

**Forum:** *Youth Action Committee (YAC)*

**Issue:** *The question of trial by the court of public opinion*

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## Introduction

When a case has reached the end, the judge will give the final verdict to the case. However, from time to time, the public will not agree with the final decision. Sometimes in court, the court will use the media as an attempt to gather even more public support for one side. This often caused people to protest, sign petitions, comment on social media platforms, and more. Because of this backlash, many judges get peer pressured to change their verdict. This kind of behavior causes both positive and negative effects on society. If a case was given an unjustified verdict, a court of public opinion can help the victim. However, if the court gave a misplaced verdict due to the public, this can cause more damage to the victim.

In many countries, court cases are often allowed to be viewed by the public. Because of this access to information, the public tends to form opinions based on what they see. And when the public disagrees with the verdict, it quickly becomes a question. This means the court will need to balance between fairness and public satisfaction. On the other hand, the court of public opinion can help the victim, especially when loopholes in the justice system get exploited. Under these circumstances does the court of public opinion can become helpful. This questions the role and responsibilities of the media when it comes to court.

## Definition of Key Terms

### Court of Public Opinion

The use of using the new media to influence public support for one side or the other in court. This use of influence can serve as a double edge sword. On one hand, this can help prevent judges from giving an unfair verdict. On the other hand, if the public supports the wrong side of the case, an innocent person can be harmed.

## **Trial by Media**

A phrase that is used to describe the influence of the media to portray a person to be innocent or guilty before, or after, a verdict in a court of law. This usually can either improve or destroy a person's reputation in life. This influence can often cause the public to create mob justice, which leads to pressure on all participants in the case. This brings up the question of should the media cover court cases to the public?

## **Mob Justice**

A term to describe when a person is suspected of being a criminal and is being harassed by a group of people. With social media, mob justice has often become a common tactic for the public to harass the suspected person, even though the person can be innocent. While media mob justice can help take down criminals, at the same time, mob justice can ruin innocent lives if they are wrongfully accused. During court cases, the public will form their own opinions on the case. However, if the public starts to form the same opinion, then it quickly becomes a mob.

## **Hypodermic Needle Model**

A theory that states the media directly influence the people. The concept proposes that the media directly injects its messages into people's minds. This theory suggests that the public is vulnerable to the media's "attack". However, this kind of "attack" is more based on political propaganda. The media in modern times does use the needle model, but more subtle. Rather than directly showing their message, the media is more likely to plant ideas in people's minds. This allows people to follow the media's perspective more easily while not noticing the media's influence at the same time.

## **Two-Step Communication**

A theory that demonstrates that most people are not directed by the mass media, rather by "leaders". These "leaders" are often people that get exposed to a certain kind of media. When the leaders interpret the message the media is trying to give. Most people then listen and follow the interpretation that was given by the "leaders". This kind of social influence often causes people to conform to the leaders' ideas and opinions rather than their own. This often allows the people to believe and trust in the "leaders", which then indirectly makes most people trust in certain media.

## **Press Freedom Index**

An annual ranking of countries based on the countries' press freedom. This report is compiled and analyzed by Reporters Without Borders. The report aims to mirror each countries' amount of free journalists, news organizations, and netizens in each country. The index, however, does not reflect on

each country's human violation and quality of journalism. The score given by Reporters Without Borders is based on six general criteria: pluralism, media independence, environment and self-censorship, legislative framework, transparency, and infrastructure.

## Background Information

### Public Opinions

Before the creation of media platforms, public opinions were more controlled and calmed. This is because most people didn't have access to education and the delivery of information usually took a while. It wasn't until the late 17th century did the influence of public opinion start to play a major role in the political realm. John Locke said that man was subject to divine laws, civil laws, and the law of opinion or reputation. However, Locke said that the law of opinion is not a suitable influence for the governments. William Temple argues that public opinion helps create a social contract with the government and the government exists because of public opinion. Despite these arguments on the role of public opinion, most of these opinions are based on what the public could see. It wasn't until the Reformation that there was a sudden surge in the level of literacy. Because of this increase, the public started to form even more opinions based on what they see and read.

### *Coffee Houses*

Coffee Houses were the central locations for the spread and development of public opinion in Europe in the mid 17th century. These coffee houses became so popular that Charles II tried to suppress London coffeehouses as an attempt to stop the spread of scandalous rumors regarding him. This only caused more people to go to coffee houses. The coffee houses allow men to regard each other as equal despite the difference in social levels. By 1739, different political parties, occupations, and more would go to specific coffee houses to exchange information and news. However, after the creation of the internet, coffeehouses become more of a hangout area rather than an information exchange center.

### *Social Movements*

Social movements have caused public opinion to change on certain topics, especially through the use of a legal framework. When social movements use legal frameworks, this often allows the public to criticize and see how the laws of the country work. This often creates pressure on the legal system and the country. For example, the #BlackLiveMatter (BLM) movement allowed citizens to understand systemic racism in the United States better. Because of

this movement, many cases in the past are being pressured by the public for a retrial due to possible racism from the past that may have influenced the case's verdict. Another is the #MeToo movement. Due to the popularity of the movement and awareness of sexual harassment, many leaders, celebrities, CEOs, and more are being demanded a trial from the public.

## Media Manipulation

While the media helps provide information to the public, the framing of the news can influence the way the public thinks. Many platforms use different techniques to create an image that allows the people to side with their views more. These techniques can range from suppression of information to deception. Because of this, many platforms often depict court cases with an objective. This often causes the public to form opinions without fact-checking or looking at the full picture. Without fact-checking information, the public can easily form opinions that affect or pressure the people involved in the court. Furthermore, sometimes the information may paint a person in a certain light that may result in the public constantly harassing the victim before, during, and after the trial.

## Key Issues

### Trial by Media

Trial by media has often been accused of cherry-picking information from cases and depict them in a certain picture. This has often made judges have a harder time giving out verdict without a bias. The media get criticized for creating an atmosphere of hysteria and mob outcry. Under intense public scrutiny, fair trials are rarely given out. Even when the verdict is given out, people involved in the case often have their reputations get ruined. This often results in them not being able to find a job, face discrimination, and get followed by paparazzi. Even worse, their friends and family are sometimes scrutinized as well, despite not having involvement with the case. Jurors also sometimes will risk their jobs when forming their stances. If the public pressures enough, jurors can often be replaced if they form an unpopular opinion. This is often used to appease the public to avoid any increase in protests or public unrest. However, this also leads to cases to have unjust verdicts.

### Disinformation

Disinformation has often caused the public to believe in what is being shown to them, despite the information being false. Deception often causes a certain reaction from the public. With exposure to the internet, there is a high degree of disinformation, misinformation, and propaganda online that is constantly taking advantage of people. Some nations also use

disinformation to create an image for the public. It has been identified that there are four main methods people use to spread disinformation: censorship of certain information, manipulation of search rankings, hacking and releasing, and directly sharing misinformation.

### ***Psychological Manipulation***

During court cases, different media platforms fight to get the most public support. To gain the most supporters, these platforms will manipulate the audience by using psychological manipulation. These tactics are often used to specifically influence a target's values, beliefs, emotions, motives, reasoning, or behavior. It doesn't help since sometimes using these strategies would use false information. Instead of letting people form their own opinions, they are just following whatever the media wants them to believe in. And when people are influenced by the media, they quickly start to target the case until they get the result they want.

### ***Censorship of Information***

Countries with a lower Human Freedom Index often use censorship to limit any resistance or opinions that may go against what the person or organization wants. By limiting the information being seen, it is easier for people to manipulate the emotions and feelings of the public, which can make information deadly if it is mishandled. Because of this abuse of information, the public quickly conforms to the opinion and perspective that is being desired. It doesn't help when countries with a lower Human Freedom Index punish people that have a different opinion that would clash with chosen perspectives. Even when there is no punishment, people with different opinions often are forced into exile and criticized by the media.

### ***Miscarriage of the Justice Cases***

In the past, many cases had either been mishandled improperly or given an unfair verdict. This is when the public can help with the case especially if they notice the injustice in cases. Because of this attention from the public, the case will be scrutinized even more. Sometimes the public would demand a retrial or have the case looked over again. For example, the Jeffrey Epstein case was a case that was pressured by the public. Epstein was faced with a case for molesting an underage girl in 2005. The prosecutor during the case was Alexander Acosta, who managed to strike a plea deal that allowed Epstein to avoid federal charges and only be punished on probation. When Mr. Acosta was given the position of the Secretary of Labour under the Trump administration, the public quickly criticized Mr. Acosta for giving a sex offender a light sentence. At the same time, the media also showed an overwhelming amount of evidence, proving Epstein was a sex offender. Because of this pressure, an investigation was renewed on Epstein's case again.

This shows that the media and public can help court cases, especially those that have been mishandled or misjudged. If the media give the information without any influence or specific perspective, the public can help prevent cases from giving unjust verdicts. At the same time, to provide information, countries will need to face many challenges. Countries with high rates of corruption, censorship, discrimination, and conflicts are more likely to cause the media to give information to the public with a motive. This will influence the way the public forms opinions, making it easy for people to abuse the power of information.

### **Corruption**

Corruption is one of the biggest factors when it comes to unfair court cases. Whether it influences during the trial or the final verdict, corruption has often caused many innocents to get punished or criminals get minimal punishments. Because of this, countries with high corruption are often letting court cases get mishandled or even ignored. However, the public can often cause these cases to be retried. The media often display information on corruption in these cases. It does help add on the fact that the public often feels the final verdict in the case is often biased or not harsh enough on the defendant. It pressures the countries, even more, when the cases gain international attention.

## **Major Parties Involved and Their Views**

### **United Kingdom**

The United Kingdom (UK) has passed a series of laws that punish the media if they ever commit contempt of court. This is when a disturbance can affect the functioning of the court negatively. Some of these disturbances are when a person is being disobedient to or disrespectful toward a court or officer. It is not only applicable to citizens but also to media platforms as well. The person or organization can only be charged with direct or indirect contempt of court. Many newspapers such as *The Daily Mirror* and the *Sun* have been prosecuted for publishing information that could cause bias in court cases. However, such prosecutions are usually rare since they would often clash with the debate of free speech.

In the UK, reporters and media platforms are only allowed to cover court cases if they follow the Editors' Code of Practice. This Code is supposed to help keep journalists and media platforms from influencing the public on court cases to the minimum. While there is a series of rules that must be followed, journalists and media platforms have more freedom than limitations. Recently this year, some courts in England and Wales have started using cameras in courts. Many see this as a way for the court to become more transparent. However, some argue that the judge will be more pressured by the public

and might give out biased verdicts to satisfy the public. Others are concerned about the safety of the identities of witnesses and victims in court cases. People are worried that with the cameras, victims and witnesses are less likely to step forward and give useful information that might quicken court cases.

### Reporters without Borders

Reporters Without Borders (RSF) have fought for the freedom of the press for many years. The organization focuses on the protection of journalists at risk in high-level countries. Since 2002, Reporters Without Borders has been publishing an annual ranking of the Press Freedom Index for each country. This assessment of countries allows people to have a better understanding of press freedom in each country. Reporters Without Borders has stated that countries with higher scores in the Index are more likely to have the occurrence of manipulated information to be used in the media, causing the public to most likely to get influenced.

The organization's actions, assessments, and statements have often questioned the legal framework of the media in countries. Especially when the media in certain countries are in a form of a state monopoly. RSF aims to protect media outlets and journalists from persecution. In July 2018, RSF called out Saudi Arabia for arresting 30 journalists and demanded the release. RSF argues under Article 19 of the Universal Declaration of Human Rights, the public has the right to access information and news despite the nation's charte

### Thailand

In Thailand, the country has developed a mass media sector. However, the Thai government and military often used the radios and TV stations to exercise their control over information. After the 2006 and 2014 coup, both foreign and domestic media were faced with even restrictions and censorship of information to the public. Unless the information is critical to the royal family, monarchy, or sensitive government issues, most information is left uncensored. However, this doesn't mean these restrictions don't affect court cases. Because of this influence, many courts often give out unjust verdicts either out of fear or bias. Thailand is even more strict when the media covers the Thai Royal family, which is called the Chakri dynasty. Any information, tweet, post, and more that seems to insult or offend the Chakri dynasty are immediately taken down. Even more important, people that are caught are immediately given harsh penalties and faced with backlash from the public. In 2019, RSF ranked Thailand 136 of 180 in the freedom press. Despite this, Thailand has been slowly improving press freedom each year.

### Vietnam

In Vietnam, the government controls all broadcast media through the Ministry of Information and Communication. Press in Vietnam is government-owned either partially or wholly. This means the

government can control the information flowing in Vietnam. Vietnam also passed a law stating journalists are only able to "propagate the doctrine and policies of the Party, the laws of the State, and the national and world cultural, scientific and technical achievements". Despite these restrictions, the government does allow the media to expose low-level corruption and misdeeds. This tactic often allows the government to maintain an image while not controlling the media too much at the same time. Sometimes the government can benefit from this exposure to corruption. However, if the media starts to cover more powerful leaders in the Vietnam Communist Party in a negative light, the government will quickly censor the information.

Television in Vietnam is also owned by the government. Due to the 30 minute delay of international news, this allows the government to prevent broadcasting any politically sensitive information from international channels. In 2006, Vietnam officially restricted satellite television. Citizens in Vietnam, however, use their satellite equipment to watch satellite tv. Books are also censored by the government. Any content that is not approved by the government, is either taken out or immediately blocked by the government from being released. Many writers, journalists, and more often escape to other countries to publish their works and contents on the internet without facing punishment by Vietnam's government.

### European Court of Human Rights

The European Court of Human Rights (ECHR) is the court of law of the Council of Europe. Under Article 10 of the ECHR, media platforms and journalists have the right to freedom of expression. ECHR also calls for European countries to develop an environment with legal guarantees for the safety and diversity of the media and journalists. However, ECHR has emphasized with the Council of Europe to work with journalists and media platforms to create certain boundaries on releasing information to the public, such as setting the difference between hate speech and commentary.

### United States of America

In the United States (US), they have the contempt of court offense. The US stated that there are only two kinds of contempt of court: indirect or direct. However, most of the time, it has been individuals that have been tried for contempt of court. News media covering court cases are protected by the First Amendment: Freedom of press. Unless the media platform is a party in the case, the court cannot find contempt of court in the media. Media platforms cannot be shut down or suspended just for publishing their content.

Because of this, the media often cover court cases with a certain view. Due to the influence of social media, the public often puts pressure on the cases. Especially recently, many past court cases are

getting more attention and investigated again due to the public's belief of the unjust verdicts that were given to the victims of the cases.

## Timeline of Relevant Resolutions, Treaties and Events

Date	Description of event
September 3 1953	<p><b>The Creation of ECHR</b></p> <p>The ECHR is an international court created by the European Convention of Human Rights. Anybody that felt like the convention is attacking their rights were allowed to take a case to the court. Freedom of Speech is one of those rights.</p>
October 14 2008	<p><b>Two Journalists Arrested in Vietnam</b></p> <p>Two journalists were trailed for exposing state corruption in the country. This trail challenges the freedom of media in Vietnam. The journalists could have up to seven years in jail for “abusing democratic freedoms to infringe upon the interests of the state”.</p>
2006	<p><b>Vietnam Restrict Satellite Access</b></p> <p>In 2006, the Vietnamese government restricted the number of households accessing satellites. This causes many foreign channels to be dropped in Vietnam. However, some of its citizens are still able to access these channels due to self-made satellites</p>
October 22 2012	<p><b>The Daily Mirror Fined</b></p> <p>The Daily Mirror, a british tabloid newspaper company, was fined for breaching contempt of court laws with their coverage of Levi Bellfield's conviction for the abduction and murder of Milly Dowler.</p>
August 2015	<p><b>Jasleen Kaur harassment controversy</b></p> <p>In India, Sarvjet Singh was accused of sexually harassing Jasleen Kaur. Immediately, people began to harass Sarvet Singh on social media. Singh was</p>

bullied so badly to the point he couldn't find a job. Later on, eyewitnesses helped prove Singh innocent in court.

### **FBI Investigates Epstein**

July 7 2019

With the newfound attention on the past Epstein case, the FBI raided Epstein's house. The FBI found many photos and videos of young women in his apartment. This showed evidence that Epstein was a child molester and rapist.

## **Evaluation of Previous Attempts to Resolve the Issue**

Not many attempts have tried to resolve the issue due to the different court processes and procedures in different countries. However, there is a general pattern between countries. Countries with more freedom of the press, generally pass laws that place some kind of restriction on media when covering court cases. However, the restrictions are generally very loose and flexible to the media. In most of these countries, the media will only be accountable if they are part of the case or purposely trying to interfere with the case.

Countries with less freedom of press pass more laws that focus more on censorship and control. In these countries, the media is often controlled by someone or an organization. Because of this, the media tend to send information to the public with a message. This often prevents the public from learning the actual truth and information in the cases. Court cases would often remain secret or release false information to the media.

## **Possible Solutions**

### **Increase Education**

Education is a great way for the public to become more aware of the information they are given. By teaching people, they are given the skills to understand information more clearly and communicate with others more easily. Education allows people to increase their literacy skills as well as critical thinking skills. This will allow people to form their own opinions rather than what the media is trying to influence. At the same time, countries with stronger government control might use education to influence how the younger generation will think. Educational programs from government organizations and

non-governmental organizations can be used to prevent corrupted leaders from interfering and influencing the education given to the people.

### Cooperation with the Media

The ECHR often works with the media to help set up limitations on the content the media is allowed to release and comment on. Any form of content, comment, or more that is negative and undermines the fundamental values of the ECHR is considered hate speech and must be dealt with immediately. This kind of collaboration can help clear up the boundaries the media cannot cross or spread to the public.

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