

WB on jurors being influenced by media coverage

## Hung jury retrials would cause ‘huge’ problems

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RUNNING retrials in the event of a hung jury would cause ‘huge’ problems for a small jurisdiction like Jersey because of court staffing levels and the publicity of cases, the Bailiff has said in response to proposed changes to criminal procedures.

<https://jerseyeveningpost.com/news/2018/02/07/hung-jury-retrials-would-cause-huge-problems/>

Home Affairs Minister Kristina Moore has proposed overhauling the system – including preventing rapists and child abusers from cross-examining their victims in court.

Another section of the legislation would give prosecutors the ability to bring about a retrial in the event of a hung jury.

Last month, States Members unanimously backed the proposals in principle, which are being examined in detail by Scrutiny.

And during a Scrutiny panel hearing, the Bailiff, Sir William Bailhache, said that while changes to the criminal procedures law were long overdue, he could foresee some problems with regards to holding retrials.

He said the number of Assize trials held in the Royal Court had shot up dramatically in the last two years and that **media coverage of trials would make it difficult to swear in new jurors who did not have prior knowledge of the case and the evidence they would hear.**

Sir William told the panel: ‘The problem for a small jurisdiction would be quite huge if we had retrials. What we are seeing is more people have been pleading not guilty and that has continued through 2017.

‘The consequence of an onset of retrials is the whole system would start creaking. We can’t run more than one jury trial at a time at the moment – that is probably a matter of resources.

‘It is not to say it is impossible, but we would need to have more employees to run more trials.

*Advertising*

‘The second practical issue at the moment is where the trials take place. We can’t really have an Assize trial anywhere other than the Royal Court.’

And Sir William said that the requirement for the jury to listen to the evidence impartially could be compromised in the event of a retrial due to coverage of the case.

‘The trouble is we don’t know what the result is until we receive it,’ he said. ‘If we were to say that the media can’t report any trial until the end, that would pose problems.’

‘If we assume there is going to be media publicity of a trial as it goes ahead, then what are the choices if we go to a retrial?’

Sir William suggested that possible solutions would be to ‘grill all members of the jury’ to find out what they knew about the case or to delay the trial until ‘such a period of time that people had forgotten’ about it. Neither of these were suitable choices, he said.

#### DW COMMENT

Sir William is just plain wrong, when he says, according to the report above: "media coverage of trials would make it difficult to swear in new jurors who did not have prior knowledge of the case and the evidence they would hear"

It is established in the UK, and that judicial opinion has been relied on in Jersey, that jurors are able to distinguish what they have read or heard in the media from the evidence they have heard in court.

Take a look at Attorney General v Aubin [2009] J.R.C. 035A

Well. don't, as it is behind a pay wall now. But what follows is the gist, and it matters because it appears that our learned friend the current Bailiff is misleading the Scrutiny Panel.

What Judge Pitchers said in his judgement was that there was no danger to the criminal prosecutions going forward in the courts from the publicity surrounding Operation Rectangle, however lurid that may have been.

Pitchers said that the defence lawyer had argued: that the idea of long term widespread torture and murder is so entrenched in the consciousness of potential jurors that it cannot be eradicated by any direction from the trial judge. The advocate argues, said Pitchers, that jurors will either be convinced already that anyone charged must be guilty or they will feel that after this long and expensive inquiry someone must pay.

But Pitchers DID NOT BUY THIS ARGUMENT and Sir William should know this. Instead he (Pitchers) cited the case of Abu Hamza in the UK, He said: "I approached this case (the Aubin sex abuse case) in the same way as the Court of Appeal did in the case of Abu Hamza than whom no one could have had worse personal publicity."

The gist of what the Court of Appeal said is that jurors can distinguish between

what the media tell them and what is going on in the court in front of them and they know not to take at face value what appears in the media, they know that their job is to find out what the truth is.

And Pitchers concluded: “[For all of these reasons] I do not find that the publicity in this case was such as to prevent any of these defendants receiving a fair trial.”

So Sir William's statement to Scrutiny, as reported here, does not stack up