The Courts and the Media

Report of 1998 Churchill Fellowship

Areas of interest:

- The relationship between courts and the media
- Structured assistance offered by courts for the media
- Televising court proceedings post OJ Simpson

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Summary

In late 1998 I visited the United States, Ottawa and Toronto, and London, to look at what courts in other jurisdictions were doing generally to assist the media. Although positions of court information officers are common in the United States these positions are comparatively recent in Australia and Canada. None exist in England, although the press office of the Lord Chancellor does some of this work, particularly for judges, and some assistance is available from the press office of the Crown Prosecution Service. I have brought back some very useful media advice for judges from the Lord Chancellor's press office, whose work is concerned more with judges than the media.

Relationship between the courts and the media: (Page 3)

This remains the most difficult area, and my greatest challenge, although it has certainly got better in recent years. The message is clear that the more that courts can do to assist reporters, and to clarify concerns, the better. I have included a detailed section (What can Australian courts do? Some practical suggestions on page 25) on judicial self-defence, minimising criticism and helping the community, through the media, to understand better what judges and courts do.

Structured assistance by courts for the media: (Page 13)

Beyond assisting with inquiries about cases and courts, I found surprisingly little emphasis on helping reporters to feel more confident about reporting the courts and legal issues. Three excellent exceptions stand out: the distribution of press kits for reporters covering high profile trials in Los Angeles (since followed in England for the Rosemary West trial) and in Kansas, seminars for reporters, and written summaries of cases on appeal. The Canadian Supreme Court also has a comprehensive briefing system on cases on appeal. English courts do little directly for the media. I have included a section, Doing things better, on page 27, with some suggestions. I concluded that Victorian courts are very media-friendly compared with most of their overseas counterparts.

Televising court proceedings: (Page 16)

The dust finally is settling from the OJ Simpson trial, which universally aroused strong distaste, and was very harmful to television cameras in courts. It is regarded as an aberration, and judges I spoke to said it would be unfortunate to allow one extremely unfortunate example of an ill-managed trial to influence Australian judges' views.

My Fellowship was not an exhaustive study of televising courts, as this would duplicate some excellent recent work. I was more interested to talk to judges about their experiences and lessons for Australia. I believe that Australian courts should allow more televising of appropriate cases, with sufficient discretion for judges.

Introduction

First, I would like to record my extreme gratitude for the opportunity afforded to me by the Churchill Memorial Trust. It was certainly of enormous assistance for me, both in what I learned, and in putting my job into a broader context, and I hope, will have benefits for others in my position. I have, for example, been asked to speak at the first formal meeting of Australian courts information officers in Adelaide in August about my Fellowship. I think it has also given me more resolve to suggest to judges how I can help them, as I believe the position is under-utilised by the courts, as distinct to the media. I have certainly found some of the techniques I have learned from my counterparts to be extremely valuable.

The Fellowship also gave me the opportunity to meet some outstanding practitioners in the field. E-mails and faxes are all very well, but meeting people and discussing common concerns and what might be done, is invaluable. I found them very generous with their time and expertise.

It also clarified some thinking about how to do a number of things, so my report is a mixture of my observations during my Fellowship, some good ideas I picked up, and how I believe the experience of others fits in with and has enhanced my work.

I should also indicate that my original program varied on the run because of changing circumstances. Specifically, a course on Courts under attack at the National Judicial College at Reno was cancelled just before I left, due to lack of numbers; and a seminar previewing the US Supreme Court's forthcoming cases was brought forward from its advertised date and was actually held a few days before I arrived in the US (this despite a fax from me weeks before to confirm the date). And various other lesser arrangements which I had expected to occur did not. But of course other doors opened, and proved to be very helpful. In particular, I was able to attend a two-day seminar for court administrators in Oregon on handling high-profile trials and dealing with the media, which was very valuable. I also attended a seminar on televising court proceedings in Washington., and spent a week with Court TV in New York and Boston.

I should also state that while television in courts was one of my key areas of interest, my program was in no way an exhaustive study. There are now a number of significant studies of the subject in print, and I saw little point in duplicating them. I would like to acknowledge the assistance of the Federal Court and Mr Daniel Stepniak in giving me an advance copy of his report for the Federal Court, `Electronic Media Coverage of Courts', which is an excellent overview of the subject, worldwide and in the Australian context, and is now available. I would also recommend a recent book, `TV or not TV' by Ronald Goldfarb, published by New York University Press. The New Zealand report on its pilot into television in courts is also now available. As I had taken some time to visit television news executives in Auckland and Wellington in 1996, and knew that the report was due, I did not revisit New Zealand.

I thought my best approach would be to talk to judges and court information officers on their experiences and recommendations for Australia. Almost without exception those I spoke to in the United States favored television access, although some judges do have strong reservations. News access for television -- as distinct from public network access or unedited appeal court cases -- is far more limited in Canada. There is no doubt that the O.J. Simpson trial did enormous damage to the image of cameras in courts, in the United States and elsewhere, which is still being felt.

The relationship between the courts and the media

This remains my greatest challenge, after more than five years as courts information officer in Victoria. The very different natures of the judiciary and the media mean, of course, that they will never have identical views and approaches. Judges will continue from time to time to be concerned and angry about media reports and comments, and justifiably so. Court media officers will not be able to prevent it happening, (although they may be able to minimise it). Everyone should recognise this.

The problem is when those reports are so incomplete or one-sided, and comments so intemperate, that they are damaging. It is in this area that judges could, in my opinion, do more in the way of anticipating problems and trying to minimise them, if necessary, seeking some assistance. That is one of the reasons for the appointments, which started in 1993, of courts information officers. However, it is certainly my experience that many judges do not consider as much as they should whether I (or somebody in a similar position) could assist them. Sometimes it is possible to suggest a change in words, or emphasising something in sentencing remarks which could lessen potential for sensational media reporting and criticism.

Allied to this was a feeling I have had that helpful assistance to reporters not only increases the quality and accuracy of reports of court cases, but that there is an intangible impression that reporters who receive assistance from the courts may be less likely to bite the hand that feeds them, so to speak.

That does not mean, of course, that the organisations which employ them will not take a particular line in how court cases should be reported, especially in emotive cases like paedophiles downloading pornography on the Internet and preying on children. Remember all the fuss a few years ago about how insensitive judges were in rape cases, based in a small handful of cases Australia-wide?

Without detracting from the seriousness of these cases, the media interest they attract does seem to go in cycles.

In addition, in Australia contempt of court is a high risk area for journalists, as illustrated by legislation introduced in New South Wales in 1997 -- but not proceeded with -- to allow recovery of thrown away costs from media organisations convicted of contempt of court.

So it was against that background that I wanted to know what the general relationship was between courts, judges and the media elsewhere, and what courts actively did to assist reporters.

American courts and judges seem to have a starting point that the media are entitled to virtually unfettered reporting, stemming from cases successfully arguing press access and the right to publish under the First Amendment to the US Constitution. This is a huge advantage for the American media. The contempt of court rules in Australia (and virtually identical rules in England and New Zealand) mean that our judges are far more protective -- and occasionally too much so -- of proceedings as far as media coverage is concerned. The attitude in England seems to be that it is the responsibility of the media to know what the rules are and how to apply them in reporting, and there is no mechanism for courts to assist.

I found that access for the media was strongly endorsed in the US, but curiously, many courts did not seem to do much to assist reporters understand and report well in what can be a daunting and unfamiliar environment, although some courts do it very well. American judges seem to be the most willing to speak to the media. But without exception I found that judges respond precisely the same way as Australian judges do to requests for interviews about particular cases: they decline, as it is quite inappropriate.

My general impression was that American judges may be more prepared to talk to reporters generally, although not about specific cases they are trying. I also heard cautions expressed that judges (and court officials) should not get too close to reporters, but should maintain a professional relationship.

My much more limited discussion with judges in Canada suggested a judicial environment extremely similar to ours, with a certain wariness about the media, but an appreciation that the courts should be doing more to assist mutual knowledge and understanding.

One senior American lawyer, Mr Bruce Collins (who is the senior counsel for the C-Span public interest network operating in Washington) described the position between the courts and the media as "two words that collide -- suspicion and resentment". In a long discussion with me, he said that ongoing dialogue between the two was extremely valuable.

"People who reside and sit in a courthouse are imbued with this institutional power of the law and they respect it, and news people barrel into this public building, to them it's just, get a picture and get out, and that rubs people up the wrong way. All that cultural stuff has to be conveyed and it would go a long way towards making things better," he said. He urged "more communication, in plain language", so that the media could be helpfully informed about significant cases in the system in order to report them better.

One theme I heard from several people, judges and court reporters, was the need for clear rules, to be spelled out by the judge at the outset. While this arose mainly in the context of television access to courtrooms, it was a useful device to try to make the task easier for everyone involved in cases which were going to get a lot of attention, with or without cameras in court. To a large extent reporting court cases is far more regulated in Australia because of contempt of court concerns, but I have certainly been aware of cases where there is keen media interest and a lot of legitimate concerns on what may be reported, as the situation is not always explicitly clear. For courts which do not have media officers who can handle these requests for clarification, it may be valuable for trial judges to consider having open, preliminary hearings, on transcript, where issues about what may be reported, and so on, can be raised and clarified.

Judges need also to consider that while they can rely on the knowledge of the reporters who regularly cover the courts and will have an excellent idea of what they can and cannot report, many cases such as prosecutions of prominent businessmen, or sensational criminal cases, will attract reporters with no knowledge of court reporting, who will not be aware of the limitations on what they can do. Several reporters and lawyers I met cautioned against relying on word of mouth for reporters to know about reporting restrictions, particularly when reporters covering a case could change from day to day.

My Los Angeles counterpart, Jerrianne Hayslett, who learned her excellent skills on trials like the Rodney King police beating before moving on to the OJ Simpson trial, the

Menendez brothers' murder trial, and others, has developed a system of providing a press kit in high profile cases, containing basic information about the case, and any directions, etc, about reporting it. This model has been taken up by the Lord Chancellor's press office in London and used in trials including the Rosemary West 'House of horrors' trial.

In Melbourne we have an extremely capable group of reporters covering the courts for the major newspapers, television and radio stations and there is less need for a press kit for them. But it is a worthwhile idea to consider especially when reporters do not have that experience. A kit could include a copy of the charges in a criminal trial, or a case summary in a major civil trial, a list of parties and lawyers in the case, and any orders which may have been made affecting publication, or a pointer to any relevant legislation which would affect publication (such as not identifying someone complaining of rape). This could be updated as the need arose during the trial. It would not be difficult to prepare.

Judge Florence-Marie Cooper, of the Los Angeles Superior Court (who chairs that court's media liaison committee), is certainly of the view that co-operation deflects problems. She is a keen believer in the pre-trial conference attended by the media to air and resolve any problems for reporting.

However, she is not uncritical of the media. Speaking of the OJ Simpson trial and its impact, she said: "There was a media circus. I don't say the media isn't responsible for a lot of the fallout because they behaved very badly in and around the building, and became extremely aggressive, parked on the sidewalk so jurors and witnesses couldn't get into the building. Judges who had sat in the building and seen how badly the media behaved had no interest to co-operate."

She believes there is great benefit in interaction between the bench, the bar (used a lot in the US compared with Australia), and the media, to talk about mutual problems. (In Melbourne we have a Courts Media Liaison Group, chaired by Mr Justice Teague, with a judge from the County Court, a magistrate, the DPP, two media lawyers, two journalists and me, which serves some of this function.)

Use of the bar seems much more organised by American courts than it is here, and manyspoke highly of the American Bar Association's booklet on defending judges from unfair criticism.

Criticism of judges arises in the US as it does in Australia, and presumably some of it is ill-informed and unfair. It was obviously of sufficient concern that the Californian Judges' Association set up a media "hotline" for judges. It has not been used for several years. The executive director of the Californian Judges' Association, Connie Dove, outlined one recent example, where several long-serving judges who regularly played golf on Friday afternoons were followed by the media and ended up in the local paper. She described this as an example of warranted criticism, in other words, they had brought it on themselves and there was nothing the association could do.

But where damage control was needed, she said: "We have a sort of informal network of judges who will help respond to unwarranted criticism. You can't close the wagons, but you can set up systems so there are lots of people to turn to if required, eg the ethics hotline, the response to criticism system, all designed to connect a judge who is under siege with colleagues, cooler heads -- give them somebody to bounce off and help them make a decision. The ones who are really in trouble don't call us."

Ms Dove said that "you can't preach at judges" although they would listen to their own, eg in discussion groups.

She also believed in the value of exchanges between judges and the media, such as panel sessions at conferences.

She described the relationship between judges and the media, particularly in a smaller city, as "a kind of dance partner: You (the judge) have to be cordial, have some sort of relationship, but never forget they (reporters) have their job and you have your job". But she said that where there was helpful accessibility, stories were of a better quality.

This echoed other concerns I heard that reporters thrown into a court case often knew nothing about it, or the techniques of court reporting, and were often extremely keen to talk to someone to clarify points for accuracy and so on. While I do not expect Australian judges would normally take those kinds of phone calls, it illustrates a need for someone in the court system to be available to answer reporters' queries. (Those phone calls often come to me. If I cannot help I try to put reporters on to someone who can, eg a lawyer in the case, or tell them how to search the court file.)

Many judges are very critical of the quality of court reporting, but I wonder whether they consider what assistance the reporter has been offered to get it right. Did the judge provide sentencing notes? Who could the reporter check details with to make sure the story was correct? Judges' associates are often very helpful, but some are not, and, often, they are acting on the instruction of their judges to say nothing. Prosecutors are often helpful, but not always. So it may be that a reporter has been unable to check the story despite wanting to. Or it may be, of course, that the story was simply incompetently reported, or slanted by the newspaper or broadcaster to suit a particular line.

One point many made, and is certainly borne out by my experience, is that many of the problems arise with inexperienced reporters, who may need some handholding to get it right and learn how courts should be reported. The alternative may be poor, even damaging reports which, at worst, could abort trials. I don't think it is enough, as I found the attitude to be in London, to take the view that it is up to the media to get it right and know what to do.

Another helpful analysis of the relationship between judges and the media was from Judge Robert Payant, the president emeritus at the National Judicial College in Reno. His college is in the process of establishing a National Centre for the Courts and the Media. (I was a year too early, alas, with my Fellowship although I found it very worthwhile to go and see him and talk about the new centre, which sounds extremely good.) The college held an extremely highly regarded conference on the courts and the media in 1996, in the fallout of the OJ Simpson trial, and the centre has flowed from that. It will offer special training for judges and journalists, including joint classes.

He said that courses for judges for some time have included sessions with journalists as their teachers. "These have sometimes been terribly contentious because the judges don't believe journalists are fair or accurate. The journalists feel the judges aren't forthcoming and make terrible mistakes in public relations by saying no comment. We (recognise) a journalist ... is given the court beat in many cases and knows little or nothing about the court process. So when mistakes are made part of it is because they don't know, and if they ask, the response is, I don't comment. If they can't ask the judge, who can they ask?

So the idea was that there should be more in-depth training of people. The thing that prompted it was that the College of Judges themselves are concerned about the public attitude towards the judiciary when there was criticism ... and we all said Tsk, tsk, it's too bad. But when the criticism started of the courts we didn't have too many allies, many judges saw that they had a role in seeing public understanding of the courts was improved. One of the obviously effective ways in our thinking was we need education on both sides, what the legitimate needs of journalism are, how judges can become more articulate in explaining their cases, in judges understanding that there is a public right to information about court proceedings. It would have happened without OJ but that gave it more urgency."

I attended an extremely helpful seminar, conducted for court administrators at Hood River, Oregon, on dealing with high profile cases. (As one court administrator said, they can come from anywhere. A case involving a circus elephant in a country town was all over national television.) The main session was a panel discussion involving judges (several with high-profile case experience), journalists and Jerrianne Hayslett, the public information officer of the Los Angeles Superior Court. I have included a lot of their comments because I think they are instructive, and remind us that journalists have a difficult job covering the courts, and it should not be assumed that they have a good knowledge of the courts and legal system.

A local television journalist on the panel, Elaine Murphy, happened to have been the key witness in a trial after a man broke into her house, gagged her, beat her up and said he was going to kidnap her. So her experience of the court system was both as a reporter and witness in a prosecution. She was the anchor of the local TV news program at the time and the case received a lot of publicity.

She highlighted the problems when different reporters were assigned to a case each day, with inadvertent conflicts and reporters unaware of the rules. "It's easy for a reporter or cameraman to breach a ruling without having any idea about it," she said. "If the ground rules are established right up front it eliminates confusion. That is all the reporters want - they want to know what rules they are playing by. We need to have things explained to us so we can accurately explain them to the public. Some things in court are very complex."

Jerrianne Hayslett crystallised the debate as the courts and the media being perceived as adversaries, a free press v. a fair trial (and both protected by the US Constitution).

She endorsed the use of media advisories (using the Internet and fax) to get the word out in particular cases (about procedural developments etc) and repeating the basic rules.

It was my clear impression that away from specialist areas such as appeal courts, there were few journalists who regularly reported courts and developed any expertise, and that the level of competence was perhaps lower than would be the norm in Melbourne, which for many years has had generally very capable reporters. (That is not to say there are not teething problems with new or infrequent reporters, and that all is perfect. But I generally do assume a greater level of knowhow than seems to be the norm in the US. I found similar distinctions made in London between the regulars who did an excellent job, and others who did not.)

Big cases in the US and UK have required setting up media centres as the courts cannot cope with 100 plus journalists. So far we have not had that demand in Australia, although media areas have been established at royal commissions and occasionally courts. But I

have brought back some American plans for the logistics of these cases that could be useful in the future.

Judge Brockley, from Oregon, (who tried the Tonia Harding case) recounted the occasion he found wiring in his courtroom, without any request to him, and ripped it up and dumped it outside.

He also said that while there was public interest in coverage of cases like the Tonia Harding case, other people's cases were also being heard and they needed access to the building.

Jerrianne Hayslett said: "There is no dress code. Camera crews wear shorts, tank tops, baseball hats, etc. If not watched setting up in court they will go in to the jury box, on the bench, wherever they decide they want to put a camera without asking, so we try to make sure we let them in where they are permitted to have their equipment."

However, Bruce Collins told me his people were prepared to approach the court with the same respect that the judges did. So all the media should not be viewed as identical; and many of the problems raised amount to lack of common sense and courtesy on the part of crews, which could be overcome by a code of conduct on dress, behaviour, locations in court, seeking permission etc. We have done some work on protocols for the media in Melbourne and I am interested in the code of conduct for the media being written in New Zealand.

Jerrianne Hayslett was also enthusiastic about involving the media to solve some of the logistical problems, eg allocating the limited seating in the courtroom, photocopying documents (she provides one copy and it is up to reporters to copy and distribute it), rather than her trying to do everything. She said it was important for all concerned to know what their responsibilities were (including court staff, other agencies, media etc).

"To me the bottom line is that the courts and the media don't have to be adversaries. We have different perspectives, but share a common goal to serve the public, and while we may not end up being partners we can work co-operatively to achieve our goal," she said.

A publisher and journalist, Mr Steve Clark, told the conference that there needed to be more partnerships. The law is news, but is complex and difficult to report, he said, and more so with reporters having limited knowledge and limited time or space for the report. He emphasised that the media needed to be courteous and recognise that court staff were under pressure. "It is about we knowing you and you knowing us."

A Washington State judge, Judge Harris, also emphasised the importance of establishing the ground rules, eg to prevent interference with jurors, allowing court access to families. "The media should know they will lose privileges if they violate them. If they understand the court is in complete control you will have very few problems."

Judge Howard, who tried the Susan Smith case, said that notorious trials were entirely different from routine trials, with logistical problems like courtroom seating, parking for satellite trucks etc. He highly recommended the NCSC's book, `Managing Notorious Cases'.

Jerrianne Hayslett said it was important to recognise that the media have far more control over publicity than the courts do. She said it was important that everybody followed the same rules and knew what was appropriate to say to reporters.

Asked about correcting a mistake or misquote, Jerrianne said she first determined the severity of the error, and whether it required a correction, or to try to prevent it being repeated. Often a word to the reporter was sufficient; sometimes a correction was called for. Corrections should be done as quickly as possible (to prevent the errors being repeated, eg by other outlets).

(I return to the issue of complaints in the section What can Australian courts do? Some practical suggestions, on page 25.)

Judge Cooper said judges could be more willing to explain to the media what was going on: eg not saying this is a 38.5 application, but explaining that it is a hearing of a motion to suppress something, and that was what she was being asked to decide. "We are better off if the media understands what's going on. Some reporters may be thrown into the courtroom for the first time." She said that in some cases it was a good idea to give notice to the media that a pre-trial conference or hearing would be conducted, and allow ground rules to be set for a trial. "It's a really good opportunity to get some communication going and answer questions."

While I entirely endorse the idea of anticipating media concerns and the need for clarify, some of the problems are lessened in Australia by our more stringent requirements for reporting court cases and avoiding prejudice. But there will often be cases where judges have concerns about media interest, the media will have issues they would like clarified in grey areas, and an informal (or formal) direction from the judge in court may be very helpful. With or without a formal order, I would be confident that the media would respect the spirit of the direction or indication from a judge (which might helpfully be summarised by a courts media officer and circulated; or the relevant part of the transcript circulated).

Steve Clark reminded judges to "make sure what you are saying doesn't go right over the reporter's head".

In trial with big demand for press seats, it may be necessary to have a protocol; eg only one seat per news organisation, and a court orderly may need to take names. Jerrianne prefers to say to the media, you will have X number of seats and it is your responsibility who will be assigned them.

Jerrianne Hayslett also commented that "there should be an education process for judges" to let her know if they are doing a case the media is interested in, and to make copies of rulings available. "Some judges call me about everything; some never call." (This seemed very familiar to me and I entirely endorse her views.)

Several court staff raised concerns about how to learn what to say to reporters. This is a legitimate problem and one which courts should deal with properly. I would comment that most questions are basic, and involve no breaches of protocol to answer -- eg dates of hearings. I have brought back a very brief checklist prepared by the Lord Chancellor's Press Office for registry staff listing what they can safely answer and what they should not, which could be a helpful model for local variation and use. My experience is that most court registries, especially in regional and country areas, are helpful, probably because they deal with a limited number of regular reporters. I get a lot of calls which court staff

could answer; I'm not sure whether they refer them to me because they are too busy, or because they don't know what they should be saying. A suitable guide could be a subtle encouragement to staff to assist within proper limits.

In London I spoke at length to the chief press officer for the Lord Chancellor's Department, Mr Mike Wicksteed, who was extremely helpful. He has been doing some excellent work for judges on dealing with the media. I have brought back a draft copy of a media kit for judges, which includes the views of the Lord Chancellor on judges dealing with the media, issues to consider, advice on giving interviews, and advice on what to do in the event of seriously damaging media coverage. (Needless to say, his advice is, act swiftly to rebut anything, and there are some useful examples of statements issued by his office on judges' behalf.) He also conducts seminars for court managers in England and Wales on how they should deal with the local media.

I also spoke to Mr Joshua Rozenberg, the legal correspondent of the BBC, and Mr Jonathan Caplan QC, who does a lot of media work and wrote a report, which was cautiously favorable, on televising court proceedings in England.

There seems to be no formal structures in the English court system for the media, and no court media officers. But the Lord Chancellor's Press Office has in recent years seen some of this as valuable. It offered assistance to courts on the logistics of handling trials like the Rosemary West trial and other trials which have attracted huge press interest (and required facilities for at least 100 reporters).

A press kit was developed in the Jamie Bolger trial, and used in the West trial and others. The kit includes basic information about where the trial will be held, court hours, the names of the judge and court staff (I would also list the lawyers), media contacts at the Lord Chancellor's Press Office, the police and prosecution, seating arrangements, a copy of the indictment, an outline of any relevant reporting restrictions, and a reminder not to report anything said in court in the absence of the jury.

Big cases may justify press annexes to cope with the overflow, using closed circuit TV (and similar arrangements have been made in some Australian courts although on a lesser scale). The court provided a press copy of the transcript in the West trial although this is uncommon because there is no computer-assisted transcript in most trials in England. There was only one breach of the non-reporting rule in the West committal, on the internet, which was pulled very quickly and no prosecution resulted. However Mr Wicksteed warned that the internet was a problem, and potentially uncontrollable depending on who and where something was put on the internet. Jonathan Caplan raised similar concerns.

Mr Wicksteed said he was amazed and delighted at the media's conduct in the West trial, describing it as impeccable. "They were responsible. Even the tabloids realised ... they couldn't report it fully because it was so awful, and if they didn't report it properly she could walk, and no-one wanted that."

The role of Mr Wicksteed's office is to deal with the media for the Lord Chancellor, including informing the media of court initiatives. The office handles numerous media inquiries from reporters seeking assistance. He does not, as such, work for the courts in their daily dealings with the media, although he has attended and advised courts on appropriate media arrangements for high profile trials.

The West trial was the first time that counselling had been offered for jurors, for which he takes credit. He said it may be more widely offered, and employers had been very co-operative.

His office has also had extensive experience in assisting judges who are the subject of unwanted media exposure, ranging from a senior judge charged with a driving offence, to a judge who was the victim of a most unfair series of reports resulting from the Crown withdrawing its case in a sexual assault case involving a group of policemen and women. I can only comment that so far in Australia we have not experienced anything like the British tabloids in full cry.

His office takes the view that it cannot act directly for the judges, because they are independent. But it can advise them. "We will do it for the judge. But he's got to come to us." Statements can be put out for the judge; his office will contact the media on the judge's behalf.

I found this interesting compared with the American system which relies far more on bodies like bar associations to step in. It is probably a more useful model for Australia. Mr Wicksteed also told me of one case where a judge who had been misreported in a rape trial had gone to a well-known libel firm and managed to get an apology printed or published by every newspaper and station that carried the story. He said it had been blatantly misreported, and was a gutsy thing for the judge to do. He commented generally, and I agree, that "once something is out it's very hard to put the genie back in the bottle. It is a reactive situation and you can't always win."

The English situation, while perhaps more strident than in Australia, has some parallels. I have canvassed several possible techniques for judges to consider in the section What can Australian courts do? Some practical suggestions, on page 25.

It was the view of the Lord Chancellor's Press Office, and the press office of the Crown Prosecution Service, that responsibility for knowing the rules of court reporting lay entirely with the media, and that it was not a role for the courts or the prosecution. However, both offices do assist where they can. I found no equivalent in England of a court which routinely sends copies of any suppression orders, or concerns raised by judges in the context of reporting trials, to the media, although I thought this was an essential thing to do as soon as I began my job in 1993. In an environment where there are agencies reporting courts, and often no continuity of reporters covering a particular case, as seems to be common in London, for example, I was surprised that the courts or prosecutors did not see a benefit in making sure that copies of order were distributed, rather than relying on word of mouth.

However, Jane Holman from the Crown Prosecution Service's press office said that press officers might give guidance to reporters who rang for help, for example if they thought the reporter was going down the wrong track.

At the BBC, Mr Rozenberg, asked what the courts did for the media, answered: "Virtually nothing". It was usually possible to get printed copies of judgments when they were delivered, but very rare for anything in the way of a summary although judges had done that in a few complicated appeal decisions. (I might add, it remains rare in Australia and, as far as I could tell, in the United States.)

He thought a press officer for the courts would be helpful, to anticipate extra demand for copies of judgments for reporters, alert reporters to important judgments and so on. He was full of praise for Mike Wicksteed, saying his role was of course to protect the judge, but that he was very helpful to the media. He would also welcome copies of sentences in criminal cases. He said it was not done although the Lord Chancellor had asked judges to do it. He would also welcome copies of transcript.

"Things are improving and have improved over the years I have covered this round," he said. He noted it was a great advantage being from the BBC, and having a long track record of covering courts and legal issues, knowing the people involved (and having an excellent reputation). "I have lots of advantages and no problem doing my job. I work for a respected organisation. But I'm not saying it could not be improved."

I also met Jonathan Caplan, to discuss his report, now 10 years old, on televising court proceedings. He was concerned with the issue of contempt of court, which he said needed a major overhaul, particularly with the information explosion and the Internet.

He thought many judges did not understand the law of contempt and should be taught what it meant, and what they could and could not do. And, he said, any court orders must be clear.

He would also welcome a court media liaison officer, who could handle inquiries from the media and check information.

"You really want an inquiry into the relationship now between the media and the courts, and that would encompass everything: cameras, reporting, codification of reporting restrictions. You want to completely reassess the relationship, how they can do business, what they can report and what they can't. It is such a confusing add-on of bits and pieces over the years. We are stuck with so many decisions that quite frankly need to be reviewed, in an overall context rather than bit by bit. I think somebody should sit down and say, Here we need a royal commission, the courts and the media, and you should look at all of this and make overall judgements. Really I think very strongly it is necessary, and our law is so confusing. We have legislation, bits of Acts from 1925, part common law, part case law, it's very confusing stuff. Seasoned journalists find it all very confusing."

Mr Caplan added that a similar review would be useful in Australia.

Assistance for the media: What should the courts do?

The assistance given by the courts to help journalists report court case and legal issues is one of my key areas of interest, and partly reflects my long background as a newspaper reporter at The Age covering these areas. It is an area in which I have put a lot of work, partly because it is the most cost-effective area of my work, and partly because it seems like a very good idea. For some years I have conducted a half-day workshop for journalists on the basics of court reporting and avoiding contempt of court, both in Melbourne and for the media in regional cities, and provide written guidelines on court reporting and contempt of court. I always invite a judge along, and it seems to be to be a valuable opportunity to show that the courts can help in a practical way.

To my surprise, I found little work by overseas courts for journalists in the way of assisting them to report the courts, beyond providing information and handling media inquiries, although there are some excellent exceptions. I think this is of great importance, as there are many pitfalls for the inexperienced in covering courts in Australia, where contempt of court is a real concern for the media. There is no equivalent of that in the United States for the media, so the risks of damaging reports by inexperienced reporters is much less there. However, there are signs that courts want to assist reporters more, and some work is being done, for example, to explain the work of courts and how judges do their jobs. I found nothing directly done by English courts for journalists. The attitude there was firmly that it is up to the media to know what the law is.

In the United States, Canada and London, as in Australia, there is a keen interest on courts having a better relationship with the media. Although no English court employs a media officer (there are about eight in Australia, one in New Zealand and about 75 in the United States), some very interesting work is being done by the press office of the Lord Chancellor's office in London for judges and court officers in dealing with the media.

I was impressed with his program for seminars for court managers throughout England and Wales, on how they should be relating to their local media. (I have an outline of what is dealt with in those seminars.) I was also very impressed with a card Mr Wicksteed had prepared for staff in court registries, setting out very simply what staff could safely tell the media when they received inquiries, and what they should not say.

Mr Wicksteed's focus is on helping the judges, rather than the media (although the two coincide or share many common concerns). I have already mentioned a case study of some very unfair reports -- and what was done to correct them -- about a judge in a sexual assault trial which involved a complaint by a policewoman against a more senior male officer. However, the evidence before the jury made it clear that what might be called consensual sexual hijinks was a feature of relationships between police at the police station, and the Crown announced it would lead no further evidence. The judge then directed the jury to acquit. A policewoman who had been involved in the investigation (but who was not in court when the case collapsed) gave a very misleading version to a reporter of what had occurred, resulting in huge, adverse publicity, in which the judge was called Judge Grope and Judge Dread. After his detailed notes of what he had told the jury was given to the media by the Lord Chancellor's Press Office, the stories were generally corrected. (I must say when I read the case study I was professionally saddened that no one, even from the quality media, appeared to have made the slightest attempt to check the accuracy of the initial story but simply repeated it.)

The lesson from this case -- and there have been similar ones in Australia -- is to act swiftly and rebut misinformation with the court record, and I return to the issue of protective mechanisms later. The Judge Dread case would be a clear candidate for getting out the transcript of what was said as quickly as possible, to minimise harm and, unless faced with an extremely stubborn publisher, getting reports corrected.

In the United States, I was impressed with brief summaries routinely provided on all cases going on appeal to the Kansas Supreme Court by the court's education and information officer, Mr Ron Keefover (a former journalist). He also provides brief summaries of the significant decisions (but presumably ignores those that are of no news interest). He has access to judges' reasons before they are delivered to assist him prepare his summaries.

The United States Supreme Court's press office dates from the 1930s, and is the model on which others are based. It gives journalists printed copies of decisions, complete with headnotes ready for publication in the law reports, but does not provide summaries or briefings. (Briefings are done, however, at a seminar at the William and Mary Law School on the significant cases to come before the court, and are apparently highly thought of. This was the seminar whose date was changed and which I was very disappointed to have missed.)

In Canada, the Supreme Court's press officer provides extensive assistance to reporters for appeal decisions, including brief summaries for the electronic media, and detailed briefings for newspaper reporters preparing extensive reports in significant decisions. A copy of a paper prepared late in 1998 by the court's executive legal officer, Mr James O'Reilly, who deals with the media for the Supreme Court, is published in the St Louis University Law Journal outlining his approach. (The paper was written for the William and Mary Supreme Court preview.)

It was rare for courts to provide any summaries of cases apart from these two courts (and they are both in appeal decisions). This is a slightly controversial area, as judges everywhere seem to take the view that the judgments speak for themselves. While it may not, in Australia, be the role of a press officer to prepare summaries, I think more could be done to assist the media. For example, some judges are open, particularly in cases of a strong public interest, to prepare and read in court a summary intended to assist reporters (and the public) to understand what the issues before the court were, and what the decision was. This has been done in several Federal Court cases, notably by Justice North in the MUA case last year, and recently by Mr Justice Kellam in the Victorian Civil and Administrative Tribunal in a case involving an HIV-positive football player who had been banned from playing. There have been occasional instances of the High Court preparing summaries. I believe this could be done in more cases, either by the judges, their associates or a press officer, particularly in cases where there could be misunderstandings about what the issues actually are, and what the decision is.

I also found press releases about cases to be rare, although I was fascinated to find they are routinely prepared for "death row" cases in Tennessee. This was a specific court initiative to get out accurate information about decisions, because some excellent judges had been targeted and voted out of office for being seen to be soft on crime.

The media welcome assistance of this kind, and would be very grateful for assistance in complex appeals, with a number of separate judgments, when it can be difficult, quickly, to work out the result of the case in terms of which judges agreed with others and what the decision means. The High Court is considering introducing a press officer, and would be a

court which that would benefit strongly if a simply understood outline of what it had decided were available in cases which attract public interest. I noted with interest its brief statement in the recent cross-vesting decision. I am exploring a system of informal briefings by court staff for interested reporters in the issues raised in cases on appeal, as so frequently there are interesting decisions of community concern tucked away in seemly dull cases which a reporter may not stumble across, particularly on a busy day.

Mr Keefover also conducts workshops for reporters, often in conjunction with a professor in law at the University of Kansas, Professor Mike Kautsch, who is a former dean of journalism, and very interested in media law. (He was, for example, very interested in the conflict between the 1st Amendment guaranteeing free speech, and the 6th Amendment guaranteeing a fair trial.) Unfortunately my time in the United States did not coincide with any of their seminars. Ron has been doing these workshops for years, and it is the only other example I could find of a court information officer recognising that journalists could and should know more about the court system, the legal context, and how to report cases (even for journalists for whom contempt of court is not a daily concern). However, other American courts have started to do basic court information sessions for journalists. Jerrianne Hayslett is working with the Los Angeles section of the Radio and Television News Directors' Association to prepare a handbook on court reporting for journalists.

Professor Kautsch said that pre-trial publicity -- while not controlled in the United States -- was clearly a problem and had adverse effects on defendants' rights. Pre-trial publicity was now far more likely than it was five or ten years ago, and he said it often lead to the public inferring guilt, so that if someone was acquitted this could lead to a loss of confidence. He also commented that prosecutors now had to consider jurors' expectations, largely fed by television dramas, in presenting their cases. For example, jurors had often formed views on how police should conduct investigations, but they may be very unrealistic, he said.

Professor Kautsch said that the intention of the workshops was to be helpful to the media, and reduce the risk that they would get into conflict with judges. "You now have a basis for arguing that the fair trial for defendants is more easily jeopardised than it was five or ten years ago," he said, speaking of the American media. There was more pre-trial publicity, which seemed to be having an adverse effect on defendants' rights.

This is a fascinating area, and while I am aware of a number of centres in the United States studying the 1st Amendment, I could find no corresponding interest in the 6th Amendment, although this is an issue which has been identified by the National Judicial College for its new National Centre for the Courts and the Media.

I do wonder whether American courts, in accommodating 1st Amendment "no prior restraint" arguments particularly in the last 20 years, have created problems for trial management and minimising prejudicial publicity. (For example, the OJ Simpson jury was sequestered for the whole trial.) Certainly the American media seem to be extremely vigilant to prevent any encroachment on their right to report what many Australian journalists would not be able to report, because of privacy and prejudice concerns. Contempt of court rules in Australia and England, of course, set the balance more on the side of protecting the trial than unfettered media reporting while the trial is pending.

Unfortunately I was a year too early for the new Centre on the Courts and the Media, but intend to return when it is established, as its goals (outlined in the first section of this report on page 6) seemed to be to be very valuable.

Anyone interested in a detailed appraisal of the different approaches Australian and American courts take to "protecting" trials which attract publicity, particularly pre-trial, should read Professor Michael Chesterman's excellent article "OJ and the Dingo", published in The American Journal of Comparative Law, volume 45, at page 109.

Ron Keefover, who conducts these workshops all over the State, says he often has calls from reporters who had attended, who really appreciated his efforts. (My experience of similar workshops is the same, and if nothing else, they give reporters a name, face and phone number of someone in the court system who can help them.)

Two very different reporters gave their views of what they would like. Ms Elaine Murphy, a television reporter in Oregon, urged courts to adopt basically similar rules so reporters would know where they stood, and said that it was easy for reporters to break the rules inadvertently. Establishing guidelines would eliminate confusion. Joshua Rozenberg, from the BBC, also thought the English courts could be more media-friendly generally, while acknowledging the benefits attached to working for the BBC.

Televising of court proceedings

This was my third main area of interest. My background is newspaper reporting but I have come firmly to the view that there is a place for a television camera in court, if for no other reason than because television is now most people's primary news source.

I should stress that my views on television in courts are my personal views and do not necessarily reflect that of the courts for whom I work. I believe that television can be sensibly allowed into Australian courtrooms, but the right cases should be selected, or guidelines developed, to avoid the difficult areas of invading the privacy of witnesses in certain types of cases, and protecting the identity of jurors. Australian legislation of course already provides protection to people such as victims in rape trials, and generally prevents jurors from being identified. But additional care would be needed because names and faces are not total identification. But these are details to be worked out, not irremovable barriers to cameras.

However, I believe the best way forward, initially, is through appropriate civil cases, or tribunal hearings, particularly where there is a strong public interest element in the case, and little risk of distress to witnesses. There are already signs of this happening in Melbourne this year, with cameras in the Court of Appeal, the Victorian Civil and Administrative Tribunal for the decision in the case involving the HIV-positive footballer, and a major civil action in the Supreme Court involving embezzlement by a solicitor, to name several.

The Maritime Union of Australia's case in the Federal Court last year was a perfect example of an appropriate case for television, in which there was an overwhelming public interest. There would be many others. I commend the approach being taken in the Federal Court as I believe it will demonstrate that cameras need not be feared if handled correctly. Of course the Federal Court does almost no criminal work and or jury trials, which eliminates two major issues identified as problems for television in the criminal trial courts for which I work.

However, it is essential that judges be given sufficient discretion and not have their hands tied by rigid rules. They should also retain control of camera access. In other words, access should be discretionary, rather than a right, but a discretion which I would hope judges would exercise in appropriate cases. I would also add that rules that are too rigid are fairly pointless. They almost ruined the New Zealand pilot because of inflexibility and not enough discretion for judges, and rigid rules made television access in Scotland very limited.

When I left on my Fellowship, the report of the New Zealand three-year pilot program on television cameras in courts was due to be released (and is now available). Because of the close similarities of the court systems in Australia and New Zealand, I believe this is a very valuable appraisal, and one which the Victorian Chief Justice, Mr Justice John Harber Phillips, has publicly indicated he had found useful. My impression of the New Zealand rules, based on a brief study in late 1996, when I spoke to several key players in NZ television, was that judges needed more discretion to determine whether objections to being filmed were legitimate. At the moment the rules give a witness a power of veto over being identified, which makes it much more difficult for television, a visual medium. In fact some news executives told me they were better off in the street, without restrictions, than in court with too many restrictions to make it worthwhile. Following the report, these rules are being eased, and a new version of the rules, and a protocol for the media, are being drafted. My New Zealand counterpart, Mr Neil Billington, told me recently that no trial in New Zealand has been adversely affected by the presence of a television camera.

I believe the Australian media would co-operate with controlled access, provided the controls were sensible. Contempt of court is a formidable weapon for a court to protect its proceedings; and legislation already applies to reporting of a wide variety of cases, particularly covering children and other vulnerable people. In addition we have no equivalent of the 1st Amendment which has been used vigorously by the American media to open up access to courts. And legal ethics would curb many of the excesses which Australian judges recoil from in American cases, such as the press conferences on courtroom steps and in court corridors by lawyers during their cases.

In short, the Australian environment is in significant respects quite different from the American environment, and I believe it would be a mistake to equate television access here with what some see as excesses to be avoided in the United States. Our judges (and the legal profession) can ensure that these do not develop in Australia.

There is absolutely no doubt that the OJ Simpson trial, televised to the world in 1995, did untold harm to the cause of cameras in courtrooms, and not just in the United States. Judges in Canada and Australia, certainly, recoiled in distaste. Many American judges see this is a very bad example of a trial, which brought the system into disrepute, sufficiently so that the Governor of California asked his judges to ban cameras. But some judges believe it is not fair to blame the cameras for the excesses of participants in the trial, or the failure of the trial judge to take proper control of his court. They point to courtroom posturing by lawyers during the jury selection stage, which was not televised, as something which could not be attributed to the presence of a camera.

One case cited as a wasted opportunity to show the proper functioning of American justice -- because news cameras were banned -- was the trial of Timothy McVeigh for the Oklahoma City bombing.

Court TV staff told me that their access to courtrooms had dried up considerably, especially in California, and had only recently started to open up again. In the meantime Court TV had undergone a change of ownership and direction from the ideals with which it was started by Steve Brill, and there are accusations that it has become another ratings chaser -- to ensure its viability. Other Court TV people point to a very wide variety of cases televised, to counter the accusation that the channel is now only interested in sensational cases and celebrities. But while the Simpson trial did wonders for the then embryonic Court TV channel's ratings, and really put it on the map, it has suffered in the fallout, from a far more common refusal by judges to allow cameras, and from other major networks discovering that court cases attract audiences, and diluting Court TV's market share.

However, while television cameras are commonly accepted in many American courtrooms, even returning to some, it is by no means universal. One conspicuously camera-shy court is the United States Supreme Court, some of whose current judges are adamantly opposed to camera access, even though the court's work is confined to appeal cases. Yet the court has given decisions which state that there is nothing inherently unfair about cameras in court. So far no one has asked the Supreme Court to reconcile its positions, that cameras are not unfair, but that they cannot film Supreme Court proceedings, although some observers see a contradiction in these attitudes.

Mr Bruce Collins, senior counsel at C-Span, said judges had to understand that television has different needs from print journalism. (One point frequently made is that it is unrealistic for courts not to acknowledge that the vast majority of people get their information from television, not newspapers.)

There is no doubt that judges would prefer "gavel to gavel" coverage, that is, significant portions of cases, or cases shown in their entirety, to grabs for news broadcasts. The former has far less potential for snippets used out of context in a sensational way. But judges recognise that they cannot discriminate against one type of camera access in favor of another.

The only attempt to prescribe rules for a minimum amount of in-court footage to be shown, of which I am aware, was the two-minute rule in the New Zealand pilot. The current California rules do not prescribe how court cases will be reported. I think this is the better approach.

It is my belief that this is a decision best left to television, and that courts should not attempt to play the role of editorial executives in making news judgments. (Jonathan Caplan took the same view.) The ultimate sanction a judge in Australia can exercise is to refuse requests if they believe that televising of cases has been irresponsible, and referring cases for prosecution for contempt of court if necessary. In other words, television news executives will know that they must maintain high standards if they are to succeed in getting cameras into courts.

People should not lose sight of the fact that all criticisms that are made of television for sensationalism, out of context snippets and so on, are equally able to be made of print reports, and headlines, yet it has never been suggested that newspapers be banned from courtrooms because judges do not like their reports. I am now of the opinion that it is inappropriate for courts to favor one form of mass information over another, particularly if they discriminate against the medium which reaches far more people. These are the people whose confidence in the court system is easily shaken by media reports and talk-

back radio, for example, suggesting that judges are out of step with community expectations. Making the courts more accessible by admitting cameras should only enhance their understanding and knowledge, and support for the system.

Of course this would need commitment from television stations, by taking greater advantage of court access than simply 30 seconds for the evening news.

I would recommend that specifics of what and how much should be shown are best left to television reporters and news editors once access has been granted, in the same way that newspapers make these decisions. Contempt of court and other restraints will bind television as they now bind print reports.

The Churchill Fellowship has clarified my thinking enormously and helpfully on televising courts. My position many years ago was that TV in courts was an irrelevant issue -- probably because I worked for a newspaper, and knew that most court cases are not overwhelmingly interesting, and rarely for the whole of the case. I now share the views of people like Dan Henry, of CBC in Toronto, that TV can no longer be ignored as a way of reporting courts. If courts and judges believe they are now misunderstood and misreported, they might consider allowing cameras to record them in full so the public can see what they do and make an informed assessment. Whether television stations are now geared to judges talking for 30 minutes or so imposing sentences is doubtful. But I have little doubt that changing technologies and a change of attitude among judges will see the emergence in Australia of a court channel in some form.

I also believe that ultimately, judicial discretion, fairly exercised, would be preferable to legislation either to ban or admit cameras as a right. There will always be fine decisions for judges to make in the running of trials, including the risk that witnesses may feel under undue pressure giving their testimony to the world on camera, even though they potentially do so via newspaper reports. These are valid considerations, and ultimately I think it is unrealistic to equate absolutely print reports of court with televised reports. Some witnesses will be more vulnerable from television exposure than they are now from being reported in newspapers. But this means proper protective mechanisms should be used, with banning the camera reserved as the ultimate protection only if pixilating faces, disguising voices and so on will not suffice. Thought might be needed about controls over future use of footage to prevent on-going distress after the trial is over. But two programs from New Zealand of murder trials filmed during their pilot project show that witnesses can be protected without removing cameras.

I spoke to Judge Judith Cowin, who was presiding over a trial involving the murder of a child in Boston (and which had provoked calls to bring back the death penalty). She said cameras in court were not an issue or a distraction. "I tell jurors not to be concerned, that their faces aren't shown, and I don't think jurors are affected by them at all," she said. (The study of the NZ pilot reached the same conclusion.) "There is no playing to the cameras, no circus out there. Nobody is engaged in any histrionics because the camera is there."

She said one problem resulting from a great deal of pre-trial publicity for a case was finding jurors who had not been exposed to reports about it. "But that doesn't make it impossible," she said. American courts have mechanisms like changing venues, or sequestering a jury for the entire trial, to prevent jurors being affected by publicity. The rules in Australia which limit what can be said in the media about proceedings until the trial is finished usually overcome these problems.

She said that people seeing how the judicial process worked was an advantage of camera access. "It helps educate the general public who frankly have very little idea of how the system works. We have got to get out how the system works, and give people an idea that it is not a closed proceeding, it's not a star chamber, this is what goes on. The OJ Simpson trial was just a very bad experience which left a very bad taste in everybody's mouth. It is generally a matter of running the court as usual (with a camera present). OJ Simpson was just an aberration."

Mr Collins, from C-Span, said that Australian courts should follow the model of many courts in the US courts that had not had any problems with cameras. "They should trust their own judicial system to dispense justice regardless of what happened in America, and rely on the integrity of the lawyers and the judges."

A frank appraisal of the impact of OJ Simpson came from a Court TV producer who told me that "Judges know they're in the hot seat" which, he believed, made them less inclined to want cameras in court.

Judge Florence-Marie Cooper, of the Los Angeles Superior Court, chairs that court's media committee, and was also on the task force set up by the Governor of California to reappraise cameras in court after the OJ Simpson trial.

Her general view has always been pro-camera, although there are occasions, such as a frightened child victim, when it would be inappropriate to want this flashed on TV.

She said the climate changed very dramatically after the Simpson trial, and a common view was, "After that fiasco? That monstrosity?"

"The messenger got the blame for what didn't look good in the courtroom. But it wasn't the camera's fault that the trial didn't look good." She said judges who had previously allowed cameras continued to do so, because they knew that that one trial was an aberration.

She also thought that the majority of lawyers in California would not act unethically and talk to the media about a pending case. But she said the small number of lawyers who liked to try their cases in the media got a lot of attention, and made the problem seem more widespread than it was.

She wrote the minority report which argued that the more restrictive rules first proposed by the task force were too rigid and removed judicial discretion. Her report was eventually embraced by the Californian Judicial Council, and now includes a list of factors which judges ought to consider when deciding whether to allow a camera. She thought that had been helpful for judges. She also thought the antipathy towards the media had diminished, as the memories of OJ faded.

But California's camera rules are now more stringent, and Judge Cooper thought they imposed a lot of unnecessary requirements on the media. They had also generated unfavorable editorials and threats of law suits against the court. She was attempting to resolve this by working with the media, and asking them to specify their problems so the rules could be limited. She favored occasions for judges, lawyers and journalists to get together and discuss mutual problems.

"My personal response is that OJ notwithstanding, the presence of cameras in the courtroom doesn't interfere with the process, doesn't affect the results even in the way in which the trial is conducted in any significant way," she said. "And it is enhancing the public's ability to see what goes on in our courts, which I think is so important. I think it is a way of giving people real access, seeing their justice system at work. I think we trust things more readily when we have genuine access to them and see them in operation.

"My feeling is that the anger at the whole issue of cameras is because people were very disappointed at what they saw at that trial, and in many respects rightly so. But the solution is to focus on what went wrong at that trial."

She said she had never had any serious problem with a camera, and after five minutes, no one was conscious of the camera.

"I always check my hair and put on lipstick, and then you just forget it. It sits in the corner and doesn't make a sound, and you get on with the business of the day, and that seems to be true of everybody involved in the trial." She said if there was an impact on the judge, it was to make the judge more courteous.

"If there is anything going on in the courtroom we don't want people to see, it should not be going on. I am very much in favor of full, open access. TV is a wonderful technological advancement that we have, and to treat it as a weapon ... I don't understand."

She said being a member of the task force was a fascinating experience for what she learned about other people's experience of cameras. "Perception was very different from reality on how cameras affect the administration of justice," she said. "Judges who had never had a camera in court were overwhelmingly opposed, believed they made a tremendous difference to the outcome, they were all negative, and wanted them banned. Of judges who had had cameras, about 85 per cent felt it had no impact, and those who felt it had an impact felt it was minor. So there was a difference between perceptions and actual experience." She said the fear seemed to be based not on experience but just the one bad case.

(This view, which recurs constantly in any reports into television in courts, was echoed by Jonathan Caplan QC, who did extensive work on opening up English courts to television cameras 10 years ago. However, the legislative ban on cameras in English courtrooms, which dates from 1925, still remains.)

She agreed that the public got a truer picture of what went on in courts if the camera was there. "Public faith and confidence in what we do is enhanced by their ability to see it in action. There may be thousands of people interested in the outcome of a particular trial, and we are giving them access. It may be a nuisance but I think the public benefit outweighs it."

She said California had no requirement for judges to hold hearings about access, but did encourage judges to ask attorneys whether they were opposed. Defence attorneys were more likely to be opposed than the prosecution. She added that judges did not have to uphold any objections.

That appraisal, which puts the case for cameras at its highest, does not mean that there is not concern that the cases people want to film are sensational, or about Hollywood stars and so on, as distinct from cases of substance. On the other hand, cameras have been

kept out of, or had their access shut down, to cases in the US Supreme Court (which has never had cameras, and whose resistance is said to have been stiffened by the OJ Simpson trial) and the Federal Court (which removed cameras despite an overwhelmingly favorable assessment of a trial project).

Eloquent arguments against cameras can be found in the minority report of a New York study on cameras and in paper by David Lepofsky, arguing the case against allowing cameras into Canadian courts, both quoted (and footnoted) in Mr Stepniak's report. For example, Lepofsky cites concerns by a victim of child sex abuse in an orphanage whose image, filmed when he gave evidence at an official inquiry, was shown repeatedly for years after the event, causing distress. They raise legitimate problems that should be considered and addressed. But is banning the only solution?

Kelli Sager, a media lawyer in Los Angeles who does a lot of work for Court TV and others, says it is very helpful if there is discussion at the beginning of a case, and the rules are clearly defined, eg that the jury cannot be shown. She said it was not enough to rely on word of mouth for the rules to be passed on to other reporters coming in to the court, and that there should be some way of notifying the media.

"A lot of it is just a matter of communication, and if everybody knows the rules, I do believe people on both sides have tried to apply them, but it is important to make sure everybody knows what's going on." She said these hearings did not involve an enormous amount of court time but were extremely beneficial because they removed misunderstandings.

She said judges who had had experience with cameras were more prepared to see whether there was a suitable middle ground, when there might be a problem filming a particular witness for example, which addressed that problem without removing cameras from the entire proceeding. She said that she also had more success in applications for Court TV than for local stations, as judges had more confidence in Court TV's experience in court.

Lynn Holton, the information officer for the Californian Judicial Council, said the new camera rules were better than the original because they forced judges to think of issues ranging from public access to the ability to select an unbiased jury. "I think it forces judges to think more carefully about why they are granting access."

The Judicial Council has produced a booklet for judges on camera access, `Photographing, Recording and Broadcasting in the Courtroom - Guidelines for Judicial Officers' (which I have).

Connie Dove, from the Californian Judges Association, said that television reports of trials, criminal trials in particular, were extremely superficial. "It is very discouraging, and I think judges tend to feel it is a waste of time."

On the other hand, Judge Payant, president emeritus of the National Judicial College in Reno, said judges "should not be ashamed to show what goes on day after day when justice is indeed done, and trials are properly handled, and lawyers aren't allowed to run the courtroom".

A similar polarisation of views between judges who support television of courts and those who are adamantly opposed, was expressed at a conference I attended in Washington, organised by the Federalist Society, on Cameras in the Courtroom. One of the speakers,

Jeff Ballabon, who had just left Court TV the previous week after some years with the specialist network, told the conference there was no evidence to support the idea that cameras diminished the standing of the judiciary, and said the fallout from the OJ Simpson trial had resulted in a number of procedural changes in California, and a review of lawyers' ethical rules. He also said that one televised domestic violence case which showed a woman's graphic testimony forced legislators to change the law.

Mr Ballabon said that not one case since the 1970s had been overturned on appeal, or a charge dropped, as a result of a camera in the courtroom in the United States.

The Canadian experience, while very limited and usually in appeal case, is in a court system which more resembles our own. I visited courts in Ottawa and Toronto, and also spoke to Dan Henry, the senior legal counsel for the Canadian Broadcasting Corporation, who is a long-time advocate of opening up cameras to courts, and has written two excellent papers arguing the case for TV, also referred to in the Stepniak report. Canada has also allowed television coverage of Royal Commissions routinely over the last 15 years, including a public complaints commission while I was there, into the handling of protestors against the then President Suharto at a conference in Vancouver.

He has frequently gone to court to argue for camera access and says it is his experience that it has no effect on the process. "I think it is really a question of debating what is meant by public access, and really fulfilling in a modern age what public access is all about," he said.

He said that many of the arguments against cameras -- upsetting vulnerable witnesses and so on -- ignored the protections that already existed (and which exist in Australia). And he queried whether we should keep cameras away from people who are not vulnerable, such as police officers and expert witnesses. "If there is a problem it is something that can be addressed. The camera doesn't have to be assumed to be the instrument of the devil.

"The main problem will be leadership; if a judge wants to make it happen it will happen. There is a reluctance to do something when your colleagues are reticent. All we are talking about is getting information to people on a broader scale, so that citizens really have information about the courts. If they never read a newspaper they are still entitled to vote and have information about the courts," Mr Henry said.

Allison Small, who is the executive officer to the Chief Justice at the Federal Court of Canada, was not impressed with television coverage. She also suggested that Dan Henry was reluctant to run a challenge to the Canadian legislation banning cameras in trial courts, as being contrary to the Canadian Charter of Rights and Freedoms, in case he lost.

"From our perspective the media keep telling us how it is going to educate the public and that is why they want access. We say if all you want to do is educate the public, you can educate the public about the Federal Court of Appeal. We don't get into issues about witnesses and privacy. We let them come into the Court of Appeal, and it became perfectly obvious to us that what they wanted to do was entertain the public, and the stuff in the Court of Appeal is far from entertaining." She said that two cases where cameras were allowed either did not result in one news story, or the cameras pulled out early because it was dull.

(I would comment that expecting the public to learn about the court system by watching only appeal cases would not be likely to achieve very much, and would concentrate on one very narrow aspect of the system which generally did not create community concern, or even interest, in most cases.)

The Chief Justice of Ontario, Chief Justice LeSage, was reticent about televising court proceedings, which are banned by statute in Canadian trial courts, but implied that the Canadian Judicial Council's policy against cameras, set 15 years ago, was too rigid. He also queried why the media had never brought an application to have the statutory law declared unconstitutional. His court has a media committee, whose focus is communication, and he was very interested in my experience as a courts information officer, something he said he had been trying to get the government to provide (by paying the salary) for some time. His court was preparing guidelines for the media to assist reporters covering the courts.

In London, Mr Rozenberg also said that the OJ Simpson trial had put the clock back for TV in England, because judges had not liked what they saw. "It is a little unfair because so much of the Simpson coverage that disturbs them was outside (the court), which we wouldn't allow in this country," he said, referring to the blatant use of the media by the trial lawyers. (Nor, I would add, would it be allowed in Australia.)

However, he was hopeful when we spoke last November of persuading the House of Lords to allow a live broadcast of its decision in the first Pinochet appeal, which did occur, and which he later told me was "very dramatic". (The House of Lords, as a parliamentary committee, is not affected by the 1925 legislation.)

Mr Caplan said judges could regulate what pictures were taken in the courtroom, but editorial control of what was used, and how, must remain with the broadcaster. "There is the ultimate sanction of contempt," he added.

In many ways the English situation is very instructive for Australia, as our court system (and media) derive so directly from it. We should not lose sight of the fact that in England trials have been stayed because reports were so prejudicial that they had created a real risk of an unfair trial -- and these reports have been pre trial, in newspapers, not television reports using television cameras in court. Mr Caplan also emphasised that while the American media was virtually unrestrained as far as court coverage was concerned, that was not the situation in England or Australia, and that point was sometimes lost.

"I think people think the media is so irresponsible, and letting TV in is going to make life more irresponsible, but I don't think that is the case. Funnily enough, if you made a broad comparison between TV and the tabloid media, television is probably more responsible. But even if it isn't, you set your own rules of coverage and if they don't abide them, that would be contempt, you kick them out and they would never get back in," Mr Caplan said.

My final comment on televising court proceedings is that the challenge in Australia is for both the courts and the television media: both sides will need to show leadership to achieve worthwhile results.

What can Australian courts do? Some practical suggestions

I now turn to an area that might be viewed as judicial self-defence, aimed at minimising criticism and increasing public understanding of and confidence in the judiciary. Judge-bashing will always surface from time to time, but there are techniques that could minimise it.

Generally, there are two aspects. The first covers assistance for reporters to try to ensure accuracy. The second is what judges can do to anticipate and minimise criticisms, and how best to respond to seriously unfair reports. I would rate them equally seriously, as attention to the first area I believe has a big impact minimising the potential for problems in the second.

In Australia there does not appear to have emerged any formal system of handling criticism. It is hard to generalise because concerns range from the relatively trivial factual errors to serious attacks on a judge's integrity. In Melbourne I have discussed concerns that have arisen from time to time with judges and have suggested several ways of handling problems, which almost always arise in reports of criminal cases.

Some things that have emerged include:

* The Chief Justice or Chief Judge writing a letter to the editor of the particular newspaper to correct a damaging error or unfair criticism. I think this is most effective if used sparingly, and only for the worst cases.

* Provision as quickly as possible -- and speed is of the essence -- of a transcript (or the judge's notes) of what a judge actually said, so that reporters at least know the facts and are not relying on often distorted and incomplete second-hand accounts from people who may have an axe to grind, (or a brief, unbalanced report). I must stress that it is fairly pointless providing the transcript a week or so after the event. What often happens is that a story appears, and others follow it up, for example on talk-back radio. The ability to provide the transcript at the earliest point, together with a clear outline of what was wrong in the first report when relevant, considerably reduces the risk of the mistake being repeated, and should also mean that the original publisher(s) will correct the mistake, although that may be oblique rather than a direct "We were wrong" type acknowledgment. Even better would be for the judge to have provided written sentencing remarks so there could be no confusion. (This would also strengthen a court's hand in complaining about serious distortions and mistakes if any arose despite the provision of written remarks.)

* Judges are encouraged, and many do, to provide copies of their sentencing remarks at the time of making them. This almost without exception results in a fair and accurate report and is well worth judges making the extra effort.

* Failing that, judges could agree to reporters using personal taperecorders so that they can accurately quote the judge. This practice is common in the Victorian Supreme Court, but sadly, not in other courts and I do not see why judges and magistrates are resistant to it. It is my experience that no judge has criticised the media's use of a tape. It should properly be regarded as a modern equivalent of writing shorthand, and encouraged in order for the reporter to get a full and accurate account of what was said, if the transcript is not available. The Victorian Supreme Court asks reporters to sign an undertaking which sets out the conditions for using a tape.

* The court's media officer could ring the reporter and explain why the judge was concerned, eg that only one of several essential facts was reported so that the public had a quite false impression of what and why something had happened; or that a jail sentence appeared in the report be extremely low because there was no reference to time already spent in custody and the focus was on how soon the offender would be released from jail, and so on. Reporters do not like these phone calls. While nitpicking and very trivial complaints should be avoided, because I believe these would damage the court's standing and erode goodwill, reporters generally are concerned about the quality of their work, and do not intend their reports to be damaging (or expose them to criticism).

These devices all assist reporters to get it right, and in context. Headlines will of course continue to focus on the most sensational but little harm is done if the accompanying report is balanced. Headlines are not written by reporters. It is probably also worth adding that immaculately written reports can be changed significantly in the sub-editing process, so the result may not be the reporter's fault.

These comments are made in the context of self-protection for judges. Could I also add that anticipation of media interest by a judge, and discussion of this with the court's media officer, if there is one, in advance, is very valuable and could head off what would be a problem. Judges need to be very aware of the potential for the "soft on crime" reaction if they are not seen to be tough enough on paedophiles, for example. Various crimes seem to be topical at different times and attract particular media scrutiny. They are easy to identify and judges should be aware of them. In these, and in all cases, they should consider community concerns about these crimes in sentencing remarks, and by doing so, protect themselves as much as they can from unfair criticism.

In the context of ensuring that a trial does not go off the rails because of the way it is reported, judges should consider ordering a media copy of the transcript, at no charge to the media. My experience is where this has been done in Melbourne is that there has not been one criticism of a court report, and that all of these trials -- and it has been done in long, complicated and high-profile trials -- have proceeded to verdict without incident. It is an extremely low-cost protective mechanism for the trial, compared with the cost of a retrial. I might add that it is rare for a trial to be aborted by the media in Victoria.

It is my experience, based on five and a half years in the job, that there is a very high correlation between help from the courts in the way of sentencing remarks, access to transcript, helpful judges' associates and so on, and a good report. While many highly experienced reporters will get it right anyway, even they appreciate the safety net, especially in complex cases. And of course not all reporters are highly experienced in covering courts.

Judges perform public work, and part of their duty is general deterrence in sentences, or sometimes significant observations in the public interest in civil judgments. I believe they could make far better use of the media by alerting reporters (through their associates or a press officer) to cases of public interest. Equally, there are cases when judges have concerns about publicity for legitimate reasons, and these can be conveyed in the same way.

What should a judge do who realises he or she is going to scrutinised closely and quite possibly criticised for the outcome -- usually a sentence -- of a particular case? Some ignore the risk. But I think this is an area where anticipation can be very beneficial if it

results in less damaging reports (which of course will be far less likely to shake people's confidence in the courts). Judges might think it worthwhile to spell out in very simple terms why they have no power to do something, or precisely what they are able to do, or what the effect of their sentence is, and so on. They are addressing laymen, and impressions will be more lasting to them (victims, families and others who may comment on the case) than technical legal language.

To give one example of handling a case likely to hit the headlines, a court information officer from Arizona told me of a case which had attracted huge publicity at the time it was first reported but which, as a result of a plea bargain, had been reduced to a much lesser crime. The judge, rightly concerned that this would not be understood and that the public would be concerned that the offender seemed to have got off very lightly, asked the prosecution to explain in open court why it had negotiated a plea to a much lesser charge (resulting in a much lighter penalty). This struck me as an excellent tactic for a judge to have the public informed about what had, properly, occurred (and to deflect unfair criticism from him). I discussed this with one judge who had been targeted for lenient sentences in a big drug prosecution and suggested he do something similar to set the record straight. This would be in his own interest, and for the general community which would not have understood what had happened, and would have seen the reports as another "judge soft on drugs" story.

Finally in this section, on handling mistakes, do not get bogged down in trivial complaints; keep complaints for things that matter. We will wear out our welcome with what seem to be unimportant complaints and get less willingness to do something when it matters. I would also endorse speed if something should be corrected -- it is little use having something published a few weeks after the event when it has all died down and no one remembers the original story.

Doing things better

My Fellowship clarified some embryonic thoughts on improving help for the media, and suggested others.

Appeal decisions: I am organising briefings for reporters by staff from the civil and criminal areas of the Court of Appeal to discuss informally the interesting points raised in appeals which have been lodged. The court also produces very brief summaries of pending appeals which the media can have. This would at least alert reporters to watch for particular judgments. I would also like some way of providing a briefing or summary of the decision. Associates are often very helpful, and occasionally judges ring me to say they have decided a particular point that may be of interest to the media. Naturally I very much welcome those calls, particularly if I can then point reporters to the key sections of a judgment.

Summaries of decisions; I think there is more room for these and I would encourage judges to consider them in cases particularly where the facts (and law) are complex or could be misunderstood, and there is a clear public interest.

Press kits: Some cases may warrant a press kit as discussed on page 10. They could include details about the court, sitting hours, judge and lawyers, a copy of the presentment, or summary of the issues, and any restrictions on reporting.

Court media committee: Those courts which do not have a committee may find establishing one to be valuable. It is a useful forum for raising issues of concern either to the courts or the media, and ways of resolving them in an atmosphere of goodwill. I believe that the committees like the one in Melbourne with a wider membership including people working in the media will contribute more to understanding and resolving the problems than committees made up only of judges. (The Melbourne committee is chaired by Mr Justice Teague, and its members are a County Court judge, a magistrate, the Director of Public Prosecutions or his nominee, two highly experienced media lawyers, a newspaper and television reporter who both specialise in court reporting, and me.)

Protocols for cameramen and photographers: Co-operative agreements are likely to be more readily observed, and consultation with affected people like cameramen and pictorial editors are useful in working out guidelines for operating at court. I am working on protocols in court for camera crews, for example on what equipment they may use, where they can stand, whether they can move around, avoiding distraction for example when the oath is being administered, removing station insignia, appropriate clothing and so on. Even if it is not a daily event it should make camera access easier and less distracting if people know what to do, and give judges greater confidence to admit camera crews.

While all the current interest is on television, I should point out that radio also wants to get into courtrooms, and so do newspaper photographers. Again, we should work with them to try to work out whether we can accommodate their requests. But if there is a pool shoot by a television crew for news, I see no reason for radio not to get an audio feed, or to prevent a newspaper photographer also being present on a pool basis. I was impressed with a draft protocol by The Age's pictorial manager suggesting the type of silent camera that would be suitable to use in court, and where photographers could stand to avoid distracting or photographing a jury. My overall belief is that the media are willing to co-operate and have excellent suggestions.

Going to the community: Judges have been very reticent for a long time, but should the Kilmuir rules, which have set the standard for judges for 40 years, be updated as we move into the next century? Judges are doing much more about talking directly to the community on issues of general concern. I mention a regular series of discussions by the Victorian Chief Justice on ABC radio (with Jon Faine) on issues such as sentencing and legal aid, as an indication of what judges are starting to do. Courts might identify suitable judges, topics and outlets (I like radio as a relaxed forum for an enlightening discussion) to tell the public what is going on in courts and the legal system, although they will not be available, of course, to talk about particular cases.

The internet is starting to be used by courts to reach the public, and I think they should be identifying as much as possible to put on court sites. Speeches, papers on court reforms, media guides and advisories, as well as lists of court cases, could all be available. The Lord Chancellor's site is an excellent example, and the Melbourne Magistrates Court has just revamped its site. Their sites are:
www.open.gov.uk/lcd/ and http:\\magistratescourt.vic.gov.au

Information about cases: I would like to see more basic information from the DPP about what cases are about, or very brief details published in court lists. It would make life

easier for reporters. The District Attorney's office in Los Angeles sends out a daily media advisory which lists in a few words what cases are about, and I thought was a helpful model.

Court staff and the media: I was very impressed with the basic guide for English registry staff on what they could tell the media, and think it could be very successfully used here, adapted for particular courts' requirements. (For example a Children's Court guide could include a reminder to mention reporting restrictions to reporters.) There could probably be a greater role for involvement by a media officer in staff briefings and planning for some cases. I am now starting to invite court staff to court reporting seminars so they can hear what I tell reporters about access to court documents and so on. I now also invite judges who attend these workshops to tell reporters why they cannot take phone calls about particular cases. (I should acknowledge that these ideas are all lifted from my overseas counterparts.)

Stressed litigants and the media: This can often be a problem outside court, when people may find it very daunting to be confronted by a huge contingent of camera crews. (The Victorian Supreme Court has a plan for distressed people to get out of court and into a waiting car with minimum camera opportunities, but it is rarely used.) Although it is probably not appropriate to seek to control filming in a public street, unless litigants or witnesses are being intimidated, the courts could offer assistance to people on how to cope, and also seek co-operation of the media to minimise the trauma. A protocol here could be useful. It is worth mentioning that if television had more in-court footage there would be less demand for out-of-court footage. In fact that was one of the sparks for the New Zealand pilot project. But there are occasions when behaviour of camera crews goes too far, and the courts need to step in, preferably by seeking agreements and co-operation. It should also not be overlooked that many people welcome media attention and do not need protecting.

My final comment is that my Fellowship showed me that far from lagging behind what other courts are doing, I think the relationship between Victoria's courts and the media, particularly the assistance we offer, would stand comparison with any court. Whilst I am always open to ways of doing things better to help reporters, I think even more could be achieved if the courts -- as distinct from individual judges -- used court media officers more effectively.

Prue Innes
Courts Information Officer
Supreme Court of Victoria
1998 Churchill Fellow

Attachment

Copy of article, Jury is still out, by Prue Innes, in Media, The Australian, April 1, 1999

List of documents

I have copies of the following documents which people may be interested to get from me.

From the Lord Chancellor's Press Office:

The Media v HH Judge McCallum -- a case study
Handling media enquiries – a guide for court staff
Media Court Guide – Regina v Rosemary Pauline West

Televising the courts: Report of a working party of the Public Affairs Committee of the General Council of the Bar May 1989 (The Caplan Report)

Los Angeles Superior Court:

Photographing, Recording and Broadcasting in the Courtroom – Guidelines for Judicial Officers (This includes the application form for the media to file seeking camera access to a court case)
Public Information Policy (includes a section on dealing with the media)
Press packet for Rufo, Brown, Goldman v Simpson (the civil case)

Judicial Council of California:

Task Force on Photographing, Recording and Broadcasting in the Courtroom February 167, 1996
Report Summary (of the taskforce) May 10, 1996 (Extracts of these appear in the report by Daniel Stepniak for the Federal Court.)

David Lepofsky: 'Cameras in the Courtroom – Not Without My Consent' in P. Anisman and A.M. Linden (Eds) *The Media, the Courts and the Charter* (Toronto, Carswell,)

Dan Henry: 'Electronic Public Access to Court: A Proposal for its Implementation Today' in the Anisman and Linden book cited above.

Dan Henry: 'Electronic Public Access: An Idea Whose Time Has Come' in Yves-Marie Morissette, Wade McLaughlan and Monique Ouellette (Eds) *Open Justice* (Canadian Institute for the Administration of Justice) 1994

Managing Notorious Trials National Centre for State Courts Second edition 1998

Media Coverage of Court Proceedings Discussion Document, and Introduction and Summary of Research Findings Courts Consultative Committee (NZ) August 1998