be committed so that criminal sanctions were restricted to those offences which, in Lord Diplock’s words in *Attorney-General v Leveller Magazine Ltd* [1994] AC 440, 449: ‘involve an interference with the due administration of justice either in a particular case or more generally as a continuing process.’”

24. Beldam LJ expressed, at page 248, the court’s view of such disclosures:

“Thus, we believe, the law has long recognised the importance of complete freedom of discussion in the jury room. If a juror

were to be deterred from expressing his doubt of the accused's guilt because he feared subsequent recrimination or ridicule, the accused might be deprived of a persuasive voice in his favour. So, too, a jury deciding a plaintiff's claim to damages for libel ought not to be exposed to interrogation by the erstwhile defendants or others who share an interest in avoiding liability for, or reducing the consequences of, defamatory publication. We consider that the free, uninhibited and unfettered discussion by the jury in the course of their deliberations is essential to the proper administration of a system of justice which includes trial by jury. The enacted provisions designed to maintain such discussion are confined to soliciting, disclosing or publishing the particular aspects of the discussion in the jury room identified in the section. To that extent only do they restrain freedom expression. There is no restriction, as Mr Pannick [counsel for the newspaper] suggested, on the freedom to express opinions, advance arguments, advocate changes or promote reform on the many aspects of jury trial which have already been the subject of public debate and which are, and remain, proper objects of public concern and interest. In due course the European Court of Human Rights may be called upon to decide whether the measures enacted by Parliament are disproportionate to the restriction imposed on freedom of expression. When it does so, it will surely take full account of Parliament's experience of trial by jury as an instrument of justice in the United Kingdom and its appreciation of the need today to protect the secrecy of the jury room. We were invited to take these factors into account to guide our interpretation of section 8. To the extent that it is permissible for this purpose, we have considered them."

25. The House of Lords dismissed an appeal against the decision of the Divisional Court. Lord Lowry, with whose opinion the other members of the House agreed, considered the enactment of section 8 of the 1981 Act and stated, at page 259:

"... the mischief which was thought to need a remedy is seen to have included publication of the forbidden particulars as well as their disclosure by individual jurors, which confirms the plain and ordinary meaning of 'disclosure' as the correct meaning in section 8."

26. More recently, Lord Hope, in *R v Mirza* [2004] 1 AC 1118, stated, at paragraph 89:

"There is no doubt in the light of this background, as Lord Lowry said in *Attorney General v Associated Newspapers Ltd* ... that the mischief to which the sub-section was directed was the release of information to the press which ought to be kept secret."

27. In *Associated Newspapers*, Lord Lowry approved Beldam LJ's definition of disclosure and the effect of section 8. Lord Lowry stated, at page 259F-G, that he could not improve on what Beldam LJ had said:

“ . . . It is a word wide enough to encompass the revealing of the secrets of the jury room by a jurymen to his friend or neighbour as well as the opening up of such knowledge to the public as a whole by someone to whom it has been revealed. And in the light of the background to which we have referred, we see every reason why Parliament should have intended the word 'disclose' to cover both situations. Nor do we regard it as significant that the secrets came into the hands of the newspaper indirectly. The existence of a market for the transcript of interviews with jurors containing prohibited details of their deliberations is as inimical to the interests of justice as the direct solicitation for money which occurred in this case. Section 8 is aimed at keeping the secrets of the jury room inviolate in the interests of justice. We believe that it would only be by giving it an interpretation which would emasculate Parliament's purpose that it could be held that the widespread disclosure in this case did not infringe the section. By declaring such conduct to be a contempt, Parliament recognised the exceptional discretion vested in a court to protect the process of justice and its ability to reflect the varying shades of infringement. In our judgment the Attorney-General has proved a breach of section 8(1) by the publisher, the editor and the journalist.”

28. While the principal issue in *Associated Newspapers* was what amounted to a disclosure, I regard those statements of principle as relevant to a consideration of the present facts. In the interests of justice, the secrets of the jury room are inviolate.
29. In 1994, the European Commission of Human Rights (“the Commission”) declared inadmissible a challenge by *Associated Newspapers Ltd* to the order made in the national courts in that case (Application No. 24770/94). The Commission stated:

“The Commission agrees with the applicants that the fines imposed in the present case amounted to an interference with the applicants' freedom of expression, and also agrees that the interference was 'prescribed by law'. In connection with the question whether the interference pursued a legitimate aim, the Commission finds, as indeed the applicants accept, that the aim was to maintain the authority and impartiality of the judiciary. It would add that the term 'judiciary' comprises the entire machinery of justice, including the proper functioning of the jury system (cf., Euro. Court H.R., *Sunday Times* judgment of 26 April 1979, Series A no. 30, p. 34, para. 55). It is an important element of that system that jurors should express themselves freely in the jury room without fear of outside disclosure of their views and opinions. To this extent the law

may also serve to protect the rights of individual jurors themselves.

. . . In connection with the legislation as such [the 1981 Act], the Commission notes that the jury system in the United Kingdom is founded on the premise that jurors will express themselves freely in the jury room in the knowledge that what they say will not be used outside. If a juror thought that what he said could subsequently be made public, it is possible that he would bear in mind the future use to which his words might be put, and not just the case in hand. The unlimited prohibition on disclosure is then seen to be an inevitable protection for jurors and can therefore be regarded as ‘necessary’ in a democratic society which has decided to retain this particular form of jury trial.”

30. The Commission added that it was not called on to assess the compatibility of section 8 with article 10 in circumstances involving a conviction for research into jury methods as such, and stated:

“The present case relates rather to revelations of the jury’s deliberations in one specific case of considerable public interest, including statements by the jurors concerned about the opinions and attitudes of other members of the jury. The applicants were well aware that the information they published was sensitive, and should have been aware that its disclosure could put other individual jurors in an invidious position.

The Commission finds, in the circumstances of the present case, that the interference with the applicants’ freedom of expression did not take the State beyond the margin of appreciation which it enjoyed.”

31. Mr Millar referred to other decisions of the European Court of Human Rights (“ECtHR”) which strongly affirmed “the interest of democratic society in ensuring and maintaining a free press” (*Du Roy and M Laurie v France* (Application No. 34000/96), 3 October 2000). These decisions do not appear to me to weaken the protection given by the Commission in *Associated Newspapers* to the deliberations of a jury. It is not alleged in the present proceedings that section 8 is incompatible with article 10.
32. In *Attorney General v Scotcher* [2005] 1 WLR 1867 Lord Rodger of Earlsferry, with whom the other members of the House agreed, considered the possible application of section 3 of the 1998 Act to section 8 of the 1981 Act. He stated, at paragraph 29:

“As I have already explained, it was not disputed that the appellant could, if appropriate, invoke sections 3 and 4 of the 1998 Act. In my view, however, neither section avails him in this case. The appellant’s rights under article 10(1) were, of course, engaged but in terms of article 10(2) the right to freedom of expression can be subject to a restriction which is

prescribed by law and is necessary in a democratic society "for preventing the disclosure of information received in confidence." In *Gregory v United Kingdom* (1997) 25 EHRR 577, 594, para 44, the European Court acknowledged that the rule governing the secrecy of jury deliberations is a crucial and legitimate feature of English trial law. Therefore, in so far as section 8(1) serves to reinforce that rule by making it an offence for a juror to disclose the information which he receives in confidence from his fellow jurors, the objective is sufficiently important to justify limiting the juror's freedom of expression in this way. The provision is rationally connected to its aim and the means adopted are no more than is reasonably necessary, since the restriction does not apply to bona fide disclosures to the court authorities. The measure is accordingly 'reasonably justifiable in a democratic society.'"

33. Lord Rodger added, at paragraph 31:

"Section 3 of the 1998 Act comes into play only where it is needed in order to make a legislative provision compatible with a Convention right. As Mr Starmer accepts, however, when properly interpreted according to domestic canons of construction, section 8(1) is compatible with article 10 of the Convention. That being so, section 3 does not apply."

34. In *Gregory v United Kingdom* [1997] 25 EHRR 577, the ECtHR had stated, at paragraph 44:

"The Court acknowledges that the rule governing the secrecy of jury deliberations is a crucial and legitimate feature of English trial law which serves to reinforce the jury's role as the ultimate arbiter of fact and to guarantee open and frank deliberations among jurors on the evidence which they have heard."

That being so, I see no place for the application of section 3 of the 1998 Act in the respondents' favour so as to interpret restrictively the relevant words in section 8(1). Even if there were to be a place, section 3 would not permit an interpretation of the plain words used in a way that would influence the outcome of this application.

35. In *R v Mirza* [2004] 1 AC 1118, the courts declined to investigate allegations raised by a juror, after verdict, as to how the jury's deliberations were conducted. Lord Steyn stated, at paragraph 6:

"It is important to take account of the fact that a jury is a judicial tribunal, and is expected to conform to judicial standards."

The House of Lords "took stock" of the nature and scope of the secrecy rule regarding jury deliberations (Lord Steyn, paragraph 13). Lord Steyn cited with approval the rationale of the rule stated by Arbour J, giving the judgment of Canadian Supreme Court in *R v Pan* [2001] 2 SCR 344. Arbour J stated three reasons, the second of

which, the need to ensure finality of the verdict, standing alone, not being a convincing rationale. In relation to reasons one and three, Arbour J stated at pp 373-375:

“The first reason supporting the need for secrecy is that confidentiality promotes candour and the kind of full and frank debate that is essential to this type of collegial decision-making. While searching for unanimity, jurors should be free to explore out loud all avenues of reasoning without fear of exposure to public ridicule, contempt or hatred. This rationale is of vital importance to the potential acquittal of an unpopular accused, or one charged with a particularly repulsive crime. In my view, this rationale is sound, and does not require empirical confirmation.

. . . the third main rationale for the jury secrecy rule – the need to protect jurors from harassment, censure and reprisals. Our system of jury selection is sensitive to the privacy interests of prospective jurors (see *R v Williams*, [1998] 1 SCR 1128), and the proper functioning of the jury system, a constitutionally protected right in serious criminal charges, depends upon the willingness of jurors to discharge their functions honestly and honourably. This in turn is dependent, at the very minimum, on a system that ensures the safety of jurors, their sense of security, as well as their privacy.

I am fully satisfied that a considerable measure of secrecy surrounding the deliberations of the jury is essential to the proper functioning of that important institution and that the preceding rationales serve as a useful guide to the boundaries between the competing demands of secrecy and reviewability.”

Attorney General’s letter

36. Reference was made to a letter written by the then Attorney General, Sir Michael Havers QC, to the political editor of the Sunday Times on 19 February 1982, in reply to an enquiry about a proposed investigation of the jury system. The Attorney General stated:

“Thank you for your letter of 10 February. It is something of a tall order to ask me for guidelines before you embark on your investigation of the jury system but I will do my best!

We must start with the wording of section 8 of the Contempt of Court Act 1981. Subject to exceptions which are not relevant, “it is a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast [emphasis in original] by members of a jury in the course of their deliberations . . .”. The words underlined show what the section is seeking to protect – the “secrets of the jury room”. The section does not prohibit

journalists speaking to people who have done jury service, though the journalist buttonholing a juror as he leaves the court house at the end of a sensational trial must not be surprised if his intentions are misunderstood. So there is much that jurors can be asked about the working of the system. How were they treated by the court staff? How much of their time was stated waiting for the opportunity to try a case? Before they went into court, were they given any information about trials and procedure and what was expected of them? Did they think that the allowances they were paid were fair? Then about the trial. Could they follow what was going on?

Did they find the pace too slow? Or too fast? Did they think the performance of counsel adequate? Did they find the judge's summing up helpful? How did they select the foreman? Did he play an active part in chairing their discussions? If there was a disagreement about the verdict at the beginning of their discussions, did each member of the jury explain how he or she had arrived at his or her verdict? Did the discussion lead to change of mind? Did the jury reach a unanimous decision? If not, how long was it before they concluded that they would never do so? Did they then reach a majority verdict? Did he suspect any of his colleagues of having any improper motive in reaching the verdict (prejudice against the police or "authority", or against the defendant or people of the defendant's race)?

As you will have noticed, this list of questions moves closer and closer to the area about which questions are forbidden. But provided the questioner knows that he must not ask for "particulars of statements made, opinions expressed, arguments advanced or votes cast" all will be well. His safest course will be to ask the questions in general terms and not to relate them to a particular trial. Indeed, I see no reason why the journalist needs to know which trial was involved if he is writing about the working of the system in general terms.

Well, I have done my best. I hope that it will be helpful. I wish you every success with the series on which you are embarking."

37. Mr Millar also referred to other jury disclosures, including that by the other dissenting juror in the Henderson case, which have passed without an application such as the present. I do not propose to describe or comment upon those disclosures. The present application has been made by the Attorney General and it is for the court to determine, on the basis of the wording of the section and the authorities, whether the disclosures in this case amount to a breach of section 8.
38. I accept that answers to some of the later questions posed by the Attorney General in his letter of 1982 would be capable of amounting to a breach of section 8. I note, however, the Attorney General's reference to the "safest course":

“To ask the questions in general terms and not to relate them to a particular trial.”

It is, in any event, for the court to determine whether there has been a breach of section 8 in this particular trial.

Evidence of defendants

39. On interview by the police, both Ms Frances Gibb and the first defendant read previously prepared statements. They each elected not to answer the many questions put to them, as was their right.

40. In her statement, Ms Gibb stated that she understood that the jury foreman’s approach to The Times had been entirely unsolicited. Ms Gibb did not follow it up straight away but, a couple of weeks later, became aware that a female juror from the same case had spoken to the BBC’s Radio Five about the verdict. She added:

“I then decided to take up the story again (having failed to arouse the interest of the news desk previously) as not one, but two jurors speaking out about a criminal case was significant . . .”

When speaking to the first defendant, whom she has never met, Ms Gibb made clear to him that she could not discuss any matters regarding jury deliberations. The first defendant said that he was only interested in communicating to her what he thought about the verdict and the way the trial had been run, now that the trial had ended.

41. Near the end of her statement, Ms Gibb stated:

“It was telling that jurors felt so strongly about the issue as to how the trial had proceeded and the difficulties in weighing the views of different experts that they came forward unprompted to express their opinions in public.”

42. Ms Gibb stated, and I fully accept, that after she had written the article it was sent to the second defendants’ legal department and checked by the legal manager. He made some amendments to be absolutely certain that it was, in his view, within the boundaries of the law. Publication was held up for a few days for lack of space. When resurrected, the article was re-checked by another lawyer and would then have gone to the sub-editors who check for clarity, grammar punctuation and Times style and to ensure the headline is accurate.

43. Ms Gibb is not legally qualified and, in her statement to the police, stated that “in common with every other journalist, I rely on others at Times Newspapers for legal advice on my articles before they’re published”. Ms Gibb stated that she would never, intentionally, commit a contempt of court and was personally very distressed that she was being interviewed under caution as a result of something she had written. In her view, there was nothing in her articles which contravened section 8. She took all reasonable steps to avoid contravening section 8 and followed the normal procedure at The Times when submitting articles for publication. Ms Gibb concluded:

“What was reported in my articles was what I considered to be legitimate comment by the juror about his experience of the trial and his own opinion expressed after the trial.”

44. When interviewed under caution, the first defendant stated:

“My sole intention was to describe my generic experience in this case. I had no intention to disclose any particulars of statements made, opinions expressed, arguments advanced or note, sorry, votes cast by the members of the jury in the course of their deliberations, nor have I done so. I did not intend to, nor have I exceeded the restrictions on disclosure. I do not accept that any part of my writing or conversation constitutes an infringement of those restrictions.”

Conclusions

45. I accept that Ms Frances Gibb followed the procedures laid down by the second defendants, proprietors of a highly reputable newspaper, before the article was published, including obtaining legal advice, which she followed. I accept that the second defendants’ staff who gave that advice acted in good faith. Ms Gibb took up the story because she found it significant that two jurors had spoken out in a criminal case, which was obviously a serious case and one which had received considerable publicity. She clearly regarded the jurors’ “unprecedented move” as newsworthy.
46. There was no harassment of the first defendant on behalf of the second defendants and the first defendant came forward unprompted. I accept that the first defendant did have a genuine concern about the use made of expert medical evidence in criminal trials, an issue too of public interest.
47. I deal first with points of detail raised on behalf of the defendants. I do not accept the first defendant’s submission that the 10-2 vote may have been taken just before the verdict was announced. A foreman is normally appointed, for good reason, at the beginning of the jury’s deliberations and I have no doubt that the vote was taken, and that the first defendant was intending to convey that it had been taken, at an early stage of the three day deliberation. I also see no merit in the submission that, because the verdict eventually disclosed was 10-2, the disclosure of the earlier 10-2 vote during deliberations was not a breach of the section. It disclosed the opinion of jurors at that stage and was combined with the expression: “After that there was no going back”.
48. The disclosure of the 10-2 “consensus” was a disclosure of “votes cast” within the meaning of section 8(1). Further, I do not consider that a disclosure of how the membership of the jury as a whole voted, 10-2, was anything other than a disclosure of votes cast by members of a jury. It is not a necessary requirement of a breach to disclose the identity of the members voting one way and the members voting the other way. This was a disclosure of votes cast by members of a jury.
49. The words used in section 8 in relation to the “deliberations”; “statements made”, “opinions expressed”, “arguments advanced”, and “votes cast” appear to me to cover the entire range of a jury’s deliberations when considering their verdict or verdicts in

the case. Provided the disclosure is in relation to their deliberations in the case, and not about an extraneous matter, it comes within the section.

50. There is no doubt that members of a jury, when so acting, form part of a judicial tribunal from whose members judicial standards are expected (*Commission and Mirza*). The need to keep secret the deliberations of the jury, and the rationale for it, have been plainly stated in the cases:
- (a) “Free, uninhibited and unfettered discussion by the jury in the course of their deliberations is essential to the proper administration of a system of justice” (*Associated Newspapers*)
 - (b) “Section 8 is aimed at keeping the secrets of the jury room inviolate in the interests of justice” (*Associated Newspapers*).
 - (c) “It is an important element of that system that jurors should express themselves freely in the jury room without fear of outside disclosure of their views and opinions” (Commission).
 - (d) “If a juror thought that what he said could subsequently become public, it is possible that he would bear in mind the future use to which his words might be put, and not just in the case in hand” (Commission).
 - (e) “The unlimited prohibition on disclosure is then seen to be an inevitable protection for jurors” (Commission).
 - (f) “The rule governing the secrecy of jury deliberations is a crucial and legitimate feature of English trial law . . . to guarantee open and frank deliberation by jurors on the evidence which they have heard” (*Gregory*).
 - (g) “Confidentiality promotes candour and the kind of full and frank debate that is essential to this type of collegial decision-making” (*Mirza*, citing *Pan*).
 - (h) “The proper functioning of the jury system is dependent, at the very minimum, on a system that ensures the safety of jurors, their sense of security, as well as their privacy” (*Mirza*, citing *Pan*).
51. These statements, national and European, are forthright and comprehensive. They cover all disclosures within the comprehensive definition in section 8. The jury system has shown itself to be robust in operation and is valued highly in this jurisdiction. Its strength and value depend on the open and frank expression of views between twelve people in the secrecy of the jury room. Confidence to express views in that way depends on the juror’s knowledge that the views will not be revealed outside the jury room. Jurors should not be constrained by fears a juror would legitimately have if his friends and neighbours, and the general public, may come to know of his views, which could be unpopular views. If views were expressed in the hope of their being disclosed, or with an intention to disclose, that would also have a deleterious effect on the quality of deliberations.
52. It is the principle of the secrecy of the jury room which is at stake and which is central to the proper administration of justice in this jurisdiction, as stated in the authorities.

It is not necessary to establish that the disclosure has led to injustice in the case concerned. Disclosures must be examined individually if the principle is to be maintained. Disclosures found to be in breach of the section do not obtain cover by being interwoven, whether intentionally or unintentionally interwoven, with expressions of general concern, which may legitimately be made by a juror. They do not obtain cover by the addition of favourable comments about how the jury functioned, as some of the disclosures in this case may have done. Indeed, disclosures incorporating favourable comment about other jurors could constitute a breach.

53. In my judgment, the disclosure of the 10-2 vote was a clear breach of section 8(1). It was a breach as disclosing a vote. Moreover, it revealed the opinions expressed by 10 members of the jury, at an early stage of a long deliberation. The reference to “no going back” also revealed a firm intention on the part of those 10 members not to change their minds, a revelation of the opinions they held.
54. The paragraph dealing with common sense also constituted a breach. It was disclosed that the majority who convicted used a “despicable enemy of correct and logical thinking”. That was the foreman’s assessment of the opinions of and statements expressed by the majority members and he disclosed them by making those comments. The majority members were, in the opinion of the foreman, guilty of incorrect and illogical thinking, an accusation against them, combined with a disclosure of, their opinions.
55. It is disclosed that the majority members used that “wonderfully persuasive device, common sense”. That is a disclosure of their approach to the evidence, which necessarily was based on statements they had made or opinions they had expressed during the deliberations. If the foreman’s assessment of their opinions was incorrect, it may add to the wrong done to them, but that is not material; the mischief is in the disclosure of the deliberations. It is not necessary to prove that the accusations made against fellow jurors were true.
56. The assumption is made in the foreman’s disclosure that common sense is the enemy of correct thinking, and therefore of justice. That assumption can of course be questioned; common sense is generally perceived to be valuable and does not inevitably lead to the acceptance of expert medical evidence. Debate of the merits of common sense is not, however, in point for present purposes. What is relevant is that the disclosures reveal the approach of this jury to the evidence in this case; reliance on common sense and not correct and logical thinking. Whether or not that is a disclosure offensive to the majority members need not be decided; it was a disclosure of their approach, as assessed by the foreman, thereby revealing their opinions. It offended against the secrecy of the jury room, as that concept is viewed in the authorities. The foreman should not have disclosed the approach to the evidence of other jurors. What may be legitimate debate in the course of deliberations should not be revealed outside.
57. Read alone, the disclosures complained of by the Attorney General stated at paragraph 8(b) and (c) of this judgment were general comments on the strength of the evidence for the prosecution. The first defendant, though making the comments, also stated that he did not agree with the conviction. That creates an obscurity such that I

am not prepared to hold that either statement amounted to a disclosure of opinion or statement amounting to a breach of section 8.

58. The other disclosures analysed crossed the line between general comment on the reliability of expert evidence (“many expert witnesses vouchsafe that the literature on shaken baby syndrome is contentious and far from complete”) and disclosures of the deliberations of this particular jury in this particular case. They constituted a breach of section 8 of the 1981 Act.

Mr Justice Sweeney:

59. I agree.