Crown Court (Recording and Broadcasting) Order 2020: Questions We Should Be Asking

When we think of televised court proceedings our minds instantly turn to the catchy maxim - ‘if it doesn’t fit, you must acquit’. Johnnie Cochran’s words, spoken during the defence team’s closing argument of OJ Simpson’s trial, came to embody a sensational trial which was televised over 134 days. And who can forget the footage of OJ, putting on the black gloves and showing his hands to the judge and jury? Then we fast forward to 2016, and the world watched as Oscar Pistorius - Paralympic champion and breaker of glass ceilings - walked across the courtroom on his stumps at his re-sentencing hearing for the murder of Reeva Steenkamp.

There have been many cases in England and Wales which have caught national and global attention, just as the cases of Simpson and Pistorius did. But there is no footage of any part of the proceedings involving the likes of Harold Shipman, Dennis Nilsen, or Levi Bellfield. Whilst the normal rule is that trials in the Crown Court and the Magistrates’ Court should be conducted publicly, no film cameras have been allowed to record or broadcast proceedings. However, on 16 January 2020 it was announced that the Crown Court (Recording and Broadcasting) Order 2020 would permit sentencing remarks in the Crown Court to be recorded and broadcasted.

The thinking behind the decision is to give the public more confidence in the criminal justice system and to assist in understanding how the law is interpreted and applied. Only the judge will be visible on camera and filming will be subject to reporting restrictions.

There are a number of potential benefits to the new law. Transparency of proceedings is an important element of our legal system. Lord Chief Justice Hewart’s remark in *R v Sussex Justices; Ex parte McCarthy* [1924] 1 KB 256 is churned out by law students year after year in interviews for pupillage and training contracts: ‘Justice should not only be done, but should manifestly and undoubtedly be seen to be done’. Whilst our courts are public spaces, the reality is that the average person would not be able to walk into their nearest Crown Court, part way through the working day, to watch proceedings. Televising sentencing remarks will give the public another, perhaps better-placed, window through which to view the justice system at work.

Furthermore, the move may serve to better inform the public about how the courts work. So many misconceptions about what actually goes on at the Crown Court comes from television dramas, which are often American, and which often greatly dramatise events. Giving the public an insight into the realities will hopefully increase the public’s knowledge of how judges are bound by the law and sentencing guidelines.

However, it is arguable that the move also comes with some risks and such a significant change for the system raises a number of questions. By only broadcasting the sentencing remarks the public will be given a snapshot view of the case. Although sentencing remarks include summaries and recapping of the salient points of the Crown’s case and the defendant’s mitigation, it is impossible for a judge to set out *everything* that they are taking into account in their decision. There is still scope for misunderstanding as to why and how a sentence has been reached.
Also, at a time when the criminal justice system is on its knees, courts sit idle, and some court buildings are in a state of disrepair, it seems hard to swallow that funding and resources will be poured into this arrangement. What guidance and training will there be for court staff? What budget does this come out of?

The new law protects victims, court staff, and legal professionals from exposure. However, judges have been opened up to intense scrutiny. Televising the sentencing remarks will not stop certain sentences being unpopular with the public and will not stop ‘enemies of the people’ declarations. What will be done to protect judges from any increase in attention resulting from the change?

Whilst an increase in negative attention is what immediately springs to mind, we should also consider how to manage judges acquiring ‘celebrity status’. Is this something that our system should expose itself to when our judges are meant to be instruments of the law? Furthermore, how will the broadcasts add to the morbid fascination the public has with defendants who commit the most gruesome and depraved acts? It is often the case that we remember the name of the defendant and not their victims. Will widening the lens give a defendant even more following than they deserve at the expense of the visibility of the victim?

Furthermore, whilst the present position is conservative in what exactly will be broadcast, we have shifted closer to the possibility that a greater part of proceedings, perhaps even parts of the trial itself, could also be broadcast in the future. Our justice system has always been associated with dignity and is far removed from the sensationalist aspects of other justice systems which do broadcast proceedings. Is this the right thing for our system? Will we be ready for it?

Ultimately, it is difficult to imagine how the new law will impact the criminal justice system in England and Wales. Although it is a small step, its potential effects should not be underestimated and disregarded. Hopefully, instead of looking in from the outside as a lens of the public eye and nothing more, the new broadcasts will seamlessly become part of the process itself and serve to complement the criminal justice system.

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