

The Interplay Between Individual Citizens and the Courts: How Decisions get Played out in the Press*

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As I was preparing for our presentation, I came across the following story on the Internet:

“Murder Suspect to be tried by Media”

LOS ANGELES—Overwhelmed by its ever-growing criminal caseload, the Los Angeles District Attorney’s office announced last week that William Craig, arrested last week in connection with a string of brutal Bel Air stabbings, will be tried by the media.

“More than 150,000 cases come through this office every year and, despite our best efforts, we are simply not equipped to adequately handle them all,” Los Angeles District attorney Benjamin Dozier said. “That is why we are launching this experimental new program in conjunction with the National Society of Journalism Professionals, in which certain criminal cases will be tried by the media. In these cases, the media will serve not only as judge and jury, but also as executioner.”

According to Dozier, an alliance between the judicial system and the media should prove mutually beneficial. “This partnership makes good sense for both sides. By handing over a percentage of cases, our workload is greatly lightened and by taking these cases, America’s

* Transcription of a speech presented by Stephen Bindman, on October 12, 2001 in Halifax at The Annual Conference sponsored by the *Canadian Institute for the Administration of Justice* entitled “Citizenship and Citizen Participation in the Administration of Justice”.

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journalists will finally get their wish and be able to actually make the news rather than just merely report it.”¹

You will be pleased to know that despite my background, that is not the model that I am advocating for the relationship between the courts and the media. But I do believe that we have a serious problem and it is this. You in the court business—administrators, judges, lawyers—don’t understand journalists and what we do and why, and we in the journalism business don’t understand you and what it is that you do. Don’t get me wrong—I don’t expect us to be buddy-buddy. A little distrust or wariness may be a good thing. But I believe that until we bridge this chasm and develop a better understanding of our respective worlds and adapt our processes accordingly, the quality of the coverage of our courts will suffer and that is to the detriment of both groups.

About five years ago, I spoke to a conference of Ontario judges about the relationship between the media and the courts and the judiciary. I recently dug out my notes from that talk and I thought I would give you an update on where I think things are today.

On the media side, I complained five years ago about the abysmal lack of training of some court reporters. I noted that they know very little about the court system when they are sent down to cover something at the courthouse. They are literally told to sink or swim and when they finally get the hang of the beat, they are off to city hall. With the exception of large newspapers, most news organizations cannot afford the luxury of a full-time court reporter. The reporter who was covering your case today was probably not there for the testimony yesterday and was probably covering a parade the day before. Maybe tomorrow they will be covering a fire.

To be honest, I am not sure that in the past five years we have made much progress in this area. I am fearful that in the newspaper war that we are seeing these days, more and more reporters are being thrown into situations in which they are not comfortable or properly equipped. I still see a lot of very basic errors being committed that frankly wouldn’t, or shouldn’t, happen with a little basic training. For example, there was recently a story following a Supreme Court ruling that began “The Supreme Court has found the Red Cross guilty of negligence for failing to

¹ “Murder Suspect to be Tried by Media”, online: The Onion
http://www.theonion.com/onion3622/murder_suspect.html.

adequately screen blood...” I don’t think it is too much to ask of a reporter to realize that you are found guilty of a crime, not a civil wrong. Then there is my favorite recent story on a ruling by the Alberta Court of Appeal. It said the following in the National Post: “Yesterday’s decision by Madam Justice J. A. Hunt, Madam Justice J. A. Fruman, and Justice J. A. O’Leary...” Did it ever occur to the reporter that it was bizarre that all three of the judges had the same first initials? I think there was a correction the next day. It is a funny example but basic errors like that should not be happening. Part of the fault is on the journalism side. But would it be that big of a deal if you judges actually signed your judgments with your full name?

Justice Kennedy mentioned a project that the deans are involved in and that CIAJ is co-sponsoring. It is a day-long course for journalists that will involve local lawyers, judges and journalists dealing with media issues. We are piloting it in Prince Edward Island at the end of November. If it is successful, we hope to take it on the road across the country and we may be knocking on your door to get involved.

Five years ago I also lamented how little judges understand about the media and their requirements and needs. I am pleased that there have been some positive developments in this area. Many courts have set up court-media working groups to discuss in an off-the-record, unthreatening environment, issues of concern to both members of the media and the courts. Dean is on the one here in Nova Scotia. The Supreme Court has had a similar committee for many years and it has proved to be a great utility and some of the best meals that I have ever had.

Similarly, many courts have a media liaison person who serves as the one point of contact for the media and it can help reporters navigate their way through the system. Contrary to popular belief among some people, when reporters phone the court, they are not necessarily looking for a quote: often they just need help. They need to know when and where a case is being heard, when a ruling is expected, what the next judicial step is, etc. Given their lack of training, it would be of great use if there were a person available at the court to help with “this means this... that means that” or to help the reporter walk through a judgment. You might say, is that really the court’s business? Shouldn’t the media be training their people properly? The fact is, the media are not doing it and in this economic climate, are not likely to. I guess the choice is—no one helps the reporters or the court does.

There is also a very interesting unofficial program in Manitoba. About a year ago, Chief Justice Scott and Associate Chief Justice Oliphant spent a day in a TV newsroom and they watched the entire process of a TV newscast being put together. I think they also spent some time in a newspaper watching how the newspaper is put together; they learned a lot about that as well. I would applaud those efforts of trying to try to understand each other a little better.

A few years ago Justice L'Heureux-Dubé said, "If we don't help, how can we criticize reporters who get the story wrong?" Five years ago, I urged judges to take steps to make their judgments more accessible and readable to the media and the public. For example, I suggested that you make sure, when possible, when they have a written ruling, that they have extra copies of the judgment available so the media can actually read it without having to desperately scribble notes as judges read it aloud in lightning speed. I also urged judges to take a little extra care in writing and re-writing their judgments so that they are not full of legalese and are understandable to more than the lawyers in the case. Again, I think there have been some positive developments, due in large part to the Internet, which I really don't think figured into my remarks five years ago.

Many courts across the country have websites with a host of useful information. For example, judgments of the Supreme Court and many other courts of appeal are now posted on the website at the same time they are released in paper. As a result, there is this remarkable thing happening now. Editorial writers across the country are actually reading judgments before they write about them. It is a remarkable new phenomenon that has been facilitated by the Internet. I remember before the Internet I used to have to fax the headnote to editorial writers, those that were actually smart enough to ask "can I get a copy of it?"

Many courts now give advance notice of when important judgments will be released. I think that is important. If you know the day before an important ruling is coming out, it allows the reporter to at least do some homework. Compare this to the usual situation where a ruling lands on their desk at 4:30, when they are in the middle of three other stories and they have no time to do any background work.

Websites are still all new territory for the courts. I would respectfully suggest that there is a lot more that can be done. I don't think that we have even started to harness the power of the Internet as a powerful tool to educate people about the courts and help them navigate their way through a system that can be intimidating and daunting. As I

reviewed the Canadian sites this week, I got the impression that most sites were designed for use by lawyers and other justice system participants. There were a lot of schedules of hearings and court rules but what about a virtual tour of individual courthouses so that people know where to go and who does what? How about a virtual courtroom where the roles and responsibilities of all of the players are explained?

I must pay tribute now to former B.C. Chief Justice Allan McEachern who has been a pioneer in the use of the Web to reach the public and the media. He has put on the B.C. courts website a compendium of law and judges, a very readable ABC to the law, courts, judiciary and legal profession, the *Charter of Rights and Freedoms*,² criminal law, evidence and procedure, sentencing and parole. If you haven't seen it, I recommend it to you. He also maintained a Chief Justice's website and responded personally to e-mail queries from the public on a wide range of topics. I understand his site received more than 900,000 visits from computer users and he received 10 to 15 e-mails per week. He also posted periodic comments on judicial matters with intriguing titles such as "A Judge's Life" and the "Old Boy's Club". I understand that Chief Justice Finch is planning to follow in Chief Justice McEachern's footsteps. It is definitely worth looking at.

I understand there are several courses now offered for judges in judgment writing that preach simple good writing and I encourage you to participate in those. In fact, I was on a panel recently with Justice Laskin of the Ontario Court of Appeal and we were both preaching the same thing, which is for judges to write journalism-style—short paragraphs, short sentences, the most important information at the top, etc. We both decided we are going to quit our jobs one day and go into the judgment-writing course business.

Finally, I urged judges five years ago to get out of their courtrooms more often and into their communities, giving speeches about the justice system, what they do, how they do it and to give more interviews with the media about a range of subjects. I cautioned, of course, that there are limits to this and that it has to be a careful exercise in line drawing. I am pleased to say that some people seem to be heeding the advice, led by the Canadian Judicial Council, which in September

² Part I of the *Constitutional Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

1999 published “The Judicial Role in Public Education”. Chief Justice McMurtry in Ontario has organized the Public Legal Education Initiative that will see judges getting out into the community and students and others into the courthouses. I understand also that the National Judicial Institute is contemplating media training for judges so that they don’t put their feet in their mouths.

I know there have been some hiccups along the road—some complaints to the Canadian Judicial Council about judges who have spoken out or given media interviews. I would like to quote from a recent editorial in the *Globe and Mail* to which I could not agree more: “There are growing pains in any new situation, including this new era of openness. The solution is not for judges to retreat into the safety of silence, but simply to consider whether their comments enhance a debate, clarify a position or just criticize colleagues while espousing philosophical biases.”

I think there is a lot more that can be done. As my personal contribution to this process, I wanted to leave you with the thirteen things you should know about journalism and the courts:

1. 99.9 % of journalists are not lawyers and only a slightly lower percentage don’t know the first thing about the law or the way the justice system works;
2. Journalists are not historians and their job is not to be a historian and to accurately record history. As a former boss of mine would say, “We only write the first draft of history.”;
3. Journalists are not court stenographers and their job is not to produce a slimmed-down transcription of the day’s testimony and events that reflect everything that went on in the court that day;
4. Journalists shouldn’t write their stories just for those lawyers, historians and stenographers, they should write them for the public at large;
5. Journalists, while attempting to be fair and accurate, also must make their story relevant and interesting to their readers;
6. Reporters, even or especially in the courtroom, search out the novel, the dramatically abhorrent, the dramatic and yes, even the entertaining;

7. Most often, bad news is better than good news. Conflict and drama sell, and regrettably being first is frequently better than being best. Unfortunately we are seeing that a lot in the current newspaper war;
8. Except for large news organizations who can afford the luxury of a full-time court or justice reporter, there are no full-time court reporters, very few at least;
9. Journalists tend to travel in packs, hence the term “pack journalism”. Like all packs of animals, there tends to be one or two leaders who shape the pack. To a large extent, story angles depend for their depth and prominence on many things but mostly on the choice of who happens to actually cover the case. Radio tends to follow print, for example;
10. Journalists and newspapers have opinions. Some journalists, believe it or not, have very strong opinions about all sorts of things, even about the things they write about and it is inevitable that those opinions, that reporter’s upbringing, their life experience, their race, their gender, their class, will all consciously or unconsciously affect how they view the world and hence, how they report;
11. Most journalists have deadlines, tight deadlines. The paper has to be edited at a certain time. The 6 o’clock news, except during wartime, are on at 6 o’clock regardless of when court gets out or regardless of when the reporter’s finish editing their story;
12. Some journalists have special needs, like television. Television needs pictures and sound. That is a fact of life but it is pretty hard to do in a country where cameras are not allowed in the courtroom. Television will go where there are pictures or people willing to appear on camera and hence, there are people who will figure more prominently in stories;
13. Reporters have editors who play a key role in shaping the final product. Reporters don’t write headlines, editors do. I know you all have problems with a lot of the headlines, but don’t blame the reporter, blame the editor.