

Tweeting for Justice: How Should We Cover Courts in the 21st Century?

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M'ladies, m'lords, *mesdames et messieurs*, honoured and distinguished guests....

Je suis très heureuse d'être ici ce soir.

It is a *cliché*, and usually an empty one, for an after dinner speaker to say that he or she is honoured to address the audience of the moment.

In this case, though, I am not just honoured, but slightly abashed.

And as readers of my column could tell you, I'm not abashed easily, nor often.

But well-accustomed though I am to public speaking, it's not often that I've been asked to address an audience of such intellectual eminence; much less an audience filled with people who could throw me in jail for contempt.

Let me get two things read into the record right away.

There have been a lot of controversies of late involving columnists and speakers who've been accused of plagiarizing the work of others, or of recycling their own work. But just as the fine banquet staff here at the Palliser Hotel would never serve you last night's left-overs, I guarantee you that the speech I'm about to give will be both fresh and original. It will be up to you to judge whether it's actually any good.

The other thing I should say is that I come by my respect for the power of our bench and our bar quite honestly, and not just because my father, my uncle, my brother, and my sister-in-law are lawyers. Indeed, as the joke goes, some of my best friends are lawyers.

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I stand before you as one of the few journalists you're likely to meet who ever has faced charges of criminal contempt.

I was 23 years old, and I'd been out of journalism school for less than a month. I was working part-time as a weekend copy editor with a magazine called *Alberta Report*. It was the New Year's long weekend and almost no one was in the office. The big news that day, though, was the slaying of the wife of a prominent Edmonton lawyer. Maurice Sychuk was a bencher with the Law Society, and a professor at the University of Alberta law school. He had also been arrested and charged with killing his wife, who had died in the early hours of New Year's Day.

Normally, a rookie would never have been handed such a big story. But I was quite literally the only reporter, or facsimile of a reporter, in the newsroom that day, and so I won the assignment. I came back to the newsroom with all kinds of detail about the accused's criminal record; he'd previously been convicted of firing a gun at his wife, through the basement door, after she'd locked him down there.

I also had all kinds of gossip I'd collected from the neighbours, his colleagues, and his former students, about his volcanic temper and drinking problem. But fresh out of J-school, I also knew the law.

"Of course," I told my managing editor, who was scarcely any older than I was—"we can't report any of that, especially his previous conviction—because we'd be in contempt of court. It's illegal."

I was very earnest, and just a little naive. My young boss looked down on me from his imposing height.

"You just type what we can prove is true," he said. "Let me worry about what's legal."

So I wrote the story, and on the strength of it, the magazine offered me a full-time job. All seemed to be going smoothly until a month or so later, when a rather large policeman showed up at the building, escorted me to an office, and began questioning me. (This, I have to say, was in the days before *Law and Order*. And I was too young and too stupid to refuse to answer questions without a lawyer present).

Luckily for me, our receptionist had alerted our editor-in-chief to the presence of the police in our building. The editor-in-chief, a courtly and gentle man from a Quaker family that could trace its roots to the Mayflower, came bursting into the room where I was being questioned

with uncharacteristic fury. He threw himself in front of me, crying, “The young lady is not responsible for what she writes!”

Which, I don’t think, was quite what he meant.

In the end, the Crown didn’t prosecute me personally. They did proceed against the magazine and won, even though the Sychuk murder trial had been conducted by judge alone, with no jury to prejudice. The magazine, as best I can recall, did what it always did in such circumstances, it declared bankruptcy and promptly reincorporated and resumed publishing under a slightly different name. But believe me; I learned a valuable lesson that day. No matter what your editor tells you, you are indeed responsible for what you write.

These days, though, I sometimes feel as though I myself am now a fossil, as though we in the mainstream print media are about the last people who are still playing by those old rules. At the *Edmonton Journal*, where we’re not nearly so judgment-proof, we honour all publication bans, be they legislative or judicial. We follow the rules laid out in the rape shield provisions of the *Criminal Code*. We abide by the publication limitations in the *Youth Criminal Justice Act*. We honour the rules of *voir dire* and the rules regarding bail applications and preliminary hearings. And here in Alberta, we are also mindful to adhere to the sweeping publication bans laid out in the province’s *Child, Youth and Family Enhancement Act*. And, I must say, we retain the fine talents of the legal team at Reynolds Mirth Richards and Farmer to keep us out of trouble.

But in this era of social media, adhering to such standards is a lonely business. While we at the good grey Journal follow the law, all around us self-appointed citizen journalists, and various malicious gossips, flout those laws with practical impunity. In this new world of Twitter and Facebook and YouTube and blogs; where anyone can be a reporter and anybody can publish to an audience of hundreds of thousands, traditional publication bans are becoming harder and harder to enforce, and more and more meaningless.

The full force of this first hit home for me in 2007, when Facebook and YouTube were still in their infancy and Twitter still in its conceptual stages—back when a nearly-forgotten social networking site called Nexopia was popular amongst Alberta youth. In that year, a group of teens from Camrose was arrested for microwaving a schoolmate’s cat. The accused were all under 18, so the mainstream media never named

them. But the internet went wild with people posting their names, addresses, and photographs, and encouraging vigilante action.

No one was ever charged with breaking the *Youth Criminal Justice Act*. And to this day, if you type the words ‘Camrose Cat Killers’ into Google, you are immediately directed to a website for *Encyclopedia Dramatica*; a wiki encyclopedia known colloquially as Wikipedia’s evil twin. The *Encyclopedia Dramatica* article names all of those young adults, includes photographs of several of them, and tells you where they are now working or going to school.

More recently, last year in fact, I wrote about the case of an HIV positive 17-year-old girl from Edmonton, a developmentally delayed street kid who lived in the river valley, using sex to survive. She didn’t reveal her HIV status, in part because she was afraid for her safety, living on the streets. Police issued a warrant for her arrest, on charges of aggravated sexual assault. They also sought a court order, allowing them to name her and broadcast her photograph. The tactic worked. The girl was quickly identified and arrested. But even after she was safely in custody, the police violated the terms of their court order, and went on naming her to reporters and publishing her name and photograph on their website.

We at the *Journal* made very certain to expunge her name and photograph from our site, as instantly as possible. But the Edmonton Police Service did not, though it was never charged for breaching the *Youth Criminal Justice Act*. Nor were any of the websites that went on naming and shaming her, long after the charges against her were reduced to mischief.

Today, again, if you type ‘HIV Edmonton girl’ into Google, you’ll instantly find her name and picture, along with some of the most vicious ‘slut shaming’ rhetoric you can imagine, including people advocating her murder. Again, no one has ever been prosecuted for those violations.

And here’s the final irony; when most of the charges against the girl were dismissed, and she pleaded guilty to mischief, we asked for a copy of the exhibits, the very documents that helped to explain why she had been at such a low risk to infect her partners. We wanted access to those exhibits to better explain to readers why the charges of aggravated sexual assault had been dropped, and why the girl had never posed a major risk to the public. But when the judge and the Crown refused to

release them, we had to ask our knights at Reynolds Mirth to ride into battle to uphold our legal rights and those of our readers.

An even more egregious incident took place this year, when Edmonton Police launched a ‘wanted poster’ style campaign, to track down accused criminals with outstanding warrants.

They took out ads in several regional newspapers and created their own heavily promoted website. But the newspaper ads and the website prominently featured the name and photo of an alleged young offender, which should have been obvious to anyone, because the ad also included her age: 16. Back in April, it was announced that the RCMP would conduct an independent criminal investigation. But there have been, to date, no charges.

In the face of incidents like these, and many many comparable examples, it’s hard for those of us in the old school media not to feel jaded about the double-standard by which we are judged.

No matter what publication laws people violate on social media, they are never held to account, perhaps because they don’t have the deep pockets of corporate media outlets, or perhaps because the legal system mistakenly believes that such people cannot reach wide audiences.

The result is that those of us in the responsible, mainstream media are denied the ability to report accurately and completely on important news stories of major public interest. That information vacuum is filled instead by online vigilantes, who spread rumours and libels and untruths, which we are often powerless to counter, because we’re following the law.

Let me give you another example of what I mean. In 2006, four Edmonton teens were charged with killing a man after a brawl on a city bus. The initial reporting made it sound like a scene from *A Clockwork Orange*: an ordinary guy, sitting on a bus, beaten to death by a gang of young thugs. When the accused were granted bail, the public outrage was intense. Some 20,000 people signed a petition, demanding that the bail be revoked.

But by then, those of us who’d followed the bail hearing knew that this story was far more complex than it appeared, that the man who’d died had actually been the aggressor, and that the youths who had been charged had no history of violence. Yet we were forbidden, because of a Section 517 publication ban on the bail hearing, to report the truth.

In the meantime, citizens lost confidence in the justice system and in the overall safety of the community, while the reputations and safety of the four accused were at real risk. It took almost a year before we could legally report all the facts; that the man who died, Stefan Conley, had a history of violence, had been extremely intoxicated at the time of the altercation, and had in fact died, not of a beating but of a form of aneurysm. The case never went to trial, only to a preliminary hearing. Ironically, we might never have been able to report the truth at all, had defence counsel not agreed to waive the usual publication ban on the prelim, in the interests of clearing the clients' names.

So while we continue to play by the rules, sometimes to the detriment of truth and justice; others aren't held to account.

For example, when I tell readers who post comments on my Facebook blog or on one of our paper's main websites that they cannot post statements that are in contempt of court, or that are defamatory, they mock me, and likely with justice. They have every reason to believe they can post the most outrageous comments without ever running any legal risk; they are not only judgment-proof, but prosecution-proof. On the other hand, we at the paper could be liable if an actionable comment shows up on our site. Meanwhile, social media platforms are putting extraordinary competitive pressures and demands on mainstream media outlets.

When I started writing for the *Edmonton Journal* 17 years ago, a newspaper reporter had one deadline; we filed one finished story in the early evening, in time for the morning print edition. That world has vanished. Today, with Twitter, Facebook and the web, readers and editors expect us to file constantly in as close to real time as we can manage. When is your deadline, people ask me? My honest answer? It's NOW.

If I'm at the courthouse, covering a high-profile trial or extradition hearing, I no longer have hours to craft a column—I am also expected to post instantly to Twitter and to our website. We are not just competing with other mainstream media outlets, but with everyone on every social media platform. The pressure to report first, and to report accurately, is unrelenting, especially given the dramatic reductions in newsroom staff, nation-wide.

At this point, you may be wondering: what does all this have to do with architecture, or the architecture of justice? Architecture, of

course, is the theme of this conference. So allow me an architectural metaphor. I've logged a lot of hours in a lot of courtrooms in a lot of court houses. Every courtroom I've visited has a door, and most of the time, that door is open, not just to the media, but to the general public. But I don't think I've even seen a courtroom with a window, a window that would allow someone passing by to take a quick peek in.

I'd argue that it is the role of the media to provide that window, the responsible media, be they professional journalists or legitimate bloggers, and believe me, there are some very good, very sound legal bloggers out there, just as there are also irresponsible mainstream journalists.

Whether we work for new media or old, at our best, it is our job to allow casual passers-by, those who don't have hours and hours to dedicate to sitting through a trial, to have a glimpse of how our justice system works. But it's hard for us to provide that window, when the justice system itself often seems intent on pulling down the blinds.

In this 21st new media century, we are still compelled to cover the courts with 19th century technology; a pen and a piece of paper. We cannot make audio recordings of what happens in a courtroom; which leaves us to rely on our imperfect note-taking ability. In Edmonton, we cannot take photographs or shoot video anywhere in the courthouse. This means that we rely on 19th century style court room sketch artists who have the unfortunate tendency to make everyone in the court room, not just the accused but the lawyers and judges, look shifty, if not guilty. And since we cannot use our cameras in the building, we are forced to try to ambush people, in pack formation as they exit, making not just the principles and witnesses in a case, but the lawyers, too, run an unseemly gauntlet.

In many cases, at least in Edmonton, we are not allowed to live-Tweet in the courtroom; even if the ring tones on our smartphones are turned off (it's left largely to the discretion of individual judges). This either leads to reporters desperately trying to hide the phones under their notebooks, in the hope the judge and the sheriffs won't notice, or leaves us popping out of the courtroom, quite rudely and disruptively, at regular intervals, to update our Twitter feeds.

On top of that, it sometimes feels as though it's getting more and more routine for judges to slap discretionary publication bans on trials without giving the media a chance to argue against such measures, or to

prevent us from having access to trial exhibits which are part of the public record, or simply banning us from attending quasi-judicial hearings outright.

Once upon a time, when such things happened, we would call our editors, who would call our lawyers, who would come racing down to the courthouse and to our rescue. But in an era when media outlets, particularly newspapers, are in financial crisis, it is, quite frankly, getting harder and harder for those of us working on the front lines to convince our editors that we should spend the money on legal fees in such cases, especially in those instances where we're fighting more out of principle than in the hopes of landing a big story.

Every now and again, we meet with a judge who treats the work we do, and the new environment in which we work, with serious attention. Last year, for example, Alberta Court of Queen's Bench Justice Terry Clackson banned the media from using electronic devices in the courtroom during the first-degree murder trial of notorious Edmonton film-maker *manqué* Mark Twitchell.

But in a rare and welcome gesture, given all the media attention to the case, he allowed reporters to listen to a delayed audio feed of the trial which allowed us to live-blog the news as it happened, with our main reporter in the real courtroom, and our blogger in an adjacent one. That's just one example of a way in which new technologies can actually improve our reporting of legal issues.

Our website also gives us the capacity to provide more detailed, precise information to interested readers than ever before. We can give readers an easy point of entry to read the texts of entire judgments online. We can scan exhibits and embed links to them in our stories. We can link out to the cases that provide relevant precedents, or to papers from legal scholars that provide important context. We can enrich a simple 500 or 1000 word story by compiling all kinds of additional specialty content, things we could never accommodate in a printed paper. But of course, we can only provide readers with things like exhibits and written decisions if we get access to them in a timely way, without lengthy delays and applications.

Indeed, we can only do our best, most responsible, and more accurate work as journalists with the timely cooperation of the judicial system and the court house staff. That, in the end, is my message to you. If you want those of us who still take the responsibility of reporting on our

courts seriously, you need to help us to do our job well, and to the best of our abilities.

I don't think Canadian judicial culture is quite ready for the crassness of Court TV, for the vulgarity of turning our courts into a form of reality mass entertainment. But in view of the evolution of discreet photographic and audio technology, and in the interests of accuracy, is it not time to consider allowing less-intrusive still cameras and audio recorders in the courthouse? Is it not time to consider new ways that we can work together to facilitate the best, most responsible and most detailed on-line legal journalism?

And in a country where fewer than two per cent of criminal charges end up in jury trials, is it perhaps time to reconsider the ways in which we regulate pre-trial publicity, and at least allow things like bans on bail proceedings to be discretionary, rather than mandatory?

Finally, if we're not going to make any effort to police commentary on social media, because frankly, that would be next to impossible, is it still practical or fair to hold the professional media to standards we cannot enforce elsewhere?

I ask you these questions not merely in the hopes that you might agree to make my job easier, but because I believe that inaccurate, incomplete, irresponsible and sensational journalism and faux-journalism erodes our sense of community and our sense of trust, not just in our justice system, but in the safety of our society.

"It is not merely of some importance but of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done," wrote Gordon, First Viscount Hewat, the Lord Chief Justice of Britain, in 1924. Hewat's words related specifically to the appearance of judicial impartiality. But I'd argue that justice must be seen to be done in a very different way; that people should be able to look in the window of the courtroom to actually see how the courts work, and how justice is made.

Like a tour of a slaughterhouse or a sausage factory, such a view might not always be pretty. (Forgive me; I've spent most of the last two weeks writing about the XL Food beef recall).

But just as it's hard to trust in the quality of your Alberta beef, if you don't know how well the abattoir is operating, it's hard to trust in the

quality of your justice, if you don't know what's going on behind courtroom doors.

In a meta-media world in which rumours, slanders, falsehoods and half-truths abound, and exaggerated fears of crime, terror and conspiracy run rampant, it is more important than ever that we, who care about the administration of justice, fight misinformation and fear with truth and light.

We need to let Canadians know how our courts work so that, in the absence of reliable information, they don't assume the worst and lose faith in the system that sustains our most fundamental social contract, our expectation that the state or the Crown will act both to protect us and our families, and to safeguard our civil rights.

I ask you this evening to help me, and the others who practice my craft, to keep your windows clean and open, not so we can sell more papers or log more page views, but so we stop the debilitating contamination of fear, and help Canadians better understand the administration of justice itself.

Help us to tell the truth and shame the lie and the liars.

The great French *philosophe* Charles de Montesquieu once wrote, "*Ce qui manque aux orateurs en profondeur, ils nous le donnent en longueur;*" what orators lack in profundity, they make up for with length. I hope I haven't proved the truth of that adage. But I will borrow Montesquieu's own pithy words to add some closing profundity to my own.

Une chose n'est pas juste parce qu'elle est loi. Mais elle doit être loi parce qu'elle est juste.

A thing isn't just because it's the law. It must become the law, because it is right.

Thank you, *et merci beaucoup.*