

# Improving Media Coverage of the Courts

Dean JOBB<sup>\*</sup>

The title for this session is “How decisions get played out in the press,” part of a wider look at public participation in the justice system. I’d like to read to you from a news report of a high-profile Nova Scotia trial from a few years ago, which highlights some of the problems and challenges that arise in the relationship between the media and the courts:

The headline: “Defence calls nobody: Testimony wraps up abruptly in beating case.”

The opening paragraphs appeared as follows:

“Defence lawyers for the six men accused of beating Darren Watts into a coma outside a Halifax frat house seem sure their clients will walk.

So sure, in fact, they didn’t call any evidence or bring any witnesses forward after prosecutor Craig Botterill closed the Crown’s case yesterday [...].”<sup>1</sup>

This writer knew embarrassingly little about the justice system and its underlying principles, and reached a number of erroneous conclusions about what happened in the courtroom that day. Would the same report have appeared if the journalist understood the right to silence? How about the presumption of innocence? Not to mention this business about the burden being on the Crown to prove guilt, not on accused persons to prove their innocence. These defendants were exercising the well-established legal rights of every citizen. For their trouble, they were portrayed in the press as

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<sup>\*</sup> Staff Reporter, The Halifax Herald; Lecturer, School of Journalism, University of King’s College, Halifax.

<sup>1</sup> *The [Halifax] Daily News* (February 17, 1996) 10.

defiant, even cocky, as they thumbed their nose at the court system and refused to justify their actions.

So what happened as a result of this article? Did defence counsel complain about this twisted portrayal of reality? Did the Crown attorney take the reporter aside and explain the mistakes? Or was it left to the judge to publicly admonish the reporter the next morning for disseminating such nonsense?

The answer, in each case, is no. Nothing happened, other than perhaps the usual complaints about the media's ignorance in the judges' lounge or around the law firm water cooler. This reporter may still be none the wiser, and still criticizing arrogant crooks who refuse to confess to their crimes.

This was not a trial before a jury, which may in part explain why no one thought it necessary to set the record straight. In a jury trial, defence counsel would certainly have sought a mistrial on the strength of such a highly inflammatory report— motion that may well have been granted.

It's unfortunate there was no jury to taint, because reports such as this seriously taint how members of the public perceive the justice system and the motives of the players within it. How are citizens to understand the system, let alone have faith in the rule of law, the presumption of innocence and its other hallmarks, when such distorted and uninformed commentary is left unchallenged and uncorrected?

The media's powerful role in reflecting how the justice system operates is well understood. Few Canadians personally wind up before the courts, and fewer still drop by the local courthouse on a slow day to see what's on the docket. The media is the primary vehicle through which people find out about the justice system, and judges have long recognized this. In a 1989 Supreme Court of Canada ruling, Justice Peter Cory wrote: "Discussion of court cases and constructive criticism of court proceedings is dependent upon the receipt by the public of information as to what transpired in court. Practically speaking, this information can only be obtained from the newspapers or other media."<sup>2</sup>

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<sup>2</sup> *Edmonton Journal v. (Alberta) Attorney General*, [1989] 2 S.C.R. 1326 at 1340.

There is much the media could do to improve coverage. An obvious first step would be to ensure the reporters who cover trials and justice issues, the editors who handle their copy, and the pundits and editorial writers who second-guess judicial decisions all have a solid understanding of the law and how the justice system operates.

My personal experience, however, is typical. As a novice reporter I was assigned to my first case, a major influence-peddling trial involving a Nova Scotia senator, and I received all of five minutes' training on the walk to the courthouse. Unfortunately this is still the norm—often the most junior reporters are assigned to cover the courts, arguably the most complicated and dangerous beat in all of journalism. Don't expect this state of affairs to change anytime soon; the fact that the story about the silent defendants got into print speaks volumes about the legal knowledge of senior editors who vet copy and do the assigning.

Where does this leave players in the justice system who are concerned about the quality and accuracy of what's on the airwaves and the front pages? If public confidence in the justice system is to be fostered, University of Ottawa Law Professor David Paciocco argues, those within the system must do a better job of explaining their actions and how the system works. Lawyers and judges, he says, "have an obligation to explain in understandable terms why the system is the way it is and why we do what we do [...]. We would go a long way towards restoring the credibility of the administration of justice if only we would seek to explain the system to the general public."<sup>3</sup>

Those within the system can continue to grumble about the media's shortcomings, or they can accept Paciocco's challenge and help journalists to convey better information to the public. Some suggestions:

- The courts' business should be treated as if it were also the public's business—which, of course, it is. Judges often complain that their decisions have been reported on or criticized by people who have not read them. The question judges should be asking is, why is this so? Is this due to laziness on the media's part, or because the decision was released late in the day, with no regard for news deadlines or for ensuring it was made available to the media in a timely fashion?

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<sup>3</sup> D. Paciocco, *Getting Away with Murder: The Canadian Criminal Justice System* (Irwin Law, 1999) at 9, 11-12.

All courts should have a protocol for releasing rulings and should provide notice to the media a day or two before any major ruling is released. This would give journalists time to assemble background information and line up legal experts for advice and comment. As well decisions should be released early in the day, so there's ample time for them to be reviewed and understood before the deadline for filing news copy.

- Make an effort to help the media get it right. Does the court have a designated person to handle media inquiries and to field questions if a point of law, or a publication ban, is unclear? I know there are concerns about court officials being forced to interpret rulings, but surely some basic questions or concerns can be dealt with, even on an off-the-record basis. Perhaps a retired or supernumerary judge, who would be comfortable explaining the law, could be assigned to this duty. And is there any reason court officials could not refer reporters to resource persons in the bar or law schools who are experts in a particular field, who may be able to help journalists to understand rulings and their significance?
- Does the court have a mechanism, like a media-liaison committee, to encourage ongoing debate with media representatives on improving access, and to serve as a means of discussing problem areas or complaints about access as they arise? For that matter, court staff should have a thorough understanding of the access rights of the media and members of the public. Journalists who are continually forced to jump through hoops to consult documentation that is clearly on the public record should not be faulted for believing the courts are secretive bodies and unaccountable to the public.
- Most importantly, as Paciocco urges, the system must be defended. Unless errors and distortions are promptly corrected, the public's misconceptions—and preconceptions—will be reinforced. The media, which does a fine job of holding everyone else accountable, must be held accountable for its mistakes. So demand quality. Insist on corrections or clarifications whenever errors are made. Consider writing a letter to the editor or an op-ed piece to correct misinterpretations of the law, to put issues into context, or to bring balance to a controversial issue. Seek a meeting with the media outlet's editorial board to outline concerns about coverage of specific cases or justice issues in general.

If a news outlet is unresponsive, defensive, or a repeat offender, so to speak, consider lodging a complaint with a press council or a broadcasting standards body. Good journalists and responsible news organizations value accuracy and fairness above all else, and will welcome such input. If an organization does not, that would speak volumes about its standards and priorities.

- Finally, those within the system can support educational initiatives. Lack of knowledge of the justice system is not just a media problem, it is a wider societal problem. We do a poor job of educating our citizens about how their justice system works and why so much emphasis is placed on the rights of accused persons.

We have to teach basic legal principles in public schools and at the university level, and there is a role in this for judges and lawyers. I teach a course called “Media and the Courts” to about 60 journalism students each year at the School of Journalism at the University of King’s College in Halifax. The course is the model for a one-day workshop for journalists, lawyers, judges, and court officials being convened as a pilot project in Prince Edward Island in November 2001, sponsored in part by the CIAJ.<sup>4</sup>

An informal survey of journalism programs across the country suggests the King’s course is unique in several ways. It is mandatory, which recognizes that all journalists need legal knowledge, and it goes beyond media law issues to teach the fundamentals of the justice system and basic criminal and civil law and procedure. Students also hear directly from judges and lawyers, who each year volunteer to take part in candid panel discussions. Their explanations of judicial independence, the role of counsel and other issues have been a powerful tool in shaping how the students—some of them destined, as the next crop of rookie journalists, to cover the courts within months—view the system.

These are senior students, either in their fourth year or in a one-year program for students who already have an undergraduate degree. I wrote the opening paragraphs of the “silent accused” story on the blackboard last year and asked them to suggest what might be wrong with it. Someone questioned the use of the word “accused,” of all things, and another thought the reference to the victim being beaten into a coma might be prejudicial. Not

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<sup>4</sup> See C. Schmitz, “Judicial council plans workshops on media role in Canada’s courts” (2001) *The Lawyers Weekly*, 1, 8.

one appreciated the way basic legal principles had been mangled. The article simply reinforced their “soft-on-criminals” view of the justice system, a view, no doubt, shaped in large measure by media accounts.

These students, at the end of the course, were assigned to cover a mock trial staged by students in Dalhousie Law School’s criminal law clinic. They saw a trial from start to closing arguments, in all its factual and legal complexity. Some of them even picked up on the fact the Crown improperly led evidence of the accused’s criminal record, something lost on the student defence lawyers until the judge—a real judge—intervened.

I asked the students, at the end of their news reports on the mock trial, for a straw vote on what they thought the verdict should be. Even though, only a couple of months before, they had known little about the concept of reasonable doubt B and likely shared the widespread perception that those accused of crimes are invariably guilty B almost every student believed the accused should be acquitted.

I’m convinced they will be better equipped for their first foray into the courtroom than has traditionally been the case for Canadian journalists.