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Recommended Citation

Johnston, J., Breit, R. (2010). Constructing legal narratives: law, language and the media. *ANZCA*, 135-155.

Available at: http://ecommons.aku.edu/eastafrica_gsmc/6

Constructing legal narratives: law, language and the media

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Abstract

This paper proposes using the theory of narratology to connect legal discourses and processes with the way the media translate the law into news. Focussing on the Australian context, it looks at the choice of language used by media in covering courts, how stories are told and retold within these primarily textual environments, as well as the selection processes used by journalists in covering these rounds. The paper extends the argument for a narratology of courts, to a narratology of court reporting, suggesting fundamental criteria of story, discourse and the interpretative context be examined. It foreshadows the need for a methodology which addresses not just a content or discourse analysis of the media's coverage of the law but a more embedded, triangulated approach which follows court proceedings through their various stages, beginning with the 'acting out' in the legal system, to written versions of transcripts, to media selection and, finally, to the production of courts as news. It suggests that a possible outcome to this methodology may be a deeper understanding between the courts and the media.

Introduction

Tensions between the courts and media coverage of legal issues are part of modern life, with some seeing a level of tension as a ‘healthy’ element of a ‘lively relationship between two active institutions’ (Basten 2005: n.p.). Judges draw the line, however, where the media ‘get it wrong’ with calls for greater powers being granted to judges to respond to media inaccuracies and ‘scandalous’ criticism (Basten 2005: n.p.). A recent study reviewing suppression orders and media access to court documents (Australia’s Right to Know Coalition 2008), points out media concerns about this relationship. The study calls for laws providing greater access to court documents and fewer suppression orders. These criticisms of the current state of relations between law and the media are developed in recognition of the courts and media performing public functions that, when combined, help to foster open justice whereby the public can scrutinise the administration of justice.

This paper seeks to add to the understanding of how the courts and media contribute to open justice and public understanding of law and justice. It argues the case for deploying the techniques of narratology to help make sense of the complex relationship between courts and court reporting. Narratology – i.e.: the theory of narrative structures – could provide an analytical framework for gathering insights into how court stories are reproduced as news stories. Such a narratology might also offer a greater understanding of the languages of courts and the media; and help explain how journalists and judges use professional knowledge to construct and interpret courtroom processes. Narrative theories, we argue, provide a conceptual framework by which to interrogate the relationship between the courts and media to better inform professional development in the fields of media and law and to target reform with a view to promoting open justice and greater public access to the law *and* the media.

Narratology traditionally emphasised the science of narrative. However, narrative theories have evolved beyond a structuralist-led approach to help ‘show how narrative is a structure and practice that illuminates temporality and human beings as temporal beings’ (Prince in McQuillan 2000: 129).

Indeed to speak most generally, narratology does have crucial implications for our self-understanding. To study the nature of narratives, to examine how and why it is that we construct them, memorise them, paraphrase them, summarise them and expand them or organise them ...is to study one of the fundamental ways...in which we make sense.

Thus, we suggest narrative theories can offer a more expansive understanding of the processes at work as the news media interpret the narrative environment of the courts. The study builds on the work of other scholars who have investigated the discursive strategies used within the courtrooms to help reveal the legal profession's internalised rules (Goodwin 1994, n.p.; Brooks 2006; Jackson in McQuillan 2000: 163-165). Legal persuasion, it has been argued, is intimately tied to the legal inscription of social narratives. Goodwin (1994, n.p.) lists the disciplines with a stake in understanding and analysing courtroom persuasion as 'speech communication, rhetoric, political science, sociology, linguistics, anthropology and women's studies [which] have all addressed how trial advocacy might intersect with their disciplinary concerns'. The news media is noticeably absent from this list. While this paper is not specifically addressing the issue of persuasion in the courtroom, the intersection between the narrative of the courtroom and the writing of court stories by the news media represents a fertile area of investigation. We argue that it warrants inclusion in any list of disciplines that contribute to social understanding of the court process.

Having set out this case, the paper foreshadows an alternative methodology for researching these relationships; thereby expanding the theoretical explanations of how journalists' interpret the courtroom spectacle. In summary, this paper develops a conceptual framework by which to investigate court stories. We argue narratology might provide a deeper understanding of the relationship between the media (journalism) and the courts and thereby offer a more holistic basis for reform.

The gap in the law-media literature

Previous research into courts and court reporting includes investigations into a range of issues along the spectrum of court processes and story outcomes. Some have considered the effect of publicity on audiences to predict the likely effect of publicity on potential jurors, witnesses and public attitudes to the court's ability to administer justice (Chesterman, Chan & Hampton 2001). Others have looked at the language in courts and news (Chibnall 1977; Israel 1998); or attempted to map how news is created from the court environment (Drechsel 1983; Greenhouse 1996; Stack 1999). Still others have analysed the media's relationship with courts (see Parker 1998; Stepniak 1999; Cohn & Dow 1998; Ginsburg 1995). Sometimes this has focused on the uneasy relationship between the courts and the media (see, for the example, the various writers in Keyser 1999; Fife-Yeomans 1995; Breit 2008).

Very often, however, this research has tended to be legal-centric, with lawyers/legal academics or judges leading the debate. For example, in two major forums on the topic of the

courts and the media in Australia, legal perspectives dominated the debate. At the University of Technology Sydney *Courts and the Media* forum in 1998 (Keyser 1999), the majority of papers presented were delivered by judges and legal academics. (We acknowledge that journalists were strongly represented in the forum's panel discussions.) At the World Association of Press Council's Oceania conference (1999), two out of the three speakers on the topic of *Courts in the Media* were lawyers.

In contrast to this legal-centric focus, John Bourke (2007: 9) collapses the relationship between media and courts, positing courts as a form of 'alternative media'. His analysis explains that journalists, as court observers, 'circumvent the reconstruction' of news stories in the court environment because they are at the very source of the story. While this is not discounted, we argue for a more nuanced analysis of how court stories are reconstructed in news (set out below).

Other studies have attempted to analyse both legal and journalistic perspectives by canvassing the attitudes of lawyers, members of the judiciary and court reporters to map the relationship between the media and courts (see particularly Australia's Right to Know 2008; Breit 2007). We argue such studies only tell part of the story as they do not explain how the different bodies of professional knowledge inform decision-making. Thus, we argue, studies investigating the relationship between courts and the media could benefit from considering the question posed by Brooks (2006: 2) in his call for a narratology of the law:

If the ways stories are told, and are judged to be told, makes a difference in the law, why doesn't the law pay more attention to narratives, to narrative analysis and even narrative theory?

We extend this question to court reporting and ask:

If the ways stories are told in court and retold by the media makes a difference in how the law is understood; why doesn't the law *and* the media pay more attention to narratives, to narrative analysis and even narrative theory?

This paper calls for developing a narratology of court reporting. This approach repositions the focus of study away from the law and lawyers and the media and journalism; to look at the stories themselves as acts of production and interpretation within specific contexts that frame sense-making. We acknowledge the works cited above contribute to the field of scholarship and investigation, however, we contend that none have provided a holistic explanation of the ANZCA09 *Communication, Creativity and Global Citizenship*: Refereed Proceedings: <http://anzca09.org>

creation, production and consumption of court news. Thus parts of the process are ignored in positioning the reform agendas. This paper seeks to address this gap by treating the court and news stories of the courts as narratives.

Narratology

Narratology is the theory of narrative structures (Jahn 2005). Jahn (2005: N1.2) explains that ‘anything that tells a story, in whatever genre, constitutes a narrative’ and further that ‘a narrative is a form of communication which presents a sequence of events caused and experienced by characters’. Wake (2006: 14) notes that narrative can, and has been, used to explain history, politics, race, religion, identity and time: ‘stories that both explain and construct the ways in which the world is understood’. In arguing the case for journalists as storytellers or narrative-tellers, Bell (1991: 147) explains ‘journalists ... write stories’ which have ‘structure, direction, point, (and) viewpoint’. These features are present in courts and narrative theory has been used by scholars to explain and contextualise processes within the courtroom.

According to Brooks (2006) storytelling strategies and legal doctrine are closely linked. He argues that the law needs a specific narratology to assist in understanding of legal procedures and outcomes because understanding narratives aids understanding people, particularly how they construct and learn from stories. Brooks also calls for training in courtroom advocacy to canvass story-telling. In fact, he sees (Brooks 2006: 2) courtroom narratives as relevant as ‘economic or social theory to understanding how cases come to the law and are settled by the law’.

Brooks’ call for a specific narratology for law has weight when considering the complexity of court room stories. This complexity is compounded in news, supporting the claim for a specific narratology of court reporting. By the time the court story has become news it has been acted out and relayed several times – first in real life, then again in the courtroom from potentially several perspectives, and finally translated to the news pages, on to the television screen or by whatever other medium. This becomes an example of ‘simulacra’: a story of a story of an event which converges representation and reality, creating a multiply-constructed narrative (see Baudrillard 1983).

There are a number of accounts being played out in a courtroom, each of which contributes to the overall story. Jahn explains (2005: N.2.4.1) that when ‘a character in a story begins to tell a story of his or her own.... the original narrative ... becomes a “frame” or “matrix” narrative,

and the story told by the narrating character becomes an “embedded” or *hyponarrative*. Thus courts are full of stories which unfold from within another or contradict another – each of which is attempting to convince the judge and/or jury that their version is correct.

The stories unfolding in the courts include persuasive strategies, which follow a ritualised format designed to help judges and jurors make a decision. Jackson (in McQuillan 2000: 163) argues the discursive strategies adopted by judges are ‘truth-creating procedures’ which are indicative of the quality of an argument. These indicators of quality take account of who proposes the argument (the authority of the proposer); how it is proposed (the rhetoric of the presentation) and when and where it is proposed (the interpretative context of the presentation). Thus a multi-layered analysis is needed to map narratives within courts.

News reports, however, tend to present one version of events as interpreted through the eyes of a journalist or court reporter, usually constructed out of several or many perspectives. The discursive strategies utilised by journalists in determining the quality of arguments are internalised and rarely articulated beyond obtuse concepts such as news values or story logic or news themes (discussed below).

Not only do court room narratives and news reports of courts adopt different narrative structures, the participants employ different strategies to determine the quality of an argument and the value of a story. We argue understanding these elements is crucial to understanding the relationship between news and courts. Therefore, when analysing stories it is important to compare how the courts and journalists determine ‘truth’ or, more correctly, evaluate the quality of information/stories. Developing a narratology of court reporting goes beyond mapping narrative structures to take account of the discursive context in which those narratives are produced.

We argue for a grounded approach to analysing media and courts starting with mapping narrative structures across courts and news. Here we borrow from and build on the work of Founding Director of the Nieman Program on Narrative Journalism, Mark Kramer, (2004) who identifies some key elements of narratives:

At a minimum, narrative denotes writing with (A) set scenes, (B) characters, (C) action that unfolds over time, (D) the interpretable voice of a teller — a narrator with a somewhat discernable personality — and (E) some sense of relationship to the reader, viewer or listener, which, all arrayed, (F) lead the audience toward a point, realization or destination.

Each of these areas may be viewed as important in the telling of stories about law and justice and can be applied to the court room and to news stories of courts. Scenes are set – both in the reconstruction of stories within the courtroom and within the courtroom itself; characters are created out of the people within these scenes; action is central to how characters explain their versions of events and time can be crucial in sequencing what went on; the voices within the court-room can be used for effect as well as balance; certain connections will be made with the reader and finally; the story will reach a conclusion, potentially illustrating any number of themes, not least of which will be that justice prevails. Similarly, stories about law and justice are carried out in news reports of courts.

Kramer's six elements of narrative therefore provide a starting point for understanding why aspects of narrative are fundamental to court stories. They plot the technical elements essential to producing interesting court stories. We stress, however, narrative is a cognitive construct or mental image built by a response to textual and *non-textual* stimulus (Ryan (2004: 8-15). Thus a more nuanced approach to investigating narratives is needed that goes beyond an examination of effective story-telling techniques to engage with how language affects meaning. Therefore, we treat the legal and journalistic domains as discourse and propose a three-level schema for analysing their narratives (see Ryan 2004: 8-9):

- a. Story level: This is the superficial level which focuses on how stories are told within the different domains of law and journalism. The majority of Kramer's six elements of narrative are relevant here: setting scenes, developing characters; how action develops; use of time and sequence; conclusions and themes. Given the changing state of technology within news production and courtroom communication, at this level we also need to investigate the medium used to communicate stories.
- b. Discourse level: This level of the study focuses on the type of language used in telling stories and the professional knowledge deployed in construction of those stories. Thus the second phase of investigation into the relationships and courts involves an interrogation of the voices within courts and news stories (Kramer 2004); the language used by characters (or narrators) and the professional knowledge employed in story construction. The discourse level focuses on language, story construction and the effects of professional knowledge.
- c. Interpretative context: This level of the study targets the audience and the environment in which a narrative is interpreted. We argue the third phase of study requires revisiting Kramer's elements of time and sequencing; the types of connections stories make with readers and the conclusions they reach.

Using Ryan's three levels of narrative we develop a 'narratology matrix' across the levels of story, discourse and interpretative context. This schema for inquiry provides a manageable process by which to undertake an in-depth study of court and news narratives.

The matrix acknowledges the complexity of narrative and therefore addresses Kramer's six key elements of narratives from a range of perspectives taking into account how application of different forms of professional knowledge, professional methodologies as well as how internal and external interpretative contexts can affect narrative construction and interpretation. Such comparison, we argue below, might help identify some of the underlying tensions between the courts and news organisations involved in reporting courts.

Story level

It is obvious from the previous discussion that courtroom narratives and news reports of courts are multi-textual and multi-voiced. Thus we need to chart how news and courts set scenes and how characters are developed within these different story modes. We also need to compare and contrast how action unfolds within news and courtroom narratives and explore the different voices of the storytellers. In essence, the starting point of this investigation into the different narrative forms of courts and news starts with developing a typology of courtroom and news narratives.

Courtrooms can be places of high drama and this drama engages both verbal and non verbal narrative elements. Brooks (2006: 27) argues that the 'law tends to limit and formalize conditions of telling and listening'. His explanation of this embeds several of the key narrative elements noted earlier by Kramer. He draws connections between the retelling of past crimes (hyponarratives) as being potentially 'over-relevant' by providing too much information for a jury and connecting between past and present (chronology and time) in creating a representation of a good or bad person (character) (Brooks, 2006: 29).

The status of narrator and the characters within narratives can affect the value attributed to stories (these factors will be considered in the section on context and interpretation). Usually, narratives are told through one of three perspectives:

- first-person - told by a narrator who is present as a character in his/her story,
- authorial narrative - told by a narrator who is absent from the story, who tells a story involving other people;
- figural narrative - presents a story as if seeing it through the eyes of a character (Jahn 2005: N3.3.1).

In courtrooms, stories are told through first person narratives. In news stories of courts, however, the authorial narrative is most popular. This stems, in part, from the reporter's legal obligation to present a fair and accurate report and impartial representation of the story. Thus the law and professional ethics can affect how court room and news media narratives are structured. (This issue is addressed again in the section on discourse.)

Increasingly, the Australian news media employ a range of verbal and non-verbal narrative elements in story telling. Australian courts, for the most part, do not allow television cameras or photographers into court rooms (Johnston 2004). Therefore, if vision is used, it is primarily of people talking or hiding from camera; hence it barely has the potential to expand the textual input. Any vision obtained in courts is highly restricted where identifying features are obscured. This can result in a one-dimensional narrative. As a result, journalists must look to different elements of the court room stories to engage audience interest. Thus the structure, style and focus of news reports differ greatly from court room narratives. Journalists tend to turn to the extraordinary or high profile characters to develop relationships with audiences whereas the courts rely on the rules of evidence and courtroom protocols to define audience relationships.

Importantly, news narratives need to be media independent and thus transportable across a range of media – print, broadcast and online – and across a range of genres. Given the increasing use of technology in courts, courtroom narratives also need to be media independent. In order to better understand the relationship between courts and news reporting of courts, consideration might be given to the extent to which the laws governing court reporting affect the transposition of courtroom narratives across media, both internally (in the courts) and externally (in news).

By comparing and contrasting these elements of journalistic and court room story-telling, it is possible to compare and contrast the stories being told across the two professional fields of journalism and law. However, such methods do not offer insights into how professional knowledge is deployed to determine value. Nor do they offer insights into why certain stories are given greater value. Therefore, we argue a more in-depth analysis of courtroom and news discourses is needed.

Discourse level

We content the language of courts and news is framed by professional knowledge. In this sense we are employing Foucault's notion of discourse (1972) as the study of language within the discursive context in which it is made (see Malpas and Wake 2006: p 175).

Any language community, such as medicine, will share a methodology, phraseology and a body of thought that makes up their discourse. This discursive field contains within it rules governing language use within the community; thus certain usages will be prohibited as unacceptable or excluded altogether.

By expanding the analysis of narratives to compare and contrast both language and the professional knowledge used to construct narratives, we argue a more nuanced understanding of courts and news can be reached.

Language is essential at two key levels:

- the language used by courts and journalism to tell stories; and,
- the language used by them to gain authority over court reporting. This is tied to institutional rhetoric contained in professional self description and inter-professional critiques (see Breit 2008). This is an important and under-studied aspect of the relationship between journalism and the courts.

However, this study is more concerned with the language used within courts and journalism to tell stories.

When telling stories, both law and journalism use their own language. Both languages have developed in response to professional rituals – journalism grounded on populist traditions; law steeped in formality. An example taken from the South Australian 'Snowtown Case' illustrates the disjuncture between formal language of the courts and the populist language of journalism. In *R v Bunting and Others (NO 3)* (2003), the relationship between the accused was described by Justice Brian Martin in these terms:

...the evidence was capable of establishing the existence of an over-arching joint enterprise to which each accused was a party and pursuant to which each deceased was killed. The common enterprise began in about 1992 The accused were linked by their common hatred of homosexual persons and paedophiles. The enterprise developed. Where possible the accused sought to benefit from the property of the

deceased and to access any Centrelink benefits to which the deceased were entitled at the times of their deaths. Where necessary; personal details were extracted from the deceased immediately before their deaths with a view to ensuring the continuation of the benefits and to arranging access by the accused to those benefits. Steps were taken to create the impression that the deceased were still alive. False stories were spread to explain disappearances and false sightings of deceased were created. (*R v Bunting & Others* (No 3): par 346)

By contrast, a news report of the case, which featured on ABC's 7.30 Report, summarised the relationships in these terms:

Between them, John Bunting and Robert Wagner have been found guilty of torturing and murdering 11 people in what's become known as the bodies-in-the-barrel case. Almost as shocking as the details of the crimes themselves is the grim portrait of a vulnerable underclass, which provided their victims.

The victims were not chosen randomly, but rather, in the words of a senior police officer, the two were part of a group that preyed upon itself. (Sexton 2003: 9 September.)

This example highlights the different languages used by journalists and the judiciary to tell stories to multiple audiences (which we address in the next section). At times, the formal language of the courts can be at odds with the stories it is telling. Translating legalese into readable news can be particularly difficult when the court reporter may not understand expert testimony or crucial legal points on which a case may hinge (Lotz 1991). This increases the possibility of misunderstandings by those listening, understanding, translating, re-writing and constructing. Thus the interpretation of legal narratives involves a risk of confusion. This risk of confusion is exacerbated by the journalistic editing and packaging processes. By treating courts and news reports as narratives, we can explore how legal language is interpreted into journalistic language and how the attribution of journalistic and popular meanings reinvents the story. We suggest this is one locus of inter-professional tensions between journalism and the law.

Chakravati v Advertiser Newspaper Ltd (1998) provides an excellent example of where the technical nature of court proceedings and the complexity of the editing process can lead to journalistic inaccuracies. This case arose from two articles published in the *Adelaide Advertiser* reporting on a Royal Commission, set up in March 1991, to investigate the near collapse of the South Australian State Bank. The plaintiff was Mandobendro Chakravarti, ANZCA09 *Communication, Creativity and Global Citizenship*: Refereed Proceedings: <http://anzca09.org>

who claimed he was defamed in two articles. He argued the articles were not a true and accurate record of the proceedings. He argued further the articles created a false inference of him being involved in civil or criminal conduct and conducting himself in an improper manner as a director. He ordered a copy of the proceeding's transcript, which indicated that *The Advertiser* had inaccurately recorded a response from the witness quoted. Based on this, Mr Chakravarti wrote a letter seeking an apology and correction from *The Advertiser*. No apology or correction was published. It was later revealed that the transcript had been incorrect and the reporter's version of the evidence was correct. However, the court had to consider whether the report, as a whole, was inaccurate or unfair. Notwithstanding, the accuracy of the reporter's notes, the articles were inaccurate because of the positioning of images, captions and the headline (see Breit 1999: 37-59).

This example exemplifies the fact that understanding language is not enough to minimise risks of confusion. Account must be taken of how language is interpreted and reconstructed. This involves examining the *discursive practices* of law and journalism. Professional knowledge about legal doctrine, the seniority of legal representatives and courtroom protocols form a crucial part in courts' determining the value of a legal argument (Jackson in McQuillan 2000). Journalists, however, employ a completely different set of interpretative strategies to attributing value to information or the quality of an argument. This is decided by applying concepts like 'news values' or 'story logic' based on how a story will appeal to a news organisation's audience. These concepts form an integral part of the professional knowledge of journalism.

Decision-making in news has been highly influenced by the concept of 'news values'. While there is no set list of news values, certain concepts are seen as determining the value of news. These include conflict, impact, prominence, human interest, timeliness, proximity, currency, the unusual (see Galtung and Ruge, 1965). Grabosky and Wilson (1989: 12) identify primary news values in crime as "the exceptional, the unusual, and the novel, at the expense of the ordinary'. News values in court have been noted as 'interpersonal conflicts, adversarial manoeuvres, shocking outcomes, and community outrage...drama, spectacle and intriguing story lines' (Haltom, 1998: 16). In addition, deviance is noted as '*the* defining characteristic of what journalists regard as newsworthy' (Ericson et al 1987: 4). It is easy to see how the topics that come from the courts can fit into these lists of news values. This is further reinforced by Stack (1998: 7) who refers to 'reconstruction strategies' in courts, which include the importance of people, national impact, conflict, controversy, protest, decision, violence or scandal, moral disorder, embodied in disruptions to traditional values. Court cases

must incorporate these news values if they are to become news stories. These form the basis for selection from the plethora of court cases from which to choose (Johnston 2004).

These news values in turn 'frame the event, rendering it understandable in the terms of the ideological system' (Drechsel 1983: 14). Translating crime and courts into news has been viewed as a selective process which has changed with readers' habits brought about through cultural, social and legal changes (Roshier in Chibnall, 1977: 48; Schlesinger & Tumber 1994). For example, in the 1970s, murder, jewel thefts, and petty crime were covered. In the 1990s, drugs, terrorism, child abuse, rape, mugging, fraud, football hooliganism, and policy matters were most newsworthy (Schlesinger & Tumber 1994). Recurrent news tags such as 'home invasions' in the 1990s and 'national security' in the 2000s formed what Fishman (1980) had earlier dubbed 'news themes'.

While we concede that much news is created or manufactured (see Boorstin 1961), and hence 'news values' are not fixed, reproduction of events in courtrooms is not contingent on the event becoming news (indeed, it might be argued that many in the process would prefer it *did not* become news). Because the purpose of the court case is separate from the news story, it can be argued that news values in this environment are independent of the 'created' court event. This is not to say that the courts represent a 'pure' news environment, which runs entirely without the potential for underlying news agendas. Obviously, there are those who are interested in gaining the media spotlight in this environment as with any other. And in recent times, it is argued, the news agenda is increasingly being set by public relations and media relations professionals, particularly with the emergence of Litigation PR – an area where the news media and journalism are seen as losing professional authority (see Gibson & Padilla 1999; Breit 2007, 2009).

The idea of reconstruction within the courtroom is developed by Brookes (2006) who argues that Roland Barthes idea of '*doxa*' – that is, the cultural beliefs that structure our understanding of everyday happenings – are embedded in normative courtroom narratives. These become 'stock narratives' which represent the way things 'are supposed to happen' (2006: 14). While Brooks puts the case for how judges use *doxa* in their reconstruction of events, we argue that the media do so, as illustrated in the media coverage of Lindy Chamberlain and the death of her baby Azaria (*Chamberlain v. The Queen (no 2) 1984*). Renown as the most publicised case in Australia's legal history (Johnstone, 1982), media coverage often focussed on what was the expected, normative behaviour: the expectation of how a mother should grieve for her dead baby; the idea of going camping with a nine-week old baby at Uluru; the rumoured religious practices of the Seventh Day Adventists, and so on.

The trial provides a vivid example of how the ability to see a meaningful event is not a transparent, psychological process but instead a socially situated activity accomplished through the deployment of a range of historically constituted discursive practices.... Narrative accounts provide descriptions of action and belief in ways appropriate to the particular interpretative context ... (Edmond, 1998: 2.A)

Edmond's account of the Chamberlain highlights the need to understand the relationship between how stories are constructed and how they are interpreted. Discourse analysis can aid understanding through:

- Categorisation of the language used by journalists and courts to tell stories.
- Analysis of the relationship between medium (technology) and narrative structures.
- Identification of professional knowledge and the strategic rituals used to determine value and gain professional credibility. (Here we seek to articulate the key quality indicators mobilised by journalists and the judiciary when reinterpreting courtroom stories.)
- Explaining how core values – legal ethical and social – inform decision-making.

It cannot explain, however, how stories are interpreted. Thus a narratology of court reporting needs to take account of the interpretative context.

Interpretative context

The interpretative context looks at the next level of discourse. It goes beyond the relationship of language and knowledge to evaluate the effects of relationships and context on meaning, acknowledging its plurality (Bahktin in Zappen : 2000). Jackson (in McQuillan 2004: 164) argues judicial (or courtroom) narratives are constructed for three audiences:

- 'doctrinal audiences' (i.e. the fit of a decision in terms of legal doctrine);
- 'judicial audiences' (i.e. the judiciary); and
- 'the audience of the particular litigation' (usually limited to the parties and witnesses involved).

Thus the quality of argument (and a court's truth creating procedures) is framed by an argument's internal acceptability in terms of legal doctrine, members of the legal profession and those involved in the proceedings (which can include jurors). The quality of argument is not affected by its acceptability to external audiences namely the general public. In fact, this role - until recently - was almost exclusively devolved to journalists. In recent years, the ANZCA09 *Communication, Creativity and Global Citizenship*: Refereed Proceedings: <http://anzca09.org>

courts have acknowledged external audiences and have appointed public information officers to help interpret legal narratives and explain their meaning to the media and the public at large. However, this aspect of court reporting will not be considered in this paper.

The major purpose of a news report of a court case is for consumption by external audiences. News organisations develop discursive strategies to appeal to different audiences. Generally, for example, tabloid news outlets tend to sensationalise and over-simplify complex stories whereas broadsheet-style outlets are better known for depth and analysis.

Applying Jackson's schema, news reports of courts are prepared for *doctrinal audiences* (i.e. report's fit in terms of news which involves a range of internalised rhetorical strategies that determine the value of information including news values or story logic); *journalistic audiences* (i.e. other journalists and professional expectations); the audience of a particular story (i.e. sources and people involved in the story). But overwhelmingly, the quality of a court story is determined by its fit in terms of *external audiences* within the general public. This brings an extra layer into the way we might view narratology within the courts and provides a way of reviewing the narratology of court reporting.

This level of study offers insights into how different audiences make sense of court stories. Bakhtin argues: "On the one hand, the word that I speak is already 'half someone else's'. It becomes my own only when I populate it with my own intention. On the other hand, the word that I speak becomes populated in turn with the intention of another" (in Zappen, 2000). Thus we need to understand how people make sense of news and court stories, which means locating court stories within the lived experiences of internal and external audiences. Here, deploying a case study approach will enable in-depth interviews and focus groups to be conducted with parties involved in all levels of the courts and news processes. Through individual feedback we will be able to evaluate the importance of factors such as time and sequencing, story medium, voice and news frames. This provides a means of evaluating the suitability of Kramer's narrative elements. Through this holistic approach we will garner insights into how court and news stories are interpreted across all levels of production and consumption.

In summary, we see narratology as a useful conceptual tool by which to interrogate the relationship between media and the courts. Such investigation needs to go beyond the technical focus of Kramer's narrative features to look at how narratives are acts of creation, production/construction and interpretation. Thus we adapt Ryan's three-levelled schema, which looks at:

- Approaches to storytelling – how scenes are set; the characters; point of view, perspective, language, structure and the transportability of narratives across media.
- Discourse: How journalists and lawyers mobilise professional knowledge, core values and professional methodologies and language as well as the critiques proffered by journalism and the judiciary to claim authority over courtroom narratives.
- Interpretative context: How relationships are developed with multiple audiences within courts and news and how these might affect how stories are interpreted and valued.

Methodological implications of a narrative research

By viewing courts and news as narratives, we have been able to highlight a number of key stages that need to be investigated in order to explain the relationship between the judiciary and journalists. Drawing from our earlier discussion by Prince (in McQuillan, 2000), we argue that narratology is about making sense, organising and understanding narratives. We accept that in many ways these categories are inter-related and inform each other. However, they identify key approaches or phases of research needed to explain how journalism and the media contribute to open justice and help identify inter-professional tensions arising from the different narrative techniques deployed.

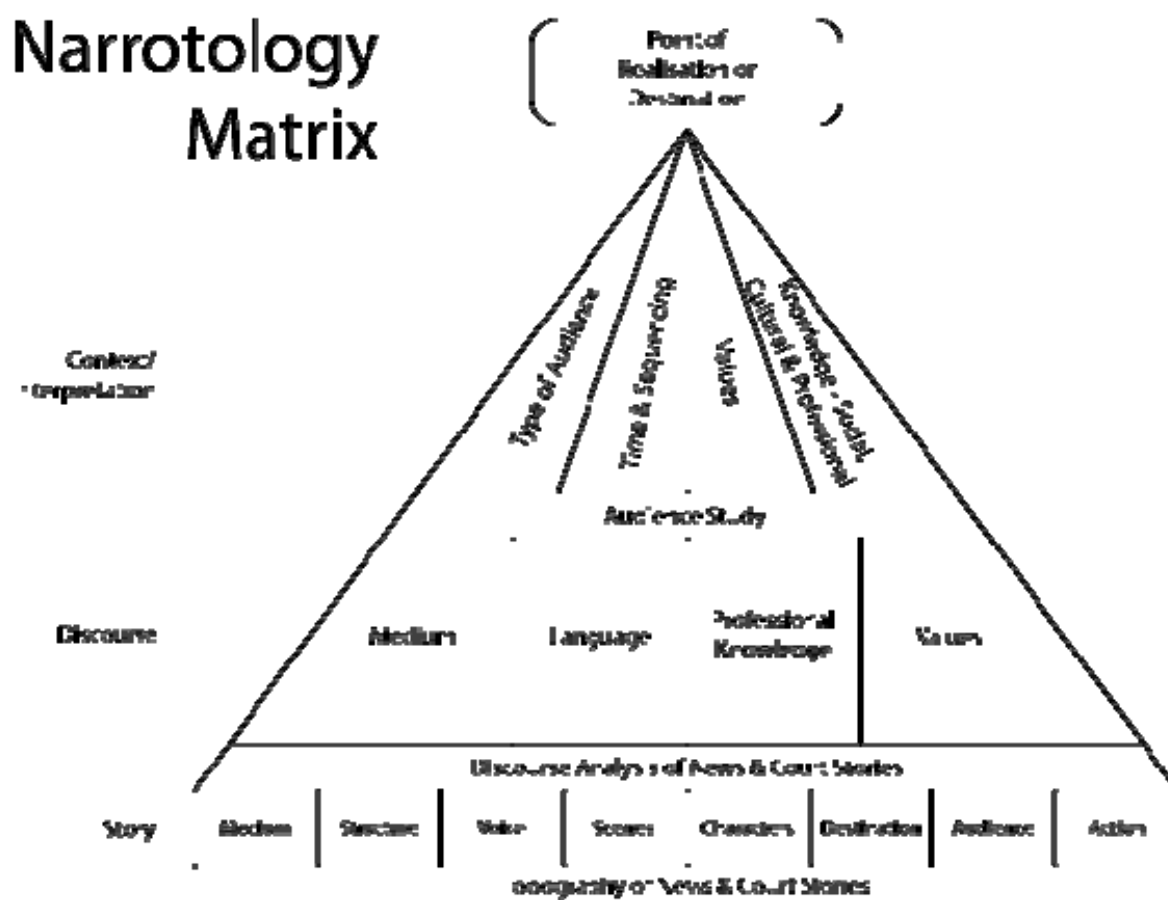
In order to map the relationship, we call for a three-pronged approach which we describe as a narratology matrix (set out in Figure 1 below) comprising:

1. Mapping the typology of news and court room stories. Here we build on the framework of Kramer (2004) to explain narrative structures. Changing technology is having a marked effect on how news and courts communicate and therefore, when studying story construction, account must be taken of the technology used to transmit such messages. Increasingly, news stories need to be transportable across all mediums. Yet laws currently restrict visual images within courts in Australia; thus communication about courts is limited to textual stimuli. Our typology of news and court stories will take account of the medium transportability of court room stories into news.
2. The second phase of our matrix highlights the importance of language and understanding how journalists and the judiciary evaluate the quality of stories emerging from the complex web of hyponarratives within a courtroom setting. We describe this phase as a study of discourse that takes account of the language used to describe stories, the professional strategies deployed to evaluate quality

and the core values – legal, social and ethical – informing these choices. In essence this phase seeks to position narratives within an ideological framework to help us understand how narratives are constructed and their role in promoting open justice and public interest.

3. The third phase of our matrix acknowledges that narratives are an act of construction *and* interpretation. Therefore, we need to understand how journalists, legal professionals (lawyers and the judiciary) and external audiences make sense of the courtroom spectacle. Here we need to map the different relationships that exist within the courtroom and the media and evaluate whether these relationships affect understandings of story quality. We recommend a case study approach to limit this level of investigation and to provide the opportunity for in-depth interrogation of how people interpret and act upon court stories. We anticipate this phase will provide the richest insights for the reform agenda across both law and journalism.

Figure 1: Narratology Matrix



By taking this approach, we can explore how legal language is interpreted into journalistic language and how this becomes news. In turn, it will aid understanding of how journalistic and popular meanings reinvent legal language. This will become our narratology of court reporting. Beyond this, however, we also seek to gain an understanding of why and through what methods, inter-professional tensions or ‘hot spots’ between journalism and the law occur. Finally, we will gather insights into what factors people take into account in interpreting these stories. In summary, our narratology of court reporting would assist in:

- identifying a theoretical framework for understanding how courts become news;
- identifying ideological and procedural differences between courts and media;
- providing a working framework for court reporters; and
- providing a framework for professional and legal reform.

References

Australian Press Council, 1999, ‘The media and the courts: the academics contribution’.

Three papers presented by H. Lee, Justice Kiefel and D. Solomon at the Proceedings of the *World Association of Press Councils First Oceania Regional Conference*, 22-23 June, Brisbane.

Australia’s Right to Know, 2008, *Report of the Review of Suppression Orders and the Media’s Access to Court Documents and Information*, 13 November.

Basten, J. 2005, ‘Court and Media Relationships’, National Judicial College, Beijing Conference, 30 October – 4 November, Beijing.

Baudrillard, J. 1983, *Simulations*, Semiotext(e), New York.

Bell, A. 1991, *The Language of the News Media*, Blackwell, Cambridge.

Bourke, John, 2007, ‘The role of Australian courts as alternative media’, in (eds) Naren Chitty and Sripan Rattikalchalakorn, *Alternative Media: Idealism and Pragmatism*, Southbound Press, Malaysia.

Breit, R. 2009, ‘The Legal Environment’, In (eds) Johnston J. & Zawawi C., *Public Relations Theory and Practice*, Allen & Unwin, Sydney.

Breit, R. 2008, ‘How the law Defines Journalism’, *Australian Journalism Review*, vol 20 no. 1, pp. 13-25.

Breit, R. 2007, *Law and Ethics for Professional Communicators*, Lexis Nexis Butterworths, Sydney.

Breit, R. 1999, 'Chakravarti v Advertiser Newspapers: Lessons for Journalists', *Australian Studies in Journalism*, no. 8, pp. 37-59.

Brooks, P. 2006, 'Narrative Transactions – Does the Law Need a Narratology?' 18 *Yale Journal of Law & the Humanities* 1, accessed 15 July 2008

http://209.85.141.104/search?q=cache:tNNDrQlo_MJ:www.law.virginia.edu/pdf/workshops/0405/pbrooks.pdf+narratology+and+courts&hl=en&ct=clnk&cd=2&gl=au

Chakravarti v Advertiser Newspapers Ltd, 1998, 154 Australian Law Reports 294.

Chesterman, M. Chan J. and Hampton S. 2001, *Managing Prejudicial Publicity*, Justice Research Centre, Law and Justice Foundation of NSW, Sydney.

Chibnall, S. 1977, *Law-and-Order News*, Tavistock, London.

Cohn, M. & Dow, D. 1998, *Cameras in the Courtroom: Television and the Pursuit of Justice*, McFarland & Co., North Carolina.

Drechsel, R. 1983, *News Making in the Trial Courts*, Longman, New York.

Edmond, G. 1998, 'Negotiating the Meaning of a "Scientific" Experiment During a Murder Trial and Some Limits to Legal Deconstruction for the Public Understanding of Law and Science', *Sydney Law Review*, accessed 5 Dec 2008 from <http://search2.austlii.edu.au/au/journals/SydLRev/1998/16.html#Heading15>

Fife-Yeomans, J. 1995, 'Fear and Loathing: the courts and the media', *Journal of Judicial Administration*, vol. 5, pp. 39-42.

Foucault, Michel, 1972, *The archaeology of knowledge and the discourse on language*, translated by A.M. Sheridan Smith, Pantheon Books, New York.

Gibson, Dirk C. & Pradilla M. 1999, 'Litigation Public Relations: Problems and Limits', *Public Relations Review*, vol 25 no. 2, p. 215.

Ginsburg, R. B. 1995, 'Communicating and commenting on the court's work', *The Georgetown Law Journal*, vol. 83, pp. 2119-2129.

Greenhouse, L. 1996, 'Telling the court's story: justice and journalism at the Supreme Court', *Yale Law Journal*, vol 105 no. 6, pp. 1537-1561.

Goodwin, J. 1994, 'Trial advocacy handbooks: narratology and opening statements', *Mosaic*, vol 27,

<http://www.questia.com/googleScholar.qst;jsessionid=LGyLTx5RwJ3SpPBcTHRSL6C0KFLxhbQ2v2nBHqRwglMzPTybyb!713837037?docId=5000293751>

Herman, D. 2004, 'Towards a Transmedia Narratology', in Ryan, M. L. (2004) *Narratives across Media*, University of Nebraska Press, Nebraska, USA.

Israel, M. 1998, 'Telling stories of crime in South Australia', *The Australian and New Zealand Journal of Criminology*, pp. 213-229.

Jackson, B. S. 2000, 'Narrative Theories and Legal Discourse', in (ed) McQuillan, M., *The Narrative Reader*, Routledge, London.

Jahn, M. 2005, *Narratology: A Guide to the Theory of Narrative*, English Department, University of Cologne accessed 15 July 2008 from <http://www.uni-koeln.de/~ame02/pppn.htm>

Johnston, J. 2005, *Communicating courts*, unpublished Ph.D thesis, Griffith University, Gold Coast.

Johnstone, B. 1982, 'All the makings of a classic whodunit', *The Age*, 20 October, accessed 5 December 2008 from http://150.theage.com.au/view_bestofarticle.asp?straction=update&inttype=1&intid=884

Keyzer, P. (ed), 1999, *The courts and the media*, vol 1, Halstead Press, Rushcutters Bay, NSW.

Lotz, R. 1991, *Crime and the American Press*, Praeger, New York.

McQuillan, M. 2000, *The Narrative Reader*, Routledge, London.

Parker, S. 1998, *Courts and the Public*, Australian Institute of Judicial Administration, Carlton South.

Prince, G. 2000, 'On Narratology (Past Present and Future),' in (ed) McQuillan, M., *The Narrative Reader*, Routledge, London.

- R v Bunting & Others (No 3)* No. SCCRM-01-205 [2003] SASC 251 (29 October 2003)
- Ryan, M. L. 2004, *Narratives across Media*, University of Nebraska Press, Nebraska, USA.
- Schlesinger, P. & Tumber, H. 1994, *Reporting Crime: the Media Politics of Criminal Justice*, Clarendon Press, Oxford.
- Schudson, M. 1978, *Discovering the News*, Basic Books, New York.
- Sexton, M. 2003, 'Snowtown trial reveals degenerate sub-culture', 7.30 Report, ABC TV, 9 September 2003, accessed January 30 2009 from <http://www.abc.net.au/7.30/content/2003/s942499.htm>
- Stepniak, D. 1998, *Electronic media coverage of courts*, Commonwealth of Australia, Canberra.
- Tuchman, G. 1978, *Making News: a study in the Construction of Reality*, The Free Press, New York.
- Wake, P. 2006, 'Narrative and narratology', in (eds) Malpas S. and Wake P., *The Routledge Companion to Critical Theory*, Routledge, London.
- Zappen, J. (2000) 'Mikhail Bakhtin (1895-1975)' *Twentieth-Century Rhetoric and Rhetoricians: Critical Studies and Sources*. (Eds). Michael G. Moran and Michelle Ballif. Westport: Greenwood Press.