

## Eddie Greenspan: a leading actor in the theatre of law

INTERVIEW BY IAN BAILEY

Perry Mason may have vanished into the annals of fiction but in Eddie Greenspan Canada has the brand of criminal lawyer that Earl Stanley Gardner's creation could only be on the pages of those famous novels. Flamboyant and inventive, Greenspan is generally regarded as one of the best in his field. His reputation for taking the cases that no one else will touch is only reinforced by his list of clients. Things looked bad for Bruce Allen when his mistress Lorelee Lorenz fingered him as the murderer of her husband, lawyer Bruce Lorenz. Greenspan kept on the case and managed to win an acquittal for Allen. Gerard Fillon, accused in the Dredging Scandal, the Metro Hold-Up Squad accused of torture, Gregory Garrin, accused of murdering his cousin Lilly Tomlinson - Greenspan takes on the tough ones and usually wins.

*You're well known for the hard work you put into your profession. Why do you work so hard?*

The role of the criminal lawyer is one that I see as very important. Anyone charged with a criminal offence is up against the entire mechanism of the State. They have unlimited resources to spend in order to try to convict somebody. The only person the accused can look to is the criminal lawyer. It is a sacred trust we have in defending people charged with criminal offences. As a result, it requires extremely hard work. Unless I am fully prepared I can't, in good conscience, walk into a courtroom.

*What role do you believe impressing the jury has to play in the outcome of criminal cases?*

It doesn't have the same role that it had a hundred years ago when a powerful address could save the day. Jurors today are more knowledgeable. They have a better understanding of the process and as a result you must persuade them based on the case as it unfolds. You must impress them, you must convince them and in that sense everything is directed towards presentation in a manner that persuades them. The criminal lawyer is the stage director, the lighting man, the choreographer and the costumes designer. He has got to be painstakingly careful about all the details. All of these things are part of the persuasive element in the courtroom.

*It sounds like theatre....*

There is an element of theatre but the difference is that at the end of the play the rope is taken off the actor's neck so that he can act again. In criminal law if you lose then your client goes to a real jail and real liberty is at stake. There is no second chance at performing the role.

*That brings up the eternal conflict for the lawyer. Do you go into court to win or to serve justice?*

As a criminal lawyer I do not make moral judgements about the guilt or innocence of my clients. If a client says I am not guilty, my job is to act on that client's behalf. Juries decide the facts, not the lawyers. If an accused person said that he did it but asked me to get him off then the role of the defense council is to test the Crown's case to try to show that there is not sufficient evidence to find my client guilty.

I believe that there is such a thing as the presumption of innocence. The State is not entitled to take away a person's freedom unless they can prove,

beyond a reasonable doubt, that the accused is guilty. On those terms I have no problem acting for an accused person subject to one rule - that we are not allowed to call perjured evidence.

*You are on record as being strongly against capital punishment. Why do you find it so repugnant?*

The danger about capital punishment is that it is a non-reversible sentence. Once imposed, if anything comes out to show that the executed was innocent, you cannot apologize, open the door and let him out to live the rest of his life. He's dead! To me, there are enough books written about innocent people who were unjustly convicted that I would not want the possibility of an innocent man being convicted and sentenced to death.

### Nobody escapes the scar

*Do any elements of the Clifford Olson payment surprise you?*

My initial reaction to the Olson payment was not really one of surprise. I regretted that it had to be done but when I examined the particular facts of the case, it became evident that it had to be examined individually and on its particular circumstances.

On analysis, I am very sympathetic to the payment. The knowledge and certainty of apprehension of this mass killer was important to hundreds of thousands of innocent people. Lives were altered by the presence of this killer in their midst. To know who killed all of those children was something that, if it cost \$90,000, was a bargain. In that sense, I have no problems with what the police did.



Canada's Perry Mason.

*You've pointed out for the public record (Maclean's, Feb. 1, 1982) that payment to criminals occurs on a regular basis. Do you believe that there are legal grounds to recover the Olson payment?*

Yes. There may be some very serious difficulties because he has placed it in trust. I think the contract is contrary to public policy and it's one that was undoubtedly made under duress by the authorities. Those are two bases on which the contract could be struck down, in my view.

I see the payment to Olson as a single event where the circumstances required the police to do it. In the Olson case the confession was not simply coming from the confessor. He led them to the actual bodies. It is undoubtedly true that he is the killer of those children and that certainty is a factor that must exist before the accused person is paid. It seems to me this is not the beginning of payments to accused persons. People are given rewards in our system all the time. In this case it happened to be money because they could not offer him anything else. Olson made a particularly bad deal for himself. The last time I looked, he is spending the rest of his life in jail.

The bottom line is that Clifford Olson is gone for good, but in the plea bargaining system that we have in this country accused people are giving rewards all the time. If they're charged with murder, they plead manslaughter. They give a little, the State gives a little. It's a negotiative process that exists throughout society when you have competing interests.

*What elements make up effective cross-examination?*

Cross-examination is part of the Theatre in court. Some of the best cross-examination is the shortest cross-examination. Very few questions are asked and you may not even get the answers that you are looking for. The cross-examination should not be so clever that only the defence attorney understands what is going on.

*In view of the recent shooting tragedy at Osgoode Hall would you say that the security practices at Toronto courts are enough to inspire confidence in you?*

There are a minor handful of homicides in the city and I feel confident going anywhere in the city. People are having the wrong kneejerk reaction. Only two homicides have occurred in court in the last century. I am more uneasy in an airplane.



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*"The criminal lawyer is the stage director, lighting man, choreographer and the costumes designer."*

*You've handled some very spectacular criminal cases that attracted a great deal of media attention. Do you think that the more sensational media tend to try accused individuals alongside the courts?*

The media sometimes gets carried away with a particular case. They love to publish the gruesome details of a crime. When an arrest occurs there's widespread publicity. In a number of cases I was involved in, the accused was tried and convicted long before the trial. If and when the accused is ultimately acquitted, there is usually very little attention; not nearly as much as when the charge comes down. I like to call it "the damnation of acquittal". The accused person who is charged is thought to be guilty by the public. The press fosters that belief. I've yet to see an article saying, "My God! The police have charged an innocent person!" They never do that. They play on the stories and they do it in such a fashion that the people who are charged never live it down, even when they are proven totally innocent. Nobody ever escapes the scar of being accused.

### Olson made a bad deal for himself

*How much do you think Eddie Greenspan's reputation helps in court?*

I don't know. I somehow suspect that it is irrelevant to the jury. I did jury trials long before I was well known and I'll continue to do jury trials long after I'm forgotten. Juries may now expect great performances. Let's face it: they should. They spend eight hours a day in the courtroom. There may be a belief that you can destroy a witness right before their eyes but I have been practicing long enough to know that it doesn't happen. The fight is to convince the jury that you have the evidence on your side.

The presentation of a case is vitally important. A marvelous play written by Shakespeare, if badly acted or presented or choreographed, will not have a favorable impression on the audience and the jury is that audience.

The fact of the matter is that in a jury trial there is no way that the jury can remember all the evidence. Jurors in Canada don't take notes so they really remember impressions. They have impressions of how a witness stood up; not so much what he said, although they remember the essential ingredients. It's a matter of form. It's a matter of creating appearances in court. It's a matter of understanding the psychology of the witness.

*As a figure in the legal profession, do you think that Bertha Wilson's appointment to the Supreme Court reflects a liberalization in the legal profession and a confirmation of the female presence in the legal field?*

What it has achieved is to sensitize the nation to the shortcomings of society in that there are presently no women in the Supreme Court. It's neither a confirmation nor a liberalization rather, it is a recognition that women in Canada. Had the time been right, but no qualified statement of the equality of women in Canada. Had the time been right, but no qualified women present, then no woman would have been appointed. The need and the availability coincided.

*What made you decide to take up the legal defence of the Metropolitan Toronto Police Hold-Up Squad?*

The simple answer to that is that they called me. I had never acted for the police in the past, however, when it came to a question of defence acting for a client it's not a question of picking and choosing. I don't forget the presumption of innocence and I make no moral and legal judgements on the guilt of my clients. If lawyers pick and choose their cases our system will crumble.

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