

Report and Conclusions of the Third Study Commission 2019

In 2018 the Third Study Commission, which is focused on Criminal Law, decided in 2019 it should study, "The Integrity of the Proceedings and Communications with the Media".

In order to facilitate our studies and discussions, a questionnaire was prepared and distributed to the IAJ/UIM member organizations. The questionnaire asked firstly for information about the regulation of the media representatives working in or reporting from the courts including the use of modern communication tools like twitter, and on the possible influence of the media on the proceedings. Secondly the questionnaire asked about the relationship between criminal courts and the media in a more general way. 37 responses were received.

In its first session, the Study Commission discussed the access of the media to the court. There is a variable approach to regulation of the media. In some countries there is little or no regulation, whilst in others regulation is by either the law or by guidelines and/or by self regulation of the media. Recognising the general principle of public accessibility of criminal trials, all represented countries allow open access to the courts by the media, whilst at the same time recognising the risk that is posed to the integrity of the judicial system by inaccurate or inappropriate reporting. There is therefore a balance to be struck between the freedom of the press and the interests of justice. Most countries have some means of ensuring that sensitive information may be protected either during the currency of proceedings or permanently.

The taking of photos and making of audio and video recordings is often forbidden. Direct broadcasting is not permitted in many countries, although permitted in limited circumstances in others. In several countries the use of live text systems in courtrooms is allowed, by both the media and the public but in other countries this is only allowed for the media.

Some countries have a system of accreditation of the press, which has the effect of improving media reporting. The rules of accreditation are established by the courts or by self regulating bodies.

There was interesting and lively debate of the topics covered. The conflict between the freedom of the press and the interests of justice was stressed by several speakers, and there is a risk of influence by the media on the participants in the proceedings, whether they are litigants, judges or jurors.

It was recognised that where there is live broadcasting, there is a need to protect both the judiciary and the participants. Live broadcasting also poses the risk that either participants or lawyers or witnesses may play to the media rather than conducting themselves in a manner more suited to the litigation. Live broadcasting works well in some countries at the appellate stage where there are no live witnesses. Live broadcasting may pose substantially greater risks in jurisdictions where the population is small.

Furthermore it was found that the use of live text systems can jeopardise the integrity of the procedure, especially if used by private persons (i.e. bloggers). There is a risk of undue influence on witnesses if they are aware of what other witnesses or participants to the procedure have stated before. Therefore, in some countries mobile phones and electronic devices are banned from the courtrooms, whilst in others such a ban is not seen as necessary or enforceable or only banned for the public but not the press.

There is a need to ensure that the interests of justice are maintained, and this should not be sacrificed to benefit the profit making of the media.

Some countries can deal with inappropriate reporting by the media as a contempt of court. This is not a concept recognised in all jurisdictions, and other sanctions can be imposed.

Those countries that do not have juries expressed concern that the danger of influence by the media could be greater in jurisdictions where there is a jury system; those who have juries did not agree, and reported that by the use of suitable directions from a judge to the jury, the juries self regulate and do not appear to be any more influenced than a professional judge

Accreditation of the media was discussed. Where this was available it was considered a positive assistance to the judiciary. Accreditation by self regulation of the media imposes a burden on the media to regulate themselves and provides protection to the courts from allegations of bias or unfairness against those claiming media status.

The discussion showed that there is an increasing problem of the use of social media to spread out inappropriate or false information about cases and/or judges.

In the second session we debated communication between the Judges and the media. It is recognised that transparency is a key to building trust between the judiciary and the media, and thereby with the public. It is also recognised that where there is secrecy that breeds mistrust. There is a risk that inaccurate or inappropriate reporting by the media can seriously undermine public trust. It is important for there to be explanation of judgements but exactly how that is facilitated varies. In some countries there is regular communication between the Court and the media, whilst in other countries there is little or no communication. It is recognised that it may be a breach of a judge's ethical duties if they speak directly to the media, and unanimously it was agreed that it is not appropriate for the decision making judge to comment on the case beyond the judgement they give. In some countries the prosecutor is relied on to speak to the media. Bad or inaccurate reporting is an issue to be addressed. What is also important is the need to ensure the public understand what the judge has said. Views differed as to whether it should be a judge or a legally trained person who should be a spokesperson for the judiciary; however regardless of whom it was felt that such person should be trained in how to speak to the media, and retraining is also important. In one country retired judges are used for this purpose.

The intense and lively discussion led us to the following conclusions and recommendations:

1. Live broadcasting is not appropriate at the stage of proceedings where there are live witnesses and therefore should be forbidden to protect the integrity of the proceedings.
2. Accreditation of the media is of assistance in the relationship between the media and the courts. However, judges should not be involved in the accreditation process and therefore, self regulation systems by the media seem to be preferable.
3. It is necessary to distinguish between the media and the public. Live based use of modern tools such as twitter can have a negative impact on proceedings when used by the public to influence witnesses or other court users, and therefore steps should be taken to ban or limit their use. No such ban is needed where there is an accredited media.
4. Jurors, lay judges but also professional judges should be fully aware of and alert to the risk of inappropriate influence from media reporting.
5. The media have an important role to play in understanding the courts system, and co-operation between the media and the courts is very important.
6. Where there is a spokesperson for the judiciary it is important they are legally qualified and understand the system, and may be a judge, providing they are not the judge in the particular case. Such spokesperson should be trained to speak to the media.

At the end of the second session, it was agreed that next year, the Third Study Commission would undertake the study of "Communication in the criminal courtrooms". This topic will cover different aspects of communication including questions related to interpreters and the communication of judges with non-legally educated participants to the procedure.

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