Communicating courts: an analysis of the changing interface between the courts and the media

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Abstract

This research investigates the changing relationship between the courts and the news media in Australia. While providing a broad historical context for this relationship, it focuses specifically on the past decade and the significant changes in communications practice within many Australian court jurisdictions. The study critically examines the role of public information officers (PIOs) in the Australian court system from 1993. It also investigates debates around experimentation with television cameras in Australian courts. It further critically examines other initiatives, undertaken by the courts through the PIO, including the development of court-media liaison committees, judgment summaries, websites and standardised request forms.

This investigation brings together a range of perspectives about the court-media relationship. The findings are based on responses from 32 semi-structured interviews, conducted across seven jurisdictions in Australia over 28 months. Those interviewed include judges, PIOs, television reporters, news directors and newspaper reporters. The findings show overwhelming support for the role of PIO in facilitating access, improving communication, fostering a better understanding between the courts and the media and enhancing accuracy in court reportage. They indicate that those jurisdictions with PIOs in office are better at meeting the needs of the news media than the single jurisdiction that does not employ a PIO.

In contrast, the issue of television camera access to courts has been marked by inconsistencies across the different groups of respondents. While the courts have generally been proactive in this area, news directors are ambivalent, even dismissive, about advancing moves. Progress has been slow, to the point of stalling in this area.

This research is positioned within a field described as “under-researched” and “incompletely theorized”. It deals with uncharted research territory, particularly in the analysis of how the news media perceive their own role in the court-media interface. In delving into how the courts and media intersect, it forces an analysis of open justice and investigates the practice, policy, theoretical and philosophical assumptions and traditions of this relationship. Central to any relationship with the media is the

source-reporter connection and this is analysed in the context of courts. It is argued that, consistent with the relatively low-level of analysis into the courts-media interface in general, sources on the court round have been inconsistent and disparate, reinforcing problems and irregularities for reporters on the round. Theories of sources as bureaucratic channels of information and primary definers of news provide a theoretical position for the emergence of the PIO. Critical elements that underpin the research are the importance of the media as presenting the courts to the wider community, through open justice, as well as the news media's role as the Fourth Estate in monitoring all aspects of society, including the judiciary and the courts. While the courts and the media must work together, they must also remain separate if they are to function effectively within a democracy. The investigation concludes that they should have "separate but interlocking functions" in the public sphere.

The research is framed around ideas of courts as part of the public sphere. It argues that developments aimed at enhancing communication between courts and the media have also improved the position of courts within that sphere. The intersections are viewed through concepts of ideal speech, communicative action and shared lifeworld. Individually and collectively, these provide a solid 'best practice' approach to how courts and the media can work together. These ideas are shown as a cycle of communication, represented as a communication model between courts, media and the public. Whilst originating from the work of Jurgen Habermas, these ideas have evolved to include a variety of perspectives and have, in this thesis, been employed to provide the theoretical framework for an analysis of the changing court-media interface.

Statement of originality

This work has not previously been submitted for a degree or diploma in any university.

To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

Signed:

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Jane Johnston

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Chapter 1 Introduction

This thesis considers the unique relationship that exists between the court sector and the news media. Their functions intersect to form a critical part of a participatory democracy, providing the public with access to the workings of the law through the regular transformation of court proceedings into news stories. These two institutions have been described as serving "disparate but interlocking functions" by Chief Justice Brennan of the High Court (1997). It is at the point where they interlock, or more specifically, intersect, that provides the basis for this thesis. In particular, it will focus on the media's role in representing the courts' function in a democratic environment and in ensuring the accountability of the courts through the principles of open justice. In addition, it investigates the courts' communication practices with the media as they seek to balance the freedoms of free speech and fair trial. The courts, and the legal environment, will be analysed insofar as they intersect with media practice. For this reason the research will include some analysis of the role of the judiciary and the courts, concepts of open justice and deterrence, philosophical arguments about the law and the separation of powers, at the points where these connect with the media.

It is the contention of this thesis that the news media's relationship with the courts and the judiciary has been inadequately researched, especially from a media perspective. American researchers in the 80s and 90s noted that research into the other arms of government, the parliament and the executive, had overshadowed research into the judiciary and the media (Cohn & Dow, 1998; Drechsel, 1983; Ericson, Baranek, & Chan, 1989). Drechsel (1983:1) observed that knowledge of the courts as news was "strikingly meagre compared with our knowledge of news making in other branches of government" and Cohn and Dow (1998:7) argued that, despite widespread televised courts in the US, "people know less about the judiciary and the legal system than other branches of government". In Australia, Parker identified a specific gap in Australian research, noting that "the whole area of the relationship between the Courts and the Public is incompletely theorised in Australia" (Parker, 1998: 5). While Parker did not refer specifically to the media, his arguments translate to the media as an extension of the public and the modern representation of the public sphere, as

discussed in Chapter 2. For a media scholar, the gap in the literature, research and theory is particularly great, given that much of the existing material on court-media issues is written within the legal literature. The legalistic approach to the issue was illustrated in the late 90s where two major forums on the topic of the courts and the media in Australia, first at the University of Technology Sydney "Courts and the Media" forum in 1998, followed by the World Association of Press Council's Oceania conference of 1999, were dominated by legal perspectives. Thus, despite a level of understanding about the court-media interface, there remains a significant deficiency in our detailed knowledge of how the courts and the media communicate and relate to each other in Australia, especially in the context of a changing society and most notably from a media point of view.

Specifically, therefore, I set out to investigate the relationship between the media and the courts and the impact of this on the public sphere, through three primary research questions:

1. What changes have been put in place during the past decade to facilitate the court-media interface?
2. How have changes by the courts impacted on journalistic practice? and
3. In what ways could the relationship be improved to better serve the courts, the news media and the public?

Underlying these questions is the common thread of open justice, which underpins the importance of this thesis. Indeed, the principles of courts being open and accountable in a democratic society, with the concomitant involvement by the media, form a primary motivation for the research. It is crucial to understand and monitor this nexus because together these two institutions represent cornerstones of democracy and public life that, individually and collectively, wield such influence and power. As the citizenry relies on the media to view, interpret and articulate the workings of this arm of government, it is critical that we expand our knowledge and understanding of how the courts and media work together. A lack of investigation runs the risk of undermining the very principles of open justice. Indeed, justice can only truly be open if it is constantly evaluated and critically scrutinised. This thesis, therefore, will examine the many layers of this complex relationship, providing a profile of its development at functional, philosophical and theoretical levels.

Tensions in the Courts-Media interface

The terms "fair trial" and "free press" might well have the link "versus" in between them: such has become the acceptance of a tension or conflict between the two (Sanford, 1999). Indeed, as Brennan noted above, they are disparate: we see this in many ways. The courts and the media occupy separate parts of the public sphere, often at odds with the culture and expectations of the other. On the one hand, the courts are immersed in tradition, yet they embrace changing laws through case law judgments. They are open to public scrutiny yet can close doors and exclude the media with limited explanation. They are a centre for acting out real-life drama, constructing versions of reality based in adversarial engagement. On the other hand, the media, themselves a complex mix of commerce and service, constructs their own versions of reality. Compare the time-worn traditions of courts to the expeditious nature of the news media, fixed in the deadlines and the happenings of today, fitting their narrative within a space or time frame, reducing years, weeks or days to column centimetres or minutes on air. The adversary plays a role for the media too: conflict is central to the news agenda. And courts, by their nature, provide conflict.

At a purely functional level, the courts supply the media with a smorgasbord of news stories. From the lengthy judgments brought down by the High Court to the daily list of short appearances in Court One of the local Magistrates Court, they provide news stories to fill the news hole of the day. Yet the constraints placed on the media within the context of courts show us how the media cannot function under totally unconstrained or absolute freedoms because of the need to balance freedoms and rights: the rights of freedom of speech and the press and the rights of the individual with the right to a fair trial and the proper administration of justice. In no other journalistic round is the balance so polarised. This is because in no other round is the very essence of every story based on another person's liberty, covered by the broad-based defamation protection of limited privilege. At the same time, the courts have a responsibility to uphold and balance these rights. They balance the weight of open justice with the rights of the individuals before them: achieved most widely through the use of non-publication or suppression orders and invoking contempt laws.

Traditionally, the functions of the media have been to educate, inform, entertain, investigate and make money. These functions are clearly not all aligned and can bring the media's mission of social responsibility into conflict with their commercial imperatives. Common themes of the modern news media are seen in their increasing need to move within tight budgets to produce their product and their trend toward the entertainment function for an increasingly passive public. Paul Kelly, international editor of *The Australian,* noted a "profound intersection between news and entertainment" in today's society. He said popular culture values were "seeping through news" and posed the question: "What is a genuine news story?" (Kelly, 2004). Schultz notes various "guises" of the modern media: "a political player, an economic agent, a social agent and a technological innovator" (1994: 23). It is expected that these descriptors will resonate throughout this thesis, as we see the role and form of the news media moving through change. At times the media's own roles are tensioned against each other, and sometimes these tensions are juxtaposed over the various functions and roles of the courts, thus providing a complex web of interplays, activities and conflicts.

Tiffen (1989) notes that the mass media represent the central political arena of contemporary liberal democracies, acting as the link between the governors and the governed. In this description we can position the courts as representatives of the governors, with their workings reproduced, via the media, to the citizens of a democratic country. The media, as the link, thus bring the courts and the community together. But it may be argued that the pervasiveness of the modern mass media takes it further than a link between governors and governed. It is argued that the media now ARE public life, that the media are seen more and more to constitute public life rather than represent it. The media have become "the sites where politics and public life are played out" (Craig, 2004: 4). Thus, if something is not validated by the media, it is seen as less significant, even invisible. Similarly, if a court case is not covered by the media it can fall into obscurity; if it is covered, it can, and often does, become famous or infamous.

The concept of the media becoming the new public sphere is central to its transformation from a place of personal communication to a mass mediated one, as discussed in Chapter 2. This proposition is consolidated by the pervasiveness of

television as the dominant medium. O'Hagan (2004) asserts that in television, the most popular programs are "entirely Warholian" by focussing on people seeking their small slice of fame, with televised realism regularly outstripping traditional fiction in ratings. Even in closed environments, CCTV has taken hold. Michelle Grattan, political columnist from *The Age* notes "(In Parliament) House TV tends to have taken over from the house meetings" (2004). The domination of television has resulted in contemporary politics being re-defined to accommodate the need for visual representation in the ever-expanding televised media. One relatively new trend has been the broadcasting of Federal Parliament, standard practice since 1990. By contrast though, the courts have been far more resistant to this change. The courts have, for the most part, not refashioned themselves to fit the new mould that television dictates. So, while there has been a growing trend in television's visual coverage of the courts, this has been on the courts' terms and not the media's. Indeed the media have argued that broadcast rules are inconsistent with their needs and internal constraints. Thus, in a society where television dominates much of the environment, tensions between the courts and the media continue to exist.

Positioning the thesis

In this thesis, the courts and the media have been positioned within the context of the public sphere. Chapter 2 explores how this sphere was once essentially "the forum within which public opinion is circulated and formed" (Craig, 2004: 50). However, the modern public sphere is increasingly difficult to define. The media are seen to represent the modern-day public sphere through their saturation and pervasiveness. Yet, the largely single-directional communication that most media use, with little by way of feedback and interactivity, makes it inconsistent with the original public sphere, which centred on interactivity and public debate. This thesis will consider the various forms of the public sphere, considering how it has developed and changed since it was identified first as a 17th century forum for the establishment of public opinion. It will consider how "publics" are treated within the public sphere, the concept of strong and weak publics and how they are afforded differing access to decision making forums.

The emergence of the news media, first in the western form of newspapers in the early 1800s and subsequent development to the dominant media forms of today, most notably television, will be traced, focusing on the various functions and roles served by the media. The benefits and shortcomings of television are considered as a major influence in the public sphere, with suggestions that it can both undermine or reshape democracy and that it has moved toward some degree of audience participation through talk shows and reality TV, thus re-instituting aspects of the original popularly-driven public sphere. The impact of public relations on the public sphere is considered, with particular attention to power relations with the media and the facilitation of information as well as the redefining of public opinion by this rapidly expanding industry. Out of this discussion emerges what Habermas (1998) calls "ideal speech", a discourse based on validity and access with equal rights to participation. In some ways it thus holds similar characteristics to the original public sphere. In Chapter 2, we also see the similarities between Habermas's concepts of ideal speech and the public sphere and Grunig and Hunt's theories of symmetrical and asymmetrical public relations. Ideal speech allows for communicative action, which leads to communicative understanding or consensus, as opposed to strategic action, which presupposes an imbalance of power relations and an underlying agenda in discourse. However the most positive of communicative outcomes can only be achieved if there is a shared "lifeworld" which assumes a common understanding of language and background knowledge.

Habermas (1996) draws a connection between communicative action, and its understanding of truth as objective and factual, and the law, which allows for truth to be disputed. In this thesis, however, the role of the law within a democracy provides the context for the workings of the courts. The law thus provides balance between dominant powers: government, media and money, thus ensuring protection for individuals, groups and social systems. The role of the courts as part of the public sphere, and as a centre for communicative action, presents a necessary link within this thesis.

Chapter 3 positions some of the traditional source-media relationships between the courts and the media. First, I examine the importance of the source in the news environment with news sources considered as "primary definers", "authorized

knowers", "news shapers" or as "bureaucratically determined". These sources are then considered within the courts. In America, Canada and Australia, the late 1980s and early 1990s saw a focus on problems which existed with court-media relations with common themes across all those countries: notably how courts' channels of communication were at that time ad hoc and less systematic than other institutions such as parliament. Courts were either less than cooperative or more distant than other allied news rounds such as police. Indeed, Janet Fife-Yeomans (1995) noted in Australia that the courtroom supplied information for judges, magistrates and lawyers, but not journalists and there was no method through which the facts could be checked. The range of sources on the court round was noted to be broad and disparate, often unsystematic, based largely on personalised networks, many of whom were sources with their own agendas, such as police and lawyers.

A further problem highlighted in this chapter is how under-researched the court-media relationship is. It is noted that the courts-public interface (and the courts-media interface forms a major part of this) is "incompletely theorised" and there are "deep issues that have not been adequately addressed" (Parker, 1998: 5). These issues include the role of courts in a modern democratic society and the proper role of public opinion in the organisation and services of courts (1998). These gaps in research provide common themes throughout this research.

The lack of focus is also part of the internal news culture, with the importance of the court-media round falling below that of the crime reporter. The roundsperson for the courts holds a relatively low status, receiving limited training. Court stories are considered in relation to news values, with conflict not surprisingly a central news value. It is argued, however, that broadly speaking tabloid journalism tends to focus on entertainment functions, while broadsheet (or quality) media have moved toward analysis. But while the courts are acknowledged as a media staple, readily available from Monday to Friday, there is a broader philosophical reason for why the media cover courts. Open justice is played out by the courts and the media, which results in the news media's reportage of courts to the wider community. The concept of open justice is thus examined, with consideration of issues such as suppression orders that limit media access, and the values of transparency in keeping the judicial system accountable whilst acting as a deterrent against future crime.

The primary focus of Chapter 4 is to consider changes to the court-media interface during the past decade. This provides a logical starting point to the primary research, beginning in Chapter 5. However, before analysing the major developments of the past decade, historical development of the court round and the print media's history within it is briefly considered. Historically, court reporting dates back to the late 1500s, though it was not a regular feature until the Penny Presses of the 1800s. Court stories moved through a variety of styles, from stenographic accounts of court proceedings in the 1800s to highly subjective, colourful versions which went as far as calling for harsher sentencing in the 1900s (Stack, 1998). Translating crime and courts into news has changed over time, influenced by social, cultural, political and legal factors such as terrorism, home invasions, law-and-order politics, and no fault divorce laws and these are considered in this chapter.

The courts were thus a staple of the print media for 200 years before television moved in to share the territory. But television has faced a significant stumbling block in its reportage of courts: that is, the courts' limited acceptance of television cameras. Chapter 4 thus focuses on that very major issue of how television has managed this round, confronted with the shackling of its most important element: vision. That is not to say there have been no cameras in court, indeed it is central to this thesis that cameras have made significant inroads into this domain, however it is argued that this has been an ad hoc and piecemeal process. The major benefits and risks are analysed in this chapter, along with comparisons between the United States, Canada, New Zealand and Australia, all countries which have taken different approaches to the issue of televised court proceedings. The Australian experience has shown that the Federal Court has been at the forefront of televising courts, with some major successes. Other jurisdictions which have pursued this option on occasion have been, notably, Victoria, South Australia and Western Australia. The development of the specific cable network of Court TV in the United States is examined, as the option is placed onto the agenda for potential future adoption by Australian courts.

Other major developments in the courts, which have facilitated access for the media, are also considered. Most notable is the introduction of the Public Information Officer (PIO), possibly the biggest single advance in court-media relations in Australia's

history. The role of PIO is fourfold: media liaison, community relations, public education and judicial communications support. PIOs generally assist the media with day to day access to documents, access to the judiciary, compiling summaries of long judgments, providing web-based assistance and developing guidelines to enable the media to better understand the boundaries of its access and reportage. Detractors of the system note that PIOs represent an unnecessary additional layer of interpretation in the courts, but generally, the initial response to this role has been positive with benefits outweighing the problems.

The importance of improved communications with the media is illustrated in the case study of the Media Protocols for the Tasmanian Magistrates Courts. These protocols were developed following discussions and evaluations between Chief Magistrate Arnold Shott and myself about the efficacy of the relationship between the media and the Magistrates Courts in Tasmania. The protocols were developed in collaboration, and subsequently presented to the Chief Council of Magistrates in September 2003, for consideration for national adoption. These protocols served to reinforce the need for two things: first a consistent approach to journalists working in the courts by court staff; and second, the inclusion of the Magistrates Courts, alongside the superior courts, as being in need of court-media attention.

Thus, the need for a close evaluation of the existing systems in the court-media interface is well established. The methodology and research design of this thesis are discussed in Chapter 5. This provides the framework for input from the two primary categories of participants: the courts (represented by the judiciary and the PIOs); and the media (represented by print and television reporters). Participants were chosen because of their geographic location with each mainland capital city, except Darwin, under review. In addition, the study incorporated limited feedback from the Hobart Media Protocols, giving voice to the Tasmanian Courts. A total of 32 court and media personnel from five states and one territory were interviewed in the study. In all jurisdictions representatives from both categories were interviewed, in some cases several from one group took part. In Brisbane, there is no PIO in operation with the courts and this provided a contrast to the jurisdictions with PIOs. Only two respondents were interviewed in Canberra, one each from the courts and the media.

The instrument used in the research was semi-structured, in-depth interviews, most taking place in person. Those that could not be arranged face-to-face were conducted by speakerphone in my office at Griffith University. All interviews were tape-recorded with the consent of the participants. Specific issues associated with "elite interviewing" were addressed (Marshall & Rossman, 1999) in Chapter 5. These included limited access to recipients and their potential to "take-over" an interview, the possibility of being critical of it or trying to redirect it. These, however, did not become issues. In addition, the chapter also provides a rationale for choosing the media outlets; it explains how the instrument was pre-tested and how the participants were approached. Data collection occurred over a 28 month period from October 2001 to January 2004. Since 2003 marked a decade since the courts first appointed PIOs in Australia, the end of the collection period provided a tidy, ten-year time frame through which to view changes and developments in this arena.

The findings are presented in Chapter 6. In this chapter, the different levels of interface between the courts and the media are considered, from the practical, day-to-day workings, through to the philosophical connections within a democracy. Respondents suggest their views on the role of the media in covering courts as part of the function of the Fourth Estate as a public interest service. The importance of the court round is considered in comparison to nine other key rounds in the news mix. These rounds are Federal and State parliament, Politics, Justice, Crime, Industrial, Welfare, Education and Health. Perhaps somewhat surprisingly, almost all respondents from the courts and media categories rank the courts toward the middle of the list of ten, generally following Federal and State parliament. This chapter provides a breakdown of the specific detail of these rankings.

Also important in the analysis of the court-media relationship is how the two groups perceive the importance of sources within the round. Specific details of sources are presented, followed by close consideration of the role of PIO as a key source. In particular, the PIO is examined in its role as facilitating access, enhancing accuracy, and providing a like-minded approach to the role of the court reporter (thus closely paralleling the concept of the shared lifeworld). In addition the different perceptions of the role of the PIO and the importance of the media maintaining control of the news agenda when dealing with the courts are addressed.

A number of themes and issues emerge relating to the television media, most notably problems relating to vision, which are discussed in detail by the television respondents. A range of different options for camera access is discussed, including news, current affairs, documentaries or cable TV. One of the striking observations of this chapter is the limited interest by the senior television media in pursuing increased camera access in the courts. This issue is articulated strongly by the PIOs who have been at the forefront of moves to improve this facility for the television media during the past decade. Further, it is suggested that newspaper reporters are not only very protective of the court round, but have on occasion overtly undermined the television media's coverage of the court process. In addition, this chapter suggests that many reporters are unsure about access laws relating to the courts, and this issue has become more difficult to navigate with recent changes to privacy laws.

A range of court cases that have been covered by the media, with a specific focus on televised cases, are considered for their successes and failings. In particular, the Snowtown committal and trial in Adelaide are discussed, as these represent a long-running case in which the media-court relationship was developed and tested. Suggestions for improving the interface are discussed, with the list including camera access and a greater priority be given to the court round. The themes that emerge from this chapter are taken up in Chapter 7 with a focus on democracy, the courts and the media. This includes a close analysis of where the court round is ranked, as this reflects its perceived importance by these two important groups of people. By positioning the courts after the rounds of State and Federal Parliament, the respondents place the courts in the natural order of the three estates of government: Parliament, the Executive and the Judiciary.

Television and its role within the public sphere, and specifically within the courts, are examined. As television comes under focus for its part in eroding the original public sphere, by virtue of its capacity to cause behaviour rather than simply reflect it, it is argued that courts have, to a large extent, remained quarantined from it. The chapter considers some examples of the televising of courts, such as the *Avent* and *Gutnick* cases, and suggests reasons for their strengths and failings.

The role of the PIO and the use of the terms “public relations”, “publicity” and “media relations” are considered in detail. This section brings together a range of themes such as the perceptions held by the media of the role of the PIO, and the connotations associated with some of these nomenclatures, and hence the tendency to adopt the term “media liaison” over the other choices. These titles resonate throughout the thesis as important: first with Habermas in his description of the emergence of the public relations industry; later in the discussion of sources; and finally; in the findings of the primary research. It therefore became instructive to bring the terminologies together and consider them in the context of courts. Sources and lifeworld become central to this analysis as the media note how sources in general, and most specifically PIOs, should be able to speak their language and anticipate their needs. Habermas’s concepts of communicative action and ideal speech are also considered in this context as the need to communicate efficiently and with a shared validity position is noted as being central to effective communications between the courts and the media.

Uncertainty about the existence of laws that keep cameras out of courts is also considered, as access is a central theme to the media’s interface with the courts. It is suggested that uncertainty might cause a timid media, especially against the potentially daunting legal obstacles of courts and the judiciary. However, it is also suggested that the media should question guidelines, rather than accepting them without explanation.

Chapter 8 concludes that the television media have not eroded the courts in their position in the public sphere to the same extent as other sectors such as the legislature and executive simply because of television’s limited access into the courts. In Australia, while there have been incremental steps to move television cameras in courts, these have been slow and piece-meal, a situation that has been contributed to by a television media which, at senior editorial levels, is at best ambivalent to the idea. On the other hand, the introduction of the PIO, as a primary source of information, a facilitator between the courts and the media, an insurance against inaccuracy and speculation by the media, must be seen as a successful courts’ initiative. The findings indicate that the role of the PIO should be developed and expanded in all jurisdictions across Australia. In particular, the Magistrates Court,

which handles the majority of court cases, as the most likely interface with the wider community and as the training ground for news reporters, should be supported by such a role. In addition, the judiciary should also be better supported by PIOs, in line with the other arms of government.

Summary and conclusion

This research considers how the news media interfaces with that arm of government that has, for the most part, been overshadowed by the parliament and the executive: the judiciary. It raises many illustrations of how the judiciary, and the courts by association, have either been ignored or under-recognised in the research agenda. In particular, this gap in the agenda is greatest from the media's perspective, with a limited literature on the subject. The relationship between the media and the courts provides a range of tensions and interfaces that have rarely, if ever, been explored, particularly in the contemporary, Australian environment. While the different cultures and priorities of the courts and the media are central to their importance and independence in a democracy, their inevitable intersections and interlocking functions should not be overlooked or underestimated. This thesis will address important elements of how the courts and the media function independently of each other, how they are brought together and how this process, in turn, informs the wider community about the role of the courts and the judiciary in a democracy. In order to thoroughly address this topic, this thesis will provide insights into a range of issues and concepts, providing a theoretical framework, a review of the literature relating to different media needs, news, courts and the judiciary, and ultimately present a qualitative study into how the courts and the media interface in Australian society. Topics under investigation will include notions of Open Justice and the Separation of Powers, to the role of the Fourth Estate, changes within the Public Sphere and the importance of sources in the development of news.

As Schultz (1998) notes: "the precise nature of the relationship between the news media and the judiciary, executive and parliament is subject to contest and renegotiation". Thus, it is argued, that it is time to place this relationship under the spotlight, not necessarily with a view to contest or renegotiate it, as Schultz suggests, but so that it can, at the very least, not remain static but move forward its relationship

and provide the basis for informed decision-making and stronger communications between these two central components of democratic life.

Chapter 2 Theoretical Framework

The work of Jurgen Habermas provides a useful framework to situate the relationship between the media and the courts in today's society. In particular, Habermas's work on the public sphere, as presented in the *Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (Habermas, 1989) and later works on communication in *Theory of Communicative Action vol 2* (Habermas, 1984) and *The Pragmatics of Communication* (Habermas, 1998), give a foundation for analysing the three-way relationship between the court system, the mass media and the role of public information as the facilitator of dialogue between the two.

In this chapter, the public sphere is considered in its various stages: first as the forum for the expression of public opinion in the 17th and 18th centuries, through the emergence of public relations and the mass media. From this analysis emerges the concept of ideal speech, which requires an equality of access for those who take part in discourse, representing optimum communication in the original public sphere environment. The discussion of ideal speech is further developed in an analysis of two types of actions: communicative, which is oriented toward cooperation or consensus, and strategic, which is oriented toward manipulation or distortion. These communication contexts provide a basis for analysing the lifeworld of the participants. If lifeworld is shared, that is, if social and cultural understandings are common and understood, there is a greater likelihood of communicative action, ideal speech and consensus. The various theories in this chapter, while all quite separate, are ultimately brought together to form a cycle that begins with the socially equitable public sphere through the linguistic model of ideal speech which fosters free discussion and debate and leads back to the fair and accessible public sphere. This theoretical model further expands to consider how Habermas ties the law into the communication environment. The brief analysis of the law allows a structural and philosophical context for the ongoing discussion of the intersection of courts and the media.

These theories, proposed by Habermas, and critiqued at various levels throughout the chapter, suggest a range of perspectives from which to view communication, access to

public information, the role of law and the mass media's role in contemporary society. They therefore provide a solid foundation for analysing the primary data later in the thesis, as well as the changes and developments to the media and the courts' relationship as discussed in the review of the literature. For these reasons, these theories become central to this thesis, underpinning the discussion, analysis and conclusions of Chapters 7 and 8.

The Public Sphere

Habermas defines "the public sphere" as "a network for the communication of contents and the expression of attitudes, that is opinions, in which the flows of communication are filtered and synthesised in such a way that they condense into public opinions clustered according to themes" (Outhwaite, 1994: 147). Traditionally, the public sphere provided a forum for the mediation between the authority of the state and civil society, found in commercial activity and the family. From this space public opinion emerged, hence the notion of public opinion as a fundamental part of the public sphere. Habermas's public sphere grew out of European coffee houses of the 17th and 18th centuries, accessible in reality to bourgeois males, who used this space to criticise and discuss matters to do with the state, philosophy, art and literature (Habermas, 1989).

Holub (1991: 11) develops this definition to incorporate the theoretical access to the public sphere by all citizens:

> The public sphere is a realm in which individuals gather to participate in open discussions. Potentially everyone has access to it; no one enters into discourse in the public sphere with an advantage over another…the bourgeois public sphere in its classical form, which is the central focus for the Structural Transformation, originates in the private realm; it is constituted by private citizens who deliberate on issues of public concern. In contrast to institutions that are controlled from without or determined by power relations, the public sphere promises democratic control and participation.

Central to these definitions is the distinction between public (state) and private (society). Although state authority is the executor of the political public sphere it cannot be part of it (Habermas, 1974). Rather, as Hohendahl notes, the state and public spheres confront each other as opponents (footnote 2, in Habermas, 1974). Within the publicly-accessed space, there is an expectation of a common good coming from deliberation within the public sphere, and the ruling out of private interests (Fraser, 1993).

The Public Sphere in this strictly separate state began to decline during the 1800s because of the intervention of the state into private affairs and the penetration of society into the state, thus upsetting the clear distinction (Holub, 1991). Habermas (1974: 55) suggests reasons for this transformation:

> At one time the process of making proceedings public was intended to subject persons or affairs to public reason, and to make political decisions subject to appeal before a court of public opinion…but often enough the process of making public serves the arcane policies of special interests.

Since the rise of the public sphere depended on a clear separation between the private realm and public power, the penetration of one sphere into another is seen to inevitably destroy it. But this crossing over need not inevitably be viewed as a negative outcome for democracy. Rather, notes Fraser (1993: 26), "any conception of the public sphere that requires a sharp separation between (associational) civil society and state will be unable to imagine the forms of self-management, inter-public coordination, and political accountability that are essential to a democratic society". It is argued that the concept of the Public Sphere is difficult to delineate (Craig, 2004: 53), that it constantly fluctuates (Polan, 1993), which may see it positioned within actual institutions or within a broader context of public life. For this reason Craig redefines the public sphere as "public life" because this is more consistent with the flexible and porous boundaries of the domain which ultimately absorbs aspects of the private sphere into the public sphere (Craig, 2004).

As a result of this merging between the two distinct spheres, the role that the public sphere had played in the intellectual life of society is taken on by other institutions

that reproduce the public sphere in a manufactured way such as parliament which developed to gradually contradict the ideal form of the public sphere because of party politics (Holub, 1991). This, coupled with the manipulation of the mass media, lead to what Habermas calls a "refeudalization" of the public sphere, where image and appearances outweigh true discussion and debate (in Holub, 1991: 6). These changes are discussed later in the chapter in the discussion of the media and public relations.

Habermas came under criticism for his representation of a single public sphere, which excluded all groups other than middle class men (Fraser, 1993; Holub, 1991; Outhwaite, 1994).[i] However, access by all groups was both idealistic and inevitably unequal. Indeed, the idea of the public sphere as accessible, with unconstrained dialogue to all is seen as "an obfuscation by and of bourgeois ideology, since it stands in contradiction to the empirical reality of the public sphere in capitalist societies" (Holub, 1991: 6). Furthermore, Outhwaite (1994: 11) notes:

> Critics of *Structural Transformation of the Public Sphere* shared anxiety at Habermas's rather idealized account of the bourgeois public sphere. Marxists pointed out its limitations in terms of class, and feminists in terms of gender…Feminists have pointed out that Habermas's 'sex-blind' categories fail to thematize the exclusion of women from the bourgeois public sphere and of the gender dimension of the public-private split.

People were excluded from the public sphere on the basis of sex, status and race. Thus it became a place for domination, for "emergent class rule" in contrast to the open and democratic position it was proposed to hold. "The official public sphere, then was – indeed, is – the prime institutional site for the construction of the consent that defines the new, hegemonic domination" (Fraser, 1993: 8).

Fraser (1993: 9) also questions four underlying assumptions of the public sphere:

1. That civil society and the state should be sharply separated;
2. That private interests are inherently undesirable;
3. That multiple competing publics are a step away from, rather than toward, democracy and;
4. That differing status does not afford equality in society.

In questioning these assumptions, Fraser questions the ideal nature of what the public sphere might have been and repositions a series of public spheres more realistically within an imperfect world. In her review of Habermas's public sphere, she notes that social inequality resulted in a division between "weak" and "strong" publics and this in turn resulted in inequitable access to the public sphere. This meant there could be no, one, singular public sphere in any egalitarian, multicultural society: "That would be tantamount to filtering diverse rhetorical and stylistic norms through an overarching lens" (Fraser, 1993: 17).

Fraser raised two important points in her analysis of weak and strong publics. First is the issue of access, and second, is the idea of counter-publics. Thus, even if a multiplicity of public spheres is accepted as reality, rather than a single public sphere, inequality continues to exist in stratified societies because of impediments to access. Fraser suggests that the existence of a pluralistic public sphere is consistent with the idea of people being members of more than one public; that memberships may overlap (1993: 18). She refers to "subaltern counterpublics (that) stand in a contestatory relationship to dominant publics" (1993: 19). McBarnet (1981) takes up this point of unequal access later in the chapter in her analysis of the inequality of access to the justice system by court participants. It follows that access to these public spheres has clear implications when we consider the role of public information and open channels of communication that can lead to public opinion. In the context of this thesis, the specific public in question is the media and the issues of access that surround that public in its relationship with the courts.

The idea of the counterweight has importance in providing balance to the public sphere. In a broad sense, public opinion can thus result in "a mobilized public" (Outhwaite, 1994: 438). This is described as "the informally mobilized body of non-government discursive opinion, that can serve as a counterweight to the state" (1994: 24). However, while the mobilisation of the public may be necessary in the counter-weight process, it has also been identified as a factor in the demise of the public sphere because at times the public has no desire to mobilise itself.

Aronowitz (1993) laments public apathy in democracy and its resulting effect on public sphere deliberations:

> To the extent that mass communication and its culture have replaced 'face-to-face' communication, American democracy is, indeed, in serious trouble. For democracy is the same as community itself, where the idea of community entails participation among equals, at least for purposes of public activity.

Dewey is critical of how life has become enjoyment and work focused and has lost its sense of community (in Aronowitz, 1993: 83): "(T)he members of an inchoate public have too many ways of enjoyment, as well as of work, to give much thought to organization into an effective public". And, as society becomes less mobilised, as passive rather than active consumers, it becomes less community oriented and more reliant on the mass media. As a result:

> the public sphere is always a restricted space – restricted, in Habermas's model, to people like himself, those who have undergone the rigorous training of scientific and cultural intellectuals…For only those individuals who have *succeeded* in screening out the distorted information emanating from the electronic media, politicians, and the turmoil of everyday life are *qualified* to participate in social rule. If all cultural formation is embodied and interested, however, then no such antidemocratic exclusions can ever be admissible (Aronowitz, 1993: 91-92).

While society's apathy is thus identified as a reason for the public sphere's downfall, another explanation may be seen in the lack of access to decision-making forums. So, while access to the public sphere may be possible, if no access is granted to the decision-making part of the public sphere, the system inevitably renders access impotent or useless (Fraser, 1993). We would expect strong publics might have greater access to the opinion-making phase of the public sphere, and weak publics to be frustrated at the point of decision-making. If, however a counterpublic gained access, through lobbying or a growth in numbers, such as the environmental movement, it could be seen to have moved from a weak or counterpublic to a strong public. This limited access may be seen in various ways in the court. First, the

physical restrictions of the courtroom limit the number of people who can attend; second, those who do attend, whether as individual citizens or the media in their stead, are either passive observers or subject to court rules and procedures and ultimately dominated by the environment and finally, the passive nature or apathy of the public results in few people actually seeking out access in the first place.

In Fraser's discussion of strong and weak publics, she calls "sovereign parliaments" a strong public "whose discourse encompasses both opinion formation and decision making" (Fraser, 1993: 24). The force of public opinion is strengthened when a body representing it is empowered to translate opinion into authoritative decisions (Fraser, 1993: 25). If the line between state and civil is blurred, as she suggests, then there is a strong argument to allow access to other publics to give balance. One such strong public that provides balance to parliament is the judiciary.

This notion of checks and balances within co-existing arms of government is based on the doctrine of the separation of powers. Ideally, the separation of powers sees "a system of government where different aspects of governmental power are dispersed between different bodies" (Wood, Hunter, & Ingleby, 1995: 53). The very foundation of the separation of powers keeps the three arms of government apart and there are strong arguments for this, such as the following proposed by Lee (1999: 81):

> The separation of powers doctrine operates at its best when the judiciary is truly independent. If the judiciary is cowed by the government of the day, it paves the way for the unbridled exercise of authoritarian powers.

However, a neat and clear division cannot always occur. Indeed, Wood et al (1995) note how the roles of the executive and the legislature can become blurred and that, in its interpretation of law, the judiciary's role may also fall in an undefined line between interpreting existing laws and making new laws. Williams (1994) notes that Australian states work under a variety of models, with different levels of true autonomy for the judiciary in different jurisdictions. The High Court, the Family Court, the Federal Court, and courts in South Australia, the Northern Territory and New South Wales are all, through various models, administratively and financially autonomous. In contrast, Queensland, Western Australia, the Australian Capital

Territory, Tasmania, and Victoria retain the "traditional model" which blurs the separation of the judiciary from the executive government because of the judiciary's reliance on administrative services from the executive (D. Williams, 1994). This therefore makes the courts in these states less autonomous and has ramifications for the findings, analysis and conclusions of this study, as noted in Chapters 6, 7 and 8.

One important difference between the three arms of government is that an independent judiciary has, traditionally, been held up as an ideal whereas the independence of the executive has a always been highly scrutinised and criticised (Wood et al., 1995: 54). This has impacted on the media's differing treatment of the two, which has seen a traditional "hands off" approach towards the judiciary by the media. However, in more recent times this tradition has been challenged. The media now scrutinise the judiciary as closely as the other arms of government with, for example, front-page "exposés" of international travel expenditure not uncommon. Indeed, in 2004 alone there were at least 10 news stories, columns and editorials on this topic run in News Limited newspapers (Griffith, 2004; P Whittaker, 2004). Williams (1994: 184) concludes: "The public has become increasingly inquisitive as to who the judges are and as to their socio-economic background, education, gender and ethnic origin". As a result, the judiciary has begun responding to criticisms in order to defend its community standing. Williams (1994: 185) continues: "Without judicial input the consistent presentation of one side of an issue in the media could leave the impression that there is no answer to it". Further discussion of the judiciary and the role of the federal Attorney-General is discussed in Chapter 4.

Thus, if the judiciary represents part of the balance to the government of the day, the news media must be seen to represent another important part of the system of checks and balances in the public sphere. But checks and balances do not necessarily translate to bad news. While the media have been noted to criticise the judiciary, their reports can also represent a more positive approach and enforce concepts of open justice and a working democracy. Indeed the media and the three arms of government connect on a range of levels, as the media fulfil their function of social responsibility of covering news from these institutions, while also fulfilling their commercial imperative of filling the news hole of the day. In the context of courts, Brennan (1997) notes: "We are speaking of … disparate but interlocking functions which, if

properly performed by both institutions (media and courts), should produce public confidence in the maintenance of the rule of law by the courts". In keeping with this theme, Fraser (1993: 26) asks the question: "What democratic arrangements best institutionalize coordination among different institutions, including among their various complicated publics?". The mass media are the logical vehicle through which to facilitate interaction between these multiple publics.

Development of the News Media

By the early 19th century, the model of face-to-face communication, of the bourgeois public sphere, with its literate publics which had been informed by reading local newspapers and participation in literary clubs, salons, and associations, was displaced by mass produced print publications, followed a century later by the electronic media. Habermas (1974: 49) summed up this transformation in 1974: "Today newspapers and magazines, radio and television are the media of the public sphere". Where the bourgeois public sphere used intellectual newspapers as a mode of communication, this evolved with changes to newspapers. The first newspaper with a mass edition of over 50,000 copies was the Political Register published in 1816. The penny presses reached runs of 200,000 by the middle of the century and their popular style has characterised the commercial printed mass media ever since (Habermas, 1989). Some argue (Carpignano, Anderson, Aronowitz, & DiFazio, 1993: 97) that the mass media grew to claim the institutional authority which once existed in speech. "Historically, it was precisely this development, the dissemination of information as news, that provided the raw material for the development of the 'public sphere'".

However, the media, first in its mass newspaper form and later in its electronic form, incurred major criticisms due to the lack of access to certain groups, its commercialisation, its political and consumer driven content, and its monopolistic controls. In the early days of the penny press, sales were maximised by depoliticising content, thus "watering down" comment and eliminating sensitive moral topics such as intemperance and gambling (Habermas, 1989).

Where the development of new newspapers had meant "joining the struggle for freedom and public opinion" to these institutions, growing commercialisation meant the abandonment of this polemical position (Habermas, 1974: 43). It is observed:

> Newspapers changed from mere institutions for the publication of news into bearers and leaders of public opinion – weapons of party politics. This transformed the newspaper business. A new element emerged between the gathering and the publication of news: the editorial staff. But for the newspaper publisher it meant that he changed from a vendor of recent news to a dealer in public opinion (Bucher in Habermas, 1974: 53).

Thus, the news media, and journalists that became the voice within the news media, took over the ideological place the public sphere once had (Carpignano et al., 1993: 100). But with this ideological position came the need for the media to maintain a legitimate voice and develop both keen investigation and reliable sources. The media are thus viewed as checks and balances to the state:

> Legitimacy of news can be conceived only in terms of a relationship between the event and the reporter. Reporting is unearthing the event…taking the form of investigation … the media as the fourth estate as check and balance to the discursive power of the state, correspond to the assumption of social conflict within the dynamics of balanced growth (Carpignano et al., 1993: 100-101).

As the news media represented the institution that carried the burden of balancing the power of the state, the journalist developed as the professional entrusted with this day-to-day function. Schultz (1994) notes that the journalist's struggle for legitimacy was paralleled by the overarching struggle of press freedom throughout the 1800s. The emergent professionalism of journalism, saw "journalists increasingly…assume the responsibility…of acting as an agent for truth on behalf of the population" (Schultz, 1994). Ultimately, she argues that the development of university training from 1869 onward meant that the profession of journalism gradually became "a more respectable profession" (Schultz, 1994: 36). The modern day role of the journalist and the Fourth Estate is discussed in more detail in Chapter 3.

At the same time, Habermas notes that from the 1830s onward, journalism in England, France and the United States began to transform from one of conviction to that of commerce. He notes:

> In the transition from the literary journalism of private individuals to the public services of the mass media the public was transformed by the influx of private interests, which received special prominence in the mass media (Habermas, 1974: 54).

In Australia, newspapers at the time were noted to be "an adjunct to the process of government, colonial information management and economic development" (Schultz, 1994: 33). By the mid-1800s, the mass culture-consuming public had demanded newspapers that were more convenient and accessible. Thus Habermas (1989) notes ready-made and pre-digested news replaced more complex political issues and the distinction between fact and fiction became blurred. He suggests:

> Editorial opinions re-cede behind information from press agencies and reports from correspondents; critical debate disappears behind the veil of internal decisions concerning the selection and presentation of material. In addition the share of political or politically relevant news changes. Public affairs, social problems, economic matters, education and health … are not only pushed into the background by immediate reward news (comics, corruption, accidents, disasters, sports, social events and human interest) but … are read less (Habermas, 1989: 175).

The implication of such changes were that the checks and balance role of the Fourth Estate was diluted, as the media responded to public demand for easily digested news with either conflict or entertainment as a key element. This included court reporting, which saw a more sensationalised approach, as discussed in its historical context in Chapter 4. Somewhat paradoxically, while the aim of the penny press was intended to give the masses access to the public sphere and public discussion because of its commercial accessibility (Habermas, 1989: 169), the mass media of the new public sphere incorporated limitations to access. Educational limitations meant only the educated could read the newspaper. Additionally, the media that were supposed to

offer support for the circulation of views were privately owned and operated for profit. Fraser (1993: 12) argues: "Consequently, subordinated social groups usually lack equal access to the material means of equal participation. Thus political economy enforces structurally what culture accomplishes informally".

Hence the media, as the new public sphere, emerged out of several contradictions. Carpignano et al (1993: 98) note:

> Although claiming equality of status against the ranks of traditional society, the new public sphere was in reality made up of a new emerging class of intellectuals and technicians (as part of a very limited reading public) who actually articulated the theoretical category of publicity and applied them to civil society as a whole.

Habermas notes how the media and the publics they represented did not correspond, thus the contradiction continued.

> (T)he mass media…freed communication processes from the provinciality of spatiotemporally restricted contexts and permit public spheres to emerge … These publics are structured by those who control the media, but not entirely so -- and therein lies their ambivalent potential (in Outhwaite, 1994: 105).

One major problem with the mass media assuming the role of the public sphere is the monopolies that exist in this environment and the resulting lack of voice this represents to the range of publics, as Outhwaite concludes (1994: 323):

> The seeming pluralism provided by thousands of newspapers, magazines, radio stations and TV channels is belied by their near-total absorption into giant media combines. The consequence is a national discourse that is increasingly one-dimensional.

This one-dimensional discourse is seen as part of the growing uncritical public, arising out of a growth in consumerism. Audiences are seen to be passive and the media are "bound up with corporate and state power" (Carpignano et al., 1993: 94).

The transformation of the public sphere, which is seen in a decline in public involvement in political life and a reliance on the media, dominated by the state and commercialism, is "a tranquilizing substitute for action" (Carpignano et al., 1993: 99). The news media cannot be representative and do not represent universal communication due to an "irreconcilable interplay of interest groups" (Carpignano et al., 1993: 101). Thus, the media that began as the embodiment of the public sphere become the mouthpiece of business and the bureaucracy. This development is considered further in Chapter 3, which takes a closer look at the bureaucratic sources that supply information to the media.

But while the public may indeed be uncritical, the level of information provided by the news media is also at issue. The problem therefore becomes a question of cause and effect. Aronowitz (1993) argues that newspapers, film, television and radio provide only partial and often distorted information, and the public's capacity to make political decisions suffers because of this. "The present crisis in the public sphere is the result of, among many other factors, a crisis of legitimacy of the news as a social institution in its role of dissemination of life" (Aronowitz, 1993: 96-97).

Much of the criticism of the public sphere from the past decade focuses on television as the dominant medium. Under the traditional public sphere the print media worked as an effective communication tool, but the print based culture has in general been eroded through visual forms of communication, principally television (Craig, 2004). Criticism also moves to consideration of the news media as an entity, as the public sphere itself, rather than as conduits of information, or mediums through which the public sphere is used by others, to provide balance to other public spheres. Carpignano et al (1993: 103) argue:

> The mass media *are* the public sphere and that this is the reason for the degradation of public life if not its disappearance … Public life … has been transformed by a massive process of commodification of culture and of political culture in particular by a form of communication increasingly based on emotionally charged images rather than on rational discourse, such that political discourse has been degraded to the level of entertainment, and cultural consumerism has been substituted for democratic participation.

Television as the new public sphere immerses itself in events, becoming part of them, rather than just reporting them. For example, this is seen in war reportage in which television journalists talk about "our troops" and "we", as the voice of the military are "undistinguishable from state controlled media" (Carpignano et al., 1993: 102).

> Television could establish an 'unmediated' direct relationship with reality if it were not for the ideologically charged framing of events … There is no distinction in terms of truth between live pictures and framed events, not because the equation between live and real is ideological but because reality as such is socially constructed (Carpignano et al., 1993: 104).

Carpignano et al call this "a crisis of interpretation": thus, television news has changed reporting so that "the act of reporting has acquired the same status as the event to be reported" (1993: 105). This type of reportage is also consistent with the need to see media representations as authentic as they paradoxically represent constructions of reality with "a perceived loss of the real" (Craig, 2004: 15).

In *Structural Transformation,* Habermas is very critical of the televising of courts and parliaments, arguing that these institutions have been transformed to fit in with the television media. It is argued that they have both become cheap forms of entertainment. Habermas notes how the public nature of deliberations in parliament was once supposed to ensure, and for a while actually did ensure, the continuity between pre-parliamentary and parliamentary discussion. This was an example of the unity of the public sphere and the public opinion that crystallized within it. However, it no longer accomplishes this because of the bias, distortion and disruption that are now part of parliamentary debate. Just as deliberation has shifted from the full session into committees and party caucuses, where it is out of the public eye, so deliberation in parliament has become secondary to documentation. Parliamentary interaction has become stylised into a show and this has also occurred in courts (Habermas, 1989: 206).

Habermas (1989: 207) argues that publicity thus distorts proceedings:

> For the trials in criminal court that are interesting enough to be documented and hawked in the mass media reverse the critical principle of publicity in an analogous manner; instead of serving the control of the jurisdictional process by the assembled citizens of the state, publicity increasingly serves the packaging of court proceedings for the mass culture of assembled consumers

Habermas takes this one step further suggesting that in the courts, the judiciary should be shielded from the public. He is in favour of reduced access, that parliamentary sessions no longer be directly transmitted and that court proceedings should not be changed for the sake of radio and television reportage.

> In both cases the principle of publicity is to be reduced to guaranteeing 'public accessibility to those bodily present'. Proceedings are to continue to be open to the public; what is to be avoided is turning parliamentary documentation of internally haggled out resolutions into party grandstanding or criminal trials into show trials for the entertainment of consumers who, strictly speaking, are indifferent (Habermas, 1989: 207).

This suggestion to reduce court access to television is in contrast with the American trend for liberal access of television to the courts, but not totally out of step with other western countries which have adopted a more conservative, if sometimes circumspect, approach as discussed in Chapter 4 and later in Chapters 6, 7, and 8. Schmitt (in Habermas, 1989: 203), is particularly scathing about televised court proceedings, raising questions and issues that are reflected later in this thesis:

> Of what are we really deprived when we do not get to see pictures of defendants or witnesses in the press? These may be a legitimate interest on the part of the public to learn of the acts of which important personalities of our times are being accused, of the court's findings in this respect, and of the sentence…Only one caught up in the unhappy trend toward publicity that today tramples underfoot everything that a humane mentality naturally feels

> obligated to respect can here still speak of a legitimate need for information on the part of the public.

However, an alternate view is put by Loyd (2002: 6) who argues that television can be used to benefit discourse and democracy:

> The point is not to bemoan the end of democracy, or its rational discourse, but to recognise that the media, especially television, has means to reshape it. We are not helpless: we have civil society and responsible leaders; we are not like serfs in Habermas's dystopian fantasy.

He proposes that there are many ways in which contemporary television could deepen and enliven the democratic process and, rather than restricting access to parliament and other public forums, such as courts, these should be increased in televised coverage. He provides a list of public arenas that could be televised for the benefit of the community:

> Parliaments and assemblies, political meetings and rallies, trade union conferences, companies' annual general meetings, think-tanks, professional associations, senior citizens' groups, school and university debating societies, even editorial meetings – could all be made a distinctive part of the media diet (Loyd, 2002: 7).

Indeed, if we are to take Loyd's point and extend it, the television market has already moved outside its traditional boundaries with the widespread acceptance of reality TV and docu-dramas. Where *Judge Judy* was an early incarnation of such reality TV, with live courtroom proceedings broadcast in a dramatic context, other Australian programs have focussed on the day-to-day running of an airport with *Airport* and a more serious documentary approach to hospitals with *RPA*. As discussed in Chapter 4, Court TV is a full-time cable channel in the United States. If Loyd's list of public arenas was to be considered, then new ways of representing courts could also be part of this new media diet.

Such a move would present a shift back to participation within the media and, by association, the public sphere. Carpignano et al (1993) identify another area of television as representing a move back to audience-participation: the talk show. Although not universally accepted as a positive move, indeed Aronowitz refers to "talk shows" and the experiential nature of television as having taken the medium to a new, low level (1993), these programme types do tend toward a degree of inclusivity. Ironically as Carpignano et al (1993: 110) argue that talk shows target women, they suggest a growth in the relationship between television and one of the previously excluded publics in Habermas's original public sphere: women. They note how talk shows do include the audience as a major player in which "the living room becomes a 'sort of town assembly". The act of viewing therefore becomes an act of viewing the viewing. Carpignano et al (1993: 112) continue: "The viewers are giving social meaning to what they see. They are located in a material and social situation that conditions those meanings. They are producers of texts, makers of meanings". Indeed, we see a similar argument made by O'Hagan in his analysis of reality TV titled provocatively "Watching me watching them watching you" in which he discusses televised reality programmes as representing "a new vision of belonging" (O'Hagan, 2004: 172).

The popularity of such talk shows as *Donahue* and *Oprah* represents the transformation of the social agenda by focussing on women and the family, society and the growing awareness brought about by women of women. Ultimately, women's struggles have "redefined the relationship between the public and the private" (Carpignano et al., 1993: 116). In this context, there is no longer a clear delineation of the private and public spheres. So, in shows such as *Oprah, Donohue* or *Judge Judy,* which bring the participant into the media environment, the public sphere (the television medium) mixes with the private sphere (the private lives of individuals). The implications for courts in both talk shows and reality TV is that these represent forums that can bring issues of justice, both within the court room and outside it, to a platform that is located somewhere between news reportage and fiction. The televising of courts as a Court TV option is taken up in detail in later chapters.

Habermas (in Outhwaite, 1994: 9) notes the change in power of the mass media as it evolved from its early days to its role in contemporary society, and concludes: "Whereas the press could previously merely mediate the reasoning process of the private people who had come together in public, this reasoning is now, conversely, only formed by the mass media". He, like others, has concerns that the media have become more and more controlled by outside interests and more open to manipulation. Thus, we move to the next stage of the public sphere, beyond the news media working in isolation to the news media in its relationship with outside influences. The impact of the public relations industry, and its significant influence on the news media and public opinion, thus becomes a focus in the next phase of the transformation of the public sphere.

Impact of Public Relations

In *Structural Transformation* Habermas discusses "the blurred blueprint of the press" (1989: 175) as it assumes advertising functions and public relations becomes a significant element in news formation. [ii] He offers a brief description of how public relations developed in the United States:

> (Public relations') beginnings can be traced back to Ivy Lee who developed 'publicity techniques on a policy-making level' for the purpose of justifying big business, especially the standard oil company and the Pennsylvania Railroad, then under attack by certain social reformers. Between the Two World Wars some of the largest enterprises began to adjust their overall strategies also to considerations of public relations (Habermas, 1989: 193).

Habermas draws a distinction between public relations and advertising: public relations is aimed at citizens, whereas advertising is aimed at consumers. He advances this still further by suggesting that public relations is more complex, but also more covert. "The sender of the message hides his business intentions in the role of someone interested in the public welfare. Advertising limited itself by and large to the simple sales pitch" (Habermas, 1989: 193). At this point in the thesis the different terms public relations, public communicator, public information officer (PIO), media liaison officer are all used synonymously, however differing perceptions within the

court and media sectors are analysed in Chapters 6 and 7. The analysis throughout this thesis focuses simultaneously on the act of providing public information and the role of the PIO.

In his early analysis of public relations, Habermas is critical of what he sees as public relations' need to hide its private interest, describing an "engineering of consent" as its central task. He says only in the climate of such a consensus does promotion, suggestion and public acceptance or rejection of a person, product, organisation or idea, succeed (1989). This is reinforced in the connection that is drawn between the commodification of culture and public relations practices, which ultimately transforms the public sphere into a form of "manipulative publicity" (Carpignano et al., 1993: 98). Ultimately, "(p)ublicity becomes a strategy for organizing consensus" (Carpignano et al., 1993: 100).

In Habermas's analyses, the consensus of behaviour has features of "staged public opinion". He says while public relations is supposed to stimulate, for example, the sales of certain commodities, its effect goes well beyond this and the result is acknowledgement and acceptance similar to the kind displayed toward public authority (1989). Indeed, he argues that the state and public authority must compete for this space with private enterprises:

> One may speak of a refeudalization of the public sphere in yet another, more exact sense. For the kind of integration of mass entertainment with advertising, which in the form of public relations already assumes a 'political' character, subjects even the state itself to its code. Because private enterprises evoke in their customers the idea that in their consumption decisions they act in their capacity as citizens, the state has to address its citizens like consumers. As a result, public authority too competes for publicity (1989: 195).

At this point in Habermas's analysis we see a limited perspective of the public relations industry, one that is focussed only on publicity, which is commodity-based and consumer-driven. It is also premised on competition between the public and the private sectors. This limited view, however, developed and changed through

Habermas's writing to incorporate a more complex and multi-layered approach to public relations that was ultimately less negative in perspective.

In the development of public relations, the 1920s gave rise to the "transmuted political function of the public sphere" and public relations emerged to fulfil the insatiable need for news:

> With that relentless extension of its publicity to every sphere of life, the modern newspaper itself has caused the rise of its adversary and perhaps even master of its own insatiable urge for information: the information bureau and press release specialists that every centre of activity exposed to publicity, or desirous of it, now considers requisite (Brinkman in Habermas, 1989: 196).

Power is transferred from government to other societal groups and lobby groups emerge as a form of public relations, first within the government arena, but then also from the opposite side. Thus, just as public relations emerged to fulfil the needs of the mass media, it is seen to emerge in response to other demands within the public sphere. Habermas (1989: 196) notes how agreements between parliament and other groups circumvented "the state's institutionalised public sphere":

> (T)he outcome was that the state lost a number of bridging functions to society through integration and a weakening position of the parliament which occurred at the same time as a strengthening in the bureaucracy (state infused into society) and in the opposite direction, special interest groups and political parties (society infused into the state). The public sphere, as represented by a 'carefully managed display of public relations' was made to contribute in a different way to the process of integrating state and society.

Through shifts in jurisdictions or by allocating societal organisations to take part in the process, political decisions were now made within the new forms of bargaining or lobbying. These evolved alongside the older forms of the exercise of power: hierarchy and democracy, thus representing an expanded public sphere (1989: 196). Hence, public relations was part of a broader public sphere, or perhaps could be viewed as a range of parallel public spheres and there appeared a shift in how Habermas

positioned public relations from exclusionary to inclusionary. This expanded public sphere now included public relations, in the form of lobbyists, as an external force with a legitimate role in pressuring governments on behalf of the community and other parts of the private sphere.

In addition, the role developed within the government sector, perhaps in response to the external forces that required attention. Habermas notes the positive role of the public communicator as facilitator of information when the demand for publicly accessible information became extended to include not only organs of the state, but all organisations dealing with the state (1974: 55). In practical terms, just as the news media was personified in the reporter, so too was this role of public relations personified in the public communicator. Habermas (1974) describes this responsibility as belonging to individuals who can participate effectively in the process of public communication, thus taking the place of the original public sphere. He argues (1974: 55): "Only they could use the channels of the public sphere which exist within parties and associations and the process of making proceedings public which was established to facilitate the dealings of organizations with the state".

Thus, Habermas might well describe the role of the Public Information Officer (PIO) within the court sector, as outlined in Appendix 1. The emergence of this role may be seen as an example of the courts' acknowledgement that public information should be more easily accessed. However, the courts are still not supported by this presence at the same level as the other arms of government. As noted in Chapter 4, the presence of public relations or public information services (by whatever name) in the courts is not only recent, but the numbers of people in this role in the courts fall far below the other arms of government (Electoral and Administrative Review Commission, 1993: 106). This imbalance is addressed at various stages throughout the thesis.

Carpignano et al (1993: 100) note how in broad terms, "public opinion becomes a matter of public relations". They note (1993: 100): "the science of public relations does not assume a public sphere as a given, it intervenes in shaping it". This is no doubt what Habermas meant when he said … "the public sphere has to be 'made' it is not 'there' anymore" (1989: 201). Thus, as public relations moves into the public sphere, we are left with a sphere that is shaped, that is not a given, but must be

created, and which has expanded over time. A further theory of Habermas, that of ideal speech, is particularly instructive in determining the position of public relations within this public sphere and its ultimate relevance to communication processes in the courts.

Ideal speech

The notion of ideal speech assumes an equality of access for all those involved in discourse and therefore does have limitations in its practical application. Nevertheless, it provides a platform through which to extend the analysis of the public sphere, public relations and communication, both in the courts and beyond.

McCarthy (1981: 312) describes how practical discourse is at the core of ideal speech:

> The aim of practical discourse is to come to a rationally motivated agreement about problematic rightness claims, an agreement that is not a product of external or internal constraints on discussion but solely of the weight of evidence and argument.

Such an environment, according to Holub, emerges logically out of the public sphere. He argues that "(r)ational discourse that is free from both domination and linguistic pathology, and oriented towards intersubjective understanding and consensus, is precisely the type of activity appropriate to the public sphere" (Holub, 1991: 8). In the *Pragmatics of Communication* (1998), Habermas links the notions of ideal speech, discourse and truth together, providing a basis for understanding ideal speech in a broader context. He notes that it is characterised by:

> Openness to the public, inclusiveness, equal rights to participation, immunization against external or inherent compulsion, as well as the participant's orientation toward reaching understanding … a proposition is true if it withstands all attempts to refute it under the demanding conditions of rational discourse (Habermas, 1998: 364).

Habermas (in McCarthy, 1981: 202) describes discourse as that "peculiarly unreal" form of communication in which the participants subject themselves to the "unforced force of the better argument". The supposition that is part of such an agreement is that it represents rational consensus. McCarthy (1981: 202) acknowledges that this description of argumentative discourse is idealised, but argues that it represents an ideal that historically has attempted to try to sort through claims of validity and truth. Actual situations of theoretical discourse rarely approximate the ideal. He concludes (1981: 308): "Nonetheless this does not render the ideal illegitimate…that can serve as a guide for the institutionalisation of discourse and as a critical standard against which every actually achieved consensus is measured".

Not surprisingly, the concept of ideal speech has its supporters and detractors. Indeed, the inclusion of "truth" as an element of ideal speech may be seen as problematic since it is itself a complex concept. However, "truth" in this thesis is included as Habermas cites it as an element of the process of ideal speech. Supporters of ideal speech, like McCarthy (1981) suggest that ideal speech can make sense of argumentation and that while it may not often correspond to the ideal speech situation Habermas "never intended the ideal speech situation to be understood as a concrete utopia which would turn the world into a gigantic seminar' (Outhwaite, 1994: 45). Holub (1991) argues that Habermas really refers to the condition of possibility for meaningful encounters to occur rather than actual encounters. Detractors, however, disagree with the notion of true consensus. Where Habermas holds the view that the goal of dialogue is consensus, Lyotard argues this is not attainable because "consensus is only a particular state of a discussion, not its end" (1984: 65). He notes that "consensus has become an outmoded and suspect value" (1984: 66). In her introduction to the *Pragmatics of Communication,* Cook (in Habermas, 1998: 14) notes that Habermas modified the ideal speech model in his later works to reflect and respond to such criticisms.

> Habermas no longer conceives truth as idealised rational consensus. He now focuses on the idealizing suppositions guiding the *process* of rational argumentation rather than on the idealizing suppositions marking its *outcome.* The former idealizations pertain to the conduct of discourse rather than to the agreement to which participants in discourse aspire.

Habermas's concept of ideal speech has been compared to the preferred model of public relations espoused by Grunig and Hunt (1984). Like Habermas, Grunig and Hunt have been criticised for their unrealistic or unrepresentative theories[iii], which they too defended in later works (Grunig, 2001). Grunig and Hunt's two-way symmetrical model, argues that, "practitioners use research and dialogue to bring about symbiotic changes in the ideas, attitudes, and behaviours of both their organizations and publics" (Grunig, 2001: 12). While posited in an organisational context rather than the broader theoretical context of ideal speech the two have similarities in their win-win, approach. Insofar as Grunig suggests that the two-way symmetrical model is the normative model which explains how public relations *should be* practised, rather than how it actually *is* practised (2001), there is another similarity. In response to criticisms that this model was unrealistic and naively utopian, Grunig noted that the two-way symmetrical model was not always successful. This was due to "institutional disincentives…historical and ideological barriers, disparities in power, societal dynamics…differing perceptions of risk, technical complexity, and political and institutional cultures" (2001: 14). This, therefore, has similar impacting external factors as ideal speech. An alternative, less extreme, model suggested by Grunig and Hunt, is the two-way asymmetrical model which still allows for two-way open communication but assumes some degree of imbalance (1984). (This model may be seen to parallel the communication-understanding model of Habermas rather than the communicative-consensus model as discussed in the next section of the chapter.)

In their most recent description of public relations theory, Leitch and Neilson reject Grunig and Hunt's symmetrical model of public relations, suggesting that public relations is better positioned within Habermas's theory of the public sphere (Leitch & Neilson, 2001). They incorporate elements of lifeworld, systems theory, communicative and strategic actions, in their analysis suggesting a more complex approach to public relations is needed than the symmetrical approach of Grunig and Hunt.

Central to Habermas's theory of achieving ideal speech is the notion that discourse must be properly motivated: it can only be reached through communicative action,

rather than strategic action.[iv] One of the central elements of Habermas's theory of Communicative Action is the distinction between the genuinely communicative use of language to attain common goals and the strategic use of language that will not achieve this. Discourse must exclude structural constraints on argumentative reasoning, both internally and externally, and there must be equal chances to talk. If these conditions are not met then the discourse is open to the charge of being less than rational, or being the result not of the force of the better argument, but of domination or strategic motivations (McCarthy, 1981).

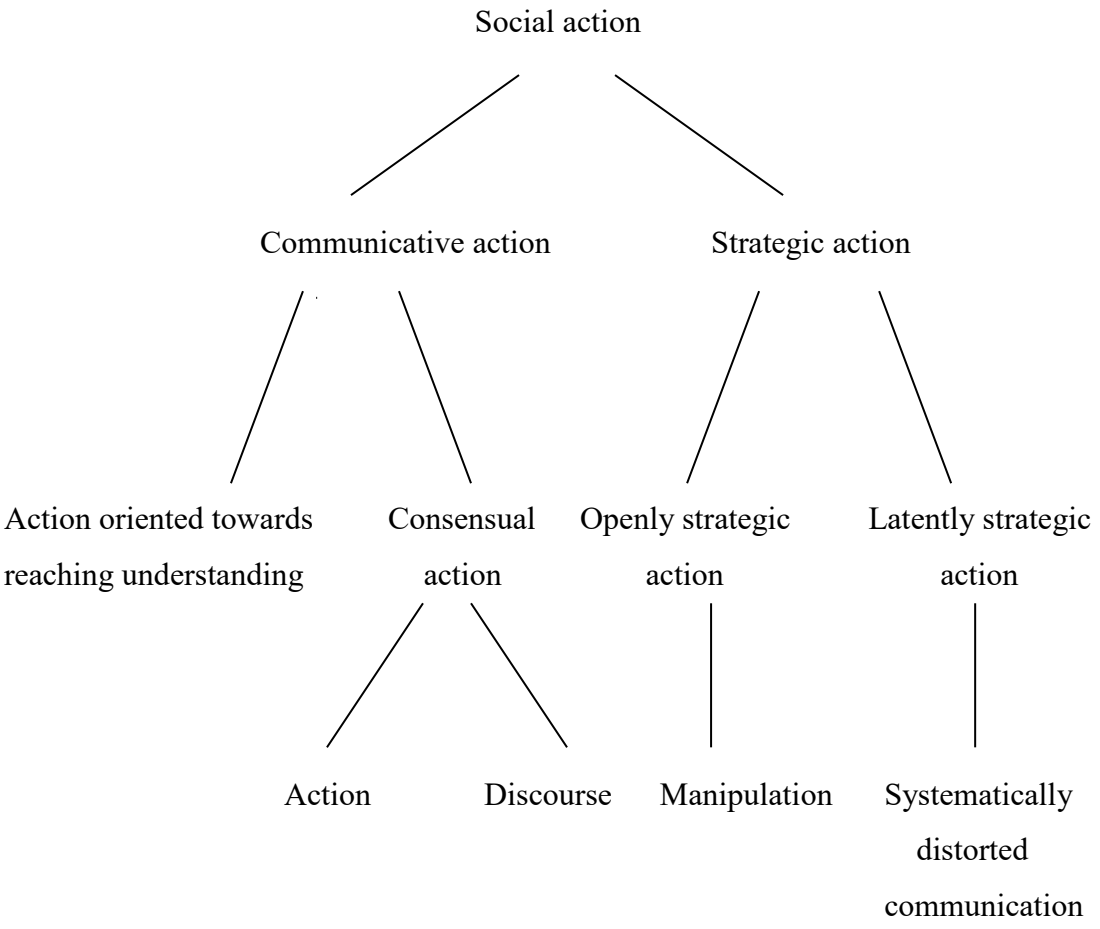
Communicative and strategic actions

A distinction between strategic and communicative actions locates strategic actions as distorted or manipulated while actions aimed at reaching an understanding are communicative, as Rasmussen (1990: 28) concludes:

> A communicatively achieved agreement has a rational basis; it cannot be imposed by either party, whether instrumentally through intervention in the situation directly or strategically through influencing decisions of opponents…The argument is not that communicative forms ought to be primary, the argument is that they ARE primary.

Rasmussen argues that this is the central tenet of Habermas's later work. The following diagram and analysis considers the outcomes of communicative and strategic actions through locating different types of social interaction, as suggested by Habermas in his work *On The Pragmatics of Communication* (1998: 93).

Figure 1: Types of Social Interactions as suggested by Habermas.



a. *Communicative vs. Strategic Action.* In communicative action, a basis of mutually recognised validity claims is presupposed; this is not the case in strategic action. In the communicative attitude, it is possible to reach a direct mutual understanding oriented toward validity claims; in the strategic attitude, by contrast, only an indirect mutual understanding via determinative indicators is possible.
b. *Action oriented toward reaching understanding vs. Consensual Action.* In Consensual action, agreement about implicitly raised validity claims can be *presupposed* as a background consensus by reason of common definitions of the situations; such agreement is supposed to be *arrived at* in action oriented toward reaching understanding. In the latter case strategic elements may be employed under the proviso that they are meant to lead to a direct mutual understanding.
c. *Action vs. discourse.* In communicative action, it is naïvely supposed that implicitly raised validity claims can be vindicated (or made immediately plausible by way of question and answer). In discourse, by contrast, the validity claims raised for

statements and norms are hypothetically bracketed and thematically examined. As in communicative action, the participants in discourse retain a cooperative attitude.

d. *Manipulative action vs. systematically distorted communication.* Whereas in systematically distorted communication at least one of the participants deceives *himself/herself* about the fact that the basis of consensual action is only apparently being maintained, the manipulator deceives at least one of the *other* participants about his/her own strategic attitude, in which he/she *deliberately* behaves in a pseudo-consensual manner.

Using this distinction, strategic forms of communication such as lying, misleading, deceiving, manipulating and the like, involve the suspension of certain validity claims, in particular, truth. They use speech to their own ends: in this way they are described as "parasitic"(in McCarthy, 1981: 287; Rasmussen, 1990: 38). However, Kunneman argues (in Outhwaite, 1994: 211) the distinction may not be a clear-cut or simple one and may be a "latently strategic action" which misrepresents actions. He further notes that the perception that organisations have moved toward consensus in recent years is an illusion:

> The role of communicative processes in formal organizations can…be analysed more closely if one represents the formal, jurisdictionally structured framework of enterprises and state bureaucracies as a 'container' into which communicative processes are squeezed in and dammed up. As soon as these threaten to become dysfunctional for the goals of the organization, sanctions which are not communicatively criticisable can be brought into play.

This is described as a "truth-funnel" in which "pseudo-communication" may occur (Kunneman in Outhwaite, 1994: 119). This observation resonates against the earlier criticisms of Habermas in his observations of public relations, with an ultimate focus on information control rather than information dissemination. There are clear implications in this distinction between valid knowledge and pseudo-communication for public relations and the media that will be addressed in Chapters 6 and 7.

It is possible to expand the two separate concepts of strategic and non-strategic communication to include a third option as a middle ground, suggesting that the idea

of two distinct categories of strategic and communicative actions is too limiting. Actions may thus be categorised as: strategic, communicative-understanding and communicative-consensus (Habermas, 1998). We could thus view communicative-understanding as representing a partial realisation of communication-consensus. Indeed, in real life situations, actions more commonly fall between the two extremes rather than being one or the other: that is, we often do not achieve consensus but agree to differ, accepting the validity of another's right to hold an opinion, rather than the opinion itself. In addition, speech actions do not occur in a vacuum. Context must also be factored in and thus Habermas's concept of "lifeworld" is appropriate to consider.

Lifeworld

Habermas says "institutionally bound" speech acts may be based on rules or norms that presuppose knowledge (Habermas, 1998: 283). Such knowledge is drawn from a common frame of reference, a lifeworld. Thus, any institution with its own rules, regulations and language forms a lifeworld. It follows that the more complex the lifeworld, the more interpretation of it is required in order to maximise communication. The courts provide a strong context for the existence of a specific lifeworld, with their rigid structure, traditions and language. Similarly, the media's lifeworld is unique, with a specific culture of its own.

In its simplest definition, the lifeworld forms the linguistic context or background for the processes of communication (Rasmussen, 1990: 35). Outhwaite notes (1994: 124) it is "a culturally transmitted and linguistically organised stock of interpretive patterns". He concludes:

> The symbolic structures of the lifeworld are reproduced by way of the continuation of valid knowledge, stabilization of group solidarity, and socialization of responsible actors. The process of reproduction connects up new situations with the existing conditions of the lifeworld; it does this in the semantic dimension of meanings of contents (of cultural tradition), as well as in the dimensions of social space (of socially integrated groups), and historical time (of successive generations). Corresponding to these processes of cultural

> reproduction, social integration and socialization are the structural components of the lifeworld: culture, society, person (Outhwaite, 1994: 137).

The lifeworld and speech are firmly connected. Cook (in Habermas, 1998: 16) notes that the "background knowledge of the lifeworld forms the indispensable context for the communicative use of language; indeed without it, meaning of any kind would be impossible". Likewise, McCarthy (1981) notes that lifeworld must be considered in the context of understanding speech. He refers to a "double structure" of ordinary language. In it, if speaker and listener are to reach an understanding, they must communicate simultaneously at two levels: the first must be the level of inter-subjectivity on which speaker and listener establish the relations that permit them to come to an understanding with one another and the second is the level of experiences about which they want to reach an understanding in the communicative function determined by the first part of the structure. Hence, the double structure represents a circle of understanding, in which lifeworld, communicative vs. strategic actions, and ideal speech may all be situated (McCarthy, 1981: 282). In source-media relationships, for example, such a double structure must exist with both a mutual understanding of a subject and a desire to want to learn or impart information about it. If either of these steps breaks down then the communication will be flawed: it may result in incorrect reportage or misquoting a source. Thus, an understanding of the double structure of language is highly relevant to the news media in getting the story right.

Leitch and Neilson (2001) suggest that the more an organisation's goals are seen as neutral or enhancing to another's lifeworld, the more likely it is to achieve these goals. It is therefore necessary not to think of publics as passive, but at all levels, from corporate to activists, as impacting on the lifeworld of others (Leitch & Neilson, 2001: 137). While the lifeworld cannot exist free from outside forces it must be sheltered from "invasions by other media" (Rasmussen, 1990: 51). The lifeworld may be "invaded" or "colonised" by outside influences such as media, money or the imperatives of the social system. Social change can occur through communicative or strategic actions, and Rasmussen (1990) argues that colonization of lifeworld is the outcome of strategic imperatives taking over communicative ones.

Habermas proposes a middle ground between lifeworld and social systems. He proposes that “a rational mediation between technical progress and the conduct of social life, can be realised only through basing political decision-making processes on general and public discussion free from domination” (in McCarthy, 1981: 13). Thus, there is a need for law to secure fairness and order. The intersections between communication and the law therefore need to be considered.

Legal intersections

Habermas suggests that we should conceive of law as "the medium by which communicative power is transformed into administrative power" (in Outhwaite, 1994: 142). The law, exercised through state power, must also be based on the institutions of justice embodied in communicative power (Outhwaite, 1994). Outhwaite (1994) notes how in societies, historically, courts represented symbolic and practical centres. They represented the mediation between the two spheres of state and society, and thus became the symbol of the law-making bodies that are essential to democracy. Through remaining open, courts also provided the potential for the public to monitor their activities. "Regulations demanding that certain proceedings be public…for example those providing for open court hearings, are also related to this function of public opinion" (Habermas, 1974: 50).

It has been suggested that the law functions on four levels: the first, that of political philosophy including notions of justice, privacy and liberty; the second, that of constitutional theory including notions such as the separation of powers; third at a functional level including institutions such as the courts and the judiciary, and fourth, at an analytical level, inclusive of the examination of legislation and court decisions (Wood et al., 1995: 41). In this thesis, elements of the first three levels will all be considered. While the focus will be largely on the functional level of the courts, it will also include the philosophical and constitutional aspects that impact on the interface with the media. Many of the issues in this chapter are developed further in Chapter 4.

In the *Theory of Communicative Action vol 2* (Habermas, 1984), it is suggested that the law allows for individuals, groups and the social system to function without domination:

> The point is to protect areas of life that are functionally dependent on social integration through values, norms and consensus formation, to preserve them from falling prey to the systematic imperatives of economic and administrative subsystems growing with dynamics of their own, and to defend them from becoming converted over, through the steering mediums of the law, to a

> principle of association which is, for them, dysfunction (Habermas, 1984: 516).

Thus, a legal order finds its legitimacy in securing equal status for its citizens before the law. This, notes Habermas, is based on "the forms of communication which are essential for this autonomy to express and preserve itself" (1984: 144). The law exists to balance the powers of money and administration and, as such, has grown to include a "broad process of extension and deepening of the sphere of law, in which it comes to cover more and more areas of life in greater and greater detail" (in Outhwaite, 1994: 100). The law brings together the public and private spheres as the citizens who transgress the law (private) are processed through the public institution of the courts (public) in order to resolve conflict.

Law, says Habermas (1998), must be both compulsory and compelling, combining the threat of sanctions with an appeal to shared convictions. One of the main arguments for the law is that it provides a deterrent factor, discussed in more detail in Chapter 3. Rehg (in Habermas, 1996) notes that a shared lifeworld facilitates acceptance of laws which stabilizes "a communicatively integrated group insofar as it removes a large body of assumptions from challenge" (1996: xvi). Thus because lifeworld allows for shared knowledge and identities, there is a greater likelihood of consensus (Rehg in Habermas, 1996). Simply, the publics that share an understanding of lifeworld can understand its laws and those without this shared knowledge cannot. For example, we see this illustrated in the historical disjuncture between indigenous Australians and European laws imposed in Australia where there was no shared lifeworld, understanding or knowledge between the two communities. This then has implications for how the law is communicated to different publics.

However, McBarnet (1981) maintains that the law itself represents contradictions, that it reproduces the ideology of justice while simultaneously denying it through preconceptions of guilt, ambiguities in language, access to lawyers and by trivialising the lower courts. Thus, we see a connection with the earlier theme of subaltern publics. In Fraser's discussion, the weak or subaltern publics of the public sphere would be necessarily disadvantaged in their access to the law and the courts. Similarly, ambiguities in language cannot facilitate either ideal speech or

communicative action because these must be based on a shared linguistic understanding. McBarnet notes that the rhetoric and the reality of law are not the same "epitomised in Anatole France's … observation that the law equally forbids rich and poor to sleep under bridges and beg … the law cannot allocate equal rights in an unequal society" (1981: 167).

Habermas's theories as a circular model

The central theme, if one is to be derived from all the Habermasian theories analysed above, is that open and accessible communication is critical to a successful, functioning public sphere, or spheres, in whatever form these take. We have seen a linear connection between communicative and strategic actions and indeed, the theories of Habermas, as discussed here, cannot be considered in isolation, but rather as connected. In doing this, we can go a step further and bring Habermas's interconnected theories of public sphere, ideal speech, communication and lifeworld full circle.

Holub (1991: 15) notes:

> With the theory of communicative action, therefore, Habermas has come full circle and arrived back at his starting point in the public sphere. But now the entity that was portrayed in terms of a bourgeois institution that underwent a demise in the modern age is conceived as a state of affairs whose realization lies in the future. On the basis of his linguistically based model Habermas has been able to provide a substantive foundation for free debate as the rationale and goal of social existence.

Thus, public opinion, which proceeds *from* the public sphere, is critically reflected *through* discourse and communication, and *leads back* into the public sphere (McCarthy, 1981).

The process can be seen as having direct application to the communication channels that exist between the courts (public sphere), the media (the new public sphere) and public opinion, as described in Figure 2, overleaf.

Figure 2: The Communication Cycle of the Courts

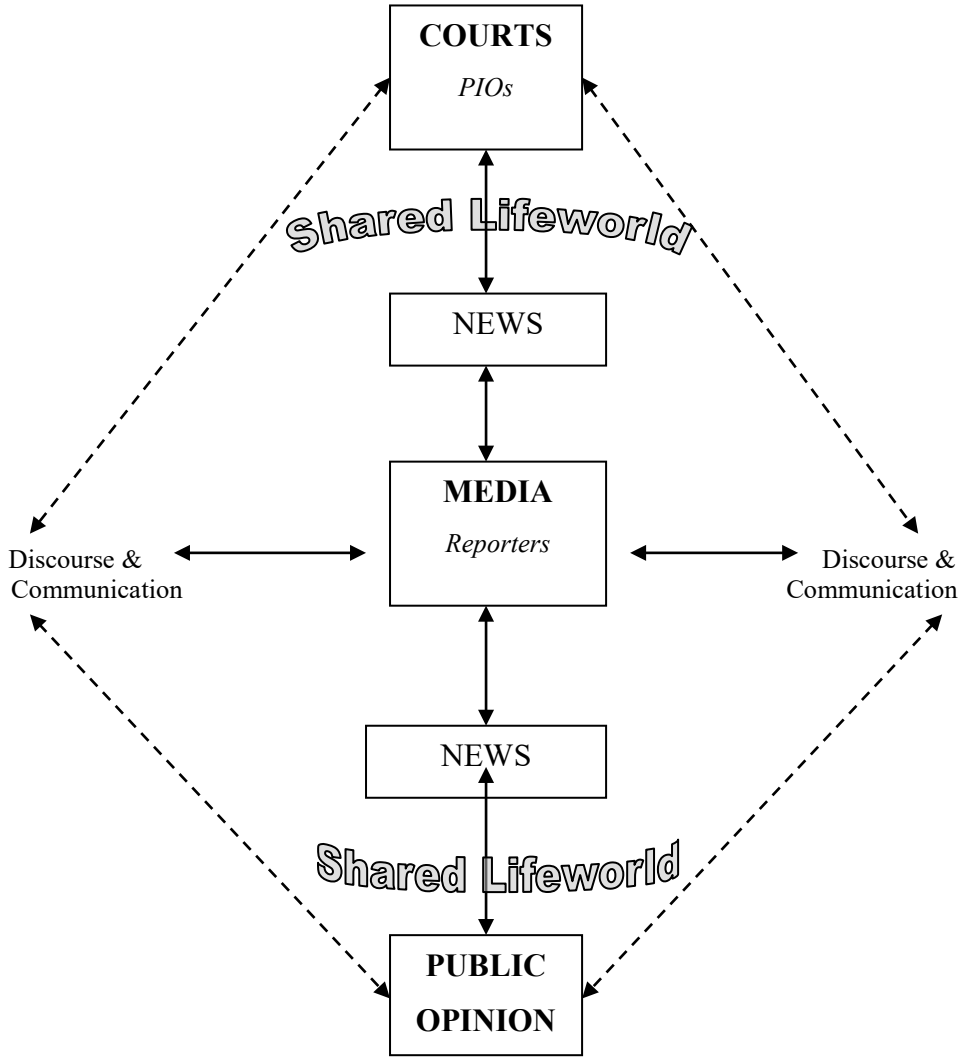


Figure 2 represents the flow of communication from the courts (within the public sphere), to the media (within the public sphere). Media both reflect and lead public opinion while discourse and communication is continually feeding into the communication process. The news depicts representations of justice, which are understood through shared lifeworld, and feed into public opinion and back to the courts, through ongoing discourse and communication and news.

Summary and Conclusion

Thus, the combined theories suggested by Habermas provide a solid framework through which to consider the interface between the courts and the media. The concept of the public sphere allows us to place the workings of society into an historical context, with the sharp division between public and private merging over time. Central to this theory is the notion of equitable access to the public sphere. Others have noted how the public sphere has developed to see the news media as the "new" public sphere and the expansion of the public sphere, in the singular, to public spheres, in a plural context. From these newer constructs of the public sphere emerge important considerations for this thesis: the dominance of the television medium; the role of public information and public relations in supporting and supplying information to the media; and the range of publics who are at the centre of the court-media interface.

Habermas's theories of ideal speech and communicative and strategic action allow us to view communication and discourse from a range of perspectives. The fairest and most equal position for speech is ideal speech, which is identified as being difficult, but not impossible, to achieve. It is compared to the symmetrical communication model of public relations theorists Grunig and Hunt. Similarly, communicative consensus is identified as communication based on openness and fairness, compared to strategic communication, which can be distorted or manipulated. Thus, a foundation is laid for clear, truthful and open communication between courts and the media at both a functional and philosophical level. In addition though, the message must be understood and comprehensible which brings in the notion of lifeworld. Habermas views lifeworld as a shared linguistic context or background for communication and as such, a shared lifeworld provides greater understanding, with parties coming together through communication from a similar position. This has particular application to the relationship between source and journalist who must understand each other if information-flow is to be effective.

This chapter considers how communication and the law come together and outlines those levels of law that underpin this thesis. Specifically, the law is considered at a

functional level of courts, but also at philosophical and constitutional levels that relate back to communication, the media and democracy. The separation of powers is also discussed because of the role of the judiciary as a check and balance to the other arms of government within the public sphere and, as such, the law is considered at various stages throughout the chapter.

The theories come together in a circular process, with the ideal (open and accessible) public sphere linking back to ideal (open and fair) speech. Central to this circular process are the channels of communication that are used and the interfaces that exist between them, ensuring the communication is successful. If these do not function effectively problems emerge within the public sphere and a break in momentum results in breakdowns in communication. Applying the ideas raised in this chapter, the communication role can thus be considered in the context of the media's reliance on sources. Chapter 3 will consider issues that feed into the complex relationship between the media and its sources, first in a general context and then, specifically in the courts. It will also focus specifically on theories of courts, the media and gaps in the nexus between these two institutions.

Chapter 3 Courts and the Media in context

This chapter provides an overview into the importance of sources in the daily make-up of news, in all rounds including the courts. It is argued that, while first-hand information is usually seen as the most effective form of news data-collection, this choice is often not available to the working journalist who regularly draws on sources to help construct news stories. While studies have shown that these sources are often from the culturally elite, or bureaucracy, becoming the "primary definers" of news, they nevertheless provide the basis for much journalistic investigation. The analysis of sources is important in establishing the significance of this role within journalism practice and how this translates into the court sector, with the development of the specialised source of Public Information Officer (PIO). This will help to explain and underpin some of the findings in Chapters 4, 6, 7, and 8. Unlike other rounds, such as parliament, the courts have not traditionally offered source-assistance; hence the court reporter works within an uncertain and unpredictable environment. These limitations on sources on the court round provide the court reporter with an unusual and often unhelpful environment in which to report.

The chapter further considers the relatively poorly researched field of courts and media, arguing that the courts are the lesser-known arm of government. Literature from Australia, Canada, the United States and England indicates that the field of court-media relations has been inadequately theorized. In addition, the research that does exist focuses on the superior courts alone which does not form a representative sample of court activity. Furthermore, the court round is seen to occupy a low priority in newsrooms with limited space and priority given to it in newsrooms. This is compounded by a lack of training of court roundspeople, paradoxically in a field that is highly specialised, requiring specific legal knowledge and know-how.

Significant issues of balance for the courts and the media are addressed in this chapter. The notion of open justice, and its importance for the courts and the media, is considered. This focuses on transparency within the courts as they strive to balance this with free press issues, through implementation of suppression orders. Similarly, the news media in its role of the Fourth Estate has a range of issues to consider and

balance, in particular its social responsibility role, which sees the court as an important round in the democratic process balanced with its commercial role, which brings factors such as entertainment and limited news space into consideration.

News and sources

While the best and purest form of information gathering is through first-hand observation, this is rare and impractical, thus practical issues, such as time and staffing levels, require the journalist to use sources (Tiffen, 1989). Gans notes that "emphasizing the role of sources is the best way, or perhaps the only way, to connect the study of journalism to the larger society" (in Schlesinger & Tumber, 1994: 16, footnote 29). Studies of how news is constructed (Ericson, Baranek, & Chan, 1987; Fishman, 1980; Tiffen, 1989; Tuchman, 1978) identify the bureaucracy as one of the mainstays of information from which news is formed. These people have been called "surrogate observers" for journalists (Roshco in Soley, 1992: 17). It is further argued that "the world is bureaucratically organised for journalists" because the bureaucracy can provide the "relevant knowers" (Fishman, 1980: 51). So, when a journalist seeks to construct a story, based on tip-offs, hints or assumptions, the automatic pathway to verify the story is through sources in positions of authority.

Soley (1992: 11-13) lists studies by Sigel (1973), Whitney (1989), Brown et al (1979), Hoynes and Croteau (1989) and Herman and Chomsky (1988) that show how government officials, and former government officials, are the most frequently used sources. Sources may also be differentiated as either conventional or non-conventional (Strenz, 1989) with the use of expert or conventional sources decreasing the need for citizen participation, thus eroding participatory democracy (Soley, 1992: 27). Tuchman (1978) identifies three ways to view news, and in doing so reinforces the idea of the erosion of citizen's participation because of the reliance on specialised sources. First, it is an information tool to the consumer, second, it is a tool of institutions, and third, it is a product of internal institutional practices within newsrooms (1978: 4-5). Thus, in the context of the public sphere, sources generally come from the bureaucracy rather than the citizenry.

Schlesinger and Tumber (1994) develop the idea of news as a tool of the powerful through the Marxist view which centres heavily on the dominant classes and the media's reproduction of dominant ideological perspectives. The pluralist view of news access, by contrast, suggests a range of distinctive views are articulated (1994: 15). It is further argued that because the production of information and its conversion into knowledge is a primary activity of a knowledge society, and knowledge is a key element of organisational power and social stratification, this dominant ideology is reinforced (Ericson et al., 1987: 11). Knowledge needs interpretation and context and journalists thus translate and interpret what politicians, philosophers, and scientists present to them (1987: 16). Thus, control of knowledge becomes power. In the context of the public sphere, sources are more likely to be drawn from the strong publics, with weak publics having less access. Hence, the system perpetuates itself, as strong publics are used as sources, who in turn control knowledge and thus become more powerful. Ericson et al call these sources the "authorised knowers" in the knowledge society (1987: 18).

In one view, Haltom describes the use of sources, or what he calls "source-ery", as misleading in three ways (1998: 45). First, journalists are able to use sources who are either similar to them or reflect their views; second, these sources then become known as authorities, irrespective of their real expertise; and third, by so doing, exclude other sources, thereby reinforcing the cycle. The end result is that the views of the often-cited source are transformed from subjective into objective (Haltom, 1998: 45). Journalists can be "co-opted into the very system they report on … The watchdog becomes the lapdog" (Haltom, 1998: 47). Stanga uses an exchange model approach in his analysis of source-media relationships. Through this approach, "friendship, information and some ego-massage" is exchanged (in Drechsel, 1983: 18). It is further observed that "(k)nowing sources brings professional status" (Tuchman, 1978: 68) and journalists jealously protect their private sources and specialties from other's encroachment. Schlesinger and Tumber (1994: 17) call these news sources "primary definers" and the media, in turn, become "secondary definers."

Source problems within the court round

If we accept that sources form the very basis of journalistic investigation, it therefore follows that limitations on source access can impede this investigation. The limited, and often disparate, news sources available within the courts represent an issue that warrants close analysis and investigation. Source problems in the court round do not appear to be country-specific, with literature from Canada, the United States, England and Australia identifying consistent problems (Ericson et al., 1989; Fife-Yeomans, 1995; Greenhouse, 1996; McGarvie, 1992). Such issues within court-media relations came under scrutiny in the 1980s and early 1990s. Some of the criticisms, which will be examined below, include how channels of communication were far less systematic in the courts than in the parliament, that the courts were not cooperative and the courts simply did not try to accommodate the media. It is worth noting that these criticisms generally precede moves in Australia, beginning in 1993, to introduce the role of PIO into the courts, altering court-media relations in some jurisdictions and spearheading what may be perceived as an institutional change in attitude by the courts to its relationship with the media.

Canadian researchers Ericson et al (1989) observed that sources within the court round were more distant than in the parliament or police rounds. Justice McGarvie (1992: 236), in commenting on the role of the Australian judiciary, noted that: "the courts do practically nothing to assist the media in reporting on the courts' work". And giving an insight into the role of the journalist on the court round, *The Australian* journalist Janet Fife-Yeomans (1995: 40) pointed out: "There has been no simple method through which we can check facts. The courtroom is absent of any information for anyone other than the judges, magistrates or the lawyers". These reports were consistent with North American reporter Linda Greenhouse's view that legal journalism not only gained a lesser share of analysis than political journalism, but also that barriers existed to the legal journalist that did not exist for the political journalist (1996). Greenhouse, a Supreme Court journalist for the *New York Times*, said a lack of access to interviews was central to limitations imposed on court reporters whose job was largely paper-dependent. She compared her time as a New York state political reporter, in the centre of activity, to that of court reporter where she was excluded from "the action". She noted (1996: 1540): "Sources, leaks, casual

contact with newsmakers – none of these hallmarks of Washington journalism exist on the court beat, leaving even experienced reporters baffled and disoriented".

Of course not all court reporters meet with closed doors. Indeed, the inconsistency and unreliability of this round appears to be central to its character. Different courts deal with journalists in different ways. Pearson (1997) gives the example of two reporters who work in different localities, in regional NSW, for the same newspaper group. One is afforded open access to files, closed courts and even phone calls to advise the newspaper of a newsworthy case. The other, in contrast, is offered the bare minimum of co-operation. As Pearson points out "clearly something had gone wrong with the relationship between the press and the court house" in this second scenario (1997: 76). This may have been a relationship breakdown between the courts and the local media in general, or possibly the individual reporter and court staff member, on a more personal scale. Either way, it illustrates the disparate nature of access for journalists on this round.

Schlesinger and Tumber (1994) note how the "primary definer" is often external in crime reportage. They argue "official bodies do occupy a dominant position in shaping crime-reporting" (1994: 17). The application of this approach is particularly obvious in the court environment. Information made available to the media is restricted to court-actioned material, either from observation of the court process or from court staff who may or may not be specialised in dealing with media enquiries. Consistent with Pearson's explanation above, limitations of information may therefore result in limitations on news coverage.

At the 1998 Courts and the Media forum at University of Technology Sydney (UTS), one of the few journalistic points of view came from a legal reporter who commented on such a relationship. His comments, while no doubt advancing the need for greater media-source support in the superior courts would offer the journalist in Pearson's second scenario little comfort:

> When we ponder the relationship between the courts and the media, I don't think we're too fussed about the relationship between the clerk of the Local Court at Dubbo and the reporter from *The Daily Liberal.* They undoubtedly

> have a fine working relationship and are probably in the same cricket or netball team. What we are really talking about is the relationship between the superior courts and the metropolitan media (Campbell, 1999: 127).

The inconsistent source-media relationship in the courts, observed by Pearson, is consistent with two American studies reviewed by Stack (1998). In particular, Stack compares the research of Drechsel (1983) and Doppelt (1991) which are particularly instructive in analysing source-media relations from the point of view of legal professionals. Drechsel's research was based in Minnesota and another (unnamed) regional area while Doppelt's study was based in Chicago and Illinois. One major difference was that the main criticism of media reports in Drechsel's study was inaccuracy. The main criticism of media reports in Doppelt's study was sensationalism. Both studies found that judges and attorneys were more willing to cooperate with the media than journalists tended to expect. The most cooperative sources in Doppelt's study were defence lawyers in contrast to Drechsel's study that found prosecutors were the most cooperative. Prosecutors in Doppelt's study did have the most contact though and were most satisfied, of all sources, with how the media covered the legal system. Doppelt found 81 per cent of respondents had little or no interaction with the media but that lines of communication were "more open than journalists have been led to believe" (in Stack, 1998: 88). Other studies have found similar results. However, Surette (1998: 271) also identified judges' major complaints about media coverage of court as being inaccurate or incomplete. "They also wish the media would select a more representative set of cases to cover and not emphasise those selected for entertainment value". This observation clearly parallels Habermas's concerns about the sensational nature of televised court coverage, discussed in Chapter 2.

In one Australian study in Queensland (Johnston, 1996), journalists had to consider nine information sources in the courts and identify which they would be more likely to use and why. The sources were: legal contacts, that is solicitors and barristers; daily personal or newsroom diary; other media; crown and police prosecutors; court contacts (clerk of the court, other admin staff); police; court listing (daily newspaper); judge or magistrate; registry of courts. While barristers and solicitors were listed by the majority of respondents as being major sources, many described them as being

difficult to work with, least helpful or biased. Johnston noted one journalist's observation: "obviously the solicitors and barristers have vested interests in having cases covered. You then have to make a decision as to whether it's newsworthy or not, but you're better off being told about it than not knowing about it" (1996: 38).

Police as sources were identified as having limited news sense and in trying to influence journalists. News editors were quick to point out that court reporters must establish their own contact base. One respondent noted: "A journalist who fails to establish contacts can adequately, but not well, cover court" (Johnston, 1996: 45). Some reported an unavoidable reliance on police material that is often incorrect. The "day sheet" or police brief, which lists the offences, pleas, charges, had sometimes been wrong and this made it difficult for the court reporter to check the facts. Several suggested ways of improving information channels. These included the introduction of an official source for reporters to check their facts with, such as a public information officer, court houses faxing court lists, allowing information to be available by phone and easier access to writs (Johnston, 1996).

Rossitto noted several key areas of source-media relations but focused purely on journalist-lawyer relationships, noting: "a symbiotic relationship exists between journalists and lawyers" (in Stack, 1998: 95). Like Johnston, she found "additional suggestions for positive media relations". These included "know the differences in reporter's beats, always return phone calls, avoid blaming the media for anything, never overreact to a media statement, and never blame the judicial system for a problem" (in Stack, 1998: 96). She further noted that journalists rely on other professionals to accurately report a story or gain a clearer understanding of events relating to court matters.

While sources within the court environment are usually similar to the list of nine noted above (Drechsel, 1983: 50; Ericson et al., 1989: 34-91), Conley has compiled what appears to be the most comprehensive list of 31 sources. These are:

> A court reporter's contacts might include law societies, the State office of public prosecutions, the State and Federal Attorneys-General and relevant opposition spokespersons. Also included will be bar associations, law librarians, legal-aid solicitors, justices of the peace groups, halfway houses, prisons, law academics, and State and Federal police. Other entries may include prisoners' rights groups, civil liberties organisations, the Royal Society for the Prevention of Cruelty to Animals, social workers, consumer affairs groups, bailiffs, council by-law enforcement officers, corrective services commissions, court registries, crown and police prosecutors, court personnel, watch-house supervisors, judges, magistrates, lawyers, barristers, corporate affairs investigators, and bankruptcy officials (1997: 96-97).

In addition, one could add the daily court lists printed in the newspapers, monitoring other media's coverage of courts, emergency services not listed above such as ambulance and fire services, and finally, other journalists, both at the courthouse and within the reporter's own news organisation. Obviously, this goes beyond the scope of most court reporters' daily needs, and incorporates other related rounds such as police. However, it serves to illustrate the disparate nature of the round which calls upon a journalist to access information from so varied a range of people and places.

David Solomon, offering the only journalist's perspective on the topic of the "Media and the Courts" at the 1999 World Association of Press Council's Oceania Regional Conference, expressed his concern over police and lawyers as sources, largely reflecting those already noted. Solomon was commenting on concerns raised in a report of a Standing Committee of Attorneys-General. He noted:

> I have no doubt that some lawyers do manipulate the media in the way the Attorney suggested. It is certainly true that the police try to do the same, to enhance prosecutions. The police are quite adept at arranging for television

> crews to be present when arrests are made, or prisoners bundled in or out of vehicles on the way to be questioned or charged (1999: 79).

Like the UTS conference, noted previously, this event was skewed in representation toward legal representatives, reflecting the legalistic approach to issues of media and the courts.

Stack (1998) argues that current trends in media coverage of the judicial system compel lawyers and journalists to work together more frequently, even though the two professions have little understanding of each other's field. However, this needs to be balanced by the need to maintain a professional distance. Justice Keifel of the Federal Court argues that the distance between the courts and the media is "not a bad thing" since they serve different functions. She notes (1999: 5): "a democratic government, an independent judiciary and a free press co-exist and, to an extent, need each other, but it would not be desirable for them to develop a close relationship". This supports the earlier argument that the two provide "disparate but interlocking functions" (Brennan, 1997: n.p.).

However, it is also argued that the different needs within the two institutions create other issues within the relationship. Consistent with Habermas's observations in Chapter 2, Surette points out that courtroom participants may change their behaviour in court to fit the needs of the media, noting that "such social construction changes have already been noted in religion, sport and politics" (1998: 87). Surette argues that the courts' socially constructed realities are often undermined by media images. While well-publicised cases such as the OJ Simpson trial in the United States are clear testimony to this claim, it could be argued that in Australia courts have, until recently, done little overall to concede to the needs of the media. Rather, the media have been the concession-makers. For example, Australia's High Court Building, opened in 1980, has no media bench. For the media to report on this court when it is in session, they must join the public gallery, as there is no press bench. In the back row of this gallery there are several seats which have slide-out trays for note-taking, which would facilitate media use, however the symbolic lack of facility for the news media could be seen to illustrate the low priority placed on the needs of the media.

Courts: the unpopular research round

Much of the literature on how courts are covered highlights the differences between courts and other news rounds undertaken routinely by journalists (Drechsel, 1983; Ericson et al., 1989; Israel, 1998). It is argued that "there is relatively little research on news making in the courts…in contrast, the police beat and legislature beat have been researched in greater depth" (Ericson et al., 1989: 34). Drechsel (1983: 1) observes that knowledge of the courts as news is "strikingly meagre compared with our knowledge of news making in other branches of government" and Cohn and Dow (1998: 7) note that, despite widespread televised courts in the US, "people know less about the judiciary and the legal system than other branches of government".

Former Chief Justice of Australia's High Court, Sir Gerard Brennan (1997) suggests that limited knowledge of the courts, in contrast to the executive and legislature, is due to the protracted, often boring, nature of courts. Courts "seem dull and pedestrian by comparison" (Brennan, 1997: n.p.). He notes:

> They are focused on the individual, not on great questions of policy; they are slow, deliberate to the point of tediousness, sometimes quite out of sympathy with popular sentiment, punctilious about publication of the grounds on which they exercise power but reticent in the usual modes of public relations (Brennan, 1997).

Parker (1998: 5) sums up the position of the courts when he argues "the whole area of the relationship between the Courts and the Public is incompletely theorised in Australia". In particular he notes "deep issues (which) have not been adequately addressed" included the role of courts in a modern democratic society; whether courts are service industries, arms of government or a unique mix of the two; and the role of public opinion and the satisfaction of public needs in the organisation and services of the court (1998: 5). While acknowledging a mass of plans, mission statements, charters and policy papers, he argues that the "relative neglect" of these areas is due to too much pressure and too little resources in the area. He further points out that until a

systematic approach is taken to these issues there is a risk that potentially good ideas will be developed but never appropriately implemented (Parker, 1998: 5).

In addition Parker notes limited research undertaken into the Magistrates Courts, observing a "top-down" approach to courts, which focuses on judges and their support staff in the superior courts. He draws on McBarnet's British study, which focuses on the two-tiered system of justice: the superior courts, which provide the public image of justice, and the lower courts tier. He notes:

> By comparison, there is little public perception of practices in the lower tier, such as the Magistrates' Courts, even though over 90% of the nation's cases are actually decided there…it does seem that for many of us our immediate image of a court is based on the minority activities of a minority of courts (Parker, 1998: 9).

There appear to be no empirical studies on news making in the courts in Australia. Israel (1998: 214) notes this in his investigations into source-media relations in the crime and court sector. He concludes: "If work on police-media relations in Australia has been limited, work on the relationship between the media and other sources of crime seems to be almost non-existent". Israel cites Grabosky and Wilson (1989) as the primary Australian source for such analysis. However their study, while offering interesting anecdotal material, is limited in its research approach and, published in 1989, it is now somewhat dated. Furthermore while Grabosky and Wilson consider the importance of sources on the police round and the lack of sources within the prison system, they virtually ignore sources on the court round, dealing instead with the issues of contempt and pitfalls in covering the court round.

Even those who do research journalism and the court round in particular seem to afford it a low priority in terms of space. In their analysis of sources, Ericson et al (1989) allocate 57 pages to courts, compared to 81 pages to police and 87 to the legislature. Tiffen (1989: 46) identifies and analyses four key rounds: federal politics, state politics, industrial rounds, and business and economics as "among the most important reporting positions in news organisations, staffed by senior reporters, who stay in the role for long periods". The very absence of courts or the justice round is

indicative of the lack of status. An analysis of commonly used media guides, such as *Margaret Gees Australian Media Guide*, shows that court reporters are often not listed by name, despite specific information provided for the reporters on all other major rounds. Ericson et al (1989) observe that the lack of research into the courts parallels the low volume of news from courts in the news media. Drechsel (1983) points out that sport is afforded a specific section of a newspaper, whereas court stories vie for position with other general news and courts are given less space than the weather (Everson, 1995).

Limitations on research may be attributed, in part, to the way courts have often, historically, been subsumed under the "crime" label. For example, two studies on news selection, one published in 1949, the other 1950, include 13 categories of news, with no separate category for courts stories (Berkowitz, 1997).[iii] Many studies of how news interconnects with the courts are conducted under the broader scope of crime coverage (Chibnall, 1977; Schlesinger & Tumber, 1994). However, courts and crime, as news, are not synonymous. Crime stories do not always evolve into court stories. Clearly, there is a significant overlap and court stories often represent a logical conclusion to coverage of a crime. Obvious examples are high profile cases such as "the backpacker murders" (crime stories), which resulted in the prosecution of Ivan Milat (court story), and the subsequent contempt charge against *Who Weekly* for its front cover photograph of Milat (crime/court/analysis). However, coverage of crime (generally) and courts (specifically) are controlled by different areas of media law and covered by different defences (Pearson, 1997). While an analysis of defamation and contempt laws is beyond the scope of this thesis, it should be acknowledged that court reportage is a very specialised round, requiring specialised knowledge of courts and a good working knowledge of media law, yet it is often seen as an extension of the crime round, as Ericson et al (1989: 35) note:

> In terms of both the number of journalists assigned and the quantity of stories, news outlets pay more attention to police efforts at crime control, and to politicians and civil servants policy talk about the control of crime and other forms of deviance.

Crime reporters are noted to have high profiles and to be well known (Chibnall, 1977; Schlesinger & Tumber, 1994). Chibnall (1977: 8) notes of crime reporters on Fleet Street: "They form an elite corps of journalists occupying a strategically important position in the process of news creation and dissemination". Schlesinger & Tumber identify a growth in legal affairs reporting in Britain, with four out of five legal affairs journalists from the five daily papers holding law degrees (1994: 147). The rise in status of the crime reporter in Britain saw the emergence of the Crime Reporters' Association, formed in 1945. Court reporting, in contrast, is covered by news agencies (Schlesinger & Tumber, 1994: 159). Schlesinger & Tumber (1994: 160) note that only one London daily newspaper, *The Independent*, has a daily court correspondent. They note: "the days when the national papers had an Old Bailey correspondent are now past: current practice is to send reporters for each individual trial". Such reporters are generalists rather than specialists and this can have ramifications for covering a case thoroughly. Ashbee (2001) cautions over the use of non-court reporters, such as sports reporters covering sports related court cases, because of the lack of knowledge of the round. This observation is supported by instances of error arising from ignorance of the court process by non-specialist or 'fill in' court reporters (Johnston, 1996). Tiffen (1989: 30) further argues that the use of generalised reporters, rather than specialised roundspeople, "are more likely to make errors". Stack (1998: 101) reinforces the need for court reporters to be specialised:

> The reporter who has covered the judicial process in the past is more capable of doing so in the future. The experienced journalist also has contacts necessary to support a story and the skills necessary to thoroughly research both sides of an issue, reducing bias and diminishing factual errors.

However, it is also noted that, even with specialisation, "reporters' news gathering routines necessarily fall short of systematic surveillance" (Tiffen, 1989: 31). Certainly within the court round, systematic surveillance is impossible with court reporters expected to cover many courts at once. Thus, as noted earlier, their reliance on sources to supplement their information is all the more important.

Within the hierarchy of the newsroom, courts are consistently ranked toward the bottom. Ericson et al (1989: 39) note: "…the court beat served as a relatively low-status training

ground for junior, inexperienced reporters lacking specialist or recipe knowledge". Indeed, at the 1999 Journalism Education Association (JEA) Conference a keynote speaker referred to courts, among other rounds, as "good tough learning grounds" (Ryan, 1999). Others report limited training on the round. One reporter described her experience in court:

> I started in journalism as a cadet and on day two I was in court and within the first six months I'd covered two murder trials, major drug busts and I was as green as the grass. I think that happens too often in the Australian media (Johnston, 1996: 42).

The legal reporter for the *Canberra Times* reinforced the inexperience and lack of court training:

> It must be remembered that the average court reporter is young and inexperienced, with little if any knowledge of the law and the rules of the game. They have never met a *functus officio* in their life and would not recognise an *obiter dictum* if it bit them. Even bread and butter expressions such as "liberty to apply" and "declaratory relief" bamboozle them. When the High Court announced its decision in the *Patrick Stevedores* case earlier this year, the words "liberty to apply" had several senior journalists thinking there was another avenue of appeal, there for the asking (Campbell, 1999: 129).

And this argument is further demonstrated by the limited coverage of courts, by broadcast journalists in particular. The view, following, as expressed by a print journalist, also serves to illustrate the tensions that exist between the print and television media:

> At least by being here constantly you learn the rules of the situation. They (television) might have any staff at any time thrown onto a court case, and many of them really don't know what's going on. They report things that have been ordered not to be reported. They hassle people incredibly around the court (Grabosky & Wilson, 1989: 53).

Issues of low status and limited training are not confined to the Australian and Canadian court environment. One American writer (Stack, 1998: 91) concludes: "Many journalists...are thrown into a beat without much preparation – no training –

and have to learn the ropes on their own". According to at least one Australian court professional, there is a need to put better resources into court reporting and to improving the "image of the court reporter beat, as it has lost a lot of its cachet" (Ashbee, 1999).

Tiffen (1989) describes two polarised views of rounds and it is interesting to note where courts fit in. One is formed on a strong social base of working alongside competitors within an institutional environment (not primarily the newsroom but a separate environment), with well-developed information dissemination, requiring a store of knowledge. This fits well with his later description of the political round. The other extreme is more haphazard, in which reporters do not work closely with competitors; sources are varied, with little continuity in sources and information flow. This is illustrated in the medical round with stories more "hit and miss" than systematic (Tiffen, 1989: 33). Based on these two typologies, courts would seem to fall between the two, with elements of the political round -- the ongoing working relationship with competitors within the institution (in this case the court house) -- but without the well developed information dissemination.

But it is also argued that the images of both the courts and the media are also self-determined and self-limiting due to the restrictions they, themselves, place on access. A peculiarity of both is the resistance to outside access and the continued struggle by both institutions to keep their back-stage areas closed. Ericson et al (1989) consider the closely guarded back-stage of the courts, which restricts access to media. It could be argued that this lack of access has compounded the limited research and understanding of the courts. Surette (1998: 94) notes how the reconstructed images of both the media and the courts vary significantly from the images they promote:

> Both strive to construct contemporary public images that better align with their historical, traditional social realities – for the courts as the fair, impartial social institutions that determine truth and dispense justice by the rule of law; for the news media as the objective, credible news-gathering government watchdog businesses that represent and inform the public.

With both institutions guarding these back-stage areas, and the resulting mystery which is often attached to the courts and the media, it seems somewhat paradoxical that they are both central to the democratic process of open justice.

Open Justice

Access to the courts by the media is based on the fundamental principle of access to the general public. One of the primary reasons for courts remaining open is to keep them transparent and easily scrutinised. It is argued that judges must remain transparent in their decision-making, thus reducing the possibility of judicial partiality. This system of transparency is a fundamental principle of a democratic system of law. Bentham (n.d.) notes how publicity and justice are inseparable: "Publicity is the very soul of justice… It keeps the judge himself, while trying, under trial". It is further argued that witnesses too, will be more careful and considered in their testimony if courts are open (Butler & Rodrick, 1999: 129).

In addition, open justice arguments are based around the potential to deter criminals and the educational value in seeing how the courts work. The latter two may be seen in the criminology and law literature on theories of sentencing. It was recently noted:

> Studies (since 1970) show some evidence of deterrence through sentencing with respect to some crimes. For instance, one study of the effects of mandatory sentencing for violent crime involving guns (homicide, assault, and robbery) in six United States cities suggested strong support for deterrence of homicides with a gun, while the results for gun assaults and robbery with guns showed little evidence of deterrent effect. One possible reason for this differential effect was that the higher volume and profile of media reporting of homicide cases compared with the other offences meant that sentence levels were much more effectively communicated for homicide (New Zealand Ministry of Justice, 1997).

It is further argued that publicity can serve as punishment itself, and also act as "notice" to what may be expected for committing a crime (Ericson et al., 1987: 87).

This element of publicity is central to the openness of courts. Studies have shown that the public learn about courts through the media, in both court reportage and court-fiction. One study found that the media was more important in providing information about courts than lawyers, personal experience, schools or libraries (in Parker, 1998: 90). In Queensland, a study showed that 82 per cent of the general public considered their main source of information about the court system is the media. Of these, 40 per cent said they would like more information about the courts (Marketshare in Parker, 1998: 136). Thus, we see that while courts may be open to the public, the primary arguments for access are based around the news media. Indeed, it has been argued that for courts to be truly open they must be able to be published in the news media (Butler & Rodrick, 1999: 129).

The principle of open justice is, however, balanced with other freedoms and rights. It was stated by Justice Bayley in 1829:

> It is one of the essential qualities of a court of justice that its proceedings should be public, and that all parties who may be desirous of hearing what is going on – provided they do not interrupt the proceedings, and provided there is no specific reason why they should be removed--have a right to be present (in Armstrong, Lindsay, & Watterson, 1997: 128).

Thus, open justice is far from an absolute. Instead, as noted in the caveats in this quote, it must be balanced with other factors that may be applied through judicial discretion. It has been observed that the courts lean toward the administration of justice over freedom of the press, at least in some jurisdictions:

> The court must weigh up the public interest that is served in publishing information and the consequential right of the news media to publish such information with the need to ensure the proper administration of justice and that there is not undue hardship. The latter two are of greater importance. Therefore if a suppression order would ensure proper administration and prevent undue hardship, the right of the media to publish is of secondary importance (Legislative Review Committee, 2003: 3).

Suppression orders represent one of the biggest legal hurdles to the media's coverage of courts. Walker (1989) notes that in most states in Australia, suppression orders are the exception rather than the rule. She notes how in most jurisdictions, "rules permitting departure from publicity are given only narrow scope because the courts have had regard to the principle that only exceptional circumstances warrant departure from open justice" (Walker, 1989: 31). However, such cases do exist as seen in the Snowtown murders' case in the South Australian Supreme Court, in which the court placed in excess of 200 suppression orders on the media. This case, which drew a barrage of criticism from the media, including arguments that there was no valid reason for placing suppression orders on material in order to keep it out of one state because of access to information on the internet in all states (Lumby in Mark, 2000: 2), will be discussed in detail in Chapter 7.

There is, however, another reason that should be considered in why the news media cover the courts, one that has nothing to do with open justice and everything to do with circulation and ratings. This factor is the entertainment factor, which has become indelibly a part of the process of how courts are reported. As one analyst noted "the courtroom is a place of drama" (Ericson et al., 1987: 70). One Queensland judge noted that the aims of the electronic media in covering courts are "to entertain and titillate" (Davies, 1998: 14). The role of the news media thus warrants some closer consideration. In addition, Chapter 4 considers the importance of the entertainment factor to the television medium.

The Fourth Estate

The term "The Fourth Estate" is used today to refer to the mass media as a watchdog in liberal democratic societies. The functions of the news media in their Libertarian role of the 18th and 19th century, after they were first named the Fourth Estate in 1790, were primarily to provide a public forum for debate about the issues of the day, to articulate public opinion, to force governments to consider the will of the people, to educate, to channel communication between groups and to champion the individual against abuses of power (Schultz, 1998). Schultz argues (1998: 30): "These elements remain central to contemporary definitions of the role of the press today despite the … expectation of entertainment, amusement and titillation". The contradictory nature of

these functions gives rise to internal conflicts and tensions within the mass media while polarising views of their capacity to act in all these roles effectively and simultaneously. The more recent model, the 20th century social responsibility model, further saw the need for the media to balance the commercial imperatives with their other obligations to society.

Critics of modern media argue that since the news media have been subsumed by big business and monopolistic control it, they cannot function as an effective watchdog:

> The notion of the media as the 'Fourth Estate' is of course nonsense; the media are part of the corporate structure they report on … the pressures of time, of limited sources, of confining cultural assumptions, and of commercial and managerial pressures all combine to make the news something that rarely seriously threatens any of the underhand corporate and government dealing (and collusion) we know goes on in our society (Stokes, n.d.: n.p.).

In keeping with this view, other criticisms suggest that the media are manipulated, cut and edited to fit into spaces left over from advertising, that they have become "dumbed down" to cater to a growing passive public with a penchant for entertainment. Paul Kelly, international editor of *The Australian,* notes a "profound intersection between news and entertainment" in today's society (2004). Similarly, it has been argued that the mass media can, and do, sway political opinion, so can the mass media truly still be considered the Fourth Estate taking sides in political debate? Underwood (2003: n.p.) takes up this question:

> Does it necessarily follow that, because ownership is concentrated, because media conglomerates and the state share common interests, the media are powerful shapers of public opinion? It is a widely held view that that does follow - for example after the 1992 General Election (in Britain), won by the Conservatives after confident predictions of a Labour victory, the Sun newspaper proclaimed triumphantly in a banner headline: 'It's the Sun wot won it! Lord McAlpine, Conservative Party treasurer, thanked the

> Conservative press for securing the victory; Neil Kinnock, the Labour leader, blamed the Conservative press for Labour's defeat.

In a journalism seminar, Paul Kelly posed the question: What is the right of the owner in an editorial sense? He answered this by noting that, when he became editor of *The Australian* he was given an "editorial framework" from the newspaper's owner, Rupert Murdoch on "what would be the editorial position *The Australian* took under my leadership". He further noted "there are some issues when the owners will assert their views, other issues where the editor's position is more important" (Kelly, 2004). This simply articulated the commonly held belief that the news media does take the position of the publisher or the owner and that the notion of a purely objective media is a nonsense.

Put simply, the many functions of the Fourth Estate mean that it cannot be all things to everyone. It seems somewhat unfair that the Fourth Estate has become the target of derision because it is either too commercial, too driven by entertainment, or too reliant on public relations, when the original estates of the realm – Lords Spiritual, Lords Temporal and Lords Common, seen today as the clergy, and the two houses of parliament – are also bound by conflicting imperatives. They, too, must balance their roles between their own needs and interests and the needs and interests of the public. Just as the news media have had to change to accommodate societal change, so too have all the other estates, in various ways, had to adapt with a changing society. In the case of the news media, the ideal of the Fourth Estate must be "juxtaposed with the reality of the news media as an expanding industry operating in global information and capital markets, constantly exploring new technologies and searching for new audiences" (Schultz, 1998: 17).

Schultz notes that journalists act as the greatest proponents for the news media as the Fourth Estate and equate this role with "watchdog journalism". She notes that the 1980s were a particularly important time for journalists who responded to a lack of public confidence in the news media…

> by emphasising the importance of disclosure and information provision to an informed representative democracy many journalists, especially during the 1980s, as a way of reinvigorating confidence in the institutional role of the news media (Schultz, 1998: 17).

Indeed it was during the 1980s that the news media's focus turned to increased investigation and a critical examination of the political system. During this time journalists and editors were more likely to challenge the authority of parliament and the judiciary (Schultz, 1998). We can note here a juncture between the discussions on the Separation of Powers in Chapter 2 and the need to speak for the judiciary which will be discussed in Chapter 4, as the news media moved from a "co-operating servant (to) an equal contender in the political system" (Schultz, 1998: 19). If we consider Schultz's timeframe of journalistic change, it must be seen as no coincidence that the judiciary moved to bring in changes to their communication practices shortly after this time, accepting the need to respond to media attention.

Summary and conclusions

This chapter provides a review of the ideas that feed into the study of courts and the media and in doing so sets out a foundation for understanding this important democratic relationship. First, it analyses the importance of news and sources, identifying the role of the source in newsgathering and its often bureaucratic nature. It extends this concept into the context of the court round, arguing that the courts are not well provisioned with sources and that the court round is under-developed and under-valued. This idea is supported by studies that have found inconsistent source-media relations and problems with the interface across the courts and the media.

Furthermore, there is evidence to support the idea that the courts are under-researched and incompletely theorised, especially when compared with other arms of government and other sectors of the justice system. The result of the low priority placed on courts is that journalists covering the round are often seen as having a low status, thus the under-valuing perpetuates itself. Despite these limitations, the courts represent an important part of the news make-up. The media's coverage of courts is undertaken on behalf of the wider community who, though they have the right to monitor courts,

cannot realistically do so. Thus, the concept of open justice results in the media representing the courts to the public through news coverage. This coverage, and the right to free speech, is balanced against the fair administration of justice. However, it is further argued that the media, while serving the public interest role in covering courts are also driven by the need to maintain circulation and ratings and therefore are further motivated by the conflict and entertainment that courts provide. The role of the news media as the Fourth Estate is considered as it has moved through various phases to the 1980s when it challenged the political system, including the judiciary.

Major criticisms of the news media are analysed, alongside the role of the other three estates. Chapter 4 takes up some of the issues raised in this analysis within the context of court reportage, notably the entertainment mix in the make-up of news, from an historical perspective which saw courts as the sole domain of the printed press, to the climate of court reportage in the 1990s where the television media has moved in to share the space.

Chapter 4 Mapping the changes

Given the limited literature on the court round in general it is not surprising that there has been no close analysis of how the round has developed in Australia. A brief overview therefore relies heavily on secondary analysis from England and more recently, the United States with some examples drawn from Australian cases. In tracking the changes that did occur we see parallels with some of the observations of the public sphere and sources and the news media, as noted in Chapters 2 and 3. In looking at the brief history that follows, connections between these broader issues and the developments within the courts of the 18th and 19th centuries become apparent. These place current-day reportage of courts into perspective as we see how crime and court events are transformed into news stories through the process of selection and application of news values.

This chapter also considers one of the biggest modern day considerations for the courts in their relationship with the media: the televising of courts, in Australia and internationally. It provides an historical context for the televising of courts, while also establishing the current position. This includes a comparison between the United States, Canada, New Zealand and Australia, with a focus on the emergence of Court TV and its strengths and weaknesses in international environments. Paralleling these changes have been the courts' moves to improve and facilitate communication with the news media through the introduction of Public Information Officers (PIOs). Since 1993 these professional communications officers have become central to the interface with the media and other publics in their roles of media liaison, education, community relations and judicial assistance. This final role, of judicial communications assistant, is considered in some detail due to the media's moves since the 1980's to place the judiciary under scrutiny, as discussed in Chapter 3. Once defended by the Attorney-General, the judiciary must now defend itself against media criticism and it is argued that the role of PIO, in working with the superior and the magistrates courts, might be developed to assist in this role.

Finally, this chapter provides a case study of the Court-Media protocols as developed in the Tasmanian Magistrates Courts. If the courts in general have experienced a low

priority in research and status, the inferior courts, it could be argued, are situated at the bottom on this scale. It was therefore important to incorporate these courts into the analysis of court-media relations. These protocols may have the potential for application across other jurisdictions, to support the lower courts in their daily court-media interface.

Historical development of the court round

The earliest court reporting reflected sensational cases. A report of a British witchcraft trial in 1575 recorded: "Walpurga Hausmannin, evil and wretched woman, now imprisoned and in chains has, under solicitous questioning as well as torture, confessed her witchcraft …" (in Drechsel, 1983: 35). More than 400 years later, the focus on the sensational, or courts as entertainment, has not really changed. The report of the witchcraft trial is a very early one, with most analyses centring on court or crime reporting from the 1800s (Stack, 1998, analysis of American media) or 1900s (Chibnall, 1977, analysis of British media). General analysis of newspaper reporting (Mott, 1962; Schudson, 1978) also assists in following the development of crime and court coverage.

Drechsel (1983: 35) observes that most coverage of English courts by the mid-1600s were "terse, one or two line accounts" with some, if rare, extensive coverage of rapes or murders. Newspapers were not, however, the main medium for court reporting in England in the 1700s. A specialised book or pamphlet allowed more in-depth coverage, with verbatim reports, some embellishment or narrative attached. Drechsel (1983: 53) observes that "court reporting in the eighteenth century was frank, to the point and reasonably detached".

The penny press of the early 1800s was identified as largely being responsible for the development of court reporting (Drechsel, 1983: 43; Stack, 1998: 1). Stack (1998) argues that the penny press was targeted at the uneducated reader who craved crime and violence. The 18th and 19th centuries witnessed coverage of criminal trials in which no case was "too distasteful to cover" (Drechsel, 1983: 45). Joseph Pulitzer and William Randolph Hearst in the 1880s developed successful formulas for newspapers based on crime, scandal, scare headlines, and graphic photos (in Stack, 1998: 2).

Coverage of civil cases began in the mid-19th century (Drechsel, 1983: 45). It is interesting to note these time lines in light of the development of the news media, as outlined in Chapter 2 by Habermas. By the mid-1800s, the Penny Presses, substituted quality for convenience in what Habermas called "immediate reward news" and what became known as yellow journalism. Thus, by covering courts in the way Drechsel describes above, with its focus on violence and the sensational, the news media went some way toward making the public sphere accessible to the masses, but it was clearly not a truly representative public sphere. This is also consistent with the idea that by this time, the news media had transformed from one of conviction to one of commerce with a focus on easily accessed news rather than social commentary. It also shows that the watchdog and social responsibility roles of the news media, as seen in their role of the Fourth Estate, were not particularly important at this time at least.

The development of rounds and use of multiple sources within the round developed through the 1800s. Some of the first newspaper reporters hired were court reporters (Drechsel, 1983: 47). These reporters used a range of sources who supplemented the verbatim accounts that were available through court records. These sources included talking to defendants, a defendant's mother or neighbour (Drechsel, 1983: 4). Drechsel notes a contrast of court styles between the early and late 1800s. "Newsgatherers were as much stenographers as journalists" from the 1820s when court reporters were appointed. The second half of the 1800s saw less verbatim and more colourful stories appear (1983: 136). At this time it seemed that journalists began interpreting court stories far more than previous simple reportage. Consistent with the position raised in Chapter 3, it appears that court reporters had a low status, especially in the style of yellow journalism. This is illustrated in accounts of them receiving abuse and ridicule from members of the public. One reporter for the *Chattanooga Times* had a gun put to his throat for printing a name in a divorce proceedings while a reporter of the *New York Herald* was horsewhipped by a woman after printing a story about her dishonestly dealing with a cheque (Drechsel, 1983: 57).

Several important elements in the 18th and 19th centuries helped translate court cases into news stories. Drechsel notes how courts provided entertainment: "The criminal trial was the theatre and spectaculum of old rural America. Applause and catcalls

were not infrequent. All too easily lawyers and actors became part-time actors at the bar" (Gerhard and Mueller in Drechsel, 1983: 60). This scenario, therefore, lent itself to the development of the colourful accounts in the emerging penny press. Once codes of ethics began to appear, however, in the last half of the 19th century, with the resultant toning down of legal theatrics, complaints from within the legal profession about court coverage also emerged (Drechsel, 1983: 61). The development of contempt and defamation laws helped to mould the nature of reporting. Drechsel (1983: 63) notes how "legislative protection from constructive contempt beginning in the early 1800s may have provided protection that allowed a new, more active and aggressive type of court reporting to evolve".

The development of the defence of qualified privilege (in 1796 in England and 1884 in the United States) established newspapers' rights to publish otherwise defamatory stories "with relative impunity" (Drechsel, 1983: 64). Thus, court reporters finally had some guidance on reporting the courts, however there are examples of the testing of these laws by the early 1900s.

Until the 1920s there was "no perceived distinction between facts and colour in journalists' definitions of accuracy" (Schudson in Drechsel, 1983: 65). At this time, there were cases in which journalists overtly called for convictions, harsh sentencing and even execution (Stack, 1998: 3). However, while Schudson identifies that an understanding of objectivity began in the 1920s (in Drechsel, 1983: 65), a columnist for the *Daily Mirror* in the United States openly called for the execution of child murderer Bruno Richard Hauptmann prior to his trial in 1934 (Stack, 1998: 3). This inconsistency is likely to be an exception to the norm, and may be attributed to the excessive nature and high profile of this case, which is discussed later in the television section of this chapter.

Post-war crime in Britain saw a wave of adolescent imprisonment increasing 250 per cent from 1939 to 1947 (Chibnall, 1977: 55). This was seen as part of a general social dislocation of youth, a growth in crime and courts as an entertainment genre, and a general representation of "youthful lawlessness projected by the newspapers" (Chibnall, 1977: 56). The 1950s were typified by sensational murders and their media coverage, such as that of John Reginald Halliday Christie who killed eight times,

causing great media attention. Chibnall's research in the 1970s saw one reporter commenting, "murder is not what it used to be" (1977: 65) and a decline in murder reporting. This was attributed to a fall in public interest, possibly through boredom or desensitisation, and a decrease in newspaper resources devoted to murder reporting. As such, ties between specialist crime correspondents and police as sources were eroded. The 1960s saw the end of what was known as the "golden age" of murder reporting and a new law and order crisis in Britain emerged with the beginning of political terrorism in 1970s (Chibnall, 1977).

Thus, translating crime and courts into news may be viewed as a selective process which has changed with readers' habits brought about through cultural, social and legal changes (Roshier in Chibnall, 1977: 48; Schlesinger & Tumber, 1994: ch.5). In the 1970s, murder, jewel thefts, and petty crime were covered. In the 1990s, drugs, terrorism, child abuse, rape, mugging, fraud, football hooliganism, and policy matters were most newsworthy (Schlesinger & Tumber, 1994: 142). In Australia, for example, prior to the no-fault divorce legislation of the 1970s newspapers covered divorce cases in the civil courts for their drama, conflict and intrigue. Once this legislation was in place and there was no longer the need for personal material to be placed before the courts, the source of stories dried up (ABC, 2000b: n.p.). Similarly, new tags or themes for crime such as "home invasions" made for crime and court copy in the 1990s. Law and order issues, such as mandatory sentencing in the Northern Territory, essentially a political issue, but one which began as a crime issue, also became a topic for court reporters which resulted in major news attention and formed what Fishman (1980) would call a news "theme".

If we follow the changes in court reporting over the past two centuries, we see trends emerge which are based on news that is unusual, sensational or entertainment-based, particularly in relation to criminal cases and novel or significant in terms of social justice in civil matters. These trends, together with the impact of television over the past 50 years, form a basis for the current interface between the news media and the courts.

Courts as news

While differences in crime reporting may have reflected cultural and social trends, some generalisations may be drawn about crime coverage, as some statistics on the issue may provide some further insights. Ericson et al (1987: 44) identify a correlation between the French term for "natural order" (*fait divers*) and "news items", sometimes interchangeably defined in French-English dictionaries. In so doing, they point out that violations of order, the very essence of crime, are seen by some as synonymous with news. Deviance is "*the* defining characteristic of what journalists regard as newsworthy" (Ericson et al 1987: 4). They identify the low degree of crime content in the media: 4 per cent in English newspapers and in 6 per cent in Scottish newspapers (in Ericson et al., 1987: 44). Much more space is devoted to the broader topic of crime control and the administration of justice, with 25 per cent of newspaper space in Chicago, 20 per cent of local television and 13 per cent of national television (in Ericson et al., 1987: 26). However, Ericson et al point out that "crime news does not mirror crime and its control" (1987: 45). Researchers in Scotland found that sex crimes are 14 times over-represented and violent crimes 20 times over-represented compared to official crime statistics (Ditton and Duffy in Ericson et al., 1987: 45). In addition:

> Research also demonstrated that the news media focus predominantly on solved crimes and in particular on the process of capture, arrest and charging the accused. Little attention is given to phases of the criminal process after arrest and before sentence, and the court cases presented are not representative (in Ericson et al., 1987: 46).

Crime or court coverage may be largely determined through the application of news values. Grabosky and Wilson (1989: 12) identify primary news values in crime as "the exceptional, the unusual, and the novel, at the expense of the ordinary". In so categorising stories, journalists assign value to them. These news values in turn "frame the event, rendering it understandable in the terms of the ideological system" (Drechsel, 1983: 14). Court cases must incorporate these news values if they are to become news stories. These form the basis for selection from the plethora of court cases from which to choose.

High on the list of news values in court are: “interpersonal conflicts, adversarial manoeuvres, shocking outcomes, and community outrage…drama, spectacle and intriguing story lines” (Haltom, 1998: 16). News values are common across most news organisations and are listed in most basic journalism texts with little variation (Conley, 1997; Granato, 1991; White, 1996). These are further reinforced at the news organisational level (Drechsel, 1983: 13).

It is easy to see how the topics that come from the courts can fit into these lists of news values. Chibnall identifies “eight professional imperatives which act as implicit guides to the construction of news stories” (1977: 23). These are immediacy, dramatization, personalisation, simplification, titillation, conventionalism, structured access and novelty. Stack, while reinforcing the news values of Conley, White and Granato[v], also refers to “reconstruction strategies”. These include the importance of people, national impact of actions, a high degree of activity seen in conflict, controversy, protest, decision, violence or scandal, moral disorder, embodied in disruptions to traditional values (Stack, 1998: 7). Given the presence of these news values in many court stories, particularly in criminal cases, and the reliable consistency of court proceedings, held from Monday to Friday, it is no wonder that courts have become a staple, if under-valued, part of the media diet.

It is therefore not surprising that court coverage is given more space and afforded greater importance in popular and tabloid press than the quality press (Ericson et al., 1989: 35). Tiffen (1989: 16) points out that tabloids or popular press have news priorities which emphasise “crime, sport, sex, and human interest”. Both broadsheets and tabloids “have moved beyond straight reporting, but, to put it over-simply, the (broadsheets) have moved into analysis and the populars into entertainment” (Tiffen, 1989: 18). Televised coverage of courts has also been identified with a high entertainment focus. Nowhere has this been more apparent that in the high profile criminal trials of the 1980s and 1990s, with cases of Lorena Bobbit, the Menendez brothers, Mike Tyson, Tonya Harding, OJ Simpson, Rodney King in the United States, and Lindy Chamberlain in Australia, which saw the most sensational of court cases covered by the news media.

Developments in camera access

In Australia, the televising of courts is a relatively new phenomenon. And in bringing together television cameras and the court system, we often see an uncomfortable alliance of the old and the new. On the one hand, it is argued, courts still operate according to some 19th century traditions (Stephens in Appendix 71 of Stepniak, 1998a: 8). On the other hand, television is a relatively new medium, commonplace for less than 50 years in Australia. Technology and tradition are taking their time to find common ground. Gamble and Mohr (in Parker, 1998: 22) note:

> The nature of society and or communications have changed so much between the eighteenth and the twentieth centuries that the traditional means of the courts' communications with the public is (now) badly out of step.

They argue that courts, once modelled on a face-to-face model of participation (and consistent with Habermas's original public sphere communications model), no longer exist. Rather, society gains its understanding of courts through the mass media, including the most recent addition of the Internet. Parker (1998: 22) explains: "This is not an area which can be left to develop at its own pace in the hope that 'truth' will somehow prevail".

As far back as 1983 Justice Michael Kirby (then of the New South Wales Court of Appeal) said that television would ultimately enter the courtroom (in Ball & Costello, 1996: 9). A decade later, analysts were again predicting this move as inevitable (Sydney Morning Herald, 1994). But, apart from a list of isolated televised events this has not occurred. Early reports on the subject of cameras in court were undertaken by the New South Wales Law Reform Commission in 1984 and the Access to Justice Advisory Committee in 1994. These reports were followed by Daniel Stepniak's *Electronic Media Coverage of Courts*, commissioned by the Federal Court and published in 1998. This report provides a cautiously progressive approach to allowing the broadcast media access into the Federal Court (Stepniak, 1998b). In his analysis, Stepniak flagged a significant gap in the research, reinforcing the observations of the under-researched topic of courts noted in Chapter 3. He noted that (Stepniak, 1998b: 233): "while much has been written about the experiences of various American

jurisdictions…Australian public debate also reveals how little is known about electronic media coverage of Australian court proceedings.

However, in Australia the televising of courts has tended to be the exception rather than the rule. Australian authorities have remained cautious about moves to open the courts to the broadcast media (NSW Law Reform Commission, 1984; Sackville, 1994; Stepniak, 1998b). The body of literature which addresses this topic, from within Australia and elsewhere, has canvassed the positive and negative effects of cameras (and radio microphones) in court (Cohn & Dow, 1998; Linton, 1993; Linton & Gerace, 1990; Nettheim, 1981; R. Phillips, 1990; Stepniak, 1998b). A summary of the risks and benefits were included by Stepniak in his report (Stepniak, 1998b: 173-175). Some of these points apply less and less as technology, and hence cameras, become more sophisticated. In addition, many of the issues raised below have been addressed in the Cameras in Court protocols, developed by the Federal Court, included as Appendix 2.

Stepniak's list of the effects of cameras provides a concise overview. A brief analysis follows the two lists, however they are also central to discussion throughout this chapter.

The risks include:

- Physical disruption brought about by the cameras;
- Distraction of the cameras to participants;
- Interference with the dignity and decorum of the court;
- Generates prejudicial publicity, affecting the administration of justice;
- Invades the privacy of participants;
- Distorts and creates misconceptions about the judicial process

Under current conditions, the presence of cameras and the potential for physical disruption or distraction are acknowledged as relatively minor issues. In keeping with this argument, the dignity and the decorum is less likely to be affected if technology is kept hidden and to a minimum. The issue of privacy has been addressed in Australia by avoiding cameras in jury cases. Where a jury and witnesses may be in court, it is

expected that the camera operators would be instructed not to film them. Other participants in the court process are either paid to be there, bringing the action (the plaintiff) or defending the action (the defendant). The question of distortion of the judicial process needs to be considered against the alternative, that is, no real-life images of judges or the judicial process in the news results in the public perceptions based on fictitious characters.

The benefits include:

- The educative value of courtroom proceedings;
- The informative function that the televising provides;
- Allows viewers to personally observe;
- Positive effects that cameras may have on participants;
- Makes the legal system accessible to the public.

The first two of these benefits are clearly related, providing an opportunity not available to most members of the public to view, first hand, what goes on in a court-room. By providing vision, viewers can see proceedings rather than just read about them, providing a range of media from which to choose. Positive effects on participants could include judges and lawyers being conscious of what they say in sentencing but the reverse could also be argued as court participants "play" to the camera. Accessibility to the court process through television assumes that if court proceedings were on television people would choose to watch them. It is worth considering the acceptance of courts on television in other countries, which has been reasonably strong in countries such as the United States and to a lesser extent Canada and New Zealand.

In addition, the broadcasting of courts is believed to deter deviant behaviour. It has been argued that publicity itself can be a punishment which can be more punitive than the sentence of the court (Braithwaite, 1989; Ericson et al., 1989: 87). The contrasting view, however, is that public humiliation does not serve the function of imprisonment (Frankel in Surette, 1998: 94). Indeed, for some, the televising of courts could represent an opportunity to gain their Warholian "15 minutes of fame", as discussed

in Chapter 1, so the deterrent effect could be reversed as they seek publicity through television exposure.

There is a further argument that real or true depictions of courts are seen to balance the public's misconceptions about courts based on fictitious cases and television dramas (Cohn & Dow, 1998; Stepniak, 1998b). However this argument too can have its pitfalls. Date notes that the documentary *So Help Me God* was "probably the closest that many people will get to seeing what actually happens inside a court (in Australia). And it is nothing like *L.A. Law* or *Rumpole"* (in Stepniak, 1998a: 201). Yet, an important point should be noted about this documentary. It took 28 days over six weeks to film the documentary which gives the appearance of "a day" in court, (Brockie, 1994; Flack, 1994). Other studies have also found documentaries are not true to time frame, change order of appearance in court, include omissions, rearrangement and dramatic emphasis (Linton & Gerace, 1990). But while documentaries include these elements of selection, omission and drama, we would assume they still present a more realistic portrayal of courts than fiction.

Comparisons with the United States, Canada and New Zealand

While much analysis of Australian broadcast media accessing the courts has been done in the light of the American experience, it has been suggested that to compare the two countries approaches is neither fair nor appropriate. Prue Innes, the PIO for the Victorian Supreme Court and former court reporter, noted (Innes, 1999a: 17): "The Australian environment is in significant respects quite different from the American environment, and I believe it would be a mistake to equate the television access here with what some see as excesses to be avoided in the United States".

One significant difference that should be noted between the four countries is that Australia, unlike America, Canada and New Zealand, has no Bill of Rights or Charter of Rights that enshrine citizens' freedoms. The Canadian and New Zealand experience of televised court proceedings therefore differ from Australia because of the New Zealand Bill of Rights and the Canadian Charter of Rights and Freedoms which define specific guarantees to freedom of expression and public hearings

(Stepniak, 1998b). Australia's limited protection of freedom of speech as upheld in the High Court's decisions of Constitution in *Lange v Australian Broadcasting Commission* 189 CLR 520 and *Theophanous v Herald and Weekly Times Ltd* (1994) 182 CLR 184 provides for political communication only.

In the 1990s, the issue of televising courts came under scrutiny in the aftermath of the OJ Simpson criminal trial, widely regarded and often described as "a media circus". Los Angeles attorney Charles Lindner wrote during the trial:

> Television has turned the Simpson trial into a throwback to the Roman Colosseum…a gladiatorial contest surrounded by profiteering charlatans. Television has paraded gossip writers, fortune-tellers, mind readers, fashion critics and, most recently, dog psychiatrists before its audience. Before the trial is over, a dancing bear will undoubtedly cross the screen (in Cohn & Dow, 1998: 4).

Despite 'Simpson-vision' replacing soap operas during daytime television, the trial polled badly, with 74 per cent of Americans thinking it was a bad idea to televise trials. This constituted a near complete reversal of a finding 12 years earlier (Cohn & Dow, 1998: 3). While the case was described as "an aberration" it is nevertheless argued that it turned back the clock in terms of camera acceptance and resulted in calls for more research into the issue (Cohn & Dow, 1998: 12). Lois Heaney of the National Jury Project in the United States argued that studies into televised trials are scientifically incomplete and should be further developed (in Cohn & Dow, 1998: 13).

American history of televising court proceedings dates back to 1917 when the first application for newsreel footage of a trial was refused. In 1925, in Dayton, Tennessee, a judge allowed a trial to be broadcast over radio, creating court-media history (Cohn & Dow, 1998). The Lindbergh case, in 1935, in which German immigrant Bruno Hauptmann was charged with the kidnap-murder of the baby son of famous aviator Charles Lindbergh[vi], was covered by still and newsreel photographs and attended by celebrities. Like the Simpson trial, it was to develop a reputation as a "media circus" (Cohn & Dow, 1998). As a result, the American Bar Association and the Judiciary Conference of the USA successfully tightened access to the courts by the broadcast

media and, by the 1950s, only four states had moved toward even limited camera access (Cohn & Dow, 1998: 18).

Also controversial was the trial of *Estes v State of Texas* in 1962. Television and still photographers were allowed access into the trial and the conviction for swindling was appealed and overturned on the grounds that the media coverage had deprived the accused of a fair trial (Cohn & Dow, 1998; Nettheim, 1981; Ramsey, 1993). The proceedings were found to be in violation of the 14th Amendment, which provides for the right to a fair trial. These violations included the effects on the jury, the effects on witnesses, effects on the judge and effects on the defendant (Nettheim, 1981). The five-four decision on appeal in 1965, while in Estes' favour, noted that it was "not a blanket constitutional prohibition" and camera access should be reviewed when technological advances permitted (in Cohn & Dow, 1998: 20). Surette (1998) identifies a turnaround by the courts almost 20 years later in the 1981 decision to allow cameras into the case of *Chandler v Florida.* He notes (Surette, 1998: 99): "Television was now seen as promoting both crime control and due process, and thus was now a positive addition to a proceeding".

Cohn and Dow (1998: 148) argue that "debate over cameras in courtrooms simmered for 60 years and boiled over in (the OJ Simpson trial) of the century". The OJ Trial, as it came to be known, dominated much of American television, finding space in a diverse range of television genres, from talk shows to news and on the dedicated Court TV station. Only The Gulf War received more minutes of airtime between 1987 to 1997 on the evening news (Tyndall, 1999: 58). Jeffrey Toobin (1999: 45), staff writer for the *New Yorker,* attributed the fascination with the OJ case to Simpson's well-known, celebrity status akin to what he calls "a glamorous neighbour" and the "toxic racial atmosphere surrounding the case". Add to that the entertainment that viewers seek from television, in the form of story-book drama, and the fascination became an obsession.

While 48 of the American states allow access to some trials, it should be noted that there is no blanket acceptance. At the time of the OJ Simpson trial, cameras were banned in several other trials by presiding judges. Stepniak divides American states into four tiers: those which allow most substantial coverage (25 states); those states

which have restrictions on certain types of cases (8 states); those that allow appellate coverage only (15 states) and those which allow no coverage at all (3 states). In addition, the United States' Federal Courts have moved to loosen restrictions for camera access following a history of prohibition in this area (Judicial Council of California in Appendix 14 of Stepniak, 1998a: 25).

In New Zealand, a three-year pilot program of four courts took place between 1995 and 1998. The pilot involved selected proceedings in four courts: the High Courts of Auckland, Wellington and Christchurch and the District Court in Auckland. A parallel pilot of radio and still photography was also undertaken during this period. The rules regulating broadcast media included a stipulation that material should be used for news programs only, should be a minimum two-minutes duration and that a single camera only should be used with fair distribution of coverage to all media outlets .

During the pilot period, surveys found that public acceptance of televised court proceedings increased from 25 per cent at the beginning to 39 per cent midway through and toward the end of the period. Stepniak (1998b: 25) noted that "support increases as the public personally experience and become accustomed to electronic media coverage of courts". By mid 1999, televised coverage of courts had become "an everyday thing" (Billington cited in Johnston, 2001). Billington argued that cameras in court add depth to reportage rather than the "relentless superficiality of coverage" (in Johnston, 2001) which comes from camera coverage outside the courtroom rather than from within it.

Televised court proceedings in Canada appear, in many ways, to be similar to Australia, although to date, more formalised pilots have been undertaken. A two-year Federal Court experiment from 1995 and 1997 was extended to 1998 (Stepniak, 1998b). In addition, the Provincial Court of Appeal of Nova Scotia ran a two-year pilot program from 1996 that was also extended, until 1999. The two-year pilot provided "virtually trouble free camera coverage" (Stepniak, 1998b: 122). Yet, in Canada the situation with televised courts is not universally trouble-free. Ontario, in Canada, has a statutory ban on televising court proceedings, which followed one particular incident in 1973. In this incident, a television crew tried to film participants in a child custody case as they were leaving the court. The Chief Justice objected to

the incident and subsequently recommended a ban on filming in and around the courts (Stepniak, 1998b: 122). This case illustrates that, while there may have been a general move toward camera acceptance in courts, the news media cannot take for this granted and there is no universal acceptance of the move. In Canada, since 1995, more than 100 Supreme Court cases have been televised by CPAC, a subscription channel which covers courts during parliament's downtimes of evening, weekends and summer (Stepniak, 1998b). To date, no such niche has been found in Australia, although there have been some proposals which will be discussed later in the chapter.

The Australian Experience

The OJ Simpson trial provided a basis for some reflection in the Australian, as well as the American, environment. Innes (1999a: 17) argued that "legal ethics would curb many of the excesses which Australian judges recoil from in American cases, such as press conferences on the courtroom steps and in court corridors by lawyers during their cases". She also noted that Australia has in-built controls which represent differences between the two systems. Without the First Amendment to ensure the media's access, the Australian media will always rely on the permission of the court and this, in itself, is a formidable control (Innes, 1999b). This applies particularly in cases in which television stations seek camera access to courtrooms. In addition, Australia's defamation and contempt laws are more restrictive. One commentator noted, as the American media "scramble to see who can get to the gutter first" in covering courts, Australian law provides tougher *sub judice* laws (Lyon, 1994: 14). And furthermore "under US defamation laws, there is virtually no pressure on either the interviewee or the news program to ensure anything they say is accurate" (Lyon, 1994: 18). Defamation laws are notably more restrictive in Australia.

But ironically, while the OJ Simpson trial has been noted to have slowed developments of cameras in court in the United States making the public more circumspect about camera access, there have been some significant developments in Australia in recent years. It is interesting that one of the newest courts in Australia, the Federal Court, established in 1976, has been one court driving change in this area. The Federal Court appears well placed to be steering the move to television access partly because the lack of jury involvement reduces potential complications. This

would seem to make this court an ideal testing ground. A similar case has been put to allow broadcast access to the High Court because without witnesses there are less risks or concerns of conflict (Stephens in Stepniak, 1998a). American studies have shown that witnesses do worry about televised coverage (in Stepniak, 1998a) and many concerns centre on how televised proceedings may affect jurors, witnesses and lawyers (for example, see the New York State survey, Appendix 67 in Stepniak, 1998a). American experiences provide important illustrations on this issue. Reports have shown that children, being prepared for appearances in court have, ironically, had their perceptions of court distorted by one of the first reality-TV programs, *Judge Judy.* It was found that children are a primary audience of this program and they associate their day in court with the scoldings and opinions of *Judge Judy*. It was note (ABC, 2000a): "Children are aware that there are cameras in the TV rooms, and they have concerns about their cases being broadcast to the world, and everyone knowing what happened to them". All this serves to reinforce why a lack of juries and/or witnesses simplifies the procedure for allowing cameras into courts.

As of August 2004, the Federal Court listed in excess of 60 cases in which its proceedings had been recorded (beginning December 1993) (B Phillips, 2000, 2004). This list includes such key cases such as the *Cubillo Gunner* (or Stolen Generation) *judgment,* which occurred in August 2000, in Darwin. That case was the first to be broadcast live, via different mediums (ABC television, radio and the Internet as well as Sky channel) during the afternoon of 11 August 2000. It was the largest live production ever in Australia, involving link vans, generators and satellites (B Phillips, 2000). Prior to this, in April 1998, *The Docks Dispute* (or MUA case) broke new ground because it went live to air.

> It constituted the first time in Australian history that a superior court had permitted such a broadcast and would not have been possible without the experimentation the court had undertaken in the preceding four years (B. Phillips, cited in Johnston, 2000: 232).

This live judgment, from the Federal Court in Melbourne at 6.50pm, was too late for most evening news bulletins but was broadcast on the ABC and two commercial

networks. At the end of that year, Stepniak made his recommendations to the Federal Court.

> The option, which this report recommends, does not call for a radical departure from the Court's current practices. While the incremental approach would continue, the current ad-hoc electronic media coverage would become structured, governed by Court policy and guidelines, and systematically monitored and evaluated (Stepniak, 1998b: 223).

This trial approach would bring Australia in line with other countries because others have already trialled camera access. As noted, Canada and New Zealand have both run pilot programs and in the United States, there have been several pilots, for example, a one-year trial in Florida in the 1970s and a pilot in the United States' Federal Court.

The Australian Federal Court has also taken other initiatives in the area of court-television access. For example, in the planning phases of the Federal Court's new building in Melbourne, television engineers from stations 2, 7, 9 and 10 were consulted (B Phillips, 2000). Phillips concluded that television was considered in the planning though it would be wrong to say that all courtrooms are set up for mainstream broadcasting (2000). Similarly, other jurisdictions have moved toward developments within court buildings and procedures to accommodate cameras. In at least one other new court building, the Magistrates Court in Adelaide, provision has been made for cameras. The South Australian Chief Magistrate said in 1997 "televised court cases could soon become a reality" (in Stepniak, 1998b: 154).

Stepniak (1998b: 42) noted that Victorian courts have been at the forefront of reforms and innovations in the field of televised coverage. The most publicised case to be televised from this state was the sentencing of convicted child murderer Nathan John Avent (*R v Nathan John Avent*) in May 1995. Avent appealed his sentence on three grounds; two based on the televising of the sentencing. However, his sentence was reduced from a non-parole period of 21 years to 18 years based simply on the first ground that "it [the sentence] was manifestly excessive" (in Ackland, 1999: 12).

In his analysis of the appeal, Ackland (1999: 12) noted:

> They [the appeal judges] said that the appeal was not about whether a judge, in exercising discretion in the conduct of a trial or passing sentence, should permit the proceedings to be televised. It was purely about whether the sentencing discretion had miscarried.

However, the third ground, "that the decision to allow the televising of the sentencing created a reasonable apprehension that the judge was biased and thereby vitiated the whole process' was noted by the majority judges as 'not without force'" (in Ackland, 1999: 12). This case, described as a modest experiment which "nevertheless ruffled feathers" (Ball & Costello, 1996: 9), drew mixed responses from a range of people. The then-premier Jeff Kennet noted in *The Australian*:

> Knowing the media, they are only to take a 30-second grab or a minute grab, so it's not going to be able to be used to explain the system of the court …I am worried about where it may all lead (in Ball & Costello, 1996: 9).

An argument in favour was put in the *Sydney Morning Herald*'s editorial, praising the move:

> Above all … broadcasting allows greater scrutiny of what judges and lawyers do and so provides an important mechanism for making the justice system more accountable (which was) perhaps the strongest argument of all for continuing in this new direction (in Ball & Costello, 1996: 10).

Other comments offer insights from the media involved. Channel 9's news director John Sorrell (in Ball & Costello, 1996) was reported to have responded negatively to a two-minute minimum of court footage imposed by Justice Teague: "I don't expect to be doing this very often in my life. It's a guy reading a judgment. It's hardly riveting television." It is worth noting that the two-minute minimum was in keeping with the rules, noted earlier, which have been applied in New Zealand, which aim for a fair representation of material. Ball and Costello noted that some regional stations outside metropolitan area ignored this two-minute rule. What these comments show

was not only the diverse views this event evoked, but in looking at the specific roles of these people quoted above – notably a senior politician, a newspaper editor and a television News Director – some insight into the perceptions that are held by these leaders of public opinion.

Notably, during the 1990s there was a range of televised coverage, including documentaries made in several states. The Melbourne Magistrates Court produced a documentary called *Court One – TV on Trial* in 1995. In South Australia a criminal trial was recorded for ABC Radio's *Law Report* in 1996 and *Today Tonight* broadcast an hour-long documentary called *Tell my kids I'm sorry* in 1997 (in Stepniak, 1998b: 153). There has also been coverage of inquiries, commissions, civil proceedings and other documentary-style programs from several Australian jurisdictions.[vii] In addition, access to the judiciary has moved ahead in many courts. One report notes (Johnston, 2001: 116): "In one year in South Australia alone, judges, magistrates, the State Coroner and senior court staff gave around 20 radio interviews and several television interviews". This represents significant increases in access to all broadcast media.

On 28 May 2001, the Western Australian Court of Criminal Appeal went live to air with the start of the appeal by John Button, against his 1963 conviction for the manslaughter of his girlfriend Rosemary Anderson. Button's high profile case came under public and media scrutiny following the discovery of new evidence, including the gallows confession of Anderson's killing by serial-killer Eric Cooke in 1963, and an ongoing campaign by a Western Australian journalist to prove his innocence. At the Court of Criminal Appeal all television news outlets were given access to Channel 9's film of the proceedings, while four newspaper photographers were granted permission to photograph in court, the ABC broadcast a short section live and commercial radio used taped grabs (Buchanan, 2001). Since then, in 2002, Button's conviction was overturned, and court footage was again featured on television news and the ABC put to air two programmes of *Australian Story,* which outlined the appeal.

However, not all experiences with televised courts in Australia have been positive. In Queensland, courts have opposed broadcasting of proceedings attributed, in part at least, to an incident in 1998 by Channel 9's *A Current Affair.* In this incident, District

Court Judge Hall was interviewed about his supposed leniency in sentencing. Judge Hall had publicly invited members of the public to phone him and arrange to observe his sentencing but he subsequently withdrew this offer after what he called an "unscrupulous and unprincipled ambush" by *A Current Affair's* interviewer (Stepniak, 1998b: 165). He was reported (Turner in Stepniak, 1998b: 165) in the *Gold Coast Bulletin* as saying: "I believe that this conduct has set back, possibly forever, any prospect that existed for good relations between the judiciary and the electronic media". Thus, negative experiences with the media can have serious ramifications in terms of court-media relations and television access.

Who wants it?

But while we can analyse these developments in order to argue for greater access, one issue has, for the most part, been ignored in the Australian analysis: do the Australian television media want access to the courts? Linton (1993: 23) argued that in contrast to America and Canada, Australian media had not put forward a strong case:

> It is in the media's own self-interest that such a right of privilege be attained, and if that institution is not eager to achieve it, there is little chance that other segments of society can be convinced that the effort is important enough to warrant support.

These words were echoed at the UTS conference on the Courts and the Media in 1998 by Justice Teague, the judge who allowed the broadcast of the Avent sentencing in 1995. Justice Teague (1999b) noted: "(I)f the right kind of collective action were to be taken, there are potentially major gains for the electronic media". Clearly this judge, who has shown his readiness to open his court to television cameras as he did in the Avent case, believes television can broaden its current coverage of courts through increased camera access. However, he further observed during that conference that no request for television access had been more than "a polite request". Justice Teague (1999b: 112) said it was "time the electronic media engaged more with the courts about increasing its access".

However, arguments for camera access are irregular and continue to come from the legal profession rather than the media. By and large the media did not comment on the Stepniak report. Nor was there any significant media analysis of the *Access to Justice* Report of 1994 (known as "The Sackville Report") in which an entire chapter was devoted to cameras in courts. Comment or analysis of Stepniak's report has been largely by legal academics (for example see Leder & Fisicaro, 1999). Why is this? The simple answer may be that, as Linton and Teague have suggested, the broadcast media are not driving the issue. Perhaps the case for cameras in court has been slow and protracted because there is no real push behind it. Indeed the question of the broadcast media's interest in access thus became a central issue under consideration in this research.

In contrast, a unified push by the television media preceded the move to televise parliament. Regular and systematic coverage of parliament is now entering its second decade. Steketee cited the television push for access which ultimately saw television "forced on a reluctant government by the combined vote of the Opposition and the Democrats in the Senate" (Steketee, 2000: 6). Steketee (2000: 6) notes:

> Former press gallery president Paul Bongiorno, of the Ten network recalled that, in the battle by the TV networks to have restrictions lifted, 'we used to argue that there is more access given to television in the Soviet parliament than in Canberra'.

It seems that the united approach of the networks represented a significant force in opening the doors of parliament to television in 1990. Yet it would be simplistic to compare, without qualification, televised coverage of courts to that of parliament. A fundamental difference between coverage of parliament and courts is that the "players" in parliament are paid professionals, who, within limits, can come and go as they please. They are also buffered from the media by an army of public relations professionals. The "players" in court are quite different. Aside from the judiciary and the legal profession who are paid to be present, plaintiffs, defendants and witnesses in court, and to a lesser extent the jury, are often not there by choice. Defendants are innocent until proven guilty and the over-riding principle of fair trial therefore requires balance that is often not required in parliament. Similarly, questions of

privacy need to be considered in the court context, particularly in light of the tightening of these laws in Australia. This is not a new issue for those Australian camera crews who have ventured into courts. During the making of the documentary *So Help Me God* in the 1980's written clearance of participants had to be secured in advance of any filming (Brockie, 1994). Thus, while comparisons between televising the two arms of government may be useful, they do have clear limitations in their application. Many of these issues are particularly relevant when discussing the role of Court TV.

The Court TV option

To this point, consideration has been given to camera access to Australian courts for news, current affairs and documentary filming. However, in the absence of a unified push from the television news media, an alternative form of televised court coverage is that of Court TV. Stepniak (1998b: 113) noted that:

> With some interest being expressed by Australian subscription service providers, and digital television to be introduced in 2001 it is only a matter of time before the Australian courts are approached by a CPAC like service, to provide 'gavel to gavel' coverage and to act as a pooling agent for other broadcasters.

However, analysts have been forecasting similar changes since Pay TV began in the early 1990s (Lipski, 1994) and to date there has been only experimentation with Court TV.[viii] But before considering such a development in the Australian environment, it is worth taking a look at the short history of Court TV in the United States. Court TV's driving force, Steven Brill, proposed the service as a form of what he called "good journalism", a more accurate picture of the courts as seen by jurors who had experienced the system, rather than fictitious Hollywood versions, newspaper headlines or television sound-bites (in Cohn & Dow, 1998). Brill's prediction for Court TV was a mixture of C-SPAN (the cable station which covers the legislative branches of government) and soap-operas (Cohn & Dow, 1998). So developed Court TV in July 1991 as a 24-hour a day, cable television station. In 1998 Cohn and Dow listed Court TV's reach at 32 million homes in the United States. In August 2000, the

Court TV website www.courtv.com/ listed its reach at 45 million households with a projected reach of 50 million subscribers by year's end (Authorlink, 2000).

Court TV has become well known for, among other cases, its coverage of the OJ Simpson trial in 1995, the trial of the four police officers charged with beating Rodney King and the Erik and Lyle Menendez trial for the murder of their parents. The OJ case represented the 380th trial the network had televised (Cohn & Dow, 1998).

The process of determining which court cases will be covered by Court TV is one worth noting. "Trial trackers" and "stringers" who follow hundreds of cases around the United States confer with network executives to determine a selection of cases to be covered either live or taped and replayed. Issues such as newsworthiness, notoriety and expected duration of the trial are taken into consideration (Cohn & Dow, 1998). The range and diversity of trials, including civil and criminal, low profile as well as high profile have also been noted by observers as strengths of the station (Cohn & Dow, 1998: 126). Australian law lecturer Isabel Karpin noted: "Court TV offers an intermediate discourse, attentive to both the rhetoric of the law and the rhetorics of television" (1999: 43).

Since its launch, Court TV has diversified. In 1996, *Teen Court TV* was launched, aimed at the youth market and in the same year the network launched beyond the United States by televising portions of the first Bosnian war crimes trial from The Hague. Suggestions have also been made for developing state-based community Court TV channels, which have a more local appeal (Cohn & Dow, 1998) and in 2000 it launched *Confessions* which uses videotape from investigation rooms (Authorlink, 2000). Just how much of Court TV is gavel-to-gavel and how much is cut and edited is unclear. It comes complete with an anchor and commentator and those who have watched imported sections, such as the OJ Simpson committal, would have noted that it was presented more as a documentary than a gavel-to-gavel account. Its format, at times at least, seems to include elements of documentary and reality-TV. Not surprisingly, Court TV's coverage tends to draw strong audience responses. Some say its claims of education are laughable, while others strongly defend its educational

basis, some even incorporating Court TV tapes into law school curricula (Cohn & Dow, 1998).

The profitability of Court TV has also been a point of contention. While Brill argued it was turning a small profit in 1997, Sorenson, who later took over the network, disputed this contention. He argued that in its first six and a half years, the network had not made "a dime of profit … After six years and an investment of over $100 million, you'd like to be in the black" (Sorenson in Cohn & Dow, 1998: 135). This investment would appear to have come from the one-third sale of Court TV's stock to Time-Warner and Liberty Media in early 1998. If indeed it did not make a profit, as Sorenson suggests, it could have been due to low advertising revenue relative to other cable television advertising rates (The FitzSimons Company, 1999).

Brill argued that Court TV would be "good journalism" (Cohn & Dow, 1998: 124) however this, also, may be contested. It must be argued that beyond the selectivity process of choosing which cases to cover, there is little or no real "journalism" in its coverage. In particular, it lacks the elements of selection, packaging and summary. Management of Court TV sum up the network thus (Johnson in Cohn & Dow, 1998: 125): "We are at moments the most boring network ever invented …and then at the other extreme, we have moments that are absolutely compelling". Indeed, if Court TV can be "the most boring network" at any time, there would be many who would question its description as "good journalism".

In 1998, former High Court Judge Sir Ninian Stephen (in Appendix 71 of Stepniak, 1998a: 14) spoke out in favour of extended court coverage in Australia:

> We hear of the possibility in the not too distant future of multiple new channels becoming available. If that happens, a separate channel devoted during sitting hours exclusively to the court would not seem too much to ask of government.

However, whether Court TV has a future in multi channelling, or indeed in any other area of Australian television development, would seem to be anything but guaranteed. It has, however, made the idea of cameras in courts far more commonplace in

America and provided the American public with the following benefits: first, courts would be more accustomed to applications for camera access, second, it is likely the news media would be able to access vision from the Court TV operators, and finally, after ten years of viewing, the television audience may be in a better position to reflect on its benefits and weaknesses.

Public Information Officers

It is no coincidence that developments of televising courts have occurred predominantly over the last 10 years, as it has been in this time frame that the courts have begun to appoint PIOs. This development marks a move by official sources into this round and the potential for a more systematic flow of information to the media. Indeed, these PIOs are in keeping with earlier descriptions of "authorised knowers" (Ericson et al., 1987: 18), "surrogate observers" (Roshco in Soley, 1992: 17) and bureaucratic sources in an exchange model relationship. They also personify facilitation of access to the public sphere, as expressed by Habermas. Through the emergence of PIOs, there has been a major shift in how the courts are managing the media and information from the courts.

While the first such officer in the United States was appointed in the 1930s (Innes, 1999b), the position as it currently exists in Australia has a short history. The Family Court appointed its first media officer in Melbourne in 1976; however that position was expanded to its current role of Director of Public Affairs in 1993 and it was at this time that the trend began to take hold in the Australian court system (Jackson, 1999). Appointments to this position soon followed in New South Wales, followed by Victoria, South Australia and Western Australia. Currently, the Federal Court employs a Director of Public Information at its Melbourne registry and has also appointed a community relations officer in its Sydney registry (although this position no longer exists). Another recent appointment was to the Industrial Relations Commission in Melbourne and two media liaison positions also exist in the National Native Title Tribunal. At least one state industrial commission has a research officer, whose job includes media liaison (Holdsworth, 1999). The most recent court to appoint such an officer is the Australian High Court, with its inaugural appointment in

December 2002. Delays in making this appointment were attributed to a lack of funding (Keifel, 1999: 5).

Queensland, Tasmania, the Northern Territory and the ACT remain the States and territories without such officers. In Queensland, there have been calls for the appointment since the mid-nineties (Robertson, 1997: 5) and in 2000 the State's Chief Justice Paul de Jersey (2000: 2), was openly critical of the lack of such a role: "I would much appreciate the assistance of media liaison staff presently lacking. For that deficiency, the Supreme and District courts of the state stand in stark contrast to most other higher Australian courts". Most recently, in June 2004, Justice Davies of the Queensland Court of Appeal raised the issue in a newspaper article in *The Courier-Mail* asking the question (2004: 24): "Why are Queenslanders, alone in Australia, deprived of consistently accurate information of what is happening in the courts? The answer is known only to the Government". (In fact, Queensland is in company with Tasmania, the ACT and the Northern Territory.) The Chief Justice of the Northern Territory, Brian Martin, has openly called for such an appointment (1999), and in Tasmania, the Chief Magistrate Arnold Shott, has been proactive in developing a system of Court-Media Protocols for introduction at the Magistrates level in his State, as discussed later in this chapter.

Development of the role has also occurred in the United States, Canada and New Zealand. One report lists approximately 75 such officers in the United States in late 1997 (Innes in Parker, 1998: 86). Only one such officer exists in New Zealand, as the Senior Judicial Communications Advisor.

While the breakdown of the role of PIO in the courts varies from jurisdiction to jurisdiction one such officer defines her job as: 40 per cent media liaison, 40 per cent community/education, 10 per cent conferring with the judiciary, and 10 per cent administration (Kriven, 1999). Another lists hers as 60 per cent media, 30 per cent judiciary and 10 per cent public (Ashbee, 1999). In some jurisdictions, where the role is primarily that of media liaison, the appointment of a Public Education Officer has followed (Black, 1999: 10). Certainly, the primary objective of many of these officers is that of media relations, that is, providing the media with an easier access to court materials and a pathway to the judiciary. It is argued that for most members of the

public who have never entered a court, the journalist's record of the courts is their only window into the courts and as such this provides "the frame" described by Tuchman (1978). In the words of one judge "the media are really exercising the public right of access on behalf of the public" (ABC, 1998b, 1998c).

Arguments for the facilitation of information from the courts are strengthened by the presence of strong information channels in other arms of government. Transparency of all arms of government, whether the legislature, the executive or the judiciary, means that the provision of information to the news media and the news media's unfettered access, within reasonable constraints, provides a strong argument. One could argue that the introduction of media liaison to the courts is long overdue, with its near universal positioning in business, government departments and political offices. In Queensland, for example, the State Government established a Public Relations Bureau as far back as 1958, with staffing levels reaching 46 positions under the Goss Government in 1990 (Electoral and Administrative Review Commission, 1993). This role varied from Premier's public relations to a more general public information service (Electoral and Administrative Review Commission, 1993). A study by B. Phillips (1999) found that of the 162 state and federal ministers interviewed, most have at least one media advisor, and some have two or three.

However, one North American PIO has carefully differentiated his work from other government public relations officers, noting "we do not do spin" (House in Ginsburg, 1995: 2122). This is consistent with how Australian PIOs in courts see themselves, rejecting the idea that their job is public relations or propaganda (ABC, 1998a). It is interesting to note that of the PIOs in Australia's courts, only one has ever been called a public relations unit and this title was changed during the course of this thesis to a Communications Unit.

While there has never been any systematic research into the media's relationship with these PIOs in Australia there are anecdotal accounts from America and Australia of extremely positive feedback by the media. They have been called "indispensable as a supplier of documentary information and answers to process questions" (quoted in Ginsburg, 1995: 2122. See also Fife-Yeomans, 1995). As Parker (1998: 151) noted: "a media liaison person is the first step towards improving communication" He

further noted (1998: 87) that "(g)iven that the public's need is actually a need for *accurate* information, the function of these officers in preventing mistakes and correcting efforts is obviously an important one". He observed (1998: 88) that the PIO could "train judges and court staff in their communication with the media" and recommended increased resources be allocated to this role to fully realise its potential.

Initial accounts indicate strong working relationships between judges and PIOs and, as noted earlier, this working relationship forms up to 30 per cent of a PIO's job (Black, 1999; Kriven, 1999; Teague, 1999a). Teague (1999a: 117) notes:

> Court media liaison officers …I cannot understand how any court can be expected to get by without one. I expect them to continue to do their invaluable 'foot slogging' work. I also expect them to be doing more ground-breaking work, particularly in conjunction with the electronic media court reporters.

Since PIOs' work involves bridging the gap between the judiciary and the media, it has been noted that those jurisdictions without these officers are disadvantaged (Martin, 1999). This issue is taken up later in this chapter and later in the thesis. In keeping with this idea, an increasing number of the Australian judiciary have spoken out in favour of facilitating access between the media and the courts. Chief Justice Doyle (ABC, 1998b) of the South Australian Supreme Courts supports this view "because I see the media as exercising the public's right of access, I think it's important that we help the media as much as we can". He (ABC, 1998b) points out that because the courts are an arm of government, the public have a right not only to access the courts but to be told what is happening, and furthermore, public confidence will be enhanced by knowledge and understanding. Chief Justice Black (in ABC, 1998b: 1) of the Federal Court notes:

> It is tremendously important that the public understand the work of the courts… And that means, where appropriate, assisting journalists in the work that they do, by providing summaries of judgments, better access to the court and so on.

Many of the developments within the courts, certainly those regarding communication and information, are inextricably linked with this new role. While the introduction of the role must be seen by the judiciary and the courts as a need for increasing openness and facilitating access, the PIO has put this openness and access into practice. This issue is developed further in the next section of the chapter, in the PIO's role with the judiciary. Further illustrations of this court work include summaries and précis of long judgments, development of web sites, and major developments into the broadcasting of courts. In addition, four states have in place, or are currently compiling, guidelines for the media. Several courts have introduced formal applications for court documents, which allow a court reporter to systematically access a transcript or evidence. Web sites for many of these court jurisdictions provide extensive media information materials. In addition, some PIOs, or their departments, run journalism award ceremonies to acknowledge excellence in court reporting and training sessions for court reporters. These developments are not out of keeping with those in the United States. Shapiro suggests preparation of succinct press statements, key messages that are brief and delivered within ten minutes should also be added to the list of media work (in Stack, 1998: 96).

While most accounts show support for the role of the PIO, the development has not been without its detractors. There are those who believe the appointment of PIOs in certain jurisdictions have not worked (Campbell, 1999: 135). His issues are not with the role of the PIO, rather they are with the rest of the system. Campbell says while opening up courtrooms to microphones and introducing media officers is "highly commended (it) will not cure some of the more deep-seated problems" which are based in ignorance. He advocates "proactive educative programs" inclusive of teaching civics into the Australian education system and educating "anonymous bosses in the newsroom" (Campbell, 1999: 131-132).

There have also been concerns about the additional level of interpretation this role might have. Keyzer (1999: 135) concludes: "The appointment of court media officers is a welcome development. But their role is extremely delicate. There are real dangers. There is perhaps an *inherent* danger in having court media officers explain decisions". Former Federal Attorney General Daryl Williams (1994: 190), while positive about the role in its early days, was nevertheless guarded when he noted:

"There is still a gulf between judges and journalists". Ericson et al (1989) cite problems with the use of official media-sources in the courts. They discuss the trial coordinator as partly fulfilling this role but caution against full-time news-media courts officers:

> Such a person would add another level of interpretation and translation to the process and, as such, would entail 'second-guessing' what went on in court or what was meant by the judge who wrote the judgment. Moreover, there is always a risk that, instead of patrolling the facts, this person might venture into the back regions of the courts on behalf of reporters to reveal the workings there.

Indeed, it could be argued, that patrolling the back regions of the courts, hitherto a no-go region, may also be a strength of court-media liaisons in its policy of open justice. However, it must be noted that the volume and level of criticisms is small when compared with the positive accounts in the literature.

While the backgrounds of the PIOs vary from journalists who have worked as court reporters to professional communications advisors and former lawyers, it is clear that some, if not all the people in these positions, are aware of the deficiencies and limitations that have traditionally existed within the court system for court reporters as noted in Chapter 3. Phillips (ABC, 1998a) notes:

> I think that court reporting is arguably the toughest type of reporting of all. It's very difficult, you don't get handouts as you do in other areas of journalism, and I think when you report a Royal Commission or a Board of Inquiry or a court, any assistance that can be given to minimise mistakes and errors is welcomed by the journalists.

And since errors can result in mistrials, the existence of the role is supported by a strong economic argument. One judicial officer in Queensland noted:

> The reality is that an average criminal trial in the superior courts of this State (Queensland) costs the public purse in excess of $6,000 daily, and it is easy to see how the avoidance of even a small number of aborted trials will readily cover the cost of such an appointment (Robertson, 1997: 5).

If the role of PIO is partly a cost-saving one, then it seems no coincidence that it has developed within the costly superior courts rather than the Magistrates Courts. While PIOs do try to cover all levels of courts, for example in South Australia the court web-site has access forms for the Magistrates Courts as well as the superior courts, the limited number of people in any one office, the commentary on the role by predominantly judges and not magistrates, and the job descriptions of the PIO, would indicate that the focus of the role has been on the superior courts. This focus is consistent with Parker's comments, earlier, about the prominence placed on the superior courts and the judiciary, and the contrasting paucity of information and referencing in the literature to the Magistrates Courts. With a single person in the role of PIO in most states, the superior courts do seem like a logical place on which to focus because: "It is where 'the ideology of justice is put on display'" (McBarnet in Parker, 1998: 9).

Speaking for the bench

As previously noted in this chapter, the judiciary have been among the staunchest advocates for the role of the PIO. Indeed, the PIO's role is partly allocated to assisting the judiciary. For many years the judiciary were guided by the Kilmuir Rules, which encompassed the notion that judges should keep silent in response to criticism, their reputation for wisdom and impartiality thus remaining unassailable (Davies, 1998).

In keeping with this silence, the judiciary could traditionally expect the Attorney-General to defend them in the media. This, today, is no longer a reality. It has been observed:

> The office of Attorney-General has over the last 50 years, become much more of a politician and much less of a law officer. That's just a fact, and I think sometimes one can get excessively precious about policing these border disputes between the judiciary and the courts (ABC, 2003).

Former Federal Attorney-General Daryl Williams has been vocal that it is not his job to step in and defend the Court when it is attacked. Chief Justice of the High Court, Justice Murray Gleeson disagrees with that position, noting there have been instances where he would have liked the Attorney-General to speak out when personal attacks have been made against High Court judges (ABC, 2003). Ultimately though, the lack of support from the Attorney-General has resulted in judges defending themselves.

In Chapter 3, the media's Fourth Estate role was seen to move toward a greater criticism of the three arms of government in the 1980s, just prior to the majority of PIO appointments in Australian courts. This move must be seen as no coincidence: rather it followed the judicial need to respond to media criticism. As Williams (1994: 184) notes:

> The legal profession has been the subject of public analysis for many years. In view of the length and level of that analysis it is really surprising that it has taken as long as it did for the scrutineers to reach the judiciary. When the microscope did reach the courts, the judges were unfortunately still not prepared for the intrusion.

Like others, Williams (1994: 185) advocated the adoption of PIOs to respond to media scrutiny: "The period of intense scrutiny has not ended. In fact there are good reasons for believing that critical analysis of courts and judges will continue and will even increase, with both a wider ambit and sharper focus". He said the voice of the courts should be articulate, eloquent, comprehensible, always available, prompt and accurate (D. Williams, 1994).

The need for a media liaison role is heightened by arguments that the judiciary, through their language and place in society, sometimes do not communicate well with the media or the wider community. One view places judges apart from everyday society. “He’s part of the real world, yet detached from it”, notes Ackland (2003: 5) about Chief Justice Gleeson. Ackland further refers to “the art of detached judicial drollness” (2003: 5) noting that if language is “passionless and technical, respect for the law will have less chance of being diminished than if it is engaging and human” (2003: 5). Such perspectives serve to highlight the different expectations of the judiciary, bringing under scrutiny the issues of public confidence in the judiciary and the need for transparency positioned against potentially unrealistic expectations of the people in this role.

Conversely, there are those who believe that the socially elevated position of the judiciary raises it beyond the need to be defended. Cooray (n.d.: n.p.) argues that judges should be above defending their arguments, that they have lowered their position in society by arguing as a politician would. He is critical of (former) Chief Justice Mason for the way in which he responded to criticism of the High Court’s ruling of Mabo, arguing:

> It is deplorable that the Chief Justice of the High Court and a judge of the Federal Court have descended to the levels of political diatribe until very recently confined to the extremes of politics … Much more is expected of any superior court judge than a politician. Therefore the type of language used by a Prime Minister or Minister is totally inappropriate for a judge (Cooray, n.d.: n.p.).

While Cooray was not recommending the need for PIOs, his argument actually supports the need for the role. Indeed, given the abandonment by the Attorney-General, the tendency by the judiciary toward “passionless and technical” language, and the expectation that the judiciary should not conduct its own defense, it seems certain that the judiciary, the media and the wider community would benefit from the assistance of a professional communicator within this arm of government, just as the professionals in the other arms of government benefit from an army of media minders.

But the judiciary and Superior Courts are not the only courts to receive media attention. While the Magistracy and the Magistrates Courts may not receive the same level of media attention on sentencing, decisions or judgments as the Supreme Courts, those occasions in which they have come under scrutiny have received considerable and sustained attention. New South Wales Magistrate Pat O'Shane, for example, has been the subject of much media scrutiny following several controversial decisions and comments. Magistrate O'Shane successfully sued the *Sydney Morning Herald* for defamation for its story "Extreme Views from the Bench" written in 1999 (Ackland, 2004). It is interesting to note that while the Law Council of Australia expressed its support for Magistrate O'Shane (Carmody, 2001) over her decision to speak openly about a social issue, the then Attorney-General Daryl Williams was openly critical of her public stand on the issue. He notes:

> …it is very important for the public confidence in the judiciary that judges and magistrates do not get involved in politically contentious issues because it undermines the confidence the public will have in the objectivity of the court and the people who sit on the bench (Daryl Williams, 2001).

Indeed, just as members of the Judiciary are moving down the path of improved communication with the media, so too are members of the Magistracy becoming more and more aware of their need to interface more efficiently and positively with this important sector of the community. This is highlighted in the following case study, in which the Chief Magistrate of Tasmania has taken up the challenge of improving this relationship in his own state, and potentially beyond.

Magistrates Court-media protocols: a case study

Whilst the primary focus within the literature, research, and indeed this study, is on the superior courts because of changes which are occurring within them, there is good reason to look beyond the superior courts (Parker, 1998: 9):

> For a more balanced picture of modern courts, we need to add in a bottom-up perspective and look at their (magistrates) routine and unexceptional work. We need to see our courts as organisations, or civic institutions, and not only as judges with their support staff.

Depictions in modern culture might well have the primary image of the courts as that of the superior courts, however the vast majority of court work is at the magistrate's level (Parker notes 90%, 1998: 9). Hence, not only can it be argued that these courts are where most members of the public will interface, they are also the level of courts which the most junior news reporters will be sent to cover. A bottom-up, rather than top-down, perspective is therefore invaluable in the overall investigations into the courts' workings with the media.

Background to the project

The development of a set of court-media protocols followed a three-month discussion period between the Chief Magistrate of Tasmania Arnold Shott and myself during December 2002 and February 2003. The protocols were developed collaboratively for implementation in Tasmanian Magistrates Courts. During the period of time in which the protocols were developed, from February to August 2003, Magistrate Shott and I determined that he would present the protocols to the annual conference of the National Council of Chief Magistrates in Perth in September 2003 for discussion.

The initial brief for the court-media protocols as proposed by Chief Magistrate Shott (Shott, 2003a: n.p.) was:

> We want to strike a proper balance. In my view, this is not an academic exercise of sitting down in a quiet, sealed room with a heap of books and finding out how other courts approach this issue. From our perspective, this is a real life exercise. I am sure we are prepared to be innovative.

My initial proposal to the Tasmanian Magistrates Court thus outlined several key ideas, which included:
1. Considering existing strategies, protocols and tactics utilised in other courts;
2. Approaching individual journalists from the major media outlets in the State of Tasmania for feedback on what they need in covering the court and justice round, generally referred to as a "wish list";
3. Developing the project as a pilot, with potential for application at a broader, perhaps national, level within other Magistrates Courts.

Development of the Court-Media Protocols

Development of the protocols occurred over the seven months from February to August 2003. Each of the three ideas, outline above, were adopted and the draft protocols were prepared for Chief Magistrate Shott and presented to the National Council of Chief Magistrates' annual conference in Perth in September 2003 as planned. (The protocols are included as Appendix 3.) Each of the key ideas, above, is addressed individually below.

1. Consider existing strategies in other courts.

Magistrate Shott and I undertook this research task. Of particular interest to this research were the web-sites of the Australian Federal Court and the Courts Administration Authority of South Australia.

- The Australian Federal Court includes protocols for media accessing transcripts, court documents and media releases (*Federal Court of Australia website*).
- The Courts Administration Authority of South Australia includes a media section with a cause list, directory, media releases, communications branch details, access details (including media request forms), media and law handbooks (*Court Administrations Authority of South Australia website*).
- Email contact was made with the public information officers in all the courts, however only one responded with feedback on court-media protocols for Magistrates Courts.
- Magistrate Shott sought feedback from an email discussion group of judicial officers of which he was a member.
- An Internet search of web sites of other court jurisdictions, outside Australia, was conducted for court-media protocols. Interestingly, the best media sites were the Australian sites, however some North American sites were useful. The Nevada District Court (*The Nevada District Court website*) had a good media page but all protocols pertained to camera access and offered little in addition to Australian courts.
- Searches for general media protocols, not necessarily in the courts.

The initial research provided some ideas for development, such as the access documents provided by the Federal Court and the South Australian Courts, however, these had limited application because of the difference in timing between the Magistrates Court as compared with the more lengthy cases in the superior courts. As Magistrate Shott noted: "There is not time to fill out a form for every request". This would not only be restrictive, in terms of time, but also in terms of human resources in the court.

2. Court Media Liaison Meetings and the development of the "wish list".

Focus groups with Tasmanian journalists provided the primary information needed to develop the court-media protocols. These were conducted by senior court personnel, minuted and the results were emailed to me. As such, I had no control over the

process, but was able to follow it from inception to conclusion through regular email and telephone calls with Magistrate Shott.

Meetings were held with the media in Burnie, Launceston, Devonport and Hobart. Media in attendance were from: *The Advocate, The Mercury, The Examiner, ABC Radio* and *Southern Cross Television* during the period 9-14 July 2003. The following passage is an excerpt from the minutes of each meeting:

> Mr Shott opened each of the meetings with an invitation to those present to present their individual wish list of issues which they would like the Court to address either with a change of practice or the provision of information. The invitation was subject to an undertaking to make every endeavour to meet the requests with in the limitations of the law and the Court's capacity. He explained that the liaison meetings formed part of a joint project with Griffith University and had been endorsed by the Council of Chief Magistrates as a national pilot (Shott, 2003b).

Following the final focus group, a summary of outcomes of the meetings was prepared. (This is presented as Appendix 4.) In brief, the media's "wish list" included:

1. More information on the court list
2. Web site publication of court list
3. Access to court outcomes
4. Written summary judgments
5. Embargoed decisions
6. Consideration of media deadlines
7. Familiarisation tours of the courts for new journalists
8. Development of a legal dictionary
9. A contact list of staff for general enquiries
10. Counter cards to deal with frequently asked questions
11. A media box to be relocated in the Burnie court
12. The use of audio recorders for recording court proceedings

3. Develop the court-media protocols for adoption by other courts.

This recommendation was undertaken in two parts: first the protocols had to be evaluated within the Tasmanian courts, and they could then be considered for wider adoption.

The evaluation

The Court Protocols were adopted in all Tasmanian Magistrates Courts from October 1, 2003. Evaluation was recommended six months after this adoption date. It was further recommended that ongoing evaluation should be undertaken, in order to gain a greater understanding of the impact and acceptance of the court-media protocols. Further to this, certain procedures were recommended for the period of implementation and evaluation.

First, staff should be briefed prior to the implementation of the protocols, and then again in six months, to ascertain feedback. All staff, including security, who may be dealing with media should be included in focus groups or general discussion groups in order to work through the protocols and the main concepts and practices, including the topics of open justice, working with media deadlines, the 10 point media check-list, the chain of command for enquiries, and so on. Information from these sessions would be used to provide feedback of issues raised and considered in the overall evaluation.

Second, the media organisations that took part in the initial meetings should be advised that follow-up focus groups would be conducted in six months with a view to evaluating the protocols in order to make recommendations for changes or modification. Finally, during the implementation period wider adoption of the protocols to incorporate input from other stakeholders such as major employer groups (such as News Ltd), the Council of Chief Magistrates, the Media Entertainment and Arts Alliance (MEAA) and the Australian Press Council, should be considered. A consistent set of protocols could ultimately be incorporated into tertiary courses in media law and within training regimes in media groups.

The wider implications

While evaluation was suggested for six months following the implementation of the protocols in October 2003, by July 2004 this had not taken place. Nevertheless, the Tasmanian Magistrates Courts reported that "Some of the requests have been met since those meetings including a Legal Dictionary, Coronial Lists and Outcomes published on web site, audio recording of court sessions" (Tasmanian Magistrates Courts, 2004: n.p.). It is anticipated that further communication following the submission of this thesis will re-instigate the evaluation process prior to the 2004 national Conference of Chief Magistrates.

The entire process, from conception through the research and development stages of the Court-Media Protocols, reinforced the need for such a document at the Magistrates Court level. While early research showed some jurisdictions did provide excellent web-based information and materials for the media, this was generically for all levels of courts and tended to be most appropriate to the superior courts, such as the access sheets which were dismissed by Magistrate Shott as being inappropriate for the rapid use at the lower courts' level. While PIOs in existing courts may try to incorporate the lower courts in their scope, the reality appears to be a top-down, not bottom-up approach. These issues are taken up in the research and discussed in depth in Chapters 6, 7 and 8.

Following the implementation of the Tasmanian protocols, I was informed that the jurisdiction of Victoria had written a set of Media-Court Protocols for the Magistrates Courts in Victoria in early 2004. These include: a useful list of information for the court officers on topics such as the use of audio recorders by journalists, access to transcripts and forms for the media to access transcripts, hand-up briefs, exhibits and charge sheets. The court personnel in these courts have been advised that access to these items should be made through the PIO. Thus it seems that a positive trend has begun in the area of media liaison at this level, in particular in the implementation of Magistrates Courts' protocols.

Summary and conclusions

While there are some major studies from the USA, England and Canada on the subjects of crime and courts as news, and court-media relationships, there is limited material in the Australian literature. The literature that has emerged has been driven from a legal research perspective. Predictably, this tends to provide a court-centric approach rather than focussing on media needs and issues. The available literature clearly indicates that the court round has been undervalued and under-researched, thereby making the courts the poor relation of the journalistic round especially when compared to other rounds such as police and parliament. The need for research into relationships between journalists on the court round and court professionals has been identified as important (Stack, 1998). Additionally, the focus in the literature tends to be on the superior courts and the Magistrates Courts are largely overlooked.

Television cameras are slowly making gains into the Australian courts. As The United States moves into its fifth decade of relatively free broadcast access, and New Zealand and Canada continue their moves in that direction, Australia's position from the media standpoint needs also to be considered. It seems that, in the short term at least, the existing situation of televised court cases, decided on a case by case basis, will continue on free to air networks in news, current affairs and documentaries. In his report to the Federal Court, Daniel Stepniak proposed an experimentation period for the Federal Court of two to three years, based on the experiences of New Zealand and Canada and the need for a sufficient quantity of cases to allow meaningful evaluation (Stepniak, 1998b: 225). The end of this experimentation period, a year after the report in 1999, saw continued, limited coverage by the Federal Court. To this end, the experience of television cameras has loosely followed his recommendations, however it does seem likely that the same would have occurred with, or without, the report.

Suggestions that Court TV could act as a pooling agent might be worth the television networks considering if, indeed, any networks want regular access to court stories. Some courts certainly appear to be anticipating a move by television, equipping themselves in readiness for the future of television cameras but to date, there has been little but speculation about whether the television networks are interested in further

access. The needs and wants of television news must be heard, instead of merely anticipated or speculated upon, particularly by legal academics.

Appointing PIOs to the courts is a clear indication of the emergence of a regular, reliable, bureaucratic, role in the courts. It is also a sign of the importance the courts are placing on their relationship with the media. This significant development, still relatively in its infancy, needs to be investigated to determine any current or potential impact it will have on the media, the news process and the representation of justice. In addition, the judiciary and the magistracy need to take greater advantage of such a role, especially given the position by the Federal Attorney-General of his limited advocacy for the judiciary.

The case study of the Tasmanian Magistrates court-media protocols provided some insight into the needs of both institutions, the courts and the media, at the lower-courts level. It focussed on a specific under-explored area of court-media liaison and placed the issue of the need for a systematic approach to dealing with the media by the Magistrates Courts on the agenda. It further highlighted a need for greater attention to be placed on this grass-roots level of court-media interface. While this case study eventually played a part in informing the final recommendations of this research, the timing meant that it was considered a separate part of this thesis, and as such could not be incorporated into the main research design. Nevertheless, it raised issues for future investigation which have been advanced later in later chapters.

Chapter 5 Methodology and Research Design

Previous chapters have thus far taken us through the major changes that have occurred in the relationship between the courts and the news media, with particular emphasis on the past decade. However, while the changes can be mapped through to the early 2000s there has been little written on this subject since that time, nor has there been any systematic analysis of how successful, or otherwise, these changes have been. As noted previously, there has been a dearth of media perspectives documented on this interface between the courts and the media. It was therefore determined to investigate these areas to provide specific data about the effectiveness of the court's interface with the media, incorporating a range of perspectives from within both the media and the courts.

In order the begin redressing the gap in literature from a media perspective it was deemed most important to gain a solid understanding about how members of the news media saw their relationship with the courts and court personnel. Furthermore, these media needed to either work in a court environment (court reporters) or oversee staff who worked in a court environment (News Directors). However, while the media perspective was paramount, there were several reasons why it was also essential to gain an understanding of the courts role, from within the courts. As noted in previous chapters, the role of the PIO was first implemented in Australia (in its existing format) in 1993 but little is known about how these court professionals view their role within the courts and their relationship with the media. Because PIOs are employed in different jurisdictions, there is no uniform job description or profile in place and there had never been any collective data published or recorded on the role in Australia. In addition, members of the judiciary needed to be included in order to gain a broader perspective of the courts and how they perceived the role of the PIO, in much the same way as the News Director gave a broader perspective than the court reporter. They were, however, deemed to be of lesser importance to the PIOs and their lower numbers, five of the 32 respondents, reflect this.

Thus, while it was deemed most important to gain information from the media who were involved in the coverage of courts, it was acknowledged that this would be more thoroughly understood if juxtaposed against the views from the courts. As such, a mix of participants from both the courts and the media needed to be chosen to take part in the research with the focus at all time kept on the media.

The geographically dispersed placement of PIOs, with just one PIO in most capital cities, presented a logical pattern for gathering data. It was determined that research would be conducted in each mainland capital city (with the exception of Darwin): Melbourne, Adelaide, Perth, Sydney, Brisbane and Canberra. This would potentially allow for generalisations across the country to be drawn, variations between jurisdictions to be considered, and comparisons between jurisdictions with and without PIOs to be made.

Data needed to be collected on a range of areas that affected both courts and the media. These included pragmatic concerns pertaining to practice and policy issues such as access to information, the news media's daily reporting practices, which sources were most widely used in the court round, whether television cameras were allowed in court rooms and general or perceived restrictions to media access in the courts. They also included broader, philosophical issues such as how the courts and the media fit into the democratic mix and why court stories become news. It was necessary to gain an understanding of a range of practice, policy, philosophical and perspective issues, in order to not only establish **what** currently occurs, but **why** it occurs and **whether or not it works** for both institutions.

Specifically, as noted in Chapter 1, this research was set in place to address the following research questions:

1. What changes have been put in place during the past decade to facilitate the court-media interface;
2. How have these changes by the courts impacted on journalistic practice; and
3. In what ways could the relationship be improved to better serve the court system, the news media and the public

Issues needed to be discussed in an in-depth manner, thus a semi-structured, in-depth interview schedule allowed for the variations in input from the two primary groups: the courts, made up of 12 PIOs and judges and the media, made up of 20 print and television journalists.

In determining how to best choose the methodology and research design, Morse and Richards' (2002) five-step approach was selected, while using the following quote as a starting point:

> You need to design a project that both fits and is obtained from the question, the chosen method, the selected topic, and the research goals. You should treat research design as a problem to be considered carefully at the beginning of the study and reconsidered throughout (2002: 72).

Keeping this in mind, I elected to utilise this guide in developing the research design for this project.

Step 1 – Establishing the purpose.

The primary purpose of the research was to gain an understanding of the communication channels and relative interfaces that exist between the courts and the media and how these affect the media's information gathering and coverage of courts. The literature showed that research in this area had been primarily in the legal field and was predominantly from North America. Perspectives from the Australian environment, sensitive to news media limitations and operations, were lacking. It seemed that certain assumptions were being made, such as the perceived expectation of improved camera access by television news, and it was intended to test such assumptions within the research, thus they were incorporated into the research instrument.

At the start of the research in 1998, the role of the PIO was in its infancy, with the first person appointed to the position in 1993. Some observations had been published in Australia, representing views from the media (Campbell, 1999; Fife-Yeomans, 1995), the judiciary (Teague, 1999a) and PIOs themselves (Innes, 1999). While

providing insights and professional opinions they were nevertheless single, anecdotal viewpoints, and there was clearly a need to bring together a range of perspectives that had already been forthcoming and seek out those who had not been vocal on the issues.

This project was designed to be conducted over a four to six year period, ultimately extending from March 1999 to July 2004. Understanding that the research would be conducted over a period of several years, it was proposed therefore that the end of the data collection period would approximately coincide with the anniversary of a decade of the role of PIOs in the Australian court system (that being from 1993 to 2003). This time period seemed long enough to have allowed the position to "settle in". As well as seeming like a tidy time period, it was also considered long enough to determine whether any impact had been made in a sector that is generally known to be a conservative institution in which change occurs slowly. Within the time period, several significant personnel changes occurred within the courts which had to be factored into the research. These were: a PIO was appointed to the High Court in 2002 (the lack of a PIO in this court had been discussed anecdotally, as noted in previous chapters); several personnel changes occurred in other courts most notably a community relations officer was appointed to the Federal Court, but ultimately not re-appointed during the research period. These represent changes to how important the role of the PIO was, and is, currently perceived internally. They therefore represent significant changes in our total understanding of the role of PIO in Australia and are factored into the discussion, analysis and conclusions in the following chapters.

Step 2 -- Methodological location.

To gain the depth of information required, in-depth interviews were identified as the primary research tool. These were best undertaken face to face, due to a range of reasons which will be discussed in this section, notably, the elite level of respondents in their respective settings, and the level of detail required. Interview locations were, in most cases, within the office of the respondents in Brisbane, Sydney, Melbourne, Adelaide, Perth and Canberra. In particular, the judges, the PIOs and the News Directors were interviewed in their offices. Several interviews, most notably with reporters, had to be conducted in coffee shops near the courts or in the media room in

the courthouse. This was because the reporters did not have offices of their own. On several occasions, when interviews could not be conducted face to face, phone interviews were carried out on my phone at Griffith University.

Other methodological materials were used and these are also considered in this section. In addition to the interviews, two other types of data ultimately fed into the project design process. Although not part of the original research design, it became apparent early in conducting the interviews that observational notes would offer additional information and, in addition, the web sites for each of the court jurisdictions could also supplement the data.

Additionally, as noted in Chapter 4, material was generated through the Magistrates Courts of Tasmania. Although this was not under my control, I was central to its implementation. My initial meeting with the Chief Magistrate of Tasmania resulted in a collaboration between the two of us and the development of the Courts-Media Protocols, under my guidance. (The collaborative nature of the project is outlined in Chapter 4). Through my constant monitoring of the project, I was able to oversee the research which included focus groups of court personnel and the media in Tasmania and consultation between the Tasmanian Chief Magistrate and the National Council of Magistrates. The research with the Chief Magistrate was undertaken parallel to this project, however some of the outcomes of that project feed directly into this research and have significant ramifications for future use. Thus, they have been considered alongside the findings of this research because of their direct relevance.

The research design may be described as triangulated. As noted by Patton (1990: 196): “Qualitative designs continue to be emergent even after data collection begins”. While the secondary materials did not hold the same weight as the interviews, they have been referred to at relevant times throughout the data analysis. As Morse (2002: 236) notes: “In qualitative research your memos *are* data”, thus the addition of these notes added to the depth of information obtained.

Step 3 -- Scoping.

"The sampling strategy must be selected to fit the purpose of the study, the resources available, the questions being asked, and the constraints being faced" (Patton, 1990: 181). This approach raised issues that had to be considered in the overall planning, coupled with the limitations that were already apparent, such as geographical distance and access to respondents. Patton (1990) notes that logic and power of purposeful sampling lies in the selection of information-rich cases. Thus, the respondents from the sample can be selected due to their capacity to illuminate the questions under study. They are chosen due to specialised knowledge and their ability to offer insight into a particular issue. This can, in turn, skew findings because of the specialised knowledge, however in this research it would have been inappropriate to choose respondents at random and the purposeful sample was most useful.

To gain perspectives from the court and media perspectives, it was necessary to interview people from both fields. These two fields were divided into two sample groups:

1. Court – public information officers (PIOs) and judges: 12 in total.
2. Media -- newspaper court reporters, TV news directors: 20 in total.

These are depicted, according to location, in Table 1 below.

Table 1: Table of Interviews

	Brisbane	Sydney	Canberra	Melbourne	Perth	Adelaide
Judges	1	-	-	2	1	1
PIOs	-	1	1	2	1	2
News Directors (TV)	1	1	-	2	2	-
TV Reporters	1	5	-	-	-	1
Court Reporters (n'paper)	1	1	1	2	1	1

The sample size was considered at some length. To some extent, it was self-limiting. For example, the number of PIOs in Australia is relatively small. Similarly, the number of daily metropolitan newspapers in capital cities is limited (only Sydney and Melbourne have two dailies, each other state has one daily newspaper published in the morning). Nevertheless, there were decisions which had to be made in order to keep the sample group manageable. Patton (1990) notes that sampling to the point of redundancy may be ideal, but is not practical and it is therefore better to use judgment and negotiation, staying open to the possibilities of adding to the sample as the fieldwork progresses, or changing the sample if this can provide value. This was the approach taken with this research. Indeed, this occurred because this is a changing and dynamic field. As noted earlier, during the research process the High Court advertised for a PIO. I approached this person for interview shortly after her appointment and it was determined that the interview would be best conducted after she had been in the position for a minimum period of time. A period of six months was determined and the interview took place accordingly.

Prior to all interviews, respondents were explained the purpose of the research and asked to sign a consent form, indicating their willingness to participate in the project. On the occasions where interviews were conducted by phone, consent forms were sent either by email and returned, signed, or the participant answered their willingness to take part on the audiotape.

Court Personnel

In this group, there was a limited pool from which to draw. According to the information sheet of contact details for PIOs circulated among the group, there are currently seven permanent Public Information Officers within the Supreme Court, Family Court, Federal Court and High Court jurisdictions (this does not include institutions such as the Federal Industrial Commission or the Native Title Tribunal which also employ PIOs). Thus, it was possible to approach most of these for interview. (The Family Court was omitted because of the lack of court reportage of this round.) In total, seven PIOs were interviewed. One of these was not a permanent PIO, but had been brought in by one jurisdiction to work solely on a long-running case.

Only a small sample of judges was approached for interview. Of the six approached, all but one took part. The main criterion for selection was that the judge was known to be interested in, or proactive in, the field of media relations. In all cases where a PIO was in office, the judges were approached through the PIO. Queensland was the only state in which an approach had to be made directly due to the lack of a PIO in this office. Judges who were sought for interview were in the Federal Court, based in Melbourne, the Supreme Courts of Victoria, Western Australia, Queensland and South Australia. Their proactivity was gauged through their established record of open communications with the media.

It is acknowledged that the sample of judges tended to perpetuate the focus on the superior courts. There are several reasons for this. First, the single judge who had consented to the interview but did not take part was a District Court judge, also with a high profile on media matters. Unfortunately, on several occasions proposed interviews were unavoidably cancelled. In addition, the choice of judges was a complex one which was largely dictated by geography and their pro-activity in media matters, rather than court level. It was felt that there would be a greater level of comparison if all the judges were from the one court level, and worked closely with the PIOs. Furthermore, the issue of the under-represented magistracy did not really present to me until part way through the study and most of the interviews were complete by this stage. The magistracy was represented to a limited extent in this research, through the production of the protocols, as discussed in Chapter 4. A review of how the magistrates perceive the interface between the courts and the media would thus be a recommendation for further research. Finally, it was found that PIOs made access to superior court judges relatively simple.

Two judges chose to be interviewed with the PIO present and actively involved in the interview. Other judges were interviewed alone. Where judges were interviewed with PIOs present, it presented the problem of separating the answers. PIOs would not then be interviewed separately, maintaining they had already been interviewed. This posed some problems in data analysis and some interviews had to be transcribed using two identifiers rather than one.

Media Personnel

The news media presented other difficulties in the selection of a manageable sample and this became more, not less, of an issue as the interview period progressed. Because of the need to travel interstate to undertake interviews, it was necessary to arrange interviews with judges, PIOs, print media and television media, all within the one time-period, within the one location. It was important, where possible, to gain interviews from all four of these respondent groups because this would allow comparative data analysis within the one geographical area. The primary problem encountered here was availability, compounded within this group because of the elite nature of the respondents, as described in detail below. On several occasions it was necessary to either leave a copy of the interview schedule to be filled out and forwarded or follow-up interviews by phone at a later date. Funds restricted going to back to the city for follow-up interviews.

Notwithstanding these confining characteristics, it still had to be determined which media would be approached for inclusion in this sample. The limited number of PIOs provided the best guidance for this sample and, with the exception of Queensland, the locations for media interviews corresponded with the location for PIO interviews. In five of the six cities where interviews took place at least one print and one television reporter were interviewed.

Initially, it was intended that court reporters from each daily (mainland) metropolitan newspaper in each capital city would be interviewed. However, as Table 1 shows only one newspaper reporter was interviewed in Sydney, hence one daily metropolitan paper was not included in the sample. In addition, neither of the national daily newspapers was included. The newspaper roundspeople were approached directly via email or letter. Initially, the Chief Court Reporter was to be targeted for interview, but on several occasions a more junior person was interviewed, due to availability. This, however, was to prove a benefit as it provided an additional level of anonymity for respondents. It also provided a range of perspectives from a broader age of respondents. Because questions were largely procedural or policy based, and this round was relatively well established in newspapers, it was determined that the court

reporter could provide a greater depth of information than the News Editor or Chief of Staff who works out of the newspaper office rather than experiencing the daily routines of court.

The television news sample was restricted to the ABC and one commercial channel. This sample was aimed at being more representative than just one broadcaster and it was hoped that it might also allow some comparison between the ABC and a commercial television station in their approaches to televised court reporting. In a larger study, a sample of News Directors from all commercial stations as well as SBS, would certainly have offered a broader representation of metropolitan television news but the sample had to be kept smaller than this. In contrast to the newspaper group, the sample of television respondents was more difficult to determine because it was more difficult to identify the "court reporter" in many instances. This was due largely to the newspaper reporters discussing a firmly established area of reporting in contrast to the television media. Because of the depth required in the interviews, and due to problems in identifying which television reporters cover courts on a regular basis, News Directors were approached for interview. The end result, however, was that in several cases, the News Directors chose to have the current court reporter present at the interview, answering the questions that pertained to daily procedural issues of court reporting. Alternately, they suggested a court reporter on their staff for interview. On one occasion, the National News and Current Affairs Director also held the position of State News Director. He offered some, if limited, responses to the interview questions, but also supplied supplementary interview schedules from several journalists who currently, or previously, worked in the courts, hence the larger TV sample from one state, as noted in Table 1.

Step 4 -- Planning the nature of your data.

The primary instrument for data collection was in-depth interviews, conducted under semi-structured conditions. Semi-structured interviewing allows the interviewer to seek both clarification and elaboration on answers and the ability to probe beyond the answers supplied (May, 1993). The semi-structured interview incorporates what Robson (2002: 278) describes as an "interview schedule". The schedule should include introductory comments, a list of topic headings and key questions, a set of

prompts and closing comments. It is also common to include some highly structured sequences to obtain demographic information. This was generally consistent with the needs of this research and provided a template for adoption.

The final interview schedule, however, was reasonably structured as on many occasions the respondents requested to see the questions in advance and this required a reasonable degree of structure.

The interview schedule for this research, available as Appendices 5 and 6 for courts and media, consisted of 30 and 31 questions on the topic of the courts and the media, with an additional page of general questions, seeking eight general questions relating to demographic information. In the main body of the interview schedule, a mix of closed and open ended questions was used in order to gain in-depth responses as well as brief answers. Most were open-ended, enabling questions to allow the respondents to "respond in their own terms" (Patton, 1990: 295). Some closed-ended questions were used in order to gain ranking of the importance of areas of news, or to gain "yes/no" responses to support further questions. These also gave respondents a break from the hard work of thinking through reasonably complex issues in the open-ended questions.

Questions related to a range of issues ranging from the policy and process related areas such as *List the major information sources in the court round that you, or your staff journalist, use to supply information about court stories,* to philosophically based questions such as *How would you describe the news media's role in covering courts?* to questions of perspective, such as *What do you understand to be the current restrictions on television cameras in court?* Some people were more comfortable with certain areas of questions – for example, News Directors were more involved in policy and journalists were more involved in process, while judges often more keenly responded to the broader philosophical questions of the court-media interface and PIOs tended to have mixed responses. This meant that some people were more knowledgeable in some areas than other and, as expected, provided a range of responses. In addition to the initial set of interview questions, three additional questions were sent to the PIOs toward the conclusion of the interview period, in January 2004. This was because additional information was required relating to the

updating of televising of courts and the position of the PIO in the court structure. These questions were sent and returned over a two day period via email and all six (permanent) PIOs responded. (The one PIO who did not work in this field on a regular basis was not approached for further information.)

Marshall and Rossman (1999) note that the most important aspect of in-depth interviewing is in conveying to the participant that their views are valuable and useful, thus systematisation must be flexible enough to incorporate this underlying message. It is therefore important to allow the participant to frame answers in their own way and use established material more as a guide than as a set structure. This is certainly relevant in the context of "elite interviewing" (Marshall & Rossman, 1999) in which influential and well-informed people are selected for interviews based on their relevant experience and status. These people are likely to be familiar with legal and financial structures as well as policies, histories and future plans of an organisation. The disadvantages of interviewing people at this senior level can be:

1. Initial access to them can be limited,
2. They are generally busy so their time is limited, and,
3. They can "take-over" an interview, be critical of it or try to redirect it. (Marshall & Rossman, 1999: 114).

They note:

> Well practiced at meeting the public and being in control, an elite person may turn the interview around, thereby taking charge of it…Working with elites places great demands on the ability of the interviewer who must establish competence by displaying a thorough knowledge of the topic… The interviewer's hard work usually pays off, however, in the quality of information obtained. Elites often contribute insight and meaning to the interview process because they are intelligent and quick-thinking people, at home in the realm of ideas, policies and generalisations (Marshall & Rossman, 1999: 114).

In each of the three observations above, Marshall and Rossman touch on extremely salient elements of the interviews in this project: their time was at a premium, they

were reasonably critical and they expected a slick approach. In particular, News Directors and Judges fell into this category of elites. Not only are they elite in professional status by community standards but they also come from professional groups of highly trained communicators. For all of these reasons, the interview schedule was made available to them in advance. This was sent with a covering letter that it was an interview guide only, given that the interview would be semi-structured and may incorporate other lines of questions. Nevertheless, this did impact on the style of interview schedule design as it needed to appear reasonably structured as well as open and transparent in order to make the respondents feel relaxed with the interview process. By keeping the questions reasonably consistent and transparent, the differences in the answers could not be attributed to differences in the interview situation (May, 1993).

Pre-testing

The interview schedule was initially formulated and sent to two senior academics for feedback. The instrument was found to be generally sound, however some poor wording was amended at this time. Following this, a pre-test was undertaken in the first, formal interview. The respondent was known to me and lived reasonably close, so this provided a good place to pre-test. Minor modifications were made to the interview schedule as a result of this pre-test, most notably in the area of duplication of questions. No questions were added at this stage, but some were omitted. Two similar interview schedules were ultimately adopted for the two groups: media or court. Due to the "elite" nature of the judges in the research, it was determined that this group would not be pre-tested, but instead the pre-test of the media acted as a universal one.

The location of the respondents in mainland capital cities meant that the sampling location would inevitably be geographically scattered. This was written into the research, and indeed became central to it for a number of reasons. By incorporating elements of Patton's *maximum variation sampling* procedure which "can at least be sure that the geographical variation among sites is represented in the study" (1990: 172), it was anticipated that variations or trends across the country could be

determined. In particular, a location which was not supported by a PIO could be compared with those that were.

The samples collected from the six Australian cities allowed for a *case study* approach, typified by "historical and document analysis, interviewing, some forms of observation as data collection" (Marshall & Rossman, 1999: 159). This approach is limited in this research due the level of depth of material from one sample group or one geographical location, according to some definitions (Patton, 1990) but more in keeping with others (Robson, 2002: 89). I had anticipated the software programme NVIVO would allow Boolean searches according to sample group relating to location, however this program provided limited use only, as discussed below.

Step 5 -- Thinking ahead.

This step, identified at the beginning of the research made it essential to plan the process from start to finish. In reality, while it meant anticipating issues that might arise as well as how the material would be evaluated because the project was undertaken over an extensive period of time, in this case 28 months, it was simply not possible to imagine all possible variables that might affect it.

Nevertheless, preparation and planning was essential. Initially, it seemed that dealing with the reams of interview data would present problems relating to data management and coding and it was determined early in the project that I would utilise the NVIVO programme to enable the most efficient management of the information. Thus the NVIVO program was initially selected to enable me to code results and organise my material. Ultimately though, the program proved limited in its application to this research because I knew the material extremely well and found the NVIVO searches frustrating. For example, the concept of key word searches was limited because often a word would be used either in a question or an answer but not both, thus an interview response which did not use a specific word would be omitted in a search because the respondent had not stated a word specifically. In addition, because I transcribed my own interviews I knew the content and found sorting through soft and hard copies of transcripts far more straightforward than anticipated.

One element of analysis that had been of concern throughout the research was the potential for problems with the anonymity of recipients. Respondents were drawn from small, select groups, some excessively small: for example, there is only one PIO in most capital cities and only one in the High Court. For this reason, certain controls were put in place. As Morse and Richards note, keeping respondents anonymous "is no trivial task, and it is rarely achieved merely through changing of names" (2002: 204). Names were substituted for generic titles, Judge, Public Information Officer (PIO), News Director, Television Reporter or Newspaper Reporter. Where possible, identifying blocks of quotes were avoided to help ensure the anonymity of respondents.

Summary and conclusions

This chapter sets out the methodology that was used for the thesis, using Morse and Richards' five-step approach to the research problem. This approach provided a simple course to navigate the research, from establishing the purpose of the research, to identifying the location, scoping the project, planning the nature of the data, pre-testing and finally, to thinking ahead. The primary instrument for the research was semi-structured interviews using a formalised interview schedule with the two groups of respondents: courts (made up of PIOs and judges) and media (made up of court reporters and News Directors) personnel. In total, 32 respondents took part in the research: 20 from the media and 12 from the courts. The literature had indicated a paucity of knowledge about how the media perceive their involvement with the courts and it was determined that the media would remain a prime focus of the research. Thus, the number of respondents is skewed toward the media, however the level of response from the courts was nevertheless representative of the PIOs from around the country given that the majority of the PIOs in office were interviewed. The five interviews with judges were determined on the judges known interest in the court-media interface, however the focus on the judiciary from the superior courts might be seen as a shortcoming in this research.

While the term "interview schedule" was used to describe the interview questions, the structure of the instrument used was more structured than a simple schedule. This was because it was anticipated that the list of questions would be requested in advance by

some of the respondents and indeed this was the case. Providing respondents with the list of questions, while pointing out that this was not a fixed list, allowed for a transparency in the interviews. Given the elite nature of the respondents, I believed it was appropriate to make the process as easy as possible in order to secure their involvement. The only restriction I encountered with the elite group of respondents was, occasionally, access. This was overcome by respondents replying to the questions and forwarding them back to me. Ultimately it was worth pursuing the elite respondents as they provided a data base of information which could only be obtained at this senior level, offering insights into all the desired levels of court-media interaction based on the areas of policy, process, as well as philosophical and perception issues.

This research design has provided a systematic approach through which to manage the data collection for this study. Chapter 6 presents the research findings and initial observations from this data collection, presenting the collective responses of these two groups of people who are involved in the daily activities of the courts and the subsequent news production of court stories. Chapters 7 and 8 develop these findings into themes and conclusions, providing in-depth analysis and discussion addressing the key issues of this research.

Chapter 6 Research Findings and Observations

To this point, it has become clear that the relationship between the courts and the media is moving through a time of change. Other issues which have also emerged from the literature include the legal focus which offers few media perspectives, the unpredictable and problematic resources for reporters on the round, and the overall limited research and theorising of this important part of the social and political structure. Thus, there is a need to closely consider all of these issues, both in terms of the existing courts-media interface and where the relationship is headed.

This chapter presents the findings from the 32 in-depth semi-structured interviews conducted during the 28 month period, from October 2001 to March of 2003, as described in Chapter 5. The respondents were categorised into two groups: media personnel, made up of 20 newspaper reporters, television reporters and News Directors and the court personnel, made up of 12 judges and public information officers (PIOs). The locations for interviews were: Melbourne, Adelaide, Perth, Sydney, Brisbane and Canberra. In each location, except Canberra, a range of respondents was chosen, ensuring a minimum in each location of one newspaper court reporter, a commercial television reporter or News Director and an ABC television reporter or News Director, a PIO if in office and, in most centres a judge. Judges were chosen either because of their known interest in court-media activity, because they offered their involvement, or in the absence of a PIO in one jurisdiction, they represented the sole court perspective. Thus, each jurisdiction included a range of court and media perspectives.

The findings and observations are presented to parallel some of the key topics and themes that emerged in Chapters 2 to 5. This then allows for their logical analysis, in the context of the theory and existing literature, in Chapter 7. The findings begin by focussing on broader, theoretical issues, and become more specific, process and policy-based throughout the chapter. They indicate how connections with democracy and the public sphere are central to the issue of the role of the media in covering courts. This discussion provides some insights into how the two groups of respondents view the media, as the proxy for the public, in its role of observing and

reporting the court system. Following this, the chapter looks at how the court round is ranked when compared with nine other standard news rounds, thus locating its importance in the eyes of the two groups of respondents. This provides a link between the philosophical aspects of the media in the court context, and the day-to-day expectations of the court round. Next, specific information is gained on the sources used within the court round, which leads to an analysis of the role of the PIO. This role is described by all categories of respondents: the media who deal with the PIO, the PIOs themselves and the judges.

As noted in earlier chapters, the emergence of the PIO has occurred alongside the developments of camera access. It was logical to then consider the issues for television, with the most obvious one being the lack of vision available to the television medium. Some examples of courts as news, including the Snowtown trial and other criminal and civil trials, plus criminal appeals, are discussed to illustrate some of the issues presented in the chapter. Finally, the chapter presents some suggestions made by respondents on how the relationship between the courts and the media might be improved, citing existing strengths and weaknesses and where strengths might be expanded to enhance and cultivate the court-media interface.

This chapter will bring together the findings of the four groups of professionals – judges, PIOs, print media and television media – from the six Australian geographical locations. In doing this, the findings will lead to some preliminary observations, which will be developed in depth in the discussion and analysis of Chapter 8.

Role of the media in covering courts

Courts are a major staple of the media diet, providing regular stories due to their Monday to Friday operations. However, the underlying reasons for why courts are covered by the news media are clearly more complex than this, as noted earlier in the analysis of open justice. Courts occupy part of the public sphere but are also a place where the public and private spheres intersect through their function of law enforcement. At this interface of the law and the individual (the public and the private), the law is communicated through the news media back to the community.

In responding with their views of why the media cover courts, several respondents from both categories drew a distinction between why the media cover the courts and why the media **should** cover courts. For them, the distinction was about the media role in serious reporting, education and democracy. One newspaper reporter drew a sharp comparison between the two.

> The reality of the situation or what it ought to be? Well the two of them are poles apart. Basically what they ought to be is an educational role at letting the broader community know what's going on in the courts: in criminal law and major developments in constitutional law. The courts are quite complex and there's an enormous number of them. If ever there's an area where the media need to do a lot of sifting or fact kicking it was that. That's what it ought to be, but that's not what it is at all. It's about sensationalising human stories, shock horror, the bigger the crisis, the bigger the conflict, the better.

A judge also drew a distinction between what the role of the media is and what it should be, arguing that foremost the role is central to democracy:

> You're asking me what their role should be rather than what it is? I see the role of the court reporter as a very, very important social role to explain that the courts serve a function. Why I've been such a keen advocate of having TV in court is that it seems to me that most information is explained to society through the television news and my aim has been to have the Federal Courts or courts in general featured in news regularly so that society gets to understand how the courts stand between citizens and government, how the courts are a genuine guarantee to freedom and democracy in society. It is our function but it's not well understood. I see television as portraying that function.

One television reporter who said the role was critical to democracy and the system of open justice shared this view of the courts' role in the democratic process. She also touched on the role the media play as the public eyes and ears on the courts.

> (People) rely on the media to communicate what's happening in courts, this is fundamental to our system of justice being open: a cornerstone of a democratic society that our criminal justice system is open and fair and so access to courts should always be facilitated. Most people haven't got the time or indeed the inclination or knowledge and they rely on the media to do that for them. For society to have confidence in the way the police firstly, and then the courts work, the media's portrayal of what's happening in courts is critical.

Indeed, the most common response was that court stories are in the public interest and most members of the public do not access the courts in person, thus relying on the media to do this for them. This response was often coupled with the importance of educating the public about the courts' functions. Sometimes this was related to the courts role in a democratic society. One PIO noted that the media covered the High Court to show citizens the importance of what goes before the court. A News Director noted that the media covered courts to monitor how the courts' interpret legislative changes. This placed a responsibility on the media in its role of reporting how the other arms of government connect with the courts, requiring the reporter to understand not only the courts' interpretation but also the legislation on which it is based.

Most members of the media had strong views relating to the need to cover courts in order to act as a public watchdog in keeping with the "whole idea of the Fourth Estate". This was necessary to keep the judiciary open to public scrutiny. One television journalist summed it up thus:

> It's essential – the media's role in covering of courts can reflect the adequacy of how our laws are operating, ensures the administration of justice to victims of crime or disadvantage, provides opportunities to review laws and keeps the court system (hopefully) open, democratic, unbiased and accountable.

Other words used to describe the role were "vital" and "incredibly important". Reporters especially argued that the role was part of a socially responsible media, as they described the need to bridge the gap between the courts and the public. "Most often it's the only source of information the public have regarding the justice system," said one reporter. In keeping with this role, two print reporters also believed that the role of news coverage of courts was to give victims a voice. One noted:

> The media is an opportunity for these people to have their say, to get their story out, to express how crime and other court circumstances have changed their lives and to promote some empathy and understanding in the wider community.

This could be seen in the publication of victim impact statements, which are now read out in open court at sentencing hearings. However, it is interesting to note that no-one suggested that reporting on courts should also give defendants a voice. This lack of response is considered alongside the actual responses in the following chapter.

Several television reporters suggested that court stories gave resolution to coverage of crime, by closing coverage of police stories. "Because once we start a story we have to finish it". This suggested a responsible approach by the media to follow through on crime-court stories and the overall concept of addressing the law and order agenda.

It was further proposed that the role of the media in covering courts was to entertain, however not one person listed this as a sole or primary purpose. In all cases this was listed as a subsidiary reason, or to suggest a range of contexts for courts as news. One television news director who saw the role as "public interest" added "but that works in a number of levels from the very serious, fundamental principles of justice kind of court stuff to other cases which are right down the other end of the scale which can even be amusing".

On a more practical note, there were some suggestions on how courts fed into the day to day routine of news collecting. "Courts are a feast of stories really", said one news director. Ideally the challenge was to "try to find on a daily basis a sort of

representative smattering of very different maters that are being handled from the Supreme Court, to the local, to all the many, many tribunals".

In describing the daily make-up of news, responses varied. One PIO noted that news from the courts was "a cheap, reliable source of dramatic content" while another saw it as a forum for human issues, "where ordinary people are seen in extraordinary circumstances". A newspaper reporter summed it up thus: "Courts are extremely cost effective, protected, you're unlikely to be sued … (they're) cheap, quick and dirty. Courts turn out some really good stories".

The importance of the courts round

The literature had indicated that the court round was held in a low status and it was therefore noteworthy to hear the responses from the two groups about how they viewed the importance of the court round. One commercial television News Director noted:

> It doesn't traditionally hold a great weight, the court round, but I'm getting the feeling that is changing a bit…certainly in Victoria…we regard it among our top three or four rounds, up there with state politics and crime.

However, several reporters said it was still seen as "a training ground" and one person admitted that until she was given the round she was reluctant to do it.

> I used to do police (rounds) and I do remember the editor telling me 'I want you to move from police to courts, I think it's the best theatre in town'. And I begged and screamed and sulked not to be sent there.

But while the literature had indicated the low status of the court round, nowhere had this been considered relative to other rounds, by either the media who work in the round or the court personnel. All respondents were asked to scale ten rounds according to their importance, with 1 being most important and 10 being the least important round. The other rounds were: Federal Parliament, State Parliament, Politics, Justice Issues, Crime, Industrial, Welfare, Education and Health. Several

respondents chose to group rounds together, thus providing a more limited scale and several respondents chose not to scale the rounds at all. Many respondents commented that the order depended on the news of the day. Other comments such as "they are all equally important to cover comprehensively, I will list stories in terms of where they end up on the ABC news" and "they are too difficult to scale", were common.

One News Director said the station's priorities were reflected in the staff who were dedicated to the round. He noted:

> … obviously Federal Parliament we cover via Canberra, but in terms of specific rounds, State Parliament and politics generally are the one person, courts/justice issues are the one person, crime one person, health with one person. Education I would rank with those. The others are an ad hoc basis. So that might indicate our priority.

*Table 2: How the **media** scaled the ten rounds from 1 (most important) to 10 (least important).*

Group	Federal P'ment	State P'ment	Politics-General	Courts	Justice Issues	Crime	Industrial	Welfare	Education	Health
TV Brisbane	1	2	3	6	5	7	10	4	8	9
TV Sydney	1	2	7	4	8	3	5	9	10	6
TV Sydney	1	5	10	4	9	3	8	2	7	2
TV Sydney	1	2	10	6	5	7	9	8	4	3
TV Sydney	9	10	1	3	7	8	6	5	2	3
TV Sydney	1	2	3	5	6	7	8	10	9	4
TV Sydney	9	10	1	3	7	8	6	5	2	3
TV Perth	3	2	1	6	7	4	10	9	5	8
TV Adelaide	3	2	4	5	6	1	10	9	8	7
TV Melbourne	3	1	1	4	4	2	7	8	6	5
N'paper Canberra	1	1	1	3	3	3	4	2	2	2
N'paper Perth	8	7	5	4	9	3	10	6	2	1
N'paper Brisbane	2	3	1	5	10	4	9	8	6	7
N'paper Adelaide	1	2	3	4	6	5	9	10	7	8
N'paper Melbourne	1	2	4	3	5	5	5	6	3	3
N'paper Sydney	10	9	7	1	3	2	5	8	6	4
	Federal P'ment	State P'ment	Politics-General	Courts	Justice Issues	Crime	Industrial	Welfare	Education	Health

(Number of respondents 16) News Rounds

*Table 3: How **court personnel** scaled the rounds from 1 (most important) to 10 (least important)*

Group										
PIO1	1	1	1	4	4	6	5	3	2	2
PIO2	2	3	1	5	7	4	6	10	9	8
PIO3	6	2	6	3	7	1	9	8	4	5
PIO4	1	3	2	6	10	6	5	8	9	7
Judge1	1	2	6	5	3	4	10	9	8	7
	Federal P'ment	State P'ment	Politics-General	Courts	Justice Issues	Crime	Industrial	Welfare	Education	Health

(Number of respondents 5) News rounds

The court round is significant in its consistency across Tables 2 and 3.With one only exception the court round was rated as between 3 to 6, on the scale of 1-10, by all respondents. This meant that 20 respondents found it neither the most nor the least important round, but somewhere in the middle. We might have expected that reporters covering the court round and court personnel might rate the court round quite high, but this was not the case. It is interesting to note that the one respondent who rated it as the most important round was a newspaper court reporter who was studying a law degree and had worked on the round for five years. The court personnel (four PIOs and one judge) responses were consistent with the media responses, rating the courts in the middle of the scale. Only one judge is included in the table because only one judge gave a straight-forward 1-10 response to this question, with others either choosing not to rank the rounds or ranking them outside the scale.

Table 4 (following) shows the average responses from the two groups: the media and the courts personnel. In both groups Federal Parliament, State Parliament and Politics were ranked first and second. Courts were ranked third by the media, and fourth by the courts; Crime was ranked third by the courts and fourth by the media; both groups ranked Health fifth; both groups ranked Justice Issues, Education, Welfare and Industrial as sixth, seventh, eight and ninth in varying order.

Table 4: The average responses from the two groups, ranked from 1 - 10

Group										
Media (no. 16)	3.4	3.8	3.8	3.9	6.2	4.5	7.5	6.8	5.4	4.6
Ranking	***1***	***2***	***2***	***3***	***7***	***4***	***9***	***8***	***6***	***5***
Court (no. 5)	2.2	2.2	3.2	4.6	6.2	4.2	7	7.6	6.4	5.8
Ranking	***1***	***1***	***2***	***4***	***6***	***3***	***8***	***9***	***7***	***5***
	Federal P'ment	State P'ment	Politics	Courts	Justice Issues	Crime	Industrial	Welfare	Education	Health

News Rounds (Total number 21)

Table 5: How the four groups scaled the level of court importance as a media round

Group					
Judges				5	
PIOs			1	5	
N'paper reporters			2	4	
TV Reporters		1	6	5	1
	Not at all important	Not very important	Somewhat important	Extremely important	Don't know

Importance of the court round (number of respondents 30)

All respondents were asked to rate the importance of the courts round on a scale from not at all important to extremely important. Table 5 shows that all judges interviewed believed the court round to be extremely important, five of the six PIOs believed the round to be extremely important and four of the six newspaper reporters believed it was extremely important. Of the 12 television reporters and News Directors, however, only five believed the role to be extremely important. The one Sydney television reporter, who categorised the round as not very important, bordering on not at all important, believed the round **should** be considered important but believed the system worked against television coverage of courts. This response could account for the relatively low rating other television reporters gave the round.

Geographically, there was no particular pattern to the television reporters' responses, as shown in Table 6 although it is interesting to note that Brisbane and Melbourne represented two ends of the spectrum. Neither respondent in Brisbane (where there is no PIO) felt the round was extremely important and both the respondents in Melbourne (where there is a well established PIO) felt the round was extremely important.

Table 6: Television media responses to the importance of the court round by capital city.

TV reporters by capital city					
Adelaide			1	1	
Brisbane			1		1
Perth			2		
Sydney		1	2	2	
Melbourne				2	
	Not at all important	Not very important	Somewhat important	Extremely important	Don't know

Importance of the court round (Number of respondents 13)

The status of the court reporter also reflected the importance of the round. One television reporter made some observations of how the round developed as a specialisation in the television environment, also raising the interesting point that women were often seen as better in the role.

> Oh yes, it has been (specialised) for a long time. And they were good people around 10 years ago but I suppose in any other state other than Melbourne or New South Wales you are only ever going to get juniors in television. But you still get some senior operators. It is very haphazard actually. Unfortunately I think it has become a problem for female reporters the notion being that women seem better asking the minutiae and can sweet talk the lawyers.

Sources on the round

Sources on the court round have been established in Chapter 3 as disparate, unreliable and varied. The findings confirmed this. Reporters noted that there was clearly a need to establish sources on the court round, lawyers being one of the predictable sources for the reporter. All media were asked to list the sources or channels of communication they used most frequently on the court round. The most common ones were: lawyers – prosecutors and defence counsel; police; court staff – sheriffs,

bailiffs, clerk of the court, judge's associates; court lists from daily newspaper or internet; diaries; other media; other journalists. Also listed, but cited less frequently were: parties involved in an action; the public relations staff at law firms; Public Relations for the Bar Association or Law Society; informants; court documents; police stories; other contacts; security staff; court reception staff; and the court registrar.

One reporter said she used mostly official channels, rather than personal contacts, whereas others maintained personal contacts were most essential in the court round. One newspaper reporter summed up his contacts and the priority of knowing about his round:

> Many and varied. I always joke that I wake up each morning and read Page 1 to check that the world wasn't destroyed overnight and then I check the law list. Lawyers, court officials, diaries, just a combination of them all. Contacts, it's acquired, comes from trust.

One print reporter, who said he relied on other media, described the role of court reporting as being like a "frontier" and the reporters were "co-conspirators" because they relied on each other and spent more time together at court than with their colleagues in the office.

Over half the media also listed the PIO as a source of information, however this was rarely the first contact listed. One person drew a clear distinction between the PIO as a follow-up source rather than first contact. Nevertheless, the media responses showed overwhelmingly that the PIO had become part of their established contact base and a predictable source within the network of information of the courts.

The Public Information Officer

The findings that relate to the role of the PIO show how this function intersects with media practices. In particular, access and accuracy were two of the key themes that emerged from the discussion on the role of the PIO, in general one leading to the other. In addition, the media believed firmly that the PIO should have training and skills similar to their own so they could relate to the needs and demands of working with the media.

Access

Access to the PIO was central to establishing and maintaining open channels of communication. Media in all jurisdictions that employed a PIO were asked how often they were in contact with the PIO on a scale of "daily" to "never". Table 7 shows a breakdown of the responses. All media outside Melbourne and Adelaide reported contact on a less than daily basis. Only television reporters in Melbourne and Adelaide reported daily contact and in both these places there is a well-established PIO. In Canberra, where there is no PIO for the territory courts (only the High Court) the reporter said he never made contact with a PIO.

Table 7: Frequency of contact with the PIO

Reporter	Daily	Frequently but not daily	Occasionally	Irregularly	Hardly ever	Never
TV Sydney		X				
TV Sydney		X				
TV Sydney			X			
TV Sydney			X			
TV Sydney			X			
TV Perth				X		
TV Perth		X				
TV Adelaide		X				
TV Adelaide	X					
TV Melbourne	X					
TV Melbourne	X					
N'paper Adelaide		X				
N'paper Canberra						X
N'paper Perth		X				
N'paper Melbourne		X				
N'paper Melbourne		X				
N'paper Sydney			X			
	Daily	Frequently but not daily	Occasionally	Irregularly	Hardly ever	Never

Frequency of contact with PIO (number 17)

A priority in jurisdictions with PIOs was making the media's job easier through facilitating access to materials such as transcripts and evidence, as well as providing a conduit to the judiciary. In the jurisdictions with PIOs, while there were suggestions for improvements especially from the television media, which will be discussed later in the chapter, all categories of respondents believed communication and access had improved.

In two jurisdictions with well established PIOs, reports were extremely positive. One reporter noted the importance of working with a PIO:

> It's an extremely critical role because here in South Australia we have made some terrific strides in getting publicly accessible information in a quicker and easier way. In the past it's been a convoluted nightmare to get our hands on what should be publicly available information, now the P.R. office facilitates that and on the whole it's a very good system. But also we have a good liaison, a mediator and facilitator between us and the judiciary and the magistracy.

And a PIO in another jurisdiction summed up some of the recent advancements:

> …we've got rid of a lot of silly house rules about access to transcripts and so forth over the years. It's a hell of a lot better than it was. Reporters can use tape recorders. Little things but it is a lot easier and more media friendly than it was.

Conversely, a reporter in Brisbane, with no PIO, said access to documents could be extremely difficult:

> Sometimes you can't get them the same day, that's a nightmare. If ever you're doing an investigative report for a newspaper or a weekly, you want to go back and revisit things, the older things can take up to a week to get here. That's for District and Supreme, for Magistrates it's just an absolutely disastrous process. One set took me over a month.

Similarly, in Canberra, a jurisdiction without a PIO for the territory's courts, access for one television journalist had been problematic until she approached the Chief Justice of the Supreme Court of the ACT and asked the PIO from NSW to vouch for her. She recalled: "Suddenly I had access to everything. They don't have a public information officer (in the ACT), nor is there any likelihood that they will get one".

Among those items which were cited as "making the job easier" and facilitating access were the development of court-media committees (also known as forums or liaison groups), use of judgment summaries, courts emailing daily lists, standardised request forms and court guidelines. For some, all these items, together with a positive working relationship with the PIO, made the job simpler and straight forward. One reporter noted:

> I speak to him (the PIO) at least once a day, requesting files or requesting information. A good public information officer such as the one we have currently is a fantastic source. Not only do they work in terms of getting us transcripts, access to evidence, and comments from judges and members of the judiciary but they're also capable of trouble shooting for us, solving problems, helping out when members of the registry think that we should pay $2 for the daily court list, things like that.

Media Committees

One judge noted how the committee meetings had been extremely successful:

> … once upon a time there was no-one dedicated in that role, to dealing with media enquiries … the fact that we now have these forums once or twice a year speaks for itself in a way and quite apart from those forums from time to time if they've got a concern they raise it with the media PIO who tells me so I'm sure it does make it easier for them.

Three jurisdictions run media liaison groups, but only two include members of the media. In the jurisdiction in which media are not included in the liaison group the

judge summed up the process: “The liaison with the media is through the public information officer and requests for changes of policy … comes through her to the media committee”. This PIO said she spoke to the media often “not in a formal sense but in an informal sense I’m always saying to them ‘this is what we can provide’”. However, one News Director in the same jurisdiction reported that he was “rarely’ consulted by the courts.

In the other two jurisdictions with liaison groups or committees, media were extremely positive about them and what they represented in terms of access and improved communications. “It’s a good system, plus it keeps a direct line of communication between the Chief Judge and the reporters,” noted one News Director. The committee meetings were described as generally informal and took the form of:

> … a round table discussion between the media and usually two Supreme Court judges and two District Court judges and two Magistrates who are nominated by their peers to come and attend it. And draft an agenda in the weeks leading up to it and we sit down over lunch on a Friday and then hash out our issues and what is working and what we have concerns about and at the same time it gives the judges the opportunity to discuss what their concerns are.

The make-up of the committees did vary between jurisdictions, with a Department of Public Prosecutions’ nominee, media lawyers, and (sometimes) a police media liaison also attending, however the format of the informal “round table” was consistent.

Media Guidelines

At least four jurisdictions have developed guidelines for the media in covering courts. These were generally discussed in terms of the television media, because this was the new area of access where parameters had to be set. The Federal Court, for example, has a formal set of guidelines in place for television access. A judge noted how his jurisdiction had guidelines for the media: “They produced this document – ‘Guidelines for Journalists’. That was in 1991. That, I think, was a very important step”. But one News Director said he would like to see guidelines in place that brought uniformity to the issue of camera access, rather than having it up to individual

judges where there was no consistency. “We are still at the point of arguing the principle rather than having a set of guidelines which you can fall back on and say under guideline X we would like to do Y.”

Thus, the presence of a PIO, the inclusion of the media on a bipartisan committee, and increased consultation with the media, has all helped to improve access. For many, improved accuracy in reportage was a logical follow-on from this.

Accuracy

The judges had a lot to say about accuracy. For each of them this was a priority of the role of the PIO and it became clear that this was one reason the judiciary had spear-headed the development of the role for this very purpose. One judge noted:

> Our aim is to try to help and encourage the media to report more accurately and therefore trying to make sure that they get the right information so that there’s less reason for them to report either in an incomplete fashion or in a fashion that reflects a misunderstanding about what’s gone on.

Another judge noted that the use of judgment summaries was a great contributor to accuracy, and in his jurisdiction journalists based their stories on these summaries, hence they were more accurate. This was reinforced by the PIO who worked in the same jurisdiction:

> Summaries have been enormously helpful in minimising mistakes and maximising accuracy, there’s no question about that. They can never be selective they’re of a general nature but they’re very helpful, particularly if there’s audio or vision to go with it. They make it so much easier.

And yet another judge said while he believed really professional journalists did not need to use a PIO a great deal, it was good to have a person in that role because of the occasional need to check accuracy of material. He said he was always mindful of how he could assist the media:

> The only time I, in a sense, have been uncomplimentary is when I tell juries at the start of the trial that they should not read anything in the press, listen to anything on the radio or watch anything on television. Because amongst other things the journalists have to be in a number of different courts and even if they run perfectly accurate stories the sub editors are going to cut it around, add a headline. The rest of the time I tell them that the coverage that is given is very accurate.

And a PIO supported this response. She prioritised her primary role as facilitating access, noting that if the media are given reasonable access to material, accuracy in their stories will automatically follow:

> I see my job not so much with accuracy as much as saying this is information that you're entitled to have and I'm going to help you get it. Part of that is that if people have got the right information their story is so much more likely to be accurate. We give people the transcripts in complicated cases …We don't charge them. The media shouldn't be priced out of public access to court.

Another PIO noted: "Just having a person like a journalist on the staff of the courts who can understand what the journo needs and get it to them quickly, that's helped improve the accuracy".

The media respondents also generally felt that accuracy was an important benefit of having someone in the role of PIO. One reporter noted:

> They (the PIO) can assist with accuracy because they provide the transcripts; we actually get the words right, also we can call them to check spelling, name, D.O.B. and suburb … they go through the courts' computer system for us and find out what the actual charges facing each person are and that avoids problems down the line, like defence lawyers getting upset, that sort of thing.

While summary judgments have been seen to improve accuracy, there have also been moves to allow the broadcast media to bring tape recorders into courts, although in one jurisdiction this was still "under consideration". Clearly, it was a development

that was now well and truly on the agenda, but reporters were keen to see it as standard practice.

One judge commented how it had worked in his court: "You can use a tape recorder in proceedings, with the leave of the judge, on the basis that it is not used for any purpose other than the accuracy of the report. And that I think works extremely well".

A television News Editor, supporting this, noted how the use of the tape recorder would be really useful in improving accuracy:

> There is a draft guideline out on that which would allow it on a more regular basis. Judges quite rightly are quick to criticise journalists for inaccuracy because people don't have shorthand they way court reporters used to. These days the tape recorder is fairly ubiquitous. Restrictions would be firmly in place: it is not for broadcast, it has got to be erased within 24 hours of recording and so on but it would be a means of getting the darn thing right.

He said PIOs could assist with court stories but cautioned reporters about being too reliant on them.

> We reckon our reporters should be getting the story right in the first place but I'm sure that there have been occasions when they have checked something either on a point of law or a point of practice or even on a point of strict factual accuracy where they have been able to either correct it themselves before it went to air or point us in the right direction.

For one television journalist, the speed and accuracy of obtaining information through a PIO was paramount in filing her story by deadline. She explained how frantic getting the story together was when restricted by limited time-frames, but continued that the PIO, in the end, assisted: "It is such a tremendous panic and can compromise your ability to be accurate, but that's not a reflection on the public information officer … she helps".

In Brisbane, one reporter lamented the lack of the role of a PIO but was nevertheless quick to limit its scope. “If I were drafting the position its core duty would be to provide accurate detail on defendants and speedy access to documents in the court registry for no fee. Not to help with substantive information, not to tell you what goes on in court”.

However the Brisbane judge said he had made it clear that the media could ring him with a view to getting accurate details of stories. A judge in another jurisdiction who was also quite happy for direct media contact reinforced this. “I have always made myself readily accessible to the media”.

One judge said in his jurisdiction the issue of journalists accessing accurate documents had been on the agenda since the early 1980s.

> … It was put to the Attorney, to the Chief Justice, that court reporters were often concerned about not being able to get entirely accurate notes on what the witnesses said. They had no formal access to transcripts and had to rely upon the cooperation of counsel or the court to allow them to check some particular pieces of the evidence.

The need to gain quick access to accurate information then was central to the importance of the role of PIO. The media firmly believed that this could be best facilitated through a PIO who had been trained and worked in the media before moving into the courts, supporting the concept raised in Chapter 2 about shared lifeworlds, experience and knowledge bases.

Training and skills

All media respondents were asked what training or skills should be held by the person in the role of PIO. Responses were overwhelmingly that the person should have journalistic training or be a former journalist who should ideally have covered the courts in their journalistic career. Of the skills most commonly identified, five reporters identified the need to understand the daily deadlines of the media as having

primacy in the role. Other common responses were that the person must be a good communicator and understand the needs of the media. Several respondents believed they should also understand the needs of different mediums and two people said they must be able to work confidentially, without alerting their competitors to ongoing investigations. Several said they must have a working knowledge of journalism and the law and have the ability to "wear two hats" and negotiate with judges and the media. This was phrased by one reporter as working "both sides of the fence":

> Too often judges and other people in court have no idea about the demand of the day to day news gathering and production. That PR person's got to know that, ideally someone who's been in the system.

Of particular interest was a resistance to having a person who was a former lawyer, paralegal or judge's associate in the role. Several reporters raised this profile as being quite unsuitable or inconsistent with media needs. One senior print reporter, with more than a decade experience in court reporting, was adamant about this:

> Got to be a journo first. I think the last think they want is a lawyer. The secret of success of a good law reporter is they don't look, sound, taste or smell like a lawyer. You've got to have legal nouse. You've got to have an understanding of legal concept, but you don't need a law degree. If you think too much like a lawyer you'll make a bad public affairs officer.

Several respondents also deemed training or skills in public relations unnecessary. In these cases public relations was equated with promotions and marketing.

> In a way it is almost things you don't need. I don't perceive the marketing or sales or strict P.R. qualifications are that necessary because the way I've seen it work the information officer deals a lot with the media regularly and so it's not so much a sales position. I presume they are trying to manage information.

One television News Director was quick to position the role outside what he perceived public relations to be:

> It's not public relations. It's quite a specific liaison role. (The PIO) wouldn't take a call from the public would she? The public wouldn't know who (she) was for a start.

A consistent thread throughout the responses was the media's presumption that the role of the PIO was either primarily, or entirely, for their benefit. Not one person suggested the PIO should have skills or training beyond that of facilitating access and assisting the media. One response summed this up:

> Here in Adelaide we have four major television stations, one newspaper and several radio stations who want courts information on a daily basis, if that person is splitting their time between promoting the court in a PR role and media liaison, they're not having the time to do either job properly. It's important to have a PIO who is solely for the media. Former journalists seem to make the best public information officer when it comes to courts.

Indeed, in Adelaide, the role of PIO has been divided into two: one specialist media liaison officer and one community liaison officer. In addition, a dedicated media liaison officer was employed to work solely on the Snowtown murders committal and trial, which ran over a period of several years. This case is discussed as a case study later in this chapter. This jurisdiction is the only one which currently employs more than one full time PIO. In addition, a third person, half funded by the courts and half funded by the State Education Department, had also been appointed to liaise with schools, as Education Officer. The only other jurisdiction to divide the role between media and community has been the Federal Court, which for some time employed two Officers with a similar division between media and community. This has since been scaled back to one person who is Director of Public Information.

This dedication to servicing the media alone was not, however, consistent with the actual job description of the PIO. The PIOs were asked to divide their role between media liaison, community liaison, public education and assisting the judiciary in

keeping with the breakdown of the role in Chapter 4 and Appendix 1. Table 8 provides a breakdown of how the PIOs who work alone, divide their work. In this table, the Federal Court is omitted because, at the time of interview, it employed a Media Liaison specialist and a Community Relations specialist. In South Australia the breakdown is prior to December 2002 when the position was split into Media Liaison and Community Relations.

Table 8: Breakdown of main work areas held by Public Information Officers

	Media	Judicial	Community	Education
PIO1	70%	20%	5%	5%
PIO2	80%	9%	1%	10%
PIO3	80%	20%	-	-
PIO4	50%	20%	15%**	15%**
PIO5*	60%	10%	15%**	15%**

Work category

*allocated 10% to administration

**where community and education have been given together they have been evenly divided

PIO1 said she received between 15 and 20 media inquiries daily from the metropolitan, suburban and regional print and television journalists, with the occasional interstate or international inquiry. Unlike some of her counterparts, she was happy as a sole operator, although admitted that some administrative support would be of help.

It is interesting to note that in the following table, she does not deal with inquiries relating to Magistrates Courts. This could contribute toward her being happy with the status quo. She described herself as:

> Definitely a facilitator of information: a confidential source the media can come to when they need to check the stories. I don't tell other journalists what they're doing. They know that and they think they've got an exclusive and they can't believe it the next morning when *The Australian* had exactly the same stuff too. And I know they appreciate that. And then I'm there to give confidential advice to the judiciary about media issues.

PIO2 said she believed community and education areas were under-utilised in the jurisdiction in which she was employed. She noted: "courts really haven't grasped that they could be giving themselves a lot more free kicks than they have… yes I think the court misses many opportunities to put itself before the public".

She noted that the South Australian courts (not her own jurisdiction) were probably "unique among us" and had developed the public education and community role, adding that the Chief Justice in South Australia was interested in getting the community involved. The decision to divide the role in that jurisdiction further explained this. The judge from South Australia noted: "we just thought it was too big a job for one person. It was important enough to have two people working in the area".

PIO2 also noted that the community area was identified as one that the American courts were addressing seriously and attributed this in part at least to the election of judges in America where they are more answerable to the community.

PIO3 explained that the vast majority of her work was media relations: "I do believe strongly in the role. And so do the judges and the magistrates. Hopefully that is what the media sees". She said she believed the areas of public education and community relations could be improved but she did not know where funding for that area would come from. Her job was largely reacting to media inquiries. "You can only do so much" with one person in the job.

PIO4 said while she was a point of contact for the media, she also received a lot of queries from secondary and tertiary students.

> Sometimes you can get queries that are code for 'Please can you write my assignment for me?' I'll direct them to a few websites or might name a couple of books or something that they might want to have a look at. But other times you can tell that they've obviously done a lot of reading and they've been really stumped by a point and they're really not sure about it and you know I'm happy to give them as much as I can on that.

PIO5 said the media did not contact her for initial inquiries and likened her position to more like "a smorgasbord, not an a la carte menu", referring to how she dealt with many on-going media inquiries at a time rather than becoming absorbed in one inquiry at any one time. She noted: "The system here is such that media are encouraged to go directly to the courts and directly to the various registries and so on. It's only when they get a big snag that they'll ring us up".

While community work was varied, and not investigated at length for this thesis, it is noteworthy for a variety of reasons. It is a significant and important part of the work of several of the PIOs, despite the media not acknowledging it. A summary overview of this role provides insights into the public relations work of the PIO that goes beyond media liaison alone. PIO5 described this type of work as:

> Court tours, they (groups) like to come and look at the courts in an organised gaggle, particularly oldies; information about cases, sentencing, inquests, general information, who's who and how to find out a particular outcome or way to proceed. They just don't know who to contact so they contact us.

In South Australia, an annual Strategic Communication Plan for the courts is developed. The Community Involvement Plan for 2004, for example, is made up of six focus areas: issues, responsibilities, resourcing, timing, progress and proposed outcomes. These areas include sentencing, processes, self-represented litigants, user-friendly courts, judicial independence and technology (Courts Administration of

South Australia, 2004). Of the six jurisdictions surveyed, this type of community plan appears to be unique to this jurisdiction.

In Brisbane, which functions without a PIO, the judge made several observations about the role that would place it in the broader realms of public relations than the more specific role of media liaison. His description of the PIO incorporated public relations tasks as beyond that of media liaison.

> A public relations officer to the court would embrace how we present court initiatives to the public … such as major public events … that the public should be aware of … brochures describing the system in broad summary for visitors and school students.

In this jurisdiction, in the case of the Childers Backpacker hostel fire trial, in the case of *R v Leonard John Fraser,* the Deputy Registrar acted as a media liaison officer. The Brisbane judge said, however, that the "media would have preferred someone who was familiar with their needs". This is consistent with the media's recommendation that the PIO should be a former journalist or have journalistic skills.

As well as dividing their time among the different roles within the courts, the PIOs must also divide their time among the different court sectors within their jurisdiction. (In the following table the Federal Court and the High Court are not included because they only have one sector each.)

Table 9: Breakdown of court sectors in which Public Information Officers work

	Magistrates	District	Supreme	Other
PIO1	0%	40%	55%	5% (Childrens, Family, Coroners)
PIO2	15%	40%	40%	5% (Coroners, Childrens, Tribunals)
PIO3	10%	20%	30%	40% (Childrens, Family, Coroners)
PIO4	20%	25%	25%	30% (Coroners, Childrens, Environment, Corporate)

Court sectors

Table 9 shows that, in all cases, the superior and intermediate courts receive a greater percentage of the PIO's time than the lower courts. The Magistrates Courts receive between 10 to 20 per cent of the PIO's time. This is consistent with the proposition posed in Chapter 4 that the Magistrates Courts are less supported by this role, and has further implications in terms of the total positioning of the Magistrates Courts in relation to the superior courts.

In the jurisdiction that does not include any time spent on the Magistrates Courts, it is noted that media enquiries are "now handled by the Attorney-General's Department … this person is not on the Chief Magistrate's personal staff". This raises the issue of how the separation of powers impacts on the role of the PIO and who they are ultimately answerable to? In almost all cases the Chief Justice of the jurisdiction was

cited as identifying the need for a Public Information Officer in the first instance. One PIO confirmed the point raised in Chapters 2 and 3 that this was in response to the negative publicity that the judiciary had received through the news media.

But, the issue of keeping the staff of the courts generally separate from the executive, in particular the Attorney-General's department and the general court staff, was not always simply defined. One PIO explained that the registry staff at the courts were public sector:

> I am not public sector in that sense, nor are associates or judge's staff. Most judges have two staff members…magistrates have none. I answer to the Chief Justice so whilst the public service has (employs) me, government policy doesn't apply to me.

In general, the position was separate to the Attorney-General's Department, and indeed, the PIOs were adamant that its development did not require the Attorney-General's approval. Several PIOs noted that funding for their position came from the (state) government, within the court's budget.

In the one State without a PIO, Queensland, the need has been identified but never filled. It was explained as follows:

> Financially independent courts like the Federal Court and the High Court would appoint their own media liaison officer. Courts dependant upon departmental funding would have an appointment made by the Executive – that is the case in Queensland … Some years ago applications for appointment were advertised in Queensland but no appointment was made and the matter was not pursued. I do not know why the person interested in appointment did not take it up. The proposal was for a media liaison officer, as I recall, to serve both the Courts and the Director of Public Prosecutions which would have raised unsatisfactory prospects of conflict.

This is supported by a newspaper article published at the time of completion of this research, in which a senior appeals judge (not the judge interviewed) wrote a

newspaper column which argued that the Queensland Executive was the only obstacle to the appointment of a PIO in that state (Davies, 2004).

It is noteworthy that in Queensland the judge proposed the appointment of two Public Information Officers: one for the Magistrates Court and one for the intermediate and superior courts. He noted that there were 78 Magistrates, 24 Supreme Court Judges and 36 District Court Judges in the state: "The Magistracy is an enormous machine. The work of the magistrate is less enthralling but on the other hand (there's) a lot of public interest work there". No other jurisdiction currently works on a division such as this, with most PIOs working within all levels. Such a division would, however, be consistent with the perceived needs as discussed in Chapter 4. This issue is discussed further in later chapters.

Keeping control of the agenda

Consistent with the media response that the role of the PIO was largely to assist them, the media respondents emphasised that in most cases their communications with the PIO were in response to their own inquiries, rather than initiated by the courts (the exception to this would be the use of judgment summaries and media liaison committees). This was of particular importance to the reporters in maintaining control of the news agenda. When asked whether the role might encourage complacency or laziness or whether it would not impede investigation among journalists, most media respondents were quite adamant that it would do neither. The response was overwhelmingly that this round required reporters to be proactive and it was up to them to determine the news from the courts. In particular, television journalists were outspoken on this point. One Sydney reporter was adamant in their response: "Lazy? You can never afford to lazy in this round. There is no way they make you lazy. You are not being spoon fed".

And another in Sydney noted how important research was within the court round:

> I find the first suggestion ludicrous. This is a round where meaningful requests can only be made once the journalist has actually done sufficient research to

> know what to ask for. The PIO cannot and will not do that research for you – they are facilitators.

And these responses were echoed in Adelaide where a reporter described in some detail the process involved in reporting the courts and where the PIO fitted in with his work noting how the PIO acted as a means of getting over the "bureaucratic hurdles that the courts can throw up at you".

> It makes the job easier by smoothing the way to get to the information, where in the past you'd waste hours chasing up a sentencing remark or a transcript. It would be wrong to suggest that such a person would encourage laziness. You still have to go out there and look at the cause list and make your own assessment about the case, and you still have to go into court and take notes, and come out and sit at a computer and write your own story and chase people up and down the streets with cameras and look for photographs.

Two newspaper reporters, however, noted that if anyone were to become complacent or lazy, it would only be television reporters. "It can encourage laziness and may make life easier for the TV journos who may get enough info without even being in court," said one. And another noted that television reporters, particularly those not usually covering courts, could become lazy and take the courts' handouts where as print reporters resisted this. "Other journalists, like me, don't even read what they put out for fear that it might divert me", he added. This underlying tension between print and television reporters is consistent with that foreshadowed in Chapter 2 and is developed as a central theme both later in this chapter and in the following chapters.

One PIO noted that some journalists were indeed becoming used to being supplied material and expected this to occur, contradicting the earlier responses from television reporters:

> …. we do live in an age where sometimes the journalists expect to be spoon fed and expect a copy of the tape and the summary, and other forms of P.R. You might take the view that if they're a bit lazy and not too bright that's all

> the more reason to do things -- ala summaries -- that are going to improve the process.

However, another PIO said the local reporters knew the system, that they would not be "spoon fed", but that "outside" reporters and authors who were researching a case tried to rely too heavily on handouts.

> The locals have worked through the court system and know how to get information. One author would come down from Sydney and he'd ring me and say what's happening today, could you fax the transcript. And I'd say no, there's 17,000 pages of it, a lot of suppression orders so that would be a dangerous thing to do. If they want to get an accurate record of what's said in court they need to be in the courtroom.

Interesting responses came from Brisbane, the jurisdiction surveyed without a PIO. Here, responses about the relationship tended to be either guarded or sceptical. It was clear that in this jurisdiction, where the role of PIO had never been realised, reporters would not accept the PIO controlling the news agenda or providing too much material. One TV reporter noted:

> It would be sanitised, which is very much how it is with the police media. They're very handy at times but other times you've got to go round them to get what you need. Other times they can be more of a hindrance than a help because they're trying too hard to protect …You'd get a homogenised view.

And a print reporter, also in Brisbane, was less than positive about the role of the PIO, also seeing it as non-essential:

> They advertised for a "chook feeder" in the courts 18 months to 2 years ago and someone accepted the position, but never took it up. In some ways it would make the job easier because of barriers to journos. In courts some feel reluctant about a "chook feeder", it could affect your contacts.

Notwithstanding the general feeling that court reporters still had to do the same amount of investigation and reporting with a PIO in the courts, many agreed that the role had made the job of the court reporter easier. Even the occasional criticism of the role of PIO was tempered, sometimes begrudgingly, with an acknowledgment of the progress it represented: "I suppose having a public information officer is intended to manage us – it's not to help us primarily. We can't ring judges directly. But I'm not saying that there hasn't been some headway made – there has".

The question of whether the PIO role was proactive or reactive in meeting the demands of the media had changed over time. One judge noted how the role had changed in his jurisdiction:

> I think it is both (proactive and reactive). In the early stages it was more proactive because she had to just continually work with people who didn't know what she could do. Now to some extent, having paved the way, she is likely to be just reacting to people who come to her.

Generally this suited the reporters, who preferred to initiate contact. It was generally felt that communication was easier, more open and efficient through a PIO than through the varied other sources in the courts system.

Issues for television

As noted earlier, the role of the PIO has paralleled the recent camera access into the television media. Clearly the PIO who has, for the most part, a background in the media, has been at the forefront of moves by the courts in this field.

The television media has appeared to stake its own claim over the territory of courts alongside its print counterparts, however there have been some significant stumbling blocks and issues surrounding this development. As predicted in the literature, this nexus between courts and the television media presents special issues.
While these reporters cover the round on a regular basis -- indeed all respondents in this category noted attendance in court every working day or most working days -- the overwhelming problem they reported was the lack of vision.

Lack of vision

> No matter how good the story is you can't convey it without the vision. If it is going to be a wall of your voice, it gets pretty monotonous. Stick figures and people with slashes across their eyes gets a bit sad.

These words from a commercial television reporter sum up the responses from the television media about the need for vision and the central problem for television in covering the courts. Another commercial television reporter echoed the words, noting how important vision was in having stories accepted in the newsroom:

> Basically I have to tell my boss: yes, I have a picture of the victim; yes, we have a picture of the scene of the crime; yes, we're going to get grieving relatives outside because if we say no to any of that then I'm not going to get a story up.

The "ownership" factor for roundspeople meant television reporters were often quite passionate about it. An ABC television reporter was scathing about the lack of vision available to television reporters:

> Reporting courts for television is an absolute nightmare, it's a non sequitur. Courts are closed environments and television news is all about pictures … I'd like to see cameras in court, any journalist would. It would make our job that much easier. You don't have to worry about standing around outside court, chasing prosecutors, people are running away. We could get our vision and sound grabs from inside a courtroom and I think that would actually enhance accuracy.

He argued that despite television being around for more than 50 years, Australian society remained frightened of it, especially in the context of courts, unlike the United States which had embraced the use of television in courts. This was partly due to heightened concerns in Australia about invasions of privacy.

> Australian society is still very juvenile when it comes to the criminal justice system. We treat those … that try to report it like children. It's a very juvenile, immature approach. For some cultural reason, Australians are terrified of television, they don't mind radio, they're comfortable with print, but as soon as you pull out a television camera you may as well be pulling out an Uzi sub-machine gun.

This frustration was clearly shared by other television reporters: "For TV sometimes you wish there was another way so that we could cover the really meaty stories that the newspaper and radio get to cover**".** There was a sense that television reporters believed their print counterparts had better opportunities because of vision but also because of the different cultures in the newsrooms:

> The convention in television is that only a print journalist would want to do courts when there is not good television. My feeling is that the stories are so extraordinary if they are told properly, it is the way you tell them. You can only ever be impressionistic, but it is still worth going there.

Television reporters frequently noted how much easier the print reporter's job was. One compared the two mediums, noting that print journalists could be promoted within their organisations to higher levels than in television and this was a disincentive for television reporters:

> You're never going to be elevated into the status of a legal editor that you could be of a newspaper. You'll always be about third on the rung in terms of where you are likely to be in the bulletin.

One newspaper reporter recalled how, even in a case in which cameras were allowed into the courts, the static nature of the shots and the time allocated in the bulletin, restricted TV coverage. Sometimes too, because cameras were only allowed to film for a few minutes, the best vision occurred when cameras were not present and this represented an added element of frustration to the television reporter. However one

reporter was critical of her television counterparts for not pursuing court stories more vigorously, being prepared to "write off" stories because of a lack of vision.

Television reporters and news directors raised different issues. Generally, news directors were more dispassionate about television cameras in courts than reporters. One commercial news director said all television newsrooms tended to rely on court stories to fill the bulletin on an otherwise quiet news days: "There is a tendency sometimes – all of us do it – to rely too much on court stories to fill on a quiet day if there is not a lot else around".

News Directors (all from the ABC) regarded courts as either "not terribly interesting" or as one put it: "I think you need to take into account in a televisional sense it's very bloody boring" and another "…generally court cases are boring as bat shit. You wouldn't want to dedicate vast resources to it". One noted that camera access would have to be markedly improved for television to be particularly interested.

> It would depend on what degree of access you were provided with. If you could have multiple cameras covering prosecution, defence counsel, the judge, the witnesses evidence, the QCs themselves … If all of that material is available, it provides you with the opportunity to very easily … put together a very comprehensive report.

One news director argued that while he thought rules of camera access were "unnecessarily restrictive", he was not sure it would be a good thing for the administration of justice if they were liberalised: "If it was open slather, there would be many operators who would use it in less than an ethical fashion. There needs to be very clear conditions placed on the use of material".

Despite Queensland not employing a PIO, it had nevertheless engaged in the debate about cameras in court. The judge said while he was "ambivalent" about cameras in court with "no strong objections to letting cameras in", the jurisdiction had ruled it out. An internal court review had considered the cameras in court issue and "determined not to do so". This was further supported in the literature in Chapter 4,

which noted how a bad experience with televising courts in that state had put courts off-limits to television cameras.

But a television reporter in the same jurisdiction said the TV networks were working on other ways of depicting vision in courts without using cameras. These had already been used in the trials of *R v Robert Long*, known as the Childers backpacker hostel trial, and *R v Leonard John Fraser,* a convicted child murderer who was charged with the murder of a Rockhampton girl who was found alive during committal proceedings, but were still in their infancy and were very expensive. They involved using 3D animation:

> We're experimenting with graphics, a graphic artist makes 3D animations of courtrooms that exist in Brisbane. They've gone in and they've drawn them and then they've gone back and made 3Ds. We don't use them too often because they take too long to render, but they can put different people on and get them to stand up and move around the room.

Cameras for news, current affairs, documentaries or cable?

While most of the television media were vocal about their views on camera access for news, there was a broader spectrum of programming and formats to consider. This included current affairs, documentaries and Court TV as well as news. The diversity that this list represented gave the respondents the opportunity to consider cameras across a range of forums, following on from the range of options that were considered in Chapter 4.

All respondents were asked whether they believed there should be access for the following categories: News, Current Affairs, Documentaries or Court TV. Table 10 shows the responses from the two groups.

Table 10: Should television cameras be allowed in for news, current affairs, documentaries or court TV?

Judges (total 5)	4	4	4	1	
PIOs (total 5)	1	1	3	4	
N'paper reporters (total 7)	5	4	6	2	1
TV Reporters (total 14)	13	12	13	9	1
	News	Current affairs	Documentaries	Court TV	None

Type of TV coverage

Responses included a broad range and number of provisos in allowing the four categories of court coverage, with some interesting trends from the four groups. The judges were generally in favour of news, current affairs and documentaries but not Court TV, whereas the PIOs tended to favour Court TV and documentaries over news and current affairs. Newspaper reporters were most in favour of documentaries, followed by news and then current affairs, but generally not in favour of Court TV. Television reporters and News Directors were overwhelmingly in favour of news, current affairs and documentaries, with just over half in favour of Court TV. Interestingly, the only two respondents not in favour of any cameras in courts were from the media: one TV and one newspaper.

Comments from some of the respondents showed that many believed increased camera usage by the media would require a great deal of balancing rights and freedoms. Those opposed to Court TV generally said it would be boring and tedious. Those opposed to news commented that coverage was "too short".

One judge, who was generally in favour of increased camera access, was nevertheless cautious about the balance needed:

> It adds to the burden of the trial judge to an enormous extent and whilst there is some benefit in an appropriate case I can understand why the general position is that there has to be some very high value attaching to it because it can have the capacity to trivialise a lot of the time and cause potential prejudice and cause other difficulties for those trying to conduct a trial in an appropriate and civilised way.

Another judge suggested Court TV could not be considered until a provider was in place:

> I think (Court TV) is certainly worth pursuing but from our point of view until there's some sort of content provider on the scene it's just academic. We're not interested in letting news cameras in just to get 10 second grabs.

Four PIOs were in favour of Court TV and two said they would "love" it. One said she would love to see a Court TV set up which had internet application, but she concluded that for the most part it would be boring, with the exception of juries returning to the Court room. The other cited the Florida Court experience in which the courts owned a satellite and fed Cable TV to two million people in the United States. "I worked out how we could do it here but nobody wants to play: it costs a lot of money". This sense, that the proposition of Court TV had stalled, was raised by a third PIO who noted: "I thought five years ago we would have had it by now. I don't think it is any closer than it was five years ago now". A fourth was more positive, noting that Court TV was planned for the future but said the internet was another visual medium which had been used and would continue to be developed. The PIO noted:

> Well we're looking beyond the 10 second grab to cable (Court) TV eventually, I don't know how long it will be, and the other thing we've done is gone onto the internet in various cases, that's another application.

One concern about current affairs was that it provided the "opportunity (for courts) to be less dignified", and another opposed to documentaries held concerns that some documentary makers believed they were "on a mission from God" with the way they piously handled programs, although it was conceded that documentaries produced by the ABC were generally even-handed and that specific cases should be considered.

A newspaper reporter who was not in favour of news and current affairs said it was "not appropriate (with) limited educational value". Another said if cameras were allowed in for one category they should be allowed in "for the lot" however the volume of access would have to be controlled. Another print reporter, opposed to any camera access, explained that while courts should be open to the public, this should not be extended to television cameras:

> It makes people uncomfortable, it makes them less likely to reveal certain things, especially on a dedicated station, a cable TV type of thing, people adhere to their privacy more and they'd be less likely to give relevant evidence to be splashed all over the TV that night.

When asked if this gave newspapers an unfair advantage, the reporter responded:

> It may very well be an unfair split but it's one that works, one that allows the victims and witnesses to give their evidence without being splashed all over a 50cm TV somewhere.

Television reporters and News Directors, while representing the group most in favour of cameras in all categories, also identified the need to uphold justice. One commercial television reporter noted that cameras should be allowed "within reason, not all the time. I think it would compromise the administration of justice." And another: "So long as justice was upheld, so long as it didn't destroy the rights of the victims".

An ABC reporter said Australia was "not ready yet" for Court TV, referring to it as "an ambit claim", however, another, also with the ABC said she thought American Court TV was "fantastic". One News Director was in favour of all four categories so

long as he didn't have to pay for them and another noted interest would depend on the conditions placed on the station by the courts. He added:

> In my opinion the public has a right to see the actual performances of the practitioners in the justice system…in many respects their work, unless you are personally involved in the proceedings or you happen to be a jury member, is invisible to the general public.

Another News Director echoed the idea raised earlier by the judge about the need for a content provider for Court TV: "If there was the appetite for a dedicated TV channel, yes fine. But I think that is a very commercial decision that other people would have to make…if that existed you would hope that it would give you access to some material which would be good". He noted that in Melbourne, under one Chief Magistrate, there had been some ground made in documentaries and current affairs and it had "worked well" but the Magistrate's successor was not disposed to the idea and it had stopped. One News Director who questioned how fairly cases would be represented summed up the practical realities for television news:

> In news terms we have to recognise that we are going to be, in the end, producing a relatively brief report. Would you be playing fair if you put the cameras into a court on day one and then didn't do the rest of the case, which is a problem which arises now. But at least we are able to get around that without having committed a vast amount of resources.

Many of these issues had been thoroughly canvassed in the report *Electronic Media Coverage of Courts* written by Daniel Stepniak for the Federal Court in 1998, discussed in some depth in Chapter 4. Interestingly though, this report was not known by any media respondent in this group. While the courts personnel were quick to refer to this report, no media had even heard of it. The ramifications of this are addressed in the following two chapters.

No unified push for access

While the majority of television reporters and News Director believed camera access should be increased in all categories, there was nevertheless a sense of frustration held by reporters about their experiences in trying to gain access. One Sydney television reporter explained an example of seeking access to materials and of the frustration in being denied access over and over again:

> I remember sending a lengthy submission – this is why it is tiring on an individual basis – to the judge involved to get access to the tapes … the judge said I would need the consent of the DPP and the police because it is their property once the case is over. So after a lengthy submission to DPP I got back this high camp vitriol …he employed a publicity officer … invariably putting up smoke screens so as not having to deal with us at all.

Individually, the television reporters were passionate about their round, wanting greater access to allow for better balance, however there was no sense of any unity of approach. Indeed moves had been made, as noted above, only on "an individual basis" and this lack of unity becomes a central issue for discussion in Chapter 7.

Several members of the court group said television, in general, had not pushed its own case and that the process of allowing cameras into courts had stalled, primarily due to the lack of interest by television itself. Two judges who had both allowed cameras into their courts, and been highly in favour of increased camera access, were quite outspoken on this issue. One noted that he believed if greater camera access was to occur "a concerted effort carried out in a constructive way" would be required. He further noted: "The only reason why it hasn't happened more is because television journalists don't go about it the right way". Another judge noted that camera access would require planning and organisation by the TV media.

> (We're) well behind my vision of having camera access every day. The more coverage the better. I don't know that they (the media) realise what a treasure trove there is in the courts … they don't push enough in respect of cameras. Myopic and reactive, they don't think much beyond the next bulletin.

A third judge said the television media had not pushed hard for camera access, that they had "politely raised issues" but their only interest had been in seeking a "license to film criminal sentencing".

In general, the PIOs agreed with these sentiments and tended to be critical of the media apathy in this area. One explained the frustrations of trying to explain the situation to the television media:

> I'm disappointed how little relatively speaking has happened and I'm very critical of the media for failing to push. I've told them this again and again. If they took a different approach, showed far more interest in civil cases, and developed a situation of trust with judges they'd help themselves enormously. … The other thing that the media doesn't do and again I say to them you will succeed here, they do not ask publicly for the access and force a judge to justify a refusal.

This sentiment was echoed by another PIO who summed up a conversation among a group of PIOs about the issue, at a recent law conference:

> …we were talking about cameras in courts and the PIOs that were there – and most of us were – agreed that while we were ready to deal with applications for cameras in courts, media weren't pushing it. They're not making applications, not doing it themselves, so why were we going to do it?

She noted how one jurisdiction had forged ahead with media guidelines, for cameras in court, following the New Zealand experience: "We got the table set but nobody came to dinner, so don't talk to us about how nasty we are about cameras in courts because you actually never make a concerted effort".

As noted in Chapter 5, the five permanent PIOs were sent supplementary questions relating to camera access, toward the end of the data collection period. This was to determine whether there had been any significant changes on this issue during the time period. However, the sense of frustration with the television media had definitely

continued to develop during the two-year data collection period, as this comment summed up:

> Television outlets have no coherent policy or approach. They tend to request camera access on a same-day, off-the-cuff manner. We are certainly on a plateau with the TV experiment. With few exceptions there has been no great effort by the TV industry to push the issue. Significantly, Fox Sports is trying to get cameras into the AFL tribunal this year and from what I understand, it might happen.

Another said there had been no effort on television's part to initiate coverage, except in occasional cases that were generally notorious. However, one PIO was more hopeful that momentum would resume, noting, "two of the current crop of television reporters are showing greater signs recently of wanting cameras in court".
She said the whole issue of TV cameras in the Supreme Court would be discussed later in 2004 where some more formal policies may be developed. She noted the issue was an agenda item at a recent judges' conference in New Zealand and the feedback was that Australian judges were not impressed with the footage they saw from criminal proceedings.

> My rule of thumb, which I think is sensible, is that those working in the court can be filmed -- judge, judicial staff, transcript writer, lawyers, and probably the media … But of course not the jury, prohibited by statute anyway. So it may be that 2004 sees a little more action.

Interestingly, some News Directors agreed that television media had not pushed enough for access. This section of one interview explained the need to persist with applications for camera access and why this had not occurred:

> We probably haven't pushed as hard as we might. We get caught up in the day to day running of things … Judge (name), having been a pioneer himself, he probably feels his media mates have let him down a bit and he's probably right. It takes a lot of time and effort. The issue is still on the table and it keeps getting raised but probably at the high end of the media business we

> haven't put enough pressure on. Because I think it has been suggested to us that the only way at the moment, apart from continuing to debate this in the committee, is to actually go along and make an application for every case that we think we want to be in.
> **Question:** So it just gets to the point where you become part and parcel of the case?
> **Answer:** That's right. And that's fine from a legal side but we would have to be briefing lawyers every day and that's time consuming.
> **Question:** So that's formal applications that they would expect?
> **Answer:** Yes to the point where we wear them down and it's expensive and it's a very legal way to change things around. Even the big media organisations haven't got the money or the executive effort to put into doing that. But their argument, Judge (name)'s argument, is that constant water dripping gradually wears away a stone. You finally get to the point where they will agree because they have heard it so many times.

And another News Director, in a different state, said his newsroom had pushed, but noted that other networks in his city had not: "We certainly have in this newsroom. We've been very active". He said the court reporter in his newsroom had successfully approached the Chief Justice for camera access to the John Button appeal: "We were the only ones who had written to the Chief Justice. People have mentioned it from time to time but (journalist's name) is the one who keeps putting it in writing to them and she finally got the nod". He added that there had been no combined effort to push for access.

One television reporter suggested that the "high end of the newsroom," that is News Directors, would never be the ones to lobby for camera access and that the reporters would have to provide the push.

> He has to rely on his operatives to lobby. You will never in practical terms have an executive or a news director with time to persevere in a general sense for courts to be opened up for example. It will never happen and courts can rest easy on that basis.

Television reporters gave a range of responses to the question of whether newsrooms had pushed sufficiently for camera access with several responding that they do ask frequently for camera access. Some put the blame entirely on the courts:

> They have pushed enough but they're not pushing anymore because they know it's a lost cause. The only people that will get into the courts are the odd person that makes a documentary and they've got to jump through 15 hoops of fire and sign their lives away. Day to day news and current affairs has got no hope.

And another said she had given up without really trying "because we know our limitations. We wouldn't ask for something we know we haven't got a chance in hell of getting."

One News Director in Melbourne summed up how he saw the issue, a response that echoed Schultz's comment from Chapter 1 that the media as the Fourth Estate was subject to ongoing "renegotiation" with the judiciary:

> I guess we want the best of both worlds. We like to have access when we want to have it. But I think it is important that we have a dialogue that allows the judges to understand our problem and us to understand theirs. That is the key to it. And to be fair that has gone on and is going on. It will be a long while before it is over.

If the debate was reinvigorated, and access to cameras was relaxed, would it be taken up by television? News Directors were generally more conservative than reporters about how often they would take up this option. One News Director noted: "Sometimes…but resources would be a major reason. Just can't afford to tie up a crew all day when it might make a 20 second grab. And there are a limited number of cases you would want to do it on". And another commented: "Sometimes, because obviously in some courts it wouldn't be suitable, take into account intrusions into grief and privacy (and limit accordingly)". Another noted that cameras in court would "would remove the need to have reporters doing pieces to camera which is

distracting". Notably, he said his newsroom would cover more court stories in more detail if vision were more easily accessed.

Reporters were generally enthusiastic about the prospect. One noted: "It's always a struggle for TV journos to get footage to go with a story. They'd welcome the ability to film in court." And another said if access were generally eased she would have to pursue it. "Well **we** would because **everyone else** would. It's the whole competition thing."

Newspapers' ownership of the round

One judge though said even if television did lobby for camera access, it would have another, major stumbling block to overcome. "I suspect that it would face such stiff opposition from the printed press that it's not likely to succeed…the printed press now do 99 per cent (of courts). Why should they give up any of their territory?" This sentiment was not widely expressed, however it did resonate with the earlier literature in Chapter 2 on the print media's traditional coverage of the courts and the tension between the print and television news media as noted earlier in this chapter. It also exposed an additional explanation for the court-television impasse.

The judge noted that at the time of the Avent sentencing in Melbourne, which was televised, newspaper articles were essentially critical, putting forward one-sided views as to why coverage was inappropriate: "And they created such a furore in the end it was designed to minimise the prospect that television would ever get hold of court reporting". Below is an excerpt from his interview, which explains how newspapers have undermined television in this area.

> You understand because I worked so closely with all different kinds of media the print media used to always complain about that the electronic could get away with murder because it was spoken but when it came to contempt of court you could study what the newspapers said and they were much more likely to be prosecuted. Where as what appeared on television was fleeting and it was rarely that they got prosecuted. Now people that were putting together news used to get furious about those sorts of things. That kind of

> competition within the media always has to be regarded as a relatively important ingredient…in relation to Avent the radio where hostile because (they were not given) the opportunity to put Avent to air.
> **Question:** Really. It's a big patch thing then isn't it?
> **Answer:** Oh it is absolutely. I'm not saying that it is all-important but I'm saying that people don't give enough credit for being there because the agendas that lie behind opinion articles had to be seen as very significant in the scheme of things. But despite that it would take persistence on the part of television journalists to claw any area for themselves and there are not enough cases overall that would warrant doing it. And the limitations that I mentioned of time and the need for visual content mean that probably overall there is not enough in it to make it worth their while unless they just had a passion for it.

He explained that the Avent case had been intended as "a tiny little step" but the "patch" issue became apparent during the formal application by Channel X to film the case.

> That's when all the patches became very apparent. You won't see that in the formal legal reasons … but if you read it in conjunction with what was done and said in the press at the time you will have a better overall picture.

This is consistent with the findings noted earlier in this chapter, when members of the print media noted that how the "unfair split" in access was nevertheless "one that works", that the television media would be more likely to become complacent with a PIO in office and in Table 10 which saw the print media divided over camera access for news and current affairs.

Uncertainty about legal restraints

Another factor that appeared to impact on television's reluctance to pursue camera access was the high degree of uncertainty of the legal restrictions that governed camera access. All television respondents were asked to explain what they understood to be the restrictions on camera access to courts. The overwhelming response was that

it was far too difficult to gain access for television cameras, that it was up to the whim of the judge, that it was banned or, in one case, that it was "against the law".

Responses from television respondents were as follows:

In Sydney: "We're not allowed 99.5% of the time … it appears to be at the discretion of the judge and the Chief Justice. The Federal Court is a little more open".

In Perth: "In some borderline cases you can shoot from a certain position outside, but showing inside the court precincts is banned … it's a no-access point".

In Melbourne: "It's pretty near total with the exception of (certain) judgments".

In Brisbane: "It's against the law, we can't take any recording equipment into court…I don't know the law exactly but I just know we're not allowed".

In Adelaide: "Cameras in court in this country is a dead issue. I don't think it'll ever happen, not in my lifetime".

While most discussion about camera access focussed either on vision or the problems associated with dedicating a camera crew to courts for the day, the impact changes would have on fair and balanced reportage and the legal issue of privacy were also raised. In Brisbane, both the television reporter and the News Director discussed intrusions into grief and privacy and the impact on the victim. Elsewhere, a PIO said media were aware that vision at any time in court was restricted to paid professionals: that is, the judge/s, their associate, and lawyers. This had allowed the Federal Court to develop its access for television footage because it did not have the victim or a jury in the courts in which criminal proceedings were held.

The privacy issue was one that could be overcome by a contract between the court and the media organisation, outlining specific restrictions such as not showing non-paid participants (victims, witnesses, juries) and destroying footage after a given period of time. In one instance where no contract was drawn up, problems had occurred because of misrepresentations of court proceedings. One PIO recalled how, on one occasion, no contract was entered into, ending in the following series of events which were exposed by *Media Watch:*

> About a year or two years ago, *Today Tonight* did something very silly. *A Current Affair* ran the story that they had filmed with us "A Day in the Life Of" which was only a 5 or 6 minute thing, and *Today Tonight* wanted to gazump them the day before. So they got old footage, they ripped a bit of footage out of Queensland, they got a bit of some stuff out of New South Wales, banged it all together and said well here's a day in the life of the courts. Here is a picture of the Deputy Chief Magistrate who retired a year ago and they're touting this as having happened yesterday in Adelaide Magistrates Court.

One TV reporter had proposed producing a television series based on the workings of the Magistrates Courts, in a similar style to the real-life medical drama *RPA*. While she had worked through a process of applications and paperwork for many months, with support from one of the commercial networks to air the series, senior government bureaucrats ultimately advised her that the proposal was too contentious because of privacy issues.

While privacy restrictions often tended to relate to vision, this was not the only issue. One PIO explained that it also impacted on access to information and there was confusion and access issues over police materials:

> Police now will not give out the name of someone arrested. They will just say a 35-year-old man was arrested and will appear at the Local Court tomorrow. I can't give the name out because the court file only gets opened when he appears.

Privacy issues, especially since the amendments to the Commonwealth Privacy Act of 2001, have thus become an issue for consideration by the media and, while the scope of their limitations is not central to this thesis, it is nevertheless an important area of consideration and one which will be further discussed in Chapters 7 and 8.

The good, the bad and the ugly: cameras in court.

To this point, consideration has been given to the specific issues confronting the courts in their changing relationship with the news media. Many of these issues are best illustrated through actual court cases, which were recounted by both media and court personnel. A range of these cases, representing criminal trials, criminal appeals and civil cases are discussed below. They also include a case study of the committal and trial proceedings of the South Australian "Snowtown" case. These cases serve to illustrate themes and issues that are further developed in Chapter 7.

Criminal Trials

The Avent case in Melbourne, in which cameras were allowed to film sentencing, became a focus for the cameras in court debate at the time it occurred in 1995. One News Director praised the judge who presided over this case as "a very reasonable man" and "a powerful advocate", and said television news people in Melbourne had held high hopes for the case, but the restrictions which were placed on the television cameras had raised problems for the news media.

> Yes it was problematic. We were aware that that was a pioneering exercise in a way so we were prepared to bend over backwards as indeed was the judge to make sure we got some agreed turf we could operate on. In the normal sense those restrictions would be a problem. But we hoped at the time that we could negotiate them through.

But for some at least, the case was now history and memories were less than clear. Another News Director recalled the experience with Avent:

> My memory is a bit sketchy on it but I think that the experience of the Avent case made them (the courts) very gun-shy … The restrictions that they placed on it, I think they felt it was all too hard, too much trouble. We won't be doing that again.

He said the restrictions on the filming were too limiting and that news style was not consistent with court expectations:

> The fixed locked-off shot with the inability to change, quite apart from a practical point of view, that gives you no opportunities to film cutaways should you want to edit it which of course is the idea of doing it. It's another practical way of ensuring that what they do is not edited.

In Queensland, the Childers backpacker hostel case, which ran for five weeks beginning February 2002, used a Criminal Court Registrar in the role of PIO and this was identified as a positive experience between the courts and the media where some access was given to television cameras. One reporter noted how the media were consulted on their needs prior to the trial:

> He explained to us behaviours, protocols, asked what he could do for us, such as setting up a media room. They set a made-for-TV opening … there was a radio mic on the clerk, *Courier Mail* photographer. They used computer animation in channel X, Y and Z by the court artist to augment the court footage of the Banco Court where the trial was held … exhibits could be taken out for photos before they were tendered – knife, suicide note, mug shots.

Criminal Appeals

One PIO recalled two appeals which were broadcast successfully in her jurisdiction. One had been in the matter of *Glenmont v the Royal Adelaide Agricultural Show Society* otherwise known as "The Burning Dinosaur Case". In this case, a life-sized model of a Tyrannosaurus Rex burnt down while on display at the Royal Adelaide Show. The owner sued the Show Society for damages and was awarded $30 million, which was appealed by the Show Society and reduced to $10 million by the Full Court. A summary of the Full Court's judgment, read by the Chief Justice of South Australia was subsequently broadcast. Another case, before the same appeals court, which was televised was *R v Paul Habib Nemer*.

> Again it was a full court, a Court of Criminal Appeal. It was…to do with (the question) … can the State Government order the DPP to appeal a case that the DPP doesn't want to appeal? And the second question was if it can, then should this particular guy be re-sentenced or re-tried or what should happen to his misdemeanour? It's a convoluted case but very popular so we had cameras in for that.

The PIO said the Nemer case was a live audiocast and the visuals were pooled and fed to all television stations, noting that the media were extremely happy with the results. One television journalist described covering the case:

> There was the Nemer case: government v the judiciary. We had our cameras in court for that but that was because the Chief Justice was involved. That was as much a political issue as it was a criminal law issue. That was a bit groundbreaking.

Civil cases

The Federal Court had made significant moves in allowing cameras into court. One PIO was quick to sing the praises of the Federal Court and its televised cases citing the MUA and Tampa cases as examples that had "worked" for television calling them "cases from heaven".

But even these "cases from heaven" presented issues and risks for the courts. One PIO noted: "There was quite a backlash following the Tampa matter, in 2001, where North J. allowed almost unfettered access." And in the case of *Cubillo and Gunner v Commonwealth of Australia* he noted: "In the Stolen Generation case, shots from Cubillo-Gunner – you never see them reacting to the judgment, it wasn't shown – but some judges are now cautious about it."

One PIO said she would like to see television more interested in civil cases, noting that there had been some successes in the jurisdiction in which she operates, including the much-publicised Gutnick case.

> Recently there was a preliminary decision in Joe Gutnick's internet libel action in which he says he was defamed by Dow Jones Insight published in New York. He sued in Melbourne for the downloading in Victoria. Dow Jones said it all happened there, we want this transferred to New York and the judge said he (Gutnick) was entitled to his trial in Melbourne. He read a summary and Channel X came in filmed it.

However not all cases are major, representing public interest news or precedent setting court cases. Sometimes courts simply provide quirky, offbeat stories and sometimes television cameras do get to air them. One Sydney television reporter noted:

> I've had them (cameras) inside. At every turn I would ask if I could go in, if I thought it lent itself. There was one case in the District Court … I went in and asked the judge if I could shoot. It was a case involving an inventor who was being sued over his invention of a toilet seat. I asked if I could go in during the break and shoot the toilet seat as a silent witness in the dock. Everybody was completely happy about it.

But outcomes are not always so positive. One PIO said her most recent experience with television media was when they did not follow the rules.

> We had an occasion when Channel X brought a hidden camera into the Registry to film a Duty Registrar who was critical of the court's processes in dealing with people, who broadly speaking, default on their mortgages. The Chief Justice wrote to the station about this and received suitable replies and I know that internally all staff were reminded of the court's protocols.

Experiences with current affairs, as well as news, had provided a range of experiences: both bad and good. In one state, a current affairs program of the courts which took 18 months to make, was heralded a success by the PIO who oversaw the production. She noted 210,000 people watched the segment, and it beat *Burke's Backyard* in ratings.

> We used that at subsequent court open days where we have up to 2,000 people come through just to have a look at the court. There were people just glued to it and they sat there for the whole 50 minutes...and it still is something that people enjoy watching.

Snowtown: a case study of the court-media interface

The complexity of some cases provides strong illustrations of the tensions that exist between the courts and the media, as both institutions pursue their part in the justice process. This was particularly well illustrated in the so-called Snowtown murder trial (*R versus Bunting and Wagner*) in South Australia. In this notorious case two men were convicted over the serial murders of 11 people who were tortured, dismembered and dumped in barrels in Snowtown, 150 kilometres from Adelaide.The jurisdiction of South Australia is generally considered progressive by the media, with one reporter in this research noting how the current Chief Justice had allowed "things to move forward". However, this jurisdiction came under close public scrutiny and a great deal of criticism by the media during the Snowtown committal and trial, particularly due to the large number of suppression orders placed on the proceedings. Some of the tensions, together with some of the benefits of using a PIO specifically for the case, are explained below to highlight the court-media interface in this case.

The South Australian courts employed a PIO to work solely on the Snowtown case, beginning prior to the committal in 1999 and concluding with the judgments of Bunting and Wagner in October 2003. The PIO explained setting up in the job:

> Obviously there was a fair amount of media interest and that involved logistical work …We had to make the whole court room easy to use …Court room 3 was majorly overhauled and something like $3m was spent on it to make it a high tech court, to make the docks bigger and more secure. The jury area had to accommodate 15 jurors instead of 12, we had to put CCTV in.

The PIO was positive about her role in the case, acting as liaison between the media and the judge and keeping the inquiries limited to single approaches from her instead

of the 15 or 20 a day from individual journalists. She explained that her previous training and work as a journalist allowed her to appreciate the media's needs.

> I had a pretty good relationship with Justice Martin and his associates and that's the key to it I think. As the media liaison you need to be able to go to the judge and say 'these guys want to do this, can we meet in the middle ground somewhere'?

The case became well known for the number of suppression orders made. A total of 226 suppression orders were issued during the trial period. Another PIO explained that the hundreds of suppression orders were to ensure there was no mistrial. She further outlined how the case had resulted in " a certain amount of case law gained ground for journalists".

> Enterprising ones … took on the issue of suppressions and won a precedent judgment. That judgment enables any journalist in South Australia to stand up in court unrepresented to oppose (a suppression order), and … the court must hear them.

Media respondents from South Australia cited Snowtown as a difficult case to cover due to the suppression orders but also acknowledged that this was not typical of their overall relationship with the courts in their city. A print journalist noted: "Despite the fact that there are far too many suppression orders, the way that the media is treated is reasonably fair."

One television journalist, who generally praised the courts for moving "into the 21st century", was nevertheless scathing about the suppression climate in the state: "It has to be said that South Australia is a particularly quirky and stand-out jurisdiction. We've been labelled, and rightly so, 'Suppression City'."

He described his experiences in the Snowtown case as "immensely frustrating", explaining that the media were first given to believe they could access the Magistrates Court for the committal hearing: "It was just like a dream come true". However, he

went on to explain that such proposals were “completely reversed once it got to court”.

> The defence lawyers jumped up with impassioned and lunatic submissions like the sky was falling, the end of civilization as we knew it. Everything was cancelled and reversed. We ended up with blanket suppressions over most of the material that emerged in the committal hearings.

He described the suppression orders at the committal and at trial as extreme, calling the situation “absurd”:

> ….oh we were outspoken but we didn’t get anywhere. That’s the case here, the bigger the case, the more impact it can have on the community, the more therefore the community has to be denied that information. It’s a real nanny state here.

He said the television media had expected access to cameras because facilities had been put in place for them, with talk of a permanent camera in the courtroom due to the huge public interest in the trial. However, this was thwarted by the arguments of defence lawyers.

The PIO explained how “ninety per cent of evidence was quite run of the mill. It was credit cards, not all sensational bits of bodies and that other kind of macabre stuff that everyone wanted”. She further explained that reporters were allowed to get 30 seconds of background vision of the judge and his associates walking in and the courtroom rising at the start of the trial. “And at that stage he made it clear that this is the last time they would be allowed in, there was no vision of inside the court”.

While television cameras were not allowed into Courtroom 3 after this initial footage was taken, there were some other opportunities to gain vision. The PIO explained that when the jury was taken out to locations, the judge allowed television media to film the scene provided the faces of the accused were pixilated and that they kept a “respectful distance” from the jury. They were allowed to film the judge and his

associates. Also, if the media wanted vision of certain exhibits, they could apply to film these in the exhibit room, which was adjacent to the courtroom.

Thus, while Snowtown provides a strong example of the tension that existed between the courts and the media, it also presents some incremental advancements which will pave the way for the future court-media interface. In particular, it provides an illustration of the courts acknowledgment of the need for a full-time PIO on such a high-profile case, which was at small cost when compared with the $3m outlay for the courts refurbishment alone. For example, the salary of the Public Information Officer at the High Court was advertised at between $61, 512 - $86010 in 2002 (The Australian, 2002: 7). In addition, this case placed on the agenda other important issues such as the media's questioning of suppression orders, the concessions to the use of cameras while on jury location visits, and, finally, the media's right to argue against a suppression order, unrepresented before the court.

Court-media relationships: improving the interface.

While Snowtown would hardly be described as a success story of court-media relations, it does represent a case that fuelled much dialogue about the interface between the two groups. On a broader scale, this two-way relationship, as well as the internal relationships within the media, and within the courts, also came under scrutiny by all respondents. All were asked if they would like to see changes to the way courts work with the media and the way journalists cover courts. This resulted in respondents not only looking at the obvious deficiencies in the court-media relationship but also at their own internal cultures. Responses ranged from philosophical to practical.

> I have never stopped being shocked by the contempt with which we are held. We are not seen to have a legitimate role in covering what is going on in the courts.

These words, from a television reporter, about the way reporters perceive their relationship with the courts, were not isolated. A newspaper reporter in a different city echoed these words: "There are some who acknowledge the role the press plays and

there are others who think the press are scumbags and won't tell them anything". Another reporter noted that "greater trust of the media would enhance the relationship".

One judge further reinforced this: "Judges could have greater personal relationships (with the media)". However a PIO cautioned against courts and media personnel being too close, echoing sentiments raised in Chapter 1 and 2 about the disparate functions of the two and the need to keep separate:

> I don't think that either party should get in bed with the other. I think there should remain a healthy distance between the two. They both have important jobs to do… a good healthy distance but sensible liaison.

And a News Director in a different state said he would like to see judges speaking out on social issues and being more accessible to the media. One television reporter associated court-media problems with a lack of understanding among the parties and a lack of questioning of the status quo from the media, the courts and the wider community. She argued for a greater debate over the law and order agenda, noting that it was complex but often seen by the community and the media in a simplistic way:

> I don't think there is that level of sophisticated understanding by the public. Most people don't even understand the separation of powers. They genuinely believe if Bob Carr is pissed off with a decision or a sentence is inadequate that he can personally step in and order the DPP to proceed again and tell the judges that they must triple the sentence.

Reporters argued that it was important to simply be consulted and heard by the courts, notably in relation to suppression orders:

> Obviously you don't need to be consulted on a daily basis or anything. But just that you do have a job to do and you would do it a lot better if you were acknowledged as part of the process rather than a nuisance.

Another reporter who commented that the media should not be regarded as "a monolithic blob" by the judiciary supported this. Additionally, access to everything from transcripts to vision remained an issue for most reporters. One News Director said access was a problem at Magistrates level, reflecting issues raised in Chapters 3 and 4 that communications between the courts and the media may need to be re-focussed at this level: "We have more difficulty at that level than above it". The problem stemmed from very restricted access to hand up briefs, now used in proceedings. He said a ruling to limit this access had reversed what was once reasonable access.

> We are trying to get back to where we were before. And we are slowly getting there. It has been through the courts at various levels … the Supreme Court and the Court of Appeal up to the High Court who said they didn't have jurisdiction. And now it is back in the hands of a yet another new Chief Magistrate who's produced some guidelines, which seem a good deal better.

Not surprisingly, television reporters and, to a lesser extent, News Directors overwhelmingly said more access to cameras would improve coverage, make their jobs easier and minimise the less pleasant aspects of filming court participants outside courts. One commercial television reporter noted: "The paradox, or irony of that, is that they (the courts) resent us running up and down outside court with cameras. You can't have it both ways." Another television reporter said the media "scrum" outside was unpleasant for victims and journalists. The reporter noted how this could be alleviated by gaining sanctioned vision within the courts rather than waiting outside. One News Director said while he did not like this part of the job, this issue would not go away:

> I have reservations about being in people's faces at inappropriate times … It certainly isn't good for the media to be seen chasing people down the street. I don't know how that is going to be resolved because it is a competitive business … I just see it as becoming more of a problem.

Several ABC respondents said they would like to see less emphasis on the use of vision of "grieving families" with one noting that this issue was more commonplace among the commercial stations.

Suggestions for camera access were not restricted to the courtrooms. One News Director said access to police holding yards would also remove the secretive filming procedures which they were forced to used. " When somebody is arrested we often sneak a shot over the fence using a lipstick camera on a pole. I think that is a bit downmarket."

Reporters and judges all raised the issue of appropriate resourcing of media to cover the courts. One newspaper reporter noted: "We're selling the community short at the moment. More resources need to be put into it."

The issue of resourcing was, of course, related to the level of coverage and it was therefore not surprising that the reporters covering the round and the courts personnel wanted to see this either improved or increased. One judge said while he believed the existing level of reportage of courts was done very well, it could be done more comprehensively. "It's important so people understand this arm of government," he noted.

Parallel to this was the overwhelming response that court reporters needed to be better trained and this response was raised consistently by both groups. A PIO noted the need for more legal training and referred to the "sheer ignorance" of some reporters on the round. But training went hand in hand with assistance from the courts. It was generally acknowledged that the courts were a difficult round to cover, and the courts needed to work more closely with the media to ensure reporters could do their job adequately.

> It's not even a question of honour, it's that they don't want to be sued every third week. It is a really hard round to cover. Very tricky. You can lose your nerve quite often. The art is in trying to turn what is often terribly dry, dull stuff that has been going on for weeks, into a pithy, short article highlighting

> the issues. And unless you can work in with them (the courts) and get their help, you really are often at sea.

Reporters, in general, were in favour of regular meetings between the courts and the media. Not surprisingly, this point was not raised in Adelaide or Melbourne where such meetings already take place. Where meetings were already held, it seemed that some of the problems raised in other jurisdictions had already been resolved or, at least, a dialogue was ongoing. One PIO in such a jurisdiction noting, "it's a hell of a lot better than it was. I think we've got a very cooperative and helpful relationship".

The judge in Queensland, without a PIO, said the introduction of a PIO in his jurisdiction would improve the court-media relationship, adding that his relationship with the media was already good: "courteous and not too pushy". This was reinforced by a reporter in his jurisdiction who described him as "wonderful". Nevertheless, it was interesting to note that his main suggestion for improved relationships was to simply bring Queensland in line with other states by appointing a PIO. Other jurisdictions, on the other hand, were at the point of fine-tuning their relationships.

There was some criticism, from within the courts, of the type of coverage courts received and the criticisms that were "spun" in the media about court stories.

> What has happened in the last five or 10 years is the rise of people who are the eloquent victim who are happy to be interviewed outside the court. They are good at it, they expect it. I've got no objection to people being interviewed about their court case … my concern is where a court story is still only going to be 12 to 14 pars, three quarters of it is now taken up by criticism.

However, one judge said his problems were within the justice system rather than the media and its coverage:

> I've had to work through the prejudices that lawyers and judges have had about the press. One of those is that the only interest the press has is in sensationalising it. I've come to understand that that's far too simplistic an

> analysis, that really they're interested in conveying information that the cases have their own inherent sensationalism.

Problems within the courts sometimes irritated reporters and these highlighted the different cultures of newsroom deadlines and courtroom time frames. One television journalist made the point that courts often ran well behind time and could be much more efficient, both in time and money: "A lot of time is wasted … and you think 'surely there's a better way to do this, wasting so much money and time'"?

The media, however, also criticised their own internal systems. Print journalists, in particular, noted how their stories were often poorly sub-edited. One noted: "The way that the story is cut is a very nebulous thing, you'd have more luck predicting the wind".

And another newspaper reporter had firm ideas of who should, and should not, be allowed to sub-edit court stories which he described as a very specific style of reporting.

> I feel a great deal of frustration within my own ranks. People don't know anything about courts. Recent trial sub editors will put 'jury' in the lead in a judge only trial, or they cut from the bottom. Court stories don't necessarily work that way. After 2 or 3 pars it becomes a narrative, and it's totally destructive to cut from the bottom. They don't even read the stories and if they do they don't understand them. We then have to justify ourselves to magistrates, lawyers, prosecutors for the sins of somebody else.

He said he believed only former court reporters should be allowed to sub-edit court copy because it required such specific knowledge and understanding, and added: "It comes down to the core of the relationship between the journalist and the courts".

While both groups of respondents made suggestions for improvements to the court-media relationship, one noticeable practice was that, News Directors often deferred to their reporters for comment or said their reporters could provide a more appropriate answer. One News Director noted: "I can't really answer that on a day-to-day basis.

My people could." This clearly indicated the reporters' greater knowledge and understanding of the court round and the daily issues that emerged on the round for the court roundsperson.

Summary and conclusions

These findings have highlighted many of the changes that have occurred in the relationship between the courts and the media during the past decade. The media's role in translating courts into news was found to be important to the democratic process in its representation of open justice, as well as part of the media's public interest agenda and, in this respect, consistent with the media's role as the Fourth Estate. On a more practical level, it was also found that courts represent "a feast of stories" for use in the daily make-up of news. The findings also showed how the court round is positioned against nine other regular newspaper rounds, with the courts falling behind Federal and State parliament, and general politics, but before education, industrial, health, justice and welfare, by both court and media respondents.

The findings that relate to the role of PIOs within the courts showed this to be an extremely positive news source that has been well received since its inception in the early Nineties. This role was seen by the media as existing to meet its needs, yet the PIOs themselves described their roles in a broader sense, including education, community relations and judicial assistance along with the media liaison role. The courts that were best supported by the PIOs were found to be the superior and intermediate courts, with the Magistrates Courts receiving only 10-20 per cent of the PIOs' time allocation. The biggest improvement in court-media relations, facilitated through the PIOs, has been in the area of access to court materials, a practice which was noted to have also improved accuracy in reporting practices. Some of the other improvements which have been developed by PIOs are the use of summary judgments, guidelines and court-media liaison committees. These developments have been widely accepted and embraced and it is noteworthy that the most sceptical of the role of PIO are those media respondents who do not work with a PIO in their jurisdiction. Even where tensions have been strained at times, such as in Adelaide during the Snowtown murder committal and trial, due to its suppression orders, the benefits of having a PIO in office became apparent and were acknowledged by the local media.

Access to vision was found to be the single biggest obstacle for the television media and television reporters made it clear that greater access to vision would benefit their

stories and enhance their reporting performance. This was a central theme throughout the chapter. Yet, a paradoxical theme was that the television media had not pushed hard enough to secure increased access for itself. Indeed, the PIOs found that the television media had become quite complacent about this issue, and the News Editors reinforced this by admissions that the issue had become too difficult to navigate, suggesting that it was not worth the time, effort or money that would be required to pursue it. Thus, developments in camera access had stalled. While the television media were generally found to be in favour of greater camera access for news, current affairs, documentaries and Court TV they were also the only group who predominantly categorised the court round as "somewhat important" rather than "extremely important" as noted in Table 5.

A tension between the print and TV media was strongly suggested by print reporters. They argued that TV reporters would be less likely to be proactive in court reportage and that camera access for news, current affairs, documentaries and Court TV would have limited educational value and could make people uncomfortable. This appears consistent with the print media's traditional "ownership" of the round, as noted in previous chapters. It was noted that the print media consider the courts their "patch" and this had, to some extent at least, undermined the limited movement by the television media to increase camera access.

While there is general acceptance that court-media relations have improved, the chapter concludes with suggestions for further improvements. These include better resourcing and training of reporters on the court round and further consideration to be given to gaining vision from within the courts to alleviate the media "scrum" outside the courts. On a more theoretical level, some believed that the court-media relationship needed to be considered and debated more thoroughly and that there was an underlying need for the courts to accept the media as part of the court process rather than as an impediment to the justice system. These issues are central to the themes which will be discussed and analysed in Chapter 7. In addition, Chapter 7 will draw on the previous chapters of the thesis to link these findings with the theory and literature review of the courts and the media.

Chapter 7 Discussion and Analysis

The findings in Chapter 6 provide a range of important intersections and themes for discussion and analysis in this chapter, which will be considered in the context of the theoretical framework and literature review of Chapters 2, 3 and 4. In applying the findings to the theoretical framework and in positioning the existing interface between the courts and the media within its historical and developmental boundaries, I will establish a basis for the research questions to be addressed and conclusions to be drawn in Chapter 8.

In this chapter, the democratic relationship between the courts and the media will be explored. This will consider how the media links the courts to society, how it acts in a de facto role for the citizenry due to the impractical issues associated with the wider community attending courts. Specific cases, such as the Snowtown murder committal and trial, will be used to illustrate issues relating to democracy and the notion of open justice. The scaling of the courts alongside nine other rounds, as seen in tables 4, 5 and 6 in Chapter 6 are analysed in greater detail in this chapter. This includes how the courts were scaled on a comparative basis to other key democratic rounds of parliament and politics as well as crime and justice issues.

The topic of television cameras within the courts is considered in some detail as the practical issue of camera access is discussed in the context of Habermas's concerns about television and the public sphere. This section brings together for discussion the somewhat paradoxical findings of television reporters' concerns about restricted camera access and the ambivalence by senior television media for improved access.

The notion of publicity, and the terminology associated with it, notably public relations and media relations, are considered in the context of open justice. While it is well acknowledged that open justice only comes about through publicity, there are nevertheless negative connotations associated with publicity. Early in Chapter 2 Habermas aligned publicity with the distortion of public institutions, such that the greater the publicity the greater the distortion, however he later moved toward a greater acceptance of publicity. The PIO is without doubt the courts' biggest move

toward ensuring the public profile of the courts as an institution, through the media liaison role in all jurisdictions, but also through other roles such as community relations in other jurisdictions that are better staffed. Thus the position of PIO is considered in the context of the functions it serves and the names associated with these functions. This chapter considers some of the implications associated with the terminology surrounding the issue of publicity and the public image of the courts.

The role of the PIO is analysed in the context of Habermas's concept of ideal speech, which requires fair and open communication between parties. This is considered in the courts where PIOs have ongoing communications, primarily between two groups of people: judges and news media. Ideal speech has some similarities to Grunig and Hunt's theories of two-way symmetrical and asymmetrical communication, which are also mentioned in context.

This chapter considers how communication between courts and the news media is most successful when the two share common understandings, as illustrated through a shared lifeworld. Hence, if the PIO and the reporter or News Editor have a common understanding and knowledge of language, the communication is most likely to be positive. This notion is linked to the shared understanding that must be held between reporters and their sources. The courts provide a busy interface between reporters and sources. The PIO represents a bureaucratic source of information which, while working co-operatively with the media, must also keep the relationship separate and clearly divided.

Specific legal issues are also addressed as they relate to the court-media interface. These include suppression orders and questions of privacy of court participants and the uncertainty of laws relating to access. Finally, this chapter includes discussion on the issue of internal cultures in newsrooms, which impact on the reporters who are covering the round. While not a primary focus of the thesis, the relevance of newsroom cultures and disparities between those reporters who work in the courts and those who work in the newsroom, was an issue that emerged in Chapter 7.

Underlying the analysis in this chapter are the ideas of Habermas raised in Chapter 2. Habermas identifies the legal order as bringing together the private and public spheres

through the process of communication. Hence, we see his theories as having a direct application to the bringing together of the courts and media.

Democracy, the courts and the media

> *The media's role in covering of courts can reflect the adequacy of how our laws are operating, ensures the administration of justice to victims of crime or disadvantage, provides opportunities to review laws and keeps the court system – hopefully - open, democratic, unbiased and accountable* (Television journalist).

For Habermas, the law allows citizens to function in a democracy without domination from authority and other powerful sectors. As a direct extension of this, the courts are the embodiment of the law and the legal system, representing a significant part of the public sphere. These theories were supported in the findings, with strong links suggested between the courts, democracy and the media. Strong democratic principles, as well as explicit references to democracy, were central to the findings about the media's role in covering courts. One judge advocated that television should be the main messenger in democracies because television is today the primary medium.

> And my aim has been to have the Federal Courts or courts in general featured in news regularly so that society gets to understand how the courts stand between citizens and government; how the courts are a genuine guarantee to freedom and democracy in society. It is our function but it's not well understood. I see TV as portraying that function.

Thus, the media link the courts and the citizens. The media in this sense is seen to communicate the working of the courts to the citizenry who, unless they are physically called on to take part in the court process, will rarely venture into a courtroom and are largely limited in access by the practical exemptions and restrictions of modern life. Indeed, as one respondent noted: "Most people haven't got the time or indeed the inclination or knowledge and they rely on the media to do that

for them". The media has, in effect, become the *de facto* observers of the courts for the citizenry.

However, the media's access is only workable within the context of an open court system. Open courts are viewed as an essential part of keeping the judiciary transparent in their role of interpreting legislation and creating case law in their rulings. But openness may be divided into two parts: first the courts must allow such scrutiny from the outside; second, the media, as the de facto messenger of court proceedings, must be able to carry the message in language, clarity and framing (that is, the positioning of information in a symbolic frame to make a news story) that the citizenry can understand. Both these elements are crucial and interdependent. If justice is to be seen to be done, then the second element (the media's clear coverage of courts) must follow the first (the open courts). It is not surprising that the media and the courts were described by many respondents in this interdependent role. Thus, it was also not surprising that suppression orders were openly criticised by some media as representing blatant obstacles to open justice.

In the Snowtown committal and subsequent trial, suppression orders that restricted coverage of certain aspects of the proceedings, provided an example of the limitations which may be placed on open justice. The media preparedness to stand up and contest these suppression orders, as discussed in Chapter 7, while only an isolated incident, is nevertheless an illustration of the media's demands for access to open and accountable courts. However, arguments that courts must remain open and accountable, to ensure judicial transparency, can be too simplistic since they do not incorporate other elements of the court process. In Snowtown for example, the trial of Bunting and Wagner was to be followed by another trial related to the same events, therefore the two issues that had to be balanced were the fair administration of justice and the next person's fair trial against the right of free speech and reportage by the media. This represents a clear example of the tension that exists between the courts and the media, and the balance that must be struck to ensure a fair trial while still maintaining the principles of open justice.

In another criminal trial, the sentencing of Nathan John Avent, in which the judge allowed all media access, including television cameras, the tension was both within

the media, as well as between the media and the courts. As one judge noted, in the Avent sentencing, ripples of unrest among some newspaper media over the way television covered the case helped to undermine the television involvement and ultimately the sentencing decision. This internal media tension emerged as a minor theme throughout this thesis. In Chapter 7, the findings showed the existence of undercurrents from the print media that suggested an uneasiness with television cameras, exemplified in the following comment from a newspaper reporter: "No reason to destroy the way justice works simply so that media organisations can have footage." The findings showed the tension did not exist in reverse however. The television reporter's tended to envy the print media's role in covering courts, noting that print court reporters could move up the scale in newsroom status and position, to the role of legal writer, whereas no such position existed for television and the status was forced to remain low because of the lack of vision. In their relationship with the courts, the television respondents were far from enthusiastic about the Avent test case, seeing it more as an interesting experiment than a great leap forward or even a modest advancement for camera access. Their responses indicated an intolerance of the courts setting the reportage agenda.

Part of the media's role in its coverage of courts was reflected in descriptions of media social responsibility, in order to give victims of crime a voice. This is significant in the context of the weak and strong publics discussed by Fraser in Chapter 2, who argued that multiple public spheres existed side by side but that inequalities exist because of impediments to access. It is therefore important that the media give voice to the range of publics that access the courts, and not just the dominant (or paid) ones of prosecutor, defence and judges. However, while this is an important part of the court story, it is only one side: the prosecution side. The other side, the defence, should be weighted evenly in a truly fair and a balanced account. Not one member of the media said the media's role of covering courts was to give the **accused** a voice. This raises significant issues relating to the fair and balanced reportage of court cases. The one-sided media coverage of committal proceedings has long been a point of contention because only the prosecution case is made, and thus it is the only version which can be reported. Given the media response in this thesis about giving the victim voice, further study might provide an interesting breakdown of the amount of space or air time afforded the prosecution and the total amount of

space or air time afforded the defence. While beyond the scope of this thesis, the issue of balance and access for all parties is nevertheless an important one for fair reportage and open justice.

The media respondents suggested that the role of the media in covering courts was a duty of public interest, inclusive of an educational imperative, but there was little elaboration on these two points. Public education and community relations were discussed, however, by the PIOs as part of their roles. This is separate to the role of the media in exercising these roles, however there will inevitably be overlaps. For example, when the courts hold public information days as discussed by one PIO in Chapter 7, the media might choose to cover the event. Thus, the media become part of the process of educating the public about the court itself, through analysis and coverage of justice issues, rather than simply through presenting examples of the court process through routine court stories. Similarly, the findings indicated that court stories allowed for a follow-through of police stories. In this way, they could be viewed as having educational and public interest importance, by allowing closure of a police story. Given this, the position of court rounds compared with crime rounds (as seen in police stories), discussed later in this section, also provide some interesting insights.

Courts as stories of entertainment were mentioned, but only in passing, by a small number of respondents. This is significant, in light of the wealth of literature, discussed in Chapter 4, which considers the entertainment function of the courts in the media. The high profile trials, which are discussed in Chapter 4, were clearly paralleled in some of the trials discussed in this thesis, most notably the Snowtown murders. However there is one major point of difference. Where high profile trials are televised, they often become part of the domain of entertainment. Perhaps the very restrictions placed on television access to such high profile trials, such as Snowtown, kept the coverage outside the day-to-day understanding of what is considered entertainment media. More people said the courts were dull than entertaining, although it must be said that there were cases cited in Chapter 7 which were run for the novelty or entertainment factor, such as the toilet seat case. This issue is discussed further in the analysis of television and courts, later in this chapter.

Where the respondents were asked to scale the court round and compare it to nine other rounds, the courts, with only one exception, were rated in the mid-range: neither the most nor the least important of news stories. The other rounds consisted of Federal Parliament, State Parliament, Politics-general, Justice Issues, Crime, Industrial, Welfare, Education and Health. On average, the media group ranked the courts at 3.9 (out of 10), whereas the court respondents ranked the court round at 4.6 (out of 10): both groups thus placed the court round toward the more important end of the scale but still predominantly in the middle. It is interesting to note where the courts ranked in comparison to two other distinct, but related, areas:

1. Parliament/politics, and
2. Justice issues/crime.

The parliament/politics comparison allows us to see how the courts are viewed as a news source, compared with other arms of government. The justice issues/crime comparison allows us to see where the courts are ranked when compared with other justice or legal based news sources.

Parliament/politics. The majority of television and newspaper reporters (11 out of 16) rated both Federal and State Parliament as more important than courts. All but one (6 out of 7) of the court personnel group ranked Federal, State Parliament and politics as more important than courts. In the media group, the Federal Government was ranked on average at 3.4 and the State Government was ranked on average at 3.8, both being slightly more important than courts. In the court group, Federal and State Parliament were ranked equally at 2.2, both significantly higher than the 4.6 average of the courts. While it is clear that the groups were far too small to offer any generalised reasons for responses, it might be suggested that the court respondents saw the courts as part of the bigger picture of government: that is, the third arm of government. In contrast, the reporters who cover the courts round might simply see the round is almost as important as parliament on federal or state levels because they view it in isolation. In both groups, politics (general) ranked slightly behind parliament but was nevertheless seen as slightly more important than courts. The dominance of parliament and politics would reflect the institutionalised public sphere of the state identified in Chapter 2 and the acknowledged role the media has in delivering information and debate to the community.

Justice issues/police. Both the media and court groups ranked justice issues at 6.2 (out of 10). This is considerably lower than the ranking for courts by both groups. This is not particularly surprising since only one judge answered this part of the questionnaire and thus the day-to-day court cases are seen as more important than bigger justice issues by the people whose jobs are based on the daily activities in court. The media ranked crime on average at 4.5, which is a closer ranking to courts (at 3.9) although still seen to be of lesser importance. The court respondents ranked crime at 4.2, indicating it is slightly more important to them than the court round (at 4.6).

This final finding is of particular interest for two reasons. First, anecdotally it would seem that the media rely heavily on crime stories to fill their pages and their bulletins and it might have been anticipated that this round would be of greater importance than courts. Secondly, access to information is well established on the police round with a standardised routine to gather information from police stations, police scanners and public relations departments of long standing. However, since media respondents were predominantly court roundspeople (rather than police roundspeople) you might expect a bias toward courts, thus accounting for its higher status by the media respondents. However, you might also expect the same bias by the court personnel and this was not the case, with crime being seen as slightly more important than courts. This may simply be due to the court personnel aligning the crime round very closely with the court round, and the court's role in the resolution of crime reportage as linking the two very closely together. The very small difference between the two – 4.6 for courts and 4.2 for police -- would really indicate that they are perceived almost equally.

Importance of the court round. Where most judges did not take part in ranking the 10 rounds, all judges took part in scaling the court round on a Likert scale from 'not important' to 'extremely important'. Altogether 19 of the 30 respondents who answered the question said the round was extremely important. Nine said it was somewhat important and only one said it was not very important. One did not know. All judges said the round was extremely important and all but one PIO rated it as

extremely important, thus 10 out of 11 court respondents felt the round was extremely important.

Court personnel were clearly the most unified in this response and the media were the most divided. Of the 13 television respondents, more (7) felt it was somewhat important or not very important than those (5) who felt it was extremely important. Of the six newspaper reporters, two felt it was somewhat important and four felt it was extremely important. Thus, newspaper reporters were more in line with the court personnel in how they rated the court round. This may be attributed to their greater entrenchment in the round than TV reporters. This finding may also be seen to be consistent with responses from some of the television news directors in television in Chapter 7, who noted that the court round could be extremely dull and should not tie up too many resources. Interestingly, the one television reporter who said the round was not very important was passionate about the round and said it **should** be important but was not because of systemic problems associated with television coverage of courts. This rationale could also account for the relatively low rating other TV reporters gave the round.

There are a number of connections between these findings and the earlier literature on the status of the court round, historic development of the round and print-television perceptions of the media's role of covering courts. Differing perceptions of the round between print and television can easily be correlated with the historic development of court reporting as discussed in Chapter 4. The print media have a long tradition of covering courts and the court round is well established in newspaper culture, with a designated court roundsperson. In television, there appeared to be less "ownership" of the round by reporters although individually, in this study, the reporters were extremely passionate about the round. Nevertheless, the findings showed that they feel less potential for upward movement in the newsroom than their print counterparts: they see themselves as disadvantaged and this is reflected in the status of the round as discussed in Chapter 3. Since television news directors tend to see the courts as "dull" it is not surprising that, in that medium, court stories have not developed in the entertainment style that has occurred in American television. Dull stories simply do not equate with high entertainment. It would be fair to suggest that the low status of the round is perpetuated by this internal culture, in television at least.

Where the courts were scaled alongside the other nine rounds, they tended to fall in the middle. This ranking is not surprising, given that the courts follow parliament and politics and the other two arms of government are most associated with democratic government. It is also not surprising that the courts are rated as more important than at least six other rounds, given that the respondents, with the exception of the news directors, are all involved daily with court activity. Thus, the status the respondents afford the round is arguably quite high, although there is no indication that a similar trend would occur if the community or the media were randomly selected to develop this scale. In addition the round may be becoming more elevated in status because the courts have moved toward better accommodating the media. Much of the literature, which pre-dated the emergence of the role of the PIO in 1993, would not have taken into account the growth in the role of the PIO, particularly in Australia. Thus the relatively new role of the PIO and the developments that have occurred because of this may be starting to impact into the overall status of the court round.

Overall, the findings in Chapter 7 saw no respondents wanting to see overall news coverage of courts decreased, suggesting that media and court personnel alike believe that news coverage of the courts is important. Indeed, suggestions for improvement were the need for greater resourcing, better training and improved and increased coverage of courts. These points are of particular importance to the broader philosophical argument of media coverage of courts as a democratic practice, because they are central to the quality of coverage. A recurrent theme that emerged from the media was that they wanted to do the job better. For television reporters, this was overwhelmingly associated with vision, and this is discussed in detail in the following section. For print reporters this related to internal newsroom issues as well as court-related issues.

The issue of improved training has ramifications for better coverage of courts and improved status of the round. If resourcing was improved, and training was more thorough, then the level of the round might also improve. It was noted “we’re selling the community short at the moment”. Notably, print reporters were the primary ones who reflected their practice on community needs. Television reporters generally tended to see shortfalls within their practice in terms of how it affects themselves,

rather than the community. These observations may be viewed within the context of Habermas's earlier arguments of how the media present access to the public sphere. Under-resourcing, limitations on vision and other issues associated with the round, will likely be reflected in less than ideal, potentially unrepresentative images of this important sector of the public sphere.

Television, Courts and the Public Sphere

In earlier chapters, I noted that the development of television as the primary source of news raised significant issues for Habermas who saw the visual medium as problematic for both the public sphere in general and in its potential to undermine the role of the print media. Craig interpreted Habermas's concerns thus: "Television is identified as the main culprit, eroding a print-based culture that was judged to be the ideal form of communication for a critical public sphere" (2004: 14).

Habermas had specifically criticised the televising of courts and parliaments, arguing that these institutions have transformed to fit in with television media. While his critique tends to be more directed to parliament than courts, he is nevertheless adamant that access be reduced in both environments to those people who are present, rather than extending this access to the media. He is particularly opposed to the televising of criminal trials arguing that publicity serves the media rather than the justice process. He argues that the manipulation that results in proceedings changes the processes and is therefore not justified and extends the balance too far in favour of the media over the fair trial process. Thus, the courts as part of the public sphere, while remaining open to the public at large should not be open to cameras. There are many aspects of Habermas's critique that are borne out in the findings: in particular the issue of television access, criminal and civil trials, and publicising the courts in general. These issues represent complex and multi-faceted findings, which will be discussed in turn.

Central to the discussion of television access is the role of cameras in court and the need for vision. There was an overwhelming response that without vision court stories were severely limited, could rarely make it to the front of the bulletin, and provided the reporters on the round with a significant level of frustration as they tried to cover

their round effectively. The only alternative to real vision was suggested in Queensland with the use of animation, a relatively new concept but nevertheless one which provided one reporter with hope for the future of her court stories which may hold a broader application in time, but must be seen for their limited capacity to educate the community about the courts.

Television reporters felt quite disadvantaged against their print counterparts because of the lack of vision. This was even singled out as a reason for television court reporters not being able to gain improved status and move up the newsroom hierarchy in the same manner as a newspaper court reporter might aspire to the position of legal writer from the role of court reporter. No equivalent existed for television and the lack of vision was seen as an underlying reason for this. While television reporters tended to be quite passionate about their round, News Directors were, predictably, more pragmatic and less passionate about the round. This would be expected of News Directors who have to consider all rounds within the newsroom, in contrast to the roundsperson who is largely concerned with their own round. News Directors were keen to see greater vision but not at a cost to their organisations. Several regarded the court round as quite limited, boring and dull. News Directors were also clearly further removed from "the coal-face" of the round, and sometimes had to defer to their reporters to answer questions that they could not answer. It might be seen from this that the further away from the round the media person is, the less they know about issues that affect it. News Directors were, predictably, more knowledgeable about issues of policy than the day-to-day procedural issues that confronted the reporters.

The case study of Snowtown raised several key issues of how one court jurisdiction and the media dealt with a major court case, both committal and criminal trial, which lasted several years. Members of the television media were extremely frustrated by the lack of vision available in this case, largely due to no camera access to the courtroom and limited camera access to exhibits. This stemmed from the hundreds of suppression orders which restricted all media, but affected the television media most severely. It also showed how generally positive relations between the courts and the media, as suggested by all South Australian media interviewed, were tested in this one-off case. The appointment of a separate PIO for this case not only provided the media with a full-time point of reference, but it may also have had the added strategic

advantage of deflecting any negative media reaction to the case away from the regular staff in the communications unit. Thus, the ongoing relationship between the PIO and the media did not appear to be affected. In addition, this special appointment must be seen as a clear example of spending a little -- that is, the cost of the PIO -- to potentially save a lot – that is, to ensure there was no mistrial. As such, a dedicated PIO on this case should serve as a guide for future consideration of major, high-profile or complicated trials.

Generally, most of the respondents saw a future for camera access for news, current affairs, documentaries and Court TV as noted in Table 10. However, the groups of respondents were divided over which of these four categories they would like to see gain greater camera access. Judges were more in favour of news, current affairs and documentaries but not Court TV. PIOs, on the other hand, were less in favour of news and current affairs and more in favour of documentaries and Court TV. Newspaper reporters were generally in favour of news and documentaries, and television reporters were in favour of news, current affairs and documentaries. No one group was overwhelmingly in favour of all categories although it must be said that television reporters were, on the whole, most supportive of greater access for all four categories. The judges' positive response was not surprising given that two of the five judges interviewed have been overwhelmingly in favour of cameras in court and proactive in trials of this process. The other three judges have also been openly positive about cameras in court on occasions prior to this research.

There was, however, a recurrent theme that significant problems still existed for developments in camera coverage. The television media tended to bracket these into two areas: either courts were dull and not worthy of additional resources (news directors) or that access was too difficult and some had tended to give up ever advancing this need (television reporters). The court personnel had a common response: that they had tried to develop this area but the television media had not pushed hard enough to improve the camera access.

So while there have been many examples of cameras in court, discussed in Chapters 4 and 7, the findings showed that there was a sense that developments in this area had, most recently, slowed to the point of stalling. As noted in Chapter 4, the literature had

shown the proactivity by some courts in pushing for increased access, but it had also been suggested that the Australian television media had not been behind the push. This had only been raised as a possibility in the literature but it had never been fully canvassed or tested, which is why the respondents from both groups were specifically asked the question: *Has the television media pushed for increased camera access?* The findings in Chapter 7 certainly indicated that they had not, at least at the policy level of news director. This may indicate why there is a disjunction within the television media because the reporters clearly wanted more access but the News Directors, who are further removed from the round, were not consistently supporting their reporters on this issue. It may even be that the two levels of staff did not even communicate about the issue and that an internal gap existed in the expectations of television newsroom staff. The PIOs and judiciary all indicated that television had not been proactive or systematic in regard to improved camera access. It is not surprising that the PIOs were outspoken, as they were most involved with the media in the daily supply of their needs. Three of the judges concurred that the media had not pushed enough to gain access. Indeed, there seemed to be a sense of disappointment, particularly by the two judges who had been proactive in this field. The comment by one PIO "we set the table but no one came to dinner" seemed to sum up the feelings about the matter. Reasons which were suggested for the lack of push were the media culture of dealing with issues on the same-day basis rather than planning ahead, that the current access was sufficient for the limited grabs needed, and that the "fight" for greater camera access, in terms of funding and resourcing, would not be worth the increased benefits that television would receive.

It was significant that no one in the television media group had ever seen the most significant report into television access into courts: Daniel Stepniak's *Electronic Media Coverage of Courts*. While court personnel referred to the report often throughout the course of the interviews, its presence was noticeably absent in the responses offered by the media, and, for that matter, in any of the media literature. This report is the largest report into the broadcasting of courts ever conducted in Australia, yet the media, one of its primary focuses, had never heard of it. It is therefore impossible to draw any conclusions from the potential for this report, except to note that, at the very least, it was a wasted opportunity for the courts and the media to engage in meaningful, ongoing dialogue.

No analysis of television and courts should be made without the following simple observation, noting the single biggest paradox that is central to the cameras in court debate: that is, as society's primary news media, more people gain their news from television than print media, yet the television media are severely restricted in their access to courts through limitations to camera access. The key, therefore, is to find a bridge between the importance of courts to a democracy, the significance of television as the primary news medium, and the need to keep the courts beyond shallow entertainment-based news. Perhaps, the Court TV network does, as suggested by several of the PIOs, deserve further investigation with its potential not yet having been truly investigated.

As noted earlier, Avent was a criminal trial and as such included greater risk for the courts in allowing camera access. Similarly, Habermas noted that criminal trials were problematic and he attributed that to the way they were handled by the television media and courts. It is not surprising that the PIOs were generally in favour of the media covering civil trials rather than criminal trials: here there are no juries and fewer witnesses. There had been success in televising the civil proceedings of Gutnick and others, but the media's general interest in civil cases remained limited. One PIO lamented this because she had tried so often to interest the media in civil trials: "If they took a different approach, showed far more interest in civil cases, and developed a situation of trust with judges they'd help themselves enormously." However, in general, news directors view civil cases as particularly dull. Here, there is a significant divergence in the types of court cases television would choose to cover with cameras and the types of cases the courts would choose to cover using cameras.

Clearly, for the television news in particular, court cases must provide some entertainment. In Chapter 4 Court TV (that is, a dedicated network) was described as the most boring network ever with moments that are absolutely compelling (Cohn & Dow, 1998:124). Obviously court television is not the same as selected moments in court as represented in news bulletins. It would seem fair to argue that the compelling moments are those which reach the evening news: but as one news director noted in Chapter 7, these may range from important moments in legal precedent (for example reportage of Tampa and Cubello-Gunner) to small moments of entertainment (for

example, the toilet seat case discussed in Chapter 7). The entertainment factor of television was one that was not borne out in the findings, yet it is clearly an important part of the make-up of television. We might well conclude that the limitations to camera access have curtailed the entertainment factor of court stories, although it was indicated that another element associated with television, the sensational element of chasing court participants outside the courts with cameras, is a spin-off factor of not having cameras in the courts. The entertainment factor of television is central to Habermas's rejection of the medium as appropriate for critical debate with entertainment playing into the hands of publicity and show, both of which he sees as having negative impacts on the public sphere.

An additional theme that emerged in the discussion of camera access was the suggestion that courts were a news round which newspapers' guarded and were intent on maintaining control over. This is consistent with Habermas's notion of the printed media being ideal for the public sphere. Grabosky and Wilson's study (1997) had also indicated that there was some antagonism between print and television media in the justice area. The Avent case in Melbourne was cited as one in which the print media had been severely critical of the television coverage of the case. One judge had noted: "And they created such a furore in the end that it was designed to minimise the prospect that television would ever get a hold of court reporting".

It is somewhat ironic, given this, that the newspaper reporters in this study were, for the most part, in favour of increased camera access for news, current affairs and documentaries, although there were only seven newspaper reporters in this study and this can therefore not be seen as a representative sample. One reporter's words, however, echoed those of Habermas: "(there is) no reason to destroy the way justice works simply so that the media organisation can have footage". While he was in a minority of reporters in this research who was outspoken against camera access, this position is supported by earlier literature and should not necessarily be seen as isolated. As noted in Chapter 4, the print media's coverage of courts dates as far back as the 1500s, and was clearly entrenched by the 1800s when the first court reporters were hired. It was also noted in that chapter that courts were a staple for newspapers by the 1900s, with a focus of colour and entertainment in the North American press and the media appetite for covering stories in which order was violated and deviant

behaviour was a defining characteristic of news. Traditions have thus been well established in the printed press.

Public Relations, Publicity and Media Relations

While the term publicity is used by Habermas in a pejorative sense – "A consumer culture's distortion of publicity in the judicial realm matches the plebiscitary distortion of parliamentary publicity" – publicity is not inherently distorted, or indeed negative. Indeed, as noted in Chapter 3, publicity is seen as central to open justice. Here we see a disjuncture between Habermas's views and those which are present in the courts.

Habermas expressed concerns about public relations and its control of the media agenda. He used the term "engineering of consent" and, others called it manipulative publicity" (1989:193) and "organizing consensus" (Carpignano et al., 1993:100). However, as noted in Chapter 2, Habermas's early criticism of Public Relations is centred on commodity-based, consumer-driven demands which are premised on competition between public and private sectors. He later altered this negative view however from one of manipulation to integration, available to all organisations which deal with the state. His description thus centred on making proceedings public and, as such, has direct application to the emergence of the PIO within the courts which, by definition, rests with the communication of public information. In this context, there is no competition between the public and private sectors: the courts are a public sector, occupying space in the public sphere and, while private lives are central to court activities, there is no commercial imperative to consider and thus it does not represent a conflict for publicity.

In other analyses of the courts and publicity we have seen how publicity is a fundamental principle of a democratic system of law. As noted by Bentham: "Where there is no publicity there is no justice. Publicity is the very soul of justice… It keeps the judge himself, while trying, under trial" (J Bentham, n.d.: n.p.). If one is to accept that the media rely on the courts for a staple part of the media diet, it is implicit in Bentham's words that the courts also need the media for publicity, thus fulfilling their need for transparency. In general, we increasingly see this acceptance of the need for transparency and publicity, but we should not forget the warning signs noted by Habermas and others of the issue of control and engineering of consent. These concerns are noted in some of the findings in Chapter 7, where relationships and job

descriptions were analysed. The findings show that the media were in no doubt that the PIO was in office for their benefit and furthermore, that the PIOs would generally respond to their needs rather than proactively organise the media. There are issues here relating to nomenclature, perception and procedure.

As noted in Chapter 7 the media respondents saw the role of the PIO as either primarily or entirely for their benefit. The skills that were identified, discussed later in the chapter, were skills to make the media's job easier. Indeed, reporters noted specifically that public relations skills were **not needed** in the role. This is because they equate public relations with publicity, not public information. Comments such as: "It's not the same as being a promotional-type job" and "It's not public relations. It's quite a specific liaison role" indicated that, for some media at least, the PIO needed to be able to be responsive and that their responses should be tailored to the media. It is interesting that, as noted in Chapter 7, none of the PIOs offices are called Public Relations Departments. The one jurisdiction which had used this nomenclature, advised me that the name had been altered to Communications Unit as this was more in keeping with the role they played.

This demand by the media had been addressed in two jurisdictions, where the role of PIO had been divided into two: one specifically for the media and one directed at community relations. The South Australian jurisdiction was singled out by one PIO as being "unique among us". The judge in that jurisdiction noted that the job was too big for one person, indeed "important enough to have two people working in the area". Indeed, it is of significance that in this jurisdiction there are really more than two PIOs: a third, an education PIO was half paid for by the courts (the other half being paid for by the education department), and a fourth PIO was employed on a casual basis to work solely on the Snowtown case. This is particularly significant if we consider that South Australia is one of the smaller jurisdictions in the country, and so their relative investment is particularly impressive. One might assume that if any of the other jurisdictions were to expand their PIO operations, they would consider this as a logical point for expansion, providing scope for specialization in the roles of media and community. Comments made by the PIOs, such as "yes I think the court misses many opportunities to put itself before the public" indicate that the there is scope for this expansion. These findings show how PIOs in courts represent a special

type of public relations, and terminologies and job descriptions should be used with care.

Generally though, where jurisdictions employed only a single PIO, the role was inevitably split between multiple roles: PIOs rated their media work as accounting for between 50 and 80 per cent. The rest of their time was divided between judicial advising, community and education relations. The media were encouraged to go to the PIO, rather than the reverse. This was consistent with how the media saw it: that is, that the PIO should be reactive to them and not proactive in organising them. Systems were generally set up along the lines of the media seeking information from the PIO after other channels had been exhausted. One PIO noted that the media were encouraged to go directly to the courts' various registries in the first instance. She noted: "It's only when they get a big snag that they'll ring us up". This was supported by the media listing other sources before the PIO as their primary sources of information and citing the PIO as a follow-up source. This system appeared to work from all perspectives. The media clearly felt that it allowed them to control the agenda and gain information as they needed it rather than being approached by the PIO. It seemed that this was a major part of the media not seeing the PIO in a public relations or publicity role. In addition, this presumably regulated the workload of the PIOs, most of who worked as sole operators. Some PIOs did indicate instances in which they made first contact with the media, in particular regarding the televising of civil court cases, but these were in jurisdictions in which there was a well established trust relationship between the PIO and the media and the media overtly held the PIO in high regard.

Significantly, the only person to promote the publicity/public relations aspect of the job was the judge in the jurisdiction where no PIO was employed. He noted: "A public relations officer to the court would embrace how we present court initiatives to the public…such as major public events…that the public should be aware of". This is not consistent, however, with the actual work performed by the majority of the PIOs currently in office.

Can Ideal Speech and Communicative Action be achieved?

Thus the environment for Habermas's concept of ideal speech between the courts and the media may be at least partially realised through the PIO. Habermas saw ideal speech as being inclusive, with equal rights to participation. It assumes equality of access for those involved in rational discourse: discourse which is based on communicative action and not strategic action. An even power-base is assumed and while this environment allows argumentation, it must be based on comprehensible arguments. As suggested in Chapter 2, communicative and strategic actions might appear to describe two extremes: one in which open, fair communication with an emphasis on information is held, and one in which deceptive and unfair communication is held with an emphasis on persuasion. It was suggested that, in reality, much discourse lies between the two extremes and three options might be a truer representation of communication: strategic, communicative-understanding and communicative-consensus. Given that discourse is often between more than two people and their power relationships often differ, this would seem to be a logical extension to suggest in the court environment. Thus, if speech exists between, for example, the PIO, a court reporter and a judge, the judge would likely hold a power advantage because of the elevated position of his or her role in society. Communicative-understanding might be achieved between the reporter and the judge, whereas communicative-consensus might be more easily achieved between the reporter and the PIO as there is no perceived power differential. The PIO can reduce any imbalance in the power relationship between the courts and the media to achieve communicative-consensus in discourse, hence a balanced version of ideal speech can become a reality.

Habermas's notion of ideal speech and communicative action are consistent with the two-way symmetrical model of Grunig and Hunt (1984), in which dialogue is used to bring about symbiotic changes. It is noteworthy though that they argue that this system does not always work if there are historical and ideological barriers, disparities in power and political or institutional cultural differences. An alternative model is suggested in the two-way asymmetrical model which allows for a degree of imbalance in the power relationship (James Grunig & Todd Hunt, 1984). This would be seen as more consistent with communicative-understanding. Ideal speech and two-way

symmetrical public relations represent the optimal outcome of any relationship and there are elements which can unbalance these. It has been noted that the courts and the media clearly exist within different cultural and institutional environments and with different needs and expectations, thus the concept of ideal speech and communication consensus can still break down and indeed, it does. The courts and the news media's priorities are quite disparate, as already noted, with fair trial and free speech representing polarised expectations of the justice agenda, and thus the tension between them will never be totally slack. Managing communication, however, is one way to ensure it does not become unacceptably taut either.

It has already been noted that the media see the role of the PIO as primarily for their benefit, to facilitate information for them. Given the tradition, as noted in Chapter 3, of limited resources within the courts for the media, and the *ad hoc* means of gaining access to information, this might be seen to redress what was a previous imbalance in information available to the media. In the past, the media's relationship with the courts was restricted. "There has been no simple method through which we can check facts," noted one Australian print journalist, in Chapter 3 (1995:40). Others in the United States and Canada have found this is a consistent trend across the courts.

At no point did any of the PIOs or judges in Chapter 7 see the relationship as being too media-oriented or overly familiar. There had been some major initiatives in working toward opening the channels of communication, improving access and in doing so achieving a close approximation of ideal speech and communicative action. The role of the PIO had most definitely improved access to information, channels of communication and accuracy in court reporting. Having a PIO in office had resulted in positive, immediate outcomes. Frequency of communication with PIOs was generally quite high as noted in Table 7. The highest level of contact with the PIO was in Melbourne and Adelaide, two jurisdictions with well established and highly respected PIOs.

The jurisdictions, in which liaison committees were held, inclusive of the media, had particularly good relationships. These committees were noted to be informal, attended by judiciary, magistracy, other court staff and media representatives. All these factors appeared to strengthen their outcomes, with issues raised by media and court staff not

only being discussed but addressed. Other items which facilitated strong relationships were development of guidelines and judgment summaries.

However, the courts have seen instances in which relationships with the media have been tested and tensions have been stretched. For example, the commercial television station which brought a hidden camera into court to film the Duty Registrar had been castigated for their error of judgement and reminded that the court did indeed have protocols that must be followed. As well as having problems accessing case-based information, media have also traditionally had problems in relation to accessing the judiciary. While members of the judiciary did indicate that they welcomed media inquiries, it is clear that the PIO is intended to act as the main point of contact with the media, and in reality we can assume that there is less of a power imbalance in this relationship. We saw in Chapters 2 and 4 how the judiciary today find themselves in an environment in which they are no longer defended by the Attorneys-General, increasingly being expected to defend their own decisions and, yet, are often under attack when they speak out on legal and justice issues. Chapter 7 showed that the PIO has moved some way toward redressing this issue, with the PIO able to bridge the cultural and physical gap that has existed between the media and the judiciary and assist with judicial communication. Nevertheless, the relationship between the media and the judiciary clearly still has a long way to go. One member of the judiciary noted that judges could have greater personal relationships with the media and that he "had to work though the prejudices that lawyers and judges have about the press". The PIO could thus assist the judge at various levels.

Development of the relationships between media representatives and PIOs was of utmost importance. There were consistent threads throughout the findings that in the jurisdictions in which this relationship was seen as strong and open, respondents believed all parties, including the public, were being best served. There was a need for consensus for this relationship to work, and the PIO represented a position within the courts in which the media believed they related on an equal level.

A shared lifeworld and finding reliable sources

One of the reasons this sense of equality existed was due to the media's perceptions of similar backgrounds and common knowledge with the PIO. This is consistent with Habermas's concept of a shared lifeworld. As Maeve Cook (in Habermas, 1998: 16) noted in her introduction to Habermas's *The Pragmatics of Communication:* "This background knowledge of the lifeworld forms the indispensable context for the communicative use of language; indeed without it meaning of any kind would be impossible".

The reporters not only clearly believed that the PIOs should have skills similar to their own, but many suggested that other skills such as public relations and legal skills would be counter-productive. The skills that would allow mutual understanding and hence present a comparable lifeworld were those of strong communication skills, the ability to identify deadlines for a range of mediums and the ability to understand issues related to journalism, such as keeping a story confidential. Many of the skills suggested by the media were chosen to enable the PIO to work between the two environments of the media and the courts. The PIO needed to be able to function equally within both environments, thus working between two lifeworlds. This would include the need to understand two very different sets of needs and ideologies as illustrated in the very different languages of the media and the law, differing deadlines, cultures, and values, that are sometimes pitted against each other in the fair trial v free speech intersection. As one reporter noted, the PIO had to "liaise well with journos…and also have the respect of the judges (and) talk judge's talk".

The best PIO from the media's perspective was a person who had worked as a reporter because the media clearly saw the role as primarily for their benefit and a former reporter could best understand their needs. While there was a clear understanding that the PIO must be able to work, speak and negotiate within legal circles, their lifeworld nevertheless must be media first, law second. Reporters did not want the PIO to be a former lawyer, para-legal or judge's associate. Indeed they had to "be a reporter first…the last thing they want is to be a lawyer".

This need to be able to converse with both groups is central to Habermas's concept of the "double structure" (1981) of language in which the speaker and listener first have a relationship which allows communication between them and, second, a desire to achieve outcomes through this communication. Thus the PIO works in a relationship with the judiciary in an open communication environment, aimed at finding the best outcomes for both the media and the courts, while also working with the media in open communication and to facilitate the media's needs. The best possible scenario, according to Habermas, would be ideal speech within both these lifeworlds. Clearly this could not always occur, which is why communicative-understanding may be often the most achievable outcome of a communication, rather than communicative-consensus. Either way though, strategic communication, identified by Habermas in Chapter 2 as being distorted or manipulated, did not seem to be an issue in this generally honest communications environment.

Sources, the courts and the PIO

The concept of lifeworld may be kept in mind when considering the broader discussion of sources in general. As noted in Chapters 2 and 3, central to the development of the mass media was a need to legitimise news stories which relied on keen investigation and reliable sources. These two components thus formed the basis of journalistic investigation. Where first hand observation was viewed as the purest form of investigation, in reality this is often difficult to achieve. In the court round it is often easier to achieve than in other, more abstract, rounds because of the physical nature of courts: that is, the journalist can sit in the courts. While this may appear to be a straightforward observation, if we consider the observation made by McBarnet (1981) in Chapter 4, that court cases are merely a "construct of an event, not a reproduction of it" court stories can become complex. McBarnet notes that evidence, facts and a strong or weak case are the end product of a selective process. Because the news is also selective, court stories thus become doubly selective, two steps removed from reality. The court story is a story of the court case and not the event, and so it could well be argued that being present in court provides a first hand experience of the case, rather than the actual event it represents. In this way, in Tuchman's words, the court story itself is the "raw material" for news (Carpignano et al., 1993: 97). However, when a reporter cannot be present in court for a full case, or requires

information about cases of importance and interest, he or she relies heavily on sources to supply the range of detail required to write the story.

The courts provide an excellent example of the complex relationship between reporter and sources. In Chapter 3 we saw how courts have been noted as having erratic and unpredictable sources, however those sources that do exist may also be seen as representing pluralistic perspectives rather than the dominant "primary definer" that often typifies bureaucratic sources. As noted in Chapter 3 we can categorise three types of sources: dominant, bureaucratic and other. First, dominant sources may be defined in the context of courts as those people who have specific knowledge and levels of power within this environment. They might be motivated by their own agenda, rather than the courts. As a second category, the bureaucratic sources are those who are part of the court system itself and are motivated by the court's agenda. A third category of sources, which are neither dominant nor bureaucratic, may be made up of other reporters on the court round. It is noted that reporters sometimes "co-conspire" in this "frontier" like environment. In addition, earlier news stories produced within their own media outlet or elsewhere or other local news media coverage, say from radio, can often be a source of information.

Bureaucratic sources would include court staff such as sheriffs, bailiffs, clerk of the court, court registrar, judges' associates, PIOs, and documents produced by these sources such as court documents and court lists published in the paper. These were the routine sources, they were central to the reporters' daily routine and probably tended to be the most important. As one court reporter of 17 years noted: "I always joke that I wake up each morning and read Page 1 to check that the world wasn't destroyed overnight and then I check the law list". These sources may be identified as being non-partisan, disinterested in one side of court case, providing information on request rather than offering information for their own ends. This makes them extremely important to the reporter who is seeking unbiased, factual information. In this way, they differentiate from other sources which might be classed as dominant sources.

These would include prosecutors and defence counsel, the public relations departments of law firms and police. Informants might also fall into this category because they represent a subjective viewpoint, yet they may not be truly dominant

because they may hold no power. It is interesting that several reporters noted that the media's role in covering courts was to give the victims a voice but when this "voice" comes through a prosecutor it then becomes a "dominant" source. However, victims are not always heard through these official channels. One PIO cited the emergence over the last ten years of "the eloquent victim" who themselves had a voice in the media. "They are good at it, they expect it. Standing and giving TV interviews and so forth." In such circumstances, victims may become dominant sources in their own right.

In reality, many reporters use a range of these sources. One person used mostly official or bureaucratic channels, where others maintained personal contacts were essential and these were made up of dominant sources, bureaucratic channels and other sources. The veteran reporter of 17 years as noted earlier, who said he first checked Page 1, then went straight to the law list, also noted: "Lawyers, court officials, diaries, just a combination of them all. Contacts, it's acquired, comes from trust". This is consistent with Tuchman's observation made in Chapter 3 that reporters jealously protect their private sources from others. In addition, reporters will also seek out sources who use the same language and can reaffirm the stories they are working on, thus confirming their own versions of reality, and thus more likely to share a common lifeworld.

The role of the PIO as source is an example, if to a limited extent, of exchange behaviour, in which both parties achieve a desired outcome. This model, suggested by Stanga in Chapter 3 (Drechsel, 1983) is partially consistent with the PIO-reporter relationship. Stanga notes how friendship, information and ego-massage are exchanged in an exchange-model. It would seem that this description is rather too close or familiar for the PIO-reporter relationship, although it is clear that a strong, professional relationship replaces it. It was noted that a distance must be kept between the media and the courts PIO because they should not "be in bed with each other". By keeping a professional distance many of the issues raised in Chapter 3, about sources becoming too close to the media or pushing their own agenda, are less likely to be a problem. Certainly, the media's keenness to maintain control of the news agenda and the general sense that a professional distance be kept, might mean that Haltam's

concept of sources using "source-ery" (1998), that is taking control of the agenda, or in Habermas's terms, using strategic action, would be minimised.

Privacy and other legal constraints

Another theme that emerged in the findings of Chapter 7 was the uncertainty of the laws surrounding the news media's reportage of courts. By this I do not refer to the commonly accepted media laws of contempt and defamation in reportage, but the laws, rules and regulations that impact on the media's access to the courts rather than their reportage of it. The television media were quite clearly of the opinion that camera access was simply not allowed in courts, either in the majority of instances or all the time. As one reporter noted: "it's against the law". Most media understood that camera access was allowed only at the discretion of the presiding judge or magistrate and permission had to be sought, thus placing the courts in a position of control. It was therefore somewhat surprising that only one news director said that he would like to see guidelines which made the access issue much more consistent rather than left up to the discretion of the individual judge or magistrate. He noted: "We are still at the point of arguing principle rather than having a set of guidelines which you can fall back on and say under guideline X we would like to do Y." This level of uncertainty is of some concern because it appears that, on the whole, the television media have become timid about seeking, let alone challenging for access and indeed, it may well be argued that they are being bluffed by the courts into a blind acceptance. One PIO said she had repeatedly told the media that they should "force a judge to justify a refusal" if one was made about camera access. Indeed, the comment by a judge that the media had only "politely raised issues" concerning camera access would appear to be indicative of a media which were uncertain of their rights, not bothered to push the issue, or were timid about pursuing it. The television media, for the most part, had come to accept or anticipate rejections. This was illustrated by comments from reporters in Chapter 7. However, uncertainty about laws is not a unique problem associated with accessing the courts. Literature on media law considers how uncertainty about laws of defamation can lead to a "chilling effect" (Clark, 2000; Pearson, 2004) which causes overly cautious reportage. This widespread lack of clarity of laws affecting media reporting thus raises significant issues for free speech.

Though not all uncertainty is dealt with by caution. In the case of the Snowtown proceedings, a television reporter was noted to have argued against suppressions and won a precedent. One PIO explained: "That judgment enables any journalist in South Australia to stand up in court unrepresented…and the court must hear them". Nevertheless, it was not usual practice to question such rulings, or judicial decisions that affected camera access.

However, laws relating to privacy have the potential to further blur the legal position of the media in covering courts. The Federal Privacy Act amendments of 2001 have placed restrictions on access which have resulted in a more cautious approach to privacy by government and public sector departments. For example, the act contains 10 National Privacy Principles (Federal Government, 1988) which limit solicitation of personal information generally to ensure "the information collected is relevant to that purpose and is up to date and complete; and the collection of the information does not intrude to an unreasonable extent upon the personal affairs of the individual concerned". Wording such as this clearly has the potential to impact on reportage especially on a round which is plagued with uncertainty about rules and regulations. Pearson notes that "the sad reality is that the net effect of the legislation is that it has already made it harder for journalists to go about their work" (Pearson, 2004: 312)

The privacy of court participants was central to many of the courts' rules and stipulations placed on the media. Indeed, filming within courts would be far simpler if the privacy of individuals was not at issue. This extended to a range of participants and is clearly an area of concern for those who work in the courts. As one PIO noted: "those working in the court can be filmed – judge, judicial staff, transcript writer, lawyers, and probably the media…but of course not the jury". Visual images of people who are not paid to be in court -- the jury, witnesses and victim/s, and even those in the public gallery -- are potentially far more invasive than a written or verbal description of the same person. Thus, concerns about privacy often revolve around issues of vision. It was not surprising that the jurisdiction which did not have to consider the range of non-paid participants, the Federal Court, had fewer problems

and was, to some extent, the envy of the other jurisdictions because of the high profile cases and the low risk camera issues. Nevertheless, this jurisdiction was not without risk and vision of the gallery in the Cubillo/Gunner case, for example, had raised issues for the Federal Court.

Privacy issues had been cited as the reasons for the rejection of a proposal to make a real-life series of the Magistrates Courts in Sydney. A TV reporter had proposed producing a television series based on the workings of these courts had been advised that the proposal was too contentious because of privacy issues relating to court participants.

A PIO said that access to information had become a blurred area because of ownership of the information. This had the potential to limit media access and she noted how government policy now meant:

> Police now will not give out the name of someone arrested. They will just say a 35-year-old man was arrested and will appear at the local court tomorrow. Now I can't give the name out because the court file only gets opened when he appears.

She said there was potential for change in this area but could not expand on this point. Another PIO said it was important to shore up issues of privacy in a contract with the media. She used the example of the current affairs program described in Chapter 7, in which old footage was used to put together a new story. A contract with the media outlet would restrict subsequent use of the footage, or require it be destroyed, thus limiting its use as file footage.

Where the media have shown that they are unclear of their rights in accessing courts' materials, this is potentially another area of law that has already begun impacting on how the television sector, in particular, covers the courts. Changes to privacy laws occurred as this thesis developed and were not central to its findings or outcomes. It is however, an issue that will continue to impact on the media and will warrant further investigation in the future.

Internal Cultures

An additional minor theme that emerged in Chapter 7, which is quite separate from the media and the courts interface relates to issues that exist within newsroom cultures, both explicitly and implicitly. Newspaper reporters were often frustrated because they believed sub-editors mismanaged their stories, sometimes to the point of misrepresenting the reportage. Notably, these had to do with the sub-editing of court stories. The print reporters who argued that their stories were often poorly sub-edited, by sub-editors who often did not understand the courts, saw a distinct difference between how they covered courts and how they were handled in the newsroom. This, clearly, impacted on how they perceived the fairness, balance and quality of the coverage. One print reporter noted:

> You get told 'no, I don't like that lead, this is more sensational'. Nemer was an example. Nemer was originally given a suspended sentence with a $100 good behaviour bond. The office decided to push the $100 bond angle, as a result the mention of the bond dropped further and further down the story. It was completely out of my control.

While it was noted that television reporters did not equate problems as stemming from their newsrooms, but rather within the courts themselves, the different perspectives held between the television reporters and the television News Directors give rise to an implied difference in cultural expectations of the round. Within television, News Editors were seen to be quite passive about developing camera access on what they saw as a "dull" round, whereas reporters were quite passionate about it. In addition, in several cases News Directors deferred to their court reporters for answers because they were not informed about certain aspects of the round. Perhaps the single biggest difference between the two media though is the permanent positioning of newspaper reporters within the courts, that is, they work almost entirely out of the courts' reporters' room, whereas television reporters usually return to their own newsroom at the end of the day to compile their stories. Thus television reporters might be seen to have a greater contact and continuity with their newsroom than the print reporters.

These different perspectives and understandings suggest that there may be little or poor communication within newsrooms and within media cultures over what is expected of the court round. This is consistent with the paucity of research that has been conducted into the court round, inclusive of media perspectives. The disparities that emerge from differing categories of respondents could relate partly to individual job differences, yet the trends that emerge are equally consistent with the notion that reporters in the courts and news-staff in the newsroom are often not connecting in any real sense on how courts are covered. In some ways they might be seen to be "rowing separate boats". Where newsroom cultures might often bring a sense of connectedness for other reporters who work primarily within the newsroom, these reporters work primarily in the court house, and it was noted by one newspaper reporter in Chapter 7 that this gave reporters at courts a common understanding and sense of togetherness, despite coming from different news organisations. He described the role of court reporting as being like a "frontier" where the reporters were "co-conspirators". Indeed, reporters in the courts who share the court reporters room (at courts) with other, competitive media might experience a stronger shared lifeworld with each other than with reporters within their own organisation.

Thus, it seems that any further examination of the relationship between the courts and the media might need be accompanied by an examination of the relationship within newsrooms, to ensure a common understanding and knowledge of court reporters and the newsroom staff. Improved communication at this level would thereby have a flow on effect to the court-media interface, by ensuring that the reporters in the courts are more informed about newsroom practices and vice versa, and avoiding sub-edited versions of stories or headlines which do not reflect court stories, thereby resulting in negative ramifications for the reporter who faces the same people in courts day after day. This internal examination of news cultures extends beyond the scope of this thesis, however there have been sufficient findings to suggest that it is an area of worthy further investigation. Theories of ideal speech and shared lifeworld are just as applicable in the context of the newsroom interface as they are to the court-media interface and could be equally applied there.

Summary and Conclusions

This chapter has provided an in depth level of discussion and analysis of the findings of Chapter 7, positioned in the context of the theoretical framework and earlier literature on the courts and the media. It has focused on a range of themes, which have emerged from the findings.

The courts and the media have a symbiotic relationship in their respective roles in a democratic society, yet they have experienced a tension based on their different cultures, demands and their own expectations of what society expects from them. Since the emergence of the role of the PIO in the courts, these traditional tensions have been reduced with some strong evidence to support not only its continued role within the courts, but its adoption in jurisdictions which currently do not employ a PIO, and the expansion of the role in those jurisdictions which do employ such a person. Reasons for the success of the role of the PIO in its relationship with the media include the maintenance of a professional distance between the two areas, the courts positioning of the role under a "public information" or "media liaison" role rather than the more negatively-charged title of "public relations" or "publicity", and finally the media's perception that it controls the agenda in its deliberations with the courts.

The role of PIO has provided positive outcomes to the media and the courts alike: in providing a reliable bureaucratic source in a journalistic round which has traditionally been plagued with access problems, and in providing an experienced communicator for the judiciary. The PIO has facilitated the opportunity for the achievement of an approximate ideal speech, a discourse in which communication is equal and fair and all parties are heard and, at the very least, has assisted with communicative understanding with the media. This model is paralleled by Grunig and Hunt's two-way symmetrical and two-way asymmetrical models of communication.

Television coverage of the court round by the media has increased under the supervision of the PIO, however advancement in this area has slowed, almost to a

halt. The courts' moves to give more access to television have been problematic and fraught and there is a sense that the television media have not been proactive enough in pushing this agenda. The traditional media which cover the courts, newspapers, have been seen to consolidate problems with camera access, attributed largely due to its historical "ownership" of the round. It would seem that expectations by the courts may not have been met by the needs of the television media, or alternatively, the television media have not yet been sufficiently motivated to push the cameras in court agenda, may have become too timid to do so, or do not feel sufficiently assured of their legal position to do so. Thus, there remain issues related to the laws that govern the media's coverage of courts, some of these appearing to be partly due to media perception and problems of clarity as well as real issues of law.

Finally, this chapter has shown an additional, unexpected theme about the courts-media interface and this has been the internal cultures within newsrooms and the disparities between the reporters on the round and the news-staff in the newsroom. The courts are not the only round which take reporters away from the newsroom on a daily basis: the same would apply to reporters covering all levels of parliament and local government. For those reporters who are away from the office for extended periods of time, there appears to be a need for improved levels of communication and understanding about what they do and how perceptions and actions at the office can impact on the daily work of a court reporter.

The following chapter will draw these findings together to determine how they answer the three research questions that underpin this thesis as posed in Chapter 1, consolidate just how the media-court interface is positioned and, through the provision of a list of recommendations, consider how this might be best developed for the future.

Chapter 8 Conclusions

This thesis has provided a window into the interface between the courts and the news media, identifying aspects of their past and current relationship, both functionally and philosophically, and has proposed potential and real future directions. It has shown how the relationship between the two sectors has changed in the past decade, with steps toward improved, open communication and experimentation into new areas of media coverage. At the start of this thesis I noted Schultz's observation that the relationship between the news media and the three arms of government was constantly subject to contest and renegotiation. I would argue that, when we consider the conclusions discussed in this chapter, the renegotiation of the relationship between the news media and the courts is actually well underway.

The research presents the first detailed analysis of this relationship in Australia since changes to the courts' communications systems with the media began a decade ago, giving voice to both the media and the judiciary. Conclusions may be drawn at two levels: first, in the functional domains of day-to-day policy and procedures between the courts and the media; the second, in the philosophical and theoretical connections between these two democratic institutions. I believe that while the first level provides important practical conclusions and recommendations, this second level of findings has important implications for Australia's system of open justice and democracy as a whole.

Specifically, I set out to investigate the relationship between the media and the courts and the impact of this on the public sphere through three primary questions:

1. What changes have been put in place during the past decade to facilitate the court-media interface?
2. How have these changes by the courts impacted on journalistic practice?
3. In what ways could the relationship be improved to better serve the court system, the news media and the public?

What emerged through the investigation were two somewhat narrower, implied questions about the nature of the court-media interface. These were:

- Will television become the dominant media in reporting the courts?
- What is the nature of the public relations presence within the courts?

These questions will be addressed in this chapter. The final section will present a list of recommendations for the continued facilitation, enhancement and improvement of the court-media interface.

In addition to these functional issues, this research also develops solid philosophical and theoretical arguments, taking the impact of these findings beyond that of policy and practice, into the realms of philosophical and theoretical understanding. In particular, the investigation supports the need for the courts and the media to co-exist efficiently in a democracy in their "separate but interlocking" functions (Brennan, 1997); for the courts and the media to work together in the provision of effective representations of open justice; and, at their interface, for these two institutions to help maintain a healthy, working public sphere. Within these broader philosophical positions, the research responds to criticisms made by Parker (1998) that this area of research has been "incompletely theorised" and inadequately addressed. I would therefore argue that it provides a solid foundation for the growth and development of this crucial link in democracy.

Question 1: What changes have been put in place during the past decade to facilitate the court-media interface?

Since the early 1990s the courts have made significant steps toward enhancing their relationship with the media. This has been primarily achieved through the advent of the role of the PIO within the court structure. When we consider the rhetoric of the early 1990s about the court-media relationship, encapsulated by Justice McGarvie's (1992) comment that "the courts do practically nothing to assist the media in reporting on the courts' work", we must accept that the courts have moved a long way, and that this statement is no longer representative of the situation. The PIO represents a new interface between the courts and the media: one that previously did not exist. This new interface, with its shared understanding of cultures and language among the

parties, has moved the courts closer to the media in the areas of shared lifeworld, ideal speech and communicative consensus.

This research has found that the introduction of PIOs into the Australian court sector has been extremely successful, with potential for continued, strengthened relationships between the people in these roles and the media in the future. The findings show an overwhelming positive response to the role of the PIO in facilitating access, assisting accuracy and fostering strong communication between the media and the courts in general, with an as yet unrealised potential for assisting the judiciary, in areas such as community involvement and media training.

This is illustrated throughout the findings with a range of positive responses offered by media who work alongside PIOs in their court reporting. One reporter in South Australia summed up the position of the PIO like this:

> It's an extremely critical role because here in South Australia we have made some terrific strides in getting publicly accessible information in a quicker and easier way. In the past it's been a convoluted nightmare to get our hands on what should be publicly available information, now the PR office facilitates that and on the whole it's a very good system. But also we have a good liaison, a mediator and facilitator between us and the judiciary and the magistracy. So it performs two very important roles, as a go-between you could say. That helps us a lot as well.

Clearly, in South Australia, the media are well looked after by the courts, which has in the past few years expanded its communications office to include a specialist Media Liaison Officer, a Community Liaison Officer, a half-funded education officer, a specially appointed PIO for the Snowtown Trial and an administrative assistant for the department. Even in the face of the Snowtown trial, which clearly tested the news media's patience with the courts due to the large number of suppression orders issued, the relationship appeared to remain strong. The appointment of an "outside" PIO, not usually employed within the communications office, might be seen as a strategic move on the part of the South Australian courts to keep separate from the normal PIO any difficulties associated with covering that case. Indeed, the South Australian courts

might be held up as a best practice model of court-media relations and this level of staffing should, in the near future, be seen as a minimum level of staffing across all jurisdictions.

What also became clear in the findings was that the jurisdictions without a PIO, notably Queensland, Tasmania, the Northern Territory and the ACT, were lacking a valuable conduit between the courts and the media. The very presence of the role in some jurisdictions, but not others, is a cause for concern for the equal and fair administration of justice nationally. In addition, as the advancements made by the PIOs became apparent so has it become clear that the role needs to be expanded beyond its current ambit across the full range of court sectors, at all levels. Both these suggestions for expansion of the role of PIO will be addressed in more detail under question 3.

The research has also shown how the role of the PIO is not synonymous with a public relations presence and indeed the definition of the role in this environment appears to be extremely important, especially to the news media. The reporters interviewed rejected the identification of the role as public relations and the courts themselves generally prefer to define the role as one of media liaison. The shared lifeworld between the news reporter and the PIO, assuming a background in the news media for the PIO, appears to be an important foundation for the successful continuation of the relationship. In most jurisdictions, the role of the PIO is primarily media liaison, although this is not necessarily its exclusive domain. As the role is expanded, as indeed it will be suggested, the background of PIOs working with different sectors of the community, notably not the media, may need to be redefined. However, while the role is currently largely that of media liaison, it is important for the courts to consider how the media define it.

The research has also shown how the role of the PIO has been at the forefront of a decade of greater access to the courts by television cameras. Their presence in Australian courts have by no means become a standard or, indeed, simple practice, but the use of TV cameras is undeniably further advanced than it was a decade ago. Furthermore, the debate about camera access has been put on the agenda for ongoing and further discussion. This development is discussed in greater depth later.

In particular, the new improved communication process between the courts and the media may be seen in the following areas:

- Media liaison committees which include courts personnel, including the PIO, members of the judiciary and magistracy, and court reporters;
- Summaries of court judgments provided in a timely fashion for deadlines;
- Court web-sites which provide the media with a range of facilities including standardised request forms for access to transcripts, evidence and, in some jurisdictions, camera access;
- Some increases in television access due to the introduction of procedures such as standardised request forms and the PIO acting as facilitator;
- Development of media guidelines, particularly pertaining to camera restrictions; and
- Cheaper and easier access to court documents.

Summary: There have been significant changes to the court-media relationship during the past decade. The most significant change has been the introduction of the PIO into most court jurisdictions and this role, in turn, has become the linchpin for a range of developments and improvements on how the media relate to the courts.

Question 2: How have the changes by the courts impacted on journalistic practice?

Changes within the court system may have indeed begun to redefine the relationship between the courts and the news media, opening communication, facilitating access and improving the relationship overall. However, some aspects of journalistic practice have not changed, notably the way the print media has maintained control of the court and justice round. It became clear in this research that under current conditions, television will not become the dominant medium in covering the courts in the foreseeable future. What has changed has been the way individual reporters have been able to access information and check the accuracy of their stories through the PIO. This is without doubt the single biggest development and improvement in court-media communication because increased accuracy can only mean a better overall coverage

of courts by the media with fewer errors affecting the administration of justice. While not supported by empirical data, the anecdotal evidence, primarily the responses from the judiciary, indicated this was the case. A content analysis to compare the accuracy of jurisdictions with and without a PIO in office might further support this claim.

This thesis focused on issues for the television news media, primarily because this medium was seen to represent the area of greatest change in terms of its relationship with the courts. Television-specific issues, not surprisingly, centred around access to vision, but the investigation revealed that this was not a simple problem with a simple solution. Indeed, the disparity in perspectives and expectations from the courts, the television media and the print reporters, indicated that no two groups were focussed in the same direction on the issue.

The research supports the suggestion discussed in Chapter 4 that the television media are not, in any real way, driving the issue of camera access. Indeed, the most senior television newsroom personnel are not really interested in the prospect of increased camera access. These decision makers do not see it as an important enough issue on which to spend a great deal of resources. Conversely, it would appear that the courts personnel, both PIOs and judges, are driving the agenda of cameras in courts. Comments like "the courts are a treasure trove of stories" did not come from the media but the courts. Those television reporters who passionately sought increased access to vision were those reporters who, understandably, wanted to enhance their own stories with appropriate vision to bring them to the front of the news bulletin. The news directors, who oversee all rounds and thus have a more dispassionate view of the courts, were not so driven. One news director noted the ambivalence about getting cameras into courts that typified the position of much of the senior television news personnel:

> I guess we want the best of both worlds. We like to have access when we want to have it. But we wouldn't force the issue when it was going to be inconvenient … But I think it is important that we have a dialogue that allows the judges to understand our problem and us to understand theirs. That is the key to it. And to be fair that has gone on and is going on. It will be a long while before it is over.

The difference in approach between the news directors and the court personnel highlights the different cultures of the respective workplaces under investigation here. In essence, the television newsroom is a "live for today" environment, in which the evening's news bulletin is paramount, deadlines are tight, and today's news is tomorrow's history. The courts, on the other hand, are characterised by systematic, methodical, long-term traditions, where change happens slowly. The findings showed that the courts have made moves to accommodate the media but, in reality, the courts will always keep control of their agenda because of their ability to veto or alter a decision within their ambit: suppression orders, such as those in Snowtown; and minimum air-time restrictions, such as those set down in Avent, illustrate this. This appears to be a major stumbling block for the development of the relationship: the media would clearly choose to work on their own terms rather than that of the courts. This was seen in the media's need to maintain control of the agenda in their dealings with the courts. This is a major problem with camera access. The television news media do not want to gain access according to strict controls dictated by the courts which is central to the very cultural differences between the two areas.

The research has also shown that with some exceptions, the media tend to be the more passive partner in the relationship with the courts, often generally accepting the status quo. It is not clear why this is the case. Possibly it is due to the perceived dominance of the courts and that the concept of challenging participants within it is too daunting. On a day-to-day basis we must remember that, despite its ownership concentration, the media are not one monolithic entity (indeed one reporter suggested that the media should not be seen as a "monolithic blob"). Rather, the media are made up of individual reporters, navigating their way through their chosen round, and news directors, who were once reporters, most of whom go through their professional career trying to **avoid** the law, rather than engaging with it let alone facing or confronting it head on.

In addition, the findings suggested that even if the television news media did push consistently for camera access, another issue must be considered: that of the print media's "ownership" of the round. Courts have tended to remain predominantly a forum for print-reportage with traditions well established in the medium. When we

consider this, it is hardly surprising that moves by television into the round might be obstructed by the print media. Observations of such "patch" issues were raised by one judge who noted how the print media, in one case, created "a furore … designed to minimise the prospect that television would ever get hold of court reporting". Interestingly, print reporters, in this study, were not generally opposed to television camera access, with most of the seven newspaper reporters in favour of access by news, current affairs and documentary media. However, this group of seven may simply not be representative of print media reporters overall. Indeed, they were all court reporters and it has been established that court reporters tend to band together in a "frontier" culture within their round. It was interesting to note that the one newspaper reporter who strongly opposed cameras was against them on the grounds of justice to court participants, rather than newspaper dominance of the "patch". He argued:

> I think that courts need to be open, need to be available to the public to come in and see justice being done but if we're going to use transcript instead of video taping there's no reason why cameras should be allowed in … (It) may very well be an unfair split but it's one that works…At the end of the day we've got to remember that media being in court reporting is far more important than the media itself.

In addition, in Chapter 3, we saw how the print media was firmly entrenched within the court round and the importance of this should not be overlooked. Newspapers have an historic "ownership" of the round, dating back over the past three centuries.

The issue of deadlines and competition must also be considered in the print versus television argument. It is imperative that newspapers get a story first: otherwise it becomes old news. Hence, if television covers a story on the evening news, then it has already been reported by the time the next day's newspaper is printed. Thus, we must assume a degree of professional rivalry and this is more likely to increase, rather than decrease, as the print media clings to its traditional rounds in the face of a rapidly expanding electronic media.

Conversely, as one judge argued, television's coverage of courts is simply a matter of common sense as television is the medium from which most people gain their information about the world. Hence, it is the logical medium to carry the messages of the courts. What is not clear, however, is whether easier access to vision would markedly change the way courts are covered, or whether changes would increase the entertainment approach to courts. Would the news directors who see the courts as "dull" be interested in committing more resources to the round? The findings in this research suggest they would not unless it was offered in a more media-specific way, enabling quick and easy access on terms set largely by the media themselves.

While it was suggested in Chapter 2 that the public sphere has been recast through the media and the media became the embodiment of the new public sphere, it must be argued that this has not truly occurred within the context of the courts. The media's capacity to transform the public sphere into a space in which the public can openly observe, even participate, has not happened in this sector because of these limitations on television access. In the *Structural Transformation of the Public Sphere*, Habermas (1984) predicted that television media would erode the public sphere because of its superficiality and tendency to favour entertainment over discourse. In this sense, the courts have tended to remain buffered from this transformation because of television's limited access. The entertainment focus of courts, particularly in the United States, has been more limited in Australia because of restrictions placed on reporting of court cases, such as Snowtown. Although, superficiality of court coverage may be an issue due to deadline pressures, the "entertainment" factor remains restricted largely to footpath vision outside the courts.

Summary: Changes within the courts have impacted on media practice by making access to documents and other materials simple, easy and systematic. Anecdotally at least, we can see that this has improved accuracy of media coverage or at the very least, has the potential to improve accuracy when this is a central issue for a story. Changes have resulted in a redefining of boundaries between the media in the round, notably because the print media are the traditional court reporters and the television media are still finding their space. Increased use of television cameras has somewhat altered patterns of reportage, but in a very limited way. Differing cultures between the

news media and the courts continues to keep the change agenda under the control of the courts.

Question 3: In what ways could the court-media relationship be improved to better serve the court system, the news media and the public?

The future of a positive court-media interface will continue to rely on both these institutions working together to achieve mutually beneficial advancements. The foundations are well in place for continued growth of the relationship between these two sectors, however, it is time for the courts and the media to closely consider and to evaluate the progress of the past decade. In doing this, both parties must critically look not only at their own needs, but also their own shortcomings in this relationship. Ultimately then, if the courts and the media continue to strengthen their relationship, the public will ultimately be better served in the quality of reportage.

The two main areas for advancement lie in the role of the PIO as the primary link between the courts and the media and the communication strategies adopted between the courts and the television media. Clearly the successes of the role of the PIO in all states except Queensland, Tasmania and the territories, raises issues of equitable access for media. The findings showed that the Queensland judge interviewed saw the role as essential and that it seemed "a little odd" that his state had no-one in the role. The Queensland judiciary, and indeed the executive, needs to place the issue of the need for a PIO back on the agenda, strongly supported by the advancements in other jurisdictions. While the Queensland media did not identify the role as particularly important, they have no basis for comparison and indeed, media responses from all other jurisdictions place them at odds with their counterparts around Australia.

The appointment of PIOs has also served to provide a communications officer for the judiciary. There is a strong argument to support the judiciary being afforded the same assistance with public communication and media liaison as the executive arm of government. Where the role of the PIO does exist, it has gone part way to providing the judiciary a communications advisor, however, it must be seen that in the current climate of massive growth in communications across the corporate, political and not-

for-profit sectors, the judiciary is still extremely under-supported in this role across all jurisdictions, except perhaps in South Australia.

Another issue for the courts to consider is the importance of information from the Magistrates Courts. The Queensland judge was able to suggest exactly how he would like to see the role implemented, suggesting the employment of separate PIOs in the superior/intermediate courts and the lower courts. He noted that there were 78 Magistrates, 24 Supreme Court Judges and 36 District Court Judges in Queensland. He concluded: "The Magistracy is an enormous machine. The work of the magistrate is less enthralling but on the other hand (there's) a lot of public interest work there." Indeed, the Magistrates Courts is where 90 per cent of the work is undertaken (McBarnet, 1981). While none of the jurisdictions that currently employ PIOs divide the role in this way, there is a strong argument for separate PIOs to work in the superior and the lower courts. The most time allocated to any Magistrates Court by existing PIOs was 20 per cent, with one jurisdiction running media inquiries for Magistrates Courts from the Attorney General's Department.

In Chapter 4, I noted McBarnet's (1981) idea that an ideology of triviality had emerged around the Magistrates Courts in Britain, with the superior courts seen as the dominant court, despite dealing with only ten per cent of court cases. The media, she noted, shared this perception. She further argued that summary justice in the lower courts is seen as "fast, easy and cheap" and this is further compounded by the lack of legal expertise and advocacy in these courts where lawyers tend to be young, inexperienced, disinterested or in short supply (1981: 165). These observations are supported by those made by the Chief Magistrate of Tasmania who undertook to bring about changes to the relationship between the media and the lower courts in his state. A series of court-media protocols are being trialled in order to enhance court-media communication and to create a systematic approach for court staff in dealing with the media. These protocols, developed as a result of early research for this thesis, supported of the idea that the media should be able to gain information from all Magistrates Courts in a systematic and fair manner, rather than at the discretion of court staff.

The research also shows that the courts should consider employing separate PIOs for high profile, time-consuming trials especially those that are likely to attract significant media interest. The Snowtown case indicated that there were major benefits to such an appointment, in terms of access and accuracy, and the potential for being extremely cost-effective in the long run.

This research further showed that another major success by the courts in their moves to enhance communications with the media has been the development of media-court committees. Whilst currently operating only in three jurisdictions, two of which incorporate media representatives, the committees provide an illustration of how the court-media interface can work and work well. It became clear in this research that these meetings, which are inclusive of the media, are a major step forward in finding a shared understanding by the courts and media. The success of the meetings has been attributed to the inclusive manner in which they operate, with all parties having equal role. As far as possible, ideal speech is acted out and communicative-understanding or communication-consensus is achieved. Such committees have the potential to reinvigorate the critical role of the courts in the processes of the public sphere, noted by some news directors as "dull". For this reason, while the committees do currently work, they could still be expanded. Separate meetings could be inclusive of news directors, so that they can have an impact at the policy level of media and court proceedings rather than the current system that largely contributes to procedural change. Policy changes could include the creation of clear guidelines on what images television media can shoot and what is out of bounds. If communication understanding, or indeed potentially, consensus, is to be achieved, there is a need to address the imbalance of power relationship that exists in the overall relationship between the courts and the media, as evidenced by the media's lack of certainty about these rights. The courts' work, to this point make, them perfectly positioned to expand the channels of communication to clarify such issues with the media.

Aside from the sheer pervasiveness of the television industry, there is little to suggest that television cameras will soon become a central part of the court process for the

coverage of news. It seems no more likely now than it did five years ago, when the Stepniak report was published, that Court TV will become a reality. However, this possibility may be reversed as Australian cable television expands. If Court TV were introduced, news and current affairs would undoubtedly benefit from this format. In the meantime, this research has found a need for simple, uniform rules by the courts to enable the television media to know what they can, and cannot do. To work, these rules must be more in keeping with the culture of the newsroom. While this might appear a difficult task, it would seem that such issues could be raised at the annual Australian Institute of Judicial Administrations (AIJA) conferences, at which televising courts has been a topic of discussion in the past.

Without any in-court vision, the television newsrooms may push ahead with use of 3D animations of characters as described in the findings. However, I would argue that this approach is seriously flawed in terms of how it might depict the courts. Presenting characters in court as cartoon figures has the potential to perpetuate the fictionalised approach to courts that already exists in the absence of real court images.

Finally, the internal cultures of newsrooms need to be addressed in terms of how these impact on reporters on the court round. The research found that because reporters, particularly print reporters, are somewhat dislocated from the newsroom due to their daily attendance at court, there are gaps in understandings between the reporters and their newsroom colleagues. Notably, there is a disjuncture between print reporters and sub editors and, to some extent, television reporters and news directors, in terms of how courts are covered by the media. For the print reporters this can mean headlines which do not reflect their stories or edits which remove significant parts of a court story, while for the television reporters it can mean a lack of understanding by senior television personnel about the importance of vision to enhance a television reporter's court story. Outcomes can mean reporters are unhappy with how their court stories appear, court staff may be unhappy with how court stories are presented, or potentially, errors may occur. The latter can result in strained communications and difficulties for reporters who deal daily with the court personnel. Thus, the question of stronger communications between the newsroom personnel and the court reporters needs to be a priority in order to improve understanding of the court round by all levels of newsroom staff.

These developments illustrate how the changing interface between the courts and the media has enhanced the principles of open justice. In those jurisdictions that employ one or more PIOs, that have established media-court committees and guidelines, and that have worked with the television media at improved camera access, the philosophy of open justice is finding practical form. As noted in Chapter 1, open justice can only be truly realised if the justice-media interface is constantly evaluated and monitored. This research provided such an investigation. The development of a theoretical basis for the court-media relationship is clearly illustrated in this research through ideas that link the concepts of open justice and court-media communications – ideas of public sphere, ideal speech, lifeworld and communicative (rather than strategic) action. It can also be seen, more obviously, in the developments within the courts: exemplified in the role of PIO and the televising of courts. On a more specific level, examples such as Snowtown and the development of protocols for the Magistrates Courts of Tasmania, illustrate why those in the courts and the media must be constantly diligent in nurturing open justice where it exists and in questioning its absence where it does not.

Summary: Court-media relations may be improved through the further development of the role of the PIO, including its implementation in all jurisdictions and its expansion through the lower and superior courts. The success of media liaison committees should be used as a starting point for improved communication with the news media at a more senior level, notably news editors, to facilitate input in court-media policy directions. Changes within the court-media interface should not be considered in isolation but should also include a focus on internal media cultures to ensure that court reporters are well supported within their own organisations.

Recommendations

This investigation shows a clear case for a broad expansion of the role of PIO. As discussed in Chapter 3, problems with access to sources and documents and the idiosyncrasies of the court round are common for all court reporters. While the findings show that development of the role of PIO has been a major step toward improving this, numbers of PIOs, however, remain small. They are based in major metropolitan areas and not all jurisdictions have moved to employ their undoubted skills. Inevitably the employment of PIOs in some jurisdictions and not others serves only to highlight the deficiencies in those jurisdictions without PIOs. The media in these jurisdictions are clearly disadvantaged when compared with media in jurisdictions in which PIOs have been operating for up to 10 years. For the media to do their job efficiently, the issue of provision of public information and access to documents and sources is crucial. In addition, while the push for camera access to courts has slowed to the point of stalling, it should not be shelved or ignored. Discussion between senior news personnel and court personnel must be reinvigorated in this area.

It would thus serve both the media and the courts to consider the following recommendations:

- Appoint PIOs to all state and territory jurisdictions in Australia. These should be based on a best practice model of those that currently exist;
- Within each jurisdiction, have separate PIOs for the superior courts and the lower courts;
- Consider dedicated PIO appointments for high-profile or major cases when demand would warrant a full-time placement;
- Provide regional courts, at which it would be impractical to employ a PIO, with clear protocols for interfacing with the media, such as those produced by Tasmania for the lower courts;
- Separate the PIO role into specialist areas, with primary functions of Media Liaison or Community Relations (the second one being more of a Public Relations Role);

- Develop the existing PIO role, or incorporate within it, expanded communications assistance for the judiciary;
- Use the court-media liaison committees as a template for every jurisdiction and ensure continuity of these forums;
- Incorporate or expand the committees to include senior news media personnel so that policy issues, as well as procedural ones, may be considered;
- As a general rule, allow the television news media access to vision, limited to one camera, facing the bench, the bar table and the accused in the dock. No other parties would be video taped. This should be a focus for discussion by the expanded court-media committees;
- Keep the role of PIO separate from the Attorney-General's Department to ensure it remains under the direction of the judiciary; and
- Address issues of internal organisational culture that see court reporters dislocated from their "base" newsroom office by holding regular meetings between court reporters and editorial staff in the newsroom.

Summary and Conclusions

Moves by the courts over the past 10 years to facilitate improved access by the media have, by and large, been successful. The greatest success has been in the development of the role of the PIO and those jurisdictions that employ a person, or people, in this role are characterised as having improved communication with the media. The research shows that, whatever the historic impediments, it is time that Queensland, Tasmania and the territories move into step with the other states in developing the role of the PIO to work with the media who report on the courts in those jurisdictions. The role of the PIO has resulted in a better ongoing relationship and, anecdotally at least, more accurate reportage of courts.

After only 10 years in practice, the role of the PIO has overcome some of the long-standing difficulties in media-court relationships and in the media's coverage of the court round. In particular, it has alleviated problems associated with access to information and, to a lesser extent, access to the judiciary. An extension of the success in this field has revealed deficiencies in certain jurisdictions and at specific levels of

the court system. It is clear from this investigation that the role of the PIO needs to be expanded to better accommodate the multi-tiered levels of the court in all Australian jurisdictions. It is also suggested that the position of the PIO be kept solely within the courts, quarantined from the executive arm of government to ensure the separation of powers is maintained and the PIO continues to work exclusively under the guidance and control of the judiciary.

The same success cannot be claimed regarding increased television coverage of courts. However, there have been some advances and this issue will continue to be renegotiated between the television news media and the courts. To this point, developments have been driven largely by the courts rather than the television media and senior television news personnel are not united, systematic or overtly committed to gaining greater access for television cameras. However, it has not been placed entirely off the court's agenda and may move back into the spotlight if new members of the television media choose to engage with the courts on the issue and reinvigorate discussion. It is suggested that if there is any real progress to be made, the courts need to engage more at a senior newsroom level, with news directors, as this is where policy decisions are made. The forum for this could be an expanded form of media liaison committees that have been very successful at the news reporter level.

Putting the court-media interface onto the research agenda has allowed the developments within this relationship to be scrutinised at both a functional and philosophical level. This thesis has shown that in a decade, the courts have moved proactively to enhance this relationship. Their interface with the media has moved a long way from the early 90s in the pre-PIO era. The courts and the media now need to evaluate the developments that have occurred and to advance the process to the next phase. The advances I have explored here to communications practices between the courts and the media, will ultimately better serve each other, the wider community and our democratic system.

This research set out to provide a greater understanding of how the courts and the media relate to each other against a framework of the public sphere, communicative action and shared lifeworld. It has shown that changes in the past decade to this relationship fit neatly into the communication cycle of the courts, presented in Figure

2, in Chapter 2, which illustrated how the courts, as part of the public sphere, can experience two-way communication with the news media and the public. The public sphere is thus enhanced because of this communication between the courts, the media, and ultimately, the public. This has been demonstrated in the developments of the court-media relationship during the past decade. Using these ideas, and ultimately their practical manifestations as seen in improved communications and open channels of discourse, the courts can continue to expand and develop their relationship with the media which, in turn, can use the expanded communication with the courts for improved reporting and the benefit of the community. In this respect, the expectation by Habermas (1974) – that the news media ultimately must cause the breakdown of the public sphere – has not been realised in these findings. Indeed, the passion that court reporters have for their craft provides an encouraging foundation for the future of the court system as it occupies a crucial part of the public sphere.

Ultimately, this research has indicated that the courts and the media in many parts of Australia, due to this decade of gradual change, are currently experiencing a high point in their relationship, which augurs well for the future. This will, however, require continued diligent effort by both institutions, and an ongoing commitment to providing and representing open justice.

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[i] While this is valid criticism of *Structural Transformation*, Outhwaite notes that in his introduction to the second edition of *Structural Transformation*. Habermas takes up the question of the exclusion of sub-bourgeois strata and women from the liberal public sphere. He concedes he could have said more about the existence of various forms of 'plebian' public sphere. These are, however addressed in *Between Facts and Norms,* and *The Theory of Communicative Action volume 2.*

[ii] Not surprisingly, Habermas is critical of these industries, in particular public relations and he paints it in a semi-dishonest, manipulative light. His analysis of public relations is in a purely commercial sense, which does not take into account the existence of the industry in the political or non-profit sectors. These are discussed further into these chapters.

[iii] Habermas's theories are certainly not without criticism, as noted above. Indeed Habermas modifies some aspects in time. Holub argues that Lyotard takes Habermas too literally and this could be argued about other criticisms such as Fraser's, Outhwaite's, Carpignano's and others.

[iv] These are described in some of the literature as illocutionary discourse (communicative) and perlocutionary discourse (strategic).

[iii] The 13 categories are: human interest, international politics, national politics, crime, science, international wars, national economics, international economics, education, disaster, labor, state politics, farm.

[v] For example, Conley's list is: impact, conflict, timeliness, proximity, prominence, currency, human interest, the unusual.

[vi] Hauptmann was sentenced to death

[vii] See chapter 7 Stepniak for a list of such coverage

[viii] Stepniak listed several examples of such experimentation. The Nine Network showed 130 episodes of Court TV in 1996 in pre-dawn time slots, Sky News screened over 100 episodes of American court programs *Justice This Week* and *Prime Time Justice* in 1996, while in Victoria, a Ballarat based subscription TV service called Northgate Communications ran a Court TV channel for nine months in 1997 based on pre-recorded American Court TV. It was noted to be 'popular and well received' and established the viability of such a channel in Australia undertaken by either the ABC or SBS.