

The treatment of witnesses, parties and lawyers

The justice system depends on witnesses and parties being able to attend court and give evidence without undue influence or pressure. This includes protection from vilification, in any form of communication, which may prejudice a pending proceeding, as well as protection from physical obstruction.

Witnesses play a central role in the justice system. Their testimony enables the guilty to be convicted and the innocent acquitted, and for courts to reach correct decisions. Witnesses are expected to give their evidence in court, not in informal interviews on footpaths, in arranged media interviews or in any other out-of-court statements.

Depending upon the circumstances, the publication of statements by persons likely to be called as witnesses about the matters in respect of which they will be likely to give evidence may constitute a contempt of court: *Attorney-General (NSW) v Mirror Newspapers Ltd* [1980] 1 NSWLR 374; *Civil Aviation Authority v Australian Broadcasting Corporation* (1995) 39 NSWLR 540. Likewise, questions which are designed to invite persons who are likely to be called as witnesses to make statements about matters in respect of which they will be likely to give evidence, may have a tendency to interfere with the administration of justice. Publications of interviews may affect the evidence of the witness. The practice of witnesses being interviewed by the media on their way to and from court also may deter potential witnesses from coming forward in other cases.

In any event, witnesses and parties should not be interviewed in circumstances in which they indicate an unwillingness to answer questions. Appearing in court and giving evidence is a source of great anxiety for most individuals. Witnesses and potential witnesses may be reluctant to testify if they expect to have to “run the gauntlet” of reporters, photographers and camera/audio operators when they come and go from court when giving evidence.

The pressure upon witnesses and parties should not be added to in any case, civil or criminal, whether tried by jury or not. This includes by being asked questions when the individual should not be expected to comment, or has indicated that they do not wish to comment. Parties and witnesses also should be free from physical obstruction and invasion of their personal space.

Practice Direction No 17 of 2014 creates a line (the Braille line) beyond which film crews and reporters reporting from outside the courthouse may not go. One of the purposes of the Practice Direction is to avoid “media scums” and danger to the safety of individuals close to the entrance to the courthouse. There may be some misunderstanding, however, that this Practice Direction leaves film

crews, reporters and others free to approach witnesses and parties, as they please, outside of that zone.

The safe passage of witnesses, parties and lawyers to and from court is important to the justice system. Their safe passage, without unnecessary interference, is governed by a variety of laws, including the criminal law and the law of contempt. Media organisations and others should seek advice about these laws, including the fact that they operate beyond the immediate court precincts.

The Court appreciates that, subject to laws governing the identification of witnesses and specific court orders, the media, like other members of the general public, generally are free to record images of individuals in public spaces, including individuals coming and going from court. The Court does not wish to intrude upon the proper filming and photographing of witnesses, parties and lawyers coming to and from court. It will not, however, tolerate unsafe or improper practices, including practices which unnecessarily add to the anxiety of witnesses and parties, and thereby affect their ability or willingness to give evidence, or which otherwise place improper pressure upon witnesses and parties. Such conduct interferes with the due administration of justice.

The Court also appreciates that media organisations operate in a competitive environment, and that there is a natural tendency for reporters and camera crews to follow each other's practices, including attempts to interview parties and witnesses. A reporter who fails to follow competitors and to question witnesses and parties, and to record them at close quarters, may be criticised by an editor or producer for not having done what competitors do. However, unsatisfactory practices which have developed in recent years, whereby witnesses and parties are impeded, and the safety and security of individuals is compromised, must be addressed.

The media is expected to adopt sensible and lawful practices of the kind which were adopted until recent times in this State. In some cases, witnesses and parties who are subject to specific threats must be brought to court through secure means. In general, however, parties and witnesses are required to enter and leave the court through public entrances. The court expects that in doing so they will be free from physical obstruction, unnecessary anxiety and unwanted questions which they do not wish to answer. In particular, any person attempting to capture images should not invade the personal space of any witness, party or legal practitioner.