Why study media law? #MLGriff

By MARK PEARSON  Follow @Journlaw

More than 200 new media law students embark on our seven week summer intensive course next week, so I thought it timely to reflect upon what might be gained from studying media law.

About two thirds will be attending classes in person, while the balance will be undertaking the course online. The cohort is almost evenly divided between journalism, law and communication students, with a few others taking it as an elective.

Here are 10 key benefits of media law study:

1. Identifying and assessing risks in publishing is the new digital literacy. Traditionally only journalists and some lawyers really needed to know about media law, but now every citizen must know the risks of publishing because we are all now publishers as we post to social media, send emails and release our blogs, videos, films, games, software and images.

2. Many areas of the law coalesce in 'media law', making it an excellent introduction to the legal system for journalists and public relations practitioners and a fertile field of revision and practice for law students.

3. Media law presents a wonderful opportunity to explore the many competing rights and interests in society as the rights to free expression, information, and a free media compete with other important rights including reputation, a fair trial, privacy, confidentiality, intellectual property and national security, along with the right to be free from discrimination in all its forms.

4. It affords us a superb showcase of the role of the news media in the varied political systems internationally as governments select different points where free expression should be curtailed. You learn that free expression is a continuum, with fewer restrictions in some nations and alarming censorship in others. International students get to compare Australia's media laws with those in their home countries.

5. Just as truth might be shackled by some governments and individuals, media law offers insights into so-called 'fake news' and 'false news' by demonstrating how fair and accurate reporting and publications can earn special protections and how ethical research and reporting can be
Streaming of entertainment and news has also become part of daily life. Watch, 2017). In the six months to June 2016, 93 per cent of internet users aged 18 to 24 used social networking sites (ACMA, 2016: 58).

By the end of 2016, there were approximately 13.5 million internet subscribers in Australia (ABS, 2017). It was not until August 2003 that the first major social networking platform, MySpace, was launched in California. It was the leading social networking site in the world from 2005 until 2008, when it was surpassed in popularity by Facebook, which by 2017 had almost two billion monthly users, including 15 million in Australia (Media Watch, 2017). In the six months to June 2016, 93 per cent of internet users aged 18 to 24 used social networking sites (ACMA, 2016: 58). Streaming of entertainment and news has also become part of daily life.

Social media developments have legal implications and require a new literacy

By MARK PEARSON Follow @Journlaw

Every new development in Internet and social media communication renders countless new people ‘publishers’ – exposed to risky media law situations they might never have anticipated.

Advances in communication technology in this new millennium have redefined the ways in which most of us share news and information. Industry upheaval and technological disruption have prompted many journalists to retool as bloggers, public relations consultants, multimedia producers and social media editors.

These roles add exciting new dimensions to journalism and strategic communications—including conversations and engagement with audiences and instant global publishing at the press of a button. But they also present new legal risks that most professional communicators – and even ordinary citizens – did not envisage in the twentieth century.

The changes have been so profound that they have impacted the ways we live and organise our lives and work practices. It is only when we review some of the milestones of the internet and Web 2.0, together with the legal and regulatory changes they have prompted, that we start to appreciate the need for all professional communicators to be knowledgeable about media law.

While the worldwide connection of computers, giving rise to the phenomenon we know as the internet, dates back to the early 1980s, it did not start to impact the lives of ordinary citizens until the mid-1990s. Melbourne's Age newspaper became one of the first in the world to offer an online edition in 1995 (van Niekerk, 2005). Over the ensuing years, entrepreneurs started to embrace the commercial potential of the World Wide Web, just as consumers began to use it to source products and services, and students began to engage with it as an educational tool—predominantly from their desktop computers.

By the end of 2016, there were approximately 13.5 million internet subscribers in Australia (ABS, 2017). It was not until August 2003 that the first major social networking platform, MySpace, was launched in California. It was the leading social networking site in the world from 2005 until 2008, when it was surpassed in popularity by Facebook, which by 2017 had almost two billion monthly users, including 15 million in Australia (Media Watch, 2017). In the six months to June 2016, 93 per cent of internet users aged 18 to 24 used social networking sites (ACMA, 2016: 58). Streaming of entertainment and news has also become part of daily life.
In June 2016, 39 per cent of Australian adults had watched Netflix in the previous seven days, while 27 per cent had watched professional content on YouTube and 16 per cent had viewed the pay television service Foxtel (ACMA, 2016: 82). In the United States by 2017, six out of ten young adults were primarily using online streaming to watch television (Rainie, 2017). Associated with this was the remarkable uptake of the mobile telephone and other devices. The iPhone was only launched in 2007, but by 2016 more than three-quarters of Australians owned a smartphone (ACMA, 2016: 18). The iPad was born in mid-2010 into a market segment that many experts thought did not exist, but by 2016 more than half of Australians used or owned a tablet device (ACMA, 2016: 55).

Even more technologies are unfolding rapidly, with implications for both the media and the law, with the increasing use of drone devices for news-gathering purposes and the awe-inspiring Internet of Things (IoT), where everyday devices are all interconnected, offering novel news-gathering and delivery systems for the media but also complex legal ramifications—particularly in the realm of privacy and security law.

Governments, courts and other regulators have been forced to decide on the various rights and interests affected by these new media forms, and some of their decisions have taken private enterprise by surprise. It is a far more difficult task, however, to educate the broader community about social media legal risks.

The core message is that we are all publishers in the eyes of the law when we publish a blog or post to a social media platform, and in that role all citizens are subject to the same laws that have affected journalists and publishers for centuries.

Further, the instantaneous and global nature of the media means that we may also be the subject of foreign laws of countries other than Australia—particularly if we work for a multinational corporation, or choose to travel to, or have had material we wrote downloaded in, a place where our posts might have broken the law or infringed upon someone's rights. These laws include defamation, contempt of court, intellectual property, confidentiality, privacy, discrimination and national security.

All this makes a strong argument for greater social media literacy among professional communicators and the wider community.


References


Disclaimer: While I write about media law and ethics, nothing here should be construed as legal advice. I am an academic, not a lawyer. My only advice is that you consult a lawyer before taking any legal risks.

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Filed under blogging, defamation, free expression, journalism, journalism education, media ethics, media law, mindful

Tagged as ABS, ACMA, communication ethics, communication law, ethics, Griffith University, journalism education, law, mark pearson, media, media law, mindful journalism, mindfulness, privacy, reflective practice, social media

Reporting upon forensic mental health cases and identifying patients

By MARK PEARSON Follow @Journlaw

What are the key policy factors influencing courts and tribunals attempting to balance open justice against other rights and interests in newsworthy cases involving forensic mental health patients?

Associate Professor Tom Morton from UTS, ABC lawyer Hugh Bennett and I examined this question – and the related issue of whether the media could report upon such cases and identify the patients involved – in our recent article in the leading journal in the field, the Journal of Media Law.
We developed this list of key policy factors elicited from the cases reviewed, influencing whether a forensic patient or former patient might be given

1. Specific legislation, regulations, rules and practice directions relating to privacy and anonymity in hearings involving forensic patients or former
patients;

2. Whether there is informed consent from the patient to identification and publicity of his or her case;

3. The extent to which a public trial and/or identification impacts upon the life (ECHR Article 2), ill-treatment (ECHR Article 3), liberty (ECHR
Article 5), and other rights, dignity and self respect of patients; including the impact of publicity and identification on their mental health and
well being, ongoing treatment, safety and ease of re-entry to the community after treatment/rehabilitation;

4. The impact of a public hearing or identification upon the right to privacy (ECHR Article 8) of the patient and other participants, and the
confidentiality of personal medical details;

5. The historic principle of open justice (ECHR Article 6): fundamental principles of transparency and justice ‘being seen to be done’, as espoused in
Scott v. Scott; the public interest in transparency of mental health processes and proceedings;

Here is our conclusion:

Open justice in mental health proceedings need not be viewed in a vacuum. There are strong parallels with numerous other situations where the legislature and the courts find and apply exceptions to the open justice principle. There is much scope for consistency across Australian jurisdictions and across the many situations where the restrictions are in place because of different vulnerabilities faced by key participants in the court process – mental health patients, children, sexual crime victims, family law parties, protected witnesses and, in two Australian states, even those accused of sexual offences until after the committal stage of proceedings.

There is a strong argument that the courts should be most transparent when the public gaze is so sharply focused upon them, and that public education about the workings of the justice system in the important area of mental health will be most effective when citizens are intrigued by a particular story and know its background. The courts might acknowledge that in some circumstances a story can be both “interesting to the public” and “in the public interest” – and that perhaps the two notions might not have to be mutually exclusive as Lord Wilberforce so famously suggested.
6. Freedom of expression and communication (ECHR Article 10); including the freedom of expression of the media, patients and other participants like hospital and prison personnel;

7. The public’s right to know: public understanding of the mental health system and its treatment of patients; the public interest in knowing the outcome of highly publicised or emblematic cases; the public interest in knowing of wrongdoing in the mental health system; and the public interest in the safety and security of their communities;

8. Impact of identification and publicity upon other parties, including hospital staff, other patients, victims and their families;

9. Public administration costs (economic and organisational) associated with implementing effective systems of publicity and identification. (For example, hospitals’ and courts’ management of media inquiries, extra costs of security for patient, special accommodation for public hearings, expense of installing video links etc);

10. Stage of the process – for example, publicity and identification might be allowed on early applications related to conditions while institutionalised, but perhaps refused when re-entry to society is imminent or has already passed;

11. The track record of the applicant media organisation/s in prior coverage and ethical management of privacy and consent issues, in this and perhaps in other comparable cases; the nature of the proposed program or publication and whether it is likely to be of a professional standard, balanced, accurate, reflective of a range of stakeholder views and sensitive to the patient’s experiences; and the context and focus of the identification of the patient in the media output;

12. Whether a public hearing and/or identification of a patient might risk stigmatising mental illness.

Full contents of the edition and subscription details can be seen here.

Disclaimer: While I write about media law and ethics, nothing here should be construed as legal advice. I am an academic, not a lawyer. My only advice is that you consult a lawyer before taking any legal risks.

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INFORRM a highly recommended resource for journalists and media law students #MLGriff

By MARK PEARSON Follow @Journlaw

Congratulations to UK-based media law blog INFORRM (INternational Forum for Responsible Media) on reaching an impressive 4 million hits since it started seven years ago.

The site – international but with an understandable UK orientation – boasts more than 5,500 followers including 3,500 on Twitter @inform.

INFORRM has just listed its Top Twenty Posts of all time (in descending order of popularity):

- Case Law: PJS v News Group Newspapers, Court of Appeal grants privacy injunction – Sara Mansoori and Aidan Wills
Harassment and injunctions: Cheryl Cole – Natalie Peck
The cases of Vanessa Perroncel and John Terry – a curious legal affair – Dominic Crossley
How to avoid defamation – Steven Price
Case Law, Strasbourg: Von Hannover v Germany (No.2) – Unclear clarification and unappreciated margins – Kirsten Sjøvoll
Defamation Act 2013: A Summary and Overview – Iain Wilson and Max Campbell
Social Media: How many people use Twitter and what do we think about it?
Case Law: OPO v MLA, Shock and disbelief at the Court of Appeal – Dan Tench
Case Law: ETK v News Group Newspapers “Privacy Injunctions and Children” – Edward Craven
Case Preview: Jack Monroe v Katie Hopkins, Twitter libel trial about meaning and serious harm
Case Law: “Spiller v Joseph – the New Defence of Honest Comment” – Catherine Rhind
Case Law: Iqbal v Dean Manson, harassment by letter – Edward Craven
The Perils of “Revenge Porn” – Alex Cochrane
News: Tulisa “Sex Tape”, false privacy turns into true privacy
Case Law: Gulati v MGN Ltd, A landmark decision on the quantum of privacy damages – Hugh Tomlinson QC and Sara Mansoori
Case Law: Růžový Panter, OS v Czech Republic: Anti-Corruption NGO defamation case, no violation of Article 10
La Regina Nuda and Italian Privacy Law – Athalie Matthews and Giacomo Parmigiani
Case Law: Hayes v Willoughby, harassment defence requires “rational belief” – Aileen McColgan
Defamation Act 2013: The public interest defence and digital communications – Jacob Rowbottom

From time to time over recent years they have been kind enough to repost my blogs or commentary pieces, including these:

Australia: Whither media reform under Abbott? – Mark Pearson
25 11 2013
Where will the new Liberal-National Coalition government led by Prime Minister Tony Abbott head with the reform of media regulation? Communications Minister Malcolm Turnbull and Attorney-General George Brandis were vocal opponents of the former Gillard Government’s proposals to merge press self-regulation with broadcast co-regulation into a new framework.
Read the rest of this entry »

Privacy in Australia – a timeline from colonial capers to racecourse snooping, possum perving and delving drones – Mark Pearson
13 10 2013
The interplay between the Australian media and privacy laws has always been a struggle between free expression and the ordinary citizen’s desire for privacy. I have developed this timeline to illustrate that tension. Read the rest of this entry »

Privacy On Parade – Mark Pearson
12 05 2012
The right to privacy is a relatively modern international legal concept. Until the late 19th century gentlemen used the strictly codified practice of the duel to settle their disputes over embarrassing exposés of their private lives.

The first celebrity to convert his personal affront into a legal suit was the author of The Three Musketeers, Alexandre Dumas père, who in 1867 sued a photographer who had attempted to register copyright in some steamy images of Dumas with the ‘Paris Hilton’ of the day – 32-year-old actress Adah Isaacs Menken. Read the rest of this entry »

Australia: News Media Council proposal: be careful what you wish for – Mark Pearson
10 03 2012
An impressive distillation of legal, philosophical and media scholarship (compulsory reading for journalism students) and worthy recommendations for simpler codes and more sensitivity to the needs of the vulnerable are overshadowed by the proposal that an 'independent' News Media Council be established, bankrolled by at least Aus$2 million of government funding annually. Read the rest of this entry »

Consumer law holds solution to grossly irresponsible journalism – Mark Pearson

9 11 2011

This post originally appeared on the Australian Journlaw blog. It suggests an interesting new approach to media regulation which, as far as we know, has not been suggested in debates in this country. We are reproducing it with permission and thanks to provide a further perspective on those debates.

Australia does not need a media tribunal with regulatory powers to punish ethical transgressions. It already has one – in the form of the Australian Competition and Consumer Commission (“ACCC”). Read the rest of this entry »


11 04 2012

Professor Mark Pearson’s Blogging & Tweeting Without Getting Sued will be welcomed by anyone writing online … Melbourne media lawyer Leanne O’Donnell reviews this timely legal guide to a rapidly evolving media landscape

Mark Pearson’s new book Blogging & Tweeting Without Getting Sued: A global guide to the law for anyone writing online – is very accessible guide to laws relevant to the all those writing online. Read the rest of this entry »

I find the INFORRM “Blogroll” is a particularly useful resource – regularly updated and featuring these media law blogs from throughout the world. Together they provide a wonderful resource for media law students, journalists and researchers. (Thanks for including journlaw.com, INFORRM!)

Surely sufficient bedtime reading for even the most avid media law geek!

INFORRM’s Blogroll

- Blog Law Online
- Brett Wilson Media Law Blog
- Canadian Advertising and Marketing Law
- Cearta ie – The Irish for Rights
- Centre for Internet and Society – Stanford (US)
- CYB3RCRIM3 – Observations on technology, law and lawlessness
- Cyberlaw Clinic Blog
- Cyberleagle
- Czech Defamation Law
- David Banks Media Consultancy
- Defamation Update
- Defamation Watch Blog (Aus)
- Droit et Technologies d'Information (France)
- ECHR Blog
- Entertainment & Media Law Signal (Canada)
- Fei Chang Dao – Free Speech in China
Blogs about Privacy and Data Protection

- Canadian Privacy Law Blog
- Data Privacy Alert
- Data protection and privacy global insights – pwc
- Datonomy
- Données personnelles (French)
- EU Data Protection Law
- Europe Data Protection Digest
- Hawk Talk
- ICO Blog
- Info/Law
- Panopticon Blog
- peep beep!
- Privacy and Data Security Law – Dentons
- Privacy and Information Law Blog, Field Fisher Waterhouse
- Privacy and Information Security Law Blog – Hunton & Williams
- Privacy Europe Blog
- Privacy International Blog
- Privacy Lives
- Privacy News – Pogo was right
- RPC Privacy Blog
Blogs about the Media

- #pressreform
- Atomic Spin
- Bad Science
- British Journalism Review
- Churnalism.com (an MST Website)
- CTJT Blog
- Greenslade Blog (Guardian)
- Jon Slattery – Freelance Journalist
- Martin Moore's Blog
- Media Power and Plurality Blog
- POLIS – Director's Blog (Charlie Beckett)
- Press Not Sorry

Blogs and Websites: General Legal issues

- Head of Legal
- Human Rights in Ireland
- Human Rights Info
- Jack of Kent
- Joshua Rozenberg Facebook
- Law and Other Things (India)
- LawInSport
- Legal Research Plus
- Letters Blogatory
- Open Rights Group Blog
- RPC’s IP Hub
- RPC’s Tech Hub
- SCOTUS Blog
- The Court (Canadian SC)
- The Justice Gap
- UK Human Rights Blog
- UK Supreme Court Blog

Court, Government, Regulator and Other Resource Sites

- Australian High Court
- Canadian Supreme Court
- Commonwealth Legal Information Institute
- Cour De Cassation France
- Full Fact.org
- German Federal Constitutional Court
- IMPRESS Project
- IPSO
- Irish Supreme Court
- New Zealand Supreme Court
- NSW Case Law
- Ofcom
- Press Complaints Commission
- Press Council (Australia)
- Press Council (South Africa)
- South African Constitutional Court
- UK Judiciary
- UK Supreme Court
Data Protection Authorities

- Agencia Española de Protección de Datos (in Spanish)
- BfDI (Federal Commissioner for Data Protection) (in German)
- CNIL (France)
- Commission for the Protection of Privacy (Belgium)
- Danish Data Protection Agency
- Data Protection Commissioner (Ireland)
- Dutch Data Protection Authority
- EU List of Data Protection Agencies
- Information Commissioner’s Office
- Italian Data Protection Authority
- Scottish Information Commissioner
- Swedish Data Protection Authority

Freedom of Expression Blogs and Sites

- Backlash – freedom of sexual expression
- EDRi – Protecting Digital Freedom
- Free Word Centre
- Freedom of Expression Institute (South Africa)
- Index on Censorship
- Libertus (Australia)

Freedom of Information Blogs and Sites

- All About Information (Can)
- BBC – Open Secrets
- Campaign for Freedom of Information
- David Higgerson
- FOI Man
- FreedomInfo.org
- Hawk Talk
- Heather Brooke
- Information and Access (Aus)
- Office of the Information Commissioner
- Open and Shut (Aus)
- Open Knowledge Foundation Blog
- Panopticon Blog
- Right2Info
- The Art of Access (US)
- The FOI Advocate (US)
- The FOIA Blog (US)
- The Information Tribunal
- UCL Constitution Unit – FOI Research
- UK FOIA Requests – Spy Blog
- UK Freedom of Information Blog
- US Immigration, Freedom of Information Act and Privacy Act Facts
- Veritas – Zimbabwe
- Whatdotheyknow.com

Journalism and Media Websites
Speaking with magistrates about Open Justice #MLGriff

By MARK PEARSON Follow @Journlaw

New magistrates from throughout Australia met in Brisbane last month for the National Magistrates Orientation Program and I was honoured to join a panel addressing them on open justice.

While magistrates have both legal qualifications and considerable experience, sadly open justice does not figure prominently in the curricular of most law schools so it is heartening to see the organisers of this program giving time to this important legal principle.

It was a great session! https://t.co/v3VuZzz7Gu

— Anne Stanford (@anne_stanford) October 13, 2017

My fellow panellists for the session were former Queensland chief magistrate, District Court Judge Brendan Butler (who recounted his experiences with the media in prominent trials and inquests) and the Queensland Supreme and District Courts’ first Principal Information Officer Anne Stanford (@Anne_Stanford) (who explained her role and the interaction between the courts and the media in Queensland and in Victoria where she held a similar position).

I traced the origins and importance of the open justice principle in our legal system, citing English Master of the Rolls Lord Neuberger who described it as “a common law principle which stretches back into the common law’s earliest period” – to “time immemorial” – “…older than 6 July 1189, the date of King Richard the First’s accession to the throne” [Neuberger, Lord of Abbotbury (Master of Rolls) 2011, ‘Open justice unbound?’, Judicial Studies Board Annual Lecture, 16 March, <http://netk.net.au/judges/neuberger2.pdf>, p. 2].

Particularly important was the notion that the media should be free to report upon cases and publish the names of parties involved, with minimal exceptions, as recently stated in the UK by Baroness Brenda Hale, new President of the UK Supreme Court:

“The principle of open justice is one of the most precious in our law. It is there to reassure the public and the parties that our courts are indeed doing justice according to law. In fact, there are two aspects to this principle. The first is that justice should be done in open court, so that the people interested in the case, the wider public and the media can know what is going on. … The second is that the names of the people whose cases are being decided, and others involved in the hearing, should be public knowledge. [… limited exceptions].” – R (on the application of C) v Secretary of State for Justice [2016] UKSC 2, 1 (per Lady Hale).

I suggested that with diminished resources and finances available to mainstream media in both metropolitan and regional areas, magistrates might be the only people left to speak to the principle of open justice when lawyers and litigants want the court to be closed or names suppressed. Media organisations that might have formerly paid for lawyers to push for the courts to remain open might not be able to afford them, and court reporters might not be available to even report on the particular case being heard.

I attach here my Powerpoint presentation from the session for colleagues and students who might be interested.

MagistratesOrientationBrisbane8-9-17

Disclaimer: While I write about media law and ethics, nothing here should be construed as legal advice. I am an academic, not a lawyer. My only advice is that you consult a lawyer before taking any legal risks.

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Mindful journalism featured in MediaShift article

By MARK PEARSON Follow @Journlaw

Journalism education colleague at the University of Tennessee, Melanie Faizer, has had a second article on mindful journalism published – this time in the leading media-technology outlet MediaShift.

In it she profiles a fascinating experiment at Ryerson University's School of Journalism in Toronto where a course in mindful meditation and journalism is being launched in January.

Faizer writes:

Practicing mindfulness may help journalists better withstand the unrelenting stresses of the job. …And although mindfulness can help reduce human suffering, Ryerson's mission is really about creating a methodology for young journalists that helps them resist falling into the storytelling traps of negativity and sensationalism.

Journalists: mindfulness is important to stay sane. @melaniefaizer with why https://t.co/QWAGlZ81Wx
— MediaShift (@MediaShiftOrg) October 2, 2017

Faizer’s first article on the topic appeared in Columbia Journalism Review and can be viewed here.

Bringing Buddha to the newsroom: media with mindfulness https://t.co/4K5LVo0Ckh via @cir #MLGriff @journlaw quoted
— Prof Mark Pearson (@JournLaw) July 17, 2017

Her quotes from me for both articles stem from this interview we conducted over Skype in May:
Our *Mindful Journalism and News Ethics in the Digital Era: A Buddhist Approach* (Shelton Gunaratne, Mark Pearson and Sugath Senarath eds; Routledge, NY, 2015) explored the possibilities of applying mindfulness techniques to journalism practice. I penned an article on the “Right Speech” aspect of mindful journalism for the *International Communication Gazette* titled ‘Enlightening communication analysis in Asia-Pacific: Media studies, ethics and law using a Buddhist perspective’. Its abstract and link to the full article is available [here](#).

The article backgrounds important critiques of the Western approach to communication studies, and considers how globalized communication and media studies has become, before exemplifying how a secular Buddhist perspective might offer 2,500 year-old analytical tools that can assist with media analysis, law and ethics.

I’ve also written a shorter account of the basic principles of mindful journalism in the journal *Ethical Space: The International Journal of Communication Ethics*, and the editors have been kind enough to make that article available for free viewing as a feature item on their website [here](#). You might also want to explore some of their other fascinating articles on media ethics [here](#) and perhaps subscribe.

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**Mental health and the media: a comparative case study in open justice**

By MARK PEARSON [Follow @Journlaw](#)

Our article comparing Australian and UK restrictions on the reporting of forensic mental health cases has appeared in the leading journal in the field, the *Journal of Media Law*.

Citation: Mark Pearson, Tom Morton & Hugh Bennett (2017): ‘Mental health and the media: a comparative case study in open justice’, *Journal of Media Law*, DOI: 10.1080/17577632.2017.1375261
Here is our abstract:

Media reportage about forensic mental health cases raises several competing rights and interests, including the public interest in open justice; a patient’s right to privacy, treatment and recovery; the public’s right to know about mental health tribunal processes; and victims’ and citizens’ interests in learning the longer term consequences of a publicised serious unlawful act. This article details a case study of successful applications for permission to identify a forensic mental health patient in both a radio documentary and in research blogs and scholarly works in Australia. It compares the authors’ experience in this case with three other cases in Australia and the UK, and identifies and weighs the competing policy issues and principles courts or tribunals consider when attempting to balance open justice with the rights and interests of a range of stakeholders in forensic mental health cases where the news media and/or patients are seeking publicity and/or identification.

Full contents of the edition and subscription details can be seen here.

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Filed under blogging, citizen journalism, contempt of court, courts, free expression, journalism, media ethics, media law, Media regulation, mental health, open justice, Press freedom, social media, sub judice, suppression, Uncategorized

Tagged as ABC, Background Briefing, communication ethics, ethics, forensic patients, journalism ethics, law, mark pearson, media, media law, mental health, mindful journalism, NSW Mental Health Act, open justice, publication restrictions, radio documentary, The Man Without A Name, Tom Morton

SEPTEMBER 12, 2017 · 2:00 PM

A ‘Mindful Journalism’ Approach to News and Emotion

By MARK PEARSON Follow @Journlaw

The News Reporting and Emotions conference was held at the University of Adelaide last week (September 4-6 2017) and I presented a paper titled “A ‘Mindful Journalism’ Approach to News and Emotion”. Here is the abstract, along with the audio and Powerpoint slides for the presentation if you are interested.

A ‘Mindful Journalism’ Approach to News and Emotion

Mark Pearson, Griffith University

Awareness of – and systematic reflection upon – emotions in the news enterprise can be beneficial for all stakeholders – including journalists, their sources and their audiences. ‘Mindful journalism’ is a secular application of foundational Buddhist ethical principles to the news research and reporting process, where journalists are encouraged to engage in purposive reflection upon a range of factors that might influence their story selection, angle, language and behaviour.

The approach is premised upon Buddhism’s Four Noble Truths and Noble Eightfold Path, invoking journalists to invest time and meditative effort to consider their intent, actions and communications when planning and pursuing a story; to reflect upon how it sits with their conception of their livelihood; and how it might use wisdom and compassion to minimise suffering and acknowledge interdependence.

Such reflection upon the emotional implications of a work of journalism might take the form of a timetabled session of meditation (self or guided) or (in acknowledgment of the pressures of time and resources) as little as a mini ‘reflection-in-action’ – a pause for a few breaths to check in to the journalist’s own emotional state and the potential impact on the emotions of others.

#Newsemo Mark Pearson @JournLaw explaining a mindful approach to journalism. Need to be able to 'pause and reflect during action'.
— Amy Milka (@AmyMilka) September 5, 2017

@JournLaw on how Buddhism can inform journalistic practice #NewsEmo pic.twitter.com/SV86uXQVNy
— Amy Milka (@AmyMilka) September 5, 2017

A ‘Mindful Journalism’ Approach to News and Emotion

Mark Pearson, Griffith University

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This paper positions this emotional reflection and calibration in the body of the author’s recent work on mindful journalism, including a co-authored book and several journal articles and suggests that, while journalists might not be expected to adopt the lotus position in the news room, a systemised routine of reflection upon their ethics and practices might improve the calibre of their work and minimise the suffering it might

AUGUST 14, 2017 · 9:34 PM

Helping identify a risky media law situation

By MARK PEARSON Follow @Journlaw

There is no easy solution to helping journalists and other professional communicators identify a risky media law situation.

The first challenge is to be able to sound the alarm bells in the midst of researching or writing. Given a journalist or public relations consultant might be working on numerous stories, investigations, production or communication tasks in any day, what might prompt them to pause and assess the media law risks associated with a particular publication or action?

The answer has puzzled me for my 30 years of teaching media law, and it appears to lie in a combination of situational / emotional analysis and media law knowledge, supported by a routine system of mindful reflection.

I have recently revisited the issue with groups of working journalists, asking them to identify situations they believed prompted them to be on high alert for media law problems. I have combined their observations with my own into this table of situations and risks.

This table is a work in progress, so I would really appreciate your comments and suggestions for further categories as I work to fine-tune it for inclusion in our next edition of *The Journalist's Guide to Media Law*. 
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<thead>
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<th>Situation</th>
<th>Media law risks</th>
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<tbody>
<tr>
<td><strong>GOING COMMANDO?</strong>&lt;br&gt;You are too rushed to check or you feel you are out of your depth</td>
<td>All areas of media law including the main ones of defamation, contempt of court and breach of court reporting rules can result from feeling rushed or pressured. Learn to recognise when you are feeling that way - then pause and reflect.</td>
</tr>
<tr>
<td><strong>YOU ARE BROADCASTING LIVE OR HAVE DIRECT PUBLISHING AUTHORITY WITHOUT CHECKS OR EDITING</strong></td>
<td>A danger zone for defamation, contempt, identification restrictions and other laws. All journalism and professional communications should be checked or edited by others. Live broadcasts should be measured and only conducted by experienced practitioners around media laws.</td>
</tr>
<tr>
<td><strong>PARTISAN?</strong>&lt;br&gt;You have a vested interest or strong opinion on the matter</td>
<td>Defamation defences can be lost if you are biased or partisian and it can leave you exposed to other laws like the misleading and deceptive provisions of consumer law.</td>
</tr>
<tr>
<td><strong>IT RELATES TO ADVERTISING OR PROMOTION</strong></td>
<td>This can lose defamation defences and news reporting protections under consumer law.</td>
</tr>
<tr>
<td><strong>YOU ARE RESPONDING TO A CRITICISM OR IT IS A CORRECTION OR APOLOGY</strong></td>
<td>Defamation defences can be lost and new plaintiffs can be defamed through poorly worded corrections, apologies or offers of amends. Legal advice is essential. Your response to criticisms can escalate problems, increase damages and lose defences.</td>
</tr>
<tr>
<td><strong>STEALTH?</strong>&lt;br&gt;You are &quot;browsing&quot; images or words from the internet or social media</td>
<td>You are risking a breach of copyright suit and allegations of plagiarism. Take advice.</td>
</tr>
<tr>
<td><strong>IT INVOLVES SECRET RECORDINGS, SURVEILLANCE, TAPPING, HACKING, DUPLICATE, deception or entry onto private property</strong></td>
<td>Be socially aware of the laws of trespass. Breach of confidence, surveillance devices legislation, and of gathering evidence which might not be admissible for a defamation defence.</td>
</tr>
<tr>
<td><strong>EXPOSED</strong>&lt;br&gt;You are exposing wrongdoing or misconduct</td>
<td>Defamation and contempt are potential issues. Seek legal advice on requirements of defences like truth, fair report and qualified privilege.</td>
</tr>
<tr>
<td><strong>IT INVOLVES SECRETS, PRIVATE MATTERS OR CONFIDENTIAL SOURCES</strong></td>
<td>Be on the alert for breach of confidence and privacy laws, and of gathering evidence which might not be available for a defamation defence such as the veracity of a confidential source. &quot;Should laws&quot; might not be available or might be inadequate. Risk of jail or fine for refusing to reveal source (disobedience contempt).</td>
</tr>
<tr>
<td><strong>REPUTATION?</strong>&lt;br&gt;It makes you think less of someone or laugh at their expense</td>
<td>Defamation defences should be in order when reputation is eroded.</td>
</tr>
<tr>
<td><strong>It criticizes someone’s performance or competence</strong></td>
<td>Defamation defences – particularly the requirements of the truth and honest opinion / fair comment defence – should be checked and legal advice sought when reputations might be damaged.</td>
</tr>
<tr>
<td><strong>It describes could apply to others or it hints that the audience should &quot;read between the lines&quot;</strong></td>
<td>&quot;Hidden&quot; defamation and contemptuous meanings are hard to defend and other plaintiffs can sue if they can prove people reasonably thought you were referring to them. Use narrow and precise identification and ensure your defences are in order rather than identifying vaguely and 'writing in code'.</td>
</tr>
<tr>
<td><strong>It involves the rich, powerful, famous – or lawyers or the judiciary</strong></td>
<td>While all citizens are equal, most defamation, breach of confidence and injurious falsehood suits come from these quarters so an extra check is required. Imposing judges have some improper motive could also be contemptuous (scandalising).</td>
</tr>
<tr>
<td><strong>It is about a person or company that is 'too far away' to sue</strong></td>
<td>Defamatory material is actionable wherever material is downloaded and the internet and social media can bring legal consequences in distant jurisdictions, particularly if your organization has a legal presence there or if you ever travel there.</td>
</tr>
<tr>
<td><strong>RECYCLING?</strong>&lt;br&gt;It uses sourced or file footage or past images in a new context</td>
<td>This forms the basis of several defamation and contempt cases and might also carry the risk of breach of copyright.</td>
</tr>
<tr>
<td><strong>It uses material from earlier stories on the topic – from your outlet or other media</strong></td>
<td>Cutting and pasting historic material from earlier coverage can repeat earlier errors, increase damages in defamation, contempt by prejudicing a jury trial, and breach copyright if it is the work of others.</td>
</tr>
<tr>
<td><strong>VULNERABLE?</strong>&lt;br&gt;It relates to someone’s mental health or other vulnerability</td>
<td>Special restrictions apply to mental health and some courts’ proceedings and both defamation and breach of confidence could be at play.</td>
</tr>
<tr>
<td><strong>It involves children in any way</strong></td>
<td>The mention, identification or photograph of any child requires extra legal checks and permissions. Court, crime, family law and apprehended violence restrictions might apply and there is a fundamental ethical obligation not to cause any harm to a child.</td>
</tr>
</tbody>
</table>
### Emotional

| You are feeling angry, exhausted, annoyed, betrayed or emotional or you have been drinking, using substances or are mentally unwell | This is no time to publish or use social media. Your state of mind increases legal risk, impacts on your media law assessment of the situation, and can leave you exposed to allegations of a lack of good faith or malice, thus losing key defamation defences. |

### It feels wrong or you get that feeling that you wouldn’t want to be the person mentioned

| Deeper consideration might reveal a risk of defamation, contempt or breach of confidence/privacy. |

### It involves a reluctant or difficult source, client or a threat of legal action

| Any threat of legal action should trigger your organisation’s legal escalation procedures involving formal legal advice. Reluctant or difficult sources might sue so thorough review is necessary. |

### It allows unmoderated and unwill public commentary

| This can be defamatory, contemptuous, discriminatory, vilifying and Australian law makes publishers responsible for the comments by third parties on their sites and social media feeds. |

### Crime and Justice

| It involves police, crime, violence (including domestic violence) or national security |

| Defamation, contempt and various publication restrictions on victims, terrorism and security agencies can apply. Reporters must attend the proceedings, be aware of suppression orders and produce a fair and accurate report of only what happens in court without intrusions or historic information. |

### Sensational

| It sounds unbelievable |

| Unverified claims can present problems in defamation, contempt and consumer law where misleading and deceptive conduct might not be defensible. |

### It uses colourful or emotional language

| This can be incisive and hard to defend and raises concerns about defamation defences, particularly for defamatory meanings you or the person quoted did not intend but were nevertheless conveyed. Court reports should use clear and concise language to avoid a contempt or defamation risk. |

### The material concerns sex, nudity or sexuality

| This requires special care as it can raise legal issues around defamation, breach of privacy or confidentiality, court restrictions and indecency. |

### It generalises, stereotypes, or is offensive to religions or cultures

| This can be defamatory if certain individuals are identifiable and might also breach discrimination and vilification laws. |

### Vision

| It uses images or footage that might misidentify, be inaccurate or reflect poorly on others |

| Images and footage arise in a host of legal areas including defamation, contempt, court restrictions, and breach of privacy, confidentiality and copyright. Be especially careful to check it portrays who it claims to portray, that this is allowed, and that others are not inadvertently pictured – such as children or sex crime victims or others who might be defamed by association. |

### Damaging

| People or organisations could lose money or suffer emotional distress because of it |

| The loss of money and emotional distress are key factors in the award of damages for a range of actions including defamation, breach of confidence, breach of privacy, injurious falsehood and breach of copyright. Professional communicators might also face negligence and breach of contracts suits. |

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**Disclaimer:** While I write about media law and ethics, nothing here should be construed as legal advice. I am an academic, not a lawyer. My only advice is that you consult a lawyer before taking any legal risks.

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*Filed under blogging, defamation, free expression, journalism, journalism education, media ethics, media law, mindful* ☑️ *Leave a comment journalism, online education, reflective practice, social media, terrorism*

*Tagged as communication ethics, communication law, Donald Schon, ethics, Griffith University, journalism education, law, mark pearson, media, media law, mindful journalism, mindfulness, privacy, reflection in action, reflective practice, Right Speech*

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*AUGUST 9, 2017 · 1:52 PM*

**Interview Part 4 – Strengths and pitfalls of online courses**

*By MARK PEARSON* ☑️ *Follow @Journlaw*
Q (David Costin): What are the gaps and barriers that you see that hinder you as being an effective online operator? You've mentioned one about rules, about the boundaries of ... of the uni itself, but what other gaps are you seeing, or barriers?

A (Mark Pearson): Time is a barrier, the time element, because the ideal, the face-to-face environment commits you to so many hours in the classroom, the students know you will be there, certain consultation hours, they know they can come to see you. The online environment is meant to be amenable to the learner, but it doesn't necessarily sit with the teachers' availability. So you know, whatever the learning problem, whether it's just a technical thing with the quiz not working or whatever, the online student might encounter that at 3:00 a.m. because it suits their schedule, but to maintain one's own sanity and life balance, one can't be available 24/7 to online students. And sometimes they'll get frustrated that they've had to wait to get a response. That doesn't happen very often, but nevertheless, the ideal would be for them to get immediate responses to such problems, but that's – until we get teaching bots – that's some way away.

Q: Yeah, yeah.

A: So that springs to mind as one constraint. Another is, I mean I talked about institutional barriers to the design, but there's also the industrial labour issue of teaching online. And (my School) ... has been very good with this and I have online tutors that are compensated comparably with the on-campus versions. For academic staff, there is the workload issue and that's looking reasonable at the moment for online development, but it's, you know, the risk is trying to force fit online to traditional models and to under-allow for all of this development and nurturing and engagement that has to happen for online to work, to undervalue that in workload and in rewards within the system.

Q: Okay, so you're saying so therefore part of that is I suppose a lot of your work is developing that relationship with students, but that's not really fixed into any particular workload or that you could put a monetary value on it or anything else like that.

A: Well it is, it's so many hours of workload per week that you would devote to that and the jury is out as to whether that's enough to cater to that many online students, isn't it? I mean teaching is somewhat of a calling and you suffer angst if you think your students are being underserviced, but the more hours you put into it, the lower your hourly rate becomes, you know, for whether you're a casual worker on so much per hour, you've done your hours that were allocated, but there's some student crying for help. You know, what do you do? Your calling tells you, you offer the help.

Q: That's right.

A: You then become a volunteer and that's nice for you and me at this stage of our careers, maybe we can afford to be volunteers a little bit, but the struggling young mum or dad that's trying to feed the family on sessional …

Q: Yeah, wages.

A: … rates or whatever, it becomes a – I believe if it's managed poorly and it's undercompensated, it's an exploitation of people in those situations.

Q: Well it becomes an ethical type of practice I suppose.

A: Mm.

Q: You mentioned before, you've done a couple of courses within . about supporting – about the development of online. What are the support structures that you've found have really helped you in the development of your online course?

A: Workload allowance for the development. So I mean academic workload is done on a formula that changes regularly within institutions. It's a points-based formula at the moment, but it's meant that I haven't had to teach a full load of classroom teaching in the semesters that I've been developing or ... revising the (online) courses. So the institution's been willing to take a full professor out of the classroom to invest in the design and then the offering of such courses.

Q: Okay.

A: The other – not so much constraint but important impediment – in this area is the fact that a lot of work is done in the establishment of online courses, but there has to be, just as in vehicle maintenance, there has to be a schedule of service maintenance updating, freshening. And unless that is allowed for in the budgetary and workload approaches of the institution, what you get is what sadly has become the fate of online distance correspondence courses through the ages, is that you just get people who may or may not care about it anymore and the course is just getting rustier and rustier, the readings getting older and older, the technology is being further and further behind the state-of-the-art at the moment.
It’s a good term, I like that term, ‘rusty courses’. And I’ll go back to – and this is, of course, I suppose one other question I was going to ask, you mentioned at the start you believe there was more courses adapted to the online environment. In your opinion, what do you think, is it more, like this particular course is more gravity, more orientated towards online? Are there other courses you think are more orientated towards the online than others, in what you’ve experienced so far?

A: The term ‘hybrid courses’ or ‘hybrid learning’ is bandied around.

Q: Yeah.

A: I haven’t seen a very strict definition of it. For some people it seems to mean some online components to a standard course. To others, it means a course that can be undertaken fully online or on campus. With this one, it is the latter and I’ve tried to make it so that it is as valuable a learning experience to the online student and also that opportunity is fully available to the on-campus students.

... Flexibility, yeah, comes through all the time. And I suppose, you know, this kind of comes on to the last question in that in the course that you’re developing for the online, but you’ve taken your own thinking processes and you’ve I suppose looked at where you want the kids to be, the students to be, but what other things do you do that strengthens your own skills in that teaching and learning environment, the students’ environment?

A: What do I do that strengthens my own skills?

Q: Mm, what do you do? Obviously you reflect upon your teaching.

A: Yes.

Q: Which is one of those – knowing things that work.

A: Yeah.

Q: But do you depend on – do you go and talk to your other colleagues about other strategies you can utilise or do you go and experiment on a MOOC (Massive Open Online Course) and come back and incorporate those things?

A: Well, I’ve done both of those things. I write about some of these experiences and practises in the academic literature. I maintain a blog, which I’ve been doing for about five or six years now, with – it varies, but with like a monthly contribution, but there’s been two in the last two weeks, you know, it’s just according to time and what happens, called Journlaw, which has a mixture of things to do with commentary or snippets about media law, abstracts and excerpts from my writings or articles, just referring people to those things. And when I do those guest interviews, I’ll throw them on there, so there’s sort of a central place where students and others can go there. And I’ll do mini reports or live blogs of conferences with relevance to that area, so instead of just going to sleep as a delegate at a conference, I’ll keep myself awake by taking a couple of photos and writing a news story about the presentation and whacking it onto the blog, those sorts of things. So there’s that, there’s the academic output. I have done a few of the MOOCs as you mention. What else do I do? The academic’s life, I’ve noticed, the pressures and demands over many years has become more intense in recent years than it was in the earlier stages of my career. So I don’t do as many sort of learning and teaching grant applications, writing about learning and teaching in learning and teaching sorts of journals or got to many of the seminars for staff and that sort of thing, just because there’s only so many hours in the day and certain priorities, KPIs you’re rewarded for.

Q: Yeah, so what you’re saying is you’re prioritising what you believe as part of the important strategies that will help you through the parts of your course.

A: Yeah and I do some leisure reading about it. In other words, if I’m an airport bookshop and there’s a – I mean that thing with the formative quizzes and repeating the question just came from some random popular book on embedding learning that I found in an airport bookshop and I was interested in reading about, but it’s not something – I mean the thing I do read a lot about at the moment is Buddhist ethical principles and mindfulness and that kind of thing, so that is influencing me a lot at the moment.

Q: But you’re adapting too.

A: Yeah, whenever I do those things, I think is there a way that that has relevance to either my research or my writing. And I build some of the principles into the research. So we did a big ‘Reporting Islam’ project which is just finishing up now. I finished in December, but it’s about a $900,000 over three years that we’ve just done. It had many dimensions to it, but part of it was developing this app … And so my colleague has continued with the project, is negotiating with future hosts for it and everything. But associated with this were a lot of training courses we developed for journalists, a handbook on Reporting Islam, a newsroom handbook that is there in PDF version as well as we printed a few copies for our expert panellists and so on. But I guess my point is, this thinking around the online stuff has also led to a very practical research project which has academic outputs but also newsroom and social application. [Calls up www.reportingislam.org]. So you start to get, like I recorded this interview with [journalist Peter Greste] – I didn’t record it, I took a cameraman to report it and it talks about the importance of reporting upon Islam accurately, basic information about the religion and things that get commonly confused, some basic myths about some of the common things like…

and this obviously is going to impact both enrolments but more important on the learning that’s happening in the course – rusty courses.
the different types of headdress or whatever. And then so going from that, basic terminology and then putting it into practice with a checklist for journalists to identify, like a little quiz on how inclusive their newsroom is, basic reporting tips, protocols they should follow when reporting Islam and the voices of journalists who are respected from a range of media about pitfalls in misreporting of Islam. Then very importantly, driving home with students the effects of misreporting …

(Audio visual playing)

A: … the impact on people in the community and what bad reporting or negative reporting, associating them all as terrorists and whatever can have. And so this is taken from another body of literature with permission with our actors’ voices talking about their focus group.

(Audio visual playing)

Q: Okay.

A: But we had actors and photo stock images to capture the person that’s said those things in those research projects. And I have recorded these interviews with different experts about the research.

(Audio visual playing)

Q: Mm.

A: So journalists and students can get that actual research base to the effects and then similar to what I've done in the media law thing, we've developed scenarios that actually have all of the components here for practice reporting on a Muslim issue. So the scenario is explained, there are tasks that they have to do within a two-hour class, you know, council papers about a proposed mosque, tips that they would follow in reporting some images that we’ve had taken that they choose from for it and a selection of quotes, including some of which are actually live acted.

(Audio visual playing)

A: That kind of stuff and a similar one on a terror arrest, because that’s a commonly misreported scenario with an actual court case following it and so on. And then a list of resources and people, journalists can go to. So that was quite an achievement, but the reason I mention it is a lot of these same principles have gone into there. So there are the mindfulness principles, – what's my intent with this story?, why am I going to cover in this?, what's the language I'm going to be using?. All of that's built in to some of the resources.

Q: It’s also that lived experience, isn’t it?

A: Mm.

Q: You’re there, so from where I sit, you've got that lived experience of what you're seeing. You've got your background as to that journalism component, plus the ethics coming in on top of that, plus the mindfulness.

A: Mm.

Q: So it comes together in a product, one way, that can be practically and which people can then access and I suppose that end point for where they want to be.

A: That's the idea of it. We won the Queensland Multicultural Award last year for media, communication.

Q: Wow, well done indeed. Well thank you very much for your time.

A: Alright, okay, absolute pleasure.

Q: I’ve enjoyed it.

Disclaimer: While I write about media law and ethics, nothing here should be construed as legal advice. I am an academic, not a lawyer. My only advice is that you consult a lawyer before taking any legal risks.

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