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Chief Justice

THE RELATIONSHIP BETWEEN THE COURTS, THE MEDIA AND THE COMMUNITY

Introduction

Good afternoon all. This is my first chance to address you collectively since my appointment as Chief Justice last year. It is a pleasure to Chair this panel session covering such a significant topic. The broadcasting of court proceedings is a contentious issue. In the time available we will consider its history, current models both here and overseas as well as the risks and benefits of the present and potential Queensland position.

Openness

The chief role of courts is to do *equal* justice *to all* according to law. The open justice principle is a primary means of achieving that goal. First and foremost it gives practical expression to the community's right to know what is happening in the courts. Second, it informs and educates by providing the opportunity for direct community engagement and participation in court proceedings and processes. Third, it aids the pursuit of truth, deters misuse of power and strengthens (or weakens) public confidence in the courts' integrity and the quality of justice dispensed.

For generations, prior to the gradual emergence in the 18th and 19th centuries of the free press as the public eyes and ears, members of the community routinely attended court proceedings in person to see and hear what was going on for themselves. Direct access allowed for fully informed opinions based on observed facts, felt experiences and firsthand interpretation.

In *Richmond Newspapers Inc v Virginia* Chief Justice Burger said:

> The early history of open trials in part reflects the widespread acknowledgment, long before there were behavioural scientists, that public trials had significant therapeutic value. Even without such experts to frame the concept in words people sensed from experience and observation that, especially in the administration of criminal justice, the means used to achieve justice must have the support derived from public acceptance of both the process and its results. People in an open society do not demand infallibility from their institutions, but it is difficult for them to understand and (approve) the workings of a system they cannot see in action.[1]

Public perception and confidence

It is of particular concern to me – and I speak for no one else – that especially since the advent of television in the 1950's and development of other more recent electronic means of communication, the public perceptions informing public debate and trust are mediated by selective reporting and are now at the mercy of the standards, capacity and ethics of the media acting as an intermediary between the provider of law and justice services and the ultimate consumer.

This is not at all consistent with or conducive to meeting the original role and purpose of open justice. Nor is it likely to enhance the informative and educative aspects of the principle.

The tension between providing a public oversight mechanism on the one hand, and maximising profit from sales, on the other, makes the media an unlikely, if not unfit, vehicle for promoting the positive work of the courts as the place of decisions and actions affecting real people and their daily lives and fortunes.

The media and the courts

[1] *Richmond Newspapers Inc v Virginia* 448 U.S. 555, 570-572 (1980).

Both the media and courts are important independent public institutions who see themselves as rival guardians of the overall public interest but their role and functions differ markedly and their relationship has always been an awkward one.

They do not speak the same language and much is lost in translation. They do not interpret events or see their relative significance in the same way. For this reason, speaking to or through the media is not necessarily the same as communicating with the community.

Courts are not and should not be immune to fair criticism. But if negative comment is unfounded, ignorant or, worse still, malicious, the principle of open justice is being cynically exploited for commercial purposes. This has a number of detrimental outcomes. First, undeserved censure of the judicial system has a corrosive effect on public opinion and confidence in the courts and the laws they administer. Second, media approval is not the measure of the proper performance of judicial duties. Being popular or uncontroversial may still be unjust. Third, it can give rise to short-sighted, knee-jerk reactions by politicians wanting to be seen as responsive to apparent community sentiment.

There are no compelling reasons for the judiciary to rely on the media as its major conduit for conversing or engaging in a meaningful way with the public it serves or improving community understanding of what it does and why it does it.

Pamela Schulz detects a definite change in tone and content in the growing discourse of disapproval and dissatisfaction in today's media aimed at delegitimising courts and judges.[2] She says:

> It is no longer sufficient, or safe, to rely on traditional media to translate or deliver the information (about the courts) to the public, because they no longer just deliver an accurate record of events. Rather, court reports are now <u>infotainment</u> which is

[2] Pamela Schulz, 'Rougher than usual media treatment: A discourse analysis of media reporting and justice on trial' (2008) 17 *Journal of Judicial Administration* 223, 223.

simplified by the constraints of time to create a discourse of disrespect and control over the judicial process.

Direct community engagement

Elsewhere courts are rightly in my view becoming progressively more proactive in bettering their relationship with the community.

This raises the question of to what extent should Queensland courts make their work directly known to all thinking members of the community, rather than allowing the media to convey selective information to viewers or listeners.

I think, and again I speak on no other behalf but my own, that the courts should accept much more responsibility for making the public more fully conversant with their work. They are best placed to undertake this role and should develop communications strategies aimed at building a direct relationship with the public on firmer foundations than currently exist.

Ironically, the very technological advancements that broke the direct nexus between courts and community in the first place provide the tools and an unprecedented opportunity for forging new stronger links directly with the public and reduce overreliance on media to give even handed, unembellished, trustworthy and informative accounts and assessments.

The idea, at least, merits serious investigation and consideration by the courts. For its part the Supreme Court has taken steps towards attempting to bridge the gap between the public and the courts by considering the introduction of cameras to courtrooms to facilitate live streaming of proceedings.

A Broadcasting Court Proceedings Committee which comprises Justice of Appeal Fraser and Justices Atkinson, Martin and Applegarth under the leadership of President McMurdo is exploring the potential benefits and disadvantages associated with implementing such a system in Queensland. It will report and make recommendations in due course.

The relationship the courts have or are willing to accept with the media is an aspect of open, accessible and practical justice. There are many more important community engagement and participation related issues in need of addressing, including with the more specific and smaller but significant communities such as our high schools and universities.

Now, let me introduce your presenter and panellists.