

6. Connoisseur of the courts

Chris Marnewick

Having spent much of my professional life traversing courts in the country, I thought of sharing some reflections and anecdotes on the role of the media and the legal process.

One of the laws of physics is to the effect that whatever we subject to observation changes *as a result* of the observation so that what we think we observe is inaccurate. I'm, in principle, against live television coverage of court proceedings because the participants - witnesses, lawyers and judges - all change to put forward not their true characteristics, but those they think will make a good impression on the viewing public. Since the trial process is designed to search for the truth, with the demeanour of the participants relevant to that pursuit, a televised trial starts with the potential of deception by its participants for reasons that have nothing to do with the usual safeguards of the process.

“truth is a pursuit of both the journalist and the legal profession”

In days gone by, we used to have specialist court reporters. I remember Chitta Haysom of *The Mercury* coming to the Pinetown Magistrates' Court in 1971/2 when I was a prosecutor. She observed the trials, and reported - accurately and insightfully, in my opinion - on the proceedings. There was another reporter, who worked for the *Witness* in Pietermaritzburg, whose reports always precisely reflected that which had taken place in court. However, it seems to me that the emphasis has shifted from reporting on the trial itself to reporting “lifestyle or human interest” stories *around* or *outside* the trial. We saw that in the Oscar Pistorius trial, among others, with stories about everything and everybody - even the spectators including those remotely interested in the trial itself. Focus, at times, was on gangsters hanging around the prosecutors, or an attractive woman sitting at the defence table. In the process, reporters missed the important moments of the trial, and presented the public with a one-sided and inaccurate version of the true events that occurred *within* the trial. When cross-examination changed the import and complexion of a witness' evidence, the media missed the point completely. One example will suffice: Michelle Burger and her husband testified that they were woken by a woman's terrible screams followed by four gunshots. After hearing that Pistorius had shot Reeva Steenkamp, they testified that they had heard Reeva screaming before Pistorius shot her. Under cross-examination, they said that the screaming *by the same* person continued between the shots, and for a short time afterwards. This was incompatible with the medical evidence

which was to the effect that Reeva would have been incapable of screaming *after* she was shot in the head. In short, she was dead when they still heard the screaming! (The court later found it was Pistorius who was screaming.) One will look in vain in media reports for a fact like this to be reported. The court found, on the evidence, the Burger's did not hear - because they were sleeping - the actual shooting, which had occurred minutes earlier. Some legal commentators on the trial that I saw on television came across like people who had never seen the inside of a courtroom. They not only missed the important events of the trial, but also had no clue with regard to the applicable legal principles.



Oscar Pistorius

In the early 1990s, we had a criminal trial in Durban of several apartheid-era generals who were being prosecuted on numerous charges, including, if I remember correctly, conspiracy and murder. Senior Counsel Peter Combrinck defended one of them, and in the afternoons after the trial, he filled us in on the day's proceedings (over a beer or two while we were waiting for the traffic to subside!). The next morning we would read news reports on the trial. Those reports did not at all match what Combrinck had told us. Reports suggested that the generals were a bunch of criminals, in big trouble, and looking at lengthy prison sentences. The actual evidence was not discussed at all, leave alone the finer nuances of the issues and how the case was shaped by cross-examination and defence evidence. The verdict was not guilty on all counts, which we expected on Combrinck's account, but which shocked readers who then claimed that a great miscarriage of justice had occurred. The media's role is to keep us informed, and, in that case, they misinformed us. Truth, after all, is a pursuit of both the journalist and the legal profession.

Modern media coverage of legal proceedings lacks expert

and dispassionate reporting of the facts of the trial. Opinion should be left to the audience or an editorial page. There should be room for opinion.

And this brings me back to my earlier point: perhaps live

transmission of trials on television will allow the public to see for themselves what the evidence is, how the trial develops, and where the defence case fits in with the prosecution's evidence.



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