

The need to know

Law, politics, the community, the profession, the media



On 31 March 2006 Nicholas Cowdery AM QC, Director of Public Prosecutions delivered a speech at the Bar Association's media awards lunch.

This is Law Week in Australia. It is the time when the community has the law and lawyers in its face, more than usual, for the purposes of highlighting the role of the law in our lives and informing the community about it. Today, as part of that exercise, we honour media professionals (as they are described in the entry criteria for the awards) for excellence in journalism related to law and justice – recognising the best among those professionals who, during 52 weeks in the year, may bring the law to the community and remind us of the importance of justice in our lives.

Media professionals inform and they comment and by those means provide an essential service to the community; but some are better than others. In the seventh Manning Clark Lecture on 2 March 2006, Father Frank Brennan said:

It is easy for all of us to be critical of our governments and of our media. But in a democracy we elect our governments and the media feeds us what we like to consume. When we elect leaders without pity, when our judges fail to show pity, when our civil servants act without pity, or when our media pursues ratings by denying pity and love, there is every chance that they are reflecting us back to ourselves.

We live in a democracy under the rule of law. It is not easy to describe that in a few words but I shall try, at least, to identify a few of its features. The rule of law connotes regulation by laws that are democratically made; laws that protect and enforce universal human rights; laws that are certain, being prospective, open, clear and relatively stable; laws that apply generally and equally to all, including (so far as possible) to the government; laws that can

be impartially, honestly and fairly applied and whose effects are subject to review by independent arbiters. In our system of government the separation of powers is vital. There must be an independent judiciary (as the third arm of government) and an organised and independent legal profession to ensure access to justice with procedural fairness. The process of regulation of society must be reasonably transparent and completely accountable and it is incumbent upon the media especially to foster an enlightened public opinion to assist all that to occur, to examine what happens and to complain if it goes wrong.

The public must also have confidence that differences between citizens and between citizens and the state can be resolved peacefully through a system of justice that enables all to obtain fair and impartial treatment. It is important that the media not do anything to damage that confidence without good cause, because without the general support of the community we lawyers are wasting our time.

The law is not to become the plaything of the powerful. The rule of law has little to do with law and order and it does not mean the law of the ruler (nor, I remind my legal colleagues, does it mean the rule of the lawyer).

The law is a living thing and it must be and remain reasonably in accordance with informed public opinion and general social values and there must be mechanisms for ensuring that occurs. The community therefore needs to understand what this essential aspect of government does and how, if at all, it should change. I say again: the media has a vital role to play in fostering this understanding.

To give an example of change: it was recently proposed in parliament by the premier that the attorney general be allowed to seek continuing detention orders for up to five years and extended

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supervision orders for repeat sex offenders after their sentences have expired. On its face, that is an extraordinary proposal; but where was there published an informative, critical article about it? The *Sydney Morning Herald* and the *Daily Telegraph* gave largely factual reports of the speech with a minimum of comment, as if the passage of such a law was a foregone conclusion. The presidents of the Bar Association and the Law Society were given some airtime to voice their concerns. But since when has our democracy regarded it as proper to impose preventative detention on individuals at the application of the executive? Yes, the official terrorism panic has put such provisions in place in that context (and much could be said about that) – but for ordinary criminals? Since when has it been acceptable to punish people for offences they have not committed? How does that stand alongside the pillars of the rule of law? But it seems that nobody undertook the enlightenment of public opinion on that important subject and I heard on the radio (the ABC, of course) yesterday morning that the law was passed on Wednesday night.

In our state we have a government that (not uniquely) is media-driven, so you representatives of the Fourth Estate wield immense political power. It is common to divide the media (in all forms) into the equivalents of broadsheet and tabloid. Politicians react to the tabloids in developing policy and legislation and in prioritising public expenditure. Tabloids are usually short on factual and contextual information sufficient for consumers to make informed decisions about the issues presented. The stories do tell them what to think about, but in a generally emotional or moral framework. They do not help consumers to form their own thoughts in an informed way or follow through to help the public fully appreciate and actively assess the competing range of responses to what is reported and their potential consequences. The broadsheets, generally, do more of the latter.

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Media professionals, as Michael Pelly said in a talk to the NSW Bar last year, are in the business of storytelling. They must inform; but they must also entertain; and they must do it in a compelling way so as to hold their audience. In newspapers, Pelly said, surveys show that four out of five readers never get past the first 180 words of any article. (I have spoken about ten times that number already.) So the lead must not be buried – and then the important bits can follow for those who can be bothered or who have the time to read on.

At present, by reacting to tabloid media headlines, politicians defer to incomplete expressions of views by an uninformed public and their sound byte spokespersons. They respond to self-selected comments, often to unrepresentative polls, all published in outlets that are known for their biases and ongoing agendas. There seems little chance that this will change and no politician can afford to be appearing to disregard the apparent will of the constituents. But it is only apparent and not real. While the latest radio ratings published this week show Alan Jones' station 2GB with a 13.4 per cent share of the total radio audience – not in itself a very high proportion – it is only fifth in the number of listeners measured (up from seventh last year). It seems that a small and loyal group of a certain demographic, through symbiotic spokespersons, has undue influence over our political masters.

There is more that we can all do and the winners of these awards today show the way.

The Local Court of New South Wales has an excellent programme of occasional workshops for junior journalists, showing them how the courts work and introducing them to some of the tricks

and traps of court reporting. The Homicide Victims Support Group held a media night last year to inform journalists about the impact of the media on the lives of victims – it was well-attended; but, it must be said, largely by those who knew the messages already and who observed them in practice.

The Bureau of Crime Statistics and Research publishes absolutely excellent work – more notice should be taken of it and weight given to its research findings.

All of us, in what we say, write and do, should bypass expressions of shallow, unconsidered, unrepresentative so-called public opinion and try to obtain informed public judgment on important issues. That can only follow from people engaging in an issue, considering all aspects, understanding the choices involved and accepting the consequences of the choices they make. The media must assist by giving us the information to work with; and you representatives will have an important role to play in relation to criminal justice, especially, in the year ahead with an election in sight. Accurate and complete information can help enormously to prevent knee-jerk reactions and hysteria in political responses to utterly mundane events.

The rule of law must be preserved and we can all do our bit.