

**Cifgreen** Environmental activism

This article is more than 14 years old

## Why did Ratcliffe defence fail where Kingsnorth Six succeeded?

Mike Schwarz

Two separate trials of environmental activists that both targeted coal-fired power stations produced different results. Lawyer Mike Schwarz examines the reasons why

Thu 16 Dec 2010 12.37 GMT



📷 The Ratcliffe-on-Soar power station, Nottinghamshire. This week campaigners who planned to shut down the coal-fired power station were convicted of conspiracy to commit aggravated trespass. Photograph: David Sillitoe/Guardian

**CO<sub>2</sub> released by coal-fired power stations** is the single most damaging contributor to climate change. So it is perhaps little wonder that concerned citizens have sought to close them down. However, the juries delivering their verdicts on their actions have come to conflicting conclusions.

This week **20 environmentalists were convicted at Nottingham crown court for planning to close down Ratcliffe power station**. In autumn 2008, **six Greenpeace campaigners were acquitted at Maidstone crown court for actually occupying Kingsnorth power station**.

Why the disparity? Although both sets of defendants sought to stop CO<sub>2</sub> emissions from the coal-fired power stations, the charges they faced and the legal defences were different.

The Nottingham defendants were charged with conspiracy to commit aggravated trespass, and argued that they acted through "necessity" to prevent death and serious injury caused by CO<sub>2</sub> emissions and climate change.

Their own powerful testimony was supported by leading professors on epidemiology and population health who confirmed that climate change is currently contributing towards an additional 150,000 deaths each year around the world. It will only get worse.

The Greenpeace defendants were tried for criminal damage to the power station's chimney and argued that they had "lawful excuse" for their actions: they sought to protect property around the world threatened by climate change. Again, their vivid accounts of melting ice caps, expanding oceans and deforestation - and resulting erratic weather, flooding and rising sea levels - were supported by expert evidence.

[Among those who testified was James Hansen](#), one of the world's leading climate scientists who, in evidence to the US Congress in the 1980s, first drew attention to man-made climate change.

However, in both cases the jury had to consider one simple proposition: did the defendants believe their action was imperative, urgent and reasonable - in the light, among other things, of politicians' inactivity and nature's "tipping points" (the points of no return when runaway climate change will be beyond our control).

Given the inviolability of the jury's deliberations, we can only speculate on their decision making. The Nottingham jury may have been influenced by the crown's argument that instead of taking "direct action", the defendants should have spent their money paying a celebrity to front a campaign - or should have [installed a biodegradable toilet in their homes](#), as the prosecutor confided she had. They might have derived some advantage - not immediately obvious to others in court - from the calculator they asked to take with them to assist their deliberations on the defendants' guilt or innocence.

More seriously, one might speculate what has happened in the two years since the Maidstone verdict in 2008? In the science world, "[climategate](#)" has been exploited by "contrarians" to reduce the proportion of the population who are concerned about climate change, even [as mean world temperatures rise](#). Internationally, the [Copenhagen](#) and [Cancún summits](#) have failed to provide legally binding and effective agreements to tackle climate change. In the UK, the focus is on the reduction of the deficit through pinching financial short-termism. In an austere new world, the public may be less receptive to arguments of morality and altruism which recognise our responsibility to the world community and future generations.

The two juries' verdicts of course have no binding effect in future cases, but one ruling from the Nottingham case does. The crown tried, at a pre-trial hearing, to prevent the Nottingham jury even hearing the defendants' case.

On 21 May 2010 a high court judge rejected that argument, saying that "the circumstances in which a court will withdraw a defence from the jury will be very rare indeed". This may be the legacy of the Nottingham defendants.

● Mike Schwarz is a partner in the [Bindmans law firm](#) and co-author of [The Law of Public Order and Protest](#)

## More on this story



**Ratcliffe activists found guilty of coal station plot**

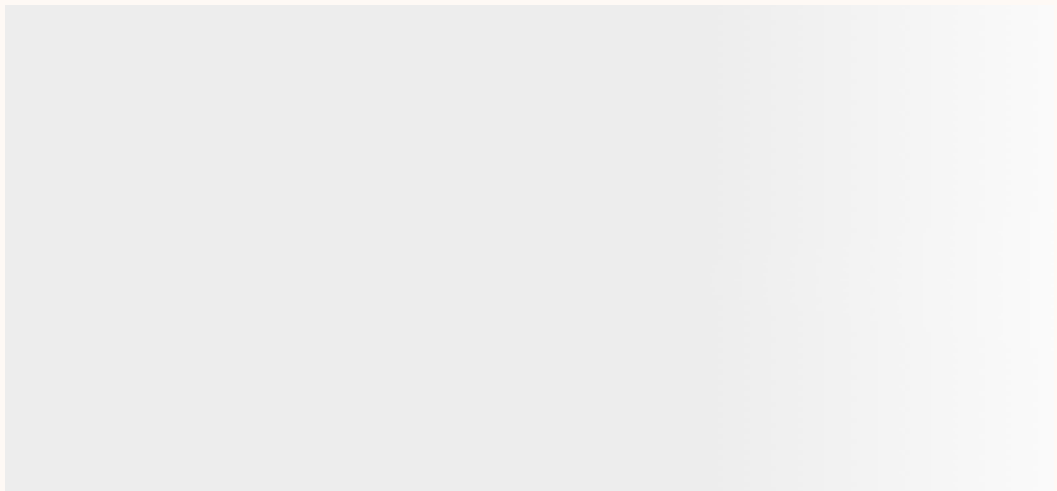
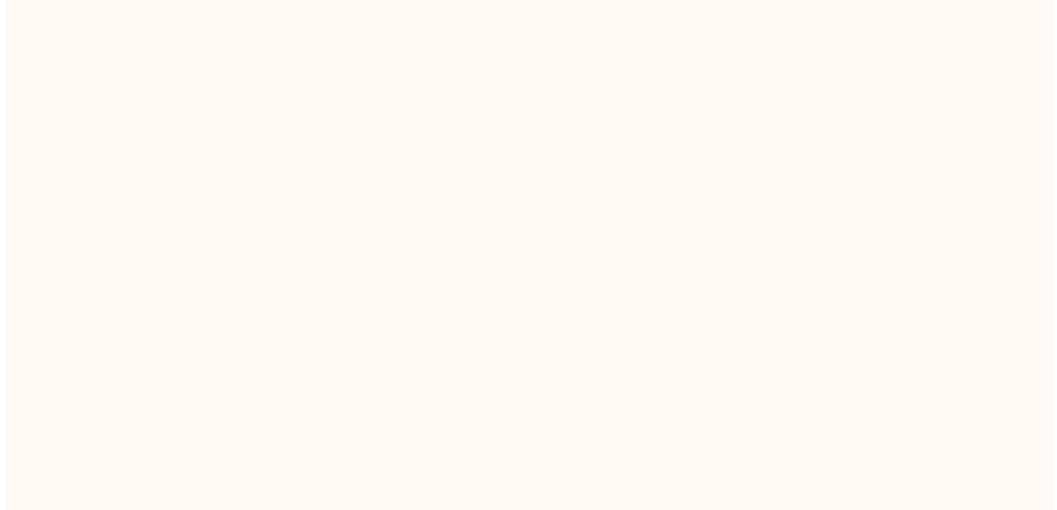
14 Dec 2010 | ...

**Ratcliffe coal protesters spared jail sentences**

5 Jan 2011 | ...

**▲ The climate movement is in desperate need of renewal**

5 Jan 2011 | ...



**Most viewed**