

The Public Perception of Sentencing — The Role of the Media

Kirk MAKIN*

Sentencing : Dawn or Dusk? An intriguing theme for a conference and one I suppose I should tackle head on. I suspect the average journalists' response to this question would likely be : "Doesn't much matter to me how light it is outside. Just show me the story".

That may sound a bit cynical, certainly rather glib, and at least faintly depressing. However, I also think it is largely accurate. The average reporter — even those who are semi-specialists in justice reporting — are not particularly conversant with the subtleties of change in sentencing philosophy. And since crusading is somewhat passe these days in my trade, it would be unwise to wait for the press to help usher in a new era of enlightened response to crime.

Because of these baseline realities, it may be of some use if I were to supply you with some sense of how the press decides the content and angle of a story. And please note, I said the following may be "of some use" — not necessarily of some reassurance. I do this without much pleasure, because there is much about the process that is unfortunate. Nor do I speak, generally, for my own viewpoint, but instead for the situation I see in my profession.

Whether it is coverage of sentencing, parole or a biker's gang bill, the factors that inform our coverage are similar. Fair or foul, journalists have the benefit, responsibility and, sometimes, the curse of deciding what our public is going to find interesting or relevant. The balancing of the need to inform with the need to stoke curiosity, or even entertain, has been the stuff of daily journalistic debate pretty much forever.

Just as you feared, we make our judgments with no particular training in sociology, psychology or demographics to guide us. It makes for a haphazard collective exercise that involves a hierarchy of people from office floor to executive suite. We receive only occasional, direct reaction from the public — leaving the issue of how representative we truly are very much open to debate.

I should add, as self-evident as it may sound to some, it is an enormous mistake to think of the news media as being of one mind.

* Journalist, *Globe and Mail*, Toronto, Ontario.

The electronic media have their own eccentricities. Radio stations — CBC being the constant exception — switches from country format to schlock rock in the flash of a ratings book, hauling such news values as they have along with them.

Television news, meanwhile, is justly famous for its impatience with any story that lacks gripping images or takes much longer than this sentence to explain. T.V. habitually seeks out drama and emotion that is instantly accessible and easily explained in terms of: "This guy's hat is white, this guy's hat is black".

In the print media, you also find distinctive values shared by corporate chains. At the Sun tabloid chain, for example, the job of covering police is as high as it gets on the prestige scale — certainly higher than covering legal affairs. Yet, at somewhere like the Globe or Southam News, it can at times be the opposite. The sentencing of an armed bank robber would likely not even get covered at the Globe. At the Sun, it could easily rate as the main story.

So, how do we choose our story angles? In any newsroom, including my own, any event that is novel, dramatically aberrant, or simply dramatic — will usually make for a story; whether it is an in-custody accused who bolts from the courtroom, or the imposition of an unusual sentence.

In newsrooms, there is a give-and-take between reporter and editor that can become as cryptic as a player-coach exchange in the heat of a hockey game. A reporter's own personal history with an assignment editor often affords him or her a reliable guideline as to what stories and story angles will be greeted most warmly.

Now, I'm sure many is the morning you pick up the paper, see an item about which you have some personal, inside knowledge, and think: "Rather overdone, to say the least".

This is where I become not an apologist for my profession, but simply try to lay out some of the inescapable realities.

A reporter constantly juggles the need for integrity and accuracy with the baseline, pragmatic journalistic requirement for relevancy and interest value.

The latter is no small consideration. A reporter who cannot inject some measured punch into the lead paragraph of a story is as likely to end up covering spring flower shows as is the reporter whose ineptitude draws consistent complaints or serious lawsuits.

One of the most common critiques journalists defend themselves against is precisely this choice of angle on a story.

"Why on earth did you pull that ONE answer out of a six-hour cross-examination and make it the lead? It wasn't reflective of the day's testimony [...]" we find ourselves asked from time to time. But the error lies in a supposition by the questioner that we are trying to produce some sort of stripped-down transcription service.

It tends to surprise me how many people are unaware that one of the chief skills a reporter must learn is how to recognize the "best" angle on a story and build the rest of the story around it.

People in a given professional field also tend to be surprised sometimes that the complex mechanics of their chosen pursuit are portrayed by the press in rather general, even colloquial terms. This CAN be because a reporter is unfamiliar with their subject area. But it is usually the produce of a required skill. Once again, it seems trite to point it out, but most media speak to a generalist audience. A legal affairs reporter who writes to impress the lawyers on his beat, for example, is a lost soul in the newsroom and will likely soon be transferred to other duties.

The ideal specialist reporter covers developments in a field that will be both new and intriguing enough to draw in practitioners, while at the same time being sufficiently clear and compelling to interest readers who have only a general or passing knowledge of the subject matter.

What all of the piecemeal decision-making, whimsy and deadline frenzy boils down to a sort of predictable chaos in the average newsroom. At the end of the day, reporting is an enormous hit-and-miss process.

This is not, I hope, to imply we are a breed unto ourselves of professional, freewheeling sociopath. We do engage in a great deal of after-the-fact internal debate and external criticism. We constantly self-correct our personal and collective course in small ways as we redefine audience, the topics that most interest them, and the topics that perhaps ought to merit their interest. And we search, usually subconsciously, for consensus.

In the area of justice reporting, let me use the topical subject of restorative justice to illustrate. Restorative justice is a subject where there is, I believe, no clear social consensus as yet. Depending on the case and the sentence meted out, press treatment of it can differ markedly.

The subject is not, for instance, comparable in journalistic terms to the 15-year judicial review for first-degree murderers — a subject upon which the press reports from an almost-universally harsh, negative standpoint as a result of its perception that this is a broadly shared viewpoint across the country.

Let's say a judge were to pass an interesting sentence in a given case; one requiring a face-to-face meeting with the victims of a house-breaking, coupled with restitution and some form of treatment. Media coverage of this could swing either way — from ridicule to admiration, or points in between.

I will suggest that there are five main factors that might engender positive — some might call it enlightened — reporting of such a proceeding :

- Factor 1. The trial judge is perceived within the courthouse community and, thus, the press room, to be an intelligent, moderate individual held in peer esteem. The decision is thus given far more serious consideration than if it were issued by a lightly-regarded judge.
- Factor 2. The judgment anticipates potential criticism by dealing with it in a straightforward manner. In other words, the judge confronts head-on the reasons a portion of the public might consider the sentence to be weak-kneed, thereby cogently counterbalancing these criticisms.
- Factor 3. A couple of the more established or popular reporters in the press "pack" in attendance at the proceeding send off positive signals to their brethren. This can set a pattern both for less experienced colleagues and for those afraid they will be questioned the following day by their editors for missing the "best" angle. Conversely, if the opinion-leading reporters in the pack — so to speak — ridicule the decision afterward, other colleagues may be inclined to take their cue. As sad as this may be, it can hardly be considered unexpected. After all, why should there be any less a proportion of sheep in journalism than any other walk of life?
- Factor 4. A quotable victims' advocate is on hand outside the proceeding, waiting to be scrummed by reporters looking for colourful quotes or a tangible perspective. Their endorsement or denigration of a sentence can play a substantial role in how it is portrayed in the press.
- Factor 5. A reporter covering the story may have, because of some previous story, adopted a positive predisposition toward the issue — in this instance, restorative justice. While personal opinion is viewed with great circumspection by my profession, it is unquestionably a factor in many conscious and subconscious decisions. No one in journalism maintains any longer that they are objective, simply that they try to be fair.

It all sounds pretty whimsical, I'm sure. Much of the time, it plain is. Please remember, I didn't say I would reassure you — just that I would try to give a sense of reality.

A Crown I know believes that when a reporter tackles a sentencing proceeding, his or her primary consideration is not so much skewed toward a particular role of the sentencing scale as it is towards ANY strong position. He believes the variable lies in which spokes people are available at the courthouse or through the miracle of faxed press releases; and that victims predominate of late primarily because they tend to be the ones on hand.

This theory certainly cannot be ruled out. Consider what transpires on the morning of a typical proceeding.

The reporter shows up for sentencing in domestic rape case at the courthouse; asks a couple of colleagues what it's all about. He or she perhaps chats with a lawyer in the case or the victim and her family. The next task is to check out which other advocates and lobbyists are on the scene, most of them recognizable.

As the sentence is rendered, the reporter stays on red alert for that all-important length of incarceration and a dramatic quote or two. There is about twenty minutes left to whip together some reaction before its time to move onto the next story, so back to the office to throw it all together.

Most reporters will have no time to go through the files comparing the sentence. Most will not call any experts in sentencing or spousal abuse. Virtually none will interview anyone associated in some way with the type of sentence. It is a story. It is cannon fodder.

Now, if anyone is capable of tempering media reaction to sentencing, it may be those least likely to want to take the press into account : The judiciary. Given the proportion of judges here, I'd like to say a few words aimed particularly at judges.

From informal conversations I've had with judges over the years, I have come to feel a substantial number feel caught in an inescapable quandary when it comes to assessing the press as an institution. To what extent, if any, should they take the news media into account in their professional work?

On the other hand, judges seem to observe the common public misunderstanding of their work as having damaged the credibility of their institution — an institution which is arguably the last one not already battered beyond recognition by the usual societal forces.

With some regularity, they see fellow judges buried under a rockslide of media commentary. Some ill-considered phrase or ill-suited sentencing can be enough to do it. They see their own carefully-measured judgments reduced to a shrill headline on a six-inch story.

They see the subtlety of human emotion and behaviour evident in the courtroom splayed in public on the form most likely to please impatient editors and satisfy perceived audiences.

Thus, the quandary for the judiciary : Does one work with the press, as it were, catering to its eccentricities in the hope of promoting genuine public understanding of the justice system? Or does one remain above the fray, as per tradition, braving and perhaps inadvertently fueling the daily indignities of the fifth estate in silent frustration?

I would suggest there are some non-compromising ways such an individual who is so inclined can make use the foibles of the press to get a message across.

To begin with, 99% of reporters invariably give prominence to that one quote that pithily or colourfully sums things up. It is not hard for a judge to consciously build a couple of such statements into a monologue, effectively focussing attention on the element of the decision that is most important, thereby playing some role in organizing his or her own fate.

By the same token, if a judge is apprehensive that an important qualifier could be lost amongst his or her verbiage, stating that concern in plain and precise English can go a long way to alleviating the dilemma.

For instance, take a manslaughter sentence in a domestic assault. The sentence has obviously potential to create a stir of media concern. A dry recital of various appeal court pronouncements that have set out the acceptable range of sentence may be totally lost on reporters whose minds are fixed on how low it seems.

In this case, a judge could make a comment something like this: "Public concern about domestic assaults is inescapable. Some may criticize a sentence of six years as painfully inadequate for the taking of a life. In some sense, perhaps it is. Certainly no sentence is able to restore a life. But generations of careful adjudication have balanced punishment, deterrence and the pains of victims. They are yardsticks we are bound to adhere to — and for good reason. This sentence reflects them".

Compact, to the point, and reasonably quotable. To be sure, many judges incorporate just this sort of compact brevity into their sentences. But all too often, important points are lost in layers of qualification, subordinate clauses and citations.

Sometimes, I might add, impulsivity or a lack of forethought can cause a judge's thought to be expressed the wrong way. One should not be surprised if the press highlight it; hopefully within its context. That is our job.

A retired judge reflected not long ago that he often chastised himself after-the-fact for producing dense judgments that were inevitably poorly reported to the public. He said he had often toyed with the impossible idea of actually getting together with reporters to explain what he really meant to convey. He said he wished there had been some sort of intermediary in place.

This is an excellent idea which, unfortunately, has been taken up seriously in just one court — the Supreme Court of Canada.

The court executive officer, who is attached to the office of the chief justice, exists in part to answer queries from the press and ensure that the issuing of judgments is an orderly process. He or she is a well qualified lawyer or legal academic carefully selected for a two-year secondment.

Practically speaking, a reporter can call up a few days prior to a judgment day to ask a few details about the issues and potential importance of a decision. On judgment day, the executive officer is available — either in the press room or by phone — to steer a time-challenged reporter to the most salient paragraphs of a judgment, or merely set the

reporters' mind at ease as to precisely how many judges concurred, dissented or part thereof.

I'd conclude by saying the press CAN be a progressive force, but for the most part it adheres to time-honoured formulas and reacts to events. It can always be counted on to conform to age-old imperatives, imperatives such as :

- Long sentences and retribution good; short sentences and parole bad.
- Loud lobbyists win more prominence than the quietly reasoned.
- High annual crime statistics will be heralded while low crime statistics will be generally ignored.
- Public fear exists to be stoked, intentionally or implicitly.

Change for the better in ANY realm is always a possibility. But one ought to rarely look to the chaotic, reactive, easily-manipulated press to do the leading. Those who lead are far more likely to be those activists operating far outside the newsrooms who are stubbornly pragmatic enough to absorb the blows and come back for more.