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## Judges named in bias appeal

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THE Court of Appeal is to rule on claims that alleged contact between three top judges deprived a man jailed for six years of his right to a fair trial.

The claims are set to make legal history: for the first time, a miscarriage of justice is being blamed on apparent bias in the judiciary. In an unprecedented hearing later this month, the Appeal Court will decide whether to order the disclosure of the judges' telephone records.

Documents filed at the court last week claim that Mr Justice Angus MacDonald, who tried businessman Paul Blanchard for importing Ecstasy at Newcastle Crown Court in 1992, spoke at key points in the case to Mr Justice Mortimer, a Hong Kong Supreme Court judge, against whom Blanchard had waged a 15-year vendetta. They further claim that when Mr Justice Blofeld refused Blanchard leave to appeal last year, he spoke to both Mr Justice MacDonald and Mr Justice Mortimer.

They stress it is impossible to ascertain the content of the judges' alleged conversations. However, if it were verified they took place at all, this alone would

cause 'grave disquiet' at the 'appearance of unfairness'.

As John Barry Mortimer QC, Mr Justice Mortimer defended Blanchard in a fraud case in 1978. After he was jailed for a year, Blanchard accused Mr Mortimer of concealing a conflict of interest. He waged a campaign of complaints to the Bar Council, a submission to the Home Secretary and newspaper articles in England and Hong Kong. He also highlighted debts of £400,000 left when a furnishing firm owned by Mr Justice Mortimer and his wife collapsed.

The advice on appeal lodged with the court by Blanchard's counsel, Diana Ellis, says that, if Mr Justice MacDonald spoke to Mr Justice Mortimer while trying Blanchard's case, he 'would be justified in feeling that he has not had a balanced treatment and consideration... viewed objectively, an unbiased bystander would not feel that justice has been done'.

The basis for the claims are alleged printouts of the judges' telephone bills, said to have been obtained by an inquiry agent. Ms Ellis says it is vital the court authenticate the records.

Blanchard's feud with Mr Justice Mortimer dates back to

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## Three top judges face bias claim in appeal court

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1974, when his York property business crashed. He was charged with trading insolvently, but told his solicitor he was owed money from a deal with Alderman Wilfred Ward, doyen of the local council, and his boss, Wilson Pulleyn, owner of companies which did council work worth millions of pounds.

Defending Blanchard, Mr Mortimer failed to mention Mr Pulleyn and his companies. Months later, Blanchard discovered Mr Mortimer was Pulleyn's nephew and godson. Mr Mortimer was left cash in Mr Pulleyn's will. He admits they went to a Masonic lodge.

By 1991, Blanchard had rebuilt his fortune. That November, Richard Henson, his chauffeur, was arrested in Blanchard's car in possession of Ecstasy tablets and linked with a nearby cache of the drug worth £5,000.

As *The Observer* reported last year, there were irregularities in the police handling of the case, including perjury by Det Con Kenneth Wilkes, the officer in charge. Counsel's grounds of appeal also question two crucial rulings by Mr Justice MacDonald.

It was not for weeks after his arrest that Henson first accused Blanchard of involvement. On 21 January, after making a long statement, Henson's counsel appeared before Mr Justice MacDonald and applied for bail. The judge refused, saying the charges were too serious. But he also took the extraordinary step of telling the barrister to visit Henson in prison, to apologise and reassure him he would receive 'credit' when it came to sentencing if he gave Crown evidence against Blanchard. Henson, despite many serious previous convictions, later got just 27 months.

Without Henson, there was no case against Blanchard. At the trial, Ms Ellis argued his evidence should be excluded because of the inducement he had been offered. Mr Justice MacDonald questioned her account of the bail hearing, saying it was not possible — as she claimed — that Det Con Wilkes had been present: this would have been 'im-

proper'. It was then that Henson's counsel had to tell the judge that he had himself presided, and Det Con Wilkes had been present.

Mr Justice MacDonald refused to rule out Henson's evidence, and to discharge himself from the case, saying: 'It is my duty to carry on hearing the case, and to take on my own shoulders the consequences of anything I did which may have had an effect.'

In February last year, Mr Justice Blofeld, as the single judge 'filter' considering whether to grant leave to appeal from the papers, rejected arguments that these rulings were wrong. But when Blanchard received the refusal signed by Mr Justice Blofeld, he noticed the instruction 'see 89/6687/W3' — the court file number of his previous property case — had been written on the top. The court registrar confirmed the two cases had, inexplicably, been filed together.

The alleged computer records claim Mr Justice MacDonald telephoned Mr Justice Mortimer on the day Blanchard pleaded not guilty before another judge; on the first day of the trial; on the day he refused to discharge himself or Henson; when Blanchard was convicted and when his son sent the judge a recorded delivery letter. They also claim he telephoned Mr Justice Blofeld on the day before the judge refused leave, and on the following day, when he did so. The agent's records claim Mr Justice Blofeld telephoned Mr Justice MacDonald and Mr Justice Mortimer when he refused leave.

Ms Ellis's document says: 'The information... discloses no other telephone calls made between the respective numbers during the relevant period.'

Last week Mr Justice Blofeld and Mr Justice MacDonald refused to comment, saying the matter was *sub judice*. Mr Justice MacDonald said he had been 'told to say nothing'. Mr Justice Mortimer said he knew Mr Justice MacDonald, but could not remember when he last spoke to him. He said he did not know Mr Justice Blofeld and was unaware Blanchard was in prison.