THE ROLE OF THE LAWYER IN SOCIETY†

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I was deeply honoured when an invitation was extended to me to be the 14th lecturer of the Manitoba Law School Foundation. The Foundation was brought into being under the aegis of the Chief Justice who presided over its deliberations for some ten years before allowing them to be entrusted to someone like Mr. Graeme Haig Q.C. who he knew would be able to see to it that the Foundation would never be permitted to flounder. When I heard of the roster of distinguished persons who have been invited to give the lectures in the years that preceded this, I was rather wishing I had not been told that because I approached my assignment with much more trepidation. You have a wonderful law school, Dean Edwards. I have been here before, and it is a great asset to the legal world of Canada and has produced and continues to produce some of the great lawyers, not only of this province, but of Canada, because I think the lawyers that are coming out of the law schools today and in the last few years are destined to enter into an area in which their services as lawyers, not just on behalf of clients, but as servants of the public generally, will be very much in demand.

I wanted to speak to you tonight briefly about the role of the lawyer in society. It is a role, I fear, which is too often misunderstood by many people; not only because of the well-known stereotypes which pour into our homes through television, but because laywers have for hundreds of years been viewed by many as a group of professionals that we might be better off without. Part of that perception I think springs from the understandable fear with which many people react when they think about the periodic release of an accused murderer, or an accused armed robber, after a courtroom process which appears dominated by a band of lawyers. On the other hand, when sons or daughters run afoul of the law, like the almost 40,000 young Canadians who are charged each year with simple possession of marijuana and thereby face a future saddled with a criminal record we turn to lawyers because they have the training, the experience, and the skill to ensure that our offspring will be fairly dealt with by the prosecutor, the police, the judge, and if necessary the probation or prison officials. In these situations, like any which pit the lone individual against the power of the state, lawyers help to give a voice to those who would otherwise be voiceless. Lawyers help to sort out the issues, to take emotionally charged events and to deal with them in a manner which reduces the possibility of escalating conflict beyond the power of rational beings to cope with them in a civilized fashion.

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Ordinarily the conflicts which arise in our lives are handled without recourse to the law or to laywers. Yet thousands of citizens, who for one reason or another find themselves unable to do that, cry out for help. They are by and large at the bottom of the social and economic ladder of our nation. They are not well educated. They are therefore ill-equipped to contribute to or take rightful advantage of the society around them. They see themselves as having been cheated somehow out of the good things of life which you and I have come to take for granted. They are more often than not more afraid of the future than we can ever imagine. They are the people who cannot for all their efforts find jobs in this time of high unemployment. They are the people who despite their attempts to stretch their few meagre dollars cannot compete with inflation in the way the rest of us can or try to. They are the people who despite the affluence in this country do not feel a part of the Canadian way of life. They, like us, have the same human conflicts that we have, but are in a poor position from the very beginning and are not able to resolve those conflicts in as neat a way as we might be able to do. The tensions within the family unit may lead to child abuse. The arguments between a husband and wife may result in an assault or worse. The poverty cycle's treadmill may lead to the desperation of a robbery or burglary. Of course, it is these kinds of conflict resolutions which we define as criminal acts, which we hear about through the media and which give us our image of the typical lawbreaker. But too often the events leading up to the commission of a criminal offence are unexplored. We may be tempted to dismiss those accused in such cases as the losers of our society, the kind of people who deserve every bad break they get, the kind of people who should be punished because they have unsettled our emotions and they made us feel unsafe.

It is because lawyers have traditionally come to the defence of such unfortunates that they have become symbolically identified with efforts to help him who ought not to be helped. In the light of my own practical experience in hundreds of criminal trials however, I can tell you that this is not the lawyer's role. There is a popular belief that lawyers spend most of their time bringing about the acquittal of the guilty. Few of us who are lawyers have not known what it is to be asked, about every second day, "how can you defend a client you know to be guilty?" Now this is indeed the lawyer's prerogative, his moral right, and sometimes his ethical duty. The number of occasions in his professional life when he is confronted with this dilemma is only very rare. When it does occur a skilled and conscientous lawyer must know the course he is supposed to follow and must not be found wanting as was the case a few years ago in Australia in a murder trial involving a native aborigine whose name was Tuckiar.[1] The accused knew no English but was represented by counsel who had been briefed by the

1. *Tuckiar* v. *The King* (1934), 52 C.L.R. 335 (H.C.).

Protector of Aborigines. There were difficulties in interpreting to the prisoner evidence given in English. It was doubtful if the accused understood the full significance of the trial. As one Justice put it: "He lived under the protection of the law in force in Australia but had no conception of its standards."[2] Yet by that law he had to be tried. He understood little or nothing of the proceedings and of their consequences to him. But during the trial another aborigine gave evidence that the accused had confessed to the murder, but had explained it as the result of the policeman's indecent assault on one of the prisoner's wives. The Judge then asked counsel to explain this testimony to the prisoner and accordingly the court was adjourned. During the adjournment Tuckiar told his counsel that the evidence just given was false and that he was in fact guilty. When court resumed the lawyer stated that he was faced with the worst predicament of his legal career and he asked for a private conference with the judge to whom he passed on his client's confession and asked him for leave to withdraw him from the case — a request the Judge refused. The trial proceeded and the Judge allowed evidence of the policeman's good character to be given. No evidence was given on behalf of the defence and the Judge commented on this in summing up to the jury referring in strong terms to the danger of affixing a slander to the memory of the dead policeman if the story of the assault were accepted. When the accused was convicted his lawyer then publicly stated that his client had confessed to the murder and admitted the falsity of the evidence concerning the policeman's assault. The Judge then revealed that the lawyer had consulted him as to whether he should withdraw from the case but that he had advised him to continue.

The High Court of Australia without any dissent among its members quashed the conviction for murder. The Judge's comment on the failure of the accused to give evidence, coupled with the to sudden adjournment of the court after the jury had heard counsel's statement about his terrible predicament, would according to the court lead the jury to draw an inference of guilt and accordingly a new trial was directed. With regard to the embarrassment of counsel who was faced with the terrible predicament the High Court made these very telling comments:

> Why he should have conceived himself to have been in so great a predicament, it is not easy for those experienced in advocacy to understand. He had a plain duty, both to his client and to the Court, to press such rational considerations as the evidence fairly gave rise to in favour of complete acquittal or conviction of manslaughter only .... Whether he be in fact guilty or not, a prisoner is in point of law, entitled to acquittal from any charge which the evidence fails to establish that he committed, and it is not incumbent on his counsel by abandoning his defence to deprive him of the benefit of such rational argument as fairly arise on the proof submitted. The subsequent action of the prisoner's counsel in openly

2. *Id.*, at 349 (per Starke J.).

> disclosing the privileged communication of his client and acknowledging the correctness of the more serious testimony against him is wholly indefensible.[3]

While the Court's message in that case was clear, a lawyer's professional obligation is to put forward on behalf of his client his best efforts. Whether he knows his client is guilty of the offence charged or not, to do otherwise, as the court pointed out, amounts to dereliction of duty and weakens the protections afforded all of us who believe in the rule of law.

What happens far more frequently is an admission by the accused to his counsel of the basic facts that form the subject matter of the charge against him, be the charge murder, rape, robbery, or criminal negligence. In such a case the services of a skilled counsel are required to bring to the attention of the judge or the jury all the circumstances surrounding the offence which tend to better explain the conduct of the accused. In some cases provocation by the victim of the offence, often extreme, tends to mitigate the accused's responsibility for the outcome of the conflict. This will reduce murder to manslaughter. So too will evidence of the accused that he had drunk to excess and therefore lacked the capacity to form intent. In some cases, the accused may have acted in justifiable self-defence, or the harm done to others may have been the result of an accident. In this situation a complete acquittal is the proper result in law even though the accused on trial was the cause of the victim's death. Would it be fair to the accused or to our notion of justice if it would have failed to ensure that skilled advocacy is brought to bear when such situations as that arise? Would it be fair for us to read the skimpy details of an arrest in the newspapers and shrug it off with the thought that well if the police arrested John Doe he must be guilty? Because if one answers those questions in the affirmative, then it is just as well simply to dispense with our prosecutors, our witnesses, our judges and our whole tradition of the rule of law and simply let our law enforcement agencies do the job for us. Such a system would not work nor would Canadians be happy with it. Happily most Canadians do not want to see that happen. They know only too well from human history that the resolution of conflicts in society cannot be left to one group of powerful men. They know that without a system in which each party to a conflict is given a voice in its resolution our country would soon find itself faced with the loss of those freedoms and rights which we all to often take for granted.

And so there have evolved, since the beginning of man's search for methods that would enable him to live in a humane and civilized fashion, different ways of ensuring fairness and of attempting to reach the branch of justice. And particularly in criminal cases this has led to the emergence of specialists who make it their business to pit themselves against the massive resources of the state in an effort to ensure

3. *Id.*, at 346.

that the individual's rights are protected by the strict observance of the rule of law. As mentioned, many members of the public resent the intrusion of a skilled lawyer into the criminal court arena. They rarely attend a real criminal trial or are unable to know the complete background to a case so that perceptions of our criminal justice system are shaped by a paragraph or two in a news report or by watching a murderer's fantasy played out on their television screen. At times lawyers are abused as individuals for the help they give to those charged with serious offences. One has only to think of the gruesome murder of a young shoeshine boy in downtown Toronto in 1977 to illustrate that point. Four men were charged with the crime and after a two-month trial before a judge and a jury of 12 ordinary men and women, three of them were convicted and one was acquitted. Earl Levy, the lawyer for the acquitted, man had skillfully and articulately presented his client's case to the judge and jury in the finest traditions of the legal profession. But moments after the jury's verdict was announced police officers who had been involved in the investigation of the murder and the arrest of the four accused taunted the now acquitted client of Mr. Levy and then asked the lawyer whether he would sleep well that night knowing that he had helped to free a man that they had considered guilty. Mr. Levy wrote about those moments after the jury's verdict in a recent publication and this is the way he put it:

> The views of the police indicated contempt for our system of justice, because the jury did not support their presumption of guilt. This brings into sharp focus just how important our jury system is. The police are not to try us. Nor are the newspapers. I have no doubt from talking to people during and after the trial, from the vitriolic phone calls and letters to my home and office that my client was tried in the newsmedia. There were many who did not want to believe the jury that listened to and analysed all evidence and returned with their verdict in such a short time. But with the help of the built-in safeguards that the jury system provided such as challenging for cause and sequestration, these twelve unbiased persons from the community in which the murder victim lived were able to listen to a horror story, hear what the law of our country had to say, then render their impartial verdict.

Mr. Levy unfortunately has not been the only advocate to be so abused abused personally because of misunderstandings of his role in society as a lawyer. I should say incidentally that the police officers who rebuked him in the way he indicated were subsequently reprimanded for the impropriety of their intemperate comments.

Over a hundred years ago one of the country's most distinguished lawyer's was attacked, vilified, and threatened becaused he defended Patrick Whelan who was charged with the murder by assassination of Darcy McGee.[4] The lawyer was Hillyard Cameron Q.C. And he said:

> It would ill-become those who are the leaders of the Bar if they were to

4. *Whelan* v. *The Queen* (1868), 28 U.C.Q.B. 2; 28 U.C.Q.B. 108 (C.A.).

> allow themselves to swerve from the high duties of their profession and from their conscientious and fearless discharge under the intimidating influences exerted either through the angry frowns of power or through the less definite rage and perhaps madness of the people.

Mr. Cameron went on to say, "that had he given in to the pressures brought upon him by those who saw no need for a fair trial in the case of Whelan, he would have proved himself unworthy of the position which he held and a craven to the profession to which he belonged." The two lawyers I just mentioned separated by a span of over a hundred years in point of time have not been the only ones throughout history to be criticized. Many counsel experience ridicule and sometimes the contempt of their fellow citizens when they act for unsavory offenders in sordid cases which are given great publicity. It is as though they are somehow expected to bend the law, even to ignore it in order to bow to the aroused passions of a public which sought a speedy resolution to a complex human event. It is as though some believed that it were better for society if lawyers were to deny due process to such offenders — that we should deny them the benefit of law. Some of you I am sure saw or read "A Man for All Seasons," which deals with the conflict between King Henry VIII and his Lord Chancellor, Sir Thomas More. More, the son of a lawyer, had risen to power in the Middle Ages in England, not only through his remarkable abilities but also through the force and strength of his personality. He was a man who believed passionately in the concepts of justice and fairness, and above all, in the rule of law. And because of his allegiance to his conscience he came into conflict with the most powerful man in England. He was stripped of his office, reduced to penury, thrown into the Tower, subjected to pressures under which you and I would likely crack, then charged with treason, found guilty, and beheaded. In one unforgettable moment of the play, the spineless Richard Rich had left the stage after asking More for employment and had been refused, More's son-in-law demanded that More have Richard arrested and so did More's wife, Alice. When More asked for what his wife replied: "He's dangerous!". And More's daughter added: "Father, that man is bad". Whereupon More said, "There is no law against that." But Roper disagreed and he said, "There is! God's law. To that More replied, "Then God can arrest him." Then his wife became exasperated "While you talk, he's gone!", she said and then this exchange took place. More said, "And go he should, if he was the Devil himself, until he broke the law!" And Roper said: "So now you'd give the devil benefit of the law!" More replied: "Yes. What would you do? Cut a great road through the law to get after the Devil?." Roper said: "I'd cut down every law in England to do that!" and More said: "And when the last law was down, and the Devil turned round on you — where would you hide, Roper, the laws then all being flat? This country's planted thick with laws from coast to coast — man's laws, not God's — and if you cut them down . . . d' you really think you could stand upright in the winds that would blow then? Yes, I would give the Devil

the benefit of the law, for my own safety's sake."

There are those in society who would look upon More's views as those espoused by a zealot, by a man who would not see the road flat on in pragmatic terms. The term "benefit of law" seems to many of our citizens to be simply a lawyer's catch phrase which is mouthed from time to time in order to justify the profession's role and standing between the power of the state and the powerlessness of the individual. And yet it is vitally important to our democratic society that we lawyers convey the message, that the preservation of such concepts as justice, fairness, and due process remain living elements in our day-to-day lives, not only for those offenders for whom we have little sympathy but for our own sake as well. The legal profession must convey this message through individual encounters with others and the execution of professional duties, by encouraging dialogue in the media and in the schools. Lawyers must become more involved in the contentious issues surrounding the views held by so many regarding the role of law in society. Time must be taken to examine the facts, to discuss them with an open mind with our peers and to be patient with those whose views and actions seem to contrary to our own. John Galsworthy once said, "The law is what it 'tis, a majestic edifice sheltering all of us, each stone of which rests on another." To use the idea embodied in those words, to help others realize that the law which protects the weakest, the most despised individual among us, protects you and me as well.

The role of the lawyer is superbly expressed through the words of Lord Birkett who said:

> For more than 40 years I have been actively engaged in the practice of the law either as counsel or as judge. During that time I have seen I suppose, almost every kind of case, in almost every kind of court, and almost every kind of advocate and judge. I am quite sure that when men and women are brought into the civil or the criminal courts for whatever reason, they should be able to turn for assistance at what may be the critical moments of their lives to a trained body of advocates independent and fearless, who are pledged to see that they are protected against injustice and that their rights are not wrongly invaded from any quarter. The vocation of the advocate calls for the nicest sense of honour and for complete devotion to the ideals of justice and I believe it to be a lofty and necessary calling which is vital for the maintenance of that way of life in which we have come to believe.

If we lawyers take a wide view of our obligations and responsibilities as professional people, we must go far beyond the law books, the courtroom, and the mere defence of clients. We must become militant in the defence of our fellowman in meeting the many challenges that are bound to come our way as we approach the turn of the century. A lawyer who is truly discharging his functions and who is utilising the training he has received over the years is inevitably to be looked upon as a force to be reckoned with in the face of any threat to the basic rights and freedoms of ordinary men.

There are many challenges of the law for us to meet in the years that lie ahead. Special concern must be focussed on the threat to the maintenance of our jury system. This threat must surely be resisted to the fullest extent of our ability as lawyers with the support of those in the community who are not.

It was the Normans who brought this device to England centuries ago. As the system evolved trial by battle was done away with, and so was trial by ordeal. There emerged a procedure for trying cases and for producing justice that in my opinion constitutes our surest protection as a society. Over 750 years ago, the barons of Runnymede extracted from King John the assurance in Magna Charta that no person shall be deprived of life or liberty except by due process of law and by the judgment of of his peers. Five hundred years later, in the early 18th century Blackstone commented that so long as this palladium, the jury, remains sacred and inviolate the liberties of England will continue to subsist. He predicted it would subsist against what he called "all secret machinations" that might attempt to introduce "new and arbitrary methods of trial . . . however convenient these may appear at first." He noted that "all arbitrary powers, well executed, are the most convenient . . . . that the delays and little inconveniences in the forums of justice are the price that all free nations must pay for their liberty in more substantial matters." He deprecated inroads upon the jury system, which he called the "sacred bulwark of the nation." He was concerned that such inroads might begin in trifles, but the precedent once having been set, might gradually increase and spread, as he put it, "to the utter disuse of juries in questions of the most momentous concern." We will see in a minute to what extent he foresaw what sort of thing might happen to the jury system.

Lord Devlin said that the essentials of the jury as a tribunal are these:

> [it] consists of a comparatively large body of men who have to do justice in only a few cases once or twice in their lives, to whom the law means something, but not everything, who are anonymous and who give their decision in a word and without a reason.

The members of a jury, he points out, are not selected for their intellectual powers; they are chosen at random, they are not even required to pass an intelligence test. He contrasts the judge as a trial tribunal with the jury. The judge, he points out, by virtue of his training naturally regards so much as being simple which to the ordinary man may well be difficult and as a result the judge may fail to make enough allowance for the behaviour of the stupid. The jury, Lord Devlin indicates, hear the witness who is as ignorant as they are of the lawyer's way of thought. And this, as a result, is the great advantage to a person on trial, of judgment by his peers.

Sir William Holdsworth commented that the effects of the jury system upon the law have been remarkable and beneficial: "it tends to make the law intelligible by keeping it in touch with the common facts of life," and, he further points out that "the jury system has for some hundreds of years been constantly bringing the rules of law to the touchstone of contemporary common sense." The jury then is a tribunal of 12 lay people. They have never been to law school, they have different age groups and occupations, they have different racial and religious creeds. We expect them to sit through sometimes lengthy jury trials at which they do not take notes, as a general rule; are present throughout long days of evidence; are presented with large numbers of documents which are filed as exhibits, which they never really get around to reading in complete detail. Then we subject them to conflicting submissions by opposing counsel and provide them with detailed instructions about the law from a trained trial judge. We instruct them to retire and to consider their verdict and invariably they produce the right result.

The great virture of the jury system is that the process whereby it is selected makes it virtually incorruptible. It is not called upon to give reasons for its verdict, it cannot be asked to explain what it has decided. It is an offence to ask them to tell you what went on, its findings are not binding on any subsequent jury and therefore no precedent is created by any verdict that it gives. Its power is supreme. A verdict of acquittal that cannot be attributed to misdirection or to inadmissible evidence is unassailable, even though on rare occasions the verdict might be regarded by some as perverse, although not to the jury. The jury traditionally has given society protection against harsh and oppressive laws exercising its constitutional power to render a verdict of acquittal in what may appear to the rest of us to be a result that goes in the face of the law. Lord Devlin described each jury as a little parliament and this is the way he put it.

> Each jury is a little parliament. The jury sense is the parliamentary sense. I cannot see the one dying and the other surviving. The first object of any tyrant in Whitehall would be to make Parliament utterly subservient to his will; and the next to overthrow or diminish trial by jury, for no tyrant could afford to leave a subject's freedom in the hands of twelve of his countrymen. So that trial by jury is more than an instrument of justice and more than one wheel of the consitution: it is the lamp that shows that freedom lives.

One of the great writers and thinkers of this century in the United Kingdom was Gilbert Keith Chesterton. He once was called upon to serve on a jury, a task I suppose he resented when it was ordered that he must do so because he was busy and preoccupied with many things. But he had no alternative so he served and after he had the experience he wrote an essay in which he said that the jury system must never, ever be allowed to go. And he said this:

> Now, it is a terrible business to mark a man out for the vengeance of men. But it is a thing to which a man can grow accustomed as he can to other

> terrible things. He could even grow accustomed to the sun. And the horrible thing about all legal officials, even the best, about all judges, magistrates, barristers, detectives and policemen is not that they are wicked, some of them are good, not that they are stupid, several of them are quite intelligent it is simply that they have got used to it. Strictly they do not see the prisoner in the dock. All they see is the usual man in the usual place. They do not see the awful court of judgment; they only see their own workshop. Therefore the instinct of our civilization has most wisely declared that into their judgments there shall upon every occasion be infused fresh blood and fresh thoughts from the streets. Men shall come in who can see the court and see it all as one sees a new picture or play hitherto unvisited. Our civilization has decided, and very justly decided that determining the guilt or innocence of men is a thing too important to be trusted to trained men. It wishes for life upon that awful matter, it asks men who know no more law than I know but who can feel the things that I felt in the jury box. When it wants a library catalogued or the solar system discovered or any trifle of that kind is uses up its specialists. But when it wishes anything done which is really serious it collects twelve of the ordinary men standing around.

In the mid-1950's our *Criminal Code* in Canada was amended to restrict an accused's right to trial by jury.[5] Since then there have been additional revisions to the *Code*[6] such that if the trend were to continue I have no doubt jury trials could in the future become an extinct social phenomenon. With regard to many offences in the *Criminal Code* of course there is no right to trial by jury at all. Such offences are theft, fraud, and unlawful possession if they involve property valued at less than $200. They are offences which are tried solely by a magistrate or a judge. Some people argue there is eminent sense in placing more and more restrictions on the availability of jury trials especially in cases where the offence is not serious and if where convicted the accused does not face an imposing sentence. I disagree on principle with that argument. But this was understandably part of the rationale behind the creation in the *Criminal Code* of a number of hybrid offences — those which can be proceeded with either as indictable or summary conviction matters at the election of the Crown. In effect this change allowed the Crown Attorney to prejudge not only the seriousness of the case presented to him by the police but also to determine the maximum amount and type of penalty which could be imposed upon an accused's conviction.

Given my intense beliefs about the importance of the jury system, beliefs which grew stronger day by day during my over 30 years as a lawyer, I was distressed, and much distressed, when it was revealed that the federal Department of Justice was circulating draft proposals which would, if implemented, have limited a citizen's right to trial by jury. This is an understatement. The proposals would have virtually removed that right. This was back in 1976, about two and a half years ago. Basically the proposal suggested that in the interests of speeding up the trial process and reducing the pressure on the

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5. *Criminal Code*, R.S.C. 1970, c. C-34, s. 438, added S.C. 1953-54, c.51, s. 467.

6. *See* S.C. 1960-61, c. 43, s.18; S.C. 1972, c. 13, s. 40; S.C. 1974-75-76, c. 93, s. 62.

courts such high volume offences as theft, forgery, robbery, break and entry, trafficking in a narcotic, would be dealt with in such a way that the prosecutor at his discretion would be able to refuse an accused the right to trial by jury. If the Crown were to exercise that option, the proposals continued, the accused would then face a much less severe maximum penalty if convicted than if a jury trial had been held and he had been found guilty. The protest which greeted the revelation of these proposals was instant and massive. Thanks to the efforts of hundreds of criminal lawyers, the media, and many interested and informed citizens, the federal Department of Justice decided quite wisely to bury the proposals and concentrate instead on experiments in the field of pre-trial procedures.

The case of Dr. Morgentaler again illustrated how fragile the jury system can become unless the legal profession, the media, and the public bring pressure to bear on those charged with preserving our hard-fought rights to be judged by members of our own communities. You will recall that Dr. Morgentaler was acquitted by a Montreal jury in 1973,[7] on a charge of performing an illegal abortion on a 26-year-old unmarried woman. The Attorney-General of Quebec appealed the acquittal and the Court of Appeal agreed with the Crown.[8] In so doing however the Court made legal history when it entered a verdict of guilty in substitution for the jury's decision of acquittal. In all past cases in the history of Canada's jurisprudence where the Crown had succeeded in such an appeal only a new trial had been ordered. Never before had a substituted verdict of guilty been entered. The Court of Appeal's decision gave Dr. Morgentaler an automatic right of appeal to the Supreme Court of Canada and there in 1975 six jurists upheld the Court of Appeal's ruling and three including our Chief Justice, the Right Honourable Bora Laskin, disagreed and argued that the jury's verdict should be restored.[9] The uproar which greeted the decision of the majority of the Supreme Court was like that which met the federal government's jury restricting proposals. It was immediate and effective. Respected and influential media commentators across the country forcefully brought to the public's attention the very grave effect on the jury system and eventually the federal government amended the *Criminal Code* to ensure that an appeal court would no longer have the power to substitute a guilty verdict for a jury's acquittal.[10] Incidentally, I do not hold any brief for Dr. Morgentaler or his practices in respect to abortion. The furor which was generated both by the Morgentaler case and the jury limiting proposals gave me a lot of faith and confidence. It demonstrated the depth of the public's concerns about our institutions and especially about the institution of

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7. *R.v Morgentaler (No. 5)* (1973), 42 D.L.R. (3d) 448; 14 C.C.C. (2d) 459 (Que Q.B.) *See also R.v. Morgentaler (No. 1)* (1973), 42 D.L.R. (3d) 424, 14 C.C.C. (2d) 435 (Que Q.B.); *(No. 2)* (1973), 42 D.L.R. (3d) 439, 14 C.C.C. (2d) 439; *(No. 3)* (1973), 42 D.L.R. (3d) 441, 14 C.C.C. (2d) 453; *(No. 4)* (1973), 42 D.L.R. (3d) 444, 14 C.C.C. (2d) 455.

8. (1974), 47 D.L.R. (3d) 211; 17 C.C.C. (2d) 289 (Que. C.A.)

9. [1976] 1 S.C.R. 616; (1975), 53 D.L.R. (3d) 161; 20 C.C.C. (2d) 449.

10. 1974-75-76, c. 93, s. 75.

the jury, as well it revealed a news media that was vigilant and capable of being a very powerful force for good.

It is essential for lawyers to become much more involved in our system of justice; and this must be emphasised because the changes which are necessary both in the public's attitude and in legislation affecting the rule of law will not come about by magic but will require education of members of the media and the public to the assaults being attempted on our system of justice as well as to the consequences which will result from our inaction or silence. One method for bringing the debate about the rule of law more into the open is to make use of the media. It, perhaps more than any other institution in our society, is really aware of the interests of the public in conflicts which arise day to day through the sheer interaction of individuals in a rapidly changing society. It is reasonable to expect them to take an increasing interest in the role we all play in ensuring that our fundamental freedoms are preserved if we take the time and the effort to engage them in dialogue and through their power to reach millions of Canadians to engage every citizen in that dialogue as well. Any such attempt, be it writing a letter to the editor of a newspaper or making a submission to a governmental organization of just speaking seriously about the issues with friends and associates, that will not change things over night. The public if anything is little concerned with matters which in their view hardly if at all affect them. They are, as we all are, concerned by unemployment, inflation, national unity, and from time to time with global survival itself. Individuals are concerned about the rapidity of change in our society, with the erosion of faith in our institutions, the government, schools, police, churches, unions, the media and the family. People are fearful. They have begun to isolate and insulate themselves from the so-called big questions facing us because they cannot see any way in which they can affect the major decisions which affect their lives. What each of us must continue to do in concert with the media, the educators, and any person who believes that the essence of our democratic nation is the involvement of our people, is to speak out for what we believe in, to defend those rights which cement us together as a civilized society and to have patience and faith in the future.

In closing I would like to leave you with a statement made by a great American trial lawyer, Edward Bennett Williams, which I feel expresses the position we are in today.

> We have allowed an erosion of individual liberty and freedom to take place in the last three decades, not as the result of overreaching of big govenment, nor as a result of calculated assaults made upon liberties and freedoms in the last decade, but rather because of the collective lethargy and a cavalier attitude of unconcern. I think we have made a substitution in our national ranking of values, an evoluationary substitution that is only now reaching its culmination. We have placed security in a position of primacy and subordinated individual liberty to it.