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"The Third Arm and the Fourth (and Fifth) Estates"

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Introduction

1 Tēnā koutou, tēnā koutou, tēnā tato katoa.

2 It is a great pleasure to be with you in Aotearoa New Zealand and to have the opportunity to interact with friends and colleagues from the New Zealand judiciary whom I hold in the highest regard. Thank you to my friend Chief Justice Winkelman and Justice Matthew Palmer for your kind invitation to speak.

3 Both in Australia[1] and abroad,[2] senior judicial officers have publicly recognised the profound importance of the relationship between the judiciary and the media or, as partly reflected in the title of my address, the third arm of government and the fourth estate. Indeed, "The third branch and the fourth estate" was the title given by former

[1] See, eg, Sir G Brennan, "The Third Branch and the Fourth Estate" (Lecture, University of Dublin, 22 April 1997); The Hon. A M Gleeson, "Public confidence in the judiciary" (Speech, Judicial Conference of Australia Colloquium, 27 April 2002, Launceston).

[2] See, eg, R B Ginsburg, "Communicating and Commenting on the Court's Work" (1995) 83(6) *The Georgetown Law Journal* 2119 at 2323. See also Lady Chief Justice of England and Wales, Baroness Carr of Walton-on-the Hill, *Press Conference*, 18 February 2025 <https://www.judiciary.uk/wp-content/uploads/2025/02/LCJ-press-conference-transcript-18.02.24-1.pdf>.

Australian Chief Justice Sir Gerard Brennan to a lecture delivered at the University of Dublin in 1997.

4 Just over a quarter of a century later, I address that topic in a conference whose overarching theme is the rule of law at a time when that concept - which Australian and New Zealand judges regard as fundamental - is under grave threat, particularly but by no means exclusively in the United States, and at a time when there has been a profound change in what we have traditionally understood as the fourth estate: on the one hand, the decline of traditional newspapers and concentration of ownership in those that remain and the emergence of a new media, driven by extraordinary technological developments and most recently captured to a certain extent by powerful “tech barons”, aided by AI, with the ability to direct and control content.

5 For the rule of law to be understood and respected, the community must know and understand (i) what courts do especially in relation to the exercise of public power; (ii) why courts and their independence are important; and (iii) why they should be respected as a critical part of the civic infrastructure of a functioning and functional democracy. In this, the fourth estate may be an important ally in the democratic enterprise; parts of the media may, however, play a negative role which undermines proper understanding of and respect for the courts. I should emphasise immediately that that is not to say that courts should be above criticism.

6 The description of the press as the Fourth Estate is attributed by Thomas Carlyle to Edmund Burke who was said to have looked up to the Gallery at Westminster and:

> "said there were Three Estates in Parliament; but, in the Reporters' Gallery yonder, there sat a Fourth Estate more important far than they all. It is not a figure of speech, or a witty saying; it is a literal fact, - very momentous to us in these times. ... Whoever can speak, speaking now to the whole nation, becomes a power, a branch of government, with inalienable weight in law-making, in all acts of authority".[3]

7 The power of the press has not diminished over time but it has changed in its nature and, of course, expanded with the advent of radio and television and then through the internet and digital technological platforms. I shall return to this.

The Fourth Estate as ally and scrutineer

8 In the early decades of colonial New South Wales, newspapers reported the work of the courts on a regular basis and the first independent newspaper in the colony was *The Australian* founded by two Sydney barristers, Robert Wardell and William Charles Wentworth in the same year, 1824, as the establishment of the Supreme Court of New South Wales. The very first issue of that paper contained a detailed account of a case being heard in the Supreme Court in which Wentworth was one of the counsel. And when *The Age* newspaper was launched in Melbourne on 17 October 1854, its proprietors promised its readership that it would

[3] T Carlyle, *On Heroes: Hero Worship and the Heroic in History* (H. R Allenson, London, 1905) at 349-50.

report on the sittings of the courts of law and aimed at being "comprehensive, accurate and impartial".

9 Such aspirations may be seen as the "gold standard", and illustrate how the Fourth Estate may be a valuable ally to the courts in bringing the judiciary's work to public attention.

10 Traditionally, judges have been almost entirely reliant on the press to publish and explain judicial decisions to the wider public.[4] As such, the media has played a critical role as "intermediaries between the legal system and the people it serves"[5] with the courts and the press having been described as "partners in a mutual democratic enterprise".[6]

11 Faithful and accurate reporting by the media of the work of the courts can foster trust in, and facilitate an understanding of, the work of the courts and its importance amongst the public. This is critical as the judiciary is more dependent than perhaps any other public institution on the confidence of the public and the other arms of government. [7] As is often noted, the judiciary "has no influence over either sword or the purse",[8] and therefore *respect* for the work of the courts in a very practical sense is central to ensuring the efficacy of that work.

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[4] See generally M Groves, "Judges and the Media" in Gabrielly Appleby and Andrew Lynch (eds), *The Judge, the Judiciary and the Court: Individual, Collegial and Institutional Judicial Dynamics in Australia* (Cambridge University Press, 2021) 259.
[5] B McLachlin, "The Relationship Between the Courts and the Media" (Speech, Supreme Court of Canada, 31 January 2012).
[6] Sir G Brennan (n 1) at 14, citing L Greenhouse, "Telling the Court's Story: Justice and Journalism at the Supreme Court" (1996) 105 *Yale Law Journal* 1537 at 1561.
[7] See generally A R Blackshield, 'The Legitimacy and Authority of Judges' (1987) 10 *UNSW Law Journal* 155.
[8] A Hamilton, "Federalist No 78" in Alexander Hamilton, James Madison and John Jay, *The Federalist Papers* (New American Library, 1961) at 465.

12 Many senior Australian judicial officers have *extolled* the media as an ally of the courts and a necessary tool in communicating the processes and outcomes of our work to the public.[9] As I shall explain, some courts, including the Supreme Court of New South Wales, have become far more proactive in facilitating the promotion and importance of our work, and making it available to the public both directly or at least facilitating that through the press.

13 There is the allied point, as Sir Anthony Mason neatly put it:

> "Because the courts are concerned with maintaining public confidence in the administration of justice, judges cannot dismiss public opinion as having no relevance at all to the work of the courts."[10]

The rise of the Fifth Estate

14 Of course, the converse of the points I have just been making is that unfaithful and/or inaccurate reporting by the media of the work of the courts may undermine respect for the judiciary or obscure or adversely colour the importance of that work.

15 Inaccurate, unfair or misleading court reporting, including when it takes the form of undue or ignorant personal criticism of judges, can damage public confidence in and undermine respect for the judiciary,[11]and also expose individual judges to pernicious personal

[9] Brennan (n 1); Gleeson (n 1). See also The Hon Justice K Banks-Smith, *The Court of Law and Court of Public Opinion; reconciling the judicial process with public perceptions* (Sir Francis Burt Oration, Federal Court of Australia, 31 October 2024) 3; R Beech-Jones, "The Dogs Bark but the Caravan Rolls on: Extra Judicial Responses to Criticism" (Speech, Conference of South Australian Magistrates, 8 May 2017); Sir A Mason, "The Court and Public Opinion" (National Institute of Government and Law public lecture, Parliament House, Canberra, 20 March 2002).
[10] Sir A Mason (n 9) at 36.
[11] M Groves (n 4) at 259.

attacks. The line between the media being an *ally* and a *threat* to the courts may be a fine one.

16 Concerns about a mounting hostility towards the Australian judiciary by media and public figures first began to be expressed in earnest by leaders of the legal profession towards the end of the 20th century.[12] From 1992 on, the focal point for this criticism became a series of decisions of the High Court including *Mabo v Queensland (No 2)* (**Mabo (No 2)**),[13] *Wik Peoples v State of Queensland*,[14] and a number of decisions concerning implied constitutional rights which are now well-established features of the Australian constitutional apparatus.[15] *Mabo (No 2)* was, at the time, particularly controversial as it exploded the legal myth of *terra nullius* by recognising the truth that the lands of Australia were not "practically unoccupied" in 1788 at the time of white settlement.

17 Much ink has been spilt about the sustained and vehement response to these decisions by public figures and the media especially in the 1990s.[16] The febrile media environment at the time was described as an instance in Australian public life when "facts

[12] See eg Sir A Mason, "Judicial Independence and the Separation of Powers - Some Problems Old and New" (1990) 13(2) *UNSW Law Journal* 173 at 180–181; M Kirby, "Judges under Attack" (1994) NZLJ 365 at 366; Sir G Brennan, "The State of the Judicature" (1998) 72 *Australian Law Journal* 33; M Kirby, "Attacks on Judges: A Universal Phenomenon" (1998) 72(8) *Australian Law Journal* 599.
[13] (1992) 175 CLR 1.
[14] (1996) 187 CLR 1.
[15] See eg *Theophanous v Herald & Weekly Times Ltd* (1994) 182 CLR 104; *Australian Capital Television v Commonwealth* (1992) 177 CLR 106; *Lange v Australian Broadcasting Corporation* (1997) 89 CLR 520; *Dietrich v The Queen* (1992) 177 CLR 292.
[16] See generally T Josev, *The Campaign Against the Courts: A History of the Judicial Activism Debate* (Federation Press, 2017), chapters 4 and 5, and the sources referred to therein.

were swallowed by opinions".[17] As one academic noted at the time:[18]

> "The strident criticism of the Court left many with the impression that the judgments were not supported by extensive and careful legal reasoning. This helped create an environment in which misinformation could thrive."

18 All of this was before the rise of social media "which has spawned 'citizen journalists' who freely comment on the legal process" on online networks.[19] These are the members of the Fifth Estate who generally operate without or at least outside the constraints or professional discipline of the traditional journalistic process, such as fact-checking, adherence to a code of ethics and editorial oversight.[20] The Fifth Estate includes at least bloggers, social media users and some podcasters[21] (although a number of podcasts are by serious lawyers and journalists).[22]

19 The Fifth Estate has been described as emerging out of:

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[17] P Keyzer, "What the Courts and the Media Can Do to Improve the Standard of Media Reporting of the Work of the Courts" (1999) 1 *UTS Law Review* 150 at 151.
[18] Ibid.
[19] M Simons and J Bosland, "From Journal of Record to the 24/7 News Cycle: Perspectives on the changing nature of court reporting in Australia" in A Gulyas and D Baines, *The Routledge Companion to Local Media and Journalism* (Routledge, 2020) 193 at 197-200
[20] Ibid.
[21] Phillip Morris International, "Rethink Disruption: The Rise of the Fifth Estate" (White Paper, Winter 2023/4) at 15.
[22] *Amicus,* presented by Dahlia Lithwick, a lawyer and journalist, describes itself as "A show about the law and the nine Supreme Court justices who interpret it for the rest of America". In Australia, shows like *The Wigs*, which features three barristers "exploring and interrogating contemporary legal issues", have commented on recent criminal and public law decisions of NSW Courts and the High Court of Australia, as well as broader issues of practice and law reform such as changes to consent and foreign bribery laws. *Coffee and a Case Note*, hosted by a Sydney commercial lawyer, regularly discusses commercial decisions of the Supreme Court of NSW. The ABC's *Law Report* presented by lawyer and journalist, Damien Carrick, explores a range of Australian and international legal issues including episodes on the integrity of the jury system featuring the NSW Sheriff Tracey Hall and the investigation and prosecution of international war crimes. These podcasts have important work to do in educating the profession and the public alike about legal developments in an accessible format.

> "The growing use of the Internet and related information and communication technologies (ICTs) in ways that are enabling 'networked individuals' to reconfigure access to alternative sources of information, people and other resources…[23]
>
> …As an individual networked member of the Fifth Estate, you almost certainly use the Internet not only for sourcing information, but also to contribute, whether by simply clicking or posting links, mailing, commenting, rating, posting photos, blogging, tweeting, crowdsourcing, or otherwise creating content that adds intelligence to the Internet, and furthers the Fifth Estate's independence from any single institution.[24]

20 While journalists of the Fourth Estate work within an established hierarchy, and are often funded and owned by conglomerates or large corporations with journalistic reputations to uphold, those operating within the Fifth Estate work in "an evolving landscape of non traditional nodes of power",[25] and are "unlikely to be subject to any form of editorial control or commercial pressures or bound by any ethical code".[26] Fifth Estate citizen journalists are independent and freewheeling; they operate in self-publishing platforms and, seemingly, can publish *whatever* they wish, *whenever* they wish to do so. And perhaps most significantly – they may choose to remain anonymous**.**[27]

21 One manifestation of the Fifth Estate is the online social media forum "Reddit". "Reddit is described as a "social news aggregation, content rating and forum social network" which has posts organised

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[23] See W H Dutton, "The Fifth Estate Emerging through the Network of Networks" (2009) 27(1) *Prometheus* 1 at 1.
[24] W H Dutton, "The Internet and Democratic Accountability: The Rise of the Fifth Estate" in F Lee et al (eds) *Frontiers in New Media Research* (Routledge, New York, 2013) at 39.
[25] White Paper (n 21) at 15.
[26] J Barrett, "Open Justice or Open Season? Developments in Judicial Engagement with New Media" (2011) 11 *Queensland University of Technology Law and Justice Journal* 1 at 13, cited in The Hon Chief Justice M Warren AC, "Open Justice in the Technological Age" (2014) 40(1) *Monash University Law Review* 45 at 17.
[27] White Paper (n 21) at 54.

into subjects called “subreddits” and is moderated by community-specific, unpaid volunteers.

22 There are a great number of subreddits internationally that are dedicated to the discussion of law, courts, the legal profession and legal issues. These include subreddits called “r/Scotus”, “r/LawSchool”, “r/Lawyers” but also, more amusingly, “r/BadLawyer” and “r/TalesFromTheLaw”. There are also subreddits in relation to Australian courts and the law, in particular one called “r/auslaw”, which features posts and updates about matters such as recent Australian decisions and legal developments.

23 However, Reddit apparently relies upon crowdsourced moderation. This may result in an absence, or inadequacy, of effective fact-checking and misinformation detection including in relation to courts and judicial decisions. In this respect, it has been said that social media platforms can facilitate the spread of mis and disinformation, as well as sensationalised and/or graphic content that may serve to erode trust in the courts and the judiciary”.[28]

24 A distinctive feature of the Fifth Estate is the speed at which information may be disseminated. Citizen journalists have been described as possessing an enhanced “communicative power”,[29] owing to the “sheer speed with which…corrosive messages travel and the vast impact they acquire through modern communications technologies”.[30]

[28] See, generally, J Jasser et al, “Controversial information spreads faster and further than non-controversial information in Reddit” (2022) 5 *Journal of Computational Social Science* 111.
[29] See W H Dutton (n 23) at 15.
[30] R O’Neil, “Assaults on the Judiciary” (1998) 34 *Trial* 54 at 54.

25 Decisions involving, for example, crime and punishment, the care and custody of children, migration and asylum, and sexual assault and harassment are capable of evoking visceral emotive reactions. One can see this through the lens of the tragic case involving the killing of Molly Ticehurst in Australia last year.

26 She was killed by her ex-partner Daniel Billings, who himself was on bail after being charged with four counts of stalking and intimidating Molly Ticehurst, as well as three counts of sexual intercourse without consent, causing damage to her property, and abusing a 12-week-old puppy. The registrar granted Billings bail with a $5000 surety, an interim apprehended violence order, and a ban on entering Forbes – where Ticehurst lived.[31]

27 A flood of public outrage concerning the NSW bail laws followed Ticehurst's murders. Mainstream media outlets in *The Sydney Morning Herald,*[32] *The Guardian*,[33] and *The Australian Financial Review*[34] each ran articles calling for tighter bail laws. The headlines included: "How many more women have to die before we get serious

[31] J Baker, P Duffin and J Drennan, "The cruel twist of fate that let an accused killer walk free" *Sydney Morning Herald* (online) (25 April 2024) <https://www.smh.com.au/national/nsw/the-cruel-twist-of-fate-that-let-an-accused-killer-walk-free-20240424-p5fmbz.html>.

[32] Opinion, "How many more women have to die before we get serious about this epidemic?" *Sydney Morning Herald* (online) (26 April 2024) <https://www.smh.com.au/politics/nsw/how-many-more-women-have-to-die-before-we-get-serious-about-this-epidemic-20240425-p5fmhw.html>.

[33] T Rose, "'Molly's death was preventable': premier says NSW must learn from mistakes after Ticehurst family speaks out" *The Guardian* (online) (10 June 2024) <https://www.theguardian.com/australia-news/article/2024/jun/10/molly-ticehurst-death-domestic-staying-home-leaving-violence-government-premier-chris-minns-review-ntwnfb>.

[34] "Make this the tipping point on domestic violence" *The Australian Financial Review* (online) (May 3 2024) <https://www.afr.com/policy/economy/make-this-the-tipping-point-on-domestic-violence-20240430-p5fnki>.

about this epidemic";[35] "Molly's death was preventable…";[36] and "Make this the tipping point on domestic violence".[37]

28 One radio broadcaster, speaking on the radio station 2GB, said:

> "I know you're probably sick of me saying it, and I'm probably sick of saying it myself, but in the 34 years I've been doing this type of morning program, absolutely nothing has changed…
>
> Until there's a societal change in the way judicial officers and others deal with men who are violent towards women, we'll have what we're dealing with again this week."[38]

In another interview, the same commentator said:

> "Now you and I have spoken about the weak judiciary (in the past)…There's a new avenue of the judiciary failing the public, and it's domestic violence…We can chant from the rooftops, 'stop it!', but until the judiciary starts slotting these people, it'll continue to happen."[39]

29 This focus on judges (rather than broader, systemic bail laws) proliferated on various social media sites, and grew increasingly personal. One TikTok user commented:

> "The judge needs his/her licence taken off them. What a disgrace the system is. How do they sleep, so sorry to her and all of these victims that it has failed for".[40]

Another commented:

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[35] *Sydney Morning Herald* (n 32).
[36] *The Guardian* (n 33).
[37] *Australian Financial Review Article* (n 34).
[38] "Ray Hadley erupts over alleged murder of childcare worker" *9News* (online) (April 2024 2024) https://www.9news.com.au/national/molly-ticehurst-death-ray-hadley-outrage-after-accused-killer-ex-partner-was-on-bail/7f7c2f7f-3dde-4622-a64f-939af6a62e1c.
[39] See https://peterdutton.com.au/leader-of-the-opposition-transcript-interview-with-ray-hadley-2gb-21/.
[40] https://www.tiktok.com/@cinaacheson/video/7361199651522891009.

> "The magistrate who let him out on bail should have charges laid".[41]

30 Marilyn Warren, former Chief Justice of Victoria, has pointed out that:

> "Traditional news mediums have criticised the 'vehement' and 'caustic' discourse of new media, which they claim also frequently contains 'factual error[s]' and 'defamatory content'.[42]

I will return to this in the final section of this paper, but should note that the conventional media is not always immune from the charge of simplistic, sensationalist reporting.

The Fourth and Fifth Estates as facilitators of open justice

31 It is important to acknowledge that the media also has important work to do in ensuring that the courts, like all democratic institutions, are subject to scrutiny and publicly accountable to the communities they serve. It was this fundamental importance of open justice which led Jeremy Bentham to describe "publicity" as "the very soul of justice" and "the surest of all guards against improbity".[43] In this context, the media operates not so much as an ally but as a scrutineer of the judiciary.

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[41] Ibid.

[42] Warren (n 26) at 49, citing Barrett (n 26) at 13, quoting S Fish, "Anonymity and the Dark Side of the Internet" *The New York Times* (online), 3 January 2011 <http://opinionator.blogs.nytimes.com/2011/01/03/anonymity-and-the-dark-side-of-the internet/?php=true&type=blogs&r=0>.

[43] J Bentham, *The Works of Jeremy Bentham* (John Bowring ed) (Simpkin, Marshall, 1843) at 316.

32 The media plays a critical role in fostering open justice – a value which we cherish and which is recognised as an essential characteristic of courts in a democratic society.[44]

33 Most obviously, reporting on proceedings opens up those proceedings to a wider audience. Open justice is not simply delivered in the literal sense by the non-exclusion of members of the public from court hearings. It is facilitated by faithful reporting of court proceedings, bringing those proceedings to the attention of hundreds of thousands who have not physically been able to observe them. Of course, livestreaming of court hearings, facilitated by contemporary technology, means that observing proceedings is far more accessible to mass audiences without the intermediation of the press.

34 Additionally, social media platforms allow traditional court reporters and journalists to live blog from courtrooms. This means that the public is able to access information about court proceedings at a much faster rate than was previously possible.

35 However, the character or word limits imposed on tweets, as well as on posts on other social media platforms, can reduce the ability of reporters to accurately convey complex legal points or the nuances of particular arguments or evidence. Instead, these limitations may encourage journalists to cherry-pick the "juiciest" or most sensational moments from court proceedings which are likely to

[44] *Hogan v Hinch* (2011) 243 CLR 506 at [20].

attract the greatest engagement from social media users but distort the accuracy of the reporting.[45]

36 This issue speaks to broader problems associated with the age of the online "attention economy" in which we find ourselves, characterised as it is by a breakneck digital news cycle, the decentralisation of news media to a variety of online forums, the subtle effects of online algorithmic curation, and the inexorable rolling commentary of "X" (formerly Twitter). Faced with powerful incentives to make news short, engaging and "shareable", the inherent complexity involved in judicial decision-making is rarely conveyed in public debate.

37 These changes to the way in which the news cycle operates have naturally affected the business model that has traditionally supported most journalism in ways which have drastically affected the ability of traditional media outlets to report fully and accurately on the work of the courts and legal proceedings. Notably, and with certain exceptions, there has been an observable overall decline over at least the past three decades in both the quantity and quality of court reporting by the mainstream media.

38 There are now far fewer dedicated court room journalists than there once were. They are spread across fewer courtrooms and courthouses in Australia and elsewhere in the world.[46] In particular, there has been a considerable reduction in the number of court reporters covering local courts, the only courts with whom a vast

[45] P Lambert, *Courting Publicity: Twitter and Television Cameras in Court* (2011, Bloomsbury Professional) at 7.
[46] Simons and Bosland (n 19) at 197-200.

majority of the public will ever interact.[47] This reduction in the number of professional court reporters means that more cases are not being observed by anyone outside the legal profession and that a growing number of cases will be "lost completely to the collective memory."[48]

39 Additionally, court reporters are far less likely to be in the courtroom for the duration of any given case, and court reporting is no longer a consistent feature of the training given to cadet journalists. Both of these changes may compromise the quality of court reporting. The work of court-appointed media officers is thus particularly important to the extent that they are able to provide journalists with accurate information about what cases are being heard and facilitate knowledge of particular proceedings.

40 In addition to the reality that journalists are time poor and court reporting suffers from the temptation of journalists to sensationalise and attract readership or viewership, we must not fool ourselves that the public is hanging on our every word or all details of our work. As Justice Ruth Bader Ginsburg noted:

> "It is indeed hard, under the pressure of publication deadlines, to describe judicial opinions with entire accuracy. And, to describe actions accurately…is, in many cases, to describe them boringly".[49]

[47] Senate Select Committee on the Future of Public Interest Journalism, *Report* (5 February 2018) at [2.41]-[2.44].
[48] B Thornton, "The mysterious case of the vanishing court reporter" *The Justice Gap* (online, 7 April 2017) <https://www.thejusticegap.com/mysterious-case-vanishing-court-reporter/>.
[49] Ginsburg (n 2) at 2128.

Court outreach

41 I earlier referred to unfaithful and/or inaccurate reporting by the media of the work of the courts may undermine respect for the judiciary or obscure or adversely colour the importance of that work.

42 In recent years, courts themselves have taken a number of steps to pre-empt and respond to ill-informed media commentary by better engaging with the media and public alike. They include, but are not limited to, the electronic publication of judgments, the engagement of media managers, the production of judgment summaries, livestreaming of proceedings and use of social media accounts.

Publication of judgments

43 A corollary of the principle of open justice is that judgments of courts should be freely and easily accessible by the public. Much has changed since Lord Mansfield advised a general who, as governor of an island in the West Indies, was required to sit as a judge, to "never give your reasons; - for your judgment will probably be right, but your reasons will certainly be wrong."[50] The notion that judges should explain their decisions at all is of relatively recent origin and the recognition of any obligation to give reasons is even more recent.[51] The earliest Australian decision to express any obligation to give reasons was a Victorian decision handed down in 1922,[52]

[50] Cited in P Jackson, *Natural Justice* (Sweet and Maxwell, 2nd ed, 1979) at 97.
[51] The Hon D Mortimer, "Some thoughts on writing judgments in, and for, contemporary Australia" (2018) 42(1) *Melbourne University Law Review* 274 at 283.
[52] *Donovan v Edwards* [1922] VLR 87.

but it was many years before that obligation was uniformly recognised.[53]

44 At least since 1999, nearly all judgments of the Supreme Court of NSW have been published on the NSW Caselaw website where they are identified by a medium neutral citation number. Many decisions of the District Court of NSW, the Land and Environment Court, the NSW Civil and Administrative Tribunal and several other of NSW's courts and tribunals are also available on Caselaw.

45 When published online, judgments may be accompanied by catchwords and headnotes, and occasionally summaries. Catchwords and headnotes serve an important function in making judgments more accessible for the media, members of the public and the profession and facilitate the searching of and for judgments on particular issues and topics.

46 It is no longer considered necessary that judgments published by the court be judgments of particular legal or factual significance or in relation to matters which have received high levels of media or public interest. Rather, the publication of routine and ordinary judgments of courts is useful as a means of dispelling myths about judicial decision-making and simultaneously promoting increased awareness of the work of the courts. Widely publishing judgments of courts may also facilitate more informed reporting of court proceedings in the media.[54]

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[53] The Hon M Kirby, "Reasons for Judgment: 'Always Permissible, Usually Desirable and Often Obligatory'" (1994) 12(2) *Australian Bar Review* 121 at 122.
[54] See, e.g., L Newlands, "Lifting the veil – The Changing Face of Judgments Publishing in the Family Court of Australia" (2009) 17(4) *Australian Law Librarian* 250 at 252.

47 Although nearly all judgments of the Supreme Court of New South Wales are now published, there are a number of circumstances in which the principle of open justice will not result in publication. For example, the publication of judgments in criminal appeals will be deferred where a new jury trial has been ordered until the completion of that new trial. This is to reduce the risk that a jury will have access to material that should not be before it. Additionally, judgments in the court's adoption jurisdiction will not be published on the basis of concern for the vulnerability and privacy of the young people and their families involved in the proceedings.

48 The advent of the internet and the development of online repositories of legal materials has fundamentally changed the nature of judgment publication and the way in which the profession and the public obtain access to judgments of courts and other legal sources.[55] Judgments of the Supreme Court of NSW, as well as those of as well those of other Australian courts and tribunals, are now made available on legal databases like Austlii, Jade, Westlaw and LexisNexis following their publication by courts themselves.

49 During the 1980s, some concern was expressed as to this increasing availability of judgments of courts in Australia in "computer data banks" and it was argued that the Crown could deploy copyright restraints to control such use of judgments. However, former Chief Justice of NSW, Sir Laurence Street, counselled against the assertion of any such rights over judgments, observing that judgments "ought to be regarded as *pulici juris* –

[55] See, generally, A Fitzgerald et al, "Open Access to Judgments: Creative Commons Licenses and the Australian Courts" (2012) 19(1) *Murdoch University Law Review* 1 at 1.

available to all without restraint to be read, criticised, studied and understood." This is consistent with my earlier observations on open justice. His Honour added that there was "a great danger that, in seeking the clearly desirable end of orderly, regulated and restricted law reporting and data bank feeding, claims to copyright in judgments may be used as the method of control."[56] That has been resisted.

Media Officers

50 Since the 1990s, Australian courts have appointed "Public Information Officers" (now often known simply as media managers or media liaison officers), tasked with publicly communicating the work of the courts to the journalistic profession and facilitating requests for information, including for digitalised access to exhibits adduced in trials.[57] For example, the Supreme Court of New South Wales pro-actively informs members of the established media of forthcoming cases likely to be of public interest and early decisions are made with the advice of media managers as to livestreaming of particular cases.

51 The media manager also liaises with the media about non-publication and suppression orders as well as in advising judges about the interactions with the media.

[56] "The Crown and copyright in publicly delivered judgments" (1982) 56 *Australian Law Journal* 323 at 326, citing the Hon. L Street's speech at the Opening of Law Term Dinner (Sydney, 2 February 1982).
[57] See J Johnston, "A History of Public Information Officers in Australian Courts: 25 Years of Assisting Public Perceptions and Understanding of the Administration of Justice (1993–2018)" (Research Paper, Australian Institute of Judicial Administration, April 2019). This development was pioneered by the Family Court in 1983, and began to be adopted in other courts a decade later: at 1.

52 The media manager of the Supreme Court of NSW fields over 5,000 enquiries of this kind each year. It has been suggested that the work of media managers in this space played an important role in reducing the number of aborted trials caused by prejudicial reporting.[58]

Judgment summaries

53 It has also become routine for courts to issue judgment summaries in cases of particular public interest or complexity. These summaries serve the purpose of assisting journalists, without legal training, in reporting accurately on what can be lengthy, complex judgments whilst meeting the demands of the deadline-driven, time-poor conditions of modern journalism.[59]

54 While it is not possible to publish summaries of all decisions, at least in the Supreme Court of NSW, there has been a growing effort to publish these summaries, especially in relation to appellate decisions. Since August 2023, the Court has published more than 200 judgment summaries, the links to which have also been shared to social media pages.

55 Although summaries play an important role in encouraging accurate reporting by the media by condensing and simplifying otherwise complex judgments, judges must also, wherever possible, promote access to justice by, as put by former Chief Justice Gleeson, doing "their best to express their reasons in a form which minimises the

[58] GL Davies and S Then, "Why the Public Needs a Court Information Officer" (2004) 85 *Australian Law Reform Commission Reform Journal* 9 citing B Teague, "The Courts, the Media and the Community – a Victorian Perspective" (1995) 5 *JJA* 22 at 24.
[59] P Keyzer, "What the courts and the media can do to improve the standard of media reporting on the work of the courts" (1999) 1 *UTS Law Review* 150.

possibility of misunderstanding and misrepresentation" by the media.[60] Likewise, Chief Justice Mortimer of the Federal Court of Australia has said that "length, complexity, inaccessible or impenetrable language and many inaccessible concepts", although sometimes unavoidable, can "obscure the exercise of judicial power, rather than reveal it."[61]

Livestreaming and televising

56 Australian Courts have also increasingly permitted the livestreaming of proceedings to allow for greater access among the public and media alike. Historically, although the common law principle of open justice required that court proceedings be conducted in public, courts were reticent to allow cameras into courtrooms.

57 Cameras were first invited into an Australian courtroom on 20 February 1981.[62] Northern Territory Magistrate, Denis Barritt, the Coroner in the First Coronial Inquiry into the Death of Azaria Chamberlain, welcomed one television camera into the court "under strict conditions and undertakings … given by the people operating that camera", in order to broadcast the findings of the inquest on the basis that the need for "the dissemination of this news in an accurate form" outweighed "the other arguments which [were] advanced against it being televised." In deciding to allow the camera into the courtroom, the Coroner said the following:

[60] The Hon A M Gleeson, "Current issues for the Australian judiciary" (Speech, Supreme Court of Japan, Tokyo, 17 January 2000); J Henningham, "The High Court and the Media" in P Cane, *Centenary Essays for the High Court of Australia* (LexisNexis Butterworths, 2004) 54 at 57.
[61] Mortimer (n 51) at 296.
[62] D Stepniak, *Audio-Visual Coverage of Courts* (Cambridge University Press, 2008) at 210.

> "There are many reasons … as to why court proceedings ought not to be on television. However, this has been, a sensational case, it has touched … a great percentage of Australians…
>
> Courts are public places to which all members are entitled to attend. Of course, in an area such as Alice Springs the public at large in Australia are not afforded the opportunity…
>
> It is argued that to televise the decision is to add sensation to [a] situation that has already had too much sensationalism…
>
> Perhaps, alternatively, it could be argued that no great purpose would be served in denying the public the televised proceedings."[63]

58 It was not until 1995 that another camera would be allowed into an Australian courtroom to broadcast the sentencing of Nathan John Avent, a 23 year old who pleaded guilty to the murder of a young boy in 1994, in the Supreme Court of Victoria. Then Victorian Premier Jeff Kennet described the decision as an "unwelcome precedent".[64] However, by 1999, steps were being taken to facilitate news cameras entering courtrooms in NSW. The Attorney-General Jeff Shaw was reported to have said that the televising of trials in NSW was "inevitable".[65] His observation has been borne out by experience.

59 Most Australian courts have opened courtrooms to cameras, initially on a restricted, ad hoc basis, but more recently we have moved to allow streaming of court proceedings far more extensively.[66] This was one of the positive by-products of the pandemic which

[63] "Inquest finding on TV today" *The Canberra Times* (20 February 1981) at 3.
[64] H Lamberton, "Televised court cases on Keating's agenda" *The Canberra Times* (16 May 1995) at 2.
[65] R Morris, "Evidence points to regular court TV" *Daily Telegraph* (3 September 1999) at 7; C Ho, "NSW courts idea of televised trials" *Sydney Morning Herald* (3 September 1999) at 4.
[66] Stepniak (n 62) at 237.

acculturated the judiciary and the profession to virtual hearings. Notable occasions on which the Supreme Court of NSW has allowed cameras to enter courtrooms include for the televising of the first ever sitting of all-female Court of Criminal Appeal bench on 15 April 1999, for ceremonial sittings, including the 150th and bicentenary celebrations of the Court. It is now routine and unremarkable to livestream cases and, in high profile matters, to do so on the Court's youtube channel.

60 The media has also been occasionally permitted to film in courtrooms and courts for the purposes of making documentaries which have aimed to shed light on legal issues, courts and the work of judges. Notably, former Chief Justice Brennan allowed SBS to record an interview with him inside one of the High Court's courtrooms in 1997. His Honour also permitted the ABC's *Inside Story* to produce a one hour long documentary called *The Highest Court* which was recorded inside the High Court over a period of 18 months and included footage of some of the most influential cases of the 1990s, such as the decision in *Wik Peoples v Queensland* (1996) 187 CLR 1 concerning native title, and argument in *Kartinyeri v Commonwealth* (1998) 195 CLR 22, a case which concerned the power of the Commonwealth to legislate for the people of a particular race. The documentary also included footage of the day-to-day work of Chief Justice Brennan and a panel discussion between his Honour and Justices Toohey, Gaudron, Gummow and Hayne in relation to the work of the Court and their roles.[67] Chief Justice Brennan's facilitation of the documentary making was consistent with his Honour's view that "the courts should facilitate

[67] Stepniak (n 62) at 246.

media access to whatever is on the public record or in the public domain."[68] Such media coverage also facilitates the public's understanding of the courts as civic institutions of the highest importance. Enhancing such general knowledge and respect is especially important at times when the independence of the judiciary may be under attack.

61 The *Supreme Court Act 1970* (NSW) was amended in 2014 to provide for a statutory presumption in favour of applications by the media to record and broadcast the delivery of a verdict, sentencing judgments or judgment in a civil proceeding, except in certain narrow exclusionary circumstances.[69] Since that time, it has also become far more common for Australian courts to livestream civil proceedings generally as well as important ceremonial occasions. Livestreamed proceedings and ceremonies then sometimes remain on the Court's YouTube channel which presently has 35,700 subscribers. There has been an even greater uptick in livestreaming of court proceedings after the Covid-19 pandemic when courts were forced to rely on AVL technology to facilitate hearings.[70]

62 In 2021, the hearing of *Kassam v Hazzard; Henry v Hazzard* [2021] NSWSC 1320, which concerned the validity of orders made by the Health Minister pursuant to the *Public Health Act 2010* (NSW) during the Covid-19 pandemic, was livestreamed. Viewer numbers peaked at 58,484 people on the second day of the hearing and there were

[68] Brennan (n 1) at 12.
[69] *Supreme Court Act 1970* (NSW), s 128.
[70] C Nelson, "The 'most maligned' witness in the Christopher Dawson case: Gender, power, media and legal culture in the digitally distributed live-streamed court" (2023) 20(1) *Crime, Media, Culture: An International Journal* 83 at 87.

a total of 1,358,313 live views over the 12 days of the hearing.[71] Viewer numbers in relation to judicial review proceedings brought by tennis player, Novak Djokovic, in the Federal Court in respect of the cancellation of his visa by the Australian government prior to the Australian Open peaked at 86,000.[72] The Ceremonial Sitting of the bicentenary of the Supreme Court of NSW, which was also livestreamed, has now received over 1,300 views on the Court's YouTube and the launch of the commemorative book, *Constant Guardian: Changing Times*, over 1,100 views.

63 On the whole, televising and livestreaming of hearings, decisions including sentencing judgments and ceremonial occasions of public importance is a valuable and a natural extension of the principle of open justice. Such streaming allows the public readily to observe the nature of judicial work and, in the delivery of judgments, the public may observe the natural sifting of evidence and systematic, structured and careful working through of arguments. However, as the Coroner into the Death of Azaria Chamberlain acknowledged before allowing the first camera into an Australian courtroom, care must be taken, where possible, to avoid sensationalising solemn hearings. That will not always be in the Court's hands.

64 Livestreaming of proceedings has raised some unique issues, particularly in relation to matters which have attracted a high degree of public attention or that have produced divisive public and media discourse. For example, the highly publicised proceedings brought

[71] Statistics provided by the Court's Media Manager.
[72] B Ryan, "Novak Djokovic fights against visa cancellation in Federal Court hearing ahead of Australian Open" *ABC News* (online, 16 Jan 2022) <https://www.abc.net.au/news/2022-01-16/novak-djokovic-appeals-against-visa-cancellation-federal-court/100759378>.

by Bruce Lehrmann, a former political staffer, against media networks for defamation in relation to publications which had accused him of sexually assaulting Brittney Higgins, another former political staffer, inside Parliament House were livestreamed via YouTube. The delivery of the decision was watched live by over 40,000 people.[73]

65 Although orders were made prohibiting the rebroadcasting of that livestream, a YouTuber and host of the site "Feminism Debunked", quickly published some nine videos on YouTube as well as at least three other social platforms, which commented on the proceedings and included footage from the livestream. The matter was thereafter referred by the presiding judge to the Federal Court's Registrar for the commencement of contempt proceedings.[74]

Social media

66 As the public has relied increasingly less on traditional news media as a source of information, courts have also embraced the use of social media as a means of communicating directly with the public. The social media presence of courts across Australia and the globe has been facilitated for two primary reasons: first as a means of improving public confidence in the judiciary by ensuring there is transparency around decision making and, secondly, as a means of

[73] E Byrne, "Public interest in Bruce Lehrmann's defamation case has never waned, and there are still questions left unanswered" *ABC News* (online, 15 April 2024) <https://www.abc.net.au/news/2024-04-15/bruce-lehrmann-judgment-captivated-tens-thousands/103711216>.
[74] See, e.g., E Byrne and V Petrovic, "YouTuber Glenn Logan to face contempt proceedings in Federal Court after broadcasting Bruce Lehrmann defamation case" *ABC News* (online, 13 February 2024) <https://www.abc.net.au/news/2024-02-13/youtuber-glenn-logan-to-face-contempt-proceedings-bruce-lehrmann/103458956>.

protecting judicial independence by facilitating the explanation of judicial decision-making.[75]

67 For other organisations, government departments and businesses, one of the strengths of social media is that it allows for the exchange of information and ideas with stakeholders or customers. However, the institutional features and limitations of courts mean that they have generally used social media solely for "information transmission", whereby court social media pages share court news, judgments, administrative matters and broader legal updates.[76] Social media pages have generally not been deployed as a means of engaging in a dialogue with members of the public, although some courts have used social media pages to respond to public enquiries or to invite public feedback.[77]

68 The Supreme Court of NSW has been able to reach a considerable audience by way of social media. The Facebook page (which is the Court's primary social media platform) has 16,034 followers and typically obtains 50-60 new followers per month. The vast majority of those followers are aged between 25 and 44 and are predominantly based in Sydney, although there are also large contingents of followers based elsewhere in the state and the nation.

69 In the last 12 months, there were nearly 25,000 unique human clicks on judgment summary and judgment links shared by the Court to its

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[75] A Henderson, "The High Court and the Cocktail Party from Hell: Can Social Media Improve Community Engagement with the Courts?" in T Sourdin and A Zariski, *The Responsive Judge: International Perspectives* (Springer, 2018) 121 at 122.
[76] M Jackson and M Shelly, "The Use of Twitter by Australian Courts" (2015) 24(1) *Journal of Law, Information and Science* 83 at 85.
[77] A Blackham and G Williams, "Social Media and the Judiciary: A Challenge to Judicial Independence?" in R Ananian-Welsh and J Crowe, *Judicial Independence in Australia: Contemporary Challenges, Future Directions* (Federation Press, 2016) 223 at 231.

social media pages. The majority of those "clickers" accessed the link via Facebook, although a growing number are engaging with the Court via LinkedIn. 72% of those who clicked on summary and judgment links shared by the Court were based in Australia. There have also been readers based in the U.S., France, Canada and the U.K. as well as in other nations. Posts which concern the Court's criminal and criminal appellate jurisdiction are consistently the most heavily engaged with, although cases which have otherwise received considerable media attention or are of great public significance also attract attention.[78]

70 Nonetheless, attempts by courts to engage with the public via social media face many challenges. About 4.75 billion items are shared by Facebook users around the globe each day.[79] In this respect, while social media offers a potentially vast audience, it can be challenging for courts to break through. This is particularly so given the short attention span of social media audiences and the algorithms employed by social media platforms. These algorithms reward "shocking" content, rather than posts like those shared by courts that provide factual summaries of decisions recently handed down. Similarly, algorithms advantage posts focused on multimedia, such as video or image-based content especially since the boom of platforms like Tiktok. This is challenging for courts whose content is

[78] This data was sourced from the Supreme Court of NSW's TinyURL and Facebook analytics. TinyURL is used by the Supreme Court to generate shortened links to judgments and judgment summaries for the purposes of sharing on social media platforms and collecting information about engagement with the decisions of the Court.

[79] J Bagadiya, "Facebook Statistics and Facts in 2024" *SocialPilot* (online, 6 April 2024) <https://www.socialpilot.co/facebook-marketing/facebook-statistics#:~:text=On%20average%2C%20350%20million%20photos,by%20Facebook%20users%20each%20day>.

necessarily highly textual.[80] Shorter, snappier content also tends to be "rewarded" on social media platforms and some platforms set character or word limits on posts. This has raised some concern for courts which must ensure that posts fairly and accurately represent the proceedings before them and that posts provide useful information to the public.[81]

71 Courts have also found it challenging to engage with the public given the relatively small following of court social media accounts, in comparison to other uses.[82] For instance, the Supreme Court of NSW's 16,000 followers pales in comparison to football player Cristiano Ronaldo's 170 million followers and the 82 million followers boasted by McDonald's. In this respect, while traditional news outlets have certainly reduced in their reach in terms of traditional media, news media outlets have largely successfully migrated their operations to social media platforms where they too have much larger followings than courts themselves. ABC News for example has 4.8 million Facebook followers while the Sydney Morning Herald page has 1.5 million followers. This means that courts should not focus all of their attention on building their own social media presence and rather, should continue to facilitate information sharing relationships with media organisations in order to continue to leverage the followings of the traditional news media outlets as a means of disseminating information about the courts and their work.[83]

[80] J Johnston, "Courts' Use of Social Media: A Community Of Practice Model" (2017) 11 *International Journal of Communication* 669 at 672.
[81] Jackson and Shelly (n 76) at 87.
[82] Henderson (n 75) at 128.
[83] Henderson (n 75) at 138.

The Fourth Estate confronts the Fifth Estate

72 It is clear that the courts must these days deal with both the Fourth and Fifth Estates. Both can be allies in the faithful reporting and dissemination of our work, and both can play a role in "shining light" on the judiciary and offering criticism where criticism is due. But just as accurate and fair reporting and open justice may be facilitated by both the Fourth and Fifth Estates, they are different and neither is homogenous.

73 I conclude with a striking example of a case - *Louise Tickle & Ors v Surrey Country Council*[84] where the Fourth and Fifth Estates were both engaged. The case arose out of the tragic circumstances of the torture and murder of a 10-year-old girl named Sara Sharif by her father and stepmother, a circumstance that unsurprisingly and rightly provoked outrage in the community with commensurate coverage in the press. The tragedy was described by Williams J as follows:[85]

> "Sara Sharif was born on 11th of January 2013. We now know she was murdered by her father and step-mother and died on 8th August 2023; the cumulative effects of sadistic torture in which she sustained multiple injuries eventually overwhelming her. Rest in Peace. Her father has now been sentenced to 40 years in prison for her murder; her stepmother to 33 years for her murder and her paternal uncle to 16 years for causing or allowing her death. The sentencing remarks of Mr Justice Cavanagh on 17th December 2024 made horribly clear the appalling brutality she had been subjected to by her father and step-mother over the months and years preceding her death. Even having regard to other notorious murders of children by their supposed carers – Victoria Climbie, Peter Connelly, Star Hobson – the violence and cruelty Sara was subjected to was

[84] [2024] EWHC 3330 (Fam).
[85] Ibid [1].

> extreme. The very high sentences imposed no doubt reflect that."

74 Some years before, the child had been placed in the custody of her father and stepmother after a contested hearing by Judge Alison Raeside who sat in the Family Division in Guildford, West Surrey. She had a difficult decision to make but not necessarily any more difficult than judges are required to make on a regular basis. Her decision was made with the benefit of evidence and psychological and case reports. She could not have foreseen the ultimate horror that eventuated.

75 The murder trial of the father and step mother unsurprisingly attracted extensive publicity and coverage.

76 A number of journalists applied for disclosure of papers from the historic family court proceedings both before and during the trial. Williams J made orders giving reasonably extensive access to the papers but importantly, from the present perspective, ordered that the name of the judge in the Family proceedings (and two other judges who gave interlocutory decisions in those proceedings) be anonymized. This application involved a balancing of interests under the European Convention on Human Rights.

77 A number of features of this judgment are striking.

78 First, the judge refused to proceed on the basis that "the Court must proceed on the footing that any reporting of the proceedings will be responsible, fair and accurate": at [59]. He said:

> "That may be a useful starting point, but experience regrettably shows that some reporting is better than others

and that it is not a reliable end point. It is also the case that once the media applicants have published the information it is available to anyone to do with it as they wish and in an age of disinformation and anti-fact the court must have an eye to what onward use may be made of the information. As the reporting of the murders of Alice da Silva Aguiar, Bebe King and Elsie Dot Stancombe demonstrates all too clearly, those with malign intent can rapidly distort information to meet their own purposes with devastating realworld consequences. As I said in the course of the hearing the reality is that there will be a spectrum of reporting – even within the represented media parties. Many will indeed report matters responsibly, fairly and accurately. Some will not."

79 Justice Williams continued at [75]-[76] in powerful terms:

"Not naming those involved is not an exceptional step although not naming the judges is I accept an exceptional step. As the media parties have relied on in support of their application for extensive disclosure and publication rights it is the exceptionality of the case that warrants that level of disclosure and publication. However, the obverse side of that exceptionality coin is that individuals associated with the case will I have no doubt be subject to an exceptional level of attention. That attention will I have little doubt range from measured commentary through to rude and discriminatory slurs, moving onto vilification, abuse and threats. That I think is reasonably certain in the online world where a virtual lynch mob will readily be assembled in the current febrile atmosphere engendered online and fanned by the undermining of the rule of law and the judiciary worldwide notably in the USA but in this country also where a headline identifying senior judiciary as "Enemies of the People" was seen as legitimate comment.

The likely level of online abuse will be high. However, the reality currently is that in addition to that there is real possibility of some individuals going further – much further. The BBC reported only last week on the case of a man who attacked a firm of solicitors identified in the Daily Mail as being involved in processing asylum applications. Hotel's housing asylum seekers were firebombed. That is not to make the press responsible for the actions of those who perpetrate such acts

> but putting names and faces in the public domain bring with it potential consequences from those who are unstable, aggrieved, fanatical. Attacks upon those in authority by those with grievances have led to death (Jo Cox) and serious assault (HHJ Perusko), arson on the home of an expert witness (although the perpetrator accidently fire-bombed the neighbour's home) and stalking (judges)."

80 Justice Williams noted that, in his position as Family Presiding Judge of the South Eastern Circuit, he and the other Presiders reviewed security threats to judiciary on a regular basis, and noted that "[a]busive and threatening communications, threatening and abusive behaviour in court, stalking and online abuse are regrettably a growing phenomenon": at [77]. He referred to his personal experience of "taking on cases from judges who have been worn down by the barrage of abuse they have suffered at the hands of litigants joined by the virtual lynch mob": at [77]. He expressed concern that, given the anonymization of other participants in the family law proceedings including the social workers, guardians and experts, publicizing the names of the judges:

> "would make them a lightning rod for all the negative attention of the virtual lynch mob and the only exposed target for anyone who chose to give effect to their feelings in the real world. Delivering a potential scapegoat or a herd of scapegoats is not only likely to risk a profound infringement of their Article 8 (and in a worst case scenario potentially their Article 2 rights) I know myself from being the target of both social media abuse and threats within proceedings the impact of this and that is in proceedings which are of far less contentiousness than these. Having to implement additional security measures and being on alert when returning home is corrosive to well-being and even if such fears do not come to pass, they are all too real at the time."

81 Earlier this year, this decision insofar as it ordered the anonymization of the names of the judges was reversed on appeal[86] with the leading judgment delivered by the Master of the Rolls, Sir Geoffrey Vos, who gave primary emphasis to open justice and deprecated a number of the ex cathedra observations of Justice Williams and his use of "anecdotal material and his own experience to create a case for anonymising the judges" at [80]. The Master of the Rolls concluded that the judge "lost sight of the importance of press scrutiny to the integrity of the justice system": at [79]. He also indicated that security concerns about judicial safety should be addressed other than by suppression of their identity although he acceded to an application by the "historic" judges to be allowed 7 days from the date of judgment before their names were published, "to allow HMCTS to put measures in place to protect them from any potential harm once their names are released"

82 Since the names of the three "historical" judges in the Sara Sharif case were released by the Court of Appeal of England and Wales on the 24th of January this year, there has followed a predictable maelstrom of online abuse. The following excerpts are all gathered from X (formerly twitter):

> **@dukeofangry**: Here is Judge Alison Raeside. She sat through many family court hearings involving Sara Sharif…She should be sacked without benefits.[87]
>
> **@SimonS1970**: This is Judge Alison Raeside, who gave Sara Sharif back to her murderous father…why's she still a judge?[88]

[86] [2025] EWCA Civ 42. See also at [78].
[87] https://x.com/dukeofangry/status/1885333257618600440.
[88] https://x.com/SimonS1970/status/1885272469793067507.

@MaryBake: They [of the 3 historical judges] look soulless, dead eyes, evil fuckers, that poor child had no hope.[89]

@MrCovertKoala: The judge who released Sara Sharif to her monster father Urfan can be named as Judge Alison Raeside…I hope all her family and friends see just what she has done by making such a poor decision…Shame on this cretin...[90]

@5thNobodynorman: "c*** @judgeraeside.[91]

@Xrad72: …[T]here are x3 monsters in the case of the murdered child – the father, step-mom & Judge Alison Raeside.[92]

@Richard70641109: How evil must you be, Judge Alison Raeside, to facilitate a child to die is (sic) this most horrific way. Judge even Satan has standards. Your task is stoking the fires of hell to warm your fellow humans who abuse children.'[93]

@Bay26088196: Doubtless she gives a toss, the vile degenerate.[94]

83 It was no coincidence that, around the same time, Baroness Carr, Lady Chief Justice of England and Wales, who has announced the establishment of a Security Taskforce to identify what improvements can be made to safety measures for judges, stating that "incidents threatening or compromising judicial safety are becoming all too common, both inside and outside of the courtroom, and online as well as physical."[95]

[89] https://x.com/MaryBake/status/1885327483148345812.
[90] https://x.com/MrCovertKoala/status/1885304605505917120.
[91] https://x.com/5thNobodynorman/status/1885275165145096292.
[92] https://x.com/Xrad72/status/1885601945571791118.
[93] https://x.com/Richard70641109/status/1885392465659597032.
[94] https://x.com/Bay26080196/status/1885450709790872063.
[95] *Incidents where judges at risk becoming 'too common', Lady Chief Justice says* (Independent, 31 January 2025), available at <https://www.independent.co.uk/news/uk/crime/williams-court-of-appeal-surrey-england-wales-b2689734.html>.

Conclusion

84 Much has changed in the years since 1997 when Sir Gerard Brennan delivered his lecture on "The Third Arm of Government and the Fourth Estate" which I referred to in opening, most notably the emergence of the Fifth Estate but also in terms of the changing nature of traditional media which I have referred to as the Fourth Estate.

85 In many respects, exposure of the work of the courts to the public and commentary on it has increased exponentially. Much of that is positive but aspects of that expansion are a source of great concern.

86 Sir Gerard offered the view that:[96]

> "Public confidence in the rule of law is not to be won by the issuing of media statements nor by background briefings that might be suspect as putting a favourable spin on the work of the courts. The media would abandon their responsibility if they were to publish uncritically summaries of cases or other media releases issued with the authority of the courts. The media must themselves probe and analyse the reasons for judgments of public importance. The basic justification for freedom of the press is the employment of an informed and critical faculty and the employment of that faculty is a source of pride to the competent journalist. If the courts were to furnish digests of information for the media to publish, they would abandon the independence which both must assert and defend in the public interest".

87 I differ and see a more pro-active role for the courts in their engagement and relationship with the media. That is driven by an

[96] Ibid.

urgent concern for the promotion of the rule of law including education as to the role of the courts in our civic infrastructure.

88 No doubt, in an ideal world, the "*well-furnished legal journalist*"[97] would be capable of bringing their own faculty to bear upon the reporting of judgments: to scrutinise the result, to perceive the relevant principles, to meticulously differentiate between *ratio* and *dicta*, and to discern for themselves what is or is not of public interest. We do not live in such a world, if ever we did.

89 It is nowadays important and legitimate for courts to take a more active role in assisting, *without regulating or restricting*, both the Fourth and Fifth estates in their reporting on our work and in drawing attention to the importance of the independence of the courts for the rule of law.

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[97] Ibid.