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JUDICIAL INDEPENDENCE AND UNWARRANTED CRITICISM OF
THE COURTS

DISCUSSION PAPER FOR 5 MAY 2015 ICJ ROUNDTABLE

- 1 It is axiomatic that the maintenance of confidence in, and respect and support for, the judiciary is necessary for judicial independence and the rule of law.¹ This, then, is the issue: the undermining effect on judicial independence (and the rule of law) caused by scurrilous, intemperate, or unwarranted attacks on the integrity of courts and judges.
- 2 The purpose of the roundtable is to share existing approaches, and formulate and coordinate strategies to address that problem. It is not, however, a problem that can be dealt with in a vacuum. Any solution will involve wider considerations about the relationship between the courts and the public and the courts and the media. Thus, the following central questions arise:—
 - (a) Should courts enhance their communication or interaction with the public. If so, how?
 - (b) Should courts enhance their communication or interaction with the media. If so, how?

¹ See, e.g., Gerard Carney, “Comment – the Role of the Attorney-General” (1997) 9(1) *Bond L Rev* 1, 7; Amnon Reichman, “The Dimensions of the Law: Judicial Craft, its Public Perception, and the Role of the Scholar” (2007) 98 *Cal L Rev* 1619, 1621, 1627; Sharon Rodrick, “Achieving the Aims of Open Justice? The Relationship between the Courts, the Media and the Public” (2014) 19 *Deakin L Rev* 123, 126; The Hon Sek Keong, Chan, “Securing and Maintaining the Independence of the Court in Judicial Proceedings” (2010) 22 *SAC LJ* 229, 230 (citing Lydia Brashear Tiede, “Judicial Independence: Often Cited, rarely Understood” (2006) 15 *J Contemp Legal Issues* 129 at 129), 238, 239; Chief Justice Rehnquist, quoted in Meghan K Jacobson, “Assault on the Judiciary: Judicial Response to Criticism Post-*Schiavo*” (2006–2007) 61 *U Miami L Rev* 931, 936–7, 941; The Hon John Doyle, , “The Well-Tuned Cymbal”
<<http://www.judcom.nsw.gov.au/publications/education-monographs-1/monograph1/fbdoyl.htm>>, 2.

- (c) In the instance of unwarranted criticisms of the court or of judgments or judges of the court, should judges respond? If so, how, and subject to what conditions (if any)?
 - (d) Are there any other bodies or entities that should come to the defence of the judiciary? If so, which?
- 3 For the purposes of the roundtable, a search has been conducted for literature addressing these issues. A list of the most salient articles is **Annexure A** to this discussion paper. This paper distils from those articles a range of views and ideas so as to inform the discussion.

Principled criticisms is unproblematic and desirable

- 4 It needs to be said at the outset that nothing here suggested is intended to discourage the scrutiny of courts and the judgments of their judges. Fair and objective criticism—even exceptionally harsh criticism,² or “the occasional unfair barb”³—instils *greater* accountability and discipline in decision making.⁴ Criticism of a decision on the ground of error in reasoning, facts, or exercise of judicial discretion is perfectly valid and is beneficial and educative.⁵ But, denigration of judges,⁶ unbalanced, ill-informed,⁷ inaccurate, biased, superficial, or sensational criticisms,⁸ or criticism that simply says that a decision is wrong without offering another outcome that is consistent with principle,⁹ has no educative value.
- 5 Most of the authors reviewed favour taking steps to limit instances of the latter kind of criticism, but the position is not universal. Kosar says that effectively all criticism ought to be valid and permissible, that less protection should be given to judges, and that unfounded criticism need not be banned because the very fact that it is unfounded means it cannot cause much harm.¹⁰ The last point is one also made by Justice Sackville,¹¹ who further said that “the case for widening the scope of permitted criticisms of courts and judicial officers in Australia is extremely strong.”¹² Justice Sachs said that only conduct that posed “a real and direct threat to the administration of justice” was problematic.¹³

² Jacobson, above n 1, 944

³ Doyle, above no 1, 3.

⁴ See, e.g., John C Yoo, “Criticizing Judges” (1998) 1 *Green Bag* 2d 277, cited in Jacobson, above n 1, 944. Yoo states, “judges should welcome all criticism ... in order to help them improve the quality of their work.”

⁵ Brennan, *State of the Judicature* address.

⁶ Chan, above n 1, 239–40; see also Kim Gould, “When the judiciary is defamed: Restraint policy under challenge” (2006) 80 *ALJ* 602, 604–5; see also *Amard v Attorney-General for Trinidad and Tobago* [1936] AC 322, 335.

⁷ The Hon Geoffrey Eames, “The Media and the Judiciary” (2006) 2 *High Ct Q Rev* 47, 49; see also *R v Metropolitan Police Commissioner; Ex parte Blackburn (No 2)* [1968] 2 All ER 319 at 320, per Lord Denning.

⁸ Rodrick, above n 1, 128; see, to similar effect, The Hon Ronald Sackville, “How Fragile are the Courts? Freedom of Speech and Criticism of the Judiciary” (2005) 31 *Monash U L Rev* 191, 192.

⁹ The Hon Kenneth Hayne, “Letting Justice be Done without the Heavens Falling” (2001) 27 *Monash U L Rev* 12, 19.

¹⁰ David Kosar, “Freedom of Speech and Permissible Degree of Criticism of Judges in the Jurisprudence of the European Court of Human rights and the U.S. Courts” <www.etd.ceu.hu/2008/kosar_david.pdf>.

¹¹ Sackville, above n 8, 194.

¹² Sackville, above n 8, 200.

¹³ Sackville, above n 8, 203. Sackville J also sets out, with approval, Justice Black’s observation in *Bridges v California*: “the assumption that respect for the judiciary can be won by shielding judges from public criticism wrongly appraises the character of American public opinion... [A]n enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt, much more than it would enhance respect.”

The relationship between the courts and the media

- 6 Surveys have revealed “massive public ignorance and misunderstanding of the judiciary” in the United States,¹⁴ which one suspects is also true, to a large extent, of Australia. That is problematic because the court does not wholly fulfil its role unless its decisions, and the reasons and spirit behind them, are accurately conveyed to the public.¹⁵ Today, that requires the involvement of the media.¹⁶
- 7 That creates a relationship of tension as between courts and the media because the most significant pressure on judges “comes from public pressure, particularly as reflected in the media which, in turn, influences politicians.”¹⁷
- 8 Various authors have observed that the quality and tone of media coverage has taken a negative turn.¹⁸ In Justice Eames’s view, “some in the media have taken their role beyond mere criticisms of the judiciary; they seek to influence decisions as to whether individuals should be charged and come very close to pre-judging the outcome of trials.” Justice Kirby has noted the “unrelenting character and partisan political aspect,” that they had “gone too far,” that there were instances of targeting female judges, and that the capacity of attacks to inflict harm is now greater given modern technologies.¹⁹ Justice Kirby also has noted that the American “disease of entertainment” had the capacity to spread to Australia.²⁰
- 9 Rodrick refers to US and UK research which suggests that the media tend to report extraordinary, newsworthy proceedings and to ignore ordinary, routine cases that may have more educative value.²¹ Rodrick also refers to Schulz’s detection of a discourse of disapproval and disrespect including a “consistent pattern of reporting which inexorably demands that the justice system be modified.”²²
- 10 It has also been observed that the internet-based commentariat (e.g., on Twitter and other social media, and in blogs) is vitriolic and unrestrained to a far greater degree than obtains in “old media.”²³ That nature of criticism tends to be especially uninformed, and lacking in nuance and rigour, and is more likely to be characterised by *ad hominem* attacks on judges. Given the cross-over between old media and the blogosphere, it may be expected that standards of behaviour which are acceptable on social media will increasingly be regarded as acceptable in the broader media.

¹⁴ Robert E Drechsel, “Dealing with Bad news: How Trial Judges response to Inaccurate and Critical Publicity” (1988–1989) 13 *Just Sys J* 308, 311.

¹⁵ Richard Cornes, “A Constitutional Disaster in the Making? The Communications Challenge Facing the United Kingdom’s Supreme Court” (2013) *Public Law* 266, 271.

¹⁶ See, e.g., the Hon Judith C Gibson, “Judges, Cyberspace, and Social Media” <<http://www.aija.org.au/Quick%20Links/Judges%20and%20Social%20Media%202014.pdf>>, 10–11; Rodrick, above n 1, 133; Cornes, above n 15, 271.

¹⁷ *Speeches of a Chief Justice: James Spigelman* (Tim D Castle ed) (S2N Publishing, 2008) at 126, as cited in Chan, above n 1, 246.

¹⁸ In addition to those cited below, see also Jacobson, above n 1 and the Hon L J King, “The Attorney-General, Politics and the Judiciary” (paper delivered at JCA conference, November 1999).

¹⁹ The Hon Michael Kirby, “Attacks on Judges – A Universal Phenomenon” (1998) 72 *ALJ* 599.

²⁰ The Hon Michael Kirby, “Judges under Attack” [1994] *NZLJ* 365 at 366. Perhaps it is now more accurate to say that it has already spread to Australia.

²¹ Rodrick, above n 1, 135. Rodrick says that whereas the objective of criticism was the pursuit of truth, journalists do not now see it as being their role to provide a balanced and accurate picture, and that unfounded and ignorant criticism engaged in for entertainment’s sake constitutes exploitation of open justice principles, especially as inaccurate, uninformed, strident or reckless criticism is corrosive of public confidence: at 139.

²² Rodrick, above n 1, 139.

²³ Rodrick, above n 1, 138.

- 11 A study conducted by Drechsel showed that “judges generally agree that the press should educate and inform the public about the judiciary.”²⁴ But, media commentators have said that it is not the media’s role to be a public spokesperson for the courts,²⁵ that it has the right to cover courts in the way it wants rather than in the way that will assist courts,²⁶ and that it will cover items that are newsworthy, not necessarily socially significant.²⁷
- 12 The media is not a charitable institution, and outlets in order to survive must obey journalistic imperatives including simplicity, immediacy, drama, focus on conflict, and (in the case of TV) having compelling visuals.²⁸ The media reports selectively, often choosing stories with the aim of entertaining rather than informing and focusing on the unusual, the dramatic, and the violent.²⁹ Some judges therefore consider that media reporting is less concerned with fair reporting and more with opinion moulding, and that the media values entertainment and dissonance over fairness and accuracy.³⁰
- 13 Another source of criticism is politicians, but such criticisms are perhaps rarer and tend to be more measured than those made in the media. There are notorious individual exceptions (e.g., Senator Heffernan in regard to Justice Kirby), and exceptions in regard to particular subject matters including bail and sentencing outcomes.³¹ It suffices to say on that subject that there is a complementary conventions that politicians refrain from political attacks on the judiciary, and judges refrain from making political statements,³² and that it would be better if that convention were universally abided by.

How can undesirable attacks be diminished?

- 14 Two answers often given to this question are encapsulated by Chief Justice Doyle:—

First, working with the media to help the media provide accurate and balanced coverage Secondly, engaging in community education and information.
- 15 A repeated theme is that the court be more proactive in disseminating information to the public. Specific strategies given include:—
 - (a) furnishing information about process, delays, workloads, training, appeals, complaints, lack of integrity, misconduct and equality issues,³³ financial data,

²⁴ Drechsel, above n 14, 309.

²⁵ Suzanne Delvecchio, Vincent Femia, Gilbert Merritt, Lyle Denniston, Fred Graham, & Kathy L. Mays, “Shall we dance? The courts, the community, and the news media” (1996)–1997) 80 *Judicature* 30, 32, 35

²⁶ Delvecchio, above n 25, 32.

²⁷ Delvecchio, above n 25, 34; See also Rodrick, above n 1, at 135.

²⁸ Cornes, above n 15, 287.

²⁹ Eames, above n 7, 50.

³⁰ Eames, above n 7, 51.

³¹ See, e.g., Brown, David, “Speaking Too Soon: The Sabotage of Bail reform in New South Wales” (2014) 3(3) *IJCJ&SD* 73.

³² Anthony Bradley, “Judicial Independence Under Attack” (2003) *Public Law* 397, 405; Brown, above n 31, 82; Enid Campbell and HP Lee, “Criticism of judges and freedom of expression” (2003) 8(2) *Media & Arts Law Review* 77, 88, citing a statement made by Black CJ in the course of proceedings in the matter of *NAVV v MMIA*; Jacobson, above n 1, 936; Carney, above n 1, 8, citing House of Representatives standing orders 75, 77, and 78; see also Matthew Groves & Enid Campbell, “Attacks on Judges under Parliamentary Privilege: A Sorry Australian Episode” (2002) *Public Law* 626, 626, 634; L M Barlin (ed), *House of Representatives Practice*, 3rd ed, 1997 at 480; Sir Alfred Denning, *the Changing Law* (1953) 14, cited in the Hon Sir Daryl Dawson, “Judges and the Media” (1987) 10 *UNSWLJ* 17, 22.

³³ The Hon Sir Jack Beatson, “Judicial Independence and Accountability: Pressures and Opportunities” (2008) 17(2) *Nottingham L J* 1, 10; the Rt Hon Beverley McLachlin, “The Relationship Between the Courts and the Media” (speech delivered at Carleton University, Ottawa, Ontario, 31 January 2012), 3

statistical data on case flows, limited information about judicial appointments, and minutes of the court's monthly management meetings.³⁴

- (b) making a copy of *ex tempore* reasons for judgment available, in contentious cases particularly, as quickly as possible after judgment is delivered.³⁵
- (c) preparing educational material for visitors (e.g., case summaries for those visiting to watch argument, interactive displays outlining the role of the court).³⁶
- (d) having a range of official communications including a strategic plan, annual report and business plan, speeches and press conferences by the Chief Executive, management board minutes, press releases, emails, and Twitter.³⁷
- (e) permitting live-blogging or Twittering of decisions,³⁸ and live broadcasts of proceedings,³⁹ though perhaps not in first-instance proceedings.⁴⁰
- (f) the reading of a short statement like a judgment summary at the time of handing down judgment,⁴¹ and in any event the issuance of one or two page judgment summaries with decisions of public interest.⁴²
- (g) "meet the judges" programs,⁴³ or addressing community⁴⁴ or school⁴⁵ groups, and information days for Parliamentary staff.⁴⁶
- (h) a regular blog, by a retired judge or someone knowledgeable from the media or the academy, to create community understanding regarding controversial issues.⁴⁷
- (i) extra-judicial speaking and writing.⁴⁸

16 The contrary (perhaps minority) view is that courts should not go out of their way to involve themselves in the foregoing kinds of information dissemination about particular

³⁴ As does the UK Supreme Court: Cornes, above n 15, 276.

³⁵ Brown, 87–8; Doyle, the Hon John, "Should Judges Speak Out?" (speech delivered at Judicial Conference of Australia conference held at Uluru, April 2001), 3.

³⁶ Cornes, above n 15, 276. an example of the latter is the provision of an interactive learning tool which provides the facts of a case for people to read and decide for themselves before seeing what the court's decision was; Doyle, above no 1, 3; Rodrick, above n 1, 154

³⁷ Cornes, above n 15, 277, 280; McLachlin, above n 33, 3. In relation to Twitter in particular, having a feed that indicates in advance what judgments will be delivered in coming weeks, having a one- or two-line note about a judgment outcome where it is of wide public interest, and linking to media alerts: Cornes, above n 15, 280; Gibson, above n 16, 2, 9, noting that while the UKSC initially had a policy against Twitter use in court, that has now been reversed "provided that [judges] are its masters and that it is [their] tool and servant."

³⁸ Cornes, above n 15, 280; Gibson, above n 16, 2, 13; Marilyn Krawitz, "Stop the Presses, but not the Tweets: Why Australian Judicial officers should Permit Journalists to use Social Media in the Courtroom" (2013) 15 *Flinders L J* 1

³⁹ Cornes, above n 15, 280; Dawson, 25; Delvecchio, above n 25, 37; Gibson, above n 16, 17, cf the Rt Hon Lord Taylor of Gosforth, "Justice and the Mass Media" (1994) 6 *SacLJ* 241, 248; McLachlin, above n 33, 4.

⁴⁰ Dawson, above n 32, 26.

⁴¹ Cornes, above n 15, 280.

⁴² Cornes, above n 15, 281; Doyle, above n 35, 3; Rodrick, above n 1, 145; George Williams, "The High Court and the Media" (1999) 1 *UTS L Rev* 136, 145; McLachlin, above n 33, 3.

⁴³ Delvecchio, above n 25, 38, as apparently is done in California.

⁴⁴ Doyle, above no 1, 3; Or, community fora: Gibson, above n 16, 17.

⁴⁵ Rodrick, above n 1, 154.

⁴⁶ Doyle, above no 1, 3.

⁴⁷ Rodrick, above n 1, 158. Apparently, this was announced by Warren CJ.

⁴⁸ McMurdo, above n 127, 5.

cases, because the purpose of a court proceeding is to do justice in an individual case, not to educate the public.⁴⁹ Current US Supreme Court Chief Justice Roberts said this:⁵⁰—

We don't have oral arguments to show people, the public, how we function. We have them to learn about a particular case in a particular way that we think is important.

17 Another common theme is that the courts should foster a positive relationship with the media. Specific strategies include:—

- (a) “building close relationships with media organisations”.⁵¹
- (b) trailing in advance to the media cases which the court thinks may be of interest.⁵²
- (c) managing lock-up arrangements in advance of the handing down of major cases so broadcast reporters can go live to air as soon as the decision has been announced.⁵³
- (d) monitoring coverage of decisions on the day they are released (including contacting journalists to correct errors),⁵⁴ though not from the second day on.⁵⁵
- (e) dealing with day-to-day enquiries in regard to specific cases.⁵⁶
- (f) coordinating special features and special coverage pieces (noting that in the UK the *Times* and the *Guardian* have run interview with justices of the Supreme Court).⁵⁷
- (g) issuing headnotes at the same time as judgment, which could be used by the media to pass on to the public,⁵⁸ as evidently occurs in the Canadian Supreme Court.⁵⁹
- (h) addressing concerns enunciated by media, e.g., difficulties accessing the court file, delay in getting responses to requests for access to materials, inconsistency of treatment as between staff, diminished access as a result of the increasing trend of courts receiving material that is not read out, and the cost of accessing the record.⁶⁰

18 Mauro makes these suggestions:⁶¹—

- (a) write with clarity and verve—give decisions a second look with that in mind.⁶² Lord Neuberger said, relatedly, this:⁶³—

[judgments] must speak ... not just to a professional audience, but they must also be capable of speaking clearly to a lay audience, prospective self-represented litigants and citizens generally.

⁴⁹ Mihm CJ, US District Court, Central District of Illinois, cited in Delvecchio, above n 25, 41.

⁵⁰ Mauro, Tony, “Five Ways Appellate Courts can Help the News Media” (2007) 9 *J App Prac & Process* 311, 311. Drechsel, who conducted a survey of judges, recorded that “for many judges, the idea that the court or justice system must be attractively ‘packaged’ for consumption by other elites or the public at large is truly repugnant” (above n 14 at 319).

⁵¹ Cornes, above n 15, 276.

⁵² Cornes, above n 15, 276.

⁵³ Cornes, above n 15, 276; Dawson, above n 32, 25; Rodrick, above n 1, 145; McLachlin, above n 33, 3.

⁵⁴ Cornes, above n 15, 276.

⁵⁵ Cornes, above n 15, 285.

⁵⁶ Cornes, above n 15, 276.

⁵⁷ Cornes, above n 15, 276.

⁵⁸ Patrick 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 L Rev* 150, 154.

⁵⁹ McLachlin, above n 33, 3.

⁶⁰ Simon Mount, “The interface between the Media and the Law” [2006] *NZ Law Rev* 413, 441–2.

⁶¹ Mauro, above n 50.

⁶² See also Williams, above n 42, 145, to the same effect.

⁶³ Cornes, above n 15, 271.

- (b) bare your soul—like, e.g., Judge Richard Posner, who “brings the reader into his, and the court’s, thinking—with all the balancing, uncertainty, and self-doubt that entails.”
- (c) lift the curtain—i.e., make as much as possible available online, including dockets, motions, briefs, decisions, oral argument transcripts, audio, video, speeches, the court rules, disciplinary procedures and complaint forms, and financial disclosure records.⁶⁴
- (d) talk to the media about court process, procedure, and basic legal principles, with a view to increasing legal literacy.
- (e) try to understand the media, a little—Mauro gives an illustration where Justice Scalia criticised the press for simply reporting who won and who lost in a case:—

And yet I am betting that when Scalia and other judges who share his view open the sports section every day, they expect to find out who won or lost in the first paragraphs of the stories ... and ... they would be hopping mad if they encountered a story about a ballgame that did not give the final score until sometime after the seventh paragraph. Covering the courts is no different

- 19 Rodrick suggests publishing guidelines for reporting, providing reporters with special seating, permitting reports at *in camera* hearings, providing online access of listings of cases, and adopting a generous attitude to the media’s standing to challenge orders that would limit open justice.⁶⁵
- 20 Many of these suggestions have already been taken up by Australian courts. The extent of effort and resources devoted is unknown and no doubt varies as between different courts.
- 21 A more novel concept is the introduction of Dutch-style “press judges,” who are responsible for speaking (in a non-binding and explanatory fashion) about cases and judgments on behalf of the court.⁶⁶ They translate and explain legal language and concepts for the media and the public to assist them in understanding the background, context, and assumptions surrounding a matter. That includes liaising with the media to provide explanations or clarifications of judgements as required, anticipating and responding to publicity-sensitive issues and media coverage about court cases, the courts, and the administration of justice in general, serving as contact person for other judges with regard to media contact, preparation and issue of press releases, and contribution to external communication to the general public including giving presentations, lectures and participating in round tables.⁶⁷
- 22 In relation to media liaison in particular, the role includes liaising with media who wish to be present at court sessions, involvement in establishing rules for media presence in court, and involvement in preparation for media visits and in publicity-sensitive cases.⁶⁸
- 23 The press judge performs that role in addition to his or her usual duties as a judge. There is, in addition, a Committee of Press Judges (where issues, trends, and approaches are discussed bi-annually) and there are communications advisors, whose role it is to provide

⁶⁴ See also Keyzer, above n 58, 155, to the same effect.

⁶⁵ Rodrick, above n 1, 145.

⁶⁶ Rodrick, above n 1, 145.

⁶⁷ de Rechtspraak, “Press Judge Profile,”

<<https://www.rechtspraak.nl/Actualiteiten/Persinformatie/Documents/Press-judge-profile.pdf>>; de Rechtspraak, “The Judiciary and the Media in the Netherlands,”

<<https://www.rechtspraak.nl/English/Publications/Documents/The-Judiciary-and-the-Media-in-the-Netherlands.pdf>>.

⁶⁸ *Ibid.*

non-legal information to the media (including answering questions about hearing dates, the use of cameras in courtroom, and things of that kind).⁶⁹

- 24 Chief Justice McLachlin alluded to the fulfilment of a similar function to that of the press judge (though by a senior lawyer rather than a judge) in the Canadian Supreme Court:—

... the Court's Executive Legal Officer ... a senior lawyer seconded to the Court for a two year stint, assists journalists by providing briefings on every judgment These briefings are off the record, for information only, and not for attribution.

- 25 In the US, Doppelt has conducted a study of what kind of information is provided to the media by (*inter alia*) judges. Interesting findings include the following:—

- (a) 88 per cent of judges had had little or no media contact during the previous 6 months.⁷⁰
- (b) of those judges that had received requests for information, 37 per cent were asked to provide factual information about a case, 30 per cent an explanation of legal technicalities or language, 22 per cent an opinion about an aspect of the case, 34 per cent an explanation of something done in the case, and 31 per cent “nothing in particular – just to chat.”
- (c) 46 per cent of judges surveyed would have been willing to provide factual information about a case, 62 per cent to provide an explanation of legal technicalities or language, 6 per cent to provide an opinion as to some aspect of a case, 0 per cent to speculate as to a case's outcome, and 50 per cent to explain something done in the case.⁷¹

Should judges respond?

- 26 In 1955 Viscount Kilmuir, then Lord Chancellor, set out the Kilmuir Rules: “the importance of keeping the judiciary insulated from the controversies of the day” meant that generally judges ought not take part in broadcasts. That was because, “so long as a judge keeps silent his reputation for wisdom and impartiality remains unassailable: but every utterance which he makes in public except in the course of the actual performance of his judicial duties, must necessarily bring him within the focus of criticism.”⁷²

- 27 That position abided for around 30 years. In 1987, Lord Mackay, then the Lord Chancellor, abolished the Kilmuir Rules. But, he said that judges:⁷³—

... must avoid public statements either on general issues or particular cases which cast any doubt on their complete impartiality, and above all, they should avoid any involvement, either direct or indirect, in issues which are or might become politically controversial.

⁶⁹ *Ibid.* The Dutch judiciary has also published a detailed press guideline setting out what kinds of information the press will have access to, the general rules concerning (e.g.) text messaging and the making of recordings in court, and the like: de Rechtspraak, “Press Guidelines,” <<https://www.rechtspraak.nl/Actualiteiten/Persinformatie/Documents/Press-Guidelines.pdf>>.

⁷⁰ Jack C Doppelt, “Strained Relations: How Judges and Lawyers Perceive the Coverage of Legal Affairs” (1990–1991) 14 *Just Sys J* 419, 428. C f. Drechsel, above n 14, who records that Wisconsin judges reported an average of 3.9 personal contacts per typical month, and that Pennsylvania judges reported 5.6 (at 318)

⁷¹ Doppelt, above n 70, 435.

⁷² Beatson, above n 33, 2

⁷³ Beatson, above n 33, 2, see also 3, whereat he says: “Judges are professional experts charged with a task of interpretation, in Lord Bingham's words, “auditors of legality”, but they have no independent authority to rule on what would best serve the public interest. They lack the democratic credentials to perform such a task, and they lack the resources and processes conducive to good law-making.”

28 There are various views as to when judges should respond to criticism. *First*, there are those that say that judges should not publically respond, or at most should do so only in the most exceptional cases:—

(a) Sir Daryl Dawson said this:⁷⁴

... the function of a judge is to judge cases. That he does in open court and when he makes his decisions he gives his reasons for them publicly. Everything is there for public scrutiny and there is no real point to be served by any further explication. Indeed, the danger of the judge discussing his function in the news media, even in a general way, is that emphasis would be placed upon the individual personality which is something which the processes of the law are designed to play down judges have no business in the world of entertainment.

(b) Justice Hayne's view is that "judicial reticence and intellectual rigour" are what is necessary for the protection of judicial independence.⁷⁵ Reasons for judgment will either be sufficient to explain what has been done, or they will not. They should in neither case be supplemented.⁷⁶ In part that is because Australian media reporting is confrontational, and any distinction that a judge might seek to draw between speaking as a judge and as a citizen will usually be lost.⁷⁷ If a judge enters public debate, the reaction may not be in the restrained or complimentary language of the courtroom.⁷⁸

(c) Justice Austin observed that the old defensive strategy of relying on the Attorney-General would not work because the Attorney-General no longer regarded that as his function. However, he suggested that for judges to engage in public debate and defend themselves is even less desirable because it would reduce judges to the level of their attackers, encourage their detractors to make accusations of partisanship, and because judges are not trained for the arena of public debate.⁷⁹

(d) Jacobson records the view (without adopting it) that a judge's silence demonstrates an unwillingness to be swayed by public sentiment and emphasises the importance of adhering to the rule of law at any cost,⁸⁰ whereas responding could give the appearance of being too concerned with public opinion or too defensive, both of which will provoke more criticism.⁸¹ She quotes Judge Guido Calabresi of the US Court of Appeals for the Second Circuit, whose advice to judges facing criticism is, "[do] absolutely nothing: silence is the price of life tenure."⁸²

(e) Ross says that "while judges might suppose that [comments in reply to criticism] will help to restore or maintain public confidence in the judicial system, comments about individual decisions are far more likely to subtly erode public respect."⁸³

(f) Justice McMurdo avers to (again without adopting) a similar view: "the standing in which the judiciary as a whole is held may be demeaned by judges who speak out

⁷⁴ Dawson, above n 32, 18.

⁷⁵ Hayne, above n 9, 12.

⁷⁶ Hayne, above n 9, 13.

⁷⁷ Hayne, above n 9, 13; see also McMurdo, above n 127, 9, to the same effect, quoting Gleeson CJ.

⁷⁸ Hayne, above n 9, 14.

⁷⁹ the Hon R Austin, "Commentary: The High Court and the Community" (1998) 4 *The Judicial Review* 17, 25.

⁸⁰ Jacobson, above n 1, 952.

⁸¹ Jacobson, above n 1, 956.

⁸² Jacobson, above n 1, 956–7.

⁸³ Cited in Jacobson, above n 1, 952.

immoderately being seen as activists, mavericks, publicity or promotion seekers or creatures that feed on the cult of personality.”⁸⁴

- (g) Sir Anthony Mason said, concerning Justice Toohey having declined to respond to criticism of him, “[t]hat’s generally the best way of dealing with controversies of that kind—at least the best way for judges to handle it. Now, that’s not to say that a judge is disqualified from entering the fray if he or she wants to. I just happen to think that in most instances, the judge is ill-advised to do so.”⁸⁵ But, Chief Justice Phillips also records that Sir Anthony did respond to criticisms of the *Mabo* decision.⁸⁶
 - (h) The American Bar Association Subcommittee on Unjust Criticism of the Bench concluded that judges should *generally* not answer media criticism directly, because that would appear self-serving or defensive, may reflect on pending litigation, and would encourage people who would control the judiciary by intimidation and thus weaken its independence.⁸⁷
 - (i) Justice Eames says that “[m]edia campaigns against individual judges, especially when based on inaccurate or incomplete information, constitute an attempt to get judges to betray their oath in order to curry favour or avoid abuse in the media.”⁸⁸
 - (j) Campbell and Lee suggest that judges may, in exceptional cases, issue a public statement, but by convention they would not.⁸⁹ Cornes’ view is to similar effect.⁹⁰
- 29 *Second*, there are those that advocate for a greater response by judges, though in some cases subject to caveats:—
- (a) Delvecchio says that judges should be available to the media, from time to time, to explain what courts do (but noting that the media distorts).⁹¹ Chief Justice Doyle is of a similar view.⁹² Merritt says that judges have got to be willing to talk to the press, to do interviews, with a view to explaining how and why the system works.⁹³
 - (b) Chief Justice Doyle said that judges may engage in public discussion about methods and principles, rather than particular decisions. Also, while a judge should be careful about speaking publically about matters that could compromise impartiality, that is a matter to be borne in mind but not a reason for silence.⁹⁴ Judges’ responsibility is to defend judicial independence and to ensure public confidence, which extends to communicating with the public.⁹⁵ Though, that should not extend to entering the political arena except in truly exceptional circumstances.⁹⁶ And, individual judges should be cautious about joining a controversy except with the approval of the head of jurisdiction, who should be responsible for managing the institutional response.⁹⁷

⁸⁴ McMurdo, above n 127, 8.

⁸⁵ Cited in the Hon John Harber Phillips, “The Judiciary and the Media” (1994) 20 *Monash U L Rev* 12, 14.

⁸⁶ Phillips, above n 85, 15.

⁸⁷ Cited in Drechsel, above n 14, 311.

⁸⁸ Eames, above n 7, 50.

⁸⁹ Campbell, above n 32, 84.

⁹⁰ Cornes, above n 15, 276.

⁹¹ Delvecchio, above n 25, 32.

⁹² Doyle, above no 1, 5–6.

⁹³ Delvecchio, above n 25, 37.

⁹⁴ Doyle, above no 1, 5.

⁹⁵ Doyle, above n 35, 2; Doyle, above no 1, 1.

⁹⁶ Doyle, above n 35, 5.

⁹⁷ Doyle, above n 35, 5.

- (c) Lord Taylor said, "It is simply no longer sensible to remain silent when so much attention, much of it highly critical, is focused on courts and the judicial process. In the absence of any reply it would be assumed against the judges either that they were so arrogant and complacent as to believe that they could ignore criticism, or that they had no good answer to it."⁹⁸
- (d) Heraghty says, "the aggregate effect of constant criticism in the media is to undermine the integrity of the courts, especially in the minds of the public when no defence of the actions of the judiciary is forthcoming through the normal media channels."⁹⁹
- (e) Of judges surveyed by Drechsel, 60 per cent had received critical or negative publicity, and of those around 36–40 per cent responded. Most that responded did so by pointing out an error either to the reporter, the reporter's editor, or to a news director. Of those that did not respond, a major reason was that it was thought to be useless if not counterproductive.¹⁰⁰
- (f) Justice Eames says, "I do not think that a passive response can be presumed in future, especially given the abrogation by many Attorneys-General of their traditional role to defend the judiciary against unfair attack, and even less so when ... senior politicians, ... have been at the forefront of such criticisms as part of bidding wars for law and order votes."¹⁰¹
- (g) Justice Sackville said that "the traditional stoic silence in the face of an ill-informed or even malicious attack is by no means the most effective means of maintaining confidence in the judicial system."¹⁰²
- (h) Guidelines put out by the AIJA eschew the "monastic lifestyle," on the basis that it "may well create as many problems that it solves, and not only be limiting the attractiveness of the judicial office."¹⁰³
- (i) Chief Justice Phillips refers to having written an open letter to the editor of a Melbourne newspaper following the publication of an editorial to which he took exception.¹⁰⁴ He had decided that the prior policy of judicial silence had encouraged baseless and intemperate criticism.¹⁰⁵ He had "become convinced that the conventional silence ... had encouraged not only an increase in [the] volume [of criticism], but also an increase in unfair and misleading criticisms."¹⁰⁶
- (j) Jacobson records a views that when the court renders a controversial decision, public confidence in integrity and impartiality is more important than ever and that judges must take an active role in defending themselves and rebutting baseless claims by critics: by remaining silent, the judge might convey a sense of defeat.¹⁰⁷ Further, responding would assist in dispelling the notion that the courts are the most secretive branch: "an aristocracy, above the fray and unaccountable."¹⁰⁸

⁹⁸ Taylor, above n 39, 252; Cited in Doyle, above no 1, 6. See also Gould, above n 6, 614, to similar effect.

⁹⁹ Ben Heraghty, "Defender of the Faith? The Role of the Attorney-General in Defending the High Court" (2002) 28 (2) *Monash U L Rev* 206, 234.

¹⁰⁰ Drechsel, above n 14, 313. There are some colourful explanations given at 313–15.

¹⁰¹ Eames, above n 7, 51.

¹⁰² Sackville, above n 8, 8.

¹⁰³ Thomas JB, as cited in Gould, above n 6, 612.

¹⁰⁴ Phillips, above n 85, 15.

¹⁰⁵ Phillips, above n 85, 16.

¹⁰⁶ Phillips, above n 85, 19.

¹⁰⁷ Jacobson, above n 1, 958.

¹⁰⁸ Jacobson, above n 1, 958.

- (k) Justice Kirby's view is that ignoring criticism in the hope that it will diminish is out of the question. Within limits, judges should correct apprehensions because collectively and individually they have a duty to protect the integrity and independence of the judicial institution.¹⁰⁹ But, "there are dangers in playing the media's game. Its mission will never be the same as that of the judges. ... Courts would be diminished if they felt obliged to defend their decisions beyond their published reasons by employing media 'spin doctors' for that purpose,"¹¹⁰ and "attempts by judges to correct the media record will more than often be manipulated and presented as suggested errors and further folly on their party. ... [Recent examples] teach ... the wisdom of the convention that judges and court pronouncements must (subject to appeals or review) stand or fall as they were spoken or written."¹¹¹
- (l) Justice McGarvie's said, "practically no balancing information is placed before the public to explain the position of the courts, or to show that there has been justification for what has been done, as there usually has. Members of the public, saturated with uncontradicted news that creates the impression that the courts are incessantly operating unfairly, unwisely and inefficiently, are absorbing a view that can only diminish their confidence in the judiciary."¹¹²
- (m) Williams agrees that judges should feel free to appear in the media to discuss general matters such as the role of the Court, judicial independence, or the rule of law.¹¹³
- 30 There are a number of commentators that say that judges should not respond to criticism of cases that they have decided.¹¹⁴
- (a) Chief Justice Doyle said, "A case is to be heard and decided upon the facts and submissions presented to the judge in court. To engage in public discussion is to begin to involve others in the process. It will also cause confusion, because of its tendency to undermine the reasons for judgment as the sole record of the reasons for the outcome. ... The appellate process is available to correct error, and that should not be displaced by public debate involving the judge."¹¹⁵
- (b) Keyzer says that "judges should not be expected to hold news conferences to explain their opinions. They do not have a political message to sell."¹¹⁶ He said that a judge influenced in judgment by what was said in the media would not be fit to be a judge at all.¹¹⁷ He quoted Sir Frank Kitto:—

Every judge worthy of the name recognizes that he must take each man's censure; he knows full well as a judge he is born to censure as the sparks fly upwards; but neither in preparing a judgment nor in retrospect may it weigh with him that the harvest he gleans is praise or blame, approval or scorn. He will reply to neither; he will defend himself not at all.

¹⁰⁹ Kirby, the Hon Michael, "Attacks on Judges – a Universal Phenomenon" (speech delivered at American Bar Association conference held at Hawaii, 5 January 1998), 7.

¹¹⁰ Kirby, above n 109, 8.

¹¹¹ As quoted in Phillips, above n 85, 17.

¹¹² Cited in Taylor, above n 39, 246.

¹¹³ Williams, above n 42144.

¹¹⁴ See Doyle, above no 1, 4; McMurdo, above n 127, 8.

¹¹⁵ Doyle, above no 1, 4.

¹¹⁶ Keyzer, above n 58, 152.

¹¹⁷ Keyzer, above n 58, 152, citing *BLF Case* (1982) 41 ALR 71 at 90 per Gibbs CJ and 123 per Mason J, both quoting Lord Salmon.

- 31 Another point of discussion is whether judges ought to have public profiles:—
- (a) Lord Phillips of Worth Matravers, first President of the UK Supreme Court, said, “we are very keen to have a higher profile, although not particularly keen to turn ourselves into public figures. But one of the objectives [of the creation of the Supreme Court] was that we would be doing our job transparently, independent of government, and that the public should be aware of our existence and of the importance of our role.”¹¹⁸
 - (b) Lady Hale said, “it’s a very narrow dividing line between improving public understanding ... and diminishing the dignity and respect the court should have. We are not politicians.”¹¹⁹
 - (c) Professor Van Niekerk has said, “[j]udges, especially senior judges, are in a peculiarly well-placed position to give leadership in matters where leadership will often not be forthcoming from other sources. ... [T]heir position to be creative architects of the law and society ... is unique.”¹²⁰ Sir Daryl Dawson disagrees, saying that the media will seldom provide an appropriate forum.¹²¹
 - (d) Sir Daryl appears to adopt the view of Sir Richard Blackburn, that as soon as a judge speaks informally (i.e., otherwise than in a judicial role) he speaks without authority and it is better that he keep silent.¹²²
 - (e) Chief Justice Doyle says, “I do not accept that judicial independence rests upon a false belief ... that judges are human ciphers, lacking emotions and beliefs about ... society Judges must, of course, avoid associating their office with public controversies, especially political ones, but with proper care that can be done.”¹²³
 - (f) Sparling’s article is to the effect that over the last hundred years the judiciary has removed itself from public contact, which created the risk that the judge is defined by critics in the popular opinion.¹²⁴ “External factors such as a judge’s courtesy, demeanour, treatment of others in court, and timeliness have all been demonstrated to lead people to judgments of judicial fairness,” so that actions connecting a judge to his or her community speak louder than words.¹²⁵ The public’s estimation of a judge who is a cipher rests on written opinions (which are unlikely to be read). Where, conversely, the judge is known and has public character of fairness and virtue, his or her decisions are more likely to be accepted even where unpopular, and that judge will have “greater judicial independence than the judge who played the hermit.”¹²⁶
- 32 Finally, it is noted that judges of the UKSC are encouraged to report false or unfair reporting or harassment to the Press Complaints Commission or the Broadcasting Standards Commission or to demand corrections, as appropriate.¹²⁷

¹¹⁸ Cited in Cornes, above n 15, 273.

¹¹⁹ Cornes, above n 15, 274.

¹²⁰ B V Niekerk, “Silencing the Judges: A Comparative Overview of Practices Concerning Restrictions and Inhibitions on the Free Speech of Judges” (1979) 4 *The Journal of the Legal Profession* 157, 179, cited in Dawson, above n 32, 23.

¹²¹ Dawson, above n 32, 23.

¹²² Dawson, above n 32, 24.

¹²³ Doyle, above no 1, 5.

¹²⁴ Sparling, Tobin A., “Through Different Lenses: Using Psychology to assess Popular Criticism of the Judiciary from the Public’s Perspective” (2009–2010) 19 *Kan J L & Pub Pol’y* 471, 501–2.

¹²⁵ Sparling, above n 124, 502.

¹²⁶ Sparling, above n 124, 503.

¹²⁷ The Hon Margaret McMurdo, “Should Judges Speak Out?” (speech delivered at Judicial Conference of Australia conference held at Uluru, April 2001), 3.

Other candidates, and other forms of response

- 33 The Hon Daryl Williams suggested that the Australian Judicial Conference (JCA) ought fulfil the role of defending the judiciary.¹²⁸ Justice Sackville broadly agreed, though noting limitations on its ability to do so.¹²⁹ But Chief Justice Doyle disagreed that the JCA (or the Council of Chief Justices) would be an appropriate source of response,¹³⁰ as did Sir Anthony Mason: “a defence by the Attorney-General will achieve much more prominence and more mileage than a defence by judges or a professional body.”¹³¹ Heraghty observes that the JCA is not trained to counter media criticism, that it meets only once per year, and that it is a co-ordination body rather than an advocate.¹³² Keyzer says that the JCA is not an appropriate responding body,¹³³ because it does not have authority to speak on behalf of the Australian judiciary and because it would be placed in the invidious position of commenting on the work of another judge or court.
- 34 Another possibility is professional organisations, such as the Law Council of Australia or the Bar Association. That is a view held by, e.g., Judge Friedman of the US District Court for the District of Columbia,¹³⁴ and Justice Kirby, who called upon the bar:¹³⁵—
- ... to defend the judiciary, to correct blatant misinformation and to remind politicians, the media and others of the precious heritage of judicial neutrality and independence which we have enjoyed until now.*
- 35 Carney, however, states that professional organisation are not as well-placed as the Attorney to respond appropriately and swiftly.¹³⁶ Sir Daryl Dawson was of the same view.¹³⁷ Chief Justice Doyle thought that it was unrealistic to expect professional bodies to respond as they were concerned with promoting and defending themselves before the public, and did not have the time or resources to also defend the judiciary.¹³⁸
- 36 Justice Kirby states that it is an accepted obligation of Chief Justices and other senior judges to respond, on behalf of their courts, to attacks on the courts, judgements, personnel, or the administration of justice itself.¹³⁹

¹²⁸ See, e.g., Heraghty, above n 99, 228.

¹²⁹ As cited in Gould, above n 6, 607.

¹³⁰ Doyle, above n 35, 5.

¹³¹ Sir Anthony Mason, 'The Judiciary, the Community and the Media', (1997) 12(1) *Commonwealth Judicial Journal* 4, 11, as cited in Heraghty, above n 99, 229.

¹³² Heraghty, above n 99, 235.

¹³³ Keyzer, above n 58, 155.

¹³⁴ The Hon Paul L Friedman, “Civility, Judicial Independence, and the Role of the Bar in Promoting Both” (2006) 1 *Fed Courts L Rev* 513, 513.

¹³⁵ Kirby, above n 109, 7.

¹³⁶ Carney, above n 1, 9.

¹³⁷ Dawson, above n 32, 27.

¹³⁸ Doyle, above no 1, 6; see also McMurdo, above n 127, 5.

¹³⁹ Kirby, above n 109, 8.

Annexure A: Relevant articles	
1	Abbott, Tony, "The Attorney and the Courts" (speech delivered at "Reflections on the Role of the Attorney General" conference held at Melbourne Law School, 27 September 2002)
2	Barrett, Johnathan, "Open Justice or Open Season? Developments in Judicial Engagement with New Media" (2011) 11 <i>Queensland U Tech L & Just J</i> 1
3	Beatson, the Hon Sir Jack, "Judicial Independence and Accountability: Pressures and Opportunities" (2008) 17(2) <i>Nottingham L J</i> 1
4	Bradley, Anthony, "Judicial Independence Under Attack" (2003) <i>Public Law</i> 397
5	Brown, David, "Speaking Too Soon: The Sabotage of Bail reform in New South Wales" (2014) 3(3) <i>IJCJ&SD</i> 73
6	Campbell, Enid & HP Lee, "Criticism of judges and freedom of expression" (2003) 8(2) <i>Media & Arts Law Review</i> 77
7	Carney, Gerard, "Comment – the Role of the Attorney-General" (1997) 9(1) <i>Bond L Rev</i> 1
8	Chan, the Hon Sek Keong, "Securing and Maintaining the Independence of the Court in Judicial Proceedings" (2010) 22 <i>SacLJ</i> 229
9	Cornes, Richard, "A Constitutional Disaster in the Making? The Communications Challenge Facing the United Kingdom's Supreme Court" (2013) <i>Public Law</i> 266
10	Dawson, the Hon Sir Daryl, "Judges and the Media" (1987) 10 <i>UNSWLJ</i> 17
11	Delvecchio, Suzanne, Vincent Femia, Gilbert Merritt, Lyle Denniston, Fred Graham, & Kathy L. Mays, "Shall we dance? The courts, the community, and the news media" (1996)–1997) 80 <i>Judicature</i> 30
12	Doppelt, Jack C., "Strained Relations: How Judges and Lawyers Perceive the Coverage of Legal Affairs" (1990–1991) 14 <i>Just Sys J</i> 419
13	Doyle, the Hon John, "Should Judges Speak Out?" (speech delivered at Judicial Conference of Australia conference held at Uluru, April 2001)
14	Doyle, the Hon John, "The Well-Tuned Cymbal" < http://www.judcom.nsw.gov.au/publications/education-monographs-1/monograph1/fbdoyle.htm >
15	Drechsel, Robert E., "Dealing with Bad news: How Trial Judges response to Inaccurate and Critical Publicity" (1988–1989) 13 <i>Just Sys J</i> 308
16	Drechsel, Robert E., "Uncertain dancers: judges and the news media" (1986–1987) 70 <i>Judicature</i> 264
17	Eames, the Hon Geoffrey, "The Media and the Judiciary" (2006) 2 <i>High Ct Q Rev</i> 47
18	Friedman, the Hon Paul L., "Civility, Judicial Independence, and the Role of the Bar in Promoting Both" (2006) 1 <i>Fed Courts L Rev</i> 513
19	Gibson, the Hon Judith C., "Judges, Cyberspace, and Social Media" < http://www.aija.org.au/Quick%20Links/Judges%20and%20Social%20Media%202014.pdf >
20	Gibson, the Hon Judith C., "Should Judges use Social Media?" < www.aija.org.au/PIO%20Conf%202013/Papers/Gibson.pdf >
21	Gould, Kim, "When the judiciary is defamed: Restraint policy under challenge" (2006) 80 <i>ALJ</i> 602
22	Groves, Matthew & Enid Campbell, "Attacks on Judges under Parliamentary Privilege: A Sorry Australian Episode" (2002) <i>Public Law</i> 626
23	Hayne, the Hon Kenneth, "Letting Justice be Done without the Heavens Falling" (2001) 27 <i>Monash U L Rev</i> 12
24	Heraghty, Ben, "Defender of the Faith? The Role of the Attorney-General in Defending the High Court" (2002) 28 (2) <i>Monash U L Rev</i> 206
25	Horwitz, Jonah J., "Writing a Wrong: Improving the Relationship between the Supreme Court and the Press"

	(2013–2014) 40 <i>Ohio N U L Rev</i> 511
26	Jacobson, Meghan K, “Assault on the Judiciary: Judicial Response to Criticism Post- <i>Schiavo</i> ” (2006–2007) 61 <i>U Miami L Rev</i> 931
27	Keyzer, Patrick, “What the Courts and the Media can do to Improve the Standard of media Reporting of the Work of the Courts” (1999)1 <i>UTS L Rev</i> 150
28	King, the Hon L J., “The Attorney-General, Politics and the Judiciary” (paper delivered at Judicial Conference of Australia conference, November 1999)
29	Kirby, the Hon Michael, “‘Judicial Activism’? – a Riposte to the Counter-Reformation”,” <i>Australia Bar Review</i> , < http://www.michaelkirby.com.au/images/stories/speeches/2000s/vo153/2004/1917-Hamlyn_Summary_Article_-_2004_-_Alex_-_19-1-04.doc >
30	Kirby, the Hon Michael, “Attacks on Judges – a Universal Phenomenon” (speech delivered at American Bar Association conference held at Hawaii, 5 January 1998); (1998) 72 <i>ALJ</i> 599
31	Kosar, David, “Freedom of Speech and Permissible Degree of Criticism of Judges in the Jurisprudence of the European Court of Human rights and the U.S. Courts” < www.etd.ceu.hu/2008/kosar_david.pdf >
32	Krawitz, Marilyn, “Stop the Presses, but not the Tweets: Why Australian Judicial officers should Permit Journalists to use Social Media in the Courtroom” (2013) 15 <i>Flinders L J</i> 1
33	Litaba, Oyiela, “Does the ‘Offence’ of Contempt by scandalising the Court have a Valid Place in the Law of Modern Day Australia?” [2003] <i>Deakin Law Rw</i> 6
34	Mauro, Tony, “Five Ways Appellate Courts can Help the News Media” (2007) 9 <i>J App Prac & Process</i> 311
35	McLachlin, the Rt Hon Beverley, “The Relationship Between the Courts and the Media” (speech delivered at Carleton University, Ottawa, Ontario, 31 January 2012)
36	McMurdo, the Hon Margaret, “Should Judges Speak Out?” (speech delivered at Judicial Conference of Australia conference held at Uluru, April 2001)
37	Mount, Simon, “The interface between the Media and the Law” [2006] <i>NZ Law Rev</i> 413
38	Phillips, the Hon John Harber, “The Judiciary and the Media” (1994) 20 <i>Monash U L Rev</i> 12
39	Reichman, Amnon, “The Dimensions of the Law: Judicial Craft, its Public Perception, and the Role of the Scholar” (2007) 98 <i>Cal L Rev</i> 1619
40	Robinson, Eric P., “Summary Guide to the Courts and Media: A Basic Guide for Judges” (2011) 1 <i>Reynolds Ct & Media L J</i> 49
41	Rodrick, Sharon, “Achieving the Aims of Open Justice? The Relationship between the Courts, the Media and the Public” (2014) 19 <i>Deakin L Rev</i> 123
42	Sackville, the Hon Ronald, “How Fragile are the Courts? Freedom of Speech and Criticism of the Judiciary” (2005) 31 <i>Monash U L Rev</i> 191
43	Sahore, Aarushi, “An awkward situation: the courts’ approach to a judicial officer suing for defamation,” 6 June 2014
44	Schulz, Pamela D. & Dr Andrew J Cannon, “Public Opinion, media, judges and the discourse of time” (2011) 21 <i>JJA</i> 8
45	Schulz, Pamela D., “Rougher than usual media treatment: A discourse analysis of media reporting and justice on trial” (2008) 17 <i>JJA</i> 223
46	Sparling, Tobin A., “Through Different Lenses: Using Psychology to assess Popular Criticism of the Judiciary from the Public’s Perspective” (2009–2010) 19 <i>Kan J L & Pub Pol’y</i> 471
47	Taylor, the Rt Hon Lord of Gosforth, “Justice and the Mass Media” (1994) 6 <i>SAC LJ</i> 241
48	Williams, George, “The High Court and the Media” (1999) 1 <i>UTS L Rev</i> 136
49	Woolf, the Hon Harry, “Should the Media and the Judiciary be on Speaking Terms?” (2003) 38 <i>Irish Jurist</i> 25