

## PRISONERS, MEDIA AND SOCIETY

### *In Memoriam: Judge Michael Reilly, Inspector of Prisons*

*This is the unedited text of a speech given by Judge Michael Reilly (RIP) at an event at the School of Law, University of Limerick on October 6, 2016 at an event to mark the launch of the Report on Deaths in Custody under the Advanced Lawyering Programme for LLB Students.*

I would like to start by reading the following:-

*The majority of the persons attending were of the lower classes from the dens of the city, from the reeking alleys and homeless haunts. They came in all their repulsiveness and wretchedness for the purpose of gratifying a morbid feeling of curiosity and being near the scene of the execution of a fellow creature.*

While you think about those lines, when they might have been written and what they might refer to I would like to thank you Chairman for your kind words of introduction and to the Law School here in the University of Limerick for inviting me to talk about a topic near to my heart namely – *Prisoners, Media and Society*.

The topic this evening is a broad subject. I wish to explore one aspect and that is whether certain headlines in the popular press are fair and the extent to which the popular press and our views contribute, if they do, to penal policy in this country. I do not intend to seek to explore the legal concepts of the rights to freedom of expression or the rights of people to privacy. Rather, I wish, in the first place, to look at how an interpretation of the concept of freedom of expression in certain organs of the press affects one small section of our society, namely, our prisoners and by extension their families. In this context I will look at the remedies, if any, that such people have if unfair, salacious or self serving headlines are printed or if reports are inaccurate.

I will then go on to examine whether what is written in the redtop press regarding prisoners and their conditions reflects our views and by extension influences penal policy in this country. However, before I do this I should tell you a little of what I do.

In 2007 the Prisons Act was enacted. It provided, *inter alia*, for the appointment of an Inspector of Prisons who would be independent in the performance of his or her functions. I was the first such appointment.

On taking up this position I found that we had no standards against which to benchmark prisons. In July 2009, I published *Standards for the Inspection of Prisons in Ireland*. These standards were informed not only by our international obligations enshrined in the many treaties and instruments that we as a country are party to, our Constitution, our laws and the jurisprudence of our Courts but also by relevant decisions of the European Court of Human Rights, relevant Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and non binding instruments emanating from the United Nations and the Council of Europe. I also took account of the standards that apply in and the jurisprudence of other jurisdictions. I was mindful of the guidance from publications of such reputable bodies as the United Nations and the Council of Europe.

My standards covered all aspects of prison life and prisons from the conditions of the prisons to the treatment of prisoners and what should be expected. My rationale for publishing standards was in order that the Irish Prison Service, prison management, prison officers, prisoners, the many who provide services to prisoners, prison visitors and the general public would be aware of the standards that I would expect to see implemented in Irish prisons.

I stated when I published these Standards that they were to act as a reminder that this country has obligations to prisoners that are imposed not alone by our domestic laws but also by international instruments to which this state has committed itself.

Subsequent to the publication of these standards I found that I had to give further advice in the form of explanatory reports on such issues as an examination of the duties and obligations owed to prisoners, the use of special cells, best practice relating to prisoners' complaints and prison discipline, physical healthcare in a prison context, how deaths in custody should be investigated to name but a number. All of these are published on my website.

I have unfettered access to all prisons and to all prison records, to those working in the prisons such as prison officers, to prisoners and to those who visit prisons. I visit prisons on a regular basis. My visits are mostly unannounced and take place not just during the working day but at night, at weekends and during holiday periods.

I talk to literally hundreds of prisoners and their families. I also talk to prison officers, to doctors, chaplains, psychologists, probation officers, others who work in prisons and the many who visit prisons and prisoners. I see at first hand the improving conditions under which prisoners are kept.

The results of my labours are published and are on my website. To date in excess of 80 of my reports have been published and many more are in the pipeline. If I may say so the record of my inspectorate includes exposing what the Prison Service's own regulations and audit do not and casting a light on areas where no public light shines. My inspectorate is critically dependent on my absolute independence from Government so that I can, where necessary, criticise Government policy as well as practice. My recent Review of the Culture and Organisation of the Prison Service which I undertook last year with Professor Coyle brought to public attention many deficiencies and weaknesses that I have found over the years, deficiencies and weaknesses that were or should have been known to the Irish Prison Service and by extension to Government.

As you can see I have a particular insight into the workings of one part of our criminal justice system and that is what happens in prisons and, by extension, how what happens affects those that are in prison and their families and friends on the outside.

However, I also see the other side of the coin. I see the despair, the vulnerability, the fear, the acceptance by some that no matter what happens they will never complain because they expect nothing from society. I see women in prison whose only real crime is that they are poor and/or addicted to drink and drugs and must feed these habits or provide money for their partners to purchase drugs from the drug barons. I also see small children coming to visit their mothers or fathers being brought by a granny or other more distant relative. I see wives and girlfriends waiting in the rain to avail of a visit to their men folk. I hear of families losing whatever accommodation they have had because the head of the household has gone to prison be that the man or the woman.

Many of the people in our prisons have come from institutions and many of the men through St Patrick's Institution which I'm sure you all know was a prison for young people between the

ages of 16 and 21 situated next door to Mountjoy Prison in Dublin. I am glad to say that the Minister of the day closed this institution after a very damning report of mine was published. I know of no person who has benefited from prison. Of course it is true to say that many people have been improved by the facilities offered in prison but everyone is blighted by the experience.

Who are these people that are in prison and how should they be treated. The majority are poor and come from certain defined geographic parts of our cities. Approximately 20% have mental health problems, some very severe. Many have been abused both physically and sexually. Many have little education. Many will never complain no matter what happens to them as they expect nothing from society.

However, 99.9% of our prisoners will leave prison at some stage. They will walk the same streets as you and me, they will go to the same shops, to the same sporting fixtures and we will come face to face with them whether we are aware of it or not.

Strides have been made in recent years to improve the lot of our prisoners with enhanced educational facilities, work training and better access to healthcare. However, these are small steps and much has still to be achieved.

At this stage I wish to ask you all – What should our attitude be towards such people if in fact we ever think of them? So, let me ask you the straight question - how do you feel prisoners should be treated. In this context I want to ask what you think of the following:-

*Savage jail thug.*

*Beware scumbag rapist.*

*Council of killers.*

*46 lags taking open university courses.*

*Scared to death – (name of prisoner) the vermin is found hanging in his cell.*

These are quotes from the headlines of some of our national papers. They are not from times past but are a small representation of what has been printed during the recent past. These headlines relate to prisoners – the people that I have just described.

Now let me share with you some comments from real people. I have changed their names to protect their identities.

*“I know I have done wrong, I got me sentence years ago, why do they write about it again, It’s not fair to the family”.* The prisoner has just shown me the front page of one of our redtops with a headline similar to those already referred to.

*“I had to take Brooklyn out of school after what they writ about his Dad”.* This was a tearful mother, waiting to visit her partner, who explained that Brooklyn’s Dad had served 6 of a 12 year sentence, that she, while supporting her partner by visiting him on a regular basis, had moved from her area, had set up a new life for herself and Brooklyn but this had now come crashing down because of the salacious headlines in a certain daily paper. She now was going to have to try once again to make a new life.

What about Katlin, a 16 year old, coming with her mother to visit her Dad in prison? She told me she loved her Dad but was it fair that the papers continued to call him horrible names and print details of what he had done when it was a number of years in the past. She told me she had to give up school as other children would throw it in her

face whenever anything was written about her father. She told me she felt like killing herself. She knew other people, boys and girls, who had been driven to do this and it might in her words “*just be the way out*”. I don’t know if Katlin is alive.

*A woman in prison said to me – “I know I did wrong. I did not like what they wrote in the paper after my trial but that was fair enough. My kids were young then and it could be kept from them. Why do they have to write about it all again after these years. Do they ever think I have a family”.*

Think of the sex offender, the man described as ‘*scumbag rapist*’ who has completed his sentence and on the day he is released his crimes are all regurgitated in a paper headline and he is virtually hunted by the media.

Since January 2012, I have investigated all deaths of prisoners who have died in the custody of our prisons. In layman’s terms my investigation is to ascertain if, by their actions or non actions, the prison service or its members have contributed to a prisoners’ death. I also seek to ascertain if the service and its members have adhered to its own rules and protocols. Many of my reports, now numbering in excess of 65 which are all published on my website, make for dismal reading. Early in my investigations I meet the family of the deceased prisoners to ascertain if they have questions surrounding the death of their loved ones that they would like answers to.

During one such investigation I met a grieving mother in her home within days of her son committing suicide in prison. She was very sad. When I had explained what I was doing she asked me to try to find answers to certain questions. I was about to leave when she showed me a newspaper article and said:- “*Look at this Judge – my son is referred to as vermin, My son was a human being like you are*”. I’m sure there are plenty of mothers in this hall this evening. All mothers do their best for their children. This mother did all she could. When I had concluded my investigation I went, as I always do, to see this lady again. I explained what I had turned up but could not answer her question as to why her son had been referred to as vermin.

I remember one day one of the chaplains calling me aside and telling me that she was very concerned about a prisoner who, because of an article in a paper which she showed me, had attempted to commit suicide. The chaplain said – “*How are they allowed write such things? I suppose there is nothing that can be done – prisoners do not seem to have any rights or feelings*”. The chaplain went on to say – “*In my opinion society should be at least as vigilant when it comes to ensuring that so called freedom of the press is not used to the detriment of a vulnerable prisoner as it would be to ensuring the vindication of the good name of a free member of society*”.

You may well say – well aren’t they criminals and indeed they are but they are also humans just like you and me.

Article 10 of the International Covenant on Civil and Political Rights states:-

*All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*

Prisoners forfeit their rights to freedom. That is all they forfeit. They are entitled to all rights that you and I enjoy that are not taken from them by the decision sentencing them.

If you accept that prisoners should be treated with dignity and I will come back to this later you decide whether the headlines that I have mentioned show dignity.

Let me say at this stage that the press reporting of trials is, in the main, fair and accurate but the added salacious, self serving comments while not affording dignity to prisoners certainly causes trauma to families who become victims solely by reason of their relationship to the prisoner. Think again of the lady who had lost her son having to read that someone else had the effrontery to call him vermin.

What remedies do these people have? They can, of course, appeal to the Office of the Press Ombudsman of the National Press Council. Few do probably because of ignorance but as has been said to me on numerous occasions *“the damage is already done”*. However, I will just say this – if a businessman, a captain of industry, a lawyer or some other person with a stake in society were written about in such terms would this not prompt an immediate excursion to the Courts? Does this indicate that the vindication of rights for prisoners is on a par with the rest of society? I doubt it. As one prisoner said to me recently –

*“I have no reputation. I have many criminal convictions. However, I am a person with feelings. I have a family. Why should I and my family not be treated fairly? Would they treat you like that?”*

Can it be said that in balancing freedom of expression with rights to privacy the headlines that I have quoted are fair?

Might I ask these questions - What influence does the public press have on us and if it does what influence do we and/or the press have on our politicians and by extension on penal policy? To try to answer this I must go back in time and briefly chart the changes that have come about in the way we treat prisoners and who has influenced such changes.

We have always had prisoners, we have always had some form of detention but I don't think we have always shown dignity to our prison population. Society has, down through the generations, had views on how prisoners should be treated and our laws have reflected these views. In the 18<sup>th</sup> and the first half of the 19<sup>th</sup> centuries, in Ireland, the preferred method of dealing with our criminals was to move them overseas. People convicted of a felony, and this could be for as little as stealing a chicken, were transported first of all the Americas and then to Australia and Van Diemen's Land. When Transportation ended in 1868 in excess of 55,000 of our people had been transported overseas. This transportation was carried out under laws passed by Parliament.

Early in the 19<sup>th</sup> century a realisation dawned that the criminal classes would have to be contained in Ireland as transportation was coming to an end. However, society did not want these people as they were afraid of them. Purpose built prisons would have to be constructed with high walls in order that the middle classes would be safe and the lower classes who engaged in criminality would be contained in areas away from prying eyes.

Penal reform was placed on the agenda. The press at the time gave vent, and properly so, to the views of its readers. But the people who discussed penal reform were the upper and middle classes – in other words the people who elected the politicians.

In the debate on prison reform much was made of moral reform. It was widely held that inmates should feel remorse for their crimes. This moral reform was a means of controlling anyone who deviated from the accepted upper and middle class norms and behaviour.

All of this thinking was debated and the papers of the day expressed views. The politicians of the day reacted to these views and the debate helped shape the prison reform system of the 19<sup>th</sup> century. Prisons were built. They were harsh places where the concept of moral reform was a major influence on how each prison was run. Most prisoners were kept in isolation.

Silence was imposed. The level of education varied from prison to prison but was virtually nil. Hard work was the order of the day. Prisoners were severely punished for any infractions of the prison rules.

The perceived wisdom was that if you punished wrongdoers this would straighten them out and they would desist from criminality. What did we do in this country? In our lifetime we sent children to industrial schools for, such as, being poor and we know where that has led us. These children were not straightened out. They were damaged irreparably and many went from the industrial schools to St. Patrick's Institution, the prison for young offenders that I have already mentioned and then to our prisons. Again the laws which enabled this happen were passed by parliaments.

Society and by this I mean you and me and our parliamentarians did not seem to appreciate that prisoners should be treated with dignity. We seemed to forget that prisoners were at some time in their lives members of the society that we live in and that they would return to such society at some stage.

So now I ask the question. Who should treat prisoners with dignity? Should it be the institutions of the state such as prison governors, prison officers or those that work in or visit prisons? Of course they should but if they don't who is to blame? Is it the individual governor or the prison officer or the prison doctor or nurse or the teacher? Of course they are all to blame but they are not the only ones. In fact you and I, the ordinary people of this country, also carry a considerable responsibility for prisoners not being treated with dignity.

Professor Andrew Coyle, one of the foremost world authorities on penal policy has said:-

*Prisons operate on the authority of citizens and their Governments and these have a responsibility to monitor what happens inside prisons in their name.*

Professor Coyle's assertion has been universally accepted. Therefore it must be true to assert that the laws under which persons are imprisoned in this country are our laws in that they are passed by our Oireachtas, on our behalf, and by extension with our consent. Therefore, we as citizens of this country have responsibility for imprisoning people, for the operation of our prisons and for the prisoners kept in our prisons.

Prisoners forfeit their right to freedom. That is all they forfeit. They are entitled to all other rights and privileges that you and I enjoy that are not taken from them by reason of their imprisonment. Prisoners, by reason of their imprisonment, are a vulnerable group.

Our legislature has been proactive in more recent times in bringing forward more enlightened laws to deal with the treatment of prisoners. Those in charge of prisons are meant to try to ensure that prisoners are treated with dignity and our courts are now, at last, coming to the forefront in vindicating the rights of prisoners.

But now we come to the human factor. I have no doubt that everyone in this room will agree that we as citizens in this democracy abhor abuses of prisoners that we read about or see on our television screens from other countries. The world was shocked a few years ago when it saw the photographs of abuse on prisoners by American soldiers in Abu Ghraib Prison in Iraq. What was even more shocking was that several of the soldiers involved were part time national guards and were employed in civilian life as prison staff in the United States.

In this case the media was proactive in bringing these abuses to the attention of the public. As a result politicians and law enforcement agencies became active.

However, is this always the case? Let me go back to my opening lines which I will repeat:-

*The majority of the persons attending were of the lower classes from the dens of the city, from the reeking alleys and homeless haunts. They came in all their repulsiveness and wretchedness for the purpose of gratifying a morbid feeling of curiosity and being near the scene of the execution of a fellow creature.*

This was taken from an edition of a local paper – The Clare Record. The date was 12 September 1882 and it referred to the hanging of a 24 year old man called Francis Hynes in the City of Limerick the day before. He was a young man who was well educated, whose father was a Solicitor in Ennis and whose conviction was universally condemned as not alone being unjust but flew in the face of all the evidence.

The paper went on to report that:-

*At 7 o'clock crowds of people commenced to flock towards the gaol and half an hour subsequently there were over a thousand people present.*

I think you will agree that the hoards in Limerick that morning showed little dignity to poor Francis Hynes even in his hour of death. I am sure you would say – well crowds would never gather like that now – we have moved on – we would not have a morbid curiosity – we would treat persons with dignity. Now you may well be right in your own minds but there is, I suggest, in 2016 in Ireland a desire to gratify a morbid feeling of curiosity when it comes to our prison population.

We do not have public hangings but we do have public trials. We do not have the public transportation of prisoners to the colonies but we do have the spectacle of convicted persons being brought to prison in handcuffs and chains. We do not have Town Criers telling us of the imprisonment of felons but we do have a public press which, in some cases, reports fairly and accurately on trials but in other cases provides us with salacious accounts of the convicted person and/or his or her family.

Recently we have witnessed the overflowing of one of our Central Criminal Courts because of a much publicised trial. I think it would be fair to say that many of the attendees were spectators who, if one were to be honest, could only have been there to satisfy a morbid feeling of curiosity which culminated in a sense of satisfaction when the jury returned its verdict. In other cases the numbers grew when the anticipation was of discomfiture being visited on whoever was, at that particular time, deemed to be the villain of the day. We have also seen convicted persons being brought from court to prison and being loaded into a prison van handcuffed and chained. How many of us would say – “*well, delighted – he got what he deserved*”. That is to be understood but if the picture is accompanied by salacious comments are we not further gratified and do such comments not further our conviction that the right thing was done?

Earlier in this paper I wondered if we, as a society, would like to have our prisoners treated as they were in other times and have them housed without dignity and under harsh conditions. My reason for saying this is because this is what we read in some of our redtops. We read that prisoners live in conditions of luxury, that some are being educated and that they have televisions. We read of the food that they eat and that they are entitled to telephone calls. In nearly all such accounts there is an attempt to demonise the prisoners and sometimes their families.

You may say – “*Oh I would never take those papers or read those headlines*” and you may well be right. But one has to ask why they were written. Headlines sell papers. People buy papers because they empathise with the headlines. Therefore, it must be true that the majority of people who take these papers, who are of course not you or me, must have a morbid curiosity when it comes to prisoners and I suggest an antipathy towards such prisoners.

But do you secretly agree with them? Answer that quietly to yourselves but in an effort to assist you in your deliberations let me ask you if you have been party to conversations at dinner parties or in the pub when the topic of prisoners comes up. I certainly have. I suggest that the majority view will be – “*whatever the conditions are, they are too good for them.*”

If I am correct that the majority view of those who buy the type of newspapers that I have referred to and the others who have occasional conversations of the type that I have referred to is that - “*whatever the conditions are they are too good for them*” then these people form a sizable body of the electorate of this country.

The electorate is fickle. Our politicians are at all times conscious of the views of the electorate when deliberating on upcoming legislation. How are the views of the people expressed? One of the powerful voices is that of the press and the other is the perceived views of the public and politicians know this.

If my rationale is correct then perhaps the headlines that I have spoken about or the conversations around dinner tables or in the pub might well be instruments or influences that are taken on board by our politicians who pass laws governing penal policy. I am not saying that this is the case but if it were and if it were perceived through this type of journalism or conversation that we as a society were lurching to one side and becoming a very right wing/ultra conservative society where the rights of the vulnerable might be trampled on might a Government of the day, mindful of the mood of the electorate, be tempted to introduce laws adverse to the needs of the vulnerable without paying due regard to those rights which prisoners are entitled to.

In this paper I have asked many questions. I have given few answers. At the end of the day who, in this decade, will endeavour to vindicate the rights of the vulnerable? I said at the outset that the topic – *Prisoners, Media and Society* is extensive. I have given my perspective on a narrow and limited part. I can report on what I see. You can read what I have written in my reports. I would just say – as a society, we waited too long to listen to the cries from our institutions that we sent our young people to, to the cries from our unmarried mothers who we banished to mother and baby homes, to those who cried out about sexual abuse at the hands of persons in authority and now old people and those who are mentally or physically disabled. Like prisoners these are vulnerable sections of society who need a strong, independent external voice. It is up to all of us as people living in a civilised democracy to listen to the voices of the vulnerable. I would now like, briefly, to address the students here this evening. You are idealistic now. Do not let expediency get in the way of raising your voice to vindicate the rights of others less fortunate than you. You are the next generation that can, I hope, balance the conflicting rights.

I have just said that I may not have given many answers. However the answers and the protections are to be found in the Human Rights that are guaranteed by the many international instruments that this country is a party to. The term Human Rights came to prominence in the wake of the horrors which had occurred during the Second World War but its principles are as old as time. These rights which we as humans have are enshrined in the Universal

Declaration on Human Rights which I have already referred to. These rights have been agreed by the international community.

There is, if I might say so, merit in living in a country where we embrace such as the European Convention on Human Rights and accept the decisions of the European Court of Human Rights. Let us never follow the extreme arguments being put forward in the United Kingdom and in some countries across Europe and beyond which seek to curtail the internationally accepted human rights of citizens and their rights to seek to vindicate such rights in places such as the European Court of Human Rights.

Tonight or tomorrow if you think about my contribution this evening reflect on this and ask yourself if, in the first place, certain press headlines are fair and then really ask yourself if you might, as a member of society, be complicit in any way in suppressing the human rights of prisoners and possibly other marginalised persons.

I will conclude by referring back to the actions of the American soldiers in Iraq and I think I spoke for all when I said that we were horrified when we saw the pictures from Abu Ghraib Prison. I'm sure we all said – *“that is an abuse of human rights”* and we would have been correct. Are the headlines that we see at times an abuse of human rights? Are they fair when the balancing is carried out between freedom of expression and the right to privacy? I think they are an abuse of human rights and do not respect the right to privacy of those written about.

However, that is for you to answer but if I am correct then all I would say is that political integrity dictates that we should comply with the human rights principles of international conventions to which this state is a party and with which we expect other states to comply. To do otherwise ladies and gentlemen would be rank hypocrisy.