

The Mason case and the working journo

Margot Saville discusses the everyday significance for news reporters
of the law of contempt

Recently I wrote an article about a prominent Sydney businessman being charged with criminal fraud. I added lots of background material about balance date transactions, artificial maintenance of liquidity ratios and backdating of documents.

None of this material appeared in my newspaper. In applying the blue pencil to my story, our resident solicitor pointed out that I had effectively pre-tried the man by including information that tended to indicate his guilt. I had disregarded the basic principles that everyone is entitled to a fair trial, and is presumed innocent until found guilty.

The problem of 'pre-trial' is nowhere more obvious than in a decision of the NSW Court of Appeal, of August 1990, in which the NSW Attorney-General sued two newspapers and four television channels over their coverage of the events of 30 July 1989 when Paul Mason confessed to three grisly murders.

Although all the media outlets were found guilty, and fined a total of \$670,000, I shall concentrate on the Channel Nine case.

The facts

In May 1989 a woman was brutally murdered with an axe on a farm near Canberra. Two months later, another woman and her child were killed in a similar fashion, triggering a widely-publicised police hunt for Mason, whom the police believed to be the killer of all three.

On Saturday July 29 1989 Mason surrendered himself at a police station, where he was arrested and interviewed. He confessed to all the killings. The following morning he was taken by the police, handcuffed, to the scene of both crimes. There he pointed out where and how he had committed the murders while being filmed by several reporters. Subsequently, the police gave a media conference where they announced that Mason had confessed to the murders.

The Channel Nine report which screened that evening referred to Mason's confession and contained footage of him taking police around the crime sites, in what the Court of Appeal described as "the act of making various significant confessional statements."

On September 11, Mason committed suicide while in custody.

The findings

The court found that Channel Nine had broadcast material which had "the tendency to diminish the power of the court to administer justice according to law, and to extend to an accused person the procedural and other safeguards which are an essential attribute of what is sometimes called due process of law."

These principles "do not exist merely to protect the private interests of persons such as Mr Mason in securing a fair trial in respect of his alleged crimes. They protect the interest of the public in having persons who are accused of crime in our community dealt with by the system established by the administration of justice according to law."

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Nine was guilty because it had conveyed the clear message that Mason was, beyond any doubt, guilty, and had, in effect, depicted his confession.

No mitigating factors

The relevant reporter gave evidence at the hearing that he had been conscious of the general rule that publication of the fact that an accused person has confessed is likely to be prejudicial to a fair trial. The court pointed out that merely referring to Mason's admission as 'alleged' was not effective to 'remove the sting' of what was reported.

Channel Nine argued that the tendency to interfere with the administration of justice should be disregarded or discounted because of the overwhelmingly strong police case against Mason and also because he had confessed. Rejecting this, the court's

response was that the law was concerned with the tendency of the matter published and the risk created by its publication regardless of how strong the case against an accused is and, in fact, regardless of whether or not the accused is guilty.

Channel Nine also argued that the likely interval of time between the date of the broadcast and any trial meant that the necessary tendency or risk did not exist. The court said that the item's impact was so powerful that "any juror at Mason's trial who saw the news item would be likely to have a recollection of the substance of it, or at the very least a recollection that would readily be revived upon some reacquaintance with the facts".

Finally, the broadcaster's public interest argument was also rejected on the basis that although the public had an interest in knowing the success of the police search, this could have been satisfied "without the presence in the news item of the various features which render it offensive".

Channel Nine was found guilty of contempt, and paid a fine of \$75,000.

Note for file

Mason's case is noteworthy because it demonstrates that the courts will not relax the rules for contempt, even when the subject of a news item is a mass murderer. Also, to all working journalists, it provides a useful set of guidelines for working within the limits of the law.

Next time I report the fact that someone has been charged I will be careful to leave out any 'background material' that tends to derogate from his or her innocence, conscious that this presumption must be uppermost in my mind and the minds of my readers. Nor will I say that the accused has confessed. And if I ever become a television journalist, I will never run footage of the accused, in handcuffs, being manhandled by the police.

Remember Harry Blackburn and the police 'walk'.

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