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Lynn McDonald

CONTEMPT OF COURT: AN UNSUCCESSFUL ATTEMPT TO USE SOCIOLOGICAL EVIDENCE[1]

LYNN MCDONALD*

In December of 1968 Thomas Murphy, a sociology student at the University of New Brunswick, wrote a column in the student newspaper criticizing a judge, certain proceedings and the court system in general. He was charged with scandalizing the court or bringing it into public ridicule and contempt. In March, 1969 the Appeal Division of the Supreme Court of New Brunswick (where the proceedings were initiated) found Murphy guilty and sentenced him to ten days in jail.[2]

The case raises a number of important issues both from the legal and the sociological perspectives (themselves in sharp conflict in places we shall see). The essential points of the case will first be briefly described. Sociological evidence on the effect of the cited column on people's opinions of the courts, which the court refused to admit, will next be outlined. The reasons for the Court's refusal to admit this evidence, the opinion rule and the hearsay rule, will be critically analyzed. Social science findings on the effect of newspapers on people's attitudes, evidence also ruled inadmissible, will be described. Then the reasons for the Court's refusal to admit it will be discussed. This will be followed by a broader treatment of the nature of evidence, theories, probability statements, speculation and calculation. Finally the necessity for the offence of contempt of court by scandalizing will be discussed. Throughout this paper we will attempt to relate legal theory to the best social science theory and research findings available.

The Murphy Case

Murphy wrote the offending article for his regular signed column, "Spades Down", in haste and outrage after giving evidence during the trial of a university professor on another contempt of court. Very briefly Dr. Norman Strax, a University of New Brunswick physics professor, was being tried for breaking an injunction forbidding him to enter the university grounds. (He had earlier been suspended from teaching there.) One of the professor's lawyers was ordered out of court during the hearing, this being the initial reason for Murphy's criticism of the Court. The professor was convicted and ordered to pay $2,000 in exemplary damages to the university and costs.

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* Assistant Professor, Department of Sociology, McMaster University.

[1] While assuming the usual responsibility for all faults in this paper I would like to thank Mr. Alan Borovoy, defence counsel, Professor John Hogarth, Osgoode Hall Law School, and Professor Stanley Schiff, University of Toronto Law School, for their advice and criticism.

[2] *R.* v. *Murphy* (1969), 4 D.L.R. 3d 289.

The original cause of Strax's suspension strains the imagination. The professor refused to use an identification card for taking books out of the university library, a procedure that had only just been instituted at the university. He with about six students took a large number of books (several hundred) to the check out counter and, since the clerk would not sign out the books to him without the card, piled the books on the check-out counter. The chief librarian responded by closing the library. The same procedure was followed the next two days and on the third Professor Strax was suspended. This was followed by a 48 day sit-in in his office, which is something of a North American record. The sit-in idea came from Murphy, although this is not relevant to the contempt proceedings. One of the results of the sit-in was that a number of students went to jail, this being the first time in Canada police were called in to end a student protest. Another professor also refused to use the identification card in the library, similarly stacking up books, but no action was taken against him. The Canadian Association of University Teachers subsequently censured the university for its suspension of Strax without due process, and for its seeking the court injunction. The gravity of censure is indicated by the fact that the association had used the censure sanction only once before in its entire history.

It should here be noted that Professor Strax, an American citizen, is a political radical and has been active in a new group called the Canadian Struggle for a Democratic Society. Murphy was also active in that group, as well as being at the time the national president elect of the Student Christian Movement.

Murphy's column was published soon after his presence at the court hearing. In it he specifically criticized the court's dismissal of the defence lawyer, offering reasons as to why he thought the court was wrong. He then went from that particular instance to the judicial system as a system, stating what he thought was wrong with it and why. Briefly this was to the effect that it did not serve justice but was the tool of the corporate elite.

Three weeks later Murphy and the student editor of the paper were charged with contempt of court. (The publisher was not charged.) The editor purged his contempt in the prescribed way and was fined $50. Murphy decided to fight the charge and this paper is concerned with his defence.

A distinguished lawyer in his eighties, Mr. J. F. H. Teed, was brought out of retirement to handle the case for the prosecution.[3] This made the generation gap, apparent throughout the proceedings, even more visible. Murphy had difficulty getting counsel. Eventually the Canadian Civil Liberties Association took the case, with its general counsel, Mr. Alan Borovoy, acting.

The trial raised a number of issues, of which only those involving sociological analysis, will be discussed here.[4] There are three such propositions, and none of these favourably impressed the Court.

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[3] The implications of this procedure are discussed by Cameron in an article in *Canadian Forum* (1969).

[4] The legal issues may be discussed in a later article by Borovoy.

1. That the cited column did not actually have the effect of lowering its readers' opinions of the court.
2. That newspapers generally and controversial statements in them more particularly do not by themselves change opinions, but rather more often reinforce existing ones. University students have already formed their fundamental political orientations, which include their views on the legitimacy of the courts, and so are not readily susceptible to attitude change via the mass media.
3. That since it is legal for people at a university to teach and write about theories on the power elite's role in society, it must be legal for a student to discuss them, even in an erroneous way. The right of free speech includes the right to criticize the courts, even erroneously.

The effect of the column on public opinion

The defence had a survey conducted by a sociologist (the writer) to determine the effect of the article on the opinions of the courts held by the readers. The hypothesis was that if the article had the effect of bringing the courts into public ridicule then people who read the article would have had less favourable opinions of the courts than people who did not read the article.

This assumes that readers and non-readers started out with similar views of courts. Certainly there was no reason for considering that non-readers would have started out with less favourable views of the courts than readers. If there were any differences in opinions before the article was written it would be more likely that they would be in the opposite direction. That is, a column of dissent would be more likely to be read by people with negative views of the courts, or at least a propensity to dissent. Thus readers of the column might have started off with slightly more negative views than non-readers. In any event any difference found between readers and non-readers of the column was to be attributed to the reading of the column.

As most of the student population of the university had read the column (not so much immediately as after its attaining notoriety) it was necessary to draw from another university for a non-reader comparison group. Mount Allison University in Sackville, New Brunswick, being the closest English-speaking university to U.N.B., was the obvious choice. St. Thomas University, a Catholic institution on the same grounds as the University of New Brunswick, was considered part of U.N.B. for purposes of the survey since its students read the same student paper.

Random samples of the student populations of the University of New Brunswick, St. Thomas and Mount Allison were drawn from the appropriate student directories, in accordance with standard sampling methods. Interviews were conducted at the place of residence of the students. The interviewers, mostly university professors and faculty wives, were instructed in interviewing by the writer. None of the interviewers were students. The questionnaire was pre-tested in several stages with students at McMaster University.

An exceptionally high yield of the sample was attained. There were only two refusals and less than five per cent were unavailable whenever contacted.

Substitutions were allowed when the student whose name was drawn had moved away and was replaced by another student.

It is proper when random sampling techniques are used to infer from the sample to the population. Thus it is proper to consider the survey results as constituting the opinions of the whole student body even though only 171 University of New Brunswick students were interviewed and 136 Mount Allison. In fact, the samples actually obtained were highly representative of the student populations they were supposed to represent, as can be seen in Appendix A.

The ten minute interview contained eight questions about the courts, interspersed with 38 others intended to disguise the purpose of the questionnaire. It started off with questions on the problems of Indians and Negroes and the Bill of Rights. The question on whether or not the student had read the column resulting in the court case came after a number of questions on Canadian and American reading material — what specific publications, and what type of writing (editorial, news, column etc.) he read.

The disguise was necessary as there was considerable unfavourable feeling about the accused at the time. During the week of interviewing a petition was circulated on the University of New Brunswick campus to overrule a Student Council decision to award Murphy funds from the student treasury for his legal expenses. Over 20 per cent of the students signed it.

The eight questions on the courts cover the major areas in which people expect the courts to act fairly:

—how frequently do they make serious mistakes?
—do they discriminate on grounds of race, social class or political persuasion?
—can a person expect to get fair treatment from the courts?

The actual wording of the questions can be seen in Table 1, with the results of the tabulations and the statistical tests applied to them.

(Table I — see pages 596, 597)

The proportions of the readers and non-readers giving a favourable answer were compared on each question. The differences between the two groups turned out to be only trivial, in two cases of only 0.1 per cent. The largest difference was of 7.3 per cent, in this case more of the readers having the favourable view of the courts than the non-readers. In no case were the differences between the readers and non-readers greater than would easily occur by ordinary sampling fluctuation.

There were eight possible opportunities for the hypothesis that the readers and the non-readers had similar favourable opinions of the courts to be rejected. Yet in not one case was there the slightest indication of a difference.

It is extremely unlikely that cheating could have had any effect on the results, an important point to consider when we discuss the hearsay problem later. It would not even have been possible for a student or interviewer trying to help the accused to cheat. A student in the sample (for example who had read the column) to help the accused would have had to have known the exact

proportions giving favourable and unfavourable responses to each of the court questions, for the reader and the non-reader groups separately. He would then have had to have given a response favourable to the courts if the reader group had a lower proportion favourable, or an unfavourable response if the reader group were already higher on the favourable. Of course the information as to how the others had responded would not have been available until too late, after the results had been tabulated.

A student interviewee opposed to the accused could cheat by giving unfavourable responses on all questions if he claimed he had read the column, and favourable if he had claimed not to have. This assumes that he knew the purpose and the method of analysis of the study, which was highly unlikely.

The only person in a position to cheat, by altering the tabulations after the interviewing, was the writer. The availability of the actual interview forms for inspection makes that highly unlikely.

The opinion rule

The Court ruled the evidence inadmissible on two grounds, violation of the opinion rule and the hearsay rule. We will first discuss the opinion rule which, although not mentioned in the judgment, was the reason given by the Court at the time it ruled the evidence inadmissible. The Court stated that even if the interviewees had been in court to give their evidence it would not have been admissible because they were students and not experts, and therefore incompetent to give evidence on opinions. Thus while the offence of contempt lies in having changed people's opinions about courts, evidence regarding opinions is not admissible.

It is contended that the application of the opinion rule is mistaken for a number of reasons. Many exceptions to the rule are already recognized. Ordinary witnesses regularly give their opinions on the speed of a car, temperature, weather, identity of an object, reputation, similarity of one trademark to another, and the value of commonplace articles. Court procedure would be considerably hampered if this evidence could not be given by ordinary witnesses.

More generally opinion evidence is admissible from non-experts when it is too complicated to be separated from the facts on which it was based, or when the passage of time has made the distinction impossible. Clearly on a matter such as the quality of justice dispensed by courts no individual could realistically make any fact-opinion distinction. To imagine this possible one would have to suppose that parents and teachers spend a number of years teaching children facts about the court system, without betraying their own opinions, and then that the children later drew their own inferences from the facts.

The reasons for the exclusion of opinion evidence clearly show how inapplicable the rule is to the present case. One main reason is that some opinion evidence from an ordinary witness would not assist the court, or might even mislead it, when on the same matter an expert's more informed opinion would be useful. In this case of course no expert opinion could have been more relevant than the opinions of the student readers themselves. Secondly

the opinion might usurp the function of the jury by speaking directly to the issue it is to decide. Yet even in this situation such evidence is allowed in some cases.[5] The effect of the newspaper column on the students' opinion which the survey would have shown, is not the ultimate issue the Court has to decide. The question of how much attitude change in how many people constitutes "public contempt" would still have to be decided.

In any event the whole distinction between fact and opinion developed in American rules of evidence is, according to Wigmore, "merely the logically technical development of a misunderstood term". This occurred when the prohibition of evidence by ordinary witnesses on "mere opinion", that is opinion not based on facts, was extended to include all opinion.

The distinction between fact and opinion in terms of reliability of reporting is only one of degree. Opinion and observation are all stored in the same brain and subjected to the same psychological and cultural biases. Subjects in psychological experiments see long lines when they should see short, read "steak" for "seak" and misperceive all kinds of sensory stimuli. Moreover it is possible to find out how reliably measurable opinions are. Thus it would be possible to find out and use opinions in evidence that are as reliably held as physical observations.

The hearsay rule

The other reason given for the inadmissibility of the survey evidence was that it was hearsay. The judgement states only that the defence had a sociologist in Fredericton for a few days who had some interviews conducted with some students, and that this evidence was clearly inadmissible. Obviously the sociologist's report of the interviewers' reports of the interviewees' words would have been hearsay, but this is not what was offered to the Court. The fact that the interviewers were present in court to swear to what they had been told, and the fact that the interview records were also in court was not mentioned, omissions which give a highly misleading picture of the evidence to have been introduced.

The defence's understanding of hearsay was quite different from the Court's and is given below. American courts which operate with the same rules on hearsay clearly have accepted these reasons at least since 1919 when the first opinion poll evidence was admitted.[6] The Murphy case appears to be the first attempt to use survey evidence in a Canadian court.

The survey evidence consisted of opinions on the courts and the fact of whether or not the interviewee read the column in question. Evidence that certain opinions exist is not hearsay at all.[7] And evidence from the students

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[5] Rupert Cross. *Evidence.* London: Butterworths, 1963, 2nd edition.

[6] The use of survey evidence in American courts and the conditions for introducing it are extensively discussed in an article by Sorenson and Sorenson, hence it will not be treated here. "Opinion research evidence." *New York University Law Review.* V. 28, 1953, pp. 1213-61. The most frequent examples are civil suits on trademarks of products, and, in criminal matters, to obtain a change of venue on grounds of prejudice in the community.

[7] Wigmore on *Evidence,* 3rd ed., 1420.

on whether or not they had read the column can be admitted as an exception to the hearsay rule, which point we will come back to. That certain opinions of the courts existed is all the defence had to introduce into court. The defence did not have to bring evidence as to the truth of the opinions given to the interviewers, which it could not have done without calling the student interviewees.

The point is that truth is of dubious relevance to opinions on the subject in question, the quality of justice in New Brunswick courts. For example, the statement that the courts of New Brunswick dispense justice as fairly as other Canadian courts is either true or false. But since this has never been objectively studied, nobody knows whether the statement is true or false. However, even if the answer were known, that would not matter. What is relevant to the contempt charge is what people *think* about the justice dispensed by New Brunswick courts. It may be true that New Brunswick courts are not as fair as other courts but that people think they are. Any readers who lowered their opinion on the courts as a result of reading a newspaper article would then come closer to the truth, but the article would have brought the courts into contempt.

The one area of frequent dishonesty in surveys known about is that respondents have a tendency to slant answers in the direction they think will please the interviewer. Thus more people say they voted than could have because people consider voting a citizen's duty and do not like to announce to a fellow citizen that they have not done theirs. That kind of bias would not be harmful in the present survey as it would affect the reader and the non-reader groups alike.

The interview method relies on confidentiality and rapport to gain its version of truthful answers. The courts rely on the method of sworn evidence, cross-examination and the threat of punishment for perjury to gain theirs. They are different styles. There is research evidence to show that surveys do obtain valid and reliable results on the whole. The same cannot be said for sworn evidence, which is merely asserted to be valid. The collection of information is of course the only function the survey has to fulfill. It does not have any ritual to perform to remind citizens of the importance of obeying the law, or of the dire punishments the Courts can hand out to those who do not. The Court does this, as well as deciding on the facts of a case and the guilt of the accused. The problem arises in that the task of reinforcing respect for the established institutions may interfere with the task of acquiring and interpreting information.

Yet even if the court method is good for obtaining truthful information in some or even most respects it is not the best way for all kinds of information. And for finding out the state of public opinion it is clearly an impractical and inappropriate method.

It cannot handle the numbers required for an accurate picture of public opinion. In this case a parade of 207 witnesses would have been necessary to obtain the same information as the survey. The large number of individual statements would have caused much confusion and made it difficult to assess

the overall result. More importantly the witnesses obtained for any such case would not constitute a random sample of the appropriate public and so it would have been wrong to make any assertions about the public they were supposed to represent. Obviously people willing to spend a day in court to give evidence for the defence would be partial to that side and vice versa.

Of course it would be possible to draw a random sample of names and subpoena witnesses irrespective of their willingness to attend, but this would violate an essential condition of surveying — that the circumstances under which the information is obtained be the same for all respondents. Witnesses not interested in the case would probably begrudge the time in court and react differently from those who were concerned. Early witnesses would not know how the evidence was to be used but later ones could probably figure this out. The possibility of cheating, extremely remote with the interview method, would be very high with the court.

Evidence gathered with the survey method would be admissible if the principles to the exceptions to the hearsay rule were applied. These principles, albeit not entirely accepted, are based on the purpose of the hearsay rule itself — to avoid untrustworthy, untested assertions in evidence. Wigmore states two principles to be considered: the circumstantial probability of trustworthiness in the evidence, and the necessity for it.

The survey evidence clearly gets full marks for necessity. There was no other evidence on the effect of the impugned article on its readers; in fact the case was eventually decided without there being any evidence of any kind. On the circumstantial probability of trustworthiness the survey method deserves high, but not perfect marks. Wigmore outlines several tests for ascertaining the truth, equivalent to that of cross-examination.

(a) "Where the circumstances are such that a sincere and accurate statement would naturally be uttered, and no plan of falsification be formed."[8]

Since the interviewees were not made aware of the plan of the survey they were not in a position to form any plan of falsification.

(b) "Where, even though a desire to falsify might present itself, other considerations such as the danger of easy detection or the fear of punishment, would probably counteract its force";[9]

The writer might have had a desire to falsify the results, but was subject to easy detection as the records were made available to the Court, and was subject to punishment for perjury upon giving false evidence as to the results.

(c) "Where the statement was made under such conditions of publicity that an error, if it had occurred, would probably have been detected and corrected".[10]

This applies as well, for the reasons given immediately above.

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[8] Wigmore, *op. cit.*, 1422.
[9] Wigmore, *op. cit.*, 1422.
[10] Wigmore, *op. cit.*, 1422.

The general effect of newspapers on public opinion

The view that newspaper articles do not change people's minds (on matters which they already have formed opinions) is enormously unpopular. However it is well supported with empirical evidence and there is no serious academic opinion against it.

The consensus of findings on the subject is that communications intended to be persuasive typically reinforce people's current views far more than change them.[11] By themselves the mass media, including the newspapers, are neither a necessary nor a sufficient condition of change of public opinion. People are exposed more to, and take more notice of, information consistent with the views they already hold than to contrary information.[12] People tend to discredit information that challenges their existing beliefs rather than change their beliefs.[13]

Newspapers have been found to be even less persuasive than the other mass media forms. People consider news reporting on television more truthful than in the newspapers. Material given in written form is understood and remembered less well than that given in a speech or on television. Even lengthy and consistent editorializing has been found to be ineffective in changing people's votes in American presidential elections.[14]

Communications by a person disapproved of may have the reverse effect. For example a Communist speaker advocating a certain measure to a non-Communist audience had more people disapprove of the measure after the speech than before it.[15]

The point is that the communication by itself does not change attitudes. The conjunction of certain material information about both sides of the issue rather than propaganda on one, from a highly respected source,[16] presented to people susceptible to attitude change by changed personal circumstances, the attitudes of associates and the direction of thinking they had been following recently can. Also the more kinds of media the message is communicated through the more likely the attitude change.[17] Thus rather than assuming that a single newspaper column has any effect in the direction intended it is necessary to consider all these surrounding facts. For example, a young American about to be drafted, whose brother had just been imprisoned for desertion, whose best friend had been killed in Vietnam, whose other close friends had

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[11] Joseph T. Klapper, *The Effects of Mass Communication.* Glencoe: Free Press,

[12] Bernard R. Berelson, *et al., Voting.* Chicago: University of Chicago Press, 1954. 1960.

[13] Leon Festinger. *A Theory of Cognitive Dissonance.* Evanston, Illinois: Row, Peterson, 1957.

[14] Maxwell McCombs. "Editorial endorsements" *Journalism Quarterly.* V. 44 1967, p. 545.

[15] L. Sargent and Webb. "The radical speaker on the university campus." *Journal of Communication.* V. 16, 1966, p. 199.

[16] Carl I. Hovland, *et al., Communication and Persuasion.* New Haven: Yale University Press, 1953.

[17] Melvin M. Tumin. "Exposure to mass media and readiness for desegregation." *Public Opinion Quarterly.* V. 21, 1957, p. 237-51.

just joined an anti-war group, who had started to be sympathetic with anti-war sentiments and read anti-war publications, would be fairly likely to show attitude change (against the war) after a speech by Dr. Spock at a demonstration.

In the Murphy case consideration of the conduciveness factors shows that the column was highly unlikely to have affected opinions. The article contained little information and was highly propagandistic; it was clearly one-sided. The source, a young student with radical political views, would not be a credible source for the bulk of readers.

The admissibility of expert evidence

The defence had an expert witness, Dr. Frank E. Jones, Professor of Sociology at McMaster University, qualified to give evidence on the above points among others. His evidence was also ruled inadmissible. In making that ruling the Court cited Phipson on Evidence which had been quoted in a Supreme Court of Canada decision:

"Neither experts nor ordinary witnesses may give their opinions upon *matters of legal or moral obligation,* or *general human nature,* or *the manner in which other persons would probably act or be influenced*".[18]

The rest of the passage, not quoted in the Supreme Court judgement, gives several examples of inadmissible evidence from the cited cases, and explains why such evidence is not admissible:

> "So the opinions of cattle drovers and the like are not admissible upon the question of how an accident to cattle in a railway truck must have happened . . . nor to the prudence of an agistor putting horses to graze amongst horned cattle . . . nor are those of firemen as to whether there was anything to point to the fire having occurred accidentally, *(for this is not a matter of scientific knowledge.)*[19]

Phipson appears to have been an unfortunate choice for a statement of the law on evidence on this point. The rule given, presumably derived from the cases cited, is not supported by those same cases. The evidence on the prudence of the agister in letting his horse graze among horned cattle was admitted without apparent objection. Evidence on how a fire must have started was also admitted, in one case out of the two cited. Confusion on this point can perhaps be minimized by tracing the origin of Phipson's general rule and fitting in the other cases chronologically. Then we shall ascertain how applicable the rule is to the present case.

The proscription on "legal or moral obligation" and on "how others would probably act or be influenced" appears to be a quotation from the judgement in *Campbell* v. *Rickards,*[20] one of the cases Phipson cites in the section. In this case evidence had been admitted in the trial court on what the insurers of a ship's cargo would have done if they had received different information from what they did in fact receive. Chief Justice Denman in delivering the judgement of the court on the appeal stated: "Witnesses conversant in a particular trade may be allowed to speak to a prevailing practice

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18 Phipson. 8th edition, p. 385, cited in *Adam* v. *Campbell,* [1950] 3 D.L.R., 449.

19 Phipson. 8th edition, *loc. cit.*

20 [1833], B & A, 840.

in that trade; scientific persons may give their opinion on matters of science; but witnesses are not receivable to state their views on matters of legal or moral obligation, nor on the manner in which others would probably be influenced, if the parties had acted in one way rather than another."[21]

The reasons for this are also stated:
"It is not a question of science, in which scientific men will mostly think alike, but a question of opinion, liable to be governed by fancy, and in which the diversity might be endless."[22]

Clearly the evidence ruled inadmissible in this case is not remotely similar to the evidence to have been introduced in the contempt case. The sociological evidence included nothing on legal or moral obligation, and the evidence on the interpretation of the survey, the mass media, and the impressionability of university students were all matters of science on which there has been considerable research. Sufficient work has been done for there to be a consensus among social scientists on these points; they are no longer matters of opinion "governed by fancy" and characterized by "endless diversity".

The point forbidding evidence on "general human nature" appears to have come from the well known case of *Bourne* v. *Swan and Edgar*[23] which Phipson also cites. The court ruled inadmissible evidence that people would be deceived by the swan decorations used by Swan and Edgar, thinking they were the same swans on which Bourne had the trademark. The judgement states:
"It appears to me that there is another reason against the admissibility, and that is that I do not see how you can call any individual to give what is in truth expert evidence as to human nature, because what they are asked in this form of question is, not what would happen to them individually, but what they think the rest of the world would be likely to suppose or believe. They are not experts in human nature, nor can they be called to give such evidence, and, apart from admissibility, one cannot help feeling that there is a certain proneness in the human mind to think that other people are perhaps more foolish than they really are."

However in another case[24] Phipson cites evidence admitted by witnesses who said they actually had been deceived into thinking a firm displaying the royal arms had a warrant to do so. So evidence about how *other* people would probably act is not admissible but evidence about how a person himself feels is.

Despite the belief expressed in *Bourne* v. *Swan and Edgar* that people would not give evidence that they themselves had been deceived, people did give just that evidence in the later case. Indeed on practically any passing off action both plaintiff and defendant could get a parade of witnesses to give opinions supporting their side. But this evidence would be of very low quality.

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[21] *Id.*, p. 846.

[22] *Id.*, p. 847.

[23] [1903] I Ch. L. R., p. 211-231.

[24] *Royal Warrant Holders' Association* v. *Deane and Beal Limited,* 1912, I Ch., p. 10-23.

Unless the witnesses are drawn randomly from the appropriate population they cannot properly be thought to represent it. And it is the scope of the deception in the population that is important, not the effect on the short parade of witnesses.

However all the arguments about people being or not being deceived, whether based on evidence from people themselves or from how other people think they would act, is now superfluous. It is possible to conduct opinion polls of representative cross-sections of the relevant populations to find out whether people were or were not actually deceived on any particular trademark. This is what is frequently done in American cases. (And this is what was done in the contempt case.) Thus the question is no longer a matter of speculating about "general human nature" but of making inferences from empirical evidence on very specific hypotheses.

The distinction between evidence of speculation and evidence of a scientific nature can further be seen in the two arson cases cited. In one[25] the prosecution had a superintendent of the fire brigade give evidence of certain experiments made with candles of different lengths, like those of the candle ends found in the debris of the fire. The object was to support the prosecution's theory that the fire had been deliberately set. The defence objected to the admission of the evidence but it was admitted.

In the other case, however, the evidence of the fireman was not admitted.[26] That evidence had not been based on experiments as had the earlier one. According to the judgement how the fire started "was not a question of scientific knowledge but the mere opinion of the witness."[27]

Similarly, in two other cases Phipson cites on inadmissibility, no scientific evidence was involved. In *Hatch* v. *Lewis*[28] the evidence of jurors as to what decision they would have reached if the evidence had been different was ruled inadmissible. In *Smith* v. *Midland Railway*[29] the plaintiff, a cattle drover and farmer, gave "so-called evidence"[30] about how an accident must have happened to his cows while they were being transported by the Midland Railway Company. The cattle drover had not been present in the railway car at the time, and, needless to say, had not conducted any scientific experiments subsequently on other cows on the same or any other railway. The objection to the evidence was clearly stated in the judgement, that the plaintiff was just "not an expert competent to give evidence" on the subject.[31]

The citation of *Smith* v. *Cook* on the point appears to have been a mistake, and if not its relevance is highly doubtful. Both the plaintiff and the defendant brought evidence on the wisdom of grazing a young horse on unfenced marshland near a horned bull. No objection to the evidence was

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[25] *R.* v. *Heseltine.* [1873] *Criminal Law Cases,* (N. Cir.) 404-407.
[26] *R.* v. *Cattermoul.* [1894] *Central Criminal Court,* (Sessional Papers) 151.
[27] *Id.,* p. 157.
[28] [1861] 2, *Foster and Finlayson's Reports,* 467.
[29] [1888] 57 L.T. 813.
[30] *Id.,* p. 813.
[31] *Id.*

raised by either party or by the court. The case clearly does not involve scientific knowledge and would appear to be irrelevant as well in that it concerns the disposition of horned cattle rather than general human nature.

Even the Supreme Court of Canada case,[32] although less pastoral than the preceding, involves conditions quite different from the present one. The defence had evidence introduced, to which the Court did not object, on the "reaction time" of drivers facing normal traffic hazards. This was based on experiments conducted personally by one of the expert witnesses, an automotive engineer. He had not conducted any experiments on the crucial point of the case, the "reaction time" of a driver suddenly encountering an unusual circumstance, a pedestrian appearing suddenly on the road and his brakes failing. The estimate of such was, therefore, of a highly speculative nature. The Supreme Court deemed that evidence to be inadmissible, and as well considered that the trial judge had added weight and significance to it. "They [the jury] would understand from what the learned trial Judge had said to them that there is an interval of time following an emergency in which the driver of a motor car is as a matter of law "entitled to lose his head" in the sense that he will not during such interval be legally responsible for what would otherwise be negligent actions and omissions on his part.[33]

The Court gave two reasons for the objection. First, the evidence was not based on actual experiments or other scientific grounds. For the second objection the quotation from Phipson is made. "Neither experts nor ordinary witnesses may give their opinions upon *matters of legal or moral obligation,* or *general human nature,* or *the manner in which other persons would probably act or be influenced.*"[34]

Phipson's distinction between scientific and non-scientific evidence is correctly applied in the Supreme Court case but misconstrued in the contempt case. Expert scientific evidence can only be introduced when it is possible to have such information. Evidence merely purporting to be scientific is inadmissible. Phipson's point concerns cases in which there is no scientific knowledge to be had, and in which speculation would indeed be idle. The present case does not fall in Phipson's inadmissible category because scientific information was relevant, possible to obtain and indeed available in the courtroom.

The theory of the impressionable university student

The Court considered it particularly important to enforce the law of scandalizing in this case because university students were the readers affected by the contempt. The judges believed university students to be a highly impressionable lot, more so than younger students or other citizens. Furthermore the Court believed students would likely carry through life the opinions they acquired at university. The Court appeared to consider they had a grave responsibility to protect such unsophisticated minds from the corrupting influence of student newspaper articles.

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[32] *Adam* v. *Campbell.* [1950] 3 D.L.R. 449.

[33] *Id.,* p. 457.

[34] *Id.,* p. 458.

The defence had expert testimony to give (which was not admitted) to refute this theory on two grounds. The indirect evidence consists of a fairly extensive literature on the acquisition of beliefs on the legitimacy of political institutions, however not specifically with reference to courts. These data consistently show that such fundamental attitudes are acquired early in life, roughly in the elementary school years, and are not substantially changed, given normal conditions, after that.[35] Most children formulate their basic attitudes to political institutions including the courts very early in life, certainly before entering high school. In the early years of elementary school these opinions are highly favourable to and trusting of the authority in question. Children lose this extreme naiveté gradually, and indeed by the time of entry into high school are fairly close to their teachers in the amount of trust they show. There is not much change in attitudes to authorities other than the courts in high school, but no studies appear to have been done directly on court attitudes in the high school age group.

Changes in attitudes to the courts during the university years can be studied directly with the results of the New Brunswick survey. The same eight questions on court attitudes already discussed were re-analyzed so that the responses of each age group, from 18 and under, to 23 or over could be compared. The results of this analysis are reported in Appendix B. On none of the questions were there statistically significant differences by age group, which we would expect to find if there is systematic attitude change during this period.

Another way to consider this question is to compare the proportion of students in each age group giving a "don't know" response to each question. If the judges' theory is correct the highest "don't know" response should appear in the youngest age group, and the proportion should fall progressively until in the oldest group the smallest proportion appears. Appendix C shows that such was not the case. The proportions having no opinion fluctuated, with no discernible pattern appearing on any of the questions.

The concept of probability

The statement about the manner in which other people "would probably act or be influenced" raises a very important and more general problem about the nature of probability statements.[36] Probability in that statement, as in numerous other legal utterances, implies rather undisciplined musing or speculation, without any defined range. The term is used frequently in that sense in everyday speech. However, its meaning in science is considerably stricter, although admittedly there is no one accepted definition of probability. Popper's definition of the word, a common and useful concept in social science, will be used here. A probability statement is a statement about the likelihood of an event taking place based on the frequency of that event having taken place in

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[35] Robert D. Hess & Judith V. Torney. *The Development of Political Attitudes in Children.* Chicago: Aldine, 1967.
F. I. Greenstein. *Children and Politics.* New Haven: Yale University Press, 1965.
Herbert Hyman. *Political Socialization.* Glencoe: Free Press, 1959.

[36] Phipson, *op. cit., supra* note 18, p. 385.

the past under similar conditions.[37] There is a 50 percent probability of the next toss of the coin being heads because a long (technically infinite) series of previous tosses showed an average of 50 per cent heads.

A probability statement is not a fact *per se,* but an expression of faith that certain processes known about (the facts) will continue to operate as they did when they were studied and then stated to be facts. In Phipson's ranking of facts and hypotheses based on facts probability statements would fall somewhere in between.

If an expert can give evidence on hypotheses based on facts he should certainly be able to give probability statements in evidence. The problem lies in the courts' failure to distinguish between the strict and loose definitions of "probability" — discrediting the strict meaning with the loose.

Any expert witness is implicitly making probability statements when he gives his evidence in any event. Consider for example a doctor, giving evidence in a negligence case, who states that 80 per cent of patients with certain symptoms and condition die within x days of surgery even with the best care. A jury from that would infer that the patient in question, having had the same symptoms and condition, died as a result of the disease, not to any lack of attention or incompetence. To not allow the doctor to state that the patient had an 80 per cent probability of early death is splitting hairs.

Calculation

The charge that initiated proceedings in the case was both that the offending article was "calculated to" and "does in fact bring" the courts into public ridicule and contempt. The prosecution did not have to show that the article did in fact bring the court into ridicule, and indeed admitted that it could not. Consequently what constitutes "calculation" is an important point.

What this word means in law is not entirely clear. We will hazard a guess through the process of progressively eliminating alternative possible meanings. First of all calculation does not mean intent. The Court ruled that it was not necessary to prove intention to prove calculation.[38] Next, calculation does not mean what actually happens and evidence to show that the courts had not actually been brought into public ridicule and contempt would not have been a defence. Further it does not mean what a reasonable man would consider likely to bring the courts into public ridicule and contempt. (The court held that evidence on opinions was inadmissible. In any event the prosecution did not attempt to bring in any citizen to give evidence that the article would likely have had that effect.)

It appears to mean what a judge considers a reasonably likely outcome of the action — irrespective of the actor's intention or the actual result. Thus a person who had no intention of attacking the courts' reputation, who did not

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[37] Karl R. Popper. *The Logic of Scientific Discovery.* New York: Basic Books, 1959, p. 149.

[38] *R.* v. *Murphy.* (1969) 4 D.L.R. 3d 289.

actually damage it, and who did not even make anyone else think his words might have had that effect, could be found guilty of contempt if a judge considered his words could have had that effect.

The major objection to such an interpretation is that it implies some objective meaning. If the only criteria for assessing calculation are the judges' opinions of a likely outcome then calculation simply means the judges' opinions of a likely outcome. The word implies more than this, that the property of calculation lies in what was written, with the judge's role being that only of observation and evaluation.

The theory of the power elite

Mr. Justice Limerick said in court that he objected to the defendant's sweeping criticism of the judicial system more than to his criticism of the specific judge and judgement (which formed the first part of the column). The criticism of the system was made in an unacademic way. It was sarcastic, without qualification and without evidence. It was a student's unsupervised attempt to generalize from acceptable (though controversial) sociological theory to a particular point about the judicial system.

There is extensive evidence of the influence of the corporate elite, in Canada as well as in other comparable countries, in politics, the arts, education, and the social welfare system. However there is very little information about the way the influence is made. Moreover, what evidence there is, is indirect. It is known that judges come disproportionately from business and upper class backgrounds, have disproportionately attended schools and universities with corporate elite members, and disproportionately belong to the same clubs and formal associations.[39] They are accordingly likely to understand and be sympathetic to the views of the corporate elite, and are not likely to understand or be sympathetic to the views of radicals, artists, Indians and poor people with whom they have little in common.

The accused took the known information and extended it in a logical way. If the corporate elite is known to influence many important social institutions it is likely to influence another one as well. The defence contended that it was legitimate for a student (or anyone) to do that. Indeed it is the role of the university to encourage students to think for themselves. The risk of error must be taken for it is to be preferred to the certain alternative of stagnation.

One writer of some reputation in British sociology considers it intrinsically impossible for the judicial system to be fair in any way but in a trivial sense of the word.[40] Thus all poor people might be treated equally (and badly) but never would the rich and the poor be treated alike. As soon as there are laws there is inequality, for the very existence of laws presupposes an already existing inequality in power. Someone made the laws and enforces them; by definition he is more powerful than those against whom he enforces

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[39] John Porter. *The Vertical Mosaic.* Toronto: University of Toronto Press, 1965.

[40] Ralf Dahrendorf. *Essays in the Theory of Society.* London: Routledge and Kegan Paul, 1968, pp. 151-178.

them. Those who are punished assume, as a consequence of punishment, a status lower than those who order the punishment and others who are not punished. This ensures that there will always be a minimum of two classes in every society: the punished and the non-punished.

The whole sense of Dahrendorf's theory is that the judicial system is a means of furthering the goals of the powerful. The way that this is done will vary considerably, so that in a modern industrial country notions of equality before the law and due process could be well implemented. But it would be proper to infer from Dahrendorf that the judicial system is one of the many tools of those who have power. In a society based on a corporate economy the courts would be to some extent the tool of the corporate elite, although of course serving other functions as well. Dahrendorf does not in the slightest suggest deliberate corruption; his analysis concerns institutionalized relationships only.

The connection between judicial authority, political and economic can better be seen in considerably earlier periods (for example mediaeval England) and in other countries. The word court came from the court of the king, as in mediaeval England the king with his court personally travelled around the country dispensing justice. (Ecclesiastical courts did as well, independently of the king.) The king was then the most powerful person economically. He had to have Parliament's authorization to tax after *Magna Carta* but he still owned vast lands and could regulate business through charters and licenses. The king shared his power with lords, but these personally held the same combination of judicial, political and economic power.

Eventually a king appointed a judge in his place beginning the long trend of division of labour. This division has become extensive in Britain and the countries developing from it. There still are connections although the separation of powers and the independence of the judiciary are considered to be ideals. The fact that judicial appointments are partisan political appointments is one sign of the continued connection.

Research has been done in the United States on the relationship between the party of the judge and the type of decision he makes, demonstrating that there is a significant association. It has been shown that Republican judges acquit fewer accused on criminal charges than Democratic judges and Republican members of regulatory commissions favour big business, monopolistic practices and procedures in disputes more than Democratic members.[41] In other words the political nature of the appointment does have an effect on the decisions actually made. No comparable research has been done in Canada so it is not known if a similar relationship exists here.

In view of the fact that political and judicial authority were previously intermingled in our history the fact of a continued connection should not be unexpected. The trend has been and continues to be in the direction of separation, but institutions take a very long time to change.

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[41] Stuart S. Nagel. *The Legal Process from a Behavioral Perspective.* Homewood, Illinois: Dorsey, 1969, pp. 227 & 238.

One last point should be made on the political-economic connection. The dominant mode of thinking in social science today is of economic determinism of some kind. Economic and social variables are considered to be the causes; political variables are seen as the results. Political biographies and studies of political decision-makers stress socio-economic background. Cross-cultural work on political development makes the economic variables the causes.[42] Lenski's work on stratification makes technological and economic variables antecedent to the political.[43] Put in the context of the bulk of the writing on the subject the idea of the corporate elite influencing the judicial system is highly conforming social science.

Dr. Jones's evidence on what is taught in universities in sociology was cut short with the Court's ruling that it was irrelevant to the question of contempt. A student could discuss such theories in the classroom but outside it he was liable to the laws of contempt. Engineers would not know that what was contained in the student newspaper was a sociological theory, and might mistake it for the truth. Moreover, the student paper is also sold outside the campus, downtown, where anyone might buy it.

The Court did not appear to have any appreciation that ideas about the power elite are not obscure sociological theories. (The term "sociology" had to be defined for the Court, also "attitude change" and "corporate elite". The Court appeared to assume that its own ignorance of these ideas was as general on the campus.) In fact the various theories of the power elite are common to all the social science disciplines and are subjects of popular interest. Cheap paperback editions of numerous versions of these ideas, such as Mills's *The Power Elite*,[44] are available and are read by the "intelligent layman". They are discussed in political club meetings and seminars and other non-academic settings as well as in classes.

The necessity of the offence of scandalizing the courts

The Court believed that the offence of contempt of court by scandalizing was a necessity to society in that the courts could not function properly without such protection and consequently without it society itself would be weakened. The Court clearly considered that the practical issue of whether or not the offence was "needed" was one of the factors to be determined. The judgement stated that undoubtedly there should be greater latitude allowed now than in the past. Canada is more mature politically now so its institutions need less support from the threat of punishment and can rely on internalized legitimacy more.

Once a practice is developed to protect a social institution it becomes a question of fact as to whether that practice does support that institution, or whether it works against the institution, or whether it has no effect either

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[42] Daniel Lerner. *The Passing of Traditional Society*. Glencoe, Illinois: Free Press, 1958.

[43] Gerhard Lenski. *Power and Privilege*. New York: McGraw-Hill, 1966.

[44] New York: Oxford University Press, 1959. Also: Arnold M. Rose. *The Power Structure*. New York: Oxford University Press, 1967 and Richard H. Rovere. *The American Establishment*. New York: Harcourt, Brace, 1946.

way. Hypotheses about the effect of certain practices can be set up and tested. This is not an easy area to research as there are so many inter-connected variables, but it is possible to gain some information of higher quality than mere speculation.

The best way of finding out the effect of one practice is to see what happens in situations, otherwise similar, that do not use the practice. For the case of contempt of court by scandalizing it is possible to do this, albeit in a limited way. Britain and the United States have restricted the scope of their contempt practices. It is reasonable to hypothesize that if these countries manage to do without, or with less protection from the scandalizing offence, without the administration of justice or public respect for the courts being adversely affected, then the practice is not required for the protection of the institutions of justice. Desirably a greater range of countries would be used in the analysis. But if it can be shown that countries similar to Canada do not need contempt of court by scandalizing we can reasonably argue that Canada does not either.

In the United States for a contempt of court to exist there must be "imminent peril to the administration of justice". This is interpreted in a way that allows an enormous amount of criticism of the courts. The fact that the "impeach Earl Warren" campaign was permitted demonstrates how much criticism is tolerated. Yet the courts are highly respected in the country. Surveys on the prestige of various occupations show that Supreme Court Justices are almost always at the top of the scale in terms of the respect accorded them by the public. This has been true even during the period of widespread and often bitter criticism of the liberal trend of the Supreme Court. The courts play a greater political role in the United States than in Canada, in a sense making it even more essential for that society to have its courts respected. The courts have been used effectively in the movement to gain greater civil rights for many groups: Negroes, the poor, the mentally ill, and criminals, a function that Canadian courts seldom perform.

In Britain the courts allow in practice far more criticism than in Canada, although the offence of scandalizing has not gone out of use entirely. Lord Denning in the judgement acquitting the Hon. Quentin Hogg, Q.C., of contempt stated this clearly. "We will never use this jurisdiction [contempt] as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom in speech itself".[45] No one would seriously dispute that the courts of Britain are held in enormous respect and that democratic institutions are as safe there as anywhere. The scope of contempt of court by scandalizing has been gradually reduced throughout the twentieth century yet there has been no comparable decline in respect for the courts or judges noticeable for the same period.

The law on sedition provides a good analogy to the law on contempt by scandalizing. Seditious libel protected the monarch from disrespectful criti-

[45] *R.* v. *Commissioner of Police of the Metropolis,* [1968] W.L.R. 120.

cism, among other things. It no longer includes that interpretation but requires incitement to violence or something involving real danger rather than mere words.[46] Yet without this protection the Queen suffers no more public ridicule and probably less than her predecessors who had it.

Lastly there is evidence from Canada itself that the offence of contempt by scandalizing is not essential to the administration of justice. There are numerous administrative boards that exercise a judicial function, such as the Labour Relations Board, the Ontario Municipal Board and the Workmen's Compensation Board, functioning without the protection of the scandalizing offence. That they function satisfactorily is borne out by the fact that more and more quasi-judicial boards are being created. They are not subjected to any noticeable amount of abuse and they do deal with important issues as do the regular courts.

The examples of court systems working effectively with less protection by scandalizing than Canada have included a system with more functions to perform (the United States), a country with racial strife and great political dissension (the United States), and a system adapting itself to a different role in the world (Britain). Canada's problems being no greater than these it is difficult to defend the view that the offence of scandalizing is a necessity without which society would suffer.

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[46] Crankshaw's Criminal Code, 7th edition, 1959, p. 110.

APPENDIX A

COMPARISON OF THE SAMPLE OF U.N.B. STUDENTS WITH THE U.N.B. STUDENT POPULATION

	Student Population		*Sample*	
	No.	%	No.	%
Arts	1,390	33.7	62	36.3
Science	451	10.9	18	10.5
Forestry, Engineering, Law, Nursing	1,389	33.7	46	26.9
Education, Physical Education, Teaching	374	9.1	19	11.1
Graduate	516	12.5	26	15.2
Total	4,120	100.0	171	100.0

$X^2 = 4.46, P > .30$

COMPARISON OF THE SAMPLE OF MOUNT ALLISON STUDENTS WITH THE MOUNT ALLISON STUDENT POPULATION

	Student Population		*Sample*	
	No.	%	No.	%
Male — Arts	387	30.2	45	33.1
Male — Science	332	25.9	30	22.1
Female — Arts	418	32.6	52	38.2
Female — Science	146	11.4	9	6.6
Total	1,283	100.0	136	100.0

$X^2 = 5.20, P > .10$

APPENDIX B

STUDENT OPINIONS ON THE COURTS, BY AGE

	question 1	question 2	question 3	question 4
age 18 and under	39%*	27%	21%	54%
age 19	27	14	16	54
age 20	32	23	13	53
age 21	26	12	19	43
age 22	13	6	10	25
age 23 and over	30	16	15	35
	$X^2 = 6.75$	$X^2 = 2.08$	$X^2 = 5.75$	$X^2 = 2.15$
	$P > .20$	$P > .10$	$P > .30$	$P > .80$

	question 5	question 6	question 7	question 8
age 18 and under	28%	49%	44%	27%
age 19	27	42	36	21
age 20	33	51	41	29
age 21	20	38	33	15
age 22	16	12	19	6
age 23 and over	27	38	30	24
	$X^2 = 1.35$	$X^2 = 4.85$	$X^2 = 1.58$	$X^2 = 7.61$
	$P > .90$	$P > .40$	$P > .90$	$P > .10$

* Percent giving the first answer stated for the question.
See Table I for the questions and answers; the same order is followed here.

APPENDIX C

NON-RESPONSE TO COURT QUESTIONS, BY AGE

	question 1		question 2		question 3		question 4	
	%*	rank**	%	rank	%	rank	%	rank
age 18 & under	15.2	6	13.6	2	12.1	3	1.5	4
age 19	24.2	3	12.3	3	20.0	19	1.5	4
age 20	16.4	5	9.0	5	16.4	2	1.5	4
age 21	24.0	4	10.0	4	12.0	4	0.0	6
age 22	25.0	2	6.3	6	6.3	6	3.0	2
age 23 & over	25.9	1	16.7	1	11.1	5	9.3	1

	question 5		question 6		question 7		question 8		
	%	rank	%	rank	%	rank	%	rank	N
age 18 & under	1.5	5	0.0	5	22.7	6	0.0	5	66
age 19	1.5	5	3.1	2	32.3	2	1.5	3	65
age 20	4.5	3	0.0	5	29.9	5	6.0	1	67
age 21	2.0	4	2.0	4	30.0	4	2.0	2	50
age 22	6.3	2	3.1	2	40.6	1	0.0	5	32
age 23 & over	9.3	1	5.6	1	31.5	3	0.0	5	54

* Percent of age group giving "don't know" response.

** If the hypothesis that students acquire beliefs on the courts while at university is correct the ranks should go from 1-6 indicating the highest don't know response in the youngest group to the lowest in the oldest.

TABLE I

STUDENT OPINIONS ON THE COURTS

		Readers		Non-readers	
		No.	%	No.	%
1. Do you think that the courts of this province dispense justice at least as fairly as the courts of other provinces?	Yes	99	85.3	104	85.2
	No	17	14.7	18	14.8
	Total	116	100.0	122	100.0
			$X^2 = 0.08, P > .75$		
2. Considering possible cases of serious injustice in Canada, such as an innocent man being hanged or sent to prison for life, do you think this happens?	Fairly often or occasionally	29	20.9	41	23.3
	Rarely or never	110	79.1	135	76.7
	Total	139	100.0	176	100.0
			$X^2 = 0.27, P > .50$		
3. It has been said that while justice in the courts will never be perfect, the mistakes made are only one in a hundred, and so realistically the system can't be much improved. Do you tend to agree or disagree with this statement?	Agree	41	30.2	56	31.5
	Disagree	95	69.8	122	68.5
	Total	136	100.0	178	100.0
			$X^2 = 0.62, P > .30$		
4. It has been said that judges, like other human beings, make many mistakes in their decision. Do you more or less agree, or more or less disagree with this statement?	Agree	82	59.9	119	65.0
	Disagree	55	40.1	64	35.0
	Total	137	100.0	183	100.0
			$X^2 = 0.90, P > .30$		

5. Do you think the Canadian courts are less fair in their treatment of Indians and Negros than of white citizens?	Yes, less fair	39	32.0	53	39.3
	No, equally fair	83	68.0	82	60.7
	Total	122	100.0	135	100.0
			$X^2 = 2.94, P > .05$		
6. Do you think that people with radical political views are treated as fairly in court, or less fairly, than people with average, conventional views?	Equally fairly	39	31.2	55	36.4
	Less fairly	86	68.8	96	63.6
	Total	125	100.0	151	100.0
			$X^2 = 0.83, P > .30$		
7. Do you think that poorer people, such as welfare recipients, are treated as fairly in court as better off citizens, or less fairly?	Equally fairly	46	35.7	52	32.9
	Less fairly	83	64.3	106	67.1
	Total	129	100.0	158	100.0
			$X^2 = 0.23, P > .50$		
8. Considering all Canadians now, irrespective of race, income or political views, can they expect to get fair treatment from the courts?	Almost always	47	33.8	58	32.0
	Most of the time	72	51.8	94	51.9
	Half, or less than half, or almost never	20	14.4	29	16.1
	Total	139	100.0	181	100.0
			$X^2 = 0.20, P > .50$		