**Presentation to JCA Colloquium 2003***

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Good morning. Thank you, Justice Sheller, and thank you to the Executive and membership of the JCA for your kind invitation to return to this year's colloquium.

Last year, many of you will remember that I spoke about trends in media coverage in Australia and the relationship between judicial officers and journalists. In particular I made some comments on the responsibilities of judicial officers and the media in terms of providing accurate information and education to the public.

I even made a few predictions – which are worth recapping on with the events of the last twelve months.

The first was the increasing focus on corporate cases as an extension of the crime round, including the expansion of the "story clock" formula to new areas of journalism.

Trials of public figures such as Nick Whitlam, Rodney Adler and most recently Rene Rivkin have, in concert with changing political attitudes to corporate malpractice, have blurred the lines between the corporate and the criminal.

With forthcoming changes to the corporations and competition laws, and with the appetite whetted for non-fraud corporate trials, this will continue to be a growth area of both coverage and criticism. The amount of time given by more serious papers such as the AFR is interesting here, and is partly driven by the appetite for Enron-level scandal in Australia.

Actually, the coverage of the Rivkin sentence, was particularly interesting. It followed the story clock almost to the letter – but with two exceptions.

The first of these is that the coverage was somewhat ambivalent in its treatment of Mr Rivkin, which is not the case in the other major corporate trials of the last year, and is never the case in criminal trials.

This ambivalence is in part driven by the subject being a slightly ambiguous, roguish public figure. But it is also driven by the nature of the charges. Insider trading itself, despite the Simon Hannes trial, is still seen more as a misdemeanor than a crime in many circles – and it is little understood by the public at large.

The second variation lies in the treatment of the sentence. Periodic detention, in criminal cases, is commonly portrayed as the "feather bed and cable television" version of doing time. But in this case, some papers, and most notably the AFR, went out of their way to emphasise what an incredible lifestyle alteration this means for someone like Rene Rivkin.

There are many aspects to this, and some, like the ambivalent treatment of the subject, have to do with the unique details of this case. However, there may be a more universal element to the coverage, which is that, however criminally corporate malpractice is portrayed, it still does not stir reader interest like regular crime.

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Apparently, polling shows that while people are fascinated by the articles, they are not the sort after substitute for real crime stories.

The second prediction that I made last year was the media will become increasingly more impatient in their treatment of each story. This is a natural outcome as they strive to follow a set formula for each case, but also it is difficult to maintain an ambitious level of public outrage and to stop the readership becoming blasé about crime stories.

Paradoxically, the only way to maintain the pace of public interest is to increase it, and in the absence of more and more "newsworthy stories" this will tend to lead, in the coming year, to more stories about how the courts themselves. Stand by for a more personal approach to judicial officers and to stories about the workload and efficiency of the court system. It's the best alternative the media has, and one that their polling suggests resonates with the community.

For those who doubt this, let me suggest that much of the substantial discussion in this year's NSWs election, regarding possible restrictions on the deliberations of the courts regarding bail and sentencing conditions, is driven by a public, media and political demand for more certainty. A certain outcome is an orderly outcome, which is much easier to plan if you are a journalist on this round.

Over the past year there has been slightly more media interest in the details of how the law as it is applied. If we were to identify any sort of win for the judiciary's media position over the past year, this last would be it.

But of course that has been driven by the media not the judiciary – it is a stance of activism rather than strict reportage.

This reflects an increasingly broad media desire to take a role in the affairs of State, rather than simply to report and explain them.

By now, most people are at least peripherally aware that political coverage, particularly at the Federal level, is driven by the media's sense of itself as an alternate, if not a formal Opposition. What the Government may at times interpret as a politically-motivated position, is more often than not simply a need to drive change and conflict as a news resource.

The occasional political scalps, and major policy backdowns, are now rightly seen more as a victory for the political media, than the Federal Opposition. At the same time, those peculiar scenes of journalists interviewing one another, and the ubiquitous claim that "the Government has not yet managed to convince the media that …" are now regarded as normal, reputable journalism.

During the last 12 months, there are a couple of court decisions which the media believes they influenced. In speaking with several journalists in order to prepare this presentation, a number of them personally claimed victory for having used their stories to force the judiciary to deliver certain results. This is not a pleasing trend, and we must find a way to turn their increasing interest into an educative role rather than a political role.

Briefly I would like to turn to the High Court's superannuation surcharge decision as a perfect illustration of the position we are in. The decision led to some inaccurate reporting and the generation of media editorials that the Judges were being exempted from something which applied to everyone else. This is of course not the

case. The JCA's problem in dealing with this was twofold – firstly it did not have the skills or resources to respond within the newscycle. Despite the best efforts of those involved it was nearly a week before a response was submitted – too late to be covered in any serious way by journalists. The feedback from journalists was to stand by their initial commentary, that there is little sympathy for the media unless it "plays the game" and that the decision was too complex for the media to guarantee accuracy. It was a salutary lesson, and one which perfectly illustrates the need for improvement in our relationship with the media.

So, in terms of examining the communications environment in which the Judiciary finds itself, much has happened over the past year by way of interesting developments and the JCA's examination of how it can assist.

One of the key initiatives undertaken by the JCA this year, in terms of communication, has been to hold a series of focus groups with judicial officers – to determine what you require to improve reverse the current trends. Much of this information has been utilized for the Media Guide that I would like to specifically address in the second half of this presentation. However, before we do so, I would like to examine some of the main points that you have raised with us.

**1. Frustration at working with the media**

With almost no exception, judges and magistrates have expressed a sense of frustration at working with journalists. Some even felt very bitter at having been misquoted, misinterpreted or even used personally to fuel an inaccurate story.

The problems, as you see it, are to defend yourselves at all, but also to find an appropriate opportunity to correct the record.

Both are challenges – the first has more to do with skills and resources, and the second has to do with what is appropriate given your position.

Unlike almost everyone else who participates in public debate, you can not participate in the media's coverage of a trial or an ongoing matter, even though weeks of coverage may be creating an unrealistic expectation or an inaccurate picture. Of course by the time you come to sentencing it is too late – and the problem becomes your failure not inaccurate coverage.

The solution to this is for the judiciary and the media to better understand each other's role, motivations and work practices. Both are here to stay and both need to work together.

**2. Fundamental differences between the law and the media.**

Do not underestimate the gap between criminality and loss, between rehabilitation and the thirst for revenge, and the need to reflect the community as opposed to standardised approaches for all cases. The media is also focused on simplistic generalisations and simplified language – again an opposite to the complex matters you wrestle with.

So why does this matter? It matters because the challenge is to find a way to bridge these gaps – continuing to ignore them is not an option.

**3. An ongoing dialogue with the media versus case based media**

There was considerable discussion about the difference between establishing an ongoing dialogue with the media about macro matters such as the independence of the Judiciary, what needs to be considered in sentencing or granting bail, how the courts work etc, and case based inquiries.

It was generally agreed that court based PR or information officers could provide transcripts or basic information but there are shortfalls:

Firstly – they can not comment on individual cases and this reverts back to the judge or magistrate – as is appropriate.

Secondly, they can not identify or provide the underpinning information about the law or the system – this is generic information to ensure factual accuracy in resulting coverage.

In some cases there is an overlap – in others you will not want there to be. A separation of these story elements will significantly improve the quality of coverage and also reduce the number of isolated incidents used to illustrate broader themes. It would also provide some consistency in overall commentary for the judiciary as well as highlighting the importance of the institution above the individual members.

It is not realistic for the JCA to be a spokesperson for every court and every judicial officer – but there is scope for the provision of generic information through Position Papers available for journalists or through the internet.

**4. In terms of communications only – what should the role be for the JCA?**

We are all aware of the JCA's mission statement – to serve the public interest in two areas – to ensure the maintenance of a strong and independent judiciary, and to help the public understand what is meant by an independent judiciary and why its continuation is essential.

One of the focus groups commenced with a magistrate asking "why do we care what the media writes about us"

It's a good question, and one which is easy but worthwhile to answer. The media shapes public understanding and opinions, which in turn influence political decision making. Public respect for the judiciary as an institution is based on understanding and experience with the system. If someone's favourite newspaper is always criticising the judiciary for being out of touch, then that person comes to believe it – regardless of whether the stories are accurate or not.

As I mentioned in last year's address, the long term impact is a gradual undermining of confidence in the judiciary and respect for its individuals and decisions.

This is where I believe, and the consensus last year appeared to be, that the JCA's involvement is critical. In the focus groups, there was widespread acceptance that the absence of a public defender is a problem. Of course previously this would have been the Attorneys General but on the whole they have made it clear that the judiciary is on its own – particularly at a Federal level.

There was uniform agreement that the JCA must find some realistic way to step into the gap…and sooner rather than later.

**5. Skills**

The final category that arose from the focus groups was the skills required to move forward. Much of these questions I have attempted to incorporate in the Guide – so I will be looking forward to hearing your response and whether anything has been missed.

I would say that we only held three focus groups in Sydney but they did take in the different levels of the court structure and varying degrees of media and judicial experience. While this is by no means a scientific sample, the relative agreement on the major points was enough to signal broad agreement on the basics.

The one area where there was a vast discrepancy was the difference in communications requirements between magistrates in say the District Court and those serving on the Supreme of Federal Courts. These differences reflect the nature and volume of cases, and the prevalence of the subject material across the mass community.
Again, this will need to be factored into the action that we take in the future.

So we have assessed the environment, we are all pretty much agreed with what options are available, and the JCA has moved forward.

About eight months ago, we worked with the JCA to prepare a very specific communications campaign to focus on three areas:

1. Environmental Research – assessing the levels of knowledge and understanding and what messages are resonating

2. Education – A Media Guide, media training for judges, briefings for the media, packages for schools, general community materials

3. Information – media correction and issues management, web based information and position sheets

This campaign was costed – needless to say at a level that the JCA could not afford on its own. Justice Sheller then met with the Federal Attorney General and presented the submission with a request for funding. While there was some sympathy for the campaign at a departmental level, ultimately there was not enough political support for funding to be granted.

We are now looking at options for the future – such as State based funding, or how the campaign can be broken down into affordable yet effective stages.

Our core objective is to immediately correct misinformation and provide a source for reference particularly for the media, and to supplement that with long-term education of the media, politicians and general public.

This would provide an immediate and long term solution to the current environment.

However, due to the urgency of taking the first step, and a willingness to demonstrate commitment to the campaign, the JCA's executive agreed to start with the Media Guide.

Everyone has in their conference materials a current draft of this document, containing much of the final text and layout.

While I don't want to run through the guide in detail, there is merit in commenting at least briefly on its purpose and use of the guide.

*Strategic* is well aware that there is a broad spectrum of views within the JCA membership on when it is appropriate for individual judicial officers to speak with journalists.

And the media guide seeks to persuade neither those who believe there are important principles at stake in restricting their remarks to the bench, nor those who are simply apprehensive about the risks inherent in giving an interview.

However, it does seek to offer a set of protocols for dealing with media enquiries, whether wanted or not. One of the things which will significantly improve the relationship between the judiciary and the media is the professional management of media contact. Even if you never want to discuss any issues of substance, it is still a useful protocol to leave no call unreturned and to painstakingly explain why you cannot comment. Giving reasons is infinitely better than a traditional "no comment" and is much less likely to provoke journalistic ire than an ignored call.

For those of you who *are* willing to stride confidently into the murky waters of Australian journalism, the guide provides a fairly detailed roadmap.