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Legal Systems on Trial

How Canada and the United States balance justice and news

Two bloody murder trials, two nations thirsty for information about the cases — and two entirely different responses to that thirst.

That was the scenario outlined by a distinguished Canadian law professor at a recent talk sponsored by the UB Law School's Canada-U.S. Legal Studies Centre.

Jamie Cameron, a professor of constitutional law at Osgoode Hall Law School of Toronto's York University, spoke about the O.J. Simpson trial in Los Angeles and the trial in Toronto of Paul Bernardo, accused of the sex slayings of two St. Catharines, Ont., teen-agers.

Cameron's speech was titled "Fair Trial vs. Free Press: Too Far and Not Far Enough?," reflecting the contradictions she said the two cases pointed up in the Canadian and U.S. legal systems.

"The O.J. Simpson trial is an event that Canadians don't fully get," she said. She pointed to an incident in which the Simpson jury appeared in court one day wearing identical T-shirts. "All it needed," Cameron said, "was a Gilbert and Sullivan chorus of 'We're the jury, dread our fury.'"

But, she noted, "any number of stories about Canada's justice system may seem equally bizarre to you." She noted, for example, that in the trials of Bernardo and his wife, Karla Homolka, already convicted in the same crimes, the press wasn't even allowed to report their pleas.

"In Canada right now, there is

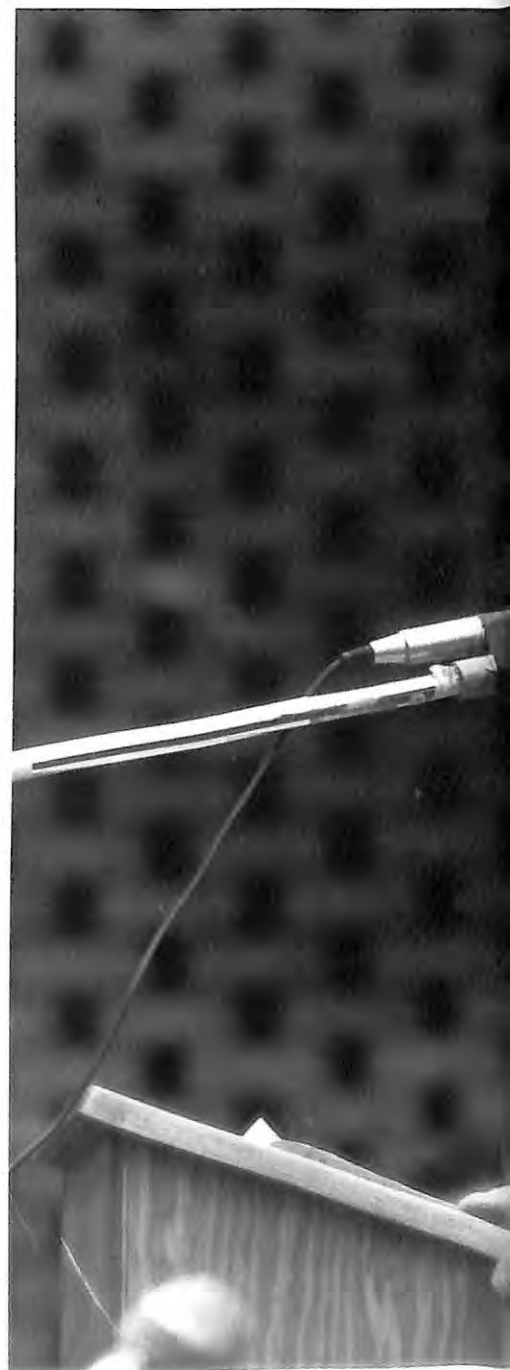
considerable confusion over what can and cannot be reported," she said. "There's constant confusion about what the lawyers can and can't say about what's going on in the courtroom."

The publication ban has led to what Cameron called "border skirmishes" as U.S. newspapers have reported on events in the Canadian trials, then faced accusations from the Canadian government that they were flouting the law.

Part of the confusion, she said, stems from the Charter of Rights and Freedoms that became part of Canada's new constitution in 1982. Before then, she said, the Canadian justice system gave great sovereignty to the judges, as representatives of the government. But with the "burgeoning of participatory democracy" since 1982, she said, "the justice system is open to the public eye like never before. ... My conclusion is that the judges have lost control of a process that traditionally belonged to them, and they don't know how to deal with that."

Juries in Canada are not sequestered during the trial, Cameron said, and the media are not allowed to report on any aspect of a trial that hasn't happened before the jury's eyes.

By contrast, of course, U.S. juries often are sequestered and the U.S. media have a nearly unlimited right to report on what's happening in court. This creates a gap, she said, between "what the jury hears and what the



world at large knows." That gap raises a question: Can the American public accept a jury's verdict if the public knows more about the case than those 12 jury members?

In Canada, she said, there's a gap of a different kind: "a gap between what the public knows and what it ultimately will be asked to accept." That dearth of information, she said, can

lead to public questioning of the legitimacy of the proceedings.

The United States has always regarded "the jury and the ballot box" as sacrosanct repositories of the democratic ideal, Cameron said. "The institution of the jury supports the idea that the people are sovereign, that the people are the governors rather than the governed. In U.S. culture, any attempt

to fetter, to control or to censure a jury is considered to be wrong, because it's an attempt to interfere with the jury's sovereignty.

"This has driven your system to the point of transparency ... To us, your system looks self-destructive. But ours, to you, probably looks as though it's operating under an illusion of control."

The justice systems in both countries, Cameron said, are under pressure — from the increasing complexity of modern adjudication, and the "relentless, even ruthless pressure" from media for ever more information about celebrated trials.

"I think each system needs to think through the values that underlie them, and decide which of those values are most important to emphasize," she said. "The problem in both Canada and the United States is that there isn't much middle ground in either system."

Cameron's May 12 speech was held at the International Institute in Buffalo, co-sponsor of the event along with the Canada-U.S. Legal Studies Centre, the Canadian Consulate of Buffalo and the



Professor Jamie Cameron at UB Law.