

Using personal bias in pro bono criminal appeals

It is a largely undisputed fact that since the legal aid cuts in 2012, pro bono work has papered over many cracks in the criminal defence and appeal system. Pro bono work is therefore vital for those appealing their conviction, and correspondingly provides a vehicle for law students to obtain invaluable experience of real-life cases. For the average law student, pro bono opportunities in the final LLB stages may be their first encounter with the stark realities of criminal law. The nature of criminal cases, particularly those involving violence or loss of life, can provoke strong reactions in those involved, particularly if there is some sort of personal connection with an aspect of the case. How law students recognise and use these emotional reactions undoubtedly will shape the way in which they approach the case, the analysis of the facts and circumstances, the overall experience of working on a real-life case, and subsequently the way in which their professional identity develops. Not to mention, of course, the quality of legal advice the client will receive, and consequently the potentially life-altering effect it could have on their liberty and freedoms.

An example could be a law student, who was serving in the military and undertaking a degree part time, working on an appeal on technical grounds for the killer of a soldier, targeted simply for serving in the Army, for extremist-related purposes. A perfectly reasonable response would be to simply remove themselves from the project and request a different task. This would be the easiest decision from an emotional standpoint for the law student, and the simplest way to ensure neutrality for the client. In this scenario though, the law student would lose out on invaluable insight into not only the criminal appeal system, but also into themselves and how they operate when faced with significant feelings towards a situation, however emotionally difficult it may be.

The initial reaction from such a law student may be that they approach the case already convinced of the absolute guilt of the appellant, without considered analysis of the facts:

“...success seems doubtful, because of ties with [organisation]...” (Mason, N. (2020), [Extract One], originally written 15 February 2020)

This can potentially cause conflict within a group working collaboratively on the appeal, as there may be group bias convinced of the appellant's innocence. Fitterer (2008) describes the potency of group bias as coming from validation from the 'mutual support from peers.' There are a number of ways the law student with the opposing view could approach this: negatively, it could cause reluctance to contribute and self-ostracization; positively, the group could help the law student see the other side of the argument, and if brave enough, the student could provide an invaluable 'Devil's Advocate' to the group's collective thought. This could break the possibility of overstating the case and ignoring the other side's argument, resulting in a more balanced piece of advice.

The law student in this situation could also try to overcome their bias by utilising analytical methods designed to combat cognitive bias, for example, analysis of competing hypotheses. There arises another issue though; the law student runs the risk of over-compensating for their bias to achieve what they perceive as neutrality. This may not be neutrality at all, but an overcompensation the other way, to the detriment of both the law student's experience and the quality of advice to the client.

Therefore, recognising, and using, personal bias in approaching pro bono criminal appeals is arguably of paramount importance for law students and lawyers alike, to develop their skills and shape their identities as legal professionals.

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REFERENCES

- Fitterer, R. (2008), *Love and Objectivity in Virtue Ethics: Aristotle, Lonergan and Nussbaum on Emotions and Moral Insight*, Toronto, University of Toronto Press. Available at <https://ebookcentral.proquest.com/lib/open/reader.action?docID=4672630> (Accessed 14 April 2020)
- Mason, N. (2020), [Extract One], originally written 15 February 2020