



Hon. Mr. Justice David Waksman

High Court Judge, King's Bench Division of England and Wales

by Ralph C. Thomas III



Ralph C. Thomas III is Senior Counsel for Government Contracts Law in the Washington, DC office of Whiteford, Taylor & Preston LLP. He is the immediate past chair of the FBA's Government Contracts Section for which he received the "Outstanding Leader Award". Moreover, he was named "2025 Lawyer of the Year" in the Government Contracts category by the D.C. Bar. He has been a UK Solicitor since 2009 and is an active member of the UK's Procurement Lawyers Association.

Paying close attention to the significant procurement legislative activity during February 2025 was High Court Judge Sir David Waksman (Mr. Justice Waksman). This month would dramatically shake up the procurement systems of two major countries across two continents. One country was the United States, where its government contracts lawyers were thrown off balance with what was just the beginning of a substantial overhaul of its procurement system by the new administration through a series of Presidential Executive Orders that would be soon followed by proposed revolutionary revisions to its Federal Acquisition Regulation (FAR). The FAR had been the "bible" of the U.S. federal procurement system for decades.

At the same time, in the United Kingdom, the new Procurement Act of 2023 (the Act), despite the year in its title name, had just been brought into force on Feb. 24, 2025. Its purpose is to consolidate all the various existing procurement regulations in the country into a single framework so that the contracting authorities and contractors can navigate the procurement process better. However, the Act also creates more transparency in the system, which some procurement pundits believe will result in increased legal challenges by dissatisfied bidders. The Act applies to all procurements which commence on or after Feb. 24, 2025; for earlier procurements, the previous law continues to apply.

Many procurement challenges in the last few years ended up before Mr. Justice Waksman. His position is like that of a federal district judge in the United States, as there is an appellate court above the High Court, known as the Court of Appeal, and above that is the UK Supreme Court.

Most importantly, Mr. Justice Waksman was from January 2024 until January 2026 also judge-in-charge of the Technology and Construction Court (TCC), which is a part of the High Court of England and Wales. It is a specialist court which hears claims relating to all aspects of construction and technology but also all procurement challenges, whether concerned with "bricks and mortar" or otherwise.



In other words, any dispute concerning the making of a public procurement will be dealt with by the TCC, where the claim is made under the Act or its predecessor legislation. By way of example, Mr. Justice Waksman has dealt with procurement challenges concerning contracts for the supply of medical products during the COVID-19 pandemic, educational management software for public schools, local transport infrastructure, national mobile phone emergency coverage, the operation of the National Lottery, the provision of publicly funded legal services, and the provision of domestic and hospital waste disposal services.

Mr. Justice Waksman's views regarding the Act had already been highly sought out in various public procurement circles. For example, he was a keynote speaker before the UK's Procurement Lawyers Association's Annual Dinner in November 2024, during which he gave remarks about the Act. The very next day, he gave remarks at the Annual White Paper Conference, where his topic was entitled, "Where is the certainty under the Procurement Act at this stage, and what will likely require clarification from the Courts?" Both are major annual events for public procurement (government contracts) lawyers and contracting officials in England and Wales.

About Mr. Justice Waksman

Mr. Justice Waksman was educated at a grammar school in Newcastle, a city in northeast England. After that, he attended the University of Manchester, where he received his LLB degree. This is an undergraduate 3-year degree which is the qualifying law degree for England and Wales. Mr. Justice Waksman then earned a bachelor of civil law (BCL), an internationally renowned masters-level law degree, at St. Catherine's College, Oxford University. This gave him the opportunity to interact and share ideas with other graduate students from around the world, including from North America. It also enabled him to study in depth both U.S. constitutional and antitrust law as part of comparative law courses in human rights and competition law, as well as to attend classes given by eminent philosophers of law, including the late American jurist Professor Ronald Dworkin, whose seminal work *Taking Rights Seriously* had recently been published.

In 1982, Mr. Justice Waksman was “called to the Bar” at Middle Temple, one of the four Inns of the Court of England, each of which is entitled to call their own members to the Bar. (Middle Temple is known for its prestigious Call ceremonies.) Being “called to the Bar” is similar to America’s tradition of admitting candidates into the state bars, but with a bit more pomp and circumstance. He is now a senior official of Middle Temple, known as a “bencher,” as he is of another Inn of Court, called Lincolns Inn.

Mr. Justice Waksman practiced as a commercial lawyer from Fountain Court Chambers, otherwise known as part of the “magic circle” of the Commercial Bar in England. In 2002, he “took silk,” meaning that he was appointed queen’s counsel (QC), now king’s counsel (KC). Being appointed as queen’s/king’s counsel is an office recognized by English courts and affords the privilege of sitting within the inner Bar of court, where they wear “silk” gowns of a particular design. During this time, he often met commercial lawyers from the United States through the North American Committee of the Commercial Bar Association.

From 2001-2007, Mr. Justice Waksman also served as a recorder, the name given to a type of part-time judge, sitting mainly in criminal cases. In 2005, he became a deputy high court judge, and in 2007, he left his practice to become a full-time specialist senior circuit judge in Manchester. As such, he presided over cases in specialized areas of the law at High Court level, principally commercial, TCC, Chancery planning, and administrative law. He eventually became the judge in charge of the Manchester and Liverpool local commercial courts, although he often sat in the High Court in London as well.

In 2015, Mr. Justice Waksman left Manchester to become the judge in charge of the London Mercantile Court, which sits in the Rolls Building, where other specialist courts sit. He dealt there with substantial High Court commercial cases, albeit of lesser value than those heard by the full Commercial Court. The London

Mercantile Court is now known as the London Circuit Commercial Courts and handles all kinds of business disputes. At this time, he was also the principal liaison judge for circuit commercial courts across England and Wales.

On Oct. 1, 2018, Mr. Justice Waksman was appointed to his current position as a judge of the High Court. Apart from sitting in the TCC, he now sits primarily in the Commercial Court, a specialised court that handles complex high-value cases involving commercial contracts, business documents, insurance and reinsurance matters, financial instruments, import, export and transport of goods, London arbitration proceedings, and appeals against arbitral awards.

A significant proportion of the work undertaken by the TCC and the Commercial Courts is international in nature, often arising from the fact that the relevant contracts have exclusive jurisdiction clauses in favour of the London High Court, even where neither party is located or domiciled there.

He also hears cases in the Planning and Administrative Courts from time to time. He was also appointed to sit as a chairman of the Competition Appeal Tribunal, which is a specialized adjudicative body that addresses competition law issues, including mergers, anti-competitive practices, and market regulation in the UK.

Notable Case

Mr. Justice Waksman is probably best known for his ruling in the *Eurasian Natural Resources Corporation Ltd v. Director of the Serious Fraud Office*, which consisted of three trials. The third is still waiting to be heard this year. The case involves an international mining company, the Eurasian Natural Resources Corporation (ENRC), which brought action against an international law firm and the UK Government’s Serious Fraud Office (SFO) in relation to their conduct prior to a criminal investigation commenced by the SFO in 2013. The investigation was in relation to alleged criminal conduct principally in the Democratic Republic of the Congo and ended in 2023 with no charges being filed.

ENRC claimed that its company suffered both reputational damage and millions of pounds in monetary damage due to the fact that the lawyer handling the in-

From 2001-2007, Mr. Justice Waksman also served as a recorder, the name given to a type of part-time judge, sitting mainly in criminal cases. In 2005, he became a deputy high court judge, and in 2007, he left his practice to become a full-time specialist senior circuit judge in Manchester. As such, he presided over cases in specialized areas of the law at High Court level, principally commercial, TCC, Chancery planning, and administrative law. He eventually became the judge in charge of the Manchester and Liverpool local commercial courts, although he often sat in the High Court in London as well.



Author Ralph Thomas with Mr. Justice David Waksman.

investigation improperly disclosed confidential information to the SFO and that the SFO induced the lawyer to improperly disclose even more confidential information.

Mr. Justice Waksman agreed with ENRC. In a 185-page judgment, the High Court judge ruled that the criminal investigation would not have been initiated but for the misconduct of the SFO, which he described as a “vital participant in the overall wrongdoing” and that it “actively encouraged” the lawyer handling the investigation to make improper disclosures both to the SFO and the press.

Other Judicial Contributions

Mr. Justice Waksman’s other contributions to the legal field are too numerous to name in full or to give sufficient credit. To name a few, he has worked on many of the recent innovations in the UK courts relating to expert witnesses, particularly concurrent expert evidence (otherwise known as “hot tubbing”) whereby both the plaintiff’s and the defendant’s expert witnesses testify at the same time. He also presided recently over collective proceedings brought against British Telecommunications, the main landline telecoms provider in the UK, alleging abuse of dominant position under UK Competition Law. He held that there was no such abuse affecting a very large class of landline users in terms of the prices they paid.

Additionally, he recently refused to order an injunction to stop a party to proceedings from moving forward with subpoenas granted to it by a federal court in Arkansas, pursuant to Section 1782 of Title 28 of the U.S. Code. Considerations of judicial comity played a role in his decision. Primarily however, he found that there was nothing “vexatious and oppressive” in a party resorting to available pretrial evidence-gathering procedures in the United States designed to assist proceedings in other jurisdictions.

Further, he was involved in setting up court processes to deal with the increasing amounts of litigation concerned with the building safety of high-rise public

dwellings following the June 2017 tragic fire at Grenfell Tower in London and the instruction of the Building Safety Act 2022.

Mr. Justice Waksman has also been a speaker at conferences involving artificial intelligence, the digital age, construction, commercial law, and acting as a moot court judge at law school events. In addition, he has given his own perspectives on the art (and science) of judging cases.

Moreover, he has been involved extensively in teaching other judges as part of their continuing education obligations. In that context, he was the courses director of a program designed to maintain and improve judicial skills in the area of specialist cases, including commercial, TCC, and Chancery. He has also assisted judges from various other jurisdictions with their own training and development. In particular, he helped the Zambian senior judiciary to establish its own judicial training college.

Motivation and Support

Mr. Justice Waksman attributes his motivation for being drawn into the judicial sphere partly from enjoying this work when sitting part-time but also from a desire to play his part in the efficient—and fair—administration of justice. He maintains that he is fortunate in being part of an enthusiastic and dedicated cadre of specialist judges who all work together to fulfill their various judicial roles, supported by a highly motivated senior and appellate judiciary.

The FAR and the Procurement Act of 2023

During what is called the “Revolutionary Overhaul of the FAR” in the United States, which includes significant changes by Presidential Executive Orders, there have already been numerous court challenges to the legality of many of those changes involving courts at every level.

With the future legal challenges to come, government contract lawyers will have to be knowledgeable of the rationale for the traditional procurement laws

and regulations while possessing a logical reasoning approach in persuading the courts as to why the proposed changes to those regulations, where applicable, are either invalid or irrational.

Although the litigation challenges have just begun regarding the UK's Procurement Act, Mr. Justice Waksman has already shown that he possesses the intellect, specialized knowledge and experience, personal integ-

ity, and judicial maturity to rule on whatever factual scenario under the Act may come before him. From all indications, he will do so with fairness and transparency. If his past rulings are any indication, his decisions under the Act will be written with his special talent for giving clarity, guidance, and direction in his written opinions to the benefit of government contracts (public procurement) lawyers, contract officials, and suppliers alike. ☉

Ethical Responsibilities *continued from page 55*

Endnotes

¹*Cybersecurity Incident*, COMPUT. SEC. RES. CTR., https://csrc.nist.gov/glossary/term/cybersecurity_incident (last visited Jan. 29, 2026).

²H.R. COMM. ON HOMELAND SEC., 119TH CONG. CYBER THREAT SNAPSHOT (2025).

³*Id.*

⁴*Id.*

⁵*See, e.g.*, CYBERSECURITY & INFRASTRUCTURE SEC. AGENCY, CYBERSECURITY ALERTS & ADVISORIES (Jan. 29, 2026), <https://www.cisa.gov/news-events/cybersecurity-advisories>; FED. BUREAU OF INVESTIGATION, THE CYBER THREAT, <https://www.fbi.gov/investigate/cyber> (last visited Feb. 1, 2026); *FBI, HHS Issue Advisory on Cyberthreat Actors Targeting Health Care to Divert Payments* (June 25, 2024), AM. HOSP. ASS'N, <https://www.aha.org/news/headline/2024-06-25-fbi-hhs-issue-advisory-cyber-threat-actors-targeting-health-care-divert-payments>.

⁶CYBERSECURITY & INFRASTRUCTURE SEC. AGENCY, FEDERAL INFORMATION SECURITY MODERNIZATION ACT, <https://www.cisa.gov/topics/cyber-threats-and-advisories/federal-information-security-modernization-act> (last visited Jan. 29, 2026); COMPUT. SEC. RES. CTR., NIST RISK MANAGEMENT FRAMEWORK, <https://csrc.nist.gov/projects/risk-management/fisma-background> (last updated Sept. 10, 2025).

⁷COMPUT. SEC. RES. CTR., *supra*, note 6.

⁸*Is FedRamp Right for You?*, FEDRAMP, <https://www.fedramp.gov/docs/rev5/playbook/csp/authorization/getting-started/> (last visited Jan. 29, 2026).

⁹NAT'L INST. OF STANDARDS & TECH., COMPLIANCE FAQs: FEDERAL INFORMATION PROCESSING STANDARDS (FIPS), <https://www.nist.gov/standardsgov/compliance-faqs-federal-information-processing-standards-fips> (last updated July 3, 2024). A current list may be found at <https://csrc.nist.gov/publications/fips>.

¹⁰NAT'L INST. OF STANDARDS & TECH., NIST SP 800-53 REV. 5, SECURITY AND PRIVACY CONTROLS FOR INFORMATION SYSTEMS AND ORGANIZATIONS (Sep. 2020, updated Dec. 2020), <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r5.pdf> (2020).

¹¹*NIST SP 800-53 Rev. 5 and FedRAMP: A Comprehensive Guide* (Apr. 11, 2025), STANDARDFUSION, <https://www.standardfusion.com/blog/nist-sp-800-53-rev-5-and-fedramp>.

¹²*SOC 2 Compliance: The Definitive Guide*, A-LIGN, <https://www.align.com/resources/soc-2-the-definitive-guide> (last visited Jan. 29, 2026).

¹³Emily Schuckman & Stephanie Oyler, *What is SOC 2? Definition*,

Requirements, and How the Audit Works, A-LIGN, <https://www.align.com/articles/what-is-soc-2-complete-guide> (last visited Jan. 29, 2026).

¹⁴MODEL RULES OF PRO. CONDUCT r. 1.1 (A.B.A. 1983).

¹⁵MODEL RULES OF PRO. CONDUCT r. 1.6 (A.B.A. 1983).

¹⁶MODEL RULES OF PRO. CONDUCT r. 1.6 cmt. (A.B.A. 1983).

¹⁷ABA Comm. on Ethics & Pro. Resp., Formal Op. 483, at 5 (2018).