



IN CAMERA

Television and the courts

Ben Gale

On the 31st May 1993 Sharon Graham stood accused of shop lifting and assault. It was a run-of-the-mill case. George More, her solicitor, put up a typically spirited fight that relied on the sheriff accepting an especially literal interpretation of the law surrounding citizen's arrest. To no-one's real surprise the Sheriff opted to apply common sense and so Sharon went down for the latest in a long line of short stays at Cornton Vale.

In the course of this depressingly mundane narrative the protagonists in Court 5 at the Saltmarket in Edinburgh had made history because this was the first criminal trial in Scottish - indeed British - legal history to be filmed. Within a few months trials for murder, attempted murder, armed robbery, death by dangerous driving, possession with intent to supply drugs and many other offences had been filmed and were being edited together as part of the BBC 2 series, *The Trial*. At the same time BBC Scotland had filmed a case in Glasgow Sheriff Court and STV had filmed parts of a civil case in the Court of Session. Much to some people's dismay cameras had arrived in court and it certainly looked as if there had been a breakthrough in the relationship between the courts and the media.

'*The Trial*' was transmitted in the late autumn of 1994. Since then no one has filmed in The High Court. Perhaps our epitaph should read, "We came, we saw, we did a bit of filming and then we quietly went away again".

Court reporting

The ban on cameras in court began as Clause 41 of the 1925 Criminal Justice Act. Following several rather sordid attempts by the press to sneak photographs in court all cameras were outlawed. This legislation was enacted before the invention of television but nevertheless it succeeded in banning all coverage of courtroom activity by television from then on. The 1925 Act did not apply in Scotland but this was largely an academic point since most TV producers simply accepted the ban as a given.

So we plodded on reporting what goes on in the courts in the same, ham-fisted way that has evolved over the years. The results are largely unsatisfactory; what we're used to is reporters on pavements trying to sum up hours of evidence and



BBC: *The Trial*

legal argument, and courtroom sketches that make everyone look blurred and ugly. But these reports offer no flavour, no context and very little expansion of what is actually going on in court. Furthermore, the unfortunate by-product is that in an increasingly televisual world they add to the public's perception that the courts are archaic and out of touch.

Behind closed doors?

For 70% of the population, the television set is the primary source of information. Even for those who get their news from the papers there has been a dramatic retreat, by both tabloid and broadsheet press, from in depth coverage of the courts. Long gone are the days when *The Times*, *Telegraph* or *Scotsman* would devote thousands of words to reporting, almost verbatim, the important sections of important trials. Now the best you get is a few column inches picking out the juiciest details.

You may argue that the fact that the courts are open to the public is what matters and if the public don't choose to find their way into the public galleries then that is their problem. That is right in a way. The court's primary function is to administer justice not to ensure that justice is seen to be done by the maximum possible number of people. But when you consider what a tiny proportion of the public can and actually does get to see what goes on in their courts you have to acknowledge that justice is effectively done behind closed - although not locked - doors.

By the late 80's there were a number of senior respected legal figures who had become concerned with the courts' apparent lack of contact with the public they serve and some of these people began to question the wisdom of the total ban on cameras. In 1990 there was an English Bar Council report on the subject that

advocated the introduction of television coverage for news and current affairs reporting across the whole range of criminal and civil cases. The following year there was an unsuccessful Private Member's bill to allow some access for television. But, as ever, change was only going to come from the inside and only if someone in a position of power inside the administration of justice decided that the courts would benefit from the introduction of some TV coverage. This happened in August 1992 when Lord Hope, The Lord President, issued his practice directions that pointed out the fact that the 1925 ban did not apply to Scotland. He broadly indicated that he would consider allowing filming of cases in the Appeal court for news purposes and, in the final paragraph, that he might allow access to cases at first instance for documentary and educational purposes.

The making of 'The Trial'

This final clause is what gave us at BBC Documentaries a way in. We opened an office in Edinburgh and, after several months of discussions and negotiation a set of rules or 'Guidelines' were issued. We set up our cameras in the Saltmarket and Sharon Graham's trial was committed to videotape.

Almost eighteen months later Sharon and a number of fellow accused were seen throughout the country in "*The Trial*". There were five fifty minute episodes. Each was a complete documentary that placed cases in context, used the lawyers involved to explain what was happening and to lead the viewer through the unfolding legal story. The reviews were very kind. It was good telly, it got a huge amount of press coverage and was watched by healthy audiences. Many commentators noted that it was sober, responsible and balanced ... very BBC. Furthermore, the BBC itself was delighted. We got what we wanted out of the project. The courts were pleased too. As Gordon Jackson QC, the defending advocate in the first programme in the series observed after the first day's filming in the High Court "The roof didn't actually fall in". Our presence hadn't caused chaos, there were no complaints that the administration of justice had been interrupted, the practitioners looked highly competent, the sheriffs all looked suitably wise and



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none of the judges were visibly asleep on the bench - although one clerk in the High Court did nod off on camera.

Our own audience reaction research indicated that the programmes had served a useful purpose. 76% of the audience thought the series gave them a good insight into the Scottish legal system. 4 out of 5 thought the programmes prompted them to think about the legal system and the issues raised. While some viewers who were questioned were concerned about the morality of televising trials, 85% thought it was a good idea for a series and only 11% thought it was actually wrong to show real life cases on television.

Consents and controls

But it was not Court TV in the way that many people had expected when the Lord President issued the Practice Directions in August 1992. The doors of the court had by no means been thrown open to the cameras - instead a discreet invitation had been issued. Admission to the party, however, depended on the guest's ability to abide by some very strenuous conditions. Fundamentally (and unlike America) we had no right to be in court.

Access to film in the courts depended on constructing a chain of consents and permissions stretching from the accused to the judges going via the lawyers and witnesses. If any one, at any stage didn't want to be filmed, the whole chain would collapse. On one memorable occasion, with film crew at the ready, the judicial veto came only half an hour before the trial started. Of the trials we targeted while making our series - we had a success rate in the High Court of less than 1%. But we worked on the basis that by patience and persistence we would eventually get access to enough cases to make a documentary series.

Now I am not blaming anyone for this nor am I complaining about any of the rules that we had to work under. The Lord President had made a bold move allowing us into court at all and we accepted that his primary purpose in setting the guidelines was not to make our lives easy but to protect the interests of the administration of justice. While in the long term I would like to see the rules relaxed, this can only happen successfully if the principal of judicial control is retained.

Cameras abroad

Cameras are already in court in the USA as we know but they are also allowed in Italy, Norway, Israel, Spain, France and

the European Court of Human Rights. Experiments are underway in Australia, New Zealand and Canada. Many of these countries have legal systems that have grown from the same roots as ours, some still have links with our own institutions and in the case of other members of the European Union our legal systems are converging in some crucial areas. Sooner or later people in Britain will start asking, if other countries can allow it and run it properly why can't we? What have we got to hide? Will we reach the situation where we can see British cases on television only when they get to the European Courts?

Far from having something to fear, I would argue that our courts have something to gain. The Americans have found that the mere presence of cameras need not distract the participants in a trial. A great deal of research has been done into the impact of cameras in court and so far it has all been positive. One research project in Florida noted that the only noticeable difference was that attorneys tended to be slightly more succinct when they knew their efforts were being filmed but all the surveys there suggest that there has been no negative effect whatsoever. Much more important than that however is the positive effect of having cameras in court. Americans do seem to have a much better understanding of how their legal system works - and a much greater interest. I should also add that Court TV covers civil cases, looks at cases from around the world and, while it makes most impact with the high profile cases, it also offers hour upon hour of mundane court room activity. It can do that because of the high penetration of cable television in American homes which means that there is plenty of airtime to go around.

New opportunities

That hasn't been true in Britain but it soon will be and therein lies an opportunity. In

the past we have had 4 terrestrial channels, BBC 1 and 2, ITV and Channel 4, plus a smattering of cable and satellite channels available. That is about to change. The advent of digital broadcasting for terrestrial and satellite television will increase the number of channels available 100 fold. The BBC alone is hoping to launch 20 specialist channels in addition to its existing operations.

The Queen's Speech outlined legislation that will control the spread of digital transmission. There is a lot of talking to be done between broadcasters and the Department of Heritage but there is a real impetus about the whole issue. The impact on the potential of court television is considerable.

One regular criticism of *The Trial* was that it took cases that lasted many hours and reduced them to fit within fifty minute documentaries. We, the producers had enormous editorial control and that made some people uncomfortable. Well, they need be uncomfortable no longer. In the near future there could be a number of channels running live and continuous coverage of cases - there is already a full time cable channel carrying live coverage of Parliament.

I can't imagine the Lord President in Scotland or the Lord Chancellor in England moving at all quickly on this matter. But I suspect it will come eventually. The challenge for those who run the courts now and in the future is to find ways to capitalise on, whilst regulating and controlling, the opportunities afforded by the TV revolution. ■

Ben Gale is a producer for BBC Documentaries. This is an edited version of an address he gave to the SASD Conference in November 1995.

"The Trial" series will be repeated at 8.05 pm on BBC 2 on Saturday evenings from January 13th 1996.

CRIMINAL JUSTICE STATISTICS FORUM

The Criminal Justice Statistics Forum has recently been formed to bring together producers and users of criminal justice statistics. The Forum will carry out market research to ascertain who produces which statistics, who uses them, what use they make of them and how they consider that criminal justice statistics can be developed to mutual advantage.

If you wish to register your interest in the Forum and receive a copy of the questionnaire, please write to the secretary: Rachael Lippett, N.E. London Probation Service, 4th Floor, Olympic House, 28-42 Clements Road, Ilford, Essex IG1 1BA.