INTERACTIONS BETWEEN THE MEDIA AND THE CRIMINAL JUSTICE SYSTEM

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Abstract

The criminal justice system and the media interact in various capacities. The reliance of the public on the information perpetuated by the media in relation to proceedings within the criminal justice system has significantly translated into a decrease in faith within the community. Previous studies have shown that when presented with media accounts of crime, in comparison to the full account of the proceedings participants were less likely to be satisfied that justice had been done. Taking this into account is important within the field of criminal law, as this decrease of faith is current and can translate to a decrease of community unity, an increase of vigilante acts, and less reporting of crime. Action on the part of the executive is important in addressing this issue to ensure faith in the system is restored.

I INTRODUCTION

The interaction of the media with the Australian criminal justice system has a significant impact on the community's perception of the effectiveness and perpetuation of justice. Selective coverage of criminal trials, agenda setting, as well as information framing are all methods which produce the media's prominent entertainment role.[1] The reliance of the public on the

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[1] Richard L Fox, Robert W Van Sickel & Thomas L Steiger, *Tabloid Justice: Criminal Justice in an Age of Media Frenzy* (2nd ed, 2007), 9.

media for information as well as entertainment poses a disparity between objectives pursued, and objectives gained. However, the public still continues to rely on the media as a means to understand and assess the criminal justice system and the process contained within.[2]

What this research intends to achieve is a deeper understanding of how the media interacts with the criminal justice system and how this translates into the public's confidence, or lack thereof, in the perpetuation of justice. It will show how the media purports to favour reporting methodology that elicits negative perceptions of the justice system and how this translates into the public's lack of faith in that system. Having an understanding of how the media's interaction with the criminal justice system translates into the public's articulation of what constitutes a 'crime', and more importantly, what constitutes 'justice' is of great importance within the scope of criminology and criminal law.[3] Utilizing this understanding by developing statutory reforms and media moderation, we can increase the community's support of the criminal justice system, and restore faith in the process contained within.

II OBJECTIVES OF THE MEDIA

The objectives of the media within the scope of the criminal justice system can be seen to have been derived from various sources. The overarching want to inform, educate and entertain are the foundations of what

[2] Gregg Barak, 'Mediatizing Law and Order: Applying Cottle's Architecture of Communicative Frames to the Social Construction of Crime and Justice' (2007) 3 *Crime Media Culture* 101, 101.
[3] Ibid.

Australian media sources purport to strive toward[4]. The ability of the media to bring events into the community's lives, no matter how remote, and to make them observable and meaningful comes within the scope of these objectives[5]. However as can be repeatedly seen the "educational function of the press is undermined by its entertainment role".[6] Thus what is professed to be informative, meaningful and educational, is an entirely different final product. The media would argue in return, as they often have,[7] that the way in which they report a story or set of facts comes within the notion of free press or free speech, and in the case of criminal proceedings, the accused's right to a fair trial.

A *Free Speech/Press and the Media*

The most historically contentious of these arguments is the notion that the community has the liberal ability to express oneself through free speech or in the case of the media, free press. However, unlike in the US where such a philosophy is entrenched within their constitution,[8] Australia does not have the same provision.[9] Justice Kirby also stated that such freedoms had no reliance on legal guarantees, however have their basis upon antiquated

[4] Websites of major television networks: http://www.7perth.com.au, www.9perth.com.au, www.ten.com.au

[5] Harvey Molotch and Marilyn Lester, 'News as Purposive Behavior: On the Strategic Use of Routine Events, Accidents and Scandals' (1974) 39 *American Sociological Review* 101, 101.

[6] Richard L Fox, Robert W Van Sickel and Thomas L Steiger, *Tabloid Justice: Criminal Justice in an Age of Media Frenzy* (Lynne Rienner, 2nd ed, 2007), 6.

[7] *Nationwide News v Wills* (1992) 177 CLR 1; *Australian Capital Television v Commonwealth* (1992) 177 CLR 106.

[8] *The Constitution of the United States,* Amendment 1.

[9] Michael Kirby, 'Reform and the Fourth Estate' in *Reform the Law: Essays on the Renewal of the Australian Legal System* (Oxford University Press, 1983), 171, 172.

tradition.[10] This tradition has been reinforced by the community's continued desire to be kept up-to-date with the news and current affairs[11], especially those of which are crime-related.[12]

The basis of free speech can be found within the writing of eminent philosopher John Stuart Mill who went so far as to say that:

> There ought to exist the fullest liberty of professing and discussing, as a matter of ethical conviction, any doctrine, however immoral it may be considered. [13]

He did qualify this seemingly broad notion by saying that;

> The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. [14]

In doing so he placed appropriate limits upon what he professed constituted free expression. This idea is contrary to that put forth by Professor Stanley Fish, who claims 'there is no such thing as free speech'[15] and that any claim to such is invalid for the following reason:

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[10] Michael Kirby, 'Reform and the Fourth Estate' in *Reform the Law: Essays on the Renewal of the Australian Legal System* (Oxford University Press, 1983) 171,173.
[11] Richard L Fox, Robert W Van Sickel and Thomas L Steiger, *Tabloid Justice: Criminal Justice in an Age of Media Frenzy* (Lynne Rienner, 2nd ed, 2007), 7.
[12] Julian V Roberts and Anthony N Doob, 'News Media Influences on Public Views of Sentencing' (1990) 14 *Law and Human Behavior* 451, 452.
[13] Can be found in the footnotes of Chapter II in; John Stuart Mill, *On Liberty* (1859), 31.
[14] Ibid.
[15] Stanley Fish, *There's No Such Thing as Free Speech* (Oxford University Press, 1994) 104.

> When one speaks to another person, it is usually for an instrumental purpose: you are trying to get someone to do something, you are trying to urge an idea and, down the road, a course of action. These are reasons for which speech exists and it is in that sense that I say that there is no such thing as "free speech", that is, speech that has its rationale nothing more than its own production.[16]

How these two ideas can be reconciled within the realm of free speech and press surrounding the criminal justice system are encapsulated by Lord Hewart, in *Rex v Sussex* where he said: 'Justice should not only be done, but should manifestly and undoubtedly be seen to be done.'[17]

Within this quote it can be seen that whilst it is argued by Professor Fish that speech is purposive, and by John Stuart Mill that speech should be free, these ideas can and do overlap within the media's interaction with the criminal justice system. The media has a purpose with its information delivery, and relies upon the traditional value of 'free speech' in order to tailor that information for such. These values have been attempted to be aligned with the constitutional implied freedom of political communication with limited success.[18]

The implied freedom of political communication within Australia is a freedom which has developed with reference to provisions in the Australian constitution[19] and an increasing amount of case law. Its origin can be traced

[16] Ibid.
[17] *Rex v Sussex Justices, ex parte McCarthy* [1924] 1 KB 256.
[18] *Hogan v Hinch* [2011] HCA 4.
[19] *Commonwealth of Australia Act* (Cth), ss 7, 24, 25, 61 and 61.

back to two cases; *Nationwide News Pty Ltd v Wills (Nationwide)*[20] and *Australian Capital Television Pty Ltd v Commonwealth (ACTV).*[21] Chief Justice Mason in *ACTV* described the freedom as being indispensable to the accountability of legislative and executive powers and that:

> Only by exercising that freedom can the citizen communicate his or her views on the wide range of matters that may call for, or are relevant to, political action or decision. Only by exercising that freedom can the citizen criticize government decisions and actions, seek to bring about change, call for action where none has been taken and in this way influence the elected representatives. [22]

However this seemingly straightforward right to free communication of ideas was qualified within the same judgment by Brennan J, who posited that any freedom was a restriction on legislation rather than an inherent personal right. He said:

> Unlike freedoms conferred by a Bill of Rights in the American model, the freedom cannot be understood as a personal right the scope of which must be ascertained in order to discover what is left for legislative regulation; rather it is a freedom of the kind for which s 92 of the Constitution provides: an immunity consequent on a limitation of legislative power. [23]

And finally Deane and Toohey JJ stated that:

[20] *Nationwide News Pty Ltd v Wills (Nationwide)* (1992) 177 CLR 1.
[21] *Australian Capital Television Pty Ltd v Commonwealth (ACTV)* (1992) 177 CLR 106.
[22] Ibid 137.
[23] Ibid150.

> In determining whether a purported law conflicts with the implication, regard must be had to the character of the impugned law A law prohibiting or restricting political communications by reference to their character as such will be consistent with the prima facie scope of the implication only if, viewed in the context of the standards of our society, it is justified as being in the public interest.[24]

These original comments by the High Court formed the basis of a test to determine whether the legislation infringes upon this implied freedom. This test was originally constructed within the case *Lange v Australian Broadcasting Corporation*,[25] was later modified in *Coleman v Power*[26] and is still applied currently.[27] What it asks of the legislation, is whether the law burdens the implied freedom and if so, does it do so in a reasonably appropriate manner to serve a legitimate end.[28] If the law does burden the implied freedom without a legitimate end or in a disproportionate manner, then it will be taken to have infringed the implied constitutional limitation. Otherwise it will be considered reasonably appropriate. Media outlets have attempted to utilize the implied freedom of political communication in a similar fashion as free speech rights available under the First Amendment in the US. The contention that communications such as reporting information from criminal trial proceedings 'do not lose protection of the freedom recognised in *Lange* because they also deal with the

[24] *Australian Capital Television Pty Ltd v Commonwealth (ACTV)* (1992) 177 CLR 106, 169.
[25] *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 5.
[26] *Coleman v Power* (2004) 220 CLR 1.
[27] *Hogan v Hinch* [2011] HCA 4.
[28] *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 5; *Coleman v Power* (2004) 220 CLR 1.

administration of justice by the courts of a State'[29] was discussed in recent case law, such as *Hogan v Hinch*.

French CJ accepted in that case:

> The range of matters that may be characterised as "governmental and political matters" for the purpose of the implied freedom is broad. They are not limited to matters concerning the current functioning of government.[30]

However Gummow, Hayne, Heydon, Crennan, Kiefel and Bell JJ qualified this by adding there must be a "direct" rather than "incidental" burden upon the communication[31]. Whilst this latest development within the scope of the implied freedom of political communication does little to entrench the ability of the media to utilize such as a means to deliver information to the public; it does potentially allow for future development due to the broad scope enunciated by French CJ.

B *Right to a Fair Trial and the Media*

As well as the free speech and press argument in favour of the media's reporting ability, the right to a fair trial is also important to consider. The right to a fair trial is outlined in the *International Covenant on Civil and Political Rights* and as Article 14(1) makes clear an essential aspect of this is a public hearing:

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[29] *Hogan v Hinch* [2011] HCA 4, 94.
[30] Ibid 49.
[31] Ibid 95, and as discussed by Gleeson CJ in *Mulholland v Australian Electoral Commission* (2004) 220 CLR 181.

> All persons shall be equal before courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children. [32]

This article is replicated in a variety of other international instruments to which Australia is a party, further entrenching their importance. The *Universal Declaration of Human Rights* reinforces the presumption of innocence as well as reinforcing the principles set forth in the abovementioned articles when it provides in Article 11(1):

> Every person charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.[33]

As also can be seen within this Article, reference to a public trial is a central notion in the delivery of justice in a fair and humane manner.

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[32] *International Covenant On Civil And Political Rights,* adopted and open for signature, ratification and accession by General Assembly resolution 2200A(XXI) of 16 December 1966 (entered into force 23 March 1976, in accordance with Article 49); Article 14.

[33] *Universal Declaration Of Human Rights,* Article 11(1).

The idea of a public trial is one which is found at the core of our common law principles of fair and just criminal proceedings[34]. It is considered necessary because it allows public and professional scrutiny of decisions in order to prevent any miscarriage of justice[35] and maintains confidence amongst the community of the court system's integrity.[36] As such a public trial implies the ability of the public to attend proceedings, as well as the reporting and publication of the proceedings.

The objectives of the media in terms of information delivery to the community can seemingly create issues as to the apparent nature of this freedom in practice. On the one hand, the increasing coverage of the media during criminal proceedings can hinder the ability of a jury to be impartial, and thus burden this right to a fair trial.[37] However, it can be argued that the coverage of said proceedings, allows for greater public scrutiny, and overall will increase the occurrence of trials conducted with regard to this inherent right[38]. Exceptions to this principle of the public trial occur in instances where the court feels it necessary to impose an order suppressing details of the proceedings.[39]

[34] *Scott v Scott* [1913] AC 417; *Russell v Russell* (1976) 134 CLR 495.
[35] *Russell v Russell* (1976) 134 CLR 495.
[36] *Raybos Australia Pty Ltd v Jones* (1985) 2 NSWLR 47.
[37] Richard L Fox, Robert W Van Sickel and Thomas L Steiger, *Tabloid Justice: Criminal Justice in an Age of Media Frenzy* (2nd ed, 2007).
[38] Andrew T. Kenyon, 'Not Seeing Justice Done: Suppression Orders in Australian Law and Practice' (2006) 27 *The Adelaide Law Review* 279, 282.
[39] s171 *Criminal Procedure Act 2004* (WA).

III THE COURTS' POWER TO REGULATE THE MEDIA

As discussed above there are exceptions to the principle of an open court that can be found in common law and are supplemented by statute.[40] Accordingly, there are three broad categories of suppression orders within the jurisdiction of Australia.[41] Firstly at common law, if an open court would jeopardise the proper administration of justice the common law allows the court to suppress the proceedings.[42] Superior courts have this inherent power to issue such orders in these instances[43]. Also if there is a public policy interest, such as that of national security or the safety of individuals, the court has a similar power.[44] However, this potentially broad power has only been invoked in limited circumstances in past case law.[45] Secondly, some statutes restrict reporting in instances involving children under the age of 18[46], victims of sex-related crimes,[47] or matters within the scope of the *Family Law Act 1975* (Cth).[48] Finally, a statutory discretion is

[40] Andrew T. Kenyon, 'Not Seeing Justice Done: Suppression Orders in Australian Law and Practice' (2006) 27 *The Adelaide Law Review* 279, 288.
[41] Australia's Right to Know, *Report of the Review of Suppression Orders and the Media's Access to Court Documents and Information*, 13 November 2008.
[42] *John Fairfax Group Pty Ltd (Receivers and Managers Appointed) v Local Court of New South Wales* (1991) 26 NSWLR 131.
[43] Andrew T. Kenyon, 'Not Seeing Justice Done: Suppression Orders in Australian Law and Practice' (2006) 27 *The Adelaide Law Review* 279, 288.
[44] *John Fairfax Group Pty Ltd (Receivers and Managers Appointed) v Local Court of New South Wales* (1991) 26 NSWLR 131.
[45] Andrew T. Kenyon, 'Not Seeing Justice Done: Suppression Orders in Australian Law and Practice' (2006) 27 *The Adelaide Law Review* 279, 288.
[46] *Children's Court of Western Australia Act 1988* s35(1); *Children And Young Persons Act 1989* (VIC) s26; *Young Offender's Act 1993* (SA) ss59, 59A.
[47] *Evidence (Miscellaneous Provisions) Act 1991* (ACT) s40; *Sexual Offences (Evidence And Procedure) Act 1983* (NT) ss6-13; *Crimes Act 1906* (NSW) s578A; *Criminal Law (Sexual Offences) Act 1978* (QLD) ss6-11; *Evidence Act 1929* (SA) s71A; *Evidence Act 2001* (TAS) ss194K, s194L; *Judicial Proceedings Act 1958* ss3,4; *Evidence Act 1906* (WA) s36C.
[48] *Family Law Act 1975* (Cth).

provided for judicial officers of any court to issue an order in certain circumstances.[49]

A *Common Law Origins of the Courts' Power to Regulate the Media*

The common law has developed more so in recent history to allow judicial officers the discretion to impose orders suppressing information gathered within the courtroom, and thus preventing the media from publishing any of the proceedings.[50] Whilst on one view the courts have no general authority to make orders to bind non-parties and their conduct outside the courtroom,[51] it has been found that conduct outside the court frustrating the endeavours of justice can be considered contempt of court.[52] Also the use of pseudonyms, and orders binding parties of the case can be used regardless.[53]

An early, yet eminent consideration of the idea of open proceedings was expressed by Haldane LC in *Scott v Scott*[54] where he stated that the imperative role of courts is 'to do justice'.[55] With relation to publicity, Earl Loreburn in the same case noted that the principles and rules expressed by Haldane LC can be disregarded when necessity compels departure.[56] The

[49] S171 *Criminal Procedure Act 2004* (WA).
[50] *Raybos Australia Pty Ltd v Jones* (1985) 2 NSWLR 47.
[51] *Raybos Australia Pty Ltd v Jones* (1985) 2 NSWLR 47.
[52] Discussed in *Hogan v Hinch* [2011] with reference to *John Fairfax & Sons Ltd v Police Tribunal (NSW)* (1986) 5 NSWLR 465.
[53] Draft Court Suppression And Non-Publication Orders Bill 2009 (WA).
[54] *Scott v Scott* [1913] AC 417.
[55] *Scott v Scott* [1913] AC 417, 437.
[56] *Hogan v Hinch* [2011] HCA 4 as per French CJ; *R v Macfarlane; Ex Parte O'Flanagan and O'Kelly* (1923) 32 CLR 518 as per Isaacs J.

idea that the administration of justice required in some instances the closing of the court to the public and the media required some development as to what constituted a valid reason in the circumstances. Restrictions merely based on unsavoury evidence,[57] morality[58] or embarrassment to one or more of the parties[59] have all been found to not constitute sufficient justification to undermine the open court and justice principle. This was acknowledged by Kirby P in *John Fairfax Group Pty Ltd (Receivers and Managers Appointed) v Local Court of NSW* where he noted:

> It has often been acknowledged that an unfortunate incident of the open administration of justice is that embarrassing, damaging and even dangerous facts occasionally come to light. Such considerations have never been regarded as a reason for the closure of courts, or the issue of suppression orders in their various alternative forms.[60]

Reasons that have been considered exceptions to this principle, were identified by Einstein J in his judgment of *Idoport Pty Ltd v National Australia Bank Limited & Ors* as including:[61]

> (a) Cases where trade secrets, secret documents or communications or secret processes are involved;
> (b) Cases where disclosure in a public trial would defeat the whole object of the action (as in blackmail cases or cases involving police informers);
> (c) Cases involving the need to keep order in court;
> (d) Cases involving (in certain circumstances) national security;

[57] *R v Hamilton* (1930) 30 SR (NSW) 277.
[58] *Scott v Scott* [1913] AC 417.
[59] *J v L & A Services Pty Ltd (No 2)* [1995] 2 Qd R 10.
[60] *John Fairfax Group Pty Ltd (Receivers and Managers Appointed) v Local Court of NSW* (1991) 26 NSWLR 131, 142.
[61] *Idoport Pty Ltd v National Australia Bank Limited & Ors* [2001] NSWSC 1024, 20.

(e) Cases involving the performance of administrative or other action that may be properly dealt with in chambers

(f) Cases where the court sits as *parens patriae* involving wards of the state or those with mental illness.

As can be seen within this direction of case law, the proper administration of justice is the court's ultimate concern. If it is necessary to prevent the public viewing and media publishing of proceedings in order to achieve this end, then the court is within their power to make an order to that effect. As stated by McHugh JA in *John Fairfax & Sons Ltd v Police Tribunal of NSW:*

> The principle of open justice also requires that nothing should be done to discourage the making of fair and accurate reports of what occurs in the courtroom. Accordingly, an order of a court prohibiting the publication of evidence is only valid if it is really necessary to secure the proper administration of justice in proceedings before it. Moreover, an order prohibiting publication of evidence must be clear in its terms and do no more than is necessary to achieve the due administration of justice. The making of the order must also be reasonably necessary; and there must be some material before the court upon which it can reasonably reach the conclusion that it is necessary to make an order prohibiting publication. Mere belief that the order is necessary is insufficient.[62]

As noted by McHugh JA in the passage above, the court must have sufficient evidence in favour of making an order, and that evidence should point in favour of suppressing proceedings in order to strive toward the fair administration of justice. In consideration of these ideas, it is important to

[62] *John Fairfax & Sons Ltd v Police Tribunal of NSW* (1986) 5 NSWLR 465, 476.

take into account the statutory role in the regulation of the media and how it interacts with the aforementioned common law.

B *The Courts' Ability to Regulate the Media And Statute*

As well as the common law providing guidance as to both the open justice principle and the use of suppression orders, statutory instruments are utilized by parliament to provide further authorisations to courts to do so as per French CJ:

> Beyond the common law, it lies within the power of parliaments, by statute, to authorise courts to exclude the public from some part of a hearing or to make orders preventing or restricting publication of parts of the proceeding or of the evidence adduced.[63]

Both Commonwealth and state or territory statutes have provisions that reaffirm the principle of open justice. At the Commonwealth level, an example of this can be seen in the *Family Law Act 1975* where s97(1) states:

> Subject to subsections (1A) and (2), to the regulations and to the applicable rules of Court, all proceedings in the Family Court, in the Federal Magistrates Court, or in a court of a Territory (other than the Northern Territory) when exercising jurisdiction under this act, shall be heard in open court.[64]

[63] *Hogan v Hinch* [2011] HCA 4, 27.
[64] *Family Law Act 1975* (Cth) s97; Other examples at Commonwealth level include the *Judiciary Act 1903* (Cth) s16 and the *Federal Court of Australia Act 1976* s17.

Similar provisions can be found in all jurisdictions in varying capacities[65] such as within the *Magistrates Court (Civil Proceedings) Act 2004* (WA) where s45(1) provides:

> All proceedings in the court's civil jurisdiction are to be conducted in open court unless this act, the rules of court of another written law provides otherwise.[66]

This can also be found in Victoria in the equivalent *Magistrates Court Act 1989* (Vic) where s125(1) allows:

> All proceedings in the Court are to be conducted in open court, except where otherwise provided by this or any other Act or the rules.[67]

Other statutes may not expressly provide for this principle however can be implied through other provisions that require orders to be made for the exclusion of the public whilst still taking into account the common law principle of open justice.[68] This can be seen in s18(1) of the *Supreme Court Act 1986* (Vic) which does exactly that:[69]

> The court may in the circumstances mentioned in section 19 –
>
> (a) Order that the whole or any part of a proceeding be heard in closed court; or

[65] *Magistrates Court Act 1930* (ACT) s310; *Coroners Act 1980* (NSW) s30; *Summary Procedure Act 1921* (SA) s61; *Magistrates Court (Civil Division) Act 1992* (TAS); *Magistrates Court (Civil Proceedings) Act 2004* (WA) s45(1); *Magistrates Court Act 1989* (Vic) s125.
[66] *Magistrates Court (Civil Proceedings) Act 2004* (WA) s45(1).
[67] *Magistrates Court Act 1989* (Vic) s125.
[68] *Supreme Court Act 1986* (Vic).
[69] *Supreme Court Act 1986* (Vic) s18(1).

> (b) Order that only persons or classes of persons specified by it may be present during the whole or any part of a proceeding; or
> (c) Make an order prohibiting the publication of a report of the whole or any part of a proceeding or of any information derived from a proceeding.

Whilst this statute does not expressly provide for the public's ability to access and view proceedings, this provision allows for this to be implied. It also has the purpose of giving the court discretion as to when the power should be utilized within the ambit of the circumstances detailed in s19. However this discretion is usually quite strict and as put forth by Kirby P, 'utilized only when clearly necessary'.[70] French CJ adds to this by saying:

> Where it is left by statute to a court's discretion to determine whether or not to make an order closing part of a hearing or restricting the publication of evidence or the names of parties or witnesses, such provisions are unlikely to be characterised as depriving the court of an essential characteristic of a court and thereby rendering it an unfit repository for federal jurisdiction. Nevertheless, a statute which affects the open-court principle, even on a discretionary basis, should generally be construed, where constructional choices are open, so as to minimise its intrusion upon that principle.[71]

Courts around Australia have varying discretions to utilize provisions such as previously mentioned, to impose an order restricting the media's ability to publicise information about the proceedings. However in a lot of cases this is done unnecessarily, with the statute governing the proceedings

[70] *Re Applications by Chief Commissioner of Police (Vic)* (2004) 9 VR 275.
[71] *Hogan v Hinch* [2011] HCA 4, 27.

already containing a presumption of information suppression.[72] This includes proceedings that involve children as can be seen in the *Children's Court of Western Australia Act 1988* amongst many others, where s35(1) details:[73]

> Except where done in accordance with an order made under section 36A or in accordance with the *Prohibited Behaviour Orders Act 2010* section 34, a person shall not publish or cause to be published in any newspaper or other publication or broadcast or cause to be broadcast by radio or television a report of any proceedings in the court, or in any court on appeal from the court, containing any particulars or other matter likely to lead to the identification of a child who is concerned in those proceedings –
>
> (a) As a person against whom the proceedings are taken:
>
> (b) As a person in respect of whom the proceedings are taken:
>
> (c) As a witness: or
>
> (d) As a person against or in respect of whom an offence has or is alleged to have been committed.

Similar provisions containing this presumption can be found protecting adoption proceedings,[74] sexual offences[75] and similar sensitive topics. Statutes that do not have this inherent presumption of information suppression contained within can still provide a power to the court to make

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[72] Andrew T Kenyon, 'Not Seeing Justice Done: Suppression Orders in Australian Law and Practice' (2006) 27 *The Adelaide Law Review* 279, 288 which discusses the 'doubling up' of suppression orders, and already statutory guards for type of proceeding.

[73] *Children's Court of Western Australia Act 1988* s35 (1); *Children and Young Persons Act 1989* (Vic) s26; *Young Offender's Act 1993* (SA) ss59, 59A.

[74] *Adoption Act 1988* (SA); *Adoption Act 1984* (Vic) ss120-121.

[75] *Evidence (Miscellaneous Provisions) Act 1991* (ACT) s40; *Sexual Offences (Evidence And Procedure) Act 1983* (NT) ss6-13; *Crimes Act 1906* (NSW) s578A; *Criminal Law (Sexual Offences) Act 1978* (QLD) ss6-11; *Evidence Act 1929* (SA) s71A; *Evidence Act 2001* (TAS) ss194K, s194L; *Judicial Proceedings Act 1958* ss3,4; *Evidence Act 1906* (WA) s36C.

a non-publication order. However publication is not limited, unless such an order is made by the court.

C *The Media's Ability to Challenge Suppression Orders*

When such an order is made by the court, it is important to consider what ability the media has to challenge this restriction of publication. It is an established principle that the media has standing to challenge orders restricting publication of material within proceedings with restriction.[76] As discussed in *Nationwide News v District Court (NSW)* by Mahoney P:

> To hold that media interests have a right to be heard upon such applications in the sense that they are, in the ordinary way, parties to them, would create a situation which would be unjust to the parties to the trial and would interfere with the fairness of the trial; see *John Fairfax & Sons Ltd v Police Tribunal of NSW*.[77]

However taking into account that obvious restriction on the media's standing within proceedings he notes that:

> In my opinion each media interest has a less choate and less extensive entitlement. It is not necessary for present purposes to attempt to mark out finally the precise boundaries of that entitlement. It is sufficient to hold that (subject to what I shall say) it is entitled to make an application to vary or terminate an order of the relevant kind and to have that application heard.[78]

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[76] *Re Bromfield; Ex Parte West Australian Newspapers Ltd* [1991] (Unreported, Malcolm CJ, Rowland & Nicholson JJ, 21 June 1991).
[77] *Nationwide News v District Court (NSW)* 40 NSWLR 486, 489.
[78] Ibid.

In circumstances where the media is present throughout the proceedings, and a proposed suppression order will bind the media authority, standing to be heard in this instance is also established. As noted:

> If the media interest is in fact present when an application is made by the parties for a suppression order and the suppression order sought will bind the media interest, it is to be expected that ordinarily the trial judge will hear the media interest if it desires to be heard, at least to the extent that is consistent with justice of the trial.[79]

Similar case law can be found in other jurisdictions establishing that the media has standing in certain proceedings. In *Re Bromfield; Ex Parte West Australian Newspapers* Nicholson J found that the media are different to that of other members of the public in that they are especially aggrieved by the implementation of suppression orders and thus should be given the opportunity to argue such. He stated:

> The applicant is truly a "person aggrieved" by the determination as a consequence of the evidence relating to the nature of its business. Its business distinguishes it from members of the general public having no particular interest in the matter.[80]

Even though such cases in these jurisdictions have been found to give the ability to the media to challenge suppression orders, Victoria is peculiar in that media lawyers have expressed concern that provisions in the *Supreme*

[79] Ibid 490.
[80] *Re Bromfield; Ex Parte West Australian Newspapers Ltd* [1991] (Unreported, Malcolm CJ, Rowland & Nicholson JJ, 21 June 1991).

Court Act have removed the right of appeal regarding this issue[81]. This can be seen in s17A(3) which provides:

> Except as provided in Part 6.3 of Chapter 6 of the *Criminal Procedure Act* 2009, an appeal does not lie from a determination of the Trial Division constituted by a Judge of the Court or constituted by an Associate Judge made on or in relation to the trial or proposed trial of a person on indictment.

With the position in Victoria being that a suppression order is an interlocutory order, and therefore cannot be challenged until the conclusion of the proceeding[82], it also means that rights of appeal within s17A(3) of such an order, as provided in Part 6.3 of the *Criminal Procedure Act* 2009 are limited as previously discussed.

These limitations upon the media's ability to report on proceedings within the court, in conjunction with their choices as to what to report and what methodology of reporting to utilize, both interact and impact the community's general perception of the justice system.

IV IMPACT OF THE MEDIA

The impact of the media upon the community's perception of the justice system is one which requires deep consideration. As noted by Martin CJ in an eminent speech:

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[81] Australia's Right to Know, *Report of the Review of Suppression Orders and the Media's Access to Court Documents and Information*, 13 November 2008, 21.
[82] Ibid.

> The difficulty is that people will take the cases about which they read or hear as representative of the justice system as a whole when, in fact, they are only representative of cases which have this character of "newsworthiness".[83]

The choice of media outlets of which cases to report can greatly shape expectations of the public, with only a small number of judgments reported upon. As such:

> They might read or hear about, say, 50 cases each year in which it might be suggested that a sentence imposed upon an offender was lenient. They will not hear or read of the 90,000-odd cases in which there is no such suggestion. But they will take the 50 cases of which they know to be representative of the system as a whole, when in fact they are anything but.[84]

As discussed previously, orders by the court may have suppressed the ability of the media to publish proceedings in the court. But whether or not this is a significant reason behind the choice of case reporting on behalf of the media is worthy of discussion. Looking toward statistics provided by courts of WA in 2008 we can see recorded suppression orders remaining similar in 2006-2007, however a significant increase in 2008:[85]

Jurisdiction	**2006**	**2007**	**2008 (until 31 July)**

[83] The Hon Wayne Martin, Chief Justice of Western Australia, 'Improving Access to Justice: The Role of The Media' (Speech delivered at Curtin University, Western Australia, 15th October 2009).
[84] Ibid.
[85] Australia's Right to Know, *Report of the Review of Suppression Orders and the Media's Access to Court Documents and Information*, 13 November 2008, 40.

Supreme Court	17	29	4
District Court	50	30	32
Magistrates Courts	42	36	37
Children's Court	0	6	3
Coroner's Court	1	1	2
Total	**110**	**102**	**75**

A marked difference to that which can be found in suppression orders recorded in only the Supreme and District Courts of SA:[86]

Jurisdiction	**2006**	**2007**	**2008 (until 30 June)**
Supreme & District Court	227	245	77
Total	**227**	**245**	**77**

Noting the differences between the two states can see a significant increase in the pro-rata statistic for 2008 in WA in comparison to previous years; comparable to a significant decrease in SA. Commentators have noted the increase in WA was most likely due to an influx of sexual assault charges made in remote Kimberley Aboriginal communities during 2008, and thus due to the inherent protection discussed previously in the *Evidence Act;* not indicative of judges use of discretion to suppress proceedings.[87] SA on the other hand has seen a marked decrease in the number of suppression orders recorded. Commentators have been unable to pinpoint reasons as to why

[86] Ibid.
[87] Ibid.

this is, however some have suggested that new provisions within the *Evidence Act*,[88] have allowed greater scope for challenging these orders.

These statistics show that there is a restriction on media outlets to comply with orders when made by the court. In doing so this may restrict which cases and how such cases are reported on. However when there is no such restriction, a large discretion on what to report is bestowed upon the reporters and the media outlets. Theories on the effects of this discretion have developed over the past 50 or so years, and therefore give us an opportunity to understand the impact on members of the criminal justice process, as well as the general public.

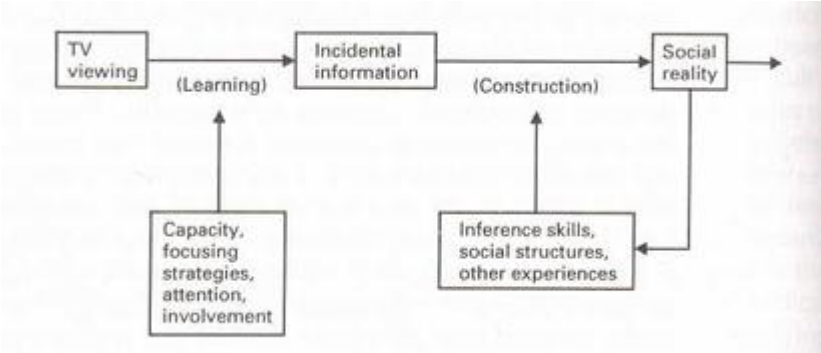
A *Theoretical Background on the Impact of the Media*

Researchers in the field of communications, media, public relations and many other disciplines have developed various theories and models explaining the effects of the media upon the public. These have been consistently investigated, developed and then often disproved,[89] however what we have been left with is an extensive range of models designed to cover various interactions between the media and the public. One of these models was developed upon the decline of support for the *Hypodermic Needle Model*, and was entitled the *Cultivation Theory*. This theory argues that the media has long-term effects on the public, but these effects are small, gradual and indirect. These gradual influences become significant

[88] *Evidence Act 1929* (SA) s 69A.

[89] As in the case of the Hypodermic Needle Model of the 1920's which implies that the media has a direct, immediate and powerful effect on its audiences, further disproved by Lazarsfeld and colleagues as discussed in Scheufele, D, and Tewksbury, D,'Framing, Agenda Setting, and Priming: The Evolution of Three Media Effects Models' (2007) 57(1) *Journal of Communication*, 9, 10.

over an extended period of time and extended exposure to the medium. This theory can be seen conceptually depicted as below:[90]



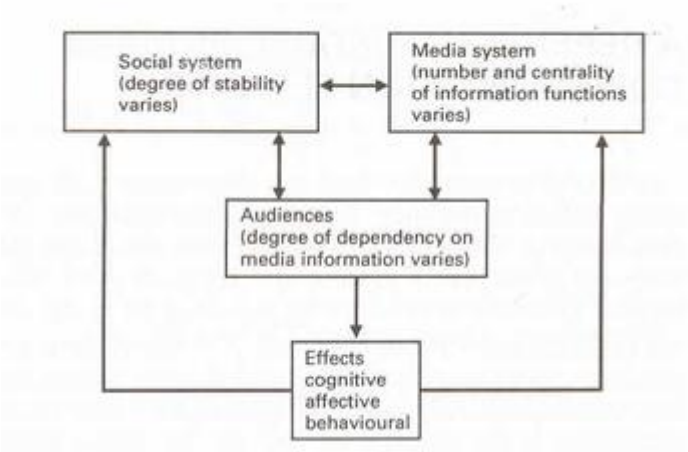
What this conceptual model illustrates is the suggestion that media is responsible for shaping its viewers formulation of social reality. Whilst this model, at a general level can include various mediums it can however be restricted to the ambit to which this research involves:

> Interestingly, most news directors nonetheless believe that the preponderance of themes of danger and victimization in the news desensitizes and depresses news consumers. Their beliefs are echoed by many media critics and scholars.[91]

People who subject themselves to higher levels of exposure are therefore more likely to be influenced by the ways in which the world is framed by the media to which they expose themselves.[92] Studies have shown that heavy viewers of mass media were more fearful of 'walking alone at night', and also tended to overestimate the prevalence of violent crimes.[93] What

[90] Hawkins R P and Pingree, S 'Television's Influence on Social Reality' in Wartella, E, Whitney, D and Windahl, S (eds) *Mass Communication Review Yearbook, Vol 5* (Sage, 1983) 53.
[91] Dolf Zillmann and Silvia Knobloch, 'Emotional Reactions to Narratives about the Fortunes of Personae in the News Theater' (2001) 29 *Poetics* 189, 190.
[92] Gerbner, G, and Gross, L,'The Scary World of TV's Heavy Viewer' (1976b) 10(4) *Psychology Today*, 41, 44.
[93] Ibid.

this model therefore indicates is that the general conceptualization of the world on the part of the media can have a distinct effect on the public's understanding of the same. By the media constantly choosing to depict crimes of a violent nature and cases where sentences are likely to be viewed to be lenient this model would argue that based upon previous research, it is likely that viewers who are exposed to this kind of reporting, are more likely to overestimate the prevalence of violent crimes[94] and furthermore believe that sentencing in general is lax within the justice system. The more this relationship evolves the more the consumer becomes dependent on the media outlet for information.[95] From this the *Dependency Theory* and model of media systems was derived. This theory proposes that an integral relationship is born between the media, the consumer and the consumer's social group. As illustrated below:[96]



What is depicted within this conceptual model is that, consumers depend on media information to meet certain needs and achieve certain goals. These goals can vary based on their social network, and their degree of dependency. How this model interacts with the *Cultivation Theory* is

[94] Ibid.
[95] Ball-Rokeach, S J, and DeFleur, M L 'A Dependency Model of Mass-Media Effects' (1976) 3 *Communication Research* 3, 5.
[96] Ibid 7.

interesting to note. Negative themes perpetuated by media reports have been found to hold great appeal to audiences regardless of the shaping effect theorized by the *Cultivation Theory* occurring.[97] Instead, often audiences seek out media that is adverse even in the form of negative 'reality' programming.[98] The continual seeking out of media that is negative can be considered to be odd, considering the adverse emotional reactions undoubtedly present within the viewer.[99] However this can be resolved with reference to biological factors as discussed in relevant research:

> The "hedonistic paradox" of the appeal of aversion-evoking narratives tends to be resolved by referral to biological factors, specifically to motives serving self-preservation. The inclination to continually screen one's environment for threats and dangers, in view of its obvious survival value through the millennia, is thought to be evolutionary defined and thus deep-rooted. This supposition is actually endorsed, although often only implicitly, by media representatives who attempt to justify the predominance of misfortune themes in the news.[100]

What this means in terms of the previous two mentioned models is that viewers are consistently being shaped by the media to which they subject themselves to. For evolutionary, and biological reasons they are innately likely to seek out media that is negative for self-preservation reasons. In

[97] Dolf Zillmann and Silvia Knobloch, 'Emotional Reactions to Narratives about the Fortunes of Personae in the News Theater' (2001) 29 *Poetics* 189, 191.
[98] J Haskins, '*Morbid Curiosity and the Mass Media: A Synergistic Relationship'* in: Crook, J A, Haskins, J B, and Ashdown, P G (eds), *Morbid Curiosity and the Mass Media: Proceedings of a Symposium* (1984, University of Tennessee and the Garnett Foundation, Knoxville), 2.
[99] Dolf Zillmann and Silvia Knobloch, 'Emotional Reactions to Narratives about the Fortunes of Personae in the News Theater' (2001) 29 *Poetics* 189, 191.
[100] Ibid, 191.

doing so, they become more dependent on the media to fulfil the 'surveillance function'[101] and therefore meet these deeply rooted needs. This dependence may vary depending on the position or role in which the person plays within the criminal justice system; be it as a judge, jury member or as a member of the public who passively accepts information given without any connection to the proceedings.

B *Judges and the Media*

It is a commonplace assumption that judges within our criminal justice system act in an impartial, fair and just manner. The maxim in Australia is that:

> No judge would be influenced in his judgment by what may be said by the media. If he were, he would not be fit to be a judge. [102]

This is a similar presumption to which the United States accepts as stated:

> Judges are supposed to be men of fortitude, able to thrive in a hardy climate and not sensitive to the winds of public opinion.[103]

However to state that judges are somehow immune to media representations is axiomatically incorrect:

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[101] P Shoemaker, 'Hardwired for News: Using Biological and Cultural Evolution to Explain the Surveillance Function' (1996) 46 *Journal of Communication* 32, 32.

[102] *Victoria v Australian Building Construction Employees' and Builders Labourers' Federation* (1982) 152 CLR 25 (the BLF case) per Gibbs CJ quoting Lord Salmon at 33.

[103] *Craig v Harney* 331 US 367 (1947).

> We live in a media culture to which no one is immune. Monarchs and popes react to media pressures. That judges should not is a noble idea and one we should cultivate. However, it is not a fact upon which law can safely be based.[104]

In contrast it is argued that it is inherent within a judge's everyday tasks to prevent him or herself from allowing prejudicial media, facts or commentary from having any effect upon his or her final judgments:

> It is the everyday task of a judge to put out of his mind evidence of the most prejudicial kind that he has heard and rejected as inadmissible. It is not uncommon for a judge to try a case which was the subject of emotional public discussion before the proceedings commenced. I find it quite impossible to believe that any judge of the Federal Court who may ultimately deal with the proceedings in that court will be influenced in his decision by anything he may have read or heard of the evidence given or statements made at the inquiry.[105]

So the question that is asked of this information is how these conflicting viewpoints reconcile with the previously discussed theoretical models and theories. Even though judges may well have a greater ability to discern legal fact from sensationalized fact perpetuated from the media, one cannot assume that this will have no effect upon his or her attitudes or beliefs. Core to the *Cultivation Theory* is that media has an influence over all members of the public, regardless of their idiosyncrasies and central to the *Dependency Theory* is that this influence will increase as the information

[104] David Anderson, 'Lessons From An Impeachment' [1999] *1 University of Technology, Sydney Law Review* 63, 64.
[105] *BLF Case* (1982) 152 CLR 25.

provided fulfils certain needs[106]. Whilst judges will have a greater understanding of the criminal justice system to that of an everyday citizen, and thus the fulfilment of 'evolutionary self-preservation' will not be strived for through these means there are other needs to which judges may rely upon. After all, advancement through judicial ranks is largely based upon reputation, and ambition to progress careers is undoubtedly of importance to many members of the judiciary:

> It is not lack of ambition that makes men and women become judges and elevation to the bench does not eradicate ambition. Lower judges aspire to be higher judges, justices aspire to be chief justices and they all aspire to be remembered kindly by history.[107]

This idea of self-interest was discussed by Gleeson CJ in *Forge v Australian Securities and Investments Commission*:

> Judges are commonly promoted (by executive governments) within courts or within the judicial hierarchy. Such promotions may involve increased status and remuneration. Throughout the history of this Court, most of its members have arrived here by way of promotion. There may be some people who would say that could erode independence and impartiality.[108]

Gleeson CJ goes on to qualify this statement by saying:

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[106] Ball-Rokeach, S J, and DeFleur, M L, 'A Dependency Model of Mass-media effects' (1976) 3 *Communication Research*, 3, 6.
[107] David Anderson, 'Lessons From An Impeachment' [1999] *University of Technology, Sydney Law Review*, 63, 65.
[108] *Forge v Australian Securities and Investments Commission* [2006] HCA 44, 44.

> It is not a matter to be dismissed lightly, but in the wider context it is not decisive. It is difficult to legislate against the pursuit of self-interest.[109]

What the ideas of pursuing self-interest suggest is that the media could very well influence a judge who is mindful of potential career progression towards a more politically favourable judgement. In doing so they would fulfil needs suggested within the *dependent model* of media consumption, as well as influence his or her attitudes and perceptions as within the *cultivation model*. However in a lot of cases to which the public are most concerned about, the onus for a fair and just judgement can lay on the shoulders of twelve everyday citizens. Removing the enhanced ability to discern legal fact from media sensationalized jargon to which could be attributed to judges, one would assume that these citizens would be more at risk of falling victim to the media as a persuasion tool.

C *Jury Members and the Media*

It is well established that the role of the jury within the criminal justice system is to answer questions of fact. They are the 'sole judges of the facts' and the judge will merely direct them as to the 'relevant legal principles' and their application within the scope of the case.[110] But is admissible evidence the sole influence on the jury member's final decision? It has been discussed on many an occasion, with the consideration that jurors' decisions may be derived from a broad range of relevant sources including

[109] Ibid.
[110] Law Reform Commission of New South Wales, *'Consultation Paper 4 – Jury Directions'* (2008), 63.

newspaper reports, radio and television news, advertising and the like[111]. Just how much an influence outside coverage plays and whether this prevents the members of the jury from being impartial is open to speculation.

It has long been accepted that the idea of jury members having no predispositions and expectations is a legal fiction as stated in research by Diamond, Casper and Ostergren:

> The legal fiction that the jury operates on a blank slate, influenced only by what it hears and sees in court, and not influenced by predispositions and expectations.[112]

However not only is the purpose of the jury to establish questions of fact, but it is to do this whilst representing the community[113]. In doing so the courts recognize that every member of the jury has their own opinions, biases, prejudices and predispositions[114]. In order for jury members to do their job correctly, they must represent the community and the community's wide range of opinions, biases, prejudices and predispositions:

[111] Edith Greene, 'Media Effects on Jurors' (1990) 14 *Law and Human Behavior* 439, 440.
[112] Diamond, Casper and Ostergren, 'Blindfolding the Jury' (1989) 52 *Law and Contemporary Problems* 247, 251.
[113] Newton N Minow and Fred H Cate, 'Who is an Impartial Juror in an Age of Mass Media?' (1991) 40 *American University Law Review* 631, 656.
[114] Ibid.

> Among the twelve jurors there should be a cross-section of the community, certainly not usually accustomed to evaluating evidence, but with varied experiences of life and of the behaviour of people.[115]

In order for a jury member to represent the community they must be informed. Some commentators state that the exclusion of 'well-informed, curious, even opinionated people' is of the same category as exclusion based on sex, race or religion[116]. American commentators go as far as to say that:

> While jurists agree that jurors need to be impartial, impartiality, as defined by the Supreme Court and the experience of other countries that use jury systems, does not mean uninformed or unopinionated. It does not require an unrealistic, undesirable, and unobtainable robot-like ability to disregard prior knowledge, whether obtained via the media or through first-hand experience. Persons with such traits, if they exist, are poor choices for jurors.[117]

So it can be deduced that commentators and judges alike have vouched for jury members that are well-informed as to all forms of media surrounding their community. After all they must be representative of the community, and substantial members of the community engage with the various media outlets. Whilst all this commentary surrounds the positives of jury members who engage with media outlets prior to entering the criminal justice system, some discussion as to their engagement whilst playing the role of juror must be noted.

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[115] Criminal Law and Penal Methods Reform Committee of South Australia, *Court Procedure and Evidence* (Third Report, 1975), 84.
[116] Newton N Minow and Fred H Cate, 'Who is an Impartial Juror in an Age of Mass Media?' (1991) 40 *American University Law Review* 631, 656.
[117] Ibid.

Having established jurors as representative members of their community, they are susceptible to the same interactions with the media as their friends and relatives. Their version of social reality is likely to have been shaped through their interactions with the media, and quite likely they have become dependent on these interactions. Research into jurors' media consumption habits in relation to their attitudes towards the case has shown to be affected with significance. Barille in 1984 investigated this in an attitudinal study, and found that people who rely on crime news were more likely have entrenched views of crime that are heavily distorted and overly violent[118]. They were also more likely to believe courts favour criminals over victims, and thus have an inherent sense of mistrust, and suspicion as opposed to those who engage in less crime-news consumption.[119] Finally, they were also seen to support the use of force of police in the positive.[120] What all this means, is that continued exposure to crime-related media may well have an effect on jury members. However, these inherent effects of consistent crime-news consumption are likely to be found within a substantial portion of the community and thus be an issue we cannot resolve. After all, they are still theoretically representative of the community which is prosecuting the accused.

[118] L Barille, 'Television and Attitudes About Crime: Do Heavy Viewers Distort Criminality and Support Retributive Justice?*'* in R. Surette (ed) *Justice and the Media: Issues and Research* (C.C. Thomas,1984), 141.

[119] G Gerbner, L Gross, M Eleey, M Jackson-Beeck, S Jeffries-Fox and N Signorielli, 'TV Violence Profile No. 8: The Highlights' (1977) 27 *Journal of Communication* 171, 179.

[120] L Barille, 'Television and Attitudes About Crime: Do Heavy Viewers Distort Criminality and Support Retributive Justice?*'* in R Surette (ed) *Justice and the Media: Issues and Research* (C.C. Thomas,1984), 141.

D *The General Public and the Media*

The community relies on the criminal justice system to represent them, and to do what a reasonable person would consider to be fair and just. They expect crimes to be met with punishment relative to their culpability and:

> [the] imposition of sanctions that are of a nature and of sufficient degree of severity to adequately express the public's abhorrence of the crime for which the sanction was imposed.[121]

In order for the public to become aware and thus satisfied that such a process is being carried out, they must turn to the media. But when they do they are confronted with a disparate body of information. The types of offences that are covered by the media are the ones that are least likely to occur.[122] Meanwhile, the common offenses such as theft and burglary receive almost no air time. Media coverage of sentencing typically provide for sentences that would be likely to be seen as lenient. A great majority of sentencing coverage involve imprisonment, with little to no focus on fines or other orders.[123]

With consideration of the abovementioned factors, it is no surprise that the public knows little to nothing about the sentencing process nor the trends of sentencing. It has been found that the public underestimates the severity of offences, overestimates the occasions to which offenders are released, and

[121] John Tomaino, 'Punishment Theory', in Rick Sarre and John Tomaino (eds), *Exploring Criminal Justice: Contemporary Australian Themes* (South Australian Institute of Justice Studies, Adelaide, 1999), 162.
[122] R Estep and P Macdonald, 'How Prime-Time Crime Evolved On TV, 1976-1983' (1983) 60 *Journalism Quarterly* 293, 299.
[123] Julian V Roberts and Anthony N Doob, 'News Media Influences on Public Views of Sentencing' (1990) 14 *Law And Human Behavior* 451, 453.

the number released on parole.[124] Surveys throughout the world find that the public are generally dissatisfied with sentencing regimes, and find that overall sentencing is far too lenient[125]. A number of studies have been conducted into the links between media coverage, and these perceptions of the justice system. Roberts & Doob in 1990 demonstrated that upon exposure to crime stories in the newspaper, ratings of sentence leniency were significantly high. A very small percentage (16%) considered the sentences to be too harsh. Other indicators in this research allowed them to draw conclusions that had more information been provided to the participants it was likely that they might have had a different view entirely.[126]

A second study, into the form of information given to participants and the effect this has on their perception on the sentence was also conducted. Participants were assigned different groups, and given different media accounts of the same crime. Similar to the first mentioned study, high levels of dissatisfaction with the sentence were found with the tabloid newspaper's account. Accounts that gave more facts as to issues and factors surrounding the sentencing process were more likely to be considered favourable, showing that context is key.[127]

Perhaps the most significant study within the ambit of this research was a comparison between the provision of a newspaper account of a crime and

[124] Ibid.
[125] R Broadhurst and D Indermaur 'Crime Seriousness Ratings: The Relationship Between Information Accuracy and General Attitudes in Western Australia' (1982) 15 *Australian and New Zealand Journal of Criminology* 219, 220.
[126] Julian V Roberts and Anthony N Doob, 'News Media Influences on Public Views of Sentencing' (1990) 14 *Law and Human Behavior* 451, 456.
[127] Ibid.

consequent sentence, and the official court documents to groups of the participants. What was found was a significant difference between participants and the opinion of leniency (63% of media document group versus 19% of court document group). This shows a significant effect of the media's account of the same information upon the participant.[128]

What is indicative of these research studies is the position of power media outlets have over the general public. A clear majority of people in the community rely on the information they are given on a daily basis by the media, and perhaps have little or no knowledge how to expand or find alternative and more accurate accounts of the same fact scenarios. In doing so they are forced to consume the overly constructed versions of social reality put forth in order to fulfil their entrenched dependence on information that assists in their self-preservation monitoring. But by falling into this paradox of media influence and dependence, they are ultimately giving away any sense of control over their own attitudes and values.

V CONCLUSION AND RECOMMENDATIONS

What has been discussed in this research is of significance within any community's justice system. Understanding how the public perceives the justice system is fundamental to its goal in providing the community a way to reprimand and deter criminality. In order for this goal to be achieved, the justice system needs to be seen by the community to be effective. The most common way in which a member of the community can do this is through interaction with the media. The media has a significant role to play within

[128] Ibid.

the perpetuation of justice, and must take this role seriously. In cases where a court has placed no restrictions on the publication of proceedings, a great deal of discretion lays within reporters and the media outlet to select and portray criminal proceedings in ways that can influence the public.

Research has been discussed through this paper that suggests that media outlets are not taking heed to this responsibility. They are over-representing violent crimes, and choosing to consistently screen proceedings which the public may view as lenient as opposed to those which they would not. These choices are having a significant effect upon the community in general. A large portion of the community consistently claims that justice is not being conducted in a consistent and fair manner. Rather they state that sentences are inherently lenient and the criminal justice system needs re-evaluation. These kinds of attitudes can be seen to have developed as per the various media communication models and theories discussed earlier with studies having shown that exposure to media accounts in comparison to more complete documents will change the perception of the participant.

For future development, government departments should take further extensive research into the effect of media outlets upon the community. Restoration of community faith in our criminal justice system is key. By implementing regulations upon our media that could possibly involve one or more of the following we can strive toward a greater community development:

- Mandatory legal training conducted by the Law Society for all reporters as to which are the crucial elements of the proceedings.

- A regulatory body to ensure compliance with legal training, with the ability to bring actions against media outlets.
- Programs to encourage legal awareness amongst the general public.
- Increased accessibility to information surrounding the courts and the criminal justice process.
- More government-funded education in schools about the legal process, and principles of crime and criminology, to prepare the future generations to be more discerning of information given to them.

This list is evidently not exhaustive, and further research will allow for investigation into the possible effectiveness of these options. What needs to be done here is a realisation on the part of the executive, and the judiciary that there is a high level of dissatisfaction on the part of the Australian community. This dissatisfaction amongst the community is important to address as it can translate to greater problems within society. Lack of faith in the effectiveness of the criminal justice system can in many ways reduce community unity, persuade victims to not report criminal activity and even increase the possibility of vigilante movements. By addressing this issue now, we can prepare future generations for a full and deep understanding of the world around them and a proper appreciation for the work done by government entities in the combat of crime.