

The News Manual

A professional resource for journalists and the media

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Chapter 64: The rules of court reporting

This is the first of three chapters on court and legal reporting. In this chapter we consider why it is important for court cases to be reported, and how to do it safely and properly. In the next chapter we look at how to write reports that are accurate, fair and interesting. In the final chapter we follow a legal case through from beginning to end.

The justice system

It is vital that all people should have a fair trial, if they are accused of doing something wrong or injuring another person in some way.

People who have done nothing wrong should not be afraid that they will be punished if they are charged, perhaps by mistake, or if someone takes legal action against them in a civil case. They should be able to be confident that they will be cleared of the accusation. Otherwise, all people will live in fear of the law, instead of feeling that it is there to protect them.

A court is the place where society employs specially trained people to decide whether or not a person really did something wrong.

If a crime has been committed, then the police need to find the person responsible; but it is not the job of the police to punish that person. That is the job of the courts, and before they punish anyone they need to be convinced that the police have caught the right person - the person who actually committed the crime.

At a trial, the police or their lawyer present the evidence which makes them believe that the defendant is the guilty person, and the defendant (or their lawyer) presents evidence in an attempt to show that the police are wrong. When the court has heard all the evidence, the jury (if there is one) or the judge (if there is no jury) decides whether the defendant is guilty or not guilty.

In these chapters we tend to focus on criminal proceedings rather than on civil law. This is because criminal processes are generally simpler and more common in everyday society whereas civil proceedings are often very specialised, complicated and less common. But most of the principles behind covering criminal cases also apply to civil cases too.

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A fair trial

Because it is so important that everybody should have a fair trial, nothing which would be likely to interfere with a fair trial is allowed to happen. This means that journalists working in many legal systems - especially those of the Commonwealth - are not normally allowed to publish or broadcast certain things during court proceedings, from the moment that somebody is about to be charged with an offence up to the moment that the court finishes dealing with it.

Sub judice

From the time that somebody is about to be charged with an offence, up to the moment when the court finishes dealing with it, the case is said to be *sub judice*.

In practice, sub judice normally starts when a person is arrested, charged or a warrant is issued for their arrest and ends when the judge or jury gives a verdict. In civil cases, sub judice normally starts when legal papers are lodged with the court and ends with the court's decision.

Sub judice is a Latin phrase meaning "under judgment". It is pronounced "sub JOO-da-see". While a case is *sub judice*, journalists are strictly limited as to what they can write. This is to make sure that they do not interfere with the job of the court in giving the defendant a fair trial.

We shall look in detail in a moment at what we are and what we are not allowed to write.

It is the job of the courts, and nobody else, to decide whether or not the person charged did in fact commit the crime. Nobody should be tried and convicted by crime reporters, in the columns of a newspaper or over the air waves.

Of course, it is also important to society that journalists (and other people) have the right to talk about things, and we shall talk more about that later in this chapter. But where two important rights clash, one has to be limited in the interests of the other.

For example, anyone has the right to drive from one town to another. However, because the people who live along the way have the right to walk safely around their homes, the speed at which you can drive may be limited. And because people driving the other way also have their rights, you may be limited to driving on only one side of the road.

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In the same way, the right to talk about a crime is limited in order to protect the defendant's right to a fair trial.

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What can we report?

When a crime has been committed, reporters need to tell people about it. They may talk to people who saw the crime, or whose property was stolen or damaged, and quote the things those people have to say.

However, as soon as the police have caught someone they believe to be responsible for that crime, and are about to charge them with that offence, then reporters are limited in what they can say about the crime. You can report the fact that the crime happened, that someone is being charged and any facts about it which are not likely to be challenged in court. If a man has been charged with breaking into a store and stealing \$500 in cash and goods worth \$250, then we must report the fact that he has been charged. We may write:

A man has been charged with burglary, following the break-in at Cut-Price supermarket at the weekend.

Bruce Maupiti, 28, of Avarua, Rarotonga, has been charged with stealing \$500 in cash and goods worth \$250 from the store on the night of July 25.

It is important to note that we did not say that Maupiti actually committed the crime - that is not a fact. It is the job of the courts to decide whether or not he did it. All we said is that Maupiti has been charged with the crime - that is a fact - and that there was a break-in at the store at the weekend - that is also a fact.

Anything which reporters publish about the details of the crime or the suffering of the victims, after someone has been charged, could interfere with the court's job. If there is to be a jury, they could be influenced by what they read in the papers, or by what they hear in the news. If the sad stories of how the victims suffered continue to be published right up to the day of the trial, the jury may feel bitter and angry towards the accused person. This will make it difficult for him to have a fair trial.

Even in countries where there is no jury system, judges do not like cases being commented on, or background being published, until the case is finished.

So, from the time that someone is charged with a crime - or, more accurately, from the time when the police tell you that someone is about to be charged with a crime - the case is *sub judice*. From that moment on, until the court case is completed, you should write nothing about the crime except details which emerge while the court case is being conducted.

We will return later in this chapter to consider how this relates to defamation and privilege.

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Why report court cases?

The courts are there to act on behalf of ordinary people, so it is important that they carry out their business in public, for all to see.

It is a vital principle that **Justice must not only be done, it must be seen to be done**. In other words, courts have to do the right thing, and the public have to see and understand that they do so.

For that reason, any member of the public may attend any court case, except for certain minor exceptions, which we will come to later in the next chapter.

Reporters are members of the public, and so are the readers or listeners they represent. Reporters therefore have the right to attend court cases, and a duty to be there whenever possible on behalf of their readers and listeners who cannot be there.

Court reporters may be given a special place in the courtroom to sit, called a press gallery. Essentially, though, there is no difference between the court reporter and any other member of the public in the courtroom.

There are three main reasons why journalists report court cases: to encourage public confidence in the law, to help the law deter future crime, and to get strong news stories.

Public confidence in the law

If ordinary law-abiding people are to feel that their society is strong enough to protect them from criminals, then they have to have a system of law enforcement which they feel confident about.

That means that they have to trust the police to catch criminals; and they have to trust the courts to punish people who break the law, to release people who obey the law, and to know the difference between the two.

In other words, society has to believe that the police and the courts are effective, fair and consistent. Let us consider each of these.

Effective: The police must have the willingness and the ability to catch people when crimes have been committed, and to make sure that guilty people are punished.

Fair: The police have to question people because they believe they can help with inquiries, and arrest people only when there is reason to believe they have broken the law. If people believe that the police arrest anyone, without good reason, then they will have no confidence in the police.

Similarly, if the courts convict or acquit people just because they are pretty or ugly, rich or poor, or come from the same part of the country as the

judge, then people will have no confidence in the courts. Only if the police and courts act fairly will society have confidence in them.

Consistent: If a judge last week sent a man to jail for three years for stealing \$1,000, and this week he finds another man guilty of stealing \$1,000, then society will expect the man to be sent to jail for three years as well. If there are other factors, of course, the sentence may be different - one man may have committed an offence for the first time, while the other has been jailed for stealing money before. But if the circumstances are more or less the same, society will expect the punishment to be more or less the same.

If the courts are not consistent, then it is unlikely that society can feel confident about the courts' ability to protect it properly.

Deterrence and publicity

Society needs journalists to attend court cases and to report exactly what happens there - who is accused of what, what evidence is brought for the prosecution and for the defence, what the court's decision is, and so on.

Society's confidence in the legal system depends upon people being informed about what is going on. That is part of the journalist's job, and it is a vital one. It is a job which needs to be done responsibly.

As we saw in the last chapter, one of the reasons for punishing people who break the law is to deter other people from doing the same thing.

It cannot possibly do this unless people know what punishment is handed out to law-breakers.

In some countries today (and in many countries in the past) murderers and other serious criminals are executed in public. Other criminals may be beaten in public. This is one way of letting society know the way in which law-breakers are punished, and this acts as a deterrent. However, most countries nowadays prefer to use newspapers, radio and television to let people know what happens to those who break the law.

Journalists have an important part to play in publicising the workings of the police and courts, so that society knows what happens to law-breakers. In this way society is helped to operate more smoothly.

If people believe that they can break the law and get away with it, they are more likely to break the law.

If people believe that the police and courts are so arbitrary that innocent people are as likely to be punished as guilty people, then they are more likely to break the law. After all, if you are going to be punished anyway, you might as well enjoy the benefits of the crime.

Only if people believe that law-abiding people are defended by the law, and law-breakers punished, will they be encouraged to live by the law. So the smooth running of society depends partly on people being informed about what happens in courts.

Strong stories

There is another very good reason why newspapers and broadcasting stations send reporters to court, as well as the social duty they perform. There are hundreds of very interesting news stories there.

Almost every case to come before the courts is full of human drama. There are murders and rapes and assaults, thefts and burglaries and robberies, broken promises, land disputes and broken contracts. Every one of these, written the right way, can give an interesting news story at the same time as informing the public about the workings of the courts.

Every editor should think very seriously about having one reporter permanently in the courts, if they have enough staff.

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Defamation & privilege

We have seen that it is in the interests of society that everything which goes on in court is reported - the charges, the name of the defendant and all the evidence, as well as the verdict and sentence.

However, as we shall see in *Chapter 69*, there is an offence called *defamation* (or libel in some countries), which stops people saying untrue things about other people which will damage their reputations. Is this not a worry to the court reporter?

Suppose a court reporter has taken down all that the prosecuting lawyer had to say, and all that the prosecution witnesses had to say about the defendant; and suppose the court reporter has done her job and written a report which has been published. It is likely that it will all be damaging to the defendant's reputation.

Now suppose that, at the end of the trial, the defendant is acquitted - that is, he is found not guilty. Can he now sue the prosecution lawyer and all the witnesses for defamation? Can he sue the reporter for defamation? After all, what was said and written was damaging to his reputation, and it can now be seen that it was not true.

The answer, of course, is that he cannot sue them for defamation. If he could, then it would be impossible for the courts to do their job. To allow the courts to do their job, anything that is said in court as part of a hearing is protected by *privilege*, and that is dealt with in detail in *Chapter 67: Privilege*.

The good news for court reporters, though, is that privilege protects more than the lawyers and witnesses. It also protects a news report of court proceedings, as long as it is fair, accurate and not malicious. In many legal systems, this special protection for reporting

cases is called *qualified privilege*, because it has some conditions or qualifications. We shall deal in a moment with what each of these means.

It is interesting to note that privilege is the court reporter's best friend. The limitations placed on what we can report by a case being *sub judice* may seem like a difficulty; the risk of defamation may seem frightening; but privilege puts everything back into balance.

The court reporter may have to wait to tell the full story, but when the time comes it can all be reported fully, without any fear of defamation.

Let us look now at the three conditions a report must meet in order to be protected by *qualified privilege*.

It must be fair

If evidence has been given by both prosecution and defence, the report must contain both sides. It is not necessary to report every word that was said, but the overall balance of the court case must be retained in the report. For example, if the prosecution case took twice as long as the defence case, you could fairly devote two-thirds of your report to the prosecution evidence and only one-third to the defence evidence.

It is essential that a newspaper or broadcasting station which starts to report a court case, continues to do so every day until it is finished. Otherwise the report of the case as a whole cannot be fair, and it will then lose the protection of privilege.

It must be accurate

It is essential that court reporters do not make mistakes. What the witness says may be quoted, but it must be an accurate quote. Court reporters need good shorthand.

Any significant inaccuracy will leave the whole of a report unprotected by privilege.

It must not be actuated by malice

If the reason you publish or broadcast a court report is to do harm to the defendant - that is, you are being malicious - then you can lose the protection of privilege.

This is not something which you need to worry about very often. You will report court cases on their merits, day after day and week after week. You will report them for the reasons we have already discussed - to inform readers or listeners about what is happening in courts. There will not normally be any malice towards anybody involved in any case.

The only time a problem might arise would be if the defendant is a known enemy of you or the owner or editor of the newspaper, radio or television station. In this case, you must be very careful to treat the case in the same way you would treat any other similar case. If you publish every word of prosecution evidence, on page one, and the person is later acquitted, he may try to sue you for defamation. If he can show that the way the case was reported was actuated by malice, you will lose the defence of privilege.

Contemporaneous reporting of a court case

Contemporaneous is a long word, but it means the next issue of the newspaper or the next news bulletin.

In some legal systems, such as Britain, as long as you publish or broadcast a court report contemporaneously, you will have a special kind of protection from privilege (called *absolute privilege*). In this case, your report only has to be fair and accurate; it does not matter whether or not it was actuated by malice.

For a daily morning newspaper, a court report is privileged in this way if it is published in the next morning's issue.

For a daily evening newspaper, it must be published in the same day's issue, unless the hearing finished too late, in which case it must appear in the next day's issue.

For a weekly newspaper, it must appear in the next issue.

For radio or television, the report is privileged in this way if it is used on any bulletin up to the start of the next day's hearing. It can be used on the evening bulletin, and again next morning, but not after that.

We shall return to consider the different kinds of privilege in more detail, in *Chapter 67*.

Sub judice illustrated

To help you understand how sub judice applies during legal processes, see this [Sub judice Chart](#). It illustrates how sub judice, defamation and privilege work at different stages in legal processes. While sub judice restricts what else you can report about the legal process, fair and accurate reports of the proceedings themselves are protected from defamation by privilege.

TO SUMMARISE:

Courts are usually open to the public; journalists are free to report what goes on there.

Reports are protected against defamation, as long as they are:

- **Fair**
- **Accurate**
- **Without malice**

This is the end of the first part of this three-part section on court reporting. If you now want to read on, follow this link to the second section, [Chapter 65: Practical court reporting](#)

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