CRIMINAL COURT OUTCOMES AND PUBLIC EXPECTATIONS: IS ALIGNMENT NECESSARY AND HOW CAN IT BE ACHIEVED

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The outcomes of court cases can attract public attention where the matter is particularly serious or of significant public interest. Judgments issued by the courts provide a full and detailed discussion of the case, the evidence, the relevant legal rules and the deliberations of the court in determining the outcome. Constructed in legal language and custom, they can be difficult for those without a legal background to digest and understand. The media will generally portray the outcome in whatever manner it feels will generate the best circulation. The use of eye catching, and sensationalist headings is liberally applied to achieve that purpose. The average person can be attracted to this as a readily accessible and easily understood source of information. Its veracity and accuracy however may be lacking, and this can create calls for harsher sentences and overhauls of the legal system because of perceived failures to mete out appropriate justice. This disparity between the legal judgment and the public perception can undermine public confidence in the judicial system. This article will analyse the issues behind the varied levels of understanding and propose a potential solution.

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I INTRODUCTION

The public perception of sentencing outcomes is often influenced by the media. The judicial system may consequently be unfairly criticised resulting in public calls for tougher sentencing. Should alignment between the public perception of sentencing and the legal reality be a priority and if so, how can this be achieved? Politicians, ever mindful of retaining public support, react to the media criticism by seeking to argue they are 'tougher on crime'. The public rely on word of mouth and what they hear in the media for their information and understanding of legal matters because short descriptions and brief narratives as included in the media are commonly more digestible than court judgments.[1] A study by the South Australian Courts Administration Authority[2] found 'less than 10% of people know anything about courts'.[3] It is not hard to understand why there is a reliance on the media for information. What the community thinks should be happening is often significantly different from what does happen, especially when the media sees an advantage in sensationalising the case for their own motives.

This article commences with an analysis of the public's understanding of the law and perceptions of the legal system. Sources of information on proceedings are identified as a lead in to a discussion on whether the courts are meeting the information demand. The role and influence of the media is the focus of the next section where the very nature of media reporting is shown to have a significant influence on people's views of case outcomes. How the courts measure up in the information dissemination stakes then leads to a discussion on options to improve the level of public understanding and presents one particular option to provide access to accurate but concise summaries of judgments which could address issues raised earlier in the article.

1 Dr Pamela Schulz, "Rougher than Usual Media Treatment: A Discourse Analysis of Media Reporting and Justice on Trial" (2008) 17(4) *Journal of Judicial Administration* 223, 232.

2 Courts Administration Authority of South Australia Public Relations Branch *The McGregor Report into the Courts and Public Opinion* (Final Report, 1994), cited in Schulz (n 1) 232.

3 Ibid.

II THE PUBLIC PERCEPTION

A *Understanding the Law*

In today's society, the role of mass media and social media is readily striving to satisfy the public demand for information on court cases with well-packaged summaries usually introduced by attention grabbing headlines. This available information influences the public opinion of important court decisions before anyone has thought to look at the actual court judgment.

Lon Fuller[4] made it clear that governing by law requires 'a degree of substantive congruence between the legal norms and the ordinary practices, customs, and ways of law-subjects in the community served and governed by the law.'[5] Congruence here implies the need to achieve alignment between the everyday thinking of the public and the dictates of the law, an ideal supported by other writers on this topic.[6] Is it possible then to find a way in which to bridge the gap of understanding between the courts and the public and perhaps support congruence?

The public sees the law as being complex, shrouded in arcane practices such as the use of wigs and latin phrases and able to express the simple in a complicated approach (commonly referred to as legalese) which defies understanding. As Chief Justice Bathurst observed 'the ancient rituals and symbols associated with the judiciary and courts make it difficult, if not impossible, to develop interpersonal trust'[7] and without understanding how there can be trust?[8]

The public perception of the legal system is shaped in many ways. Representations in film and television, sound bites on the radio, or headline grabbers in magazines and newspapers; all combine with social media posts to

[4] Lon L. Fuller (1902-1978) wrote at length on the approach to 'close the gap of separation between positive law, on the one hand, and morality and justice on the other.': 'The Rule of Law', *Stanford Encyclopedia of Philosophy* (Web Page, 22 June 2016) [3.6] <https://plato.stanford.edu/entries/rule-of-law/#Full>.

[5] Gerald Posterna, *A Treatise of Legal Philosophy and General Jurisprudence* (Springer Dordrecht, 2011) Vol 11, 320.

[6] Melvin A. Eisenberg, *The nature of the common law* (Harvard University Press, 1988) 44, cited in K.D. Ashley 'Precedent and Legal Analogy' in Giorgio Bongiovanni, Gerald Postema, Antonio Rotolo, Giovanni Sartor, Chiara Valentini and Douglas Walton eds, *Handbook of Legal Reasoning and Augmentation* (Springer, 2018) 677.

[7] Chief Justice Tom Bathurst, 'Trust in the Judiciary' (2021) 14 *The Judicial Review* 263, 271.

[8] Ibid.

mould the views of the average person. The 2005 Australian Survey of Social Attitudes[9] found 'individuals who depended on information gathered via talkback radio, family and friends, and commercial television were likely to have less accurate perceptions of crime than those who relied on other sources of crime information.'[10] Television shows including CSI,[11] NCIS[12] and Law & Order[13] have provided a depiction of criminal activity which inevitably colours our thoughts and opinions. People may for instance assume that the plea-bargaining process is as common here as in the US. They may believe Australian courts will tolerate the kind of deliberate harassment and witness embarrassment that makes for such compelling TV viewing when our legal ethics expressly prohibit such conduct.[14] Many Australians have a poor understanding of their legal rights during an arrest because they are so used to the Miranda process in the US. Angus Murray, Vice President of the Queensland Council of Civil Liberties states, 'I think people use rights they see on television, which are often American rights, so unfortunately they don't know their rights in the context in Australia.'[15] Forensic science as depicted in the CSI television series has conditioned people to expect crimes are easily solved by science and the court's task as straightforward. It is quite possible some Australian jury members may well anticipate the process will replicate

[9] 'Australian Survey of Social Attitudes, 2005', *Australian Survey of Social Attitudes (AuSSA)* 2005 (Web Page, 2005) <https://www.acspri.org.au/aussa>.

[10] David Indermaur & L.D Roberts 'Perception of crime and justice', in Wilson S, Meagher G, Gibson R, Denemark D & Western M (eds), *Australian social attitudes: The first report*. (UNSW Press 2005), cited in Brent Davis and Kym Dossetor, '(Mis)perceptions of crime in Australia', 396 *Australian Institute of Criminology*, 1.

[11] *CSI* (Paramount Global, 2000).

[12] *NCIS* (Belisarius Productions; CBS Studios, 2003).

[13] *Law & Order* (Wolf Entertainment and Universal Television, 1990).

[14] Law Society of South Australia, *South Australian Legal Practitioners Conduct Rules* (at 25 July 2011) r 21.

[15] Angus Murray, Vice President of the Queensland Council of Civil Liberties, quoted in 'Getting Arrested: The Right to Remain Silent and 'Miranda Rights' in Australia' *LY Lawyers* (Blog Post, 10 July 2022) <https://lylawyers.com.au/the-right-to-silence-do-i-have-to-answer-any-questions-asked-by-police/>.

their viewing experiences.[16] There is, however, evidence the public's view is often changed through actual contact with courts and the legal system. [17]

The legal case 'both presents a legal problem and sets out a legally reasoned solution to that problem in the form of judgment and verdict.'[18] The legal case or judgment is structured in a way 'that special attention is given to sequence of events, causation, and responsibility or liability.'[19] Lawyers and others conversant with the law intrinsically understand what they are reading and how to obtain key elements of information. The public are not used to reading legal documents and lacking the legal frame of reference, they are likely to draw different inferences and interpretations from a judgment.[20] This fundamental difference in the reading and interpretative approach can lead to different perceptions of the legal outcome and not necessarily provide balance to and/or refute what the media portrays as the practice of law. It is clear that 'most people engage with the courts only indirectly via media reports (both conventional and social)'.[21] They rely on a mass media not adverse to misrepresentation and distortion.[22] The recent South Australian case of *R v Campbell*[23] is notable for the public expectation of a harsher sentence for the driver based on the brief reporting.[24] The judgment clearly explains the legal outcome but the average person is unlikely to take the time to read and digest a court judgment. We can only speculate how the media would have presented the case had the driver had been in a Toyota Corolla, instead of a Lamborghini.

[16] Therese Murray, 'Australians are mad about crime in both fact and fiction but why? A NSW University study investigates', *The Senior* (Online, 17 January 2023) <https://www.thesenior.com.au/story/8038330/why-aussies-are-obsessed-with-crime-stories/>.

[17] David Rottman, "On Public Trust and Confidence: Does Experience With the Courts Promote or Diminish It?" (1998) 35(4) *Court Review* 14, 22.

[18] Alan Durant, 'Reading cases in interdisciplinary studies of law and literature' in Marco Wan (ed), *Reading the Legal Case: Cross Currents Between Law and the Humanities* (Routledge, 2012) 11, 16-17.

[19] Ibid 18.

[20] Ibid 23.

[21] Kathy Mack, Sharyn Roach Anleu and Jordan Tutton, 'The Judiciary and the Public: Judicial Perceptions' (2018) 39(1) *Adelaide Law Review* 1, 5.

[22] Lieve Gies, 'The Media and public understanding of the law' in Steven Greenfield and Guy Osborn (eds) *Readings in Law and Popular Culture* (Taylor & Francis Group 2006) 65, 65.

[23] [2022] SADC 95 ('*Campbell*').

[24] Ibid.

The fact remains that the general public had a view on the judgment that was not reflective of the actual court considerations and rationale.

B *Access to Information*

Given how much our view of the law is shaped by exposure to the media, how can we acquire the necessary information to form our own views?

Journalists working in the courts were once the mainstay of public information but changes in media operations, the advent of the digital age and cost reductions have led to a significant decline in their numbers.[25] The legal system was once able to rely on the expertise of specialist journalists who understood the processes. The ready availability of commentary via the internet and social media results in difficulties 'for the courts to determine who they should engage with and how they should engage in order to deliver a targeted and coherent message to the public.'[26] News editors have also been concerned at 'the risk of contempt and the need for compliance with suppression orders.'[27]

According to a Reuters survey, '44% of Australians got their news from the internet, compared to 35% from television, 12% from social media and 7% from newspapers.'[28] Live television broadcasts of court proceedings have also been trialled as a way of communicating the process to the general public but with limited success. Issues such as privacy, the potential for the filming to impact defendants and witnesses,[29] the nature of court processes all militate against this being a sustainable and effective information sharing solution. The Judicial Conference of the United States decided to end their television broadcast experiment due to judicial concerns that the media was being selective in what it broadcast thus creating an edited portrayal of proceedings which did not necessarily provide the full picture.[30] New Zealand courts observed a similar situation and in Australia, prominent jurist Justice Michael

[25] Chief Justice Marilyn Warren, 'Open Justice in the Technological Age' (2014) 40(1) Monash University Law Review 46, 57.

[26] Ibid.

[27] Ibid 50.

[28] Chief Justice Wayne Martin, 'Freedom of the Press and the Courts', (Speech, Judicial Conference of Australia Colloquium 2015, 9 October 2015) 29 reprinted in (2016) 43(2) *BRIEF* 25, 29.

[29] Supreme Court of Queensland 'Electronic Publication of Court Proceedings Issues Paper' June 2015, 16.

[30] Daniel Stepniak, 'The Broadcast of Court Proceedings in the Internet Age: The Role of Courts' (2004) 26(85) *Australian Law Reform Commission Reform Journal* 33, 37.

Kirby lamented the lack of media interest in prominent High Court hearings.[31] Sir Brian Leveson, President of the Queen's Bench Division expressed the view:

> the presence of cameras would alter the dynamics of a trial and put undue pressure on witnesses many of whom will be reluctant participants in the court process. Examples of televising such trials, in my view, fully support that concern and risk converting through editing what is intended simply to be law in action into an action movie, inevitably providing a compressed picture of a complex process.[32]

The Supreme Court of Queensland concluded that the selectivity of content the media would apply would have limited benefit in educating the wider public understanding of the proceedings or the justice system as a whole.[33] Cameras in courts is clearly a difficult issue with views tending to be polarised. There is at least general consensus 'that judicial control of the process is absolutely vital'[34] to ensure that the conflicting interests are harmonised to the extent possible.

C *The public desire for up-to-date news is clear, but are the courts meeting the need?*

Courts are required to relay facts and rationale for case outcomes within their judgments, however as a result of legalese and complex legal applications, this information is not easily communicated to the public requesting a sufficient understanding.

Referring to a survey of judicial officers in 2012-2013, Krawitz determined the interviewees were strongly in favour of providing more information which would also assist in enhancing public confidence in the judiciary.[35] Former Victorian Chief Justice Marilyn Warren supports this approach by strongly endorsing the need for the 'community to access information about the courts through the internet and social media.'[36] She agreed with then South Australia Chief Justice John Doyle who opined it is the duty of judicial officers to

[31] Ibid.

[32] Sir Brian Leveson, 'Justice for the 21st Century' (Caroline Weatherill Lecture, 9 October 2015) at [48].

[33] Supreme Court of Queensland (n 29) [182].

[34] Martin (n 28) 31.

[35] Marilyn Krawitz, 'Summoned by Social Media: Why Australian Courts Should have Social Media Accounts' (2014) 23(3) *Journal of Judicial Administration* 182, 191.

[36] Warren (n 25) 49.

'maintain public confidence in the institution of the judiciary by facilitating access to information about courts and court proceedings.'[37]

The courts are increasingly making use of other communications media to provide information for public consumption although this is not common. The Superior Court of Arizona has set a trend in exploiting the flexibility of the Internet and using social media platforms such as Twitter (now known as X).[38] In Australia, the Supreme Court of Victoria often tweets information about upcoming court events.[39] An initial study by the Judicial Commission of NSW found a 'large proportion of judges … favour the use of Twitter to broadcast decisions and changes in procedure.'[40]

Many courts have appointed media officers 'to ensure an easy and accurate passing of case information to the mainstream media and maintain comprehensive websites.'[41] YouTube (Federal Circuit and Family Court of Australia and South Australian courts) and Facebook (New South Wales Civil and Administrative Tribunal, Supreme Court of New South Wales, Victoria Supreme Court) have also been employed to provide timely access to court proceedings and judgments[42] and can be accessed by the public.

Courts have also attempted to combine open days with guided tours and explanations provided by members of the judiciary. One serving justice was

[37] Chief Justice John Doyle, 'The Courts and the Media: What Reforms are Needed and Why?' (1999) 25(1) *University of Technology Sydney Law Review* 25, 26-7, cited in Warren (n 25) 47

[38] P Seguin, Superior Court of Arizona in Maricopa County, 'The Use of Social Media in Superior Court of Arizona in Maricopa County' (2011) Superior Court of Arizona in Maricopa County 2011 9 <http://www.ncsc.org/~/media/Files/PDF/Education%20and%20Careers/CEDP%20Papers/2011/Social%20Media.ashx>, cited in Marilyn Krawitz 'Summoned by Social Media: Why Australian Courts Should have Social Media Accounts' (2014) 23(3) *Journal of Judicial Administration* 182, 184.

[39] For example, on 26 July 2013 they tweeted "[d]on't forget to visit Court of Appeal tomorrow 10am - 4pm as part of @OpenHouseMelb #loveOHM"; Krawitz (n 35) 195.

[40] Patrick Keyzer, Jane Johnston, Mark Pearson, Sharon Rodrick and Anne Wallace, 'The Courts and Social Media: What do Judges and Court Workers Think?' (2013) *Judicial Officers Bulletin* 25(6) 47, 51, cited in Andrew Henderson 'The High Court and the Cocktail Party from Hell: Can Social Media Improve Community Engagement with the Courts' (2016) 25(3) *Journal of Judicial Administration* 181.

[41] Pamela Schulz and Andrew Cannon, 'Trial by Tweet? Findings on Facebook? Social Media Innovation or Degradation? The Future and Challenge of Change for Courts' (2013) 5(1) *International Journal for Court Administration* 4, 5.

[42] Marilyn Bromberg-Krawitz, 'Challenges of Social Media for Courts and Tribunals' (Issues Paper for a Symposium Judicial Conference of Australia May 2016), Annexure B.

particularly enthusiastic and commented 'a lot of people are very, very curious and very, you know, respectful of what you do.'[43] Whilst this experience demonstrates the effectiveness of the open day approach, they would need to be held far more frequently than once or twice per year which is currently the norm[44] for there to be an appreciable impact.

Many courts have 'designated professional media liaison officers.'[45] In fact court information officers are in all mainland Australian State jurisdictions except Queensland.[46] The Federal Court of Australia has a Director of Public Information who deals with the media and enquiries from the general public.[47] Though the specific title of this role may differ between jurisdictions, the general responsibilities remain the same, including the issuing of media statements, developing communications materials and acting as a media liaison.[48]

The courts seem to be embracing the need for effective communication and are actively exploring various options to increase access, awareness and understanding. It seems somewhat perplexing therefore that the public perception of the legal system remains poor.

D *Are the current information sources inadequate?*

To obtain information from the internet requires a conscious decision to conduct a search. An open day is inherently restrictive in terms of access and is infrequently held. Some social media platforms (eg Facebook (with the exception of Messenger) and YouTube) also require a conscious access decision whilst others such as the various messaging apps,[49] alert you to something new.

In contrast, the media is actively presenting information that requires little to no active effort to engage with. Radio broadcasts can be heard in the office, car, or at home, while news headlines or segments can also be seen in a number

[43] Mack, Anleu and Tutton (n 21) 23.

[44] Ibid 23.

[45] Ibid.

[46] Supreme Court of Queensland (n 29) [273].

[47] Federal Court of Australia (Web Page) <https://www.fedcourt.gov.au/services/research-requests>.

[48] Supreme Court of Queensland (n 29) [273].

[49] Examples include Twitter, Instagram, Snapchat, Tik Tok etc.

of shopping precincts or retail stores. Other social media platforms such as Instagram, SnapChat, WeChat, X (previously Twitter) offer almost instantaneous access to information in a manner which is welcomed by the younger generations who are striving for immediate awareness of important happenings wherever they are.

It is not so much that information sources are inadequate; rather they are not immediate, not available on the move and not accessible on demand through a smart device. This contrasts with the options being utilised by the court which require a level of conscious effort to engage with and may not be available on demand.

E *Influence of the Media*

Studies in the US, Canada, UK and Australia have indicated that 'members of the public are dependent almost exclusively upon the news media for information on sentencing.'[50] These studies also determined that the 'public appear quite confident in their evaluations [of media content].'[51] This would suggest that the general public appear to trust and believe in what they are told of court outcomes in the media.

In an age when there is a wealth of information sources, attention grabbing headlines or images are important. The impetus for what has become known as Sophia's Law (Sophia being the young girl struck and killed by the Lamborghini driven by Alexander Campbell)[52] is particularly noteworthy.[53] Indeed it was a major causal factor in the amendment of the road safety law in South Australia to include a new mid-tier offence of 'causing death or serious harm by careless use of a vehicle or vessel.'[54]

Social media is progressively displacing traditional media, especially amongst younger generations which have grown up with smart devices and instantaneous information sharing. If they are to stay relevant the mainstream media must sell content to generate income prompting the use of eye catching statements such as "Killer Walks Free" or "Community Outrage at Lenient

[50] Julian Roberts and Anthony Doob, 'News Media Influences on Public Views of Sentencing' (1990) 14(5) *Law and Human Behaviour*, 452

[51] Ibid 458.

[52] See generally *Campbell* (n 23).

[53] Justin Stewart-Rattray Law Society of South Australia letter 'Statutes Amendment (Serious Vehicle and Vessel Offences) Bill 2022' reference 1327940 dated 20 December 2022.

[54] Criminal Law Consolidation Act 1935 (SA) s 19ABA.

Sentence" to attract the attention of the public.[55] The South Australian newspaper *The Advertiser* has campaigned vigorously for long jail terms to be imposed on drivers convicted of causing death by dangerous driving.[56] This has resonated with the public and the legislature with various politicians promising "even tougher new laws".[57]

Other examples show the distorted and sensationalist use of headlines such as the case of *R v Singh*[58] which involved the death of a young man in a vehicle accident. The newspaper headline read 'Hoon victim's family cries for justice'.[59] A similar media response occurred in *R v Kain Bowman*[60] where a speeding and unlicensed driver struck and killed a father in front of his two children. The newspaper's response was 'It's not fair: Killer driver could be freed in months'.[61] The length of the jail term was also the theme in the case *R v Garang Akech Luk*[62] which concerned a drunk driver killing a cyclist. The headline was 'Family's anger at jail term'.[63]

The most recent example is *R v Campbell*[64] which *The Advertiser* addressed as 'Parents campaign for justice'[65] and the Australian Associated Press (AAP) reported as 'Lamborghini driver beats dangerous charge'.[66]

[55] Pamela Schulz and Andrew Cannon, 'Public opinion, media and judges and the Discourse of time' (2011) 21 *Journal of Judicial Administration* 10.

[56] Pamela Schulz and Andrew Cannon, 'Judicial Time Lords: Media Direction vs Judicial Independence' (2010) 5(1*) International Journal of Criminal Justice Sciences* 174, 177.

[57] Schulz and Cannon (n 41) 11.

[58] *R v Singh* (2011) 221 A Crim R 1.

[59] Hannah Silverman, 'Hoon victim's family cries for justice' *The Advertiser* (Adelaide, 21 April 2011) 10.

[60] *R v Kain Bowman* [2017] DCCRM-16-283.

[61] Josephine Lim, ''It's not fair': Killer driver could be freed in months', *The Advertiser* (Adelaide South Australia, 28 April 2017) 10.

[62] *R v Garang Akech Luk* [2018] DCCRM-18-930.

[63] Sean Fewster, 'Family's anger at jail term', *The Advertiser* (Adelaide, 30 November 2018) 14.

[64] *Campbell* (n 23).

[65] Andrew Hough and Mitch Mott, 'Parents campaign for justice' *The Advertiser* (Adelaide, 19 August 2022) 5.

[66] Tim Dornin, 'Lamborghini driver beats dangerous charge' *Australian Associated Press* (Adelaide, 18 August 2022).

The attention-grabbing focus of the media coupled with a lack of balance and detail fosters distrust in the legal system. The rationale for the case outcome gets lost in the hyperbole.[67] The brevity of media reporting and social media posts leaves little room for a discourse on the constraints the judge was operating under, the elements of the offence to be proven and the relevance of the evidence to the required proofs. Mack, Anleu and Tutton observed that once the public obtain factual information relating to the case at hand and can understand the facts of the case, 'their assessment is closer to the judicial officer's decision and lacks the moral outrage reflected in media accounts, especially in relation to criminal cases.'[68]

Analysing studies conducted in Canada, Karen Gelb suggests that 'sentences described in the media are perceived by most people as being too lenient, while those described in detail in court transcripts are mostly seen as appropriate.'[69] On this basis, researchers concluded that 'were the public to form opinions from court-based information instead of through the lens of the mass media, there would be fewer instances of calls for harsher sentences.'[70] This research suggests access to court documentation clearly facilitates a more accurate and unemotive understanding of case outcomes than media reporting.

As Gies suggests 'generally speaking, people have very little first-hand legal experience, making them almost entirely dependent on unreliable mass media, which are in the habit of routinely misrepresenting and distorting the law.'[71] This could suggest that the lack of public understanding is due to the media and their focus on attention grabbing material. However, in addressing this issue, former Chief Justice John Doyle's expressed the view:

> If the courts are going to leave it to others, the media in particular, to determine how much and what sort of information the public gets about their workings, then the courts are saying that they are content to leave it to others to shape the public understanding and perception of the courts. That to me is not acceptable. I believe that the courts are well placed to explain their function. I consider that experience shows that leaving that task to others is, in the long term, unsatisfactory.[72]

[67] Martin (n 28) 30.

[68] Mack, Anleu and Tutton (n 21) 27.

[69] Karen Gelb, 'Myths and Misconceptions: Public Opinion versus Public Judgment about Sentencing', 21(4) *Federal Sentencing Reporter* 288, 288.

[70] Ibid.

[71] Gies (n 22) 65.

[72] Chief Justice John Doyle, 'The Courts and the Media; What Reforms are Needed and Why', (1999) 1 *University of Technology Sydney Law Review* 25, quoted in Daniel Stepniak 'The

If the courts were to heed former Chief Justice Doyle's advice and be more proactive in explaining case outcomes, it may be possible to dissuade the general public from the view that 'increasing violence is … widespread and offenders are … being treated lightly by the court system.'[73]

III WHAT IS THE LEGAL REALITY

A *Are the Judiciary Out of Touch?*

Whilst social media has been around for some time, it is not part of the learning fabric of many in the judiciary who are from a different generation. Though this is steadily changing, the challenges were well noted by the US Conference of Court Public Information Officers (CCPIO). Social media is decentralised and multidirectional, personal/intimate and multimedia whilst the judiciary are arguably institutional and unidirectional, separate/independent and predominantly textual.[74] This disconnect from public comprehension could suggest an out-of-touch judiciary which is too remote from the public's consistent requests for contemporaneous information.

Kate Warner et al asked exactly this question[75] considering research they analysed where 58% of survey respondents believed this was indeed the case.[76] Similar results were evident in the UK, where the majority of those agreeing with the proposition, also thought sentences were generally too lenient.[77] This contrasts starkly with the view that 'when given access to more extensive accounts of sentences, [people] are often more content with the judges' decisions.'[78] This is not always the case with respect to sentences for child sex

Broadcast of Court Proceedings in the Internet Age: the Role' (2004) 26(85) *Australian Law Reform Commission Reform Journal* 33, 36.

[73] Lyn Roberts and David Indermaur, *What Australians think about crime and justice: results from the 2007 Survey of Social Attitudes* (Australian Institute of Criminology: Research and Public Policy Series 101, 2009) iii.

[74] Norman Meyer, 'Social Media and the Courts: Innovative Tools or Dangerous Fad? A Practical Guide for Court Administrators' (2014) 6(1) *International Journal for Court Administration* 2, 6.

[75] Kate Warner, Julia Davis, Maggie Walter and Caroline Spiranovic, 'Are Judges Out of Touch?' (2014) 25(3) *Current Issues in Criminal Justice* 729, 729.

[76] Ibid 730.

[77] Julian Roberts and Mike Hough, 'Public Attitudes towards Sentencing in Britain' (1998) 10(5) *Federal Sentencing Reporter* 291, 293.

[78] Roberts and Doob (n 50) 463-464.

offences. On this theme, former Chief Justice of the Supreme Court of NSW Tom Bathurst recently wrote:

> The more the public can view court proceedings, whether in-person or from the comfort of their living room, and understand plain English explanations of legal decisions, the more likely they are to appreciate how judges make decisions and therefore trust in those decisions and the people that make them.[79]

Resnik notes that increased publicity about court proceedings can facilitate awareness of persons [being] equally entitled to the forms of procedure offered to others, so as to mark their dignity and to accord them the respect and fairness due to all persons.'[80] Such an approach would also accord with Jeremy Bentham's "Public Opinion Tribunal" concept because the general public would better understand the 'basis for decisions, the process of decision making, and the outcomes.'[81] It would seem that rather than the judiciary being out of touch, the issue is more that the public lack the information to better understand the court outcomes and it is this issue which needs addressing.

B *What is the Legal System's View?*

Perception is reality in the mind of the perceiver and will usually drive the behaviour of people.[82] We have seen how the media choose to describe case outcomes and the attention-grabbing headlines they use.

The disparity between public perception and legal reality highlights the need for judges to ensure their judgments clearly explain the rationale for the decisions they make to improve public understanding of sentencing, promote congruence, and help deflect public criticism.[83] Published judgments do provide this level of information though 'it seems much more difficult for users without law backgrounds to understand the legal relevance.'[84] Absent an understanding of the legal system and processes, it is difficult for the public to

[79] Bathurst (n 7) 273.

[80] Judith Resnik, 'Bring Back Bentham: "Open Courts," "Terror Trials," and Public Sphere(s)', (2011) 5(1) *Law & Ethics of Human Rights* 1, 6.

[81] Ibid 28.

[82] Lyndell Bates, Emma Antrobus, Sarah Bennett and Peter Martin, 'Comparing Police and Public Perceptions of a Routine Traffic Encounter' (2015) 18(4) *Police Quarterly* 442, 444.

[83] Kate Warner, Lorana Bartels, Karen Gelb, Julia Davis and Caroline Spiranovic, 'Comparing Legal and Lay Assessments of Relevant Sentencing Factors for Sex Offences in Australia' (2021) 45 *Criminal Law Journal* 57, 74.

[84] Yunqiu Shao, Yueyue Wu, Yiqun Liu, Jiaxin Mao and Shaoping Ma, 'Understanding Relevance Judgments in Legal Case Retrieval' 41(3) *Association for Computing Machinery* 1, [4.2.2].

understand the constraints that the court must operate under.[85] The complexity of particular legal arguments, the importance of precedents, and the elements of the offence can all cause difficulty for the general public to read and understand the contents of the judgment.

Former Chief Justice of the South Australian Supreme Court John Doyle maintains 'it is our duty as officers of justice to maintain public confidence in the courts and therefore to do what we can, once again, to give Australians information about what the courts are doing.'[86]

IV How Does the Public Get the Full Picture on Court Outcomes?

A *What options exist?*

Social and mainstream media have played a significant role in the publics demand for instant information. This societal development has led to questions on how court systems can harness these information channels to disseminate the required information from court judgments.

Sir Ivor Richardson posed the pertinent question 'How can the courts assist the media to ensure fair and accurate reporting of cases and of the functioning of the courts?'[87] Richardson went on to mention options such as judicial summaries, press releases and media officers as options for consideration.[88] Media officers and websites in particular have become a regular feature of many courts in Australia.[89] Norman Meyer proposed other options for consideration including 'information sharing about cases due to be before the courts, community outreach, publishing information with media jurors and staff ,HR recruitment of staff and internal communication.'[90]

The use of video cameras to record or live stream proceedings in courts is not new. Videos can also provide useful instructional material, ideally as part of

[85] Schulz and Cannon (n 41) 11.

[86] Doyle (n 37) 27.

[87] Sir Ivor Richardson, 'The Courts and the Public' (1995) 5 *Journal of Judicial Administration* 82, 88.

[88] Ibid.

[89] See for example the Federal Court of Australia E Court site on <https://ecourtroom.fedcourt.gov.au/eCourtroom/>.

[90] N. Meyer, 'Innovative Uses of Courts Systems of Social Media' Power Point Presentation, The Hague Netherlands, June 2012.

multi-media compilations. These can be a powerful tool to educate the community on the operation of the legal system, but video has some limitations and issued that need to be managed.[91] There are also concerns with respect to privacy and the right to a fair trial. As Richardson noted:

> Would it deter them from coming forward, make them more nervous in giving evidence and so affect its quality, or encourage them to tailor evidence to fit with evidence earlier broadcast or to conform with how they prefer the wider public to see them?[92]

With the possible exception of the recent Heard v Depp hearings, court happenings are not necessarily compelling viewing and may not always achieve the desired purpose.

Court websites are an excellent source of information and often include recorded audio-visual presentations. These can be used to provide access to judgment summaries, case transcripts on the web site (although not all are included),[93] webcasts of trials and sentences, educational materials etc. The Supreme Court of Victoria has even included a 'retired judge blog' on its website to provide a personal touch to the explanation of case outcomes.[94] The Federal Court of Australia is an excellent example of website usage with their 'Digital Law Library' which includes videos, judgments, podcasts and judges speeches.[95] In New South Wales, approximately 2.5 million people visit the court websites each year, prompting upgrades to meet increased demand for access and improved responsiveness.[96]

There is an increasing level of social media take up by courts in an attempt to better inform the public and inculcate confidence in the legal system. A potential advantage to this approach is the courts ability to control the nature of the information and the timing of release thereby removing the vagaries of journalistic interpretation and the negative perceptions often created thereby. 'The public may one day view social media accounts as they currently view

[91] Meyer (n 74) 13.

[92] Richardson (n 87) 89.

[93] The District Court of South Australia for example does not post all cases into legal databases on the internet.

[94] Warren (n 25) 57.

[95] 'Digital Law Library', *Federal Court of Australia* (Web Page) <https://www.fedcourt.gov.au/digital-law-library>.

[96] 'Faster and easier access to NSW courts websites' *NSW Government* (Web Page, 11 August 2020) <https://www.nsw.gov.au/news/faster-and-easier-access-to-nsw-courts-websites>.

websites: it is expected that every court has one.'[97] The Supreme Court of Victoria uses both Facebook and Twitter (now X).[98] The UK Supreme Court also uses Twitter (X) and YouTube to present videos for public consumption[99] and such accounts can also be found on many Australian court sites including the Federal Court of Australia,[100] the Courts Administration Authority of South Australia[101] and the Hight Court of Australia.[102] Whilst there is increasing usage of such media by the courts around the world, there are risks which some consider to be significant.[103] In this age of hacking and spoofing, fake social media accounts purporting to represent actual courts could distribute misleading information[104] however the growing use of cyber security applications, processes and public awareness of the threat provides a safeguard against misleading information being relied on.[105]

B *Is there a silver bullet?*

The preceding discussion has identified information dissemination options many of which can be complementary and non-exclusive. There is a clear need to convert legal jargon to a simpler form to aid public understanding,[106] however, dissemination effectiveness is also a factor. Twitter (X) for example has a 140-character limit and a 44 page case discussion such as in *R v Campbell,*[107] cannot be captured in a single tweet.[108]

[97] Krawitz (n 35) 189.

[98] Warren (n 25) 57.

[99] Krawitz (n 35) 196.

[100] 'Digital Law Library', *Federal Court of Australia* (Web Page) <https://www.fedcourt.gov.au/digital-law-library>.

[101] *Courts Administration Authority of South Australia* (Web Page) <https://www.courts.sa.gov.au/>.

[102] *High Court of Australia* (Web Page) <https://www.hcourt.gov.au/>.

[103] Meyer (n 74) 13 referring to an (unspecified) Australian survey of 62 judges and court staff.

[104] Bromberg-Krawitz (n 42) 19.

[105] *Australian Cyber Security Centre* (Web Page) <https://www.cyber.gov.au/>.

[106] Mack, Anleu and Tutton (n 21) 25.

[107] *Campbell* (n 23)

[108] Schulz and Cannon (n 41) 4.

The suggestion by Richardson of the use of summaries has already been mentioned[109] and supported by Mack et al[110], Schulz and Cannon[111] and Warren.[112] Case summaries offer a potential solution if they can be concise enough to allow for quick consumption, reflect the actuality of the case, be understandable by the non-legally minded and perhaps most importantly, visible to the public. Though existing judicial judgments typically include a shortened initial summary, such explanations still include excessive legal terminology and case precedents which limit the accessibility of the information to the public. This issue was succinctly noted by Justice Kenny when she stated 'there may be a need in such a case for some translator to translate the judge's reasons into a form which may be understood beyond the legal community.'[113]

An example of what a plain language summary could look like is provided below. The format and content can be adjusted to suit the particular case or to achieve a specifically desired outcome. It is the content that counts, not the packaging. The example is based on the aforementioned case of *Campbell.*[114]

[109] Richardson (n 87) 88.

[110] Mack, Anleu and Tutton (n 21) 21.

[111] Schulz and Cannon (n 41) 7.

[112] Warren (n 25) 57.

[113] Justice Susan Kenny, 'Maintaining Public Confidence in the Judiciary: A Precarious Equilibrium' (1999) 25 Monash University Law Review 209, 220.

[114] *Campbell* (n 23).

CASE SUMMARY

Court	**Case**	**Charge(s)**
District Court of South Australia Judge Muscat presiding	*R v Campbell* [2022] SADC 95	One count of causing death by dangerous driving One count of causing harm by dangerous driving
What is the case about?		
Mr Alexander Campbell was the driver of a vehicle that struck and killed a teenage girl Sophia Naismith and injured another teenage girl Jordyn Callea		
The Prosecution Argument		
Mr Alexander Campbell lost control of the Lamborghini he was driving because of deliberate and harsh acceleration.		
What did they need to prove?	For the charges laid, the prosecution had to prove ***beyond reasonable doubt*** that: 1. ⇒ The defendant was driving the vehicle. 2. ⇒ The vehicle was driven by the defendant in a dangerous manner. 3. ⇒ That because of the dangerous driving, the defendant either caused the death of a person or caused them harm.	
The Defence		
There were no drugs or alcohol involved. There was no evidence of deliberate and harsh acceleration and no evidence that any street racing with another vehicle was involved, all supported by the majority of witnesses. There was no evidence of dangerous driving. The owner simply lost control.		
The Evidence		
The operation of a Lamborghini in sports mode with electronic stabilisation switched off (as was the case) will result in changed handling characteristics but it is not inherently dangerous. Similarly, the tyres on the vehicle are known to potentially lose traction when the temperature is below 7 degrees C. On the night of the accident the temperature was between 4.9 and 6.2 degrees C.		
The Outcome		
The prosecution was required by the law to prove their case ***beyond reasonable doubt***. Based on the evidence, the Judge ruled the prosecution had **not made their case** that the defendant drove in a manner that was objectively dangerous.		
Were the elements proven?	1. ⇒ The defendant was driving the vehicle	**PROVEN**. Mr Campbell was the driver
	2. ⇒ The vehicle was driven by the defendant in a dangerous manner	**NOT PROVEN**. Prosecution failed to prove dangerous driving
	3. ⇒ That because of the dangerous driving, the defendant either caused the death of a person or caused them harm	**NOT PROVEN**. Prosecution failed to prove dangerous driving so it could not have caused the death or injury
The Reasoning		
Mr Campbell was driving the vehicle but there was nothing inherently dangerous or proven to be dangerous in what he was doing whilst operating the vehicle and so the case for dangerous driving could not be established hence **NOT GUILTY**.		
Judicial Commentary		
In any case before the courts, the prosecution must make their position on the evidence. The defence must counter the arguments of the prosecution with reference to the same evidence. In this case, the prosecution failed to establish **beyond reasonable doubt** that the vehicle had been driven dangerously, a key factor to establish guilt on the part of the accused. The defence was able to form uncertainty about the prosecution argument so that reasonable doubt was created and a not guilty verdict was the inevitable result. A tragic event for the victims but the legal outcome was entirely correct because the charges could not be proven. Alternative charges that could have been proven may have been a better option but were not presented.		

It is proposed such summaries would be specially written by lawyers who have also completed a degree in journalism or similar. This would result in legal accuracy and readability for the public. The judge(s) who decided the case would have the responsibility to sign off on the summary which could then be placed on the court website and its availability (via a hyperlink) advised to the public through the media options already discussed including Twitter (X) which gets around the character limitation already mentioned. Advantages of this approach include the statement of the factual details of the case, the key judicial considerations that led to the judgment, the rationale for the outcome in easily understood terms, as well as the ability to store the summary on a

website accessible via a hyperlink distributed on social media.[115] However, a potential disadvantage of these summaries is the need for conciseness necessarily curtails content but this can likely be overcome with good writing skills.

It is also important to note that to ensure this form of summary does not create the potential for appellate action, there would need to be an appropriate disclaimer included in the document.

Mack, Anleu and Tutton noted a not uncommon view from judicial officers they interviewed 'we now publish on the website decisions that magistrates have made to try and encourage an understanding of why a decision's been made and the public has access to that'.[116] The key element in the statement is 'understanding'. To achieve such understanding, the provided summaries must satisfy Justice Kenny's requirement for some degree of translation.[117] The example provided in this article is intended as just that and whilst not a silver bullet, they are a viable solution.

V CONCLUSION

The outcomes of criminal cases can be quite involved and difficult for the lay person to understand. Reliance on conventional media can create perceptions in the public mind which are not accurate and have the potential to undermine confidence in the legal system. It is doubtful the gap of understanding between the legal system and the public can ever be entirely closed. However, it would be possible to implement practices which provide the public with access to information which is accurate and untainted by the necessities of commercial publishing. A genuinely factual concise summary expressed in understandable language which clearly articulates the rationale for the court's decision and provided via a link in social media, could be used to aid the public in forming a better understanding of what has transpired. This will put us on the path towards the congruence promoted by Fuller and Eisenstein[118] and facilitate enhanced understanding which would be beneficial to the public perception of the court system as well as promote the universal understanding and comprehension of court decisions.

[115] Andrew Henderson, 'The High Court and the Cocktail Party from Hell: Can Social Media Improve Community Engagement with the Courts?' (2016) 25(3) *Journal of Judicial Administration* 175, 182.

[116] Mack, Anleu and Tutton (n 21) 21.

[117] Kenny (n 113) 220.

[118] See (n 4); Posterna (n 5); Eisenberg (n 6).