An exceptional advocate

Geoffrey Bindman QC harks back to a trailblazing litigant in person

The erosion of legal aid and the high cost of legal services are driving more litigants to represent themselves in court. The complexities of procedure and legal interpretation almost always put those without legal representation at a disadvantage. Where the opposing party is legally represented the non-lawyer does not compete on a level playing field.

The sophistication of our system means that legal aid cuts which reduce the role of lawyers may be a false economy. Lawyers save money: hearings are shorter because lawyers are skilled at curtailing arguments and time need not be spent in unravelling the woolly ramblings of the unskilled advocate. Denial of legal representation in all but the simplest cases undermines justice.

Yet there are exceptions. The confident and articulate litigant in person may be more effective with a jury. And where freedom of expression is the issue, a direct appeal to common sense and worldly experience by the individual whose freedom is at stake may make more sense to a jury than the dry recitation of statute and precedent by a dispassionate intermediary.

Early days of self representation

Indeed, we may owe our precious tradition of free speech to that direct approach. Consider the case of William Hone, journalist and publisher, who in 1817 defended himself on charges of blasphemous libel at three trials on three successive days. The prosecution was led by the Attorney-General. Hone had proved his independence and courage by his forthright and witty publications but he had no experience of public speaking and had never before appeared in court

He had written and published three satirical pamphlets which attacked in liturgical format the avarice and hypocrisy of government ministers and the erratic behaviour of King George III. *The Political Catechism*, *The Political Litany*, and *The Sinecurist's Creed* were sold in large numbers at the price of two pence each. The sinecures were public appointments carrying large salaries which required little or no actual work. They were in the gift of ministers, who appointed themselves and their cronies. The modern expenses scandal pales in comparison.

The Sinecurist's Creed begins: "Whosoever will be a Sinecurist: before all things it is necessary that he hold a Place of Profit" for which "every Sinecurist do receive the salary for, and do no service." Hone goes on to pillory three ministers: Eldon , the Lord Chancellor, whom he nicknames "Old Bags"; Castlereagh, the Foreign Secretary, obscurely called " Derry Down Triangle"; and Addington, Home Secretary, "the Doctor" (he was a medical man). A parody of *The Ten Commandments* contained such statements as "Thou shall not take the pension of the lord thy Minister in vain" and "Thou shall not call Royal gallivanting adultery". Not surprisingly, these vituperative personal attacks outraged their victims. The trials were clearly intended to deter and set an example to other critics. They were held in the vast space of the Guildhall to accommodate a large audience and the jury—a "special" jury of men of property—was corruptly handpicked to ensure the right result.

Heroic Hone

Hone was not to be cheated in that way. He challenged the jury and eventually secured a proper randomly selected panel to replace the one designed to carry out the government's wishes.

At the first trial Hone pointed out that he was merely using biblical forms to satirise politicians; he was not satirising the bible itself or insulting Christian or other religious beliefs. He was well prepared with numerous examples of parodies from some of the greatest writers and religious figures, including Milton and Martin Luther. He ridiculed George Canning, a member of the Cabinet and future Prime Minister, who had himself published parodies using religious language. Hone spoke for six hours. He was greeted by the spectators with applause and laughter which the judge could not suppress. The jury took very little time to acquit him.

The Lord Chief Justice, Lord Ellenborough, stepped in to preside over the second and third trials. He was stern and humourless, much feared for his harshness, yet he failed to intimidate either Hone or noisy spectators whom he threatened with imprisonment for contempt of court. Hone had done his legal homework. He countered the judge's interruptions by pointing out that the jury, since Fox's Libel Act of 1792, was the sole arbiter of both fact and law.

Hone was triumphantly acquitted in the second and third trials as well as the first. He published the transcripts of his trials and they were best-sellers in their day. At a time when repressive laws obstructed press freedom, the publication of words uttered in court remained privileged. The radicals who were prosecuted for challenging political and religious orthodoxy thus had a relatively secure means of propagating their ideas both during their court appearances and afterwards in print.

William Hone and other fearless journalists of the time, such as William Cobbett, played a vital role in defending freedom of the press from suppression by governments seeking to prevent exposure of their own misdemeanours. They suffered persecution and often imprisonment from those who used or abused legal measures to silence them. It is not surprising that the journalists of today are wary of attempts to impose external controls on the media and that the mild recommendations of the Leveson inquiry have attracted hostility in such quarters. Nor has history encouraged trust in law and the legal profession to protect their freedom to expose wrongdoing.

Yet the need to protect and provide redress for those whom the media unfairly vilify is also clear. The task remains: protecting the innocent without destroying the media's ability to tell the public what it needs to know. NLJ

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