

Private and Confidential.

From Tom Minogue

94 Victoria Terrace,

Dunfermline

Fife

KY12 0LU

Tel: 01383 729869

E-mail: tomminogue@btinternet.com

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Subject: **Survey of Practicing Advocates on Freemasonry in the Judiciary**

Dear

I wrote to you recently regarding the above and due to the large number of calls for further Information about: myself, the background to PE 306, the meaning of "societies such as" the Freemasons, the financing of my survey, and my views generally on Practicing Advocates, I would clarify my position as follows:

Personal Background of Thomas Minogue.

I am a 57-year-old retired businessman, and have lived 55 years of my life in the Dunfermline area. I am from a working class background, left school at 15 with no qualifications and served an engineering apprenticeship in Rosyth Dockyard from where I joined the Merchant Navy for some 3 years. I left sea to marry, worked "on the tools" as a construction worker, then as a supervisor, prior to forming my own engineering company in 1978. I belong to no political party, group or club of any sort, and I am not a practicing member of any religion. I have had many Freemason friends, and my wife of 33 years is from a family with a long Masonic tradition. In the 25 years that my company has existed I have never discriminated against individuals who are Freemasons, but I do not admire the institution of Freemasonry. I have succeeded in business despite the bias that some Freemasons appear to show in favour of their brethren. It is my belief that Freemasonry is the enemy of meritocracy, and has done much damage to the Engineering Industry in Scotland.

Background to Petition 306

The question that I raised in my petition came about as a result of a bad experience I had, involving 2 plain-clothes Police officers who displayed Masonic symbols while searching my business premises under a search warrant issued by a well-known Masonic Sheriff. Prior to my trial on criminal charges connected with the above search, I sought information from my MSP as to what I was entitled to know about the judiciary, and the type of organisations they might belong to. My MSP (A member of the Justice 2 Committee) told me that he knew little about the Judiciary, and that their selection, interests, etc. was something of a secret. Obviously to then have taken my chances in a trial carried out by the same Sheriff, or another Sheriff who may also have been a Freemason was something that I was not prepared to risk. This led to my challenging the court hearing my case regarding the Sheriff's membership of the Freemasons. The resulting petition has been fairly well reported, and its terms, plus a brief presentation made to the Public Petitions Committee can be found on the Scottish Parliament Website under the heading: New Petitions, at column 820. the address for which is as follows:

http://www.scottish.parliament.uk/official_report/ctte/petit-00/pu00-1901.htm

As a layman I found it literally unbelievable that a fair society could countenance a situation whereby any non-Masonic litigant faces the prospect of appearing before a Judge or Sheriff who has promised to keep secret their obligations under a constitution which demands a Mason to prefer a brother Mason to a non-Mason. At the first stage of Freemasonry a secret promise is sworn on oath with blood curdling penalties ending in death for default. All of this reinforced by disorientating and terrifying devices, such as hoods, hangman's noose, daggers pressed against bare breast and so on. A Procurator Fiscal may also be bound by these same Masonic obligations, as might the Police, prosecution witnesses, or indeed everyone concerned with the case, except the non-Masonic litigant. Yet the non-Masonic litigant is not entitled to know if the Judge or any members of the prosecution, or opposition are members of this secret society. A society, which also teaches its brethren to communicate by secret means. I thought that this

Proposition was unarguably wrong, and sought confirmation of my opinion. I also suggested measures to address what I thought was an unfair anomaly.

My aims were not entirely selfish, for while I was fortunate enough to eventually receive a discretionary assurance regarding Freemasonry from the Sheriff hearing my case, I sought to make sure that other litigants with similar concerns to mine might find remedy without having to spend the time, and money that I have spent in satisfying my concerns. I was of the view that other non-Freemasons might wish to know if the Judge or Sheriff hearing their case was a Freemason. The obvious concern that I had felt, that my rights might be infringed in contravention of Article 14 of the ECHR, may have been similarly felt by any non-Freemason if being judged by a member of a sect sworn to prefer their own brethren. It also occurred to me that a female litigant might object to being tried by a member of the all-male Masonic orders, or an Islamic litigant might object to being tried by a Sheriff who belonged to the Knights Templar (A Masonic organisation based on the Crusaders). I thought that it might be seen to have a bearing on the objective impartiality of the hearing if the Sheriff's allegiances were known. My perception that this was a matter of some concern to a wide range of people is confirmed by the results of my surveys, including, even the low return received from the Practising Advocates. I am certainly not alone in seeking to know where our judges are coming from.

The Aims of Petition 306.

In my petition I seek to persuade the members of the Scottish Parliament that there is a need for litigants to know if the Judge or Sheriff before whom they appear is a member of a society such as the Freemasons. Also that a register be set up, where the details of membership of fraternal organisations, such as the Freemasons, might be entered by existing Sheriffs and Judges, and that new members entering the judiciary declare similarly, and amend the register if their circumstances change. That this register be available to litigants so that they might consider if there is anything in the interests of a particular Sheriff or Judge that might give rise to an objection or challenge, depending on the circumstances of the case.

I would make it clear that in the criminal case that gave rise to my petition I would have found it objectionable to have been tried by a Masonic Sheriff.

I would also make it clear that I believe that the membership of legal societies such as the Freemasons is entirely a private matter for an individual, unless the individual holds public office.

And finally I would also make it clear that while I personally have no great opinion of the Institution of Freemasonry, I do not confine my petition to that organisation exclusively. I realise that while my own troubles stemmed from the organisation that is Freemasonry, others may find different organisations objectionable. I think that any organisation, brotherhood or society which demands fraternal preferment, or has such a reputation, should require registration by members of the judiciary.

Clarification of "Organisations such as the Freemasons": eg. The Speculative Society.

Since canvassing the 420 Practising Advocates, I have received several specific complaints about an organisation similar to the Freemasons, in particular: The Speculative Society, or the Spec as it is commonly known. This was a society I knew little of, but from what little public information there is available, I have been able to verify by research, most of what the complainers have alleged. This society, it is claimed, operates as a cabal with undue influence on Scottish life, and in particular dominates the higher offices of the legal profession, to the detriment of non-members. The analogy between my experiences in Engineering with Freemasonry, and the complaining Advocates gripes about the Spec is obvious. It is clear that the Spec is an elite, all-male, Edinburgh organisation, (although there were once Speculative Societies in Glasgow and Dundee). Membership at one time was said to be a prerequisite for entry into the College of Justice. By the late 1960's however the Spec had moved with the times, and could only boast to having 50% of the Senators of the College of Justice in its ranks. The 21st Century however dawns with Speculators, enjoying an upturn in fortune, and, by my reckoning (see attachment) accounting for 67% (*¹) of Scottish Law Lords. The actual figure, if my informants are to be believed is higher, but I will confine my comments to what can be

verified. Though I have not carried out a similar exercise on Speculators in other areas of public life, similar disproportionately high success rates for Speculators, are apparent among Sheriffs and Officers of the Faculty of Advocates.

Speculators are selected by invitation only and it is said, must be proposed by 22 members. The active role of ordinary Speculators (max 30 No) would appear to involve attending meetings and preparing, reading and criticising essays in the Old College Building of the University of Edinburgh (by candlelight) with a drinks interlude at a nearby public house. This goes on every Wednesday evening for 3 years, with breaks between sessions, after which the then extraordinary Speculator goes into the world, always welcome to return to the Halls as an elder of the sodality <sic>. As far as I know the Spec is not a Masonic organisation, though there would seem to be parallels between the symbolic playlets of the aproned masons and the essays and reports of the tuxedoed Speculators. There is also a parallel in the jealous way that both organisations have guarded their secrets. In fairness to the Freemasons they are at least making an attempt to open-up their organisations activities if not their membership details and requirements. The same cannot be said for the Spec. I have however been successful in confirming information on the Spec up to 1972 from publicly available historical records, and from this have produced the attached chart showing the extent to which members of the Spec dominate the Scottish Law Lords. I have yet to find any current, ordinary or extraordinary Speculators who openly declare their membership on their C.V.'s. I have looked at the Scottish Courts, House of Lords, and Burke's-Peerage websites, as well as reading the "Who is Who in Scotland", and other publications yet nowhere can I find evidence of any Law Lord declaring membership of the Spec, though other clubs and interests of all manner are detailed.

It seems to me that members of the Judiciary who belong to the all-male and conservative elite of the Spec should be required to register their membership publicly, because its membership and aims are, if not secret, not readily available. The fact is that the chosen few men, mainly from Edinburgh, and often from the University of Edinburgh, via exclusive public schools, enter the Spec, and then go on to achieve spectacular success rates in their chosen field, particularly the Legal profession from where the Spec draws more than half of its members. This is something that the Spec seems happy to attribute to the bonds of brotherhood forged in the years of debating essays, reports, and drinks interludes together with the social events which the society hosts. Whether or not that is so, one thing is for certain. With the evidence available for High Court Judges, either the scouts for potential Speculators are talent-spotters of extraordinary vision or the Spec gives its chosen-few an extraordinary advantage in achieving high legal office. Some Judges are the second and third generation of Speculators. Can expertise in the judiciary be confined to the male offspring of a few Edinburgh families?

The perception of bias if a member of the Spec appears before a Judge who is also a member is obvious, and similar in many respects to my Masonic hypothesis above.

I can imagine how I would feel, if as a Claimant, I were to receive an unfavourable appeal Court ruling in the Court of Session only to find out that the panel of Judges, Prosecuting Counsel, and Respondent were all members of a secretive "debating" society which openly Boasts of its influence in the judicature. I would say that such a scenario would have the appearance of bias (even if in fact there were none). Can this hypothetical scenario be less likely to suggest bias than Lord Hoffman passing around the cucumber sandwiches at his wife's fund raising garden parties for Amnesty when he was hearing the Pinochet case?

I am very puzzled as to the real aims of Speculators, who prepare farcical reports, and essays, which are then debated and voted on. The adjournment for drinks seems to be the major event, followed by the serving of coffee by the Society's servitor in an attempt to sober-up the Speculators. The whole thing sounds great fun, as do the topics of the essays chosen: "*Was Prince Charlie Bonnie?*" by Mr A Lothian, "*Has female emancipation gone too far?*" by Mr D. M. Simpson, and "*Should God retire at 80?*" by Mr D. H. R. Jenkins. The jolly japes of These young, chosen-ones must be a sight to see. I am no prude, and in my time I have enjoyed A drunken carry-on with the best of them, but how this carry-on among Speculators produces The future leaders of Scotland's legal, commercial, and education systems, with a great degree of certainty is a mystery to me. Perhaps their aim is to emulate the most famous character to

be a Speculator, R. L. Stevenson, who described the Spec as the “*Best Thing in Edinburgh*”, and for that particular young Edinburgh Advocate, who could disagree? I suspect however that to a young Advocate who was not invited to join the Spec, “*Best Thing in Edinburgh*” might be viewed as something of a misnomer.

By way of an example, a working class lassie from Lumpnians, who worked hard to qualify for the University of Dundee, before being called to the Faculty in the hope of one day becoming a High Court Judge, might be forgiven for thinking that the Spec is a privileged, male, elite, which unfairly promotes its members by virtue of their place of birth, family, social status, and place of education. And might be forgiven for wondering if her chances of attaining her goal were even calculable. Perhaps I am being overly cynical, because if hereditary privilege were being passed on to a young, conservative, male, Edinburgh, elite, for generations, The Duke of Edinburgh would not associate himself with it. Would he? The Duke, Speculator No 1662, Hon. Member, has a long association with the Spec, and visited As recently as Wednesday 1st March 2000 when he attended a Dinner and Lecture at Old College. The real aims of the Spec are something of a mystery to me, and will be the subject of representations by me to the Justice 2 Committee as part of my petition 306, in the hope that some light can be shed on them.

Clarification of the thrust of my survey letter.

I have been accused of insinuating in my last letter that Practising Advocates were a Masonic cabal, and it has also been claimed that the present Faculty does in fact contain a fair variety of members from diverse demographic and cultural backgrounds. I have never stated or implied that a Masonic cabal exists among the practising members of the Scottish legal system, and the returns from my survey of 420 Practising Advocates certainly shows no pro Masonic bias. My concerns are centred on the members of the Faculty of Advocates of bygone days who are now the Judges and Sheriffs of today. Little is known of the method of selection of Judges and Sheriffs, but the prominence of male, Edinburgh, Speculators among Law Lords certainly does not suggest sexual, demographic, or cultural variety among the Advocates of yester year. It would be nice to see more Law Lords and Ladies from Dundee, Dunfermline, Greenock, Wick Barra, etc. Similarly the many benefits that have been gifted to Scotland men and women of cultures from Ireland, Italy, India, Pakistan, Poland, are immeasurable, and it seems to me, are not represented, as they should be, in the higher offices of the Judiciary.

In 1968 J. A. David Hope. Spec. No 1750 wrote “*But the Society has stood out strongly against the admission of women in its proceedings, 1939, 11-1, and in 1964 refused to even discuss the subject*”. I feel that this statement says everything about the attitude that is prevalent in those ex-Advocates now running Scotland’s Justice system.

The future of Petition 306.

Thankfully and in fairness to Jim Wallace, he has on behalf of the Executive, promised legislation to reform the judicial appointments system. The current position with my petition is that it will be considered by the Justice 2 Committee when that matter comes up on their agenda as part of the Judicial Appointments Review. I hope at that time to be able to be given the opportunity to advise the Committee that there are a significant number of Practising Advocates who support the general aims of my petition, and that is why I would ask you (if you have not already done so) to consider completing and returning my S.A.E., or contact me by writing if you do not still have the S.A.E. I ask this so that my survey will be seen to have caught the interest of a reasonable proportion of all Practising Advocates. The 10% return to date is disappointingly low.

I will in any event endeavour to persuade the Justice 2 Committee that the declaration of non pecuniary interests by Judges and Sheriffs should form part of any new legislation. If similar declarations can also be made to apply to the selectors of the new Judges, it will, hopefully, lead to a system that will give all Advocates a fair chance to become Judges and Sheriffs, and prevent Scotland’s Justice System following other once great Scottish institutions, such as shipbuilding etc. which resisted change and persisted with antiquated practices to the detriment of their reputation.

Hostile Feedback from Practicing Advocates.

The two things that have elicited some unfavourable comments from dissenting Advocates are, the allegation that my petition is financed by a secret society, and that my aims are motivated by spite solely against the Freemasons. Neither of these allegations are true, and dealing with the latter first. My aim was, and remains, to seek honest answers to simple questions. I trust the fact that I have widened my remit to include the Spec as a result of representations from Advocates shows that I am not simply pursuing a vendetta against Freemasons. I am not discouraged however, even by ill informed criticism, as, since petitioning, I have also been: Compared to the Gestapo by the Grand Lodge of Scotland, rebuffed as a lone voice by the Justice Minister, and patronisingly mocked on T. V. by Grand Sovereign Commander 33% , Marcus Humphrey. I welcome fair criticism, but unfair or snide remarks about me, or my petition will only make me more determined to have the points I argue considered, and in order to do this I will continue to finance my petition from my own pocket.

To conclude, I hope that I have answered some of the concerns, which you or your colleagues have brought to my attention. With the benefit of hindsight I can see that to ask you to respond to a simple legal question without the benefit of any personal background was unwise, but I had decided on that course at an early stage in my petition when I still carried the stigma of someone accused of Housebreaking and Theft. I did not want to associate supporters of my petition with that stigma. Since the criminal case against me was resolved in my favour I have instigated formal complaints against the three branches of the Criminal Justice System and this again limits me in the amount of background information I can impart.

I thank those of you who have taken the trouble to make me aware of your concerns, and trust this letter has dealt with them. I would also assure you I will respect all personal queries as confidential and will be only too happy to clarify my position in any way that I can. I would again stress that I am not pursuing an unreasonable vendetta against any organisation, rather I am attempting to clarify the rights of the individual and in so doing perhaps add to the calls that our Judiciary is made more representative, and open. Declarations of membership of fraternal societies by the Judiciary is a prerequisite to confirming that the "Old-Boys" network, which Jim Wallace has referred to in speeches is soon to become a thing of the past.

Thankfully in the devolved Scotland, the Parliamentary machinery of the Public Petitions Committee system gives me the privilege of being able to pursue my aims. I will do this to the best of my ability, and in the course of doing so will hopefully spark an open and serious debate among Practicing Advocates regarding the terms of my petition, and openness in public life in general.

Yours faithfully,

Tom Minogue.

JUDGES OF THE COURT OF SESSION, 2001/2 (Rev 3)
SENATORS OF THE COLLEGE OF JUSTICE

<u>Title</u>	<u>Name</u>	<u>Spec No.</u>	<u>Universities</u>
Lord Cullen, Lord President	William Douglas Cullen	1702	St.A.+Edin
Lord Penrose	George William Penrose	none	
Lord Marnoch	Michael Stewart Rae Bruce	1732	Aberdeen
Lord Hamilton	Arthur Campbell Hamilton	1793	Ox.+Edin
Lord Prosser	William David Prosser	1711	Ox+Edin
Lord Sutherland	Ranald Iain Sutherland	none	
Lord Milligan	James George Milligan	1699	Ox+Edin
Lord Gill, Lord Justice Clerk	The Hon. Lord Gill	none	
Lord Kirkwood	Ian Candlish Kirkwood	none	
Lord Coulsfield	John Taylor Cameron	1698	Ox+Edin
Lord MacLean	Ranald Norman Munro Maclean	1736	Cam+Edin+Yale
Lord Osborne	Kenneth Hilton Osborne	1721	Edin
Lord Abernethy	John Alastair Cameron	1776	Oxon
Lord Johnston	Alan Charles Macpherson Johnston	1760	Camb+Edin
Lord Dawson	Thomas Cordner Dawson	?	
Lord Macfadyen	Donald James Dobbie Macfadyen	none	
Lady Cosgrove	Hazel Josephine Cosgrove	N/A	
Lord Nimmo Smith	William Austin Nimmo Smith	1811	Ox+Edin
Lord Philip	Alexander Morrison Philip	?	
Lord Kingarth	Derek Robert Alexander Emslie	?	
Lord Bonomy	Iain Bonomy	?	
Lord Eassie	Ronald David Mackay	?	
Lord Reed	Robert John Reed	?	
Lord Wheatley	John Francis Wheatley	none	
Lady Paton	Ann Paton	N/A	
Lord Carloway	Colin John MacLean Sutherland	?	
Lord Clarke	Matthew Gerard Clarke	?	
Lord Hardie	Andrew Rutherford Hardie	?	
Lord Mackay of Drumadoon	Donald Sage Mackay	?	
Lord McEwan	Robin Gilmour McEwan	none	
Lord Menzies	Duncan Adam Young Menzies	?	
Lord Drummond Young	James Edward Drummond Young	?	
Lady Smith	Anne Mather Smith	N/A	
<u>Judicial Studies Committee for Scotland</u>			
Lord Ross, Chairman	Donald MacArthur Ross	1642*2	Edin
<u>The Lord Advocates Office.</u>			
The Lord Advocate	Colin Boyd	?	
<u>Scottish Judges in the House of Lords</u>			
Lord Hope	James Arthur David Hope	1750	Camb+Edin
Lord Clyde	James John Clyde	1688	Ox+Edin
Lord Mackay of Clashfern	James Peter Hymers Mackay	1676	
Lord McCluskey	John Herbert McCluskey	none	
Lord Rodger of Earlsferry	Alan Ferguson Rodger	?	
Lord Jauncey of Tullichettle	Charles Elliot Jauncey	1621	Ox+Edin
Lord Keith of Kinkel	Henry Shanks Keith	1605	Ox+Edin
Lord Emslie	George Carlyle Emslie	none	
Lord Cameron of Lochbroom	Kenneth John Cameron	1681	Ox+Edin

? Denotes Lords who were admitted to the Faculty after 1971. Speculator membership data for this period is awaiting confirmation. These Lords, and Ladies, denoted as N/A, have not been used in the calculation of %.

* (1) Calculation of % formula: No of Speculators 18, Divide by Judges Total (44 - 17) = 27, x 100, = 66.66, say 67%.

* (2) Listed as a member of the Society in the 1968 Bicentenary Edition "History of The Speculative Society" but noted as resigned in 1953

To summarise: 18 judges are listed as having Spec membership numbers. 12 are not members but this includes 3 who are women and cannot be. 14 were called to the Faculty after 1972 and might be members. So of the 27 male judges that can be checked 2 out of 3 are Speculators. T. Minogue.