Judicial Conference of Australia Colloquium 2015

Freedom of the Press and the Courts

by

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Stamford Grand Adelaide - Glenelg
Friday, 9 October 2015

I would like to commence by acknowledging the traditional owners of the lands on which we meet, the Kaurna people. I pay my respects to their Elders past and present and acknowledge their continuing stewardship of these beautiful lands.

Open Justice

Unfettered public access to proceedings in our courts, often described as the principle of open justice, has been accepted as a fundamental aspect of the conduct of our courts since the very early days of the colonies that became Australia. It is a principle inherited from England and it is shared with many other justice systems that have a similar origin.

Accountability

In my view, open justice is not merely cosmetic or aesthetic, but has profound constitutional implications which are capable of being measured in at least three dimensions. The first is that of accountability. The justice system and the courts exist to serve the community. They give effect to the community interest in the rule of law, including the enforcement of the law and the maintenance of order in our community, the resolution of disputes between members

of the community, and between members of the community and the State. The public has a very real and legitimate interest in knowing whether or not the courts do in fact achieve these vital objectives and in knowing whether the courts do so fairly - in the sense of treating equally all who come before the court, whatever their wealth, their colour or their creed; in knowing whether the courts do so justly in the sense of providing adjudication in accordance with law; and in knowing whether the courts do so efficiently in the sense of the efficient utilisation of the substantial public and private resources that are invested in our justice system. Open justice provides a mechanism by which the courts can be held accountable to the communities which we all serve.

Public Confidence

The second vital interest served by open justice is that of public confidence. That great American judge, Felix Frankfurter, famously observed:

> The Court's authority - possessed of neither the purse nor the sword - ultimately rests on sustained public confidence in its moral sanction.[1]

[1] *Baker v Carr* 369 US 186 (1962) at 267.

In my view, public confidence depends to a significant extent upon transparency. No reasonable person could be expected to have confidence in a system or process which he or she cannot see in operation. That is why democracies born of the English tradition insist that their legislatures conduct their proceedings in public, although in Europe there might sometimes be different views. An aphorism is often attributed to Otto von Bismark who said that there are two things that the public should never see being made and they are laws and sausages. However, the tradition of legislative transparency that evolved in England was transported to Australia with the colonists and convicts.

People are naturally and understandably suspicious of things that they cannot see in operation. Courts that have operated behind closed doors such as the much maligned Court of Star Chamber have always been the subject of public suspicion. Contemporary experience shows that corruption and crime commissions and royal commissions which conduct their activities in public often engender greater public confidence than those which operate in private.

The Chief Justice of the Family Court of Australia, the Hon Chief Justice Diana Bryant AO has referred on a number of occasions to the adverse effect which the understandable prohibition upon the identification of parties to Family Court proceedings has had upon the public awareness of the procedures and principles which are applied in that Court, because of the inevitable effect which it has upon the reduced reporting of those proceedings. I do not understand her Honour to be suggesting that the prohibition should be removed, but rather to draw attention to the need to pursue other means of informing the public about the operation and activities of that important Court.

The Independence of the Judiciary

The third dimension of constitutional significance served by the principle of open justice is the preservation of the independence of the judiciary. Reverting again to Felix Frankfurter, he wrote:

> A free press is not to be preferred to an independent judiciary, nor an independent judiciary to a free press. Neither has primacy over the other, both are indispensable to a free society. The freedom of the press in itself presupposes an independent judiciary through which that freedom may, if necessary, be

> vindicated. And one of the potent means for assuring judges their independence is a free press.[2]

So there is symbiotic mutual interdependence between an independent judiciary and a free media. When the independence of the judiciary has been threatened in various parts of the world, the media has demonstrated that it can come to the aid of the embattled judiciary, galvanising public opinion so as to discourage undue government interference with a free and independent judiciary.

These three values, accountability, public confidence and judicial independence are not merely cosmetic aspects of our justice system - they are fundamental to its successful operation - indeed, to its very existence in the form in which we know it. In my view, all depend significantly upon the principle of open justice and the effective operation of that principle depends significantly upon productive collaboration between the courts and the media for reasons I will explain.

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[2] The Hon JJ Spigelman AC, 'The Principle Of Open Justice: A Comparative Perspective' (2006) *UNSW Law Journal* 29(2):147, citing at 155 Justice Frankfurter in *Pennekamp v State of Florida* 328 US 331 (1946) at 355.

Justice must be seen to be done

We have all heard the aphorism that justice must not only be done but must also be seen to be done. It is often attributed to the judgment of Lord Chief Justice Hewart in *R v Sussex Justices Ex Parte McCarthy*, in which his Lordship said:

> … it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.[3]

Hewart was a Chief Justice of some distinction, as Lord Devlin observed in 1985 when he said:

> Hewart … has been called the worst Chief Justice since Scroggs and Jeffries in the seventeenth century. I do not think that this is quite fair. When one considers the enormous improvement in judicial standards between the seventeenth and twentieth centuries, I should say that, comparatively speaking, he was the worst Chief Justice ever.[4]

The doors of the court are open

A lofty sentiment with respect to the importance of open justice was expressed by Lieutenant-Colonel John Lilburne at the time he was under trial for high treason in 1649 at the Guildhall of London. If you

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[3] *R v Sussex Justices Ex parte McCarthy* [1924] 1 KB 256 at 259.
[4] Lord Patrick Devlin, *Easing the Passing: The Trial of Dr John Bodkin Adams* (1985), 92 , cited in n 2 above, at 148.

were under trial for high treason in London in 1649, your future was not looking bright. Colonel Lilburne nevertheless described open justice as the first fundamental liberty of an Englishman. He observed:

> … by the laws of this land all courts of justice always ought to be free and open for all sorts of peaceable people to see, behold and hear, and have free access unto; and no man whatsoever ought to be tried in holes or corners, or in any place, where the gates are shut and barred, and guarded with armed men …[5]

The problem, of course, is that simply leaving the door of the courtroom open is insufficient of itself to provide meaningful public access to the proceedings of the Court at a time in which most people rely for their information upon secondary sources such as the media. So if we are serious about providing public access to the proceedings of the Court, the media must be the means through which that access is provided. That concept has been rather more eloquently put by Justice Park of the United Kingdom when he observed (writing at a time when the press was a more prominent medium of public communication):

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[5] Reprinted in *A Complete Collection of State Trials* (TB Howell ed), 1816) vol IV, 1270 at 1273. A reference to this passage appears in Chris McLeod, 'Wrestling with access: Journalists covering courts' (2004-05) 85 *Reform* 15.

> It is an excellent thing that any member of the public can walk into any courtroom, watch the proceedings and listen to what is said. But for the public as a whole to be informed about important or interesting matters which are going on in the courts the press is crucial. It is through the press identifying the newsworthy cases, keeping itself well informed about them and distilling them into stories or articles in the newspapers that the generality of the public secure the effects and, I trust, the benefits of open justice.[6]

Media Diversity

It is vital for the Courts to recognise and appreciate that the media are precisely what the word connotes, that is, the medium by which the principle of open justice is effectively communicated to the community which we all serve. Since Justice Park's judgment, the pool of media organisations which can provide information to the public has diversified very significantly. The information available to me some time ago suggested that in Australia there are about 90 television stations, 130 ethnic newspapers, 300 radio stations, 700 newspapers and 1300 magazines, and online providers of information too numerous to even attempt to count. If open justice is to achieve the benefits to which I have referred, we have to develop a healthy and

[6] *Re Guardian Newspapers* [2005] 3 All ER 155 at 162.

cooperative relationship between the Courts and all of those outlets. I will come to the particular issues posed by online media later.

Strains in the relationship

Given the importance of a collaborative and instructive relationship, it is most regrettable that the relationship is so strained. In his address to this colloquium, journalist Chris Masters has provided an insight into the many reasons why that relationship has become so strained. Why do the media seem to be so critical of the judiciary? Why are judicial officers, when they gather together, so often critical of the media? Why do we commonly complain to each other that the media do not understand what we do or why? The Judicial Conference of Australia owes its existence in part to the notion that the judiciary needed a vehicle through which to speak to the media in a context in which my Western Australian colleague Attorney General, Daryl Williams, decided that it was no longer the role of the Attorney General to speak on behalf of the judiciary. Why is there this tension? Why is there this unresolved strain between us? Forty years of engagement in the business of dispute resolution suggests to me that misunderstanding is

very often at the heart of any dispute or tension, and I think that is so in the strained relationship between the media and the Courts.

Misunderstanding

In order to address these misunderstandings, I would like to start by looking at the nature of news. I would like to do so by drawing upon an analogy first used by Chief Justice Gleeson,[7] and observe that it is very unlikely that you would read on the front page of the *Sydney Morning Herald* an article recording that the Sydney Harbour Bridge stayed up again last night, but, of course, if the bridge collapsed then that would be news. The nature of news is that it has to be sensational in order to attract interest and attention. You are unlikely to pick up *The West Australian* and read an article which reports that Martin CJ took account of all relevant considerations and imposed a sentence that was eminently fair and reasonable, reporting the comments of the victim's and offender's associates on the steps of the court who said, 'That judge is really in touch with community standards - he really gets it'. As Chief Justice Gleeson observed, to complain about articles that reflect the nature of news is a bit like complaining about the

[7] Murray Gleeson, 'Public Confidence in the Court' (National Judicial College of Australia, 9 February 2007) 14-15.

weather. Judges and magistrates must come to terms with the fact that the nature of news necessarily influences what is reported and the manner in which things are reported.

Public Perception

The nature of news has an impact upon public perception. Sentencing is one of the most common topics of criticism of the judiciary in the media. Only sentences that are newsworthy are reported. Commonly they are newsworthy because outrage has been expressed as to their asserted leniency. The most avid consumer of news might read or view 30 such items each year but because they are the only items on sentencing which they see, they gain the false perception that the sentences about which they have read or heard reflect what occurs in our courts generally. In most Australian jurisdictions, sentences have increased; prison populations have increased significantly while crime rates have generally gone down over the medium term, but public perception is precisely opposite. In my view, that false perception does not arise from deliberate media manipulation, generally speaking. It is simply attributable to the nature of news.

This is not to say that media manipulation to attract public attention is unheard of. A few years ago, a newspaper in Western Australia[8] published a front page story in which comments were attributed to a member of the family of a homicide victim which were stridently critical of the sentence imposed when in fact the person concerned was not at all critical of the sentence. Following complaint and investigation, it transpired that the sense of the comments made had been deliberately altered in order to make the story newsworthy, not to pursue some political agenda of the paper.[9]

The danger with these misconceptions is that they can influence government policy, given that politicians tend to be more influenced by public opinion than objective facts.

We must accept that judges and magistrates will be criticised by the media - it goes with the turf. However, we are entitled to expect a proper distinction between commentary and fact. We can have no objection if the media comment upon our work provided that they provide the consumers of the information with the facts upon which they can base their own opinion.

[8] Which is now under different management.
[9] Which is not to deny that some media outlets may have a political agenda relating to sentencing.

Intemperate Language

We sometimes get sensitive about the terms in which criticism of the judiciary is expressed. There is nothing new about strident criticism. I mention two admittedly parochial examples going back to the first Chief Justice of Western Australia, Sir Archibald Burt. In 1870 the Melbourne *Argus* described him in the following terms:

> We have read and heard of many singular freaks of men dressed in a little brief authority, but we have never yet met with such a case.[10]

At the same time, the Melbourne *Age* wrote of my first predecessor in these terms:

> The new theatre of operations, in the effort to silence the Press and to crush public journalists, is the heretofore penal colony of Western Australia -

I digress to observe that this was at a time when Victoria was crowing about never having been a penal colony - that was before convict heritage became a badge of honour -

> And the angry potentate who hurls his thunderbolts against those who dare to impugn the doings of official authority, is not the sovereign ruler of the State as represented by the local head of the Executive in the person of the Governor of the colony,

[10] 'Saturday 26 November 1870', *The Argus*, (26 November 1870) 4, quoted in Enid Russell, *A History of the Law in Western Australia and its Development from 1829 to 1979*, (1980),at 86.

> but the Chief Justice in the Supreme Court of this despotically governed Little Peddlington...
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> The Chief Justice, in a tone and style of speech the most intensely redolent of the Pecksniff spirit that our experience has ever been cognisant of, at once commenced his bitter vengeance by extolling his own conscientiousness.[11]

Despite engaging with the media in a manner which your President has described as courageous (in Sir Humphrey terms), I have never been described in terms like that. It is significant that this outpouring of vitriol was triggered predictably enough by the imposition of imprisonment and fines on the two editors of a local newspaper for contempt of court.

Freedom of the media includes the right to criticise

The courts must accept that the media can and will say things with which we disagree and publish things that we think should not be published. That was put quite neatly by Lord Justice Hoffman (as he then was) when he observed:

> … a freedom which is restricted to what judges think to be responsible or in the public interest is no freedom. Freedom means the right to publish things which government and judges, however well motivated, think should not be published. It

[11] *The Age* (26 November 1870) 2, quoted in note 10, at 86 - 87.

> means the right to say things which 'right thinking people' regard as dangerous or irresponsible.[12]

Practical Obscurity

At least in the civil work of the courts, there has been markedly increased reliance upon documentary materials which are made available to the participants in the court proceedings but which are not generally made available to the media. This has created what some have described as a "practical obscurity" in relation to the work of the courts. As long ago as 1983, Lord Scarman referred to this phenomenon. After referring to the aphorism that justice must not only be done but be seen to be done, he went on:

> … there is … [an] important public interest involved in justice done openly, namely, that the evidence and argument should be publicly known, so that society may judge for itself the quality of justice administered in its name, and whether the law requires modification. When public policy in the administration of justice is considered, public knowledge of the evidence and arguments of the parties is certainly as important as expedition: and, if the price of expedition is to be the silent reading of the judge before or at trial of relevant documents, it is arguable that expedition will not always be consistent with justice being seen to be done.[13]

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[12] *R v Central Independent Television plc* [1994] Fam 192 at 202.
[13] *Home Office v Harman* [1983] AC 280 at 316.

Since 1983 the movement towards documentary trials has increased quite significantly. The New Zealand Law Commission has observed that that trend of reliance upon increasingly documentary material creates serious practical problems for the media.[14] Material that would previously have been read aloud in open court is not now available to the media. Trying to gain access to materials through the rules of Court during the hearing results in delays in reporting and can be costly; the application may be contested and ultimately unsuccessful. There is certainly a practical problem for the media reporting civil cases because of reduced access to information and materials.

As Counsel Assisting the HIH Royal Commission from 2001, I am aware of the efforts made by the Commission to address this problem. We took the view that a Royal Commission is different to a court proceeding. It does not make determinations of right or obligation - rather the fundamental obligation is to tell a story. We thought it would be best if we told the story as it unfolded rather than simply at the end. We set up a lot of systems that were designed to encourage accurate media reporting. We had a media room that was adjacent to

[14] (New Zealand) Law Commission, *Access to Court Records* (Report 93, June 2006) par 7.18.

the hearing room but separate from it, with live feeds of vision from the hearing room, so that the media could be in the hearing room having coffee and chatting amongst themselves, posting if they wished from that media room, watching the witnesses on live feed. Because it was an electronic trial we could also put up on a screen in the media room the document that the witness was being asked about. We had real time transcript which was available to the journalists in the media room. By 6 pm each evening we had corrected transcript posted on the Royal Commission's website. Perhaps a little more controversially after each day's hearing, Counsel Assisting would conduct what we called a backgrounding session with the media. We were open about this and we invited any representatives of any of the parties with an interest in the day's proceedings to participate in that session. We would explain to the journalists what had happened during that day and what its implications were, but on a background basis - that is, not for quoting. As a consequence of these various steps, I think the quality of the reporting of that Royal Commission was of a standard that I have never seen before. If the courts are serious about open justice, we have to be willing to take those sorts of steps to improve

the capacity of the media to report accurately. There is no point complaining about inaccurate reporting when the courts do not assist the media to get it right.

The Internet

We are, of course, all aware of the internet revolution. It has changed the media world dramatically. The media world used to be print, then it became print and broadcast, and now there is a major third force, the internet, which is dominating each of the two earlier segments. The internet is a multi-headed beast. It includes agencies which are involved in providing information through the internet; it includes commentary, and it includes social media. Reuters recently produced a report identifying the sources to which people look for information and news in about 12 developed countries.[15] In Australia, the internet is the most frequent source of news. 44% of Australians responding to the survey got their news from the internet, compared to 35% from television, 12% from social media and 7% from newspapers. In terms of reliance upon online information, Australia was the second highest of those countries surveyed - second only to Finland. In terms of

[15] Reuters Institute, *Digital News Report 2015: Tracking the Future of News* (2015).

reliance upon TV news, Australia was the second lowest, again second only to Finland.[16] These things are, of course, age related so that the younger people are, the more inclined they are to gather their information on the internet, whereas the older they are, the more likely they are to go to traditional sources. These trends are also gender related in the sense that women are more likely to rely upon social media as the source of their news.

Anyone can be a publisher

The internet revolution has had a number of quite profound consequences for the principle of open justice. The first is that anybody can now publish to the entire world. Everybody can be a publisher and anybody has the entire world as their potential audience. You do not have to own a television station or a newspaper in order to communicate to the entire planet. This means that the arrangements that courts have entered into in the past with trained journalists employed by responsible media organisations may not work with people who are publishing in their own right and who may lack training, and who may lack the responsibility that goes with being

[16] Note 15, 10.

employed by an agency with a reputation and a balance sheet that has to be protected.

Courts have become publishers

The second consequence is that the Courts have themselves become publishers. Many of the higher courts in Australia publish reports of all of our cases in full. A lot of us publish in full the observations made at the time sentence is passed. We all publish on our websites our Court lists each day, (although these may still be published in the local newspapers). Some courts are also using social media to communicate with court users. Courts have become competitive with the media, or at least supplement the information provided to the public by the media. When we move to the next phase of open justice, which I think is inevitable, and increase the webcasting of court proceedings, then we will become even more competitive with media organisations than we have in the past.

Reduced Media Resources

The third consequence of the internet revolution is that at least the print media has experienced very significantly reduced human resources, and I think soon the free to air broadcast media will also

experience reductions in resources. During my time in the law, the number and experience of court reporters despatched to courts has reduced very significantly. That has a number of consequences. The first is that it is even more important for us to make it easier for untrained and time poor court reporters to get it right. The second is that media organisations are hungry for pre-prepared content. Anything they can do to reduce money spent on developing content is in their financial interests. This offers opportunities for the courts to provide information to the public in a form which serves the public interest.

Sensationalism

The fourth consequence is that internet information providers and broadcasters are competing with each other to catch the eye in an increasingly competitive environment. One way to catch the eye is through sensational headlines and content, and particularly through the use of striking visual images, including images drawn from court proceedings if they can get them. Graphic exhibits tendered in a criminal trial may be very effective in catching the eye of the viewer or online subscriber for whom commercial rivals are competing. This

also can lead to reporters being recruited by reference to appearance and visual image, rather than by reference to skill or training.

Types of Internet Publication

In an article by Judge Judith Gibson recently published in the *Judicial Review* by the Judicial Commission of New South Wales, her Honour very conveniently described the various different types of communication routinely provided through the internet.[17]

Facebook

There are sites which provide mechanisms for exchanging information between members of designated groups. Many courts have addressed the question of whether judges should have Facebook accounts. In the Supreme Court of Western Australia, we decided there was nothing wrong with judges having a personal Facebook account although they should, of course, be very cautious about the material put on their pages. The media very commonly harvest information from social media sites. Indeed, on the front page of this morning's *Australian* and in other newspapers, material was published relating to people who had been arrested in connection with the shooting of a police

[17] Her Honour Judith Gibson, 'Judges, cyberspace and social media' *Judicial Review: Selected Conference Papers: Journal of the Judicial Commission of New South Wales* (March 2015)12(2): 237-266

worker in New South Wales.[18] It had plainly been harvested from social media sites that those people had used.

Some courts use social media sites by reference to what is called the output-input model, so that the courts put out information, but also receive it in. In WA, we investigated that possibility. The problem is that if you become a billboard for anybody who wants to post something on your site, you need to monitor the site constantly lest you become a publisher of scandalous material. Many of our courts simply do not have the resources to enable that degree of monitoring.

There can also be some undesirable uses of this form of medium. For example, a mediation was conducted in our court in relation to a family dispute in a probate case. The mediation was complex and there were eleven parties. During the break, one group of parties decided to take a photograph in the mediation room including an image of the whiteboard on which the various possible avenues of settlement had been written. They then posted those images on Facebook, accompanied by derogatory comments about other members of the family.

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[18] See for example, Gus Bruno with AAP, 'If you don't like Australia, leave it': Parramatta Mosque chairman' *The West Australian* (9 October 2015)

Jury Communications

There have also been problems with jurors using Facebook to communicate with others, and in obtaining information from the internet. Many jurisdictions have struggled with these problems. In Western Australia, the Supreme and District Courts considered the question of whether there should be criminal offences specifically dealing with such things. We decided against suggesting changes to the law on the basis that we would prefer to encourage disclosure of these things if and when they occur rather than try to prevent them from ever occurring by criminalising them.

Shared Video Sites

In addition to the Facebook type sites, there are shared video sites such as YouTube. Like all courts around Australia, we deal with some organised groups of self-represented litigants who join in the recurrent assertion of dubious propositions, some of them said to derive from *Magna Carta*; some from the Constitution, and others are said to have their origins in divine law. Recently a member of one such group used the video camera that we all have in our pockets in the form of our

phone in order to surreptitiously record what was happening in court. The video was later posted on YouTube.

Shared video sites also present an opportunity for courts to provide information to people in a way in which they have become accustomed to receiving it. We can show people in moving images what to expect when they get to court; or what is likely to happen in their mediation in a format which many contemporary Australians prefer and have come to expect.

Blogs

Then there are the blog sites which enable anybody to express a view on any subject to anybody interested in receiving it. Twitter is perhaps the most well-known example of such a site, albeit a "Microblog".

This morning's *Australian* reports that a man in Queensland took his own life after a blog accused him of sexual interference with a child.[19] The importance of this means of communication cannot be overstated. They provide a mechanism for unconstrained commentary. We have

[19] Michael McKenna, 'Grammar school teacher suicides after blog pedophile allegation' *The Australian* (9 October 2015).

to get used to the fact that people will say whatever they like about what happens in our courts. Some courts are using Twitter to advise interested people of forthcoming judgments, although there is a limit to how much information one can meaningfully convey in the very limited space available. A number of courts including the courts of Western Australia have made it possible for journalists to tweet during the course of Court proceedings or to post reports online without having to leave the courtroom before using their devices.

Group Chat Sites

The final form of social media I will mention are what are called group chatsites, where people can communicate with each other in a group. I think these are very dangerous sites for judicial officers to become involved with for obvious reasons.

Webcasting and Broadcasting

I would like to finish by saying a bit about webcasting and broadcasting. Anyone interested in this area could do no better than to

look at the issues paper recently published by the Supreme Court of Queensland which covers these issues very thoroughly.[20]

The advantages of these techniques include responding to a community that increasingly expects information to be available in relation to all manner of things through electronic media. These systems have the capacity to take open justice to new levels. They might also diminish media enthusiasm for the scrum waiting at the door of the court to pursue people walking in and out. These systems enable the transparency of court proceedings to be much improved and presented to a much wider audience.

On the other hand there are real issues in relation to intrusion into privacy, and the possible intimidation of witnesses if they are recorded giving their evidence. In some States it is illegal to identify jurors, so camera angles have to be assessed carefully. It is also undesirable to discourage members of the public from attending proceedings in court by the prospect that they might be captured by vision while they are there.

[20] Supreme Court of Queensland, *Electronic Publication of Court Proceedings: Issues Paper* (June 2015).

Hearings are generally too dull to capture public attention for any length of time. It follows that it is only the sensational or brief broadcast that is likely to be viewed and that poses the question of whether short bites of information really do provide valuable information to the public, and poses the risk that over-emphasis on sensationalist material may trivialise the process. There is also the problem of how to deal with gruesome evidentiary material that we often see in homicide and other types of cases. There is the possibility of interference with an order for witnesses out of court. In the Oscar Pistorius case, which was famously broadcast to the world, the judge who decided that case expressed the view that the credibility of virtually all the witnesses that she heard had been damaged by the fact that they had seen on television many or all the witnesses who preceded them.

There is also the possibility of distraction or grandstanding. In New Zealand television cameras in the courtroom have been quite regular features of criminal trials for some years now. A survey was conducted of participants to see whether they thought it had influenced behaviour. Many of the respondents reported that they were sure it

had not modified their behaviour, but they were a bit concerned about other participants in the process whose behaviour might have been modified.

There is also the risk of selective editing so as to distort the sense of the proceedings, so that, for example, if you juxtaposed some graphic evidence with some vision of the accused person smiling, you could quite significantly distort what actually occurred. There is also the risk of future misappropriation or misuse of visual images recorded during court proceedings.

I believe many of these problems can be overcome with planning and preparation. Cameras have been in courtrooms in other comparable jurisdictions like New Zealand for some time and the sky has not fallen in. We have allowed cameras into court in Western Australia on a number of occasions without adverse consequences, but there are issues that have to be addressed in planning for such occasions. The problems are most easily resolved at appellate level where a number of the issues to which I have referred do not arise. However, there is the danger at appellate level that the kind of robust interchange that occurs between bench and bar could be misconstrued by members of

the public who might construe a question posed by a judge as the expression of a preliminary view.

Judicial Control

One thing is clear about webcasting and broadcasting of proceedings in the courtroom and that is that judicial control of the process is absolutely vital. Any system that delegates control of the output to somebody other than the court or the judiciary is fraught with hazard. The problem which this conclusion poses is the difficult issue of providing the time and the resources necessary to judicially supervise webcasting or broadcasting.

I think it is inevitable that modern technology will be used to improve public access to court proceedings whether the judiciary like it or not. I think it is important that the judiciary control the terms upon which this form of access is provided rather than have inflexible rules embodied in legislation imposed upon us. In order to avoid legislative intervention, the judiciary must take the initiative carefully and responsibly. Doing nothing in the face of contemporary expectations of electronic access to proceedings in our courtroom is simply not an

option, in my view, because whether we like it or not, the internet revolution has occurred, and we have to deal with it.