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INTRODUCTION

Introduction to Courts on Trial: Communication & the
Management of the Discourses of Disrespect

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INTRODUCTION

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In chapter 6 of this book, the author describes me at the most 'media literate judicial officer in Australia'. This is not so. I have laid down the judicial robe. And, even when I wore it, there were Australian judges who knew more about the craft than I. Chief Justice James Spigelman of the Supreme Court of New South Wales and the former Justice Ronald Sackville with his Channel 7 trial, for starters.

I accept that, during my decade as inaugural Chair of the Australian Law Reform Commission (1975-84), I learned much about the way the media in Australia then operated. I had to do this because, in law reform, survival or demise depended upon capturing the public's attention. Without it, the law reform institution, with its modest resources, would never secure the submissions, suggestions and help essential to the performance of its task. Moreover, without media prodding, politicians were often all too ready to ignore law reform proposals. So I learned to ride the tiger of the print and electronic media. By and large, they gave the Law Reform Commission fair treatment. It survived, indeed flourished. It has a good record in implementation.

The media liked the novelty of a body willing to criticise the law from inside the fortress. They assembled human interest stories on the plight of people who were on the receiving end of outdated and unjust laws. Above all, they were fascinated by a judge who would talk to them and try to summarise complex legal issues in simple and human terms. Apart from everything else, it taught me to think conceptually and to speak simply to avoid the media spike.

When, in 1984, I returned to the bosom of the judiciary, my media 'performances' declined markedly. Yet opportunities continued to present at conferences, seminars and other public occasions. Just as the other branches of government co-operated with media to get their messages across, I was never convinced that the judiciary

should cut itself off and have nothing to say to journalists who had, after all, the power to interpret society's public institutions to the people whom they served.

In the interval between 1975 (when the Law Reform Commission was created) and now, there have been many changes in the media in Australia and in the engagement between the media and the judiciary. Some of the changes have been for the better. The proliferation of new ways of carrying news and information – through telecommunications – helped to leap the Berlin Wall and to destroy the autocratic governments that had sheltered behind strong physical barriers. The Internet expanded enormously access to information. Satellites and even Twitter now bring breaking news to the living rooms of societies such as Australia's. This has meant that ordinary citizens are now much more closely engaged with the world around them than I was when, as a boy, I relied on H.D. Black to tell us, in school broadcasts, about the Chinese Revolution and the Korean War.

Courts are now the subject of reporting beyond the salacious homicide cases and divorce litigation of my youth. Journalists, dedicated to coverage of the courts, have been appointed both by print and electronic media to bring more news of such happenings to general notice than was ever the case in years gone by.

For all these improvements, there has been a definite downside:

- * Some media publications have made it their business to attack the judiciary and, in the process, to damage public confidence in the institutions of law beyond the deserts of balanced, rational analysis;
- * Some politicians have jumped on the band-wagon, because the novelty of attacks on the judges has been good for a headline or two. This behaviour has pandered to a politically desire to be seen as 'tough on crime';
- * Serious analysis of the detailed and often tedious work that judges perform has given way, all too often, to infotainment, exaggeration and personality reporting;
- * Print media attempts to arrest the decline of that medium by proclaiming every day some new 'scandal', 'outrage' or 'campaign', and to promote a never-ending atmosphere of fear, terror or, worse still, reader boredom;

- * Court proceedings are all too often misreported and misunderstood. If anything, the number and experience of trained, trusted and dedicated legal reporters, performing insightful analysis of the courts, has fallen away; and
- * Facts are now normally mixed up with comment. Adjectives are added to deprive readers and viewers of the privilege of making their own assessments (“the discredited ...”; “the disgraced ...”).

No-one is immune from these changes in media standards, witnessed in my lifetime. The Royal Family. Archbishops. Politicians. Golfing legends. Shock jocks. And the judges. It might not matter much except that, to be effective, courts depend, to some extent at least, upon the confidence of a community that is well informed about their doings or, at least, is not repeatedly misinformed.

So this is the problem that Dr. Schulz has addressed in this book. The work has grown out of her PhD thesis which, in turn, drew upon the empirical research that she conducted between 1995 and 2006. As these were years of great changes in the technology of media and in the widespread shift to tabloid techniques, Dr. Schulz has been able to draw upon a mass of data. Her empirical research started in her own state, South Australia. But it extended to a wider study of Australian media and of media around the world. It gathered the headlines on the reportage of court proceedings together with interviews with judges, some of whom were the subject of such reportage. It analysed the practical constraints which the media face, given the severe time difficulties involved in conveying complex facts in short, interesting and timely reports. But is also examined the worrying manner in which some media outlets present stories that represent a social or even political agenda. Such developments run the risk of creating a source of power in society that manipulates democratic institutions, abuses media financial interests and attacks the one institution that has so far proved relatively unsusceptible to media pressure: the independent judiciary.

Dr. Schulz has concluded that media-driven discourse on public issues, which in turn effectively dictates much of the political discourse in our society, reflects what she calls ‘the discourse of disapprovals’, ‘the discourse of disrespect’, ‘the discourse of

diminution' and 'the discourse of direction'. Anyone who cherishes a democratic society that puts limitations on the power of everyone, needs to read and reflect upon Dr. Schulz's investigations and conclusions.

None of this is to diminish the importance of freedom of expression in society. In Australia, at least as this impinges upon political discourse, that freedom now enjoys an implied constitutional protection. We all know how investigative journalism and even opinionative commentary and editorials have sometimes stimulated our society and its organs of government. Including the judiciary. Still, the concentrations of media ownership in Australia in relatively few hands, the phenomenon of infotainment and the discourses of disrespect described in this book present issues that need to be addressed if we are to keep our democracy strong and unmanipulated. And if we are to preserve our courts as brave and honest, even in the face of misleading reportage and misuse of media power.

Because these issues go to the very heart of good governance of Australian society, their resolution is of great importance to all citizens. I therefore welcome this book. It lifts the original research conducted by Dr. Schulz into the public domain. I hope that the book will enjoy wide readership among judges, journalists, media owners and the most important audience for all for whom it is written: the citizens.

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