Introduction

Courts are a public mechanism for controlling behaviour and resolving disputes. They set standards of punishment and precedents for dealing with fights between governments, companies and individuals. But they are fascinating to the public for another reason – they are real. Criminal sanctions can cost real time in jail. Civil arguments can cost real money. Those who enter the public galleries can see real people at their best and worst under pressure.

Many excellent textbooks deal with the complexities of media law. They set out the statutes and cases relevant to journalists and their employers. A few provide hints for reporters – check the details of the case, don't read the newspaper in court, be courteous to court officials. This book does this too, but generally it aims to show how journalists report the courts day by day.

In the past, a few months working at the courts was an essential part of a journalist's cadetship. Dreams of exposing governments and writing features were put aside as the newest recruit clipped newspaper stories for the pressroom scrapbook or gathered adjournment dates for the diary. When they finally were allowed to report on a case, the cadet would be quizzed on the charges, the names of the lawyers and the magistrate (they would be lucky to report on the higher courts) and other basic details their mentors had written a thousand times. They would be taught discipline and respect for accuracy, and leave to start careers reporting on politics, sport or world affairs.

These were the stories the experienced court reporters at the big newspapers told. I started by accident, when the former courts roundsman left our afternoon paper and I failed to run away quickly enough. I had finished a media law subject in my university course,

but a day or so with the departing reporter summed up the preparation. Our early deadlines meant it was hard to venture too far from the Brisbane Magistrates Court, where simple cases could be covered quickly (or was it quick cases covered simply?).

An experienced country journalist saved my bacon at the first murder trial I attended, in the Queensland town of Roma. A young local man was accused of two murders, and any lessons about the perils of contempt of court had obviously slipped my mind. At another afternoon paper in Adelaide, the education was more organised. The cadets were taken slowly through the courts. They had to earn the right to send stories, and graduated from minor cases and bail applications to reporting the State's major trials.

Journalism education has changed. Trainees take classes and workshops. They learn about their news organisation and are encouraged to think. At our newspaper, senior reporters give talks about their areas of expertise. Some of the trainees find their way to the courts, others work in a variety of journalistic disciplines.

This is an attempt to let young journalists and journalism students know what they will see if they are sent to the courthouse. News editors around the country no doubt will tell them how easy it is. You turn up, the stories are all there, all you do is wait for people to give them to you. After you spend some time at the round, it's easy to believe they are telling the truth. Lawyers and court staff get to know you. They tell you things. You find ways of obtaining documents and other information.

Then last year, the court hacks had to cover a case between two pressure groups adept at gaining publicity. Background material arrived at the office, complete with suggested interviewees and their telephone numbers. Photo opportunities could be organised, spokespeople could be found. When the hearing finished and the decision was made, the competing parties were happy to supply more quotes, and declare themselves the winner (or at least, the non-loser). One fellow offered to supply the background material again. This was money for jam.

The daily reality of covering courts is that the judges and lawyers believe with some justification that they could do their job successfully and probably with less difficulty if media interests were not present. They do not need journalists to help them sell products

or get them re-elected. They have been professionally trained. If anything, many believe court reports distort their messages about crime and punishment to the community. Some of them make reporters work for basic pieces of information that would help accuracy. They suppress information swiftly, and use complex language which hides the real intent of their orders.

Court veterans can remember sitting for hours as judicial officers read every word of a significant ruling before announcing the decision. Somehow, I missed a six-hour effort by one judge, but watched the clock as a shorter effort slowly put pressure on an early Friday deadline. The story made the front page, which was held as late as possible so we could accurately interpret the judgment. Did we? It's hard to know. There were no complaints on the following Monday. New stories were on the way by then, so we looked forward to them.

Technology has changed the position. Judges are accustomed to electronic communication. It is commonplace, not revolutionary, to make multiple copies of important decisions, and distribute them around the country. The employment of court media officers has helped as well. They have a job to promote and protect their court, but their daily role lies in the 'nuts and bolts' work of advising on information access, checking suppression orders and obtaining written decisions. Criticism of sexist comments and perceived light sentences has angered judges, but their courts are adapting by making knowledge easier to get. Critics cannot trade on ignorance if everyone can know what the court said.

Reporters are changing as well. They are better educated and more likely to challenge the traditional notion of objectivity that underpins court reporting. They are quick to move from the round if they are denied opportunity. But they learn quickly, and seem to show less fear of disturbing legal convention.

Despite this, some truths remain. The need for accuracy, the desire to listen and the ability to translate legalese into ordinary language are still prized skills. Today, the job in our pressroom was to reduce a 215-page judgment into an eleven-paragraph story. It is impossible to retain the detail and breadth of argument in such a reduction. The aim was to find the essence of the case and convey it while recording the result.

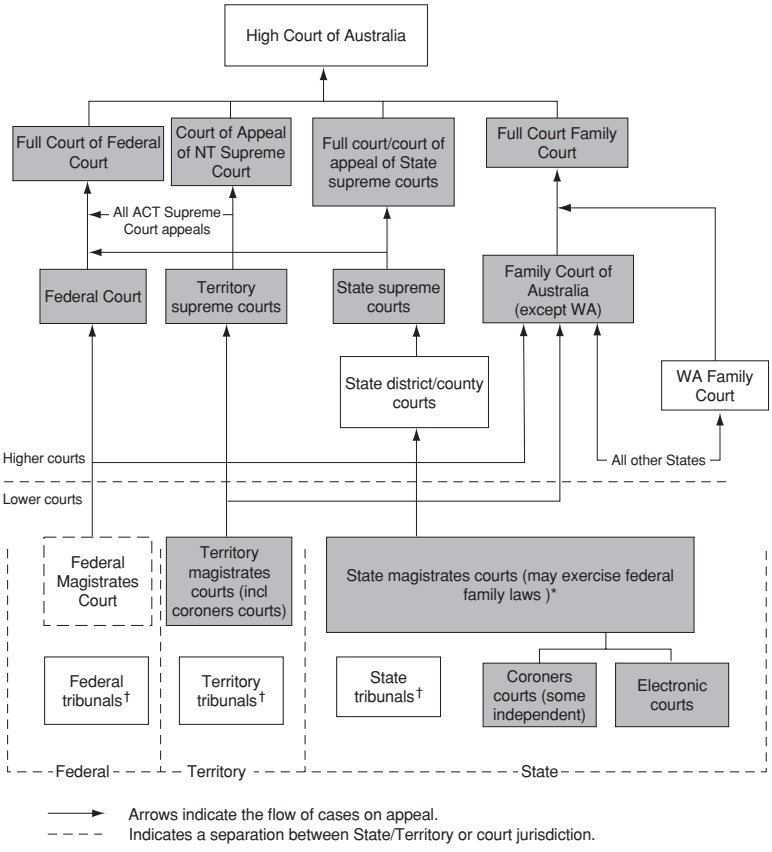
In one sense, this text has a similar ambition. It seeks to place readers in the reporter's shoes, just as the court story should place its audience in the courtroom. It will discuss story writing, obtaining information, and the relationships entered with colleagues and court workers. A 'reality reporting' exercise on a busy Friday (Chapter 9) shows how one group of working journalists approaches an exhausting work agenda. Other chapters describe the perspectives of radio and television reporters, subeditors and photographers.

One chapter examines the practicalities of obtaining information from the court system. Administrators and media officers set out the access available to media workers and the cost of searching files. With the help of other guides, chapters on contempt, suppression orders and defamation discuss legal hurdles which reporters confront every day.

Chapter 1

The Court System: An Overview

Courts are society's mechanism for enforcing its laws. Their purpose is to protect individuals and their property, to let our economic and parliamentary frameworks operate and protect the community as a whole. The Australian legal system, based on British law, is commonly called a hierarchical one. Minor cases, like small thefts and assault, or less serious breaches of traffic rules, are heard at one end of the system, usually called Magistrates or Local courts. At the other end, the High Court hears constitutional arguments and is the final appeal court for Australian cases. Parliaments make laws; so do judges by the decisions they make in court. Court-made law is otherwise known as common law. Laws have been developed to handle perceived breaches of rules and a variety of other disputes. Criminal courts hear evidence, make decisions and impose sanctions for offences ranging from parking fines to murder and treason. Civil hearings deal with arguments over contracts and non-criminal wrongs by one party resulting in loss or harm to another. Claims for compensation for personal injury caused by negligence or damage to reputation from defamation fall into this category. Family break-ups and the surrounding issues are another. A range of behaviour involving children is administered by a separate court, although the more serious offences can be heard in the adult system. Commonwealth laws, deaths, financial and broadcasting cases and migration debates are all covered within the court hierarchy. Tribunals, designed to be less formal and less expensive than the courts, have been developed to sort out arguments in a more efficient way. Appeals can be made to the court system, but resolution is encouraged. In a similar way, mediation between parties, with a trained lawyer or quasi-legal officer facilitating discussion,



* Appeals from lower courts in NSW go directly to the Court of Appeal in the NSW Supreme Court.
† Appeals from Federal, State and Territory tribunals may go to any higher court in their jurisdiction.

Figure 1.1 The court hierarchy (Source: Australian Bureau of Statistics, published in *Year Book Australia* 2002)

is another method of seeking an end to a dispute without the cost and formality of going to court.

Mediation is a method that tries to avoid the most confrontational aspects of the usual adversarial approach of the courts. Unlike some systems, in which a tribunal of judges supervise what is said to be a search for the truth, parties in our structure present conflicting arguments before judicial officers or judges and juries. In a criminal trial, an accused is presumed innocent, and the prosecuting authorities must prove their case at the highest legal standard,

beyond reasonable doubt, to gain a conviction. An accused person is not required to give evidence. The judge in a jury trial decides on the law, and which evidence is admissible or able to be presented before the jury. Jurors are told they are judges of the facts – they determine the facts of the case based on the evidence before them. They are not allowed to be investigators, and trials have been aborted, or cancelled, to be started again before a new jury, because jurors have used the internet or conducted their own inquiries outside the trial. Prosecutors at a criminal trial sit closest to the jury at the bar table. They have a duty to present all relevant evidence, and represent the community by bringing the charge or charges against an accused person. In the lower courts, police prosecutors with specific training present the prosecution case. Lawyers known as barristers address the court in the higher jurisdictions. Senior barristers, known as Queen's Counsel, or Senior Counsel, may have another barrister (described as junior counsel) to help them. Their instructing solicitor, who prepares the case, sits opposite them at the bar table. Defence counsel represent their clients. They may call evidence, but are not obliged to do so. Like prosecutors, they can test evidence through cross-examination. In a practical sense, defence counsel can be more likely to ask for evidence or publication of material to be excluded in the interests of the accused.

Civil cases generally are decided on the balance of probabilities. One colloquial definition was whether a proposition was more likely than not to be correct. Juries can sit in civil cases in some jurisdictions. For example, Victorian courts have six-member juries in personal injury and defamation cases, but barristers can argue to have the matter heard by judge alone. In civil cases, a plaintiff, who brings the action, will ask for an order or declaration to be made, and often for monetary compensation to make up for the wrong alleged to have been done. A respondent can admit or deny liability for the claimed wrong. If liability was admitted in a personal injury case, the parties could then argue about the amount of compensation to be paid.

Journalists receive a qualified privilege to report fairly and accurately on court proceedings. The privilege means they are not liable to be sued for repeating the frequently defamatory remarks made in the courtroom as disputes are fought out. They are given the privilege through the tradition in British justice of open courts.

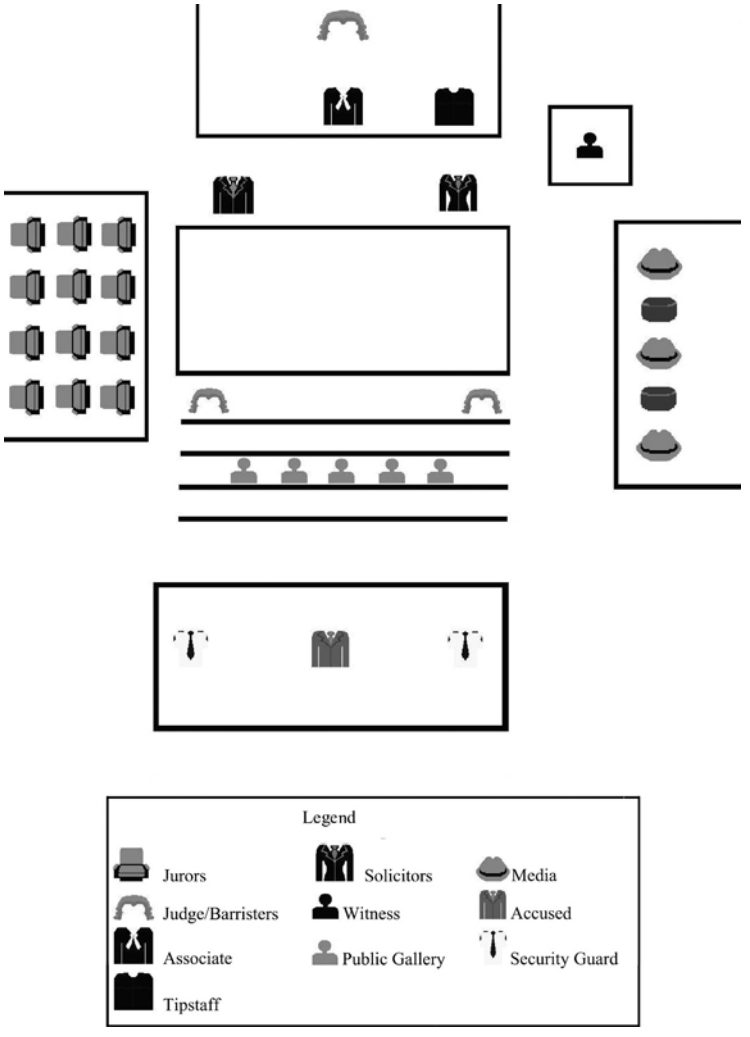


Figure 1.2 Court participants

Some theorists say the open court principle derived from an Anglo-Saxon practice that required all members of a manor, including the lord and serfs, to attend and pass judgment on perceived wrongs. There are competing theories about the development of open courts from supposedly secretive inquisitorial bodies like the Star Chamber. One theory suggests open hearings represented a

backlash against such private and punitive inquiries. The other theory is that having severe punishment imposed in an open proceeding had a greater deterrent effect. Media law researchers Robertson and Nicol (1990) say the open hearing rule became established almost by accident, because courts in the Middle Ages were badly conducted public meetings in which neighbours gathered to pass judgment on their district's notorious felons. The United States Supreme Court, in a 1979 judgment on public trial rights, said the concept was firmly established by the 17th century, and there was little record of secret hearings, criminal or civil.

The legal writer Blackstone said in 1765 that the liberty of the press was essential to the nature of a free state, but those who published improper, mischievous or illegal material had to take the consequences of their actions. The view is a starting point to understanding court reporting today. Journalists do not have an absolute right to freedom of speech in Australia. Laws regulate and balance public discussion and the transfer of information. The issue in courts is often described as a balancing exercise between the rights of an accused to a free trial and the ability to disseminate information from an open court. In 1999, Lord Irvine of Lairg, the British Lord Chancellor, said the media had a unique and constitutionally acknowledged role to ensure that justice was seen to be done. Journalists received practical access to information from the legal system that exceeded the rights generally given to the public. He quoted British judges who observed that any curtailment of media rights was a similar brake on public access to the administration of justice, and that a truly democratic society could not tolerate the void left if casual observers, not a daily media commentary, were the basis for information from courts. Lord Irvine said the primary and fundamental purpose of every court was the delivery of justice according to law. But an accompanying principle was that justice must be delivered openly.

Despite the lack of a constitutional free speech guarantee, these principles show that media organisations have a role in communicating court proceedings. Their employees are rewarded with operational privileges as they cover the courts each day. They have seats set aside in the courtroom to let them hear submissions. Courts regularly make rooms available for journalists, on either a permanent

or ad hoc basis, so they can work from the judicial premises. Copies of sentencing remarks, judgments, court exhibits and transcripts can be set aside so that the task of sending information to the public is made easier. Rules designed to protect fair trials are restrictive, but journalists or their legal representatives have the opportunity to ask that orders are varied or rescinded. Court reporters are effectively part of the legal system. They stand to one side observing and describing the daily legal struggle. But they are also reminded about their responsibilities to report accurately and in a way that lets the legal process continue unhindered.

At a 1999 conference on courts and the media, Australian legal writer David Solomon said the media's duty was to report what happened in the courts, and provide intelligent and critical analysis of them. Justice Susan Kiefel, from the Federal Court, referred at the same conference to a professor's earlier description of judges' perceptions of the media. The perception included that the media was superficial, biased, inadequate, sensational, inaccurate, unfair, misleading, irresponsible and damaging to the public interest. Quoted in *Medialine* magazine from an earlier speech (1998–99), Justice Bernard Teague from the Victorian Supreme Court nominated judges' concerns about the media, including misrepresentation, ill-informed criticism, taking remarks out of context and using other agendas to colour court reports. He said judges had high expectations that court reports should be accurate. One judge was furious after being attacked for leniency in sentencing when the media report said the maximum term imposed in a criminal case was five years, not the fifteen years actually ordered. Justice Teague pointed to communication and improved access as ways to improve accuracy.

Others point to the commercial nature of media outlets as a barrier to reasonable court coverage. Australia has prominent public broadcasters, but most media outlets are run by commercial companies whose objectives are to make money. Audiences are delivered to advertisers through the selection of information thought to appeal to the desired part of the market. Media companies boast of attracting high-income 'AB' customers, or appealing to a youth market, or leading the ratings determined by surveys. From the