

# The Public Perception of Sentencing — The Role of the Media

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Barry McLOUGHLIN\*

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\* President, Barry McLoughlin & Associates, Ottawa, Ontario.



I.  
**THE ROLE OF THE MEDIA**

We have heard very valuable comments from both Justice Greenberg and Kirk Makin. I just want to come at this from a different angle. It is not learning to love the media, it is not learning to hate the media, but I think it is definitely what I see from working with judges over time, a gulf of understanding between the two.

One of the very first things we have to look at is the role that the media play in shaping public opinion and perceptions about fairness in sentencing. I think that we all realize that the Canadian public gets their knowledge about our judicial system through the media. They really don't get it through any other source. They get it either through the news or television programming. Unfortunately, the programming is heavily from the country south of us and if you quiz the average Canadian they plead the Fifth Amendment. Unfortunately, it is just not reflective of our judicial system. It was quite shocking in Ottawa the day after the O.J. civil case judgment, when the media did a series of streeters in Ottawa on the radio and they asked people "What did you think of the fact that O.J. has to cough up 30 million bucks"? The public, I swear, replied "I don't know why they are trying him again; he was already found innocent".

That is the challenge right there. The issue of criminal versus civil justice, that which you take for granted, is not there as a fundamental understanding. That is the context within which you are communicating sentences, within which media are reporting. It is fairly shocking until you consider that the average Canadian is busy, they are not stupid, they are just not judicial experts, and by the way, have no intention of becoming one. They live other lives. As a result, when I read judgments, sentences, when I read actual instruction to the jury, wow! You would really have to have a pretty darn good understanding of the law to truly get a real sense of what is being said.

So that is the context within which we are dealing. Two thirds of Canadians rely on television as their primary source of news. One third of Canadians rely on television as their sole source of news. So if it is not on television, they do not know about it. This is sad when you consider the transcript of a half-hour television newscast would barely cover two thirds of the front page of the Globe and Mail. A lot of people are of the opinion that the media basically tell people what to think. I actually don't think so : the media's real power is in telling people what to think about. If it is not in the media, it is hard to focus public attention on it.

When it is in the media, you can have water-cooler conversations about things. I think the power of the media is truly in shaping the public and political agenda. Now, who sets that agenda is a bit of a "chicken or the egg" story to a certain extent. If it is in the media, it is important. If it is in the media, people talk about it. That is an important point to keep in mind. We tend to get "outrage of the month" kind of stories. And sentencing is the perfect opportunity to get people riled up. Just turn on talk radio today across the country. Every market now has an all talk, all news radio format. What they do is that once the fire is lit, they keep that brush fire going and it is emotion over logic. It is wonderful because it is access to the airwaves by non-experts. It tends to tie right into a public mood of a resistance against so-called experts. News that makes talk, talk that makes news. That is a real phenomenon and that is where you can see the outrage. You can do three to four days on Karla Homolka and her sentence. That is guaranteed to keep those lines absolutely jammed. Judges are a perfect example of this. The average person has a certain amount of resistance to the position of power that a judge holds. Why is that?

Well, it is very interesting. It is power, it is expertise, it is robes, it is on high from the bench. There are a lot of things in there that you are not necessarily going to feel cuddly, warm and accessible about. So we shouldn't feel too surprised at that. I am not saying that we should necessarily change but I think that this is just a reality. Doctors are going through the same thing.

## **II. WHAT IS RIGHT VS. WHAT IS LEGAL?**

One of the major undercurrents out there is that we talk about justice a lot and I think that one of the great challenges here is how the legal profession and how our judicial system define justice is very different from how the average Canadian defines justice. "What is legal" versus "what is just or right" can be two very different things when you quiz the average person about sentencing. Kirk used the example of a six-year sentence for rape. To the average Canadian, there is just no way that six years for that kind of offence is a reasonable sentence. People will equate two things, they will equate punishment with deterrence and the bigger the punishment the greater the deterrence. That very narrow dimension should be kept in mind as you are introducing new sentencing laws and talking about alternative forms of sentencing. Remember we have a very narrow dialogue that we engage in with the public. There is a long-term educational program involved in changing that fundamental connection that people will make. If you ask the public's perception, they tend to think of sentences as either hard versus soft; fair versus unfair. If the sentence doesn't match that perception, don't be surprised if they don't agree with you.

## **III. NEED TO BE SUCCINCT**

One of the rules of politics that I think applies to judges and sentencing rationale is that if you don't summarize yourself, they will summarize you. I always think of the famous first day of the 1993 election campaign, when Prime Minister Kim Campbell dropped the Writ. Reporters said to the Prime Minister "what are you going to do about jobs"? and she said "well according to O.E.C.D. projections they are forecasting very little decline in unemployment much before 1996 but I am confident that with the combination of deficit reduction, cutting government spending, restructuring government, we should see a significant decline in unemployment before the year 2000". Newspaper headlines "KIM — NO JOBS UNTIL THE YEAR 2000". Bang! So it will turn into a one-line summary, fair or not, and that is one of the great challenges in trying to communicate the rationale for a sentence in the first place.

## **IV. MEDIA TRENDS**

There are a couple of trends in the media that I think have an impact and I think we should be aware of. Are we learning anything more about it? No. And I think that one of the realities is that there are many media outlets who follow the rule that basically heat cancels out light and therefore the heat and outrage around it in and of itself is extremely newsworthy. Trying to shed light on it is really the challenge. How do you shed light on complicated issues. There are only a handful of reporters in this country who regularly

follow legal issues : one is up here today, Steve Bindman being the other. This is one of the few areas, including science, medicine or the environment, where there are so few reporters who are virtually completely focussed on legal issues. It is very rare and I think that it is a shame in many ways because if you are a reporter who covers a trial one day and the next day you cover the dog show in Dorval, how good is this really going to be? However, I think you are also seeing another trend. You are seeing actual legal cases becoming more and more interesting to people which I think is a very healthy sign in many ways. I happened to read last month Kirk's story in the Toronto Life Magazine. It was on a serial rapist case in Toronto and I found it absolutely riveting. That would not have been a great daily news hit, that wouldn't have told you very much at all but I think that being drawn into a longer story and a deeper piece starts to give you a better sense of all the dimensions. So the future for understanding here is not in a daily quick-hit journalism but rather it is in thoughtful feature pieces in which I think you are seeing trends happen out there; there is a consumer demand for that kind of coverage and I think we are starting to see some signs of it. Lex View is a new, on-line service which now goes directly to journalists' desktops and is designed to explain and give context to judicial sentences. I believe it is a valuable service which should enhance informed coverage.

## V. BUILDING UNDERSTANDING BETWEEN MEDIA AND JUDGES

What are some of the solutions? Kirk already mentioned one, simplify the language. Give reasons and communicate the reasons. With the Internet, are we going to be able to call-up and download the 59-page report? Not everybody would want to do it but there are a lot of people who truly wonder "Gee, why did the judge make that kind of a sentence"? Do they have the right to see it and can they see it readily? If they can, let's make sure that we are promoting that that kind of information is available. I would like to see a lot more of that. I think that you have to think long-term. There are a lot of attitude problems with regard to media. I try to take a very objective, realistic approach to the media. I still see a lot of heavy attitudes. There is rarely a room where you go in Canada where you get this attitude of "Oh my gosh, I just love the media, please tell me more about them". It is not actually that way. My goal is to try to promote some understanding and find some common ground there. I don't think it should be buddy-buddy either. Each has a job to do but I think we could be doing a lot more. I am now noticing from doing training sessions with judges, federally and provincially, that this is a whole new cultural shift going on. I think that judges are demonstrating that they truly want to learn more, understand more about the media in order to be able to communicate more effectively. Let's hope that this conference will continue that process.