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News judgements: a critical examination of reporting non-convictions for minor crimes

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Abstract

This paper considers issues related to the reporting of non-convictions for minor criminal offences. The entry point for the discussion is a content analysis of press court reporting across the Australian state of Victoria that shows that many newspapers report non-convictions. The paper observes that as the practice of reporting non-convictions has extended into digital space, a person the local court decides should not have a black mark recorded against their name can now be named and shamed before a global audience for an indefinite period. This paper has two aims: to document the Victorian news media’s practice of reporting non-convictions for minor offences, and to argue that its authority to name and shame those who receive non-convictions should be considered through the lens of media power. It is the second stage in a research project on “naming and shaming” of people who come to the attention of journalists as potential news stories when they appear before the courts.

Introduction

This discussion of media shaming begins with the case of two men and a dead kangaroo. In 2010, the young men were brought before a Magistrates’ Court in the Australian state of Victoria after they shot the marsupial on a pine plantation near the regional city of Ballarat. The men were “named and shamed” in the local daily newspaper, which published details of the case in both its print and online editions. The story was subsequently picked up by several wildlife protection organisations that provided links to the news article from their websites.

Of specific interest to this research is the penalty the duo received. The magistrate issued heavy fines, but imposed “non-convictions” given the nature and the circumstances of the crime. In Victoria, a non-conviction is often issued to a person who commits a minor offence, and it does not appear on their criminal record. Winford (2011) explains that if a court is considering whether or not to record a conviction, the law states that all circumstances of the case must be
considered. These include the nature of the offence, the character and past history of the offender and the impact of recording a conviction on their economic and social wellbeing, including employment prospects (s.8 Sentencing Act 1991 Vic). Given the potential stigma and discrimination that comes with a conviction, particularly in regard to employment prospects, it is relevant to note that some justice activists are campaigning to limit public access to old criminal records. Governments are being urged to set clear time limits on the use of such information amid concerns that people with some criminal history are avoiding looking for work for fear of disclosing a past conviction (Chadwick, 2012).

Unlike some North American jurisdictions, Australian courts do not consider public shaming as a factor in sentencing. It is the news media that decide whether a person who appears before the court will also be brought to wider public attention and the degree to which they will be shamed (Waller & Hess, 2011). So while the court ruled the two kangaroo shooters should not have a black mark against them on the public record, the news media were able to impose a durable mark of shame in digital space. A search of the Ballarat duo’s names and places of residence via Google more than 12 months after the case linked them to the crime immediately, with details of the offence appearing in the top 10 links on the search engine’s homepage. We argue that in the digital landscape, the disciplinary power of the news media is increasingly potent and needs to be watched.

This paper has two aims. The first is to document the Victorian news media’s practice of reporting non-convictions for minor offences. The second is to argue that the media’s ability to name and shame those who receive non-convictions should be considered through a theoretical lens of media power. Couldry and Curran (2003, p. 3) argue that “far from media simply being there to guard us against the overwhelming influence of other forms of power (especially government), media power is itself part of what power watchers need to watch”. Given that shaming has been recognised as a potent form of punishment across history and cultures, we suggest it is important to consider the media’s disciplinary and symbolic power to perform this cultural practice.

**News media and shaming – an overview**

Much scholarship acknowledges the “unmistakable” link between public exposure and shaming (Smith et al., 2002). Charles Darwin argued shame “relates almost exclusively to the judgement of others” (Darwin, 1899), whereas some suggest shame is associated with a sense of powerlessness as well as feeling exposed to others’ judgements (Tangney & Fischer, 1995). Gehm and Scherer (1988) contend shame is usually dependent on the public exposure of one’s frailty or failing, as opposed to the concept of guilt which “remains secret with us, no one else knowing of our breach of social norms or our responsibility for an immoral act” (Gehm & Scherer, 1988, p. 74). The media’s role in shaming people who appear before courts is a cultural practice that evolved when formal, often brutal, shaming punishments imposed by the courts were phased out during the 18th century (Waller & Hess, 2011). Some scholars view shaming as a potent form of punishment (see, for example, Kahan, 1996; Braithwaite, 1989), and it remains a punitive measure in some jurisdictions in the United States. It is rare for an Australian court to acknowledge the punitive role of public shaming via media (Waller & Hess, 2011). Today it is largely the news media that have the discretion to decide who should be “named and shamed” when matters come before the courts. Reporting non-convictions imposed for minor crimes has traditionally been the domain of newspapers, particularly at the “local” level (Waller & Hess, 2011).

**News media, the courts and the doctrine of open justice**

Understanding the role of the news media in deciding who should be publicly “named and shamed” for minor offences is tied to the news media’s role in upholding the doctrine of open
justice (Waller & Hess, 2011). This is intimately related to journalism’s Fourth Estate function – the idea of the press as part of society yet with its own authority to scrutinise and check power (Simons, 2007; Curran, 2010; Croteau & Hoynes, 2005; Hampton, 2011). The doctrine of open justice protects journalists’ important “watchdog” role in the administration of justice and gives reporters a qualified privilege within courtrooms so they can carry out this function. The courts recognise the power and influence of publicity and set boundaries to restrict publication of certain matters via suppression orders and contempt of court laws. For example, these powers are used to protect the identity of some victims and child witnesses and to prevent the shaming of under-age offenders who are given a chance to reform their ways out of the public gaze. Little attention, however, has been paid to the news media’s role in shaming people who come before the courts for minor crimes. This is not surprising as the relationship between journalism and justice has not been the subject of extensive investigation in general (Parker, 1998; Johnston, 2002).

Journalism scholars who examine the relationship between the courts and the news media have focused on the increasing number of suppression orders issued by the judiciary that they argue impede journalists in their Fourth Estate role (c.f. Pearson & Graham, 2010; Innes, 2008). This is not under challenge here. Rather, we suggest that the news media’s role in the judicial system should not be immune from critical examination by journalism academics, particularly in regards to coverage of minor offences.

**Deciding who should be ‘named and shamed’**

Journalists report on court proceedings for a range of reasons. Some reporters find inspiration in notions of justice and social responsibility, while for others courts are simply convenient and pragmatic sources of stories because the legal system is inherently newsworthy (Pearson, 1997, p. 73). The courts are brimming with the ingredients of a good story and offer well-recognised news values. Journalists are reminded, however, of the powerful role they play in this process, as Conley and Lamble (2006) observe:

> Defendants or their friends and relatives sometimes make threats, pleas, promises, offers or requests to persuade court reporters not to cover certain cases. For many of them a court appearance represents a humiliation that is only exceeded by having the misdeed recorded in a local or even national newspaper. (Conley & Lamble, 2006, p. 252)

The extent to which an offender is “named and shamed” can depend on media production requirements. Time, resource and space restrictions can affect how a story is reported. For example, small newspapers that employ only a handful of journalists may not have the resources to devote to routine court reporting (Waller & Hess, 2011). Courts that hear summary offences such as the Magistrates’ Court in Victoria have the highest “human traffic”, which could represent the most valuable use of a metropolitan journalist’s time because they can return to the newsroom with several story ideas rather than sit through a day of legal argument in a higher court that might not result in a report. Court stories have also been known to help boost circulations and ratings because audiences are curious to know who has appeared in court, particularly at a local level where they are more likely to recognise the names of criminal defendants (Pearson, 1997, p. 74). Recording whether a conviction has been imposed is also considered to be good journalistic practice. In court reporting, journalists’ are expected to identify the defendant accurately, state the charges and the plea, represent both sides of the case and record “any conviction and sentence and so on” (Polden & Coleman, 1997, p. 14).

**Shame and the disciplinary power of the news media**

The Fourth Estate theory that has dominated scholarly discussion of the relationship between the courts and the news media is based upon a sovereign model of political power that is being
increasingly superseded by the disciplinary model of power. Foucault’s theory of disciplinary power (1991) provides a way of understanding how extra-state influences (such as the news media) serve a “normalising” function that persuades individuals to conform to accepted modes of social conduct. Foucault (1991) identified a new kind of “disciplinary power” in the administrative systems and social services that were created in 18th century Europe, such as prisons, schools and mental hospitals. Their systems of surveillance and assessment no longer required force or violence, as people learned to discipline themselves and behave in expected ways.

It is in respect of this particular model of power that the tactic of “naming and shaming” marks certain behaviours as deviant and unacceptable (as documented here). This process not only bears upon the individuals concerned, but significantly reinforces public understanding about (and compliance with) persuasive social standards and implicit norms. This is the political problem viewed in social terms. Disciplinary power creates a “discursive practice” or a body of knowledge and behaviour that defines what is normal, acceptable and deviant (Hayward, 1998). The disciplinary power of the media shares synergies with theories of symbolic power, where the media are considered a recognised authority to “symbolise” or construct reality (Couldry, 2000; Bourdieu, 1991; c.f. Hess & Waller, 2012; van Dijk, 1998; Hall, 1973; Anderson, 1983; Tuchman, 1978; Noelle-Neumann, 1993). Journalists create versions of reality through their adherence to important cultural codes such as news values and narrative structures that guide their judgements in day-to-day newsgathering (Tuchman, 1978). Noelle-Neumann (1993) says there is a shared set of assumptions that all news people have on criteria for acceptance of stories by audiences. Evenson (2008, quoted in Hess & Waller, 2012, p. 119) lists these as conflict, consequence, prominence, timeliness, proximity and human interest, along with the unusual. Noelle-Neumann (1993) points out that the media’s disciplinary power can have a “pillorying effect”. She argues that when a group or individual steps outside society’s boundaries through actions such as breaking the law, media exposure can be punitive. She uses the term “pillorying effect” to describe the power of the media to draw attention to an individual who is surrendered to them as a scapegoat to be “exhibited” (Noelle-Neumann, 1993, pp. 154-155):

He cannot defend himself – he cannot deflect the slings and arrows. The means of rebuttal are grotesque in their comparative weakness – in their awkwardness compared to the polished objectivity of the media.

The media’s power to spoil a person’s reputation is well documented and a legal remedy is available in the form of the tort of defamation (Pearson & Polden, 2011; Breit, 2011). However, this is no protection for those brought before the criminal courts, where reporters enjoy a qualified privilege to cover most proceedings, including all accusations made in open court, whether they are proved or not. The “pillorying effect” is becoming increasingly potent in the digital landscape. Various media have now become interactively connected and as a result information flows more easily across technical, social and geographical boundaries (Bennett, 2003). Traditional news media have set up new media platforms where news and information can be produced and disseminated at a rapid pace across the globe. The old saying “today’s newspaper is tomorrow’s fish ‘n’ chip wrapper” no longer applies to traditional media as content is archived across digital spaces from news websites to Google and blogs, which means for people like the kangaroo shooters, their shame is only ever a mouse-click away.

**Method**

A content analysis (Bryman, 2008) of 1060 newspaper articles published across 16 newspapers in Victoria was undertaken for the study. The articles were taken from newspapers including two metropolitan daily newspapers, *The Age* and the *Herald Sun*, and 14 regional/community publications including *The Courier* (Ballarat), *The Standard* (Warrnambool), *The Border Mail*, *South Gippsland Sentinel-Times*, *The Wimmera Mail-Times*, *Bendigo Advertiser*, *The Guardian*
The newspapers were selected using a stratified, purposive sample. Researchers first obtained a list of 16 Magistrates’ Court locations in Victoria from the Victorian Magistrates’ Court website (https://dailylists.magistratesvic.com.au/browse-court-lists.aspx) – a figure representing one third of all Magistrates’ Court locations in Victoria. Newspapers serving the geographic areas of each court location were then identified via the Margaret Gee media guide (2010). Stories with the key phrase “Magistrates’ Court” were obtained via print copies of each of the 16 newspapers at the State Library of Victoria. Articles were taken during a three-month period from June to August 2010.

The stories were coded to identify convictions and non-convictions reported in each of the newspapers and, in the case of non-convictions, whether the accused person was named. A set of news values was established through a review of the literature on news production and identified in the data through a process of qualitative textual analysis of each story about a non-conviction where the person was named. The potential for an individual to be “shamed” was identified when a non-conviction was reported and the accused was named.

Findings

Of the 1060 court stories in the sample, 52 involved the reporting of offenders who had received non-convictions. Forty-four of these “named and shamed” individual(s) who had appeared before the Magistrates’ Court and incurred some penalty for their offence(s) – or 4.15 per cent of all articles (see Table 1 for summary). Stories ranged from a doctor fined for a case of road rage, to drunken assaults, to a woman who stole several tea-towels. Of the eight stories where minor offences were reported but individuals were not named, four could be explained for legal reasons (such as underage offenders), but no reasons were provided for the remainder.

<table>
<thead>
<tr>
<th>News stories from matters before Victorian Magistrates’ Court</th>
<th>June-August 2010. Total sample (N) =1060 stories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of non-convictions reported = 52 (5%)</td>
<td></td>
</tr>
<tr>
<td>Number of non-convictions reported where person was named = 44 (4%)</td>
<td></td>
</tr>
<tr>
<td>Number of convictions reported = 157 (15%)</td>
<td></td>
</tr>
<tr>
<td>Number of convictions reported where person was named = 147 (14%)</td>
<td></td>
</tr>
<tr>
<td>Other court stories (i.e. bail hearings, court mentions, remanded to appear, continuing matters) = 612 (58%)</td>
<td></td>
</tr>
<tr>
<td>Number of stories where penalties imposed (i.e. time, bond) but conviction or non-conviction not stated. Person is not named = 305 (19%)</td>
<td></td>
</tr>
<tr>
<td>Number of stories where penalties imposed (i.e. time, bond) but conviction or non-conviction not stated. Person is named = 345 (33%)</td>
<td></td>
</tr>
</tbody>
</table>
Table 1 shows there were a considerable number of stories that named an offender and reported their penalty, but did not indicate whether they received a conviction or non-conviction (145 stories, or 13 per cent of total sample). In many cases, these stories concerned offenders who received jail sentences or community-based orders, so it can be assumed a conviction was recorded. But in other cases it was not clear, such as a car vandal who received a good behaviour bond and was ordered to pay damage costs; a police officer charged with internet stalking; and a woman who was fined after using a pram to hide stolen goods.

Data were analysed to provide a summary of newspapers that were more likely to “name and shame” individuals for minor offences (see Table 2). The data first reveal that Magistrates’ Court stories are a popular source of news, particularly for regional daily newspapers that have court rounds. Second, the reporting and naming of offenders who receive non-convictions does not represent a high percentage of the court matters reported by each newspaper. The Courier recorded the highest number of stories where offenders were named for non-convictions, but these represent less than 10 per cent of its court reports during the sample period.

Table 2: Reporting of non-convictions in Victorian newspapers June-August 2010

<table>
<thead>
<tr>
<th>Name of newspaper</th>
<th>Publication frequency</th>
<th>Circulation</th>
<th>Total number of Magistrates’ Court stories</th>
<th>‘Naming and shaming’ non-convictions</th>
<th>% of court stories where offenders are ‘named and shamed’ for ‘non-convictions’</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ballarat Courier</td>
<td>Daily (paid)</td>
<td>20,386 (Mon-Friday average)</td>
<td>139</td>
<td>13</td>
<td>9.35%</td>
</tr>
<tr>
<td>Warrnambool Standard</td>
<td>Daily (paid)</td>
<td>13,000 (Mon-Friday average)</td>
<td>170</td>
<td>12</td>
<td>7.05%</td>
</tr>
<tr>
<td>Herald Sun</td>
<td>Daily (paid)</td>
<td>463,543 (Mon-Friday average)</td>
<td>180</td>
<td>8</td>
<td>4.44%</td>
</tr>
<tr>
<td>The Age</td>
<td>Daily (paid)</td>
<td>165,061 (Mon-Friday average)</td>
<td>99</td>
<td>3</td>
<td>3.03%</td>
</tr>
<tr>
<td>The Wimmera Mail-Times</td>
<td>Tri-weekly (paid)</td>
<td>8972</td>
<td>64</td>
<td>2</td>
<td>3.12</td>
</tr>
<tr>
<td>The Border Mail</td>
<td>Daily (paid)</td>
<td>171</td>
<td>171</td>
<td>2</td>
<td>1.16</td>
</tr>
<tr>
<td>South Gippsland Sentinel-Times</td>
<td>Weekly (paid)</td>
<td>10,500</td>
<td>67</td>
<td>2</td>
<td>2.98</td>
</tr>
<tr>
<td>Bendigo Advertiser</td>
<td>Daily (paid)</td>
<td>15,000 (Mon-Friday average)</td>
<td>85</td>
<td>1</td>
<td>1.17</td>
</tr>
<tr>
<td>Swan Hill Guardian</td>
<td>Tri-weekly (paid)</td>
<td>4346</td>
<td>35</td>
<td>1</td>
<td>2.85</td>
</tr>
<tr>
<td>Cobram Courier</td>
<td>Weekly (paid)</td>
<td>2860</td>
<td>4</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Heidelberg Leader</td>
<td>Weekly (free)</td>
<td>29,540</td>
<td>16</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Sunshine, Ardeer and Albion Star</td>
<td>Weekly (free)</td>
<td>16,909</td>
<td>16</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Benalla Ensign</td>
<td>Weekly (paid)</td>
<td>3904</td>
<td>6</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Gippsland Times and Maffra Spectator</td>
<td>Bi-weekly (paid and free)</td>
<td>13,712</td>
<td>3</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Colac Herald</td>
<td>Tri-weekly (paid)</td>
<td>5010</td>
<td>7</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Stawell Times-News</td>
<td>Bi-weekly (paid)</td>
<td>2111</td>
<td>3</td>
<td>0</td>
<td>0%</td>
</tr>
</tbody>
</table>

'Naming and shaming’ in digital space

Seventeen of the 44 reports where offenders were named and shamed for non-convictions were retrievable via the Google search engine in September 2012 by entering the headline or name of the offender. The Herald Sun and The Age (10) published most, while the remaining seven related to stories from The Courier (4) and Warrnambool Standard (3). In some cases, the articles were picked up by other organisations or bloggers. These include, for example, the kangaroo shooters and a case where the Warrnambool Standard named a man who was fined for taking his power ski within a Southern Right whale exclusion zone. This story was subsequently picked up by the Department of Sustainability website and appeared as a result of a Google search. The data also revealed that several regional publications publish what is referred to as a “court list” or “court watch” column that provides a brief list of the names and addresses of offenders who commit minor crimes, and non-convictions are often reported. These “court lists” were not available online.

The naming and shaming practices surrounding non-convictions can be interpreted as the media exercising its disciplinary power. Foucault says disciplinary power is a kind of meta-power or “regime of truth” that permeates society: “Each society has its regime of truth, its ‘general politics’ of truth, that is, the types of discourse which it accepts and makes function as true” (Foucault, quoted in Rabinow, 1991, p. 75). Public knowledge that media exposure for a criminal misdemeanour can keep occurring in digital space indefinitely and the concept of “court watch”, of news media surveillance and the public parading of those who come before the courts, can be understood in terms of disciplinary power, which pressures people to conform to accepted modes of social conduct.

News values

The data showed that regional newspapers were more likely to report matters that had news values such as “proximity” and also drew on characteristics such as the “unusual”. For example, most stories published in regional newspapers related to individuals who lived, worked or were visiting their town or city at the time they committed a crime, from drink-drivers to city nightclub assaults. Stories were given more prominence (lead articles at top of page, or listed on pages 1-5) if they were “unusual” in nature, such as the power skier who entered the whale exclusion zone and the kangaroo shooters.

Metropolitan newspapers, meanwhile, tended to report matters that had the news values of “celebrity” and “prominence”. Stories that featured in both The Age and Herald Sun, for example, included an AFL footballer who received a non-conviction after driving while his licence was suspended, speeding and running a red light; a road-raging doctor who threatened and punched another motorist; and a political figure who faced court after sending more than 100, sometimes offensive, text messages to his ex-lover.

Inconsistencies in court coverage

Some newspapers did not cover court at all or did not name any offenders, highlighting inconsistencies in editorial policies. The Cobram Courier, for example, ran a total of four court stories relating to the local Magistrates’ Court, three of which related to impending hearings of drug offences, but did not name any of the individuals who appeared before the court when there was no legal reason to prevent them from doing so. The Border Mail published 171 stories, but only two reports “named and shamed” people who received non-convictions.
Discussion: degrees of shame

The first aim of this paper has been to document the “naming and shaming” of those who receive non-convictions for minor offences in the Victorian Magistrates’ Court. The data establish that reporting non-convictions is a practice at many of the publications in the sample and highlights some differences between metropolitan, regional daily and small newspaper reporting practices. Second, it argues that the practice of reporting non-convictions for minor crimes should be considered through a lens of media power. This does not mean that the Fourth Estate view of the news media’s relationship with courts should be dismissed, as reporting on the procedures of law and order equates to reporting on the activities of the strong arm of the state. A balanced view involves journalism being seen to play an important role in upholding democracy while acknowledging the tensions involved in the interplay between the disciplinary and symbolic power of the news media and arms of the state, including courts. On its own the Fourth Estate perspective downplays – to the point of eliding – the power that the news media can wield over individuals and their relative powerlessness to defend themselves (Noelle-Neumann, 1993), as well as their disciplinary power to shape social space. The almost unwavering focus on the “watchdog” role of news media in courts in the literature to date explains why the effects of the disciplinary power of the news media on those appearing in lower courts in Australia have not been questioned until now. Under the doctrine of open justice, being subjected to media publicity of an alleged crime is presented as a sometimes unfortunate, but unavoidable, price of the system (Rodrick, 2008; Conley & Lamble, 2006). This paper problematises the practice of reporting non-convictions on the basis that in these cases the news media exert power over the lived experience of those they report on, as well as the wider social space, beyond that exercised by the state through its agents, the courts and the police.

The data reveal the Magistrates’ Court was an important source of news for Victoria’s major metropolitan daily newspapers The Age and the Herald Sun, and that non-convictions were reported when they had the news values of celebrity or prominence. The literature suggests there is a public interest “test” for reporting on those who have a public profile due to their celebrity status, and for those who are regarded as prominent in society, including some professionals such as doctors (Gregory, 2005, p. 75). The reporting of non-convictions in the major metropolitan dailies fits with these news values. Further research is needed to confirm if these papers have editorial policies regarding the public interest of reporting non-convictions in the case of those viewed as role models.

The large regional dailies, The Courier, The Standard and The Border Mail all ran more court stories than metropolitan daily The Age, and almost as many as Australia’s highest circulation newspaper, the Herald Sun. This indicates that the Magistrates’ Court round is of relatively high value to these publications, which devote considerable resources to this source of local news. The content analysis reveals that they run court stories for almost every day the courts sit. Information gathered at court meets the journalistic requirements of “reliability, trustworthiness, authoritativeness and articulateness” (Gans, 1979, p. 24), which goes some way towards explaining its appeal to these news outlets, which have relatively fewer newsroom resources for finding news independently and checking and verifying facts compared with their metropolitan cousins. Lower courts provide a constant source of local news for these newspapers that is easy to locate, identify and report and is guaranteed to interest the readership. The non-convictions reported by The Courier, The Standard and the Border Mail had different news values to those covered by the metropolitan dailies, reflecting a variation in readership and editorial policy. The non-convictions they reported were cases with the news value of proximity because the matters involved local people, places and events known among the readership. While the Standard’s reporting of the non-conviction for riding a power ski into a whale exclusion zone suggests a public interest test may have been part of its news judgement, the naming of a mother who received a non-conviction for stealing two tea-towels reported by the same paper would not appear to satisfy such a test.
The data reveals that small circulation newspapers, or those “community publications” distributed free of charge, covered very few court matters and no non-convictions in the study period. This data set does not reveal whether there were no non-convictions recorded by magistrates in the relevant jurisdictions in the study period, or whether these news outlets have few editorial resources to devote to courts, or editorial policies that rule out coverage of non-convictions. The data do reveal that relatively few court matters received coverage, which suggests that Magistrates’ Courts are not a major source of news for these small newspapers, despite their focus on local people and events.

This study suggests there are inconsistencies in the practice of reporting non-convictions which need to be researched further. First, the data show that the naming of those who receive non-convictions makes up a relatively small percentage of the sample (4 per cent). However, it is important to note the data also indicate that journalists are not routinely reporting whether an individual has received a conviction or non-conviction (23 per cent of total sample). The research also highlights inequalities when it comes to “naming and shaming”, which are best understood in terms of geographic location. The data suggest an “ordinary” person who receives a non-conviction for a minor crime is more likely to have the matter publicised if they appear in a court in a large provincial centre where the local paper has a dedicated court round than if they appear in a city or small town court. This study suggests that in the case of metropolitan dailies the news values of celebrity and prominence are the determining factors. Individual newspapers’ editorial policies on reporting non-convictions and, in the case of small newspapers, ability and resources for covering court are identified as playing a role and deserve further examination.

**Conclusion**

The data collected for this study establish that reporting of non-convictions is a small but significant aspect of court reporting practice in the state of Victoria. It has been useful for identifying similarities and differences between newspapers in the sample that deserve further examination. Our analysis of the data raises questions about editorial policy on court reporting, and the impact of these reports on individuals and social space.

This article opened with the reporting in both traditional and digital media of the non-conviction of two men whose case was captured in the study sample. It provides an example to support the argument that media power overtakes the judgement of the court when news outlets decide to report a non-conviction. In this case a public record was generated by the news media coverage despite the magistrate ruling no conviction be noted against their names. In the digital media environment the public record is not only accessible to everyone who can use the internet at the point of publication. It remains in the digital archive indefinitely for any prospective employer, landlord, spouse or other interested party to access with ease, despite the court’s ruling that no conviction be recorded and no further penalty be imposed.

We turned to Foucault’s scholarship (1991) to guide our exploration of the changing nature of media power and its practices in the specific setting of court reporting in a digital landscape because it offers ways to recognise and question socialised norms and constraints. Foucault argued that to challenge power is not a matter of seeking some “absolute truth” (which is in any case a socially produced power), but “of detaching the power of truth from the forms of hegemony, social, economic, and cultural, within which it operates at the present time” (Foucault, in Rabinow, 1991, p. 75). Discourses such as those surrounding minor criminal offences transmit, produce and reinforce power. However, discourse can also be used as a strategy to undermine and expose power, which “renders it fragile and makes it possible to thwart” (Foucault, 1998, pp. 100-101).

The literature that informs this research documents that shaming has been a punitive cultural practice across cultures and throughout time (Waller & Hess, 2011). We would like to see further discussion about the news media “naming and shaming” of people who receive non-convictions.
Pearson and Graham (2010) argue that journalists, judges and court officials need to be educated in the key principles of open justice in their discussions of suppression orders. We suggest this education should be extended to understanding and developing news organisations’ editorial policies to acknowledge the power and social responsibility associated with upholding this doctrine.

References


**Notes**

1. Individuals are required to disclose convictions when seeking employment and for some travel purposes; however, in Victoria non-convictions are only disclosed if an individual lodges a formal request with police. Winford notes Victoria Police is not authorised to release information about a person’s police record to any organisation outside the sphere of law enforcement and the administration of justice without the subject’s written consent (see Winford, 2010; Lord & Buchanan, 2011).

2. For example, in 2000 a judge ordered a North Carolina woman to clutch a handwritten sign that declared: “I am a convicted drunk driver – and as a result I took a life”, and parade around the county courthouse building. In the same year, a Michigan judge ordered a podiatrist convicted of health-care fraud to advertise his guilty plea in two newspapers as well as a professional journal (Deardorff, 2000).

3. It should be acknowledged that in Australia, for example, parliaments recognise the power and influence of the media and set some boundaries restricting the publication of certain matters such as the identification of under-age offenders, who are given a chance to reform away from the public gaze.

4. The authors are familiar with court reporting practices as both have extensive experience as court reporters on major metropolitan and/or regional daily newspapers.

5. The figure of 23 per cent includes 10 per cent where the person is not named and 13 per cent where individuals are named.

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