

## CONFIDENCE IN THE COURTS CONFERENCE

National Museum of Australia, Canberra  
Saturday, 10 February 2007, 3.45 - 5.00 pm  
Plenary Visions Theatre

### *Journalists trying to make a quid, politicians seeking re-election and tightrope-walking judges: three-ring circus or democracy in action?*

by the Hon Justice Margaret McMurdo\*

When I was appointed President of Queensland's Court of Appeal in 1998 I inherited the short-form title, "McMurdo P", even though to lay folk I was McMurdo M for Margaret. In 2003 Philip McMurdo QC, to whom I happen to have been married for a very long time, was appointed to the Queensland Supreme Court's Trial Division earning the short-form title "McMurdo J", although to lay folk he was McMurdo P, for Philip. This sets the background for a modest adventure amongst the cornerstones of our democracy: the three branches of government (legislators, judges and the executive) and the fourth estate (the media and journalists).

Had Jane Austen lived in Queensland in the first decade of the 21st century, after reading and listening to the local media she might have commenced her 21st century novel 'Crime and Punishment' as follows: "It is a truth universally acknowledged that lenient sentences in controversial cases must be imposed by women judges."

Whilst I am content to shoulder responsibility for my decisions on sentences I uphold or substitute on appeal, I have been less than thrilled with the regular attributions to me by the media of the sentences of McMurdo J, despite my deep affection and respect for him. The media and public confusion arising about McMurdo M, McMurdo P, McMurdo J and Justice P McMurdo is understandable. But so well-fixed in the minds of the Queensland media is that universal truth, it seems I am only credited with Justice Philip McMurdo's sentences when the media portrays them as controversial or lenient! When the confusion occurs I usually take it on the chin. If I feel energetic I might ask my associate or the Court of Appeal research officer (the Queensland courts have no public information officer) to phone the journalist responsible and politely explain why McMurdo M for Margaret is "McMurdo P" and McMurdo P for

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\* President, Court of Appeal, Supreme Court of Queensland.

Philip is "McMurdo J"! More often I have not bothered to correct such errors. They quickly become yesterday's news and as my children might say, "care factor?". But this laissez-faire approach was something I recently came to regret.

Fast-forward to Wednesday, 27 September 2006 when McMurdo J published his reasons in *Attorney-General for the State of Queensland v Sutherland*.<sup>1</sup>

Sutherland had served in full his sentence for some horrific crimes including manslaughter and rape. The Queensland Attorney-General sought a continuing detention order or alternatively a supervision order in respect of him under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld). The coversheet to the 16 page judgment, available on the courts website and AustLII, made plain that it was the decision of a single Trial Division judge, McMurdo J, and that it ordered Sutherland to be subject to release on a 20 year supervision order with conditions. McMurdo J in his reasons reviewed the evidence before him and the relevant statutory provisions, observing that "... no psychiatrist advocates his continuing detention"<sup>2</sup> and that "counsel for the Attorney-General was unable to advance any submission as to why a continuing detention order was necessary".<sup>3</sup> McMurdo J ultimately concluded that on the evidence he was not satisfied under the statute that it was "essential for the adequate protection of the community that [Sutherland] be kept in custody".<sup>4</sup>

Coincidentally, I had in early 2005 been a member of the Court of Appeal which dismissed an application by Sutherland for an extension of time within which to file a notice of appeal against a Trial Judge's rejection of his application for judicial review of a decision not to grant him remission on his most recent sentence: *Sutherland v Davidson*.<sup>5</sup>

To those who take a few seconds to comprehend the coversheets of Queensland judgments, easily accessible on the internet, it is plain which decision is of a single judge of the Trial Division and which is of three judges of the Court of Appeal.

On 1 October 2006 Brisbane's *Sunday Mail* journalist Kay Dibben in a short article on p 38 headed "*Sadistic killer walks from jail*" reported that Sutherland had been released the previous Friday and that "Attorney-General Linda

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<sup>1</sup> [2006] QSC 268; SC No 3524 of 2006, 27 September 2006.

<sup>2</sup> Above, [45].

<sup>3</sup> Above, [48].

<sup>4</sup> Above, [50].

<sup>5</sup> [2005] QCA 56; Appeal No 7545 of 2004, 11 March 2005.

Lavarch was unsuccessful in a Supreme Court bid to have Sutherland kept in jail, but Justice Margaret McMurdo agreed to a supervision order". The article referred to some of the more salacious details of Sutherland's offending and that in 1999 a psychiatrist described him as "a dangerous, superficial, sexually sadistic psychopath".<sup>6</sup>

I happened to see the error in the article naming me as the judge, but I was pre-occupied with the Court of Appeal's heavy workload, judgment-writing and family commitments and did not bother having it corrected. Wrong lifestyle choice.

There was a lull before the Sutherland incendiary exploded. On 6 October Robyn Wuth wrote an article on p 1 of *The Gold Coast Bulletin* headed: *Psycho Killer next door*.

The report included the following:

"A sexually sadistic psychopath who police say is one of the most dangerous offenders ever to be released on the Gold Coast is now living in a house, pictured above, next door to a children's playground at Nerang.

... Shocked local residents have reacted with anger at the revelation the convicted killer had moved into their area without them being warned. Sutherland was convicted of the 1987 strangulation death in Bundaberg of 47 year old Paula Peters, which he said was the result of a bondage sex act gone wrong.

...

A warning issued to the Gold Coast police and leaked to *The Gold Coast Bulletin* describes Sutherland as a serious danger to the community."

Wuth's report continued on pp 4 and 5. It set out details of Sutherland's life and criminal history and also listed the 22 onerous and strict conditions to which his release on supervision was subject. Wuth included the following: "A killer diagnosed as a 'sexually sadistic psychopath' who the Government believes is so dangerous he should never be released [I digress, dear listeners, to note that in fact the Attorney-General's counsel did not advance to McMurdo J any submission as to why a continuing detention order was necessary] is living at Nerang next to a children's playground. [Dear listeners, may I observe that despite the grave nature of Sutherland's offending, it was not directed at children and there was no suggestion he was a paedophile.]

<sup>6</sup>

*Sunday Mail*, 1 October 2006, p 38.

Paul Vincent Sutherland ... is now living unsupervised in a modest three-bedroom brick home on Nerang-Beaudesert Road.

... Shocked neighbours and nearby residents were horrified to learn a convicted killer was their new neighbour. One nearby resident who has young children burst into tears when told how close she lived to the killer."

Repeating in words remarkably similar to those of Dibben in *The Sunday Mail*, Wuth continued:

"... Attorney-General Linda Lavarch was unsuccessful in a Supreme Court bid to have Sutherland kept behind bars under the Dangerous Prisoners (Sexual Offenders) Act, but Justice Margaret McMurdo authorised a 20-year supervision order."<sup>7</sup>

Wuth added: "While Justice McMurdo acknowledged Sutherland's 'anti-social personality disorder makes him more likely to offend', he was released into Gold Coast suburbia as an 'acceptable risk'.

... Gold Coast police are outraged the killer has moved into the area.

A warning sent to all police officers which was leaked to *The Gold Coast Bulletin* urges them to monitor the killer's movements.

"He is considered to be a serious danger to the community," said the intelligence report.

"Sutherland is believed to be one of the most dangerous offenders ever to be released on the Gold Coast."

Angry officers want Sutherland out of the Gold Coast.

"We don't want him here. He's an animal, an absolute animal. We're just stunned that they could let him out," said one officer. ... ".<sup>8</sup>

In an ABC radio interview that day, Acting Premier Anna Bligh said: "We are currently looking at the circumstances that have led to these arrangements and if there is something that we can do to toughen it up we will do it."<sup>9</sup> Deputy State Opposition Leader Fiona Simpson added: "the legislation regarding violent offenders must be changed." Local member, Phil Gray, urged "people in Nerang to remain calm ... I'm gravely concerned for the people of that area".

AAP's website on 6 October 2006 also carried the story, reporting that Sutherland had been "released by Supreme Court Justice Margaret McMurdo on

<sup>7</sup> Wuth, R, 'Fury at psycho killer's release', *Gold Coast Bulletin*, 6 October 2006, p 4.

<sup>8</sup> See fn 5.

<sup>9</sup> Schwarten, E, 'Convicted sex killer moved after public outcry' (AAP, General News, 6 October 2006) sourced via 2006 Dow Jones Reuters Business Interactive LLC (trading as Factiva).

September 29 despite the state government's efforts to have him jailed indefinitely."<sup>10</sup> That report quoted Queensland Corrective Services Minister, the Hon Judy Spence, as saying "I understand residents' concerns and if we'd had our way, this man would not have been released".<sup>11</sup>

On 7 October *The Gold Coast Weekend Bulletin* continued its pursuit of Sutherland on pp 12 and 13 in an article headed *Terror next door -Nerang breathes easy after killer taken away* with a photo of him, head wrapped in a Bronco's scarf, vacating his former residence.<sup>12</sup> A subheading was *Judge who gave Sutherland his freedom* with a photograph of me together with biographical details. The main article included the following:

"Residents were outraged Sutherland had been allowed to move into the suburb and blamed Justice Margaret McMurdo, the judge who refused the State Government appeal to keep Sutherland behind bars and granted his freedom. Despite acknowledging Sutherland was 'more likely to reoffend', Justice McMurdo decided his release was an 'acceptable risk' to the Nerang community, while she lived safely in an exclusive inner-Brisbane suburb in her secure \$2 million mansion.

... Area councillor Peter Young said the judge was clearly out of touch with the community.

'If the judge deemed him an acceptable risk then perhaps he should be living next door to the judge,' said Cr Young.

'But that person probably lives in a secure, gated community completely removed from the realities of day-to-day life.

'This shows that the people making these decisions are out of step with community sentiment about these issues.'

Cr Young said it was time the judiciary was held accountable for its decisions.

'What happens to the judge if this person reoffends?' he said.

'They are not held accountable.

'The judge will just continue in her high-paying job and keep making these sorts of decisions.'"<sup>13</sup>

The newspaper's editorial questioned whether Corrective Services would have approved Sutherland's move to "the silvertail suburbs of Brisbane or to a street where a Supreme Court judge lives".<sup>14</sup> Interviewed neighbours and relatives of

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<sup>10</sup> See fn 9.

<sup>11</sup> See fn 9.

<sup>12</sup> Wuth, R & Gibbons, J 'Terror Next Door – Nerang breathes easy after killer taken away', *The Gold Coast Weekend Bulletin*, 7 October 2006, pp 12-13.

<sup>13</sup> See fn 12.

<sup>14</sup> See fn 12.

the victims of Sutherland's crimes gave their views: Sutherland's release was not an acceptable risk to them.

By Monday, 9 October when I was shown these reports, even my tough old chin was getting a bit raw. My associate phoned Ms Wuth of *The Gold Coast Bulletin*, explained that Wuth had wrongly attributed the *Sutherland* decision to me, that it was a decision of Justice Philip McMurdo of the Trial Division of the Supreme Court, the difference between McMurdo P of the Court of Appeal and McMurdo J of the Trial Division of the Supreme Court, referred her to the judgment on the courts website and requested that she remove the incorrect information from the newspaper's website where it was still displayed. Ms Wuth indicated that she obtained her information from another newspaper report; she did not suggest she undertook such arduous investigative journalism as looking at the judgment coversheet, let alone the actual reasons, on the website; she certainly did not suggest she had confused the decision releasing Sutherland with the earlier decision rejecting his application where I had been a member of the Court of Appeal.

Having ascertained *The Sunday Mail* and AAP websites still wrongly named me as the judge, my associate then phoned Ms Dibben of *The Sunday Mail*. Ms Dibben, unlike Ms Wuth, immediately apologised, stating she apprehended that *The Gold Coast Bulletin* had picked up her error and repeated and compounded it. My associate next phoned AAP requesting them to correct their website. In an attempt to contain the by now raging Sutherland fire, the Queensland Chief Justice, Paul de Jersey, wrote a letter to the editor of *The Gold Coast Bulletin*. His letter, published with other letters to the editor the following day, was in these terms:

"I refer to the article 'Nerang breathes easy' published in the *Weekend Bulletin*, concerning Paul Vincent Sutherland. The article asserted the Supreme Court judge who refused the state's application for Sutherland's continued detention was Justice Margaret McMurdo. The Judge who decided the application was in fact Justice Philip McMurdo.

The article disclosed little of His Honour's reasoning. The full judgment can be read on the court's webpage at <http://www.courts.qld.gov.au/qjudgment/>. In this highly emotive area, reporting should not only be accurate, but also appropriately restrained."<sup>15</sup>

The previous day the Premier the Honourable Peter Beattie and the Minister for Police and Corrective Services the Honourable Judy Spence had issued a joint

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<sup>15</sup> Chief Justice Paul de Jersey, 'Letters – Reports need restraint', *Gold Coast Bulletin*, 10 October 2006, p 12.

ministerial media statement in an effort to build their own legislature-firewall. They announced:

"... laws that will ensure certain sex offenders will be subject to electronic monitoring. ... 'These new laws are about putting in place further measures to better protect the community,' Mr Beattie said.

Ms Spence said the ... bill would ... specify the type of offenders who will be subject to electronic monitoring, and to ban jailed sex offenders from leave, other than funeral or medical leave.

'These new laws will allow for any offender released under the Dangerous Prisoners (Sexual Offenders) Act 2003 to be subject to electronic monitoring,' Ms Spence said.

'Next year we plan to introduce a system of electronic monitoring for child sex offenders and rapists after their release from prison,' Ms Spence said.

... 'This will capture offenders such as convicted killer and rapist Paul Vincent Sutherland, whose release by the Supreme Court has caused concerns for residents on the Gold Coast ...

'If we had our way, Sutherland would not have been released. However, if sex offenders are to be released into the community, then we want to ensure we can put them under the tightest supervision and surveillance possible which will include electronic monitoring as of next year.'"<sup>16</sup>

No doubt their press statement was prompted by earlier media reports of inflammatory Opposition calls for Minister Spence to resign and for the government to bring in tougher laws for violent sexual predators.<sup>17</sup>

The editor-in-chief of *The Gold Coast Bulletin*, Bob Gordon, on 10 October wrote to the Chief Justice inviting him to pen 1,000 words on the issue. On the same day he wrote to my associate, apparently after looking at the *Sutherland* judgment online, noting that the court's website "still does not state which McMurdo made the judgment"! He considered that had it stated "McMurdo P" then he would have known it was Justice Philip McMurdo! The various media websites were amended to remove the attribution to me of the *Sutherland* judgment by the afternoon of 10 October.

Retired Supreme Court judge and former Parole Board chairman Bill Carter attempted to dampen the fire. He was quoted in *The Gold Coast Bulletin*'s 11 October edition in another article by Ms Wuth at p 9 as stating that he did not believe the public had the right to know a sex offender was living next door; if it

<sup>16</sup> Hon P Beattie and Hon Judy Spence, "New laws on drink spiking and electronic monitoring' (2006) Qld Government Ministerial Media Statements, (<http://www.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=48384>), 12/10/2006.

<sup>17</sup> *Gold Coast Bulletin*, 7 October 2006, p 12.

did, why confine this right to knowledge about sex offenders rather than break and enterers? For the first time the *Sutherland* decision was correctly attributed to "Justice Philip McMurdo".

*The Gold Coast Bulletin* kept the flame of controversy flickering with more copy on p 29 of that edition with a Cate Swannell article in the *Crossfire* column: *Trust the system, Joe*. This article took a remarkably different slant from earlier reports. Swannell, too, correctly attributed the decision to release Sutherland to "Justice Phil McMurdo" adding that he "had no other choice".<sup>18</sup> Praising his reasoned approach, she quoted large slabs from his judgment, noting:

"... a reading of Justice McMurdo's conclusions to his official finding in this case reveals the decision to release Sutherland was not taken lightly, and was taken in absolute accordance with the letter of the law. ...

In other words, while Sutherland may have been described by psychiatrists as a 'sexually sadistic psychopath', not one believed him to require continued detention.

... whether the Act is right and/or reasonable in its assessment of risk is a matter that will no doubt come up for heated debate, thanks to Paul Vincent Sutherland.

But there is no question that Justice McMurdo's decision was the cool, calm conclusion that he had to come to given the letter of the law."<sup>19</sup>

[Dear listeners, forgive yet another digression at this point in the tale. I note that feminist jurisprudes and conspiracy-theorists might cynically ponder whether it was mere coincidence that once the *Sutherland* decision was attributed to a bloke rather than a sheila it suddenly gained legitimacy - but I could not possibly comment!]

On Thursday 12 October 2006 *The Gold Coast Bulletin's Crossfire* column at p 26 contained Ross Eastgate's attempt to revive the embers of the now dying controversy. He focussed on Bill Carter's approach to the *Sutherland* case concluding: "... after hearing all the submissions, Justice Philip McMurdo, for all the right legal reasons, decided to release Sutherland under a 20 year supervision order.

That might be the right legal decision, but it does not automatically mean it is in the best interest of the community into which Sutherland was put.

Release him by all means, but not in my backyard and not without giving me, or rather the community into which he was gratuitously thrust, the opportunity to show cause why they would not want to have him live there.

We all know the law is an ass but neither is it a protected species.

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<sup>18</sup> Swannell, C, 'Crossfire – Trust the System, Joe', *Gold Coast Bulletin*, 11 October 2006, p 29.  
<sup>19</sup> Swannell, pp 29-30.



None of us is above the law, including those who make the laws or sit in judgment on others, nor are they immune from criticism.

I'm sorry Bill, but if you feel so strongly about Sutherland and his right to re-enter decent society, why not find him a house in your street?"<sup>20</sup>

*The Gold Coast Bulletin's* 13 October edition at p 28 contained Chief Justice de Jersey's thoughtful response to editor Bob Gordon's offer. In an article headed "*Judge's viewpoint*", the Chief Justice referred to the error in the attribution of the decision. More importantly, he explained the difficulty of a judge's role under the *Dangerous Prisoners (Sexual Offenders) Act*. The Chief Justice wrote: "In the intrinsically difficult case confronting Justice Philip McMurdo, the legislation spelled out in comprehensive terms what the court had to address, and looking at my colleague's reasons for judgment, he plainly did.

But in the end, this is a very emotive field.

I urge interested readers to go to the Court web page and analyse his Honour's reasons.

His conclusion, is, I suggest, compelling, and significantly, the Attorney-General did not urge a different result.

Judges accept that they are representatives of the community in these complex arenas.

They do their informed, experienced, compassionate, intelligent best.

Whether they achieve a best community outcome will often be moot.

But the alternatives, computers (?) or elected judges who mould their approach to ensure re-election, are horrendously unacceptable."<sup>21</sup>

The Sutherland story then faded as quickly as it first exploded. Perhaps the Chief Justice's article had the desired wet blanket effect but more likely the Sutherland fire bomb simply ran out of its fuel - public interest. There were new stories to expose even more notorious, dangerous offenders.

The Sutherland episode has some unique aspects but it raises universal themes on the constant tussles between legislators, the judiciary, the media and the executive which arise in a host of controversial issues of legitimate community interest and concern in every jurisdiction.

Unquestionably the media has a vital democratic role in keeping the judiciary and individual judges accountable to the community they serve. I am not suggesting judges and journalists, politicians and police participate in some eternal love-in. Nor am I expecting *The Gold Coast Bulletin* to give away t-shirts emblazoned "Take the law into your own hands: hug a judge!" The tension between judges, politicians and the executive is not merely desirable. It

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<sup>20</sup> Eastgate R, 'Crossfire – Sorry Bill, but give us a say', *Gold Coast Bulletin*, 12 October 2006, p 26.  
<sup>21</sup> de Jersey CJ, 'Judge's viewpoint', *Gold Coast Bulletin*, 13 October 2006, p 28.

is essential to sound democratic government. The exposure in the media of judges unable or unwilling to perform their duty according to their oaths with reasonable efficiency or the inability of a court to competently serve its community will assist in maintaining the high standards of the judiciary.

But *The Gold Coast Bulletin's* initial attack on a judge - and the wrong judge at that - and on the judge's decision under legislation requiring that a judge (instead of politicians or members of the executive) make decisions of a non-judicial nature, was unfair on multiple levels. It attacked the judge personally. It did not fairly report the facts, the law or the judge's reasons. It had no regard to the significant community interest in Sutherland's rehabilitation, something which would be gravely hindered were he to be forever hounded from his place of residence without wrong-doing on his part. The initial Sutherland reports were sufficiently unfair and unbalanced to amount to an attack on the institution of the judiciary.

Such attacks have become commonplace so that their effect, whether intentional or not on the part of journalists and editors, has to be to undermine public confidence in not only the individual judge-victim of the attack but also in the judiciary as a whole. By playing on the "NIMBY" (Not In My Back Yard) principle, no doubt justified by "the public has a right to know" world-view, *The Gold Coast Bulletin's* initial approach to the Sutherland affair picked up the flicker of controversy (together with errors) first raised in Dibben's *Sunday Mail* article of 1 October 2006 and constructed and exploded an incendiary. It then successfully fanned the flames for enough copy for seven editions of the paper over more than a week. The fire, together with errors, spread to other media outlets. From the self-interested newspaper's perspective, this was effective journalism. Opposition politicians threw in a few flammable comments whilst basking in the ambient glow. There was no effort by the Queensland Attorney-General to douse the fire by correcting errors or defending the judge attacked or the role of the judiciary in the difficult decision-making process given to them by the legislature under the *Dangerous Prisoners (Sexual Offenders) Act*. Instead, the response to the heat from the Premier and the Minister for Corrective Services and Police was to jointly announce tougher monitoring of those released under the statute with their assurance to the public that the ruling legislators had done everything they could to prevent judges from releasing offenders like Sutherland.

You will recall *The Gold Coast Bulletin* also reported that the leak from Gold Coast police to the media about Sutherland's whereabouts was to be investigated. I have not heard any report of the outcome of that investigation.

Good copy for journalists and legislative and executive opportunism frequently clash with wider issues of community interest like public confidence in the

judiciary and judicial independence in applying the rule of law to even the most unlikeable members of society like Sutherland.

The importance of judicial independence in upholding the rule of law and the need for public confidence in the judiciary can be affirmed by few better examples than the tough and often unpopular decisions required to be made by judges under statutes like the *Dangerous Prisoners (Sexual Offenders) Act*. As New South Wales Chief Justice Spigelman noted in a recent skirmish with the legislature over proposed changes to the conduct division of the New South Wales Judicial Commission, judicial independence is not a concept developed for the benefit of individual judges. It is for the protection of democracy, its institutions, and the individual members of the democracy.<sup>22</sup>

Perhaps Queensland judges are particularly vulnerable to controversies like the one I have illustrated because we have no community or public information liaison officer. Chief Justice de Jersey's published response to *The Gold Coast Bulletin's* initial unfair and personalised attack on a judge doing his difficult job was a sensible attempt to maintain public confidence in the judiciary, something which was put at risk by the attack. In the end, it successfully resulted in *The Gold Coast Bulletin* more accurately and fairly reporting the *Sutherland* decision. But the audience who bothered to read the Chief Justice's letter and later article would most likely already understand the sentiments there expressed and in any case would be numerically much smaller than the audience who were inflamed by Ms Wuth's claims that Justice Margaret McMurdo, who lived in a \$2 million mansion in exclusive inner Brisbane, was blithely releasing sex offenders into the Gold Coast community where she considered they would be an acceptable risk. By way of illustrating that proposition, the following weekend I attended a school reunion where I met for the first time in 35 years a former fellow schoolgirl, now tertiary educated, who lived on the Gold Coast. She announced she had read all about my life since leaving school in *The Gold Coast Bulletin* reports about my release of that "sex offender and murderer"!

One small but positive outcome of the Sutherland scenario has been that, while McMurdo M for Margaret is still cited as "McMurdo P" in judgments and coversheets, in an attempt to communicate nomenclature more effectively to the media and public, McMurdo J, who is also McMurdo P for Philip, is now cited as "Justice Philip McMurdo". Even so, the confusion continues.

The Australian Press Council observed in its adjudication summary on the complaint from New South Wales Attorney-General, the Honourable Bob Debus, against *The Australian* newspaper's reporting in a series of articles dealing with the courts in 2005:

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<sup>22</sup> Spigelman, CJ, 'A Judge's lot to protect independence', (SMH), [smh.com.au/news](http://smh.com.au/news), 30/01/2007.

"... judges and the courts are clearly uncomfortable with recent press scrutiny. Newspapers do, however, have an obligation to report on Australian public institutions and even robustly to campaign on issues of public interest concerning them. Equally publications must abide by the principles of the Australian Press Council, including accuracy, fairness and balance, in such reporting.

...

... The Press Council emphasises that it is the right of any newspaper to subject any institution to vigorous scrutiny. ... [T]he complainant does not challenge this right. Given that the courts are central to the administration of justice, subjecting them to the glare of publicity will ensure transparency and accountability in relation to their operation. Equally, the Press Council draws the attention of newspapers to the need to maintain confidence in the courts and the rule of law in their presentation of court-related matters. The exercise of the newspaper's right to scrutinise does not give it *carte blanche* to report on the activities of a court in any manner it likes. Like any other entity in society, the courts are entitled to be reported in a fair and balanced manner ...".<sup>23</sup>

Judges ask no more than that reports about them, their decisions and their institution are fair, balanced and accurate. They should be entitled to no less. Fair, balanced and accurate media reporting will keep the judiciary on their toes acknowledging that judges need to be in touch with community values and expectations. But fair and accurate reporting will also recognise that judges must have the necessary distance from outside influences to independently make their decisions upholding the rule of law without fear or favour, even when those decisions are tough, unpopular and concern apparently unattractive individuals. A transparent and accountable judiciary is unquestionably necessary if the judiciary is to independently uphold the rule of law in a democracy with the confidence of the community. The judiciary and the media, judges and journalists should perform their different roles, sharing that common goal, in the interests of all members of our community.

This epic journey through the reporting of one judge's decision to release a prisoner under the *Dangerous Prisoners (Sexual Offenders) Act* raises head-on the conflicting interests of journalists, politicians and judges with a deliberate media leak from the executive thrown in for good measure. It touches on the separation, independence and accountability of and community confidence in the three heads of democratic government (the legislature, the judiciary and the executive) and the role of an independent media in maintaining that separation, accountability, independence and confidence. Three (or four)-ring circus or democracy in action? Dear listeners, I look forward to your views.

<sup>23</sup>

Australian Press Council, Adjudication no 1300, September 2005, Adjudication Summary  
<http://www.presscouncil.org.au/pcsites/adj1300.html>, 11/10/2006