

Remarks on Public Perceptions About the Administration of Justice

Link BYFIELD*

I have been asked how we in the media see our role in the justice system, and what I believe the public perceives that role to be.

Little can be said about the public's perception of the role of the news media in the justice system, because I don't think any such perception exists. By this I mean that (wisely or not) people usually take court reports in newspapers and on television at face value. Unlike in politics or in social questions, the media are not often accused of grinding their own axe in their coverage of trials. It is the mark of a good window that one does not think about the glass.

As for what I believe the media role in justice to be, I start getting nervous when anyone starts conscripting our business into someone else's business. Neither the public in general nor news media in particular are in any useful sense part of the "administration of Justice". We in the media are simply a surrogate for those members of the inexpert public who would attend in person if they could. In that sense, we are more reliably seen as an encumbrance to the system, albeit one that serves a necessary purpose in a free society.

News reporters who cover courts are not legal professionals; in fact, there is a justified bias within our trade that good lawyers make lousy journalists. For example, a few years ago, we had a young reporter at Alberta Report who was so good at covering courts that he decided to work freelance while he studied law. And the better he got at law, the worse he got at journalism.

The reason is very simple. Within the administration of justice, there are professional people who are, if you like, the producers; and there are the inexpert public — society — who are the consumers. We in the media serve the consumers.

It is not the job of the general news media to inform the professional technicians. They have specialized media of their own. Our task is to inform the wider, nonprofessional audience, and to do that, we have to think like they do. Our values and sense of significance must generally reflect theirs. Of course, it is helpful for any reporter to know the rudiments of legal process, history and terminology, but his usefulness to his reader begins to fail at precisely the moment he looks upon himself as a legal professional; that is, when he starts to see himself as a part of the administrative system.

* Editor and Publisher, Alberta Report, Edmonton, Alberta.

That in a few words is what I believe the media role to be in the administration of justice — no role at all, other than as a sometimes troublesome, sometimes perceptive but always inexpert onlooker. And while there are always exceptions, I believe we do our part well enough to satisfy the public. If this weren't so — if the public had some other expectation of us — I would expect to see all kinds of complaints about how the news media are not telling us what's going on. If anything, however, such public complaints as do arise go in the opposite direction — that we go overboard on particular trials, and provide far more graphic accounts of depravity than some in the audience feel comfortable with — that we are too "sensationalist". But this recurrent complaint is simply part of our business — always was and always will be — and each news medium has to operate within the tolerance of its own audience.

This is not to say that the public would not like more information. It is only to say that the kind of information they lack is not denied them by the press. It's denied by the Canadian and English legal tradition, or by relatively recent statutes.

For example, it is widely understood among the more attentive public that media get in trouble for publishing the criminal record of an accused in advance of a verdict, or for leaking evidence in advance of a trial, or for publishing the names of young offenders, children in care of the state, or victims of sexual crimes. The public knows this because we tell them — the words "cannot be identified under provisions of the *Young Offenders Act*" are now commonplace, and it is safe to say that the public doesn't like it.

Most of us in the media — myself included — wish our justice system held greater faith in the intelligence of the public and allowed more open reporting. By contrast, as everyone knows, in the U.S. the "public interest" means "those things the public finds interesting" — prior convictions, evidence, rumours, aspersions of character, innuendo — absent malice, anything may be published. Judges here hold that these publications interfere with justice. In fact they are saying (at least by implication) that it's impossible for anyone to get a fair trial in the U.S. which is absurd, of course.

At this point, however, I am heading off topic. And considering that I have nothing more to say about the role of the media in the administration of justice, and the public perception of it, I might as well digress into what I think the public generally finds wrong with the administration of justice. After all, if we in the news media serve as the glass through which the public sees the courts, perhaps we can also serve as a window through which the judiciary can see the public.

What explains the tidal level of public dissatisfaction with the justice system these days is something which I think judges can do very little about. After all, laws do not (I hope) originate with judges, nor are criminal sentences carried out by judges. And it is in these two areas that the public seems most upset. The laws are too lax, and the prisons are too soft. That is the common impression, and it's one I share.

It is worth noting that the abolition of both capital and corporal punishment were not the result of widespread popular agitation and outrage. It is also worth noting that if

put to a referendum today — almost two generations after they fell into general disuse — hanging and lashing would almost certainly be restored for appropriately serious crimes.

It seems to me that most ordinary citizens naturally see true justice as primarily a settling of accounts. That is, they would give greater weight to punishment and public safety than to rehabilitation and re-integration of the criminal. They prefer a system which more readily assumes moral culpability on the part of the perpetrator than our system has come to do over the past 30 years.

In this regard they are ill served by those current political and administrative elites who make our laws and run our prisons and parole system. Among these people there is an inexplicable attitude that "punishing doesn't work." And among the public there persists an attitude that "punishment works a lot better than what we've got," which is a per capita crime rate more than triple what it was when the more severe punishment norms were still in place.

The public senses — and I often get the impression that judges sense this too — that when we deny the reality of moral guilt, we devalue as well the importance of innocence. We may not intend to, but we do. What the experts are trying to do is demoralize law, because like social scientists everywhere, they seem unwilling to recognize the existence and implications of free will. They want a world in which there are only carrots and no sticks, in which there is a minimum of personal responsibility and a maximum of social responsibility. And in this attempt, they have unleashed a surge in criminal behaviour never before experienced in this country.

There is very little that the judicial arm of government can do to correct the mistakes of the legislative and executive arms. All the same, it helps to know what the mistakes are, and that's why I have gone off topic to describe them. People are longing for a return to innocence, and contrary to modern cynics, such a thing as innocence really does exist and really can be protected. It is protected by serious punishment of the guilty, something we seem to have lost the moral courage to do.

