The whole story: Intimate partner homicides, legal rules and the news production process

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ABSTRACT

Feminist empirical work criticises the media for presenting violence against women ('VAW') and, in particular, intimate partner homicides ('IPHs') as isolated incidents disconnected from the broader social problem. This representation occurs despite the reality that IPHs, more than any other crime, typically arise out of a history of controlling, violent behaviour and in an environment where gender inequality is ingrained in social, cultural and organisational structures and practices. However, what has not been adequately considered in these critiques is the question of how legal rules, processes and restrictions impact the media's ability to contextualise individual IPHs.

This is the overarching question of my thesis which I respond to by adopting an interdisciplinary approach, integrating feminist socio-legal and media perspectives into an analysis of a criminal trial, media coverage of the trial and the news production process. The main focus of this research is the impact of the law sub judice contempt which prevents the reporting of prejudicial or extraneous material while legal proceedings are on foot, and the legislative restriction on reporting family violence intervention orders. I also consider the impact of legal rules and processes which first shape the legal narrative told in court. Employing the methods of court observation, journalist interviews, content analysis and a case study, the thesis aims to understand how the law contributes to the media's problematic reporting practices or, alternatively, how the media could do better.

The findings to emerge from the empirical evidence demonstrate how the law acts as an initial filter on the raw material available to journalists to report, significantly filtering information about prior violence and social context from the IPH narrative. The media's ability to report prior violence and social context is also directly impacted by publication restrictions that constrain what can and cannot be reported. In turn, these publication restrictions are vague and uncertain, leading to inconsistent approaches by the media. Also demonstrated is the way news values, journalistic practices and the current media landscape, in which we are seeing fewer dedicated court reporters, contribute to the problematic reporting of IPHs. Despite these constraints, my thesis provides evidence of good practice journalism and opportunities for the media to do better.

Recommendations include reform of sub judice contempt to ensure greater clarity and consistency in its operation, and legislative amendments to the restriction on reporting intervention orders when a domestic violence victim has been murdered. Any changes to the law must also be supported by education of journalists in both the relevant law and VAW. More certainty in how IPHs can be reported could see to increased coverage of individual IPHs that (legally) highlights the broader social context surrounding the incident and society's role in preventing VAW. Finally, my thesis recommends future research to address other elements of this problem that fall outside the scope of my thesis and to help pave the way for more ethical, accurate and effective media reporting of VAW.

DECLARATIONS

I make the following declarations:

- The thesis comprises only my original work towards the degree of Doctor of Philosophy;
- due acknowledgment has been made in the text of this thesis to all other material used; and
- the thesis is fewer than 100 000 words in length, exclusive of the bibliography and appendices.

Annie Blatchford

22 July 2020

PREFACE

I received editorial assistance from editor Rhys Ryan in the preparation of this thesis, limited to proofreading and checking for compliance with the *Australian Guide to Legal Citation Fourth Edition*.

Chapters Five and Eight include material from a journal article 'Making violence against women (in)visible? Restrictions on media reporting of intervention orders', co-authored with Prof. Jenny Morgan and Dr Margaret Simons to be published in *Monash University Law Review* (46)(1) in late 2020.

ACKNOWLEDGMENTS

My final thesis has been shaped by many experiences and individuals. The starting point was whilst undertaking my Masters of Journalism course at the University of Melbourne during which I interned at Domestic Violence Victoria ('DV Vic') to help evaluate their journalist award program. I am indebted to DV Vic, Vanessa Born, my journalism lecturer and now supervisor Dr Margaret Simons for giving me the time and opportunity to gain my first insight into the violence against women ('VAW') sector and the role of the media in primary prevention.

I continued to be involved in research on the media's reporting of VAW at the Centre for Advancing Journalism where I worked closely with Margaret and my second supervisor Prof. Jenny Morgan. In carrying out this research we continuously encountered the problem of the law and its impact on the media's reporting of VAW. Thanks to my supervisors' encouragement and enthusiasm to be involved, I began my PhD to investigate this research problem.

Since then I have gained practical experience which allowed me to see my thesis topic play out in the real world. These have included assisting with the early development and evaluation of Our Watch's National Media Engagement Program, working as a Media Coordinator at DV Vic and as a Senior Research and Policy Officer at the Victoria Law Reform Commission where I was involved in the contempt of court review. The informed colleagues, experiences and knowledge gained throughout these positions have been integral to my research.

My research has been modelled on, and inspired by, several other academic mentors and former educators who have offered me advice, reviews of my work and support. For this, I want to thank Dr Denis Muller, Dr Georgina Sutherland and Assoc. Prof. Jason Bosland who are just some of the many. I have also benefited from the support and friendship of my peers. Thank you especially to Brandais York, Lisa Archbold, Johanna Commins and Tess Whitton. They have shared many cups of coffee with me as we have navigated the academic world together.

Thank you to my Perth and Melbourne family and friends who have been my greatest cheerleaders. I could not have pursued this pathway without the unwavering support of my family and partner Christian Tietzel especially during the final, pandemic affected, stages of this process. Thank you especially to our baby boy whose imminent arrival was my greatest motivator to reach the finish line.

In carrying out this research I was reading and writing about women and children whose lives were retold through legal transcripts, proceedings and news stories. I want to acknowledge this fact and the women and children who were the victims and survivors of these often distorted versions of reality. I hope that my thesis goes some way to ensuring the media paint a more accurate and sensitive picture of these individuals' lived experiences.

ABBREVIATIONS

Australian Associated Press	APP
Australian Broadcasting Corporation	ABC
Australian Law Reform Commission	ALRC
Australian National Research Organisation for Women's Safety	ANROWS
Australian Press Council	APC
Charter of Human Rights and Responsibilities Act 2006 (Vic)	Charter
Contempt of Court Act 2019 (NZ)	*NZ Act*
Crimes (Homicide) Act 2005 (Vic)	*Homicide Act*
Domestic Violence Resource Centre	DVRC
Domestic Violence Victoria	DV Vic
Evidence Act 2008 (Vic)	*Evidence Act*
Family Violence Protection Act 2008 (Vic)	*FVPA*
Intervention orders	IVOs
Intimate partner homicides	IPHs
Intimate partner violence	IPV
Victorian Law Reform Commission	VLRC
Violence against women	VAW

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CHAPTER ONE:
INTRODUCTION

I INTRODUCTION

> The media screamed about the heinous and horrific acts, and rightly so. Fortunately, some journalists have taken the time to explore the issue behind the senseless and tragic deaths – the issue of men's violence against women - and reported responsibly. Others have tried to understand a complex issue, but many have chosen to simply report the deaths as part of the daily news cycle. But as soon as that cycle moved, so too did our attention.[1]

Feminist empirical work criticises the media for presenting violence against women ('VAW') and, in particular, intimate partner homicides ('IPHs') as isolated incidents disconnected from the broader social problem.[2] This representation occurs despite the reality that IPHs, more than any other crime, typically arise out of a history of controlling, violent behaviour (both physical and emotional),[3] and in an environment where gender inequality is ingrained in social, cultural and organisational structures and practices.[4] The media are frequently encouraged to change their reporting practices to better represent the reality of IPHs and, in turn, improve community attitudes towards VAW and gender equality.[5] However, what has not been adequately considered in these critiques and recommendations is how legal rules, processes and restrictions impact and restrict the media's ability to contextualise individual IPHs. This is the overarching question of my thesis, and the following introduction will foreshadow how bringing the media and law disciplines together can provide a nuanced and

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[1] Nicole Ferrie, 'The media has a role to play', Bendigo Advertiser (Bendigo, 29 April 2014).

[2] See, eg, Cathy Ferrand Bullock, 'Framing domestic violence fatalities: Coverage by Utah newspapers' (2007) 30(1) *Women's Studies in Communication* 34; Cathy Ferrand Bullock and Jason Cubert, 'Coverage of domestic violence fatalaties by newspapers in Washington state' (2002) 17(5) *Journal of Interpersonal Violence* 475; Tara N Richards et al, 'Framing Deadly Domestic Violence: Why the Media's Spin Matters in Newspaper Coverage of Femicide' (2013) 19(2) *Violence against Women* 222; Tara N Richards, Lane Kirkland Gillespie and M Dwayne Smith, 'Exploring news coverage of femicide: Does reporting the news add insult to injury?' (2011) 6(3) *Feminist Criminology* 178; Kellie E Carlyle, Michael D Slater and Jennifer L Chakroff, 'Newspaper coverage of intimate partner violence: Skewing representations of risk' (2008) 58(1) *Journal of Communication* 168; Jenny Morgan and Violeta Politoff, 'Victorian print media coverage of violence against women: A longitudinal study' (Report, VicHealth and The University of Melbourne, 2012); Georgina Sutherland et al, 'Media representations of violence against women and their children: Final report' (Horizons Research Report, ANROWS, 2016) ('*Horizons*').

[3] See Evan Stark, *Coercive Control: The entrapment of women in personal life* (Oxford University Press, 2007); R Emerson Dobash and Russell P Dobash, *When Men Murder Women* (Oxford Scholarship Online, 2015) ch 3.

[4] Our Watch, ANROWS and VicHealth, 'Change the story: A shared framework for the primary prevention of violence against women and their children in Australia' (Our Watch, 2015); R Emerson Dobash and Russell Dobash, *Violence against wives: a case against the patriarchy* (Free Press, 1979); K Webster et al, 'Australians' attitudes to violence against women and gender equality. Findings from 2017 National Community Attitudes towards Violence against Women' (Research Report No 3, ANROWS, March 2018).

[5] Our Watch, ANROWS and VicHealth (n 4); Our Watch, 'How to report on violence against women and their children: 2019 Victorian Edition' (Our Watch, 2019).

novel perspective on the media's problematic reporting of VAW and, ultimately, contribute to the prevention of the social problem.

My thesis takes an interdisciplinary approach, integrating feminist socio-legal and media perspectives into an analysis of a criminal trial, media coverage of the trial and the news production process. The starting point for interrogating the law's impact on the media's reporting of IPHs is a series of literature reviews supported by my own media content analyses, court observations and interview data. First is a review of the existing critiques on the media's reporting of VAW. This is followed by reviews of the media and legal scholarship which I argue is missing from the existing critiques of IPH news coverage. What is missing is an understanding of the news production process and the reality of court reporting, and secondly, the various legal rules and restrictions which interact with the court reporting process. The legal rules and processes considered include the rules of evidence, cross-examination and sentencing, and how they impact the legal narrative told about an IPH. The publication restrictions most relevant to the reporting of IPHs are sub judice contempt, which prevents the publication of material that could prejudice an accused's fair trial, and the Victorian legislative restriction on reporting intervention orders.[6] Finally, my thesis brings the patchwork of existing scholarship together in a case study that follows, from both a legal and media perspective, the process of an IPH criminal trial and the media's reporting of that trial.

The findings that emerge from the preliminary sets of data and the final case study demonstrate the way the law acts as an initial filter on the raw material available to journalists to report, significantly curtailing information about prior violence and social context from the IPH narrative. The media's ability to report prior violence and social context is also directly affected by publication restrictions that constrain what can and cannot be reported. In turn, these publication restrictions are vague and uncertain, leading to inconsistent approaches by the media. Also demonstrated is the way news values, journalistic practices and the current media landscape, in which we are seeing fewer dedicated court reporters,[7] contribute to the problematic reporting of IPHs. Despite these constraints, my thesis provides evidence of good practice journalism and opportunities for the media to do better.

Based on these findings, I recommend a need for greater clarity in the definition and application of sub judice contempt and legislative amendments to the restriction on reporting intervention orders when a domestic violence victim has been murdered. Any changes to the law must also be supported by education of journalists in both the relevant law and VAW. More certainty in how IPHs can be reported could see increased coverage of individual IPHs that (legally) highlights the broader social context surrounding the incident and society's role in preventing VAW. Finally, my thesis recommends future research to fill some of the gaps that fall outside

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[6] *Family Violence Protection Act 2008* (Vic) s 166 ('*Family Violence Protection Act*').

[7] Margaret Simons and Jason Bosland, 'From journal of record to the 24/7 news cycle' in Agnex Gulyas and David Baines (eds), *The Routledge Companion to Local Media and Journalism* (Routledge, 2020) 193.

the scope of my thesis and to help pave the way for more ethical, accurate and effective media reporting of VAW.

II VIOLENCE AGAINST WOMEN, A BIG NEWS STORY

Violence against women is one of Australia's biggest criminal, social, economic and health news stories.[8] The media have an important role to play in telling it to the public not just because it is an important story, but because the media is integral to preventing the problem.[9] Research has repeatedly shown that a society with attitudes that endorse violence and disrespect towards women and gender inequality will experience higher rates of VAW.[10] That is, the drivers of violence are expressions of gender inequality such as the excusing of VAW, rigid gender roles and stereotyped understandings of masculinity and femininity, men's dominance in decision-making, the restriction of women's independence in public and private life, and male peer relations that encourage violence and disrespect towards women.[11] Other factors that interact with or reinforce gender inequality also contribute to the severity of VAW, such as exposure to violence, alcohol, socio-economic inequality and discrimination.[12]

Despite growing awareness of the prevalence of VAW and its relationship with gender inequality, one in three Australians believe that if a woman does not leave her abusive partner then she is responsible for the violence continuing, and one in five believe domestic violence is a normal reaction to stress.[13] From this alone, there is a clear need for ongoing efforts to improve Australian's attitudes towards VAW and gender equality. To do this, a whole-of-society response, including the media, is required. This response involves challenging behaviours and attitudes that condone VAW, encouraging equal relationships between men and women and promoting and normalising gender equality.[14] The following overview of the context of VAW helps explain why it is so important that the media change the way it tells the story of VAW, from one of isolated incidents to one of a prevalent but preventable social problem.[15]

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[8] Our Watch, ANROWS and VicHealth (n 4) 7.

[9] Vanessa Born, 'The M Factor: Media as a Setting for Violence Prevention' (2011) 24(8) *Parity* 40.

[10] Webster et al (n 4) 24; VicHealth, 'Preventing violence before it occurs: A framework and background paper to guide the primary prevention of violence against women in Victoria' (Victorian Health Promotion Foundation, 2007) 27-28 <https://www.vichealth.vic.gov.au/-/media/ProgramsandProjects/DiscriminationandViolence/PreventingViolence/frameworkweb.pdf?la=en&hash=A262B02E570F08D3B9740B19C9860E3C252571C2>; L L Heise, 'Violence Against Women: An integrated, ecological framework' (1998) 4(3) *Violence Against Women* 262.

[11] Our Watch, ANROWS and VicHealth (n 4) 8.

[12] Ibid.

[13] Webster et al (n 4).

[14] Our Watch, ANROWS and VicHealth (n 4).

[15] Ibid.

A *Terminology*

In this thesis, I use a range of terms including 'violence against women', 'intimate partner violence', 'family violence', 'domestic violence' and 'intimate partner homicides'. I have chosen not to adopt one particular term to define what is a complex phenomenon and referred to by the literature, law, media and VAW sectors in a variety of ways. Rather, I use the language relevant to the subject matter I am discussing or use the terminology used by the authors or sources I quote. To clarify, however, 'violence against women' refers to 'any act of gender based violence that is likely to lead to harm or suffering to women'[16] and therefore encapsulates many forms of abuse and violence. My thesis focuses on violence between current or former intimate partners, which can fall within 'family violence' – a broader term that can also include violence against other family members.[17] Violence between intimate partners may also be referred to as domestic violence – a term used to describe abuse that occurs in a domestic setting – which, of course, may not always be the case. What is most important to acknowledge here is that 'violence' between intimate partners is not only physical but can and does include economic, psychological, coercive, financial, emotional and many other forms of abuse.[18]

B *The social reality*

Thirty-five per cent of women worldwide have experienced either physical and/or sexual intimate partner violence ('IPV') or non-partner sexual violence.[19] This statistic is similar in Australia where approximately one in four women have experienced violence by an intimate partner, and about one in six women have experienced partner violence since the age of 15.[20] The impacts of IPV are widespread in Australia. It is the number one cause of homelessness for women,[21] the third greatest health risk for women aged 25 to 44,[22] sees up to 12 women per day being hospitalised for injuries related to domestic and family violence,[23] and in 2017, one in three murders recorded by police were related to family and domestic violence.[24] The economic consequences

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[16] Our Watch (n 5) 15.

[17] Ibid.

[18] For a legislative definition of 'family violence', see *Family Violence Protection Act* (n 6). See also *Declaration on the Elimination of Violence against Women*, GA Res 48/104, UN GAOR, 48th sess, Agenda Item 111, UN Doc A/RES/48/104 (23 February 1994, adopted 20 December 1993) ('*Declaration on the Elimination of Violence against Women*').

[19] Claudia García-Moreno et al, *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence*' (World Health Organization, 2013).

[20] Australian Bureau of Statistics, *Personal Safety, Australia, 2016* (Catalogue No 4906.0, 8 November 2017).

[21] Australian Bureau of Statistics, *Census of Population and Housing: Estimating homelessness, 2016* (Catalogue No 2049.0, 14 March 2018).

[22] Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia 2018* (Catalogue No FDV 2, 2018) 47. In 2011, partner violence was ranked the greatest health risk factor for women aged 25-44. The change is a consequence of a change in the study's methodology.

[23] 'Impacts of family, domestic and sexual violence', *ANROWS* (Web Page, 2019) <www.anrows.org.au/fast-facts-impacts-of-family-domestic-family-violence/>.

[24] Australian Institute of Health and Welfare (n 22) 44.

of VAW are immense, costing the Australian economy $21.7 billion per year, with victims bearing the primary burden of the cost.[25] Governments are estimated to carry the second biggest cost burden at $7.8 billion per year; a figure comprising health, administration and social welfare costs.[26]

At the extreme end of the continuum of VAW are IPHs, which evidence shows are predominantly committed by men against their female partners and are commonly preceded by a history of violence.[27] In Australia, one woman was killed every nine days by her current or former partner in the two years 2014-15 and 2016-17.[28] A recent analysis of available records concerning homicides conducted by the Australian Domestic and Family Violence Death Review Network found that, between 2010 and 2014, there were 152 IPHs in Australia that followed a known history of domestic violence.[29] Just under 80 percent (121) involved a man killing his current or former female partner and a majority (93 percent) of those female victims were killed by a man who had a history of being the primary family violence abuser.[30] In 24 percent of those homicides, the female victim held a domestic violence order against the male perpetrator, known as family violence intervention orders in Victoria.[31] Other dynamics observed in studies of IPHs include: the perpetrator and victim had separated or were intending to separate,[32] and the perpetrator had been stalking or using emotional or sexual violence leading up to the homicide, or exhibited controlling social behaviours.[33] Of course, these findings only speak to recorded histories of violence and not that which goes unreported and unseen.[34]

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[25] PricewaterhouseCoopers, 'A high price to pay: The economic case for preventing violence against women' (Report, PwC, OurWatch and VicHealth, November 2015) <www.pwc.com.au/pdf/a-high-price-to-pay.pdf>.

[26] Ibid 4.

[27] See Alison Wallace, *Homicide: The Social Reality* (NSW Bureau of Crime Statistics and Research, 1986); Patricia Easteal, *Killing the Beloved: Homicide Between Adult Sexual Intimates* (Australian Institute of Criminology, 1993); Australian Domestic and Family Violence Death Review Network, *Australian Domestic and Family Violence Death Review Network: 2018 Data Report* (Domestic Violence Death Review Team, May 2018); Tracy Cussen and Willow Bryant, 'Domestic/family homicide in Australia, National Homicide Monitoring Program' (Research in Practice Report No 38, Australian Institute of Criminology, 5 May 2015).

[28] ANROWS (n 23); Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story 2019* (Catalogue No FDV 3, 2019) 50.

[29] There were 124 homicides in total committed by men, most (121) killed a female partner and three killed a male intimate partner: Australian Domestic and Family Violence Death Review Network (n 27) 9.

[30] Ibid 10.

[31] Ibid 30.

[32] Ibid 12; Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story 2019* (n 28) 53.

[33] Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story 2019* (n 28) 53-54.

[34] See, eg, Easteal (n 27) 73.

C *The media's role*

Although the relationship between media representations, audience behaviour and understandings of public issues is not straightforward, there is a consensus that the news plays an important role in how people understand the world around them.[35] In the context of VAW, media reporting research has shown that the way a story is framed can impact how the reader attributes blame and responsibility and whether or not the problem is perceived as one requiring a societal response.[36] The role of the media in the prevention of VAW, mainly through improving community attitudes, has also been recognised in a number of Australian state and national policy documents.[37] In the Council of Australian Government's *National Plan to Reduce Violence Against Women and their Children,* improving media engagement on VAW has been identified as a key action.[38]

Victoria has undertaken significant efforts to improve the media's reporting of VAW, dating back to the early 2000s with the publication of the first 'Family Violence in the News: Strategic Framework' led by social services and VAW organisations.[39] This work was carried on by Domestic Violence Victoria, which updated the strategic framework[40] and implemented a range of initiatives including a journalist awards program and guidelines.[41] The primary prevention of VAW organisation Our Watch, funded by the federal government, implemented these initiatives nationally through the 'National Media Engagement Project.'[42] This project involved survivor advocacy training, journalist training, a university curriculum for journalist students and various other tools and resources.[43]

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[35] See Robert M Entman, 'Framing: Toward Clarification of a Fractured Paradigm' (1993) 43(4) *Journal of Communication* 51; Shanto Iyengar, *Is Anyone Responsible?: How Television Frames Political Issues* (University of Chicago Press, 1991); Todd Gitlin, *The whole world is watching* (University of California Press, 2003).

[36] Kellie E Palazzolo and Anthony J Roberto, 'Media Representations of Intimate Partner Violence and Punishment Preferences: Exploring the Role of Attributions and Emotions' (2011) 39(1) *Journal of Applied Communication Research* 1.

[37] Council of Australian Governments, *National Plan to Reduce Violence Against Women and their Children 2010-2022* (2011).

[38] Council of Australian Governments, *National Plan to Reduce Violence against Women and their Children: Second Action Plan 2013-2016: Moving Ahead* (2014) 18, 20 ('*Second Action Plan*'). See also Council of Australian Governments, *National Plan to Reduce Violence Against Women and their Children: Third Action Plan 2016-2019* (2016) 9.

[39] CAFS Ballarat and PACT Community Support, *Family Violence in the News: Strategic Framework* (2007).

[40] Domestic Violence Victoria, 'Working with News and Social Media to Prevent Violence against Women and their children: A Strategic Framework for Victoria' (2015) <http://dvvic.org.au/publications/working-with-news-and-social-media-to-prevent-violence-against-women-and-their-children-a-strategic-framework-for-victoria/>.

[41] Born (n 9).

[42] 'Our Watch Award for Excellence in Reporting on Violence against Women and Children', *The Walkley Foundation* (Web Page, 2019) <https://www.walkleys.com/awards/our-watch-award/>; Our Watch (n 5); Council of Australian Governments, *Second Action Plan* (n 38).

[43] 'Media Making Change', *Our Watch* (Web Page, 2020) <https://media.ourwatch.org.au/>.

Although there is little evidence of improved media reporting practices as a result of these initiatives, anecdotally it is clear that awareness about the issue of VAW has improved.[44] This is partly thanks to a series of events that have brought VAW into the public domain, such as the Victorian Royal Commission into Family Violence[45] and the advocacy of Rosie Batty whose son was tragically murdered by her former partner.[46] Alongside these turning points, there has also been quality and in-depth reporting on the issues of IPH and VAW more broadly. Examples include the *Herald Sun*'s 'Take a Stand' campaign, which in 2013 ran several dedicated issues critically addressing VAW,[47] and *The Age*'s 'This Must Stop' edition in 2018 which set aside the front and first five pages of the newspaper to discuss the broader context of IPHs.[48] A browse through former Our Watch journalism award winners from regional, rural and suburban parts of Australia also shows promising signs of media coverage that demonstrates an understanding of the complexity of VAW and the patterns that link the individual incidents of violence together.[49] Despite these positive exemplars and the concerted efforts of the VAW sector and media to improve media practices, many problems persist in the day to day reporting of violence and, in particular, in the reporting of homicides.[50]

III RESEARCH PROBLEM

The media's representation of VAW is largely 'murder-centric'[51] and, as a result, a significant proportion of coverage is made up of crime and court reports.[52] In these reports, there are two types of 'context' that are said to be repeatedly ignored. The first is the prior violence preceding an IPH which includes the broader dynamics of the relationships, such as possessiveness or non-physical types of violence such as financial control.[53] The

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[44] Annie Blatchford, 'How Australian media are changing the way they report violence against women', *The Conversation* (online, 25 July 2018) <https://theconversation.com/how-australian-media-are-changing-the-way-they-report-violence-against-women-99845>; Our Watch (n 5) 1.

[45] *Royal Commission into Family Violence* (Summary and Recommendations, March 2016) ('*Royal Commission into Family Violence (Victoria)*').

[46] Erin Hawley, Katrina Clifford and Claire Konkes, 'The "Rosie Batty Effect" and the Framing of Family Violence in Australian News Media' (2018) 19(15) *Journalism Studies* 2304; Madeline Morris, 'Luke Batty: Murdered schoolboy's mother Rosie calls for more action against domestic violence', *ABC* (online, 24 April 2014) <https://www.abc.net.au/news/2014-04-24/luke-rosie-batty-domestic-violence-campaign-murder-schoolboy/5410602>; Jess Hill, *See what you made me do* (Black Inc, 2019) 167.

[47] Tom Minear and Ellen Whinnett, 'Victoria's most powerful men declare war on family violence ', *Herald Sun* (online, 22 July 2013) <https://www.heraldsun.com.au/news/law-order/victorias-most-powerful-men-declare-war-on-family-violence/news-story/8837fd278961c9b4996e737c3345aede>.

[48] Miki Perkins, 'This must stop', *The Age* (3 August 2018).

[49] 'Our Watch Award for Excellence in Reporting on Violence against Women and Children' (n 42).

[50] Sutherland et al, *Horizons* (n 2).

[51] Georgina Sutherland et al, 'Media representations of violence against women and their children: State of knowledge paper' (Landscapes Report, ANROWS, 2015) 14 ('*Landscapes*').

[52] Sutherland et al, *Horizons* (n 2) 19.

[53] Bullock (n 2); Bullock and Cubert (n 2); Richards, Gillespie and Smith (n 2); Rae Taylor, 'Slain and Slandered: A content analysis of the portrayal of femicide in crime news' (2009) 13(1) *Homicide Studies* 21; Jessica A Wozniak

second type of context is the broader social context, which involves placing the incident within the systemic, institutional and societal framework that allows for and endorses VAW.[54] Bullock and Cubert argued that:

> by presenting a domestic violence fatality as just another homicide and ignoring the victim and perpetrator's history and social context, the coverage sidesteps the issues of male control, manipulation, and the abuse of women.[55]

Further, this type of representation allows the reader to believe that the violence is 'beyond their power to challenge'.[56]

To remedy these problems in the media's reporting, many international and national media guidelines have been developed, most of which, like the literature, advise journalists to contextualise the story.[57] These guidelines recommend that context can be included by providing statistics on prevalence, acknowledging underlying drivers of violence, providing warning signs of when women may face heightened risk or providing resources for those seeking help.[58] Some guidelines do acknowledge legal restrictions, although the warnings are vague and brief. For example, the Australian Press Council ('APC') guidelines call for the media to contextualise the story, but in the same document also note the complex array of legal restrictions that apply to publishing information about family violence.[59] The *Australian Broadcasting Corporation*'s ('*ABC'*) guidance note on reporting domestic violence also states:

> The greatest difficulties confronting the reporting of domestic violence are often legal … Be conscious of these legal risks and refer any questions to ABC Legal.[60]

The Our Watch national guidelines state 'know the law', mention legal restrictions impacting the reporting of 'certain sexual offences', 'protection orders' and cases where children are involved, and provide references for further reading.[61] However, like the literature, these guidelines do not pay adequate attention to the news production process, how it interacts with publication restrictions and the legal rules and processes that first

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and Kathy A McCloskey, 'Fact or Fiction? Gender Issues Related to Newspaper Reports of Intimate Partner Homicide' (2010) 16(8) *Violence Against Women* 934; Morgan and Politoff (n 2).

[54] K A Maxwell et al, 'Covering Domestic Violence: How the O.J Simpson Case Shaped Reporting of Domestic Violence in the News Media' (2000) 77 *Journalism & Mass Communication Quarterly* 258; cf D Comas-d'Argemir, 'News of partner femicides: the shift from private issue to public problem' (2014) 30(2) *European Journal of Communication* 121.

[55] Bullock and Cubert (n 2) 493-4.

[56] Ilsa Evans, 'Desperate Lovers and Wanton Women: Press Representations of Domestic Violence' (2001) 27(2) *Hecate* 147, 154.

[57] Sutherland et al, *Landscapes* (n 51) 28-30.

[58] Ibid.

[59] Australian Press Council, 'Advisory Guideline on Family and Domestic Violence Reporting' (2016); Australian Press Council, 'Legal Restrictions on Family and Domestic Violence Reporting' (2016).

[60] ABC, 'Reporting on Domestic and Family Violence' (2015).

[61] Our Watch (n 5) 4, 17.

shape the court narrative. Here, I will briefly explain how my thesis endeavours to respond to this research problem and fill this gap in the current understanding of the media's reporting of IPHs.

A *The reality of court reporting*

While there is a substantial body of research that crtiques media coverage of VAW, a 2015 review of the local and international literature found only four peer-reviewed studies that took a news production approach.[62] To address this gap, my thesis takes a 'news production' approach that studies the generation of news with the aim of finding and understanding an 'order' behind the final produced story.[63] The rationale is that, without understanding the practice of journalism and the institutions on which the journalists report, any criticism of the media content will be incomplete. That is why my thesis aims to understand the processes that precede the publication of news content, so that any findings or recommendations for improvement are sensitive to the environment in which journalists work.

This approach is particularly important in the context of crime and court reporting, which news production research has shown is a unique process entailing complex news values, practices and source-media relationships that affect what stories are reported, and in what manner.[64] In particular, the police and the courts have been shown to play a significant role in constructing the raw material which is then selectively reported upon by the media.[65] Also interacting with the source-media relationship are practicalities, such as tight word limits and time constraints.[66] These constraints are exacerbated by the current media landscape in which newsrooms are seeing a decline in resources and therefore capacity to cover court cases, alongside an even greater need to create quick and engaging content.[67] All of these factors interact with 'news values': a set of guiding principles as to what stories are considered newsworthy and therefore what crimes and court cases the media report, and how.[68] The effect of these various news production factors is that the journalist's reporting of crime and court cases is necessarily 'selective'.[69] As a result, complex social problems, such as VAW, are translated into familiar stories that are comprehensible, entertaining and often follow a simple plot of good versus evil.[70] Interacting

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[62] Sutherland et al, *Horizons* (n 2) 26.

[63] Michael Schudson, 'The sociology of news production' (1989) 11(3) *Media Culture and Society* 263, 264.

[64] Peter Grabosky and Paul Wilson, *Journalism and Justice: How crime is reported* (Pluto Press, 1989); Philip Schlesinger and Howard Tumber, *Reporting Crime: The Media Politics of Criminal Justice* (Clarendon Press, 1994); Yvonne Jewkes, *Media and Crime* (Sage Publications, 2004).

[65] Stuart Hall et al, *Policing the Crisis: Mugging, the State and Law and Order* (Macmillan, 1978).

[66] Grabosky and Wilson (n 64); Peter Gregory, *Court reporting in Australia* (Cambridge University Press, 2005).

[67] Simons and Bosland (n 7).

[68] Jewkes (n 64); Steve Chibnall, *Law and Order News: An Analysis of Crime Reporting in the British Press* (Tavistock, 1977).

[69] Jewkes (n 64) 45.

[70] Belinda Morrissey, *When Women Kill: Questions of agency and subjectivity* (Routledge, 2003) 15; Chibnall (n 68) xii

with the media's 'selectivity' is the impact of the law, which, in its own way, also decontextualises complex problems into simplified binary narratives.

B *The legal restrictions*

The main focus of my thesis is the impact of publication restrictions which have the direct effect of prohibiting the reporting of certain types of material. The first legal restriction I consider is the criminal offence sub judice contempt – also known as the 'golden rule'[71] of court reporting. That is, while proceedings are being tried by the court, any material that has not been put before the jury cannot be published. The primary purpose of the law is to shield the jury from 'prejudicial, extraneous or irrelevant'[72] information that could affect their decision-making process and thereby put the accused's right to a fair trial at risk.[73] Evidence ruled by the trial judge to be inadmissible will always be restricted from publication,[74] as will other types of material that could affect a fair trial, such as references to the accused's guilt or innocence[75] or opinions about the quality of the case.[76] In the context of reporting IPH trials, in many circumstances, sub judice contempt prevents journalists from reporting contextual information such as statistics or quotes from VAW experts to demonstrate the prevalence or causes of IPHs. Journalists may also know of prior violence committed by the accused against the victim or have access to information about the relationship from family and friends. Clearly, this material cannot be legally reported while legal proceedings are on foot.

While the 'golden rule' appears straightforward, sub judice contempt requires a flexible approach to allow the courts to deal with new types of potentially prejudicial publications as they arise.[77] As a result, the definition of the various elements of the law and its scope is vague and inconsistent. This makes it difficult for a journalist to predict what types of publication will or will not breach sub judice contempt and what the consequences of publication will be.[78] These uncertainties may have a chilling effect on the media or, at least, trigger more cautious reporting practices than are necessary.[79] Alternatively, this uncertainty may enable journalistic

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[71] See *DPP v Johnson & Yahoo!7* [2016] VSC 699, [25] ('*DPP v Johnson & Yahoo!7*'); 'Covering the Courts: A Basic Guide for Journalists', *Supreme Court of Victoria* (Web Page, 26 September 2016) <https://www.supremecourt.vic.gov.au/for-the-media/covering-the-courts-a-basic-guide-for-journalists>.

[72] *DPP v Johnson & Yahoo!7* (n 71) [25].

[73] *Hinch v AG (Vic)* (1987) 164 CLR 15, 76 (Toohey J) ('*Hinch v AG (1987)*'); Australia Law Reform Commission, *Contempt* (Report No 35, 1987) 4 [3] ('*ALRC: Contempt*').

[74] New South Wales Law Reform Commission, *Contempt by Publication* (Report No 100, June 2003) 19 [2.18] ('*NSWLRC: Contempt by Publication*').

[75] *DPP v Wran* (1987) 7 NSWLR 616 ('*DPP v Wran*').

[76] *Packer v Peacock* (1912) 13 CLR 577 ('*Packer v Peacock*').

[77] Victoria Law Reform Commission, *Contempt of Court* (Consultation Paper, May 2019) 83 [7.8] ('*VLRC: Contempt of Court*'); Ian Cram, *Borrie & Lowe: The Law of Contempt* (LexisNexis, 4th ed, 2010) 78.

[78] *VLRC: Contempt of Court* (n 77).

[79] Law Reform Commission of Western Australia, *Report on Review of the Law of Contempt* (Project No 93, June 2003) 17 ('*WALRC: Report on Review of the Law of Contempt*'); Grabosky and Wilson (n 64) 49-61.

practices that are either ignorant of the law[80] or consciously push the boundaries of the law for the sake of a good story.[81] For these and other reasons, sub judice contempt has been the subject of numerous international and local law reform reviews,[82] including in Victoria.[83] These reviews deal not only with the vague nature of the law but the broader problem of its value in today's contemporary environment where the traditional assumptions on which the law was based, such as fragile juries and the law's ability to control the flow of information, may have shifted.[84]

The second publication restriction I consider arises from the *Family Violence Protection Act 2008* (Vic) ('*FVPA*').[85] Section 166 restricts the publication of information that may lead to the identification of any person involved in intervention order proceedings.[86] The restriction operates to ensure the privacy and safety of individuals involved in intervention order proceedings.[87] There are exceptions, including obtaining a court order when the publication of such details is found to be in the public interest,[88] or consent from the adult victim.[89] However, in the context of an IPH where the protected person has been murdered, the latter exception is, of course, not an option. As for the former exception, it is unlikely the media will forgo resources and time to seek a court order unless the story is particularly newsworthy. The relevance of this restriction is that many IPHs are preceded by a history of violence and the existence of an intervention order.[90] Therefore, questions arise as to whether the rationale for the restriction still stands once the protected person has been murdered, particularly when it prevents journalists from reporting factual information that would help show that the murder was not a random event and that there was a systemic failure to protect the woman.

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[80] See, eg, *DPP v Johnson & Yahoo!7* (n 71); *DPP (Vic) v Johnson & Yahoo!7 (No 2)* [2017] VSC 45 ('*Yahoo!7 (No 2)*').

[81] Gregory (n 66); Grabosky and Wilson (n 64) 55.

[82] *ALRC: Contempt* (n 73); *NSWLRC: Contempt by Publication* (n 74); *WALRC: Report on Review of the Law of Contempt* (n 79); Law Commission of New Zealand, *Reforming the law of contempt of court: A modern statute* (Report No 140, May 2017) ('*NZ Law Commission, Reforming the law of contempt of court*'); Law Reform Commission of Ireland, *Contempt of court and other offences and torts involving the administration of justice* (Issues Paper, 2016) ('*Law Reform Commission of Ireland, Issues Paper (2016)*').

[83] *VLRC: Contempt of Court* (n 77) 83 [7.9].

[84] Ibid 97 [7.102]-[7.103].

[85] Each Australian state and territory has a similar provision, however, they all slightly differ in how they operate and the exceptions. That is why this thesis only looks at the Victorian provision.

[86] A family violence intervention order is a civil order which is directed to providing safety for the protected person(s) and their property, and which can place a range of conditions on the respondent. See 'Family Violence Intervention Orders (FVIO)', *Magistrates' Court of Victoria* (Web Page, 16 June 2020) <www.mcv.vic.gov.au/family-matters/family-violence-intervention-orders-fvio>.

[87] Victoria, *Parliamentary Debates*, Legislative Assembly, 26 June 2008, 2637 (Robert Hulls, Attorney-General).

[88] *Family Violence Protection Act* (n 6) s 169.

[89] Ibid s 169B.

[90] Australian Domestic and Family Violence Death Review Network (.n 27) 13.

From this brief summary of sub judice contempt and the restriction on reporting intervention orders, it is clear that both have a direct impact on the media's ability to report prior violence and the broader social context surrounding an IPH. And yet, these and other restrictions are only mentioned in critiques of coverage or media guidelines. Not only is it important to understand how these restrictions interact with the news production process, but the rationale and operation for the laws themselves must also be scrutinised to ensure they align with the modern media landscape and contemporary values such as, raising awareness about family violence.

C *Context in the courtroom*

Given that sub judice contempt restricts journalists to only reporting what occurs in front of the jury, my thesis maps the legal rules and processes which shape the raw material available to journalists in the first place. To do this, I draw on a substantial body of work that demonstrates how the legal reality of crimes involving women do not match the social reality.[91] In the context of IPHs, legal rules and processes have been shown to exclude evidence of prior violence and the broader dynamics of family violence.[92] As put by feminist sociologist Carol Smart, legal narratives emerge from a 'rigid system of exclusion', and 'binary system of logic' as to what is considered to be 'relevant'.[93] These legal versions of events can contribute to gendered stereotypes and myths,[94] which are then often echoed by the media. Some critiques of the media's coverage of VAW acknowledge that, to an extent, journalists are reporting on the 'inadequacies' in the legal process.[95] However, interrogations of the way legal narratives are translated into IPH media reports, informed by both a media and legal approach, are lacking. Understanding the relationship between what occurs in court, and the media's reproduction of the courtroom narrative, is a necessary step in improving the media's reporting of VAW.[96]

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[91] See, eg, Lisa Sarmas, 'Storytelling and the law: a case study of Louth v Diprose' (1994) 19 *Melbourne University Law Journal* 701; Alison Young, 'The waste land of the law, the wordless song of the rape victim' (1998) 22 *Melbourne University Law Review* 442; Regina Graycar, 'Telling tales: legal stories about violence against women' (1996) 8(2) *Cardozo Studies in Law and Literature* 297; Jenny Morgan, 'Provocation law and facts: dead women tell no tales, tales are told about them' (1997) 21 *University Law Review* 237.

[92] See, eg, Nan Seuffert, 'Domestic Violence, Discourses of Romantic Love, and Complex Personhood in the Law' (1999) 23(1) *Melbourne University Law Review* 211; Rosemary Hunter, 'Narratives of Domestic Violence' (2006) 28(4) *Sydney Law Review* 733.

[93] Carol Smart, 'The Woman of Legal Discourse' (1992) 1 *Social & Legal Studies* 29, 33.

[94] Mandy McKenzie et al, 'Out of Character? Legal responses to intimate partner homicide by men in Victoria 2005-2014' (Discussion Paper No 10, Domestic Violence Resource Centre, 2016); Stella Tarrant, Julie Tolmie and George Giudice, 'Transforming legal understandings of intimate partner violence' (Research Report No 3, ANROWS, June 2019).

[95] Morgan and Politoff (n 2) 45; See also Deb Waterhouse-Watson, 'News media on trial: towards a feminist ethics of reporting footballer sexual assault trials' (2016) 16(6) *Feminist Media Studies* 952; May-Len Skilbrei, 'Sisters in crime: Representations of gender and class in the media coverage and court proceedings of the triple homicide at Orderud Farm' (2012) 9(2) *Crime Media Culture* 136.

[96] See Jane Johnston and Rhonda Breit, 'Towards a narratology of court reporting' (2010)(137) *Media International Australia* 47; Emma Cunliffe, *Murder, Medicine and Motherhood* (Hart Publishing, 2011) ch 8.

IV RESEARCH DESIGN

My research takes a novel interdisciplinary approach by applying both feminist legal[97] and feminist media[98] perspectives to interrogate the connection between the media's reporting of IPHs and the law. This thesis also adopts a mixed-method approach by combining media and court transcript content analysis with sociological methods including interviews with journalists, court observation and a case study. The interdisciplinary and mixed-method approach ensures, to the greatest extent possible, an understanding of the news and legal processes that precede the publication of media coverage of IPHs.

As outlined at the beginning of this chapter, and expanded on in Chapter Two, my thesis addresses the legal and media processes by which an IPH story is formed through a series of literature reviews, which were also informed by my own data. The reviews and preliminary data are brought together in the second stage of my thesis: a case study of an IPH criminal trial and the media's reporting of that trial. My thesis concludes with a discussion of the way the different sets of preliminary data, literature and the final case study triangulate to tell the whole story of the news production process of IPHs. This includes a discussion of the findings to emerge from the thesis as a whole and the recommendations that arise from those findings.

A *Research aims*

The overarching aim of my thesis is to gain an understanding of the way legal rules, processes and restrictions interact with the news production process and impact journalists' ability to report prior violence and the broader social context of an IPH. As set out above, by investigating this research problem, my thesis also aims to fill a gap in the current literature on the media's reporting of VAW; that is, an absence of news production research that acknowledges and examines the law's role in the reporting of IPHs. As a result, my thesis will provide empirical evidence of how the law does contribute to the media's problematic reporting practices or, alternatively, how the media could do better. In turn, this evidence will allow for nuanced and informed findings and recommendations for both the clarification of relevant legal restrictions and the improvement of the media's practices when reporting on IPHs.

B *Research parameters*

1 *Victorian media and criminal cases*

My thesis examines the Victorian media's coverage of IPHs and the Victorian legal system. As discussed above, Victoria has been a leading jurisdiction in terms of improving the media's coverage of VAW reporting. Beyond the media, the Victorian government, police and legal system have been ahead of the pack in terms of recognising the impact of VAW. This can be seen in the significant reform to take place within Victorian Police,

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[97] See Elizabeth Sheehy, *Defending Battered Women on Trial* (UBC Press, 2014); Regina Graycar and Jenny Morgan, *The Hidden Gender of Law* (Federation Press, 2nd ed, 2002); Morrissey (n 70).

[98] Cunliffe (n 96); McKenzie et al (n 94); Sutherland et al, *Horizons* (n 2); Morgan and Politoff (n 2).

the initiation of a Victorian Royal Commission into Family Violence and funding commitments from the Victorian government.[99] For these reasons, this thesis focuses on the Victorian media and legal system, as any issues identified must be deeply embedded in the news production process and media-law relationship.

2 *The laws that are in and outside scope*

My thesis sits across multiple disciplines and areas of research. The main focus is the impact of law on the media's news production process. Also considered, however, are feminist critiques of legal rules and processes, much of which has led to significant homicide legal reform.[100] While this latter area of research is important context to my thesis, I do not intend to provide a unique critique of homicide law. Instead, I draw on this literature to the extent that it demonstrates how the social reality of IPHs is filtered by the law, before the material reaches the media.

There are a range of other publication restrictions, laws and legal processes that affect family violence victims, the construction of narratives about those victims and the media's reporting of those stories – for example, restrictions on the identification of sexual assault victims[101] or how Family Court matters can be reported,[102] and restrictions on access to court documents or defamation. I acknowledge this complex terrain in which the media's reporting of VAW sits. However, to avoid a shallow analysis, I have decided to focus on the production of IPH news stories and the laws that most commonly interact with this process.

C *Significance*

While there is a substantial body of research revealing a range of issues with the media's reporting of VAW, the production processes by which these reports come about have not been explored in much depth, and the impact of law on this process has been mostly ignored. The law is a system that journalists frequently interact with and therefore has a significant influence on their work, particularly in the context of court reporting and, therefore, IPHs. Any criticisms of media reports on IPHs without consideration of the law and its impact on journalists are unlikely to be effectively taken onboard by the media. This kind of understanding is needed to design and provide solutions that can be successfully integrated into the journalism industry.

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[99] Attorney-General Victoria and Minister for Police and Emergency Services, 'Stronger Justice System to Respond to Family Violence' (Media Release, 13 April 2016) <http://www.premier.vic.gov.au/stronger-justice-system-to-respond-to-family-violence/>; State Government of Victoria, 'Ending Family Violence: Victoria's Plan for Change' (2016); *Royal Commission into Family Violence (Victoria)* (n 45).

[100] Victorian Law Reform Commission, *Defences to Homicide* (Final Report, 2004); *Crimes (Homicide) Act 2005* (Vic); *Crimes Amendment (Abolition of Defensive Homicide) Act 2014* (Vic); Bronwyn Naylor and Danielle Tyson, 'Reforming defences to homicide in Victoria: Another attempt to reform the gender question' (2016) 6(3) *Crime Justice Journal* 72; McKenzie et al (n 94) 18-25.

[101] See, eg, *Judicial Proceedings Reports Act 1958* (Vic) s 4 ('*Judicial Proceedings Reports Act*').

[102] *Family Law Act 1975* (Cth) s 121 ('*Family Law Act*').

My thesis also addresses the problem of inconsistent understandings amongst the media about the legal restrictions that affect the reporting of IPHs. As has been suggested above, extensive and in-depth coverage of VAW issues may be at risk because of this ambiguity, particularly in a climate where news organisations have less resources and time to dedicate towards the comprehensive reporting of the courts.[103] The media are clearly keen to report on VAW and to do so well, as can be seen in the topic's growing prominence in the news agenda and the media's engagement with programs such as the Our Watch awards.[104] My research harnesses this momentum and contributes to the sustainability and further improvement of VAW coverage by ensuring that journalists are equipped to report on IPHs in a way that accurately tells the whole story and within the boundaries of the law.

The significance of this research, however, does not start and end with the media. My research is also of importance to the legal system, which relies on the media to be the 'eyes and ears' of the public.[105] Open justice is central to the operation of the law or, as put by the frequently quoted Jeremy Bentham:

> Publicity is the soul of justice. It is the keenest spirit to exertion and the surest of all guards against improbity. It keeps the judge, while trying, under trial.[106]

Given the legal restrictions considered in my thesis are departures from the principle of open justice, it is important that both legal and media professionals have a consistent understanding of their purpose and operation. The restrictions should also be scrutinised in today's context to ensure they continue to appropriately balance the various principles and interests that they give rise to, including the administration of justice, freedom of expression, and the public's interest in discussions about family violence. This ongoing scrutiny ensures that information is not unnecessarily suppressed and reports that are read by the public are comprehensive, accurate and fair.

Underlying my thesis is the potential the media have to contribute to the prevention of VAW.[107] As has been discussed above, when the media report on VAW and other public issues in a way that links the incident to the social context, the issue is framed as a social phenomenon rather than just an individual problem.[108] By clarifying the extent to which journalists can and cannot report on these wider issues when covering IPHs, this

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[103] Australian Competition and Consumer Commission, *Digital Platforms Inquiry* (Preliminary Report, December 2018) ('*ACCC Digital Platforms Inquiry*') 280.

[104] 'Our Watch Award for Excellence in Reporting on Violence against Women and Children' (n 42).

[105] *News Digital Media Pty Ltd v Mokbel* (2010) 30 VR 248, [35] (Warren CJ and Byrne AJA) (citations omitted) ('*News Digital Media Pty Ltd v Mokbel*').

[106] John Bowring (ed), *Works of Jeremy Bentham Vol 4* (William Tait, 1843) 316.

[107] Our Watch, ANROWS and VicHealth (n 4).

[108] See Kellie E Carlyle et al, 'News Coverage of Intimate Partner Violence: Impact on Prosocial Responses' (2014) 17(4) *Media Psychology* 451; John McManus and Lori Dorfman, 'Blaming the victim revisited: How the Press Portrays Intimate Partner Violence' (2003)(13) *Berkley Media Studies Group* 1.

research will contribute to the community's broader and more nuanced understanding of VAW and its relationship with gender inequality.

V CHAPTER OUTLINE

Chapter 1: Introduction

This introductory chapter has established the gap in the current research on the media's reporting of VAW, being the impact of the law on the news production process. The social reality of VAW and IPHs, and the media's role in prevention, has been set out to contextualise why it is important to understand the impact of the law on the media's reporting of IPHs. The scope, aims and significance of my thesis have also been summarised.

Chapter 2: Research design

Chapter Two explains the interdisciplinary and mixed method approach taken in this thesis to address the gap in the existing literature. The chapter sets out the research design, stepping through the various methods used, the limitations of the research, and my own legal and journalism background and the role it played in my approach.

Chapter 3: The media's representation of intimate partner homicides

Chapter Three reviews the identified problems in media's coverage of VAW and how different framing techniques can shape whether an IPH is perceived as an individual or societal problem. The literature is applied and compared to my own content analysis of Victorian media coverage of IPHs.

Chapter 4: The media's production of crime-news

Chapter Four reviews the news-production literature that examines the relationship between the media and criminal justice system and the practicalities of court-reporting. This chapter applies this literature to the context of the media's reporting of IPHs with the aid of my own observations of the committal hearing of Borce Ristevski, who was sentenced for the manslaughter of his wife Karen Ristevski.[109] This example is supported by interview data from journalists to provide greater insight into the news production process.

Chapter 5: The law that shapes and restricts the intimate partner homicide story

With the news production process set out in the previous chapter, Chapter Five goes on to consider the various aspects of the law that interplay with that process. This includes a review of the literature on the gendered nature of legal narratives, and the impact of legal rules and processes on the narrative of IPHs, including the rules of evidence, defences to homicide, cross-examination and sentencing. The second part of the chapter outlines the

[109] *DPP (Vic) v Ristevski* [2019] VSC 253 ('*DPP (Vic) v Ristevski*').

operation of sub judice contempt and the ongoing issues with the law that directly impact journalistic practice.[110] This chapter also outlines the publication restriction on reporting intervention violence orders and examines journalists' understandings of these laws with the aid of my interview data.

Chapter 6: Paulino case study – The 'raw material'

The first part of the case study in Chapter Six identifies the ways in which the rules of evidence and court processes contributed to the filtering or exclusion of evidence about prior violence or the broader social context in the case *DPP v Paulino*.[111] From an analysis of the court transcripts and court observations, this chapter lays out the trial narrative, and thereby the raw material available to journalists.

Chapter 7: Paulino case study – The media's story

The second part of the case study compares the above description of the raw material with an analysis of the media's coverage of the *Paulino* case. In doing so, this chapter identifies the various points at which either the legal rules or restrictions, or media values and practices, contribute to the way the media's version of the IPH story is framed.

Chapter 8: Conclusion – The whole story

The final chapter brings together and discusses the 'whole story' of the interaction between the law and media in the production of IPH stories. This begins with a discussion of the findings to emerge from my content analyses, journalist interviews and the case study in the context of pre-existing research. These findings, which demonstrate limitations but also opportunities for journalists to better report on VAW within the boundaries of the law, are followed by my own recommendations for law reform, media education and future research.

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[110] *VLRC: Contempt of Court* (n 77).

[111] *DPP v Paulino (Sentence)* [2017] VSC 794 ('*DPP v Paulino (Sentence)*').

CHAPTER TWO:
RESEARCH DESIGN

I INTRODUCTION

My research design is driven by the criticism summarised by former court reporter and journalism academic Peter Gregory who said, 'Court reporting is a bit like parenthood in that the greatest experts are the ones who don't do it'.[112] It would have been simple to carry out a critique of media outputs and identify or confirm shortcomings in the content and speculate as to how publication restrictions may have contributed to those shortcomings. However, there is limited value in such an approach. The processes, practices and sources which constrain and influence the news production process must also be considered. As put by media scholars Ericson, Banarek and Chan, '[r]esearch must respect the entire news process' and this is a matter for empirical inquiry.[113] Accordingly, my research design brings together media and legal disciplines to empirically investigate and critically analyse (rather than merely critique)[114] the impact of the law on the media's production of IPH stories.

This chapter will provide a road map of my thesis beginning with the reasons for an interdisciplinary approach, and an overview of the concepts and approaches I have adopted from the legal and media disciplines. This is followed by a description of my research design, the unique combination of methods employed and how they are brought together to tell the whole story of the impact of the law on the production of IPH news stories.

II AN INTERDISCIPLINARY APPROACH

My methodology takes a socio-legal, empirical approach which allows for methods from other disciplines to be used to explore the impact of the law on a social problem. The socio-legal approach is applicable to my thesis in two contexts. Firstly, the law's representation of IPHs is a filtered and fragmented version of the social reality of IPHs. Secondly, the law has a direct impact on what the media can and cannot report when covering IPH trials. How both these processes play out in practice requires empirical investigation. These different perspectives and the concepts developed throughout the scholarship as it applies to my research questions are

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[112] Peter Gregory, 'Gertie's Law', *Reporting the Court - Part 1* (Supreme Court of Victoria, 26 August 2019). See also Peter Gregory, *Court reporting in Australia* (Cambridge University Press, 2005).

[113] Richard Ericson, Patricia Baranek and Janet Chan, 'Research Approaches' in Chris Greer (ed), *Crime and Media: A Reader* (Routledge, 1987) 98.

[114] Clifford and White distinguish between media research that critiques crime news as being distorted and 'bad' as opposed to research which unpacks the nuances and complexities of crime reporting and is informed by a practitioner perspective. Katrina Clifford and Rob White, *Media and Crime: Content, Context and Consequence* (Oxford University Press, 2017) 253.

discussed in more detail in the literature reviews (Chapters Three to Five). I summarise them here to provide the foundation from which my research design was built.

When critiquing media coverage of IPH court proceedings, it was important to first consider the way legal rules and processes can perpetuate gendered stereotypes and myths. To understand this process, my methodology draws on feminist legal scholarship which considers the way the law can operate to de-contextualise women's experiences. Some of this scholarship relies on the approach of 'legal story telling' which highlights the way in which the law creates dominant narratives that may reinforce, or arise from, gendered stereotypes and myths about the crime.[115] I also draw on feminist socio-legal scholarship which critiques criminal trials based on an understanding of the reality of VAW and the social context.[116] I consider this literature and adopt similar approaches to ensure that my inquiries into the impact of the law on the media's reporting of IPHs were informed by a feminist understanding of how the law defines women's experiences, particularly in the context of VAW crimes. This is particularly important because the media's reporting of a crime will be a similar narrative to what was presented in the court room, thereby reproducing potentially damaging cultural beliefs.[117]

The second body of socio-legal scholarship I draw on is that which examines the relationship between media law and media practice. Much of this work has taken place in the context of defamation law, where it considers the impact of the law on journalism and journalists through the use of socio-legal methods.[118] Chris Dent and Andrew Kenyon, who carried out a comparative study of defamation in Australia and the US, acknowledged that there has been a great deal of sociological work done with regards to the factors impacting media outputs, however there was little sociological literature on the law's role in news production.[119] These authors encouraged the use of content analysis and interviews with lawyers and journalists to explore the impact of the law on media production studies.[120] Similar work has been carried out looking at the relationship between sub

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[115] See, eg, Lisa Sarmas, 'Storytelling and the law: a case study of Louth v Diprose' (1994) 19 *Melbourne University Law Journal* 701; Alison Young, 'The waste land of the law, the wordless song of the rape victim' (1998) 22 *Melbourne University Law Review* 442; Regina Graycar, 'Telling tales: legal stories about violence against women' (1996) 8(2) *Cardozo Studies in Law and Literature* 297; Jenny Morgan, 'Provocation law and facts: dead women tell no tales, tales are told about them' (1997) 21 *University Law Review* 237.

[116] Mandy McKenzie et al, 'Out of Character? Legal responses to intimate partner homicide by men in Victoria 2005-2014' (Discussion Paper No 10, Domestic Violence Resource Centre, 2016); Regina Graycar and Jenny Morgan, *The Hidden Gender of Law* (Federation Press, 2nd ed, 2002); Jenny Morgan, 'Who Kills Whom and Why: Looking Beyond Legal Categories' (Victorian Law Reform Commission, 2002).

[117] Jane Monckton-Smith, *Murder, Gender and the Media: Narratives of dangerous love* (Palgrave Macmillan, 2012) 137.

[118] Andrew T Kenyon and Tim Marjoribanks, 'Chilled Journalism? Defamation and Public Speech in the US and Australian Law and Journalism' (2008) 23(2) *New Zealand Sociology* 18; Chris Dent and Andrew Kenyon, 'Defamation Law's Chilling Effect: A Comparative Content Analysis of Australian and US Newspapers' (2004) 9(2) *Media & Arts Law Review* 89.

[119] Dent and Kenyon (n 118) 91.

[120] Ibid 110.

judice contempt and Twitter content or, in another study, true crime podcasts.[121] I also draw on the work of Emma Cunliffe who, in her study of the media's reporting of a trial in which the accused woman was charged with the murder and manslaughter of her infant children, applied her knowledge of the criminal trial process to her critique of the media's coverage of the trial.[122] These studies were informed by in-depth understandings of the relevant law, which was then triangulated with methods such as content analysis and interviews.[123] This body of work shows the value in using empirical methods to gauge how law and journalism interact in the real world.

This layered and complex understanding of the law as it applies to both IPH trials and the media's reporting of those trials is complemented by an in-depth understanding of the way the media report IPHs. This involves an understanding of feminist critiques of the media's reporting of VAW and the concepts which drive this type of research. This includes the concept of 'framing' which considers the way in which a news story is presented and how the information that is included or excluded can influence or determine a particular perception of the issue.[124] As I have argued here and earlier however, critiquing content on its own is not sufficient. Therefore, I also draw on news production scholarship, which takes a sociological approach to the study of news. Broadly, this literature looks at the news as a 'social artefact' and the result of socially patterned practices within the newsroom.[125] Central to my interdisciplinary approach, therefore, is the literature and approaches that consider the relationship between the police, courts and media, and how these relationships interact with the legal rules and restrictions I consider, and ultimately the way IPHs are reported.

Bringing these disciplines together is the argument that the law and media both claim to tell the 'truth', albeit that 'truth' has been through a series of filters unique to each profession.[126] For this reason, there is great value in comparing the legal and media narratives as a means of identifying what 'filters' are at play.[127] Accordingly,

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[121] Rachel Hews and Nicolas Suzor, ''Scum of the Earth': An analysis of prejudicial Twitter conversations during the Baden-Clay Murder Trial' (2017) 40(4) *UNSW Law Journal* 1604; Hope Williams, ''Serial' concerns: The rise of 'new true crime' journalism in the United States, and corresponding legal impediments in Australia' (2018) 22 *Media & Arts Law Review* 201.

[122] Emma Cunliffe, *Murder, Medicine and Motherhood* (Hart Publishing, 2011) ch 8.

[123] For an example of a media-law study employing interview methods to understand the state of court reporting, open justice and democracy, see: Margaret Simons and Jason Bosland, 'From journal of record to the 24/7 news cycle' in David Banes and Agnes Gulyas (eds), *The Routledge Companion to Local Media and Journalism* (Routledge, 2020) 193.

[124] Robert M Entman, 'Framing: Toward Clarification of a Fractured Paradigm' (1993) 43(4) *Journal of Communication* 51.

[125] Stig Hjarvard, 'The study of news production' in K B Jensen (ed), *A Handbook of Media and Communication Research* (Routledge, 2012).

[126] Jane Johnston and Rhonda Breit, 'Towards a narratology of court reporting' (2010) 137 *Media International Australia* 47; Cunliffe, *Murder* (n 122) 160-1; Richard V Ericson, Patricia M Baranek and Janet B L Chan, *Representing Order: Crime, Law and Justice in News Media* (Open University Press, 1991) 10.

[127] See, eg, the following studies compared what occurred in the courtroom to the media's reporting of those legal proceedings Cunliffe, *Murder* (n 122): May-Len Skilbrei, 'Sisters in crime: Representations of gender and class in the

through the lenses of the law, media and feminism, my thesis aims to analyse the process by which the reality of an IPH is translated by the courtroom and then the media. How these various disciplines, approaches and concepts are adopted in a practical sense, is now described in my research design.

III RESEARCH DESIGN

The overarching question my thesis asks is: how does the law impact the media's production of IPH news stories? To answer this broader question, there are a series of sub-questions that go towards understanding what knowledge already exists around this problem, the gaps in that existing knowledge and how bringing these discourses together can help create a more nuanced and productive understanding of the relationship between IPH news representations, media production processes and the law. These research questions also provide a framework for my research design:

RQ 1 To what extent do the media report, or not report, prior violence and social context when covering IPH trials?

RQ 2 What news values, practices and relationships do journalists encounter when reporting IPHs as they proceed through the criminal justice system?

RQ 3 What are the legal rules, processes and restrictions that impact an IPH trial, and the media's reporting of IPHs, how do they operate and how do journalists understand them?

Aspects of these questions have been addressed by existing legal and media scholarship, which I consider in a series of literature reviews (Chapters Three, Four and Five). To apply this literature to my specific research problem, I also support these reviews with my own data, which will be described below. The final research question will be addressed in the second part of my thesis, where the three different and isolated discourses will be brought together in a case study of an IPH criminal trial (Chapters Six and Seven). The case study responds to the fourth research question:

RQ 4 How do the legal influences identified interact with the media's production of IPH stories?

The case study is made up of data collected from direct observations of the IPH trial, interviews with journalists, the court transcripts and the media's coverage of the IPH. This case study aims to integrate both the legal and media perspectives and contribute empirical evidence to the existing body of scholarship, demonstrating the impact of the law on the media's production of IPH news stories.

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media coverage and court proceedings of the triple homicide at Orderud Farm' (2012) 9(2) *Crime Media Culture* 136; Belinda Morrissey, *When Women Kill: Questions of agency and subjectivity* (Routledge, 2003).

As this summary demonstrates, my research design takes a mixed-method approach in that it 'uses more than one research technique or strategy to study one or several closely related phenomena'.[128] A limitation of this approach is that the various sets of data that result are not representative. However, together, they do provide rich and nuanced insights into the interaction between the law and media. Here I will set out the methods used, the mode of data collection, the purpose of the data and how the different data sets were interpreted and analysed.

A *Literature reviews*

The first part of my research design is a review of the work that has already considered parts of my research problem from different perspectives. These literature reviews are illustrated by my own data and analysis. The methods used to collect and analyse this data are considered separately below.

1 *VAW media reporting*

The extensive body of work that critiques the media's reporting of VAW is the starting point for my thesis. These studies set out the identified problems in the media's reporting of VAW and IPHs. Given the breadth of these studies (i.e. many considered VAW more broadly), I also carried out my own content analysis to test the relevance and applicability of the issues identified in the literature to the Victorian media's reporting of IPHs.

2 *Crime-news production process*

The second literature review considers news production scholarship, particularly in the field of crime news and that which specifically looks at the reporting of gendered crimes. Structured according to the criminal justice process, this chapter reviews the scholarship that has examined the interaction between the police, courts and media in the production of crime news stories. Uniquely, this literature review is illustrated by my own observations of an IPH committal hearing and interviews with journalists.

3 *The legal context*

The final literature review focuses on the legal discourse and is in two parts. The first part will provide an overview of literature that considers the trial context of an IPH, which includes the rules of evidence, cross-examination and sentencing. The chapter discusses how these legal rules and processes impact the availability of evidence of prior family violence evidence in IPH trials. The second part of the chapter is an analysis of the legal restrictions that directly constrain the media's reporting of IPH trials, including sub judice contempt and the *Family Violence Protection Act 2008* (Vic) restriction on reporting intervention orders. This chapter also draws on interview data to demonstrate how journalists understand and work within these legal restrictions.

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[128] Laura Beth Nielsen, 'The need for multi-method approaches to empirical legal research' in Peter Cane and Herbert M Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press, 2010) 951.

B *Media content*

Content analysis is a method used to analyse communications in a 'systematic, objective and quantifiable manner for the purpose of measuring variables'.[129] The method allows for large amounts of text to be compressed into categories and for the counting of certain characteristics and terms throughout the media text.[130] This type of quantitative research has been criticised for lacking sensitivity to subtle meanings that may arise in media texts.[131] Consequently, this method is often supplemented with other types of data collection and analysis,[132] which I have done here by employing the other methods discussed below and combining the quantitative analysis with a qualitative aspect.

There are many purposes of content analysis,[133] but here it is used in two capacities for two separate sets of data. Firstly, the quantitative component of the content analysis is used to describe patterns and trends[134] in the Victorian media coverage of IPHs generally and test the findings of existing research that argue the media's reporting of IPHs is episodic, lacks context and excludes prior violence.[135] In turn, the qualitative component of this first analysis, and the other studies in which I place my smaller content analysis, also has the purpose of a 'reality check'[136] – comparing the way the media frames IPHs to the social reality of IPHs.

Secondly, I use a content analysis methodology to compress the media coverage of the IPH contained in my case study of the *Paulino* trial. This descriptive data can then be used as a starting point for further qualitative analysis. This second content analysis also serves as a 'reality check', in that it is used to observe how the media represented the legal proceedings of the trial which I was observing. Here I will set out how the data was collected, coded and analysed for these two different purposes.

1 *Victorian media coverage of intimate partner homicides*

(a) Collecting the content

For the first content analysis, I collected 18 months of Victorian and national media outlets' coverage of IPHs between February 2015 and August 2016. The period chosen enabled a reasonable number of different IPHs to

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[129] F N Kerlinger, *Foundations of Behavioural Research* (Holt, Rinehart & Winston, 3rd ed, 1979) 257.

[130] Steve Stemler, 'An overview of content analysis' (2001) 7(17) *Practical Assessment, Research & Evaluation* 1.

[131] Ericson, Baranek and Chan (n 126) 104; Steve Chibnall, *Law and Order News: An Analysis of Crime Reporting in the British Press* (Tavistock, 1977).

[132] Stemler (n 130) 1.

[133] See the five different purposes in Roger D Wimmer and Joseph R Dominick, *Mass Media Research* (Wadsworth, 2003) 142-3.

[134] Ibid 142.

[135] Georgina Sutherland et al, 'Media representations of violence against women and their children: State of knowledge paper' (Landscapes Report, ANROWS, 2015) ('*Landscapes*').

[136] Wimmer and Dominick (n 133) 142.

emerge throughout the content and allowed for some of the IPH cases to proceed through more than one phase of the criminal process, such as trial and sentencing. The final list of media outlets included are recorded in Table 1, Appendix A.

The online database Factiva[137] was used as the main content collection tool as it stored many of Victoria's print and online news sources in its database. I replicated and adapted the search string used to collect news content in Morgan and Politoff's study of the Victorian media's reporting of VAW.[138] I excluded terms about sexual assault and rape to narrow the search to IPHs only. I also included terms about the police, investigative and legal processes to capture more articles about IPH incidents, investigations and trials. These added terms are highlighted in Figure 1, Appendix A.

After the first search, the data was 'cleaned' by excluding all articles that did not relate to an IPH. I then identified and listed the IPH cases, which took place within this 18-month period. In addition, IPH cases missed by my initial search were identified from a *Herald Sun* article listing 2016 homicides. The final list of cases is in Table 1, Appendix A. A second and more focused search was then carried out, focusing on the individual IPHs I had identified to ensure a wide range of coverage for each homicide was collected. The search string for this narrower search was: *(Victim name or perpetrator name) and (murder or homicide or manslaughter)*.[139] Overall, there were 31 online articles, 49 print articles and 20 that could not be identified as print or online content.[140] Given the small amount of content returned for this period, all articles were analysed instead of selecting a random sample.

There were challenges in collecting the content. Factiva was one of the few available online databases through which one can collect both online and print news articles using the same search criteria. However, Factiva does not have access to all online and print versions of the publications and can often return incomplete and inconsistent results,[141] a problem recognised by several researchers.[142] Therefore, the content I collected is not

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[137] Factiva is produced by Dow Jones & Co and is an international news database which sources content from licensed and free sources. It includes national, international and regional newspapers, news wires, blogs and other content.

[138] Jenny Morgan and Violeta Politoff, 'Victorian print media coverage of violence against women: A longitudinal study' (Report, VicHealth and The University of Melbourne, 2012).

[139] Ashley Argoon, 'Take a Stand: Number of women killed in Victoria doubles in 2016', *Herald Sun* (online, 4 January 2017) <www.heraldsun.com.au/news/law-order/take-a-stand-number-of-women-killed-in-victoria-doubles-in-2016/news-story/0a9da9247842c1600b8c6ee0f3bf8745>.

[140] This was because of the way Factiva presented the full text of the article, in that it did not include an identifying mark as to the article's source origin. In addition, some media outlets published online and print content, making it difficult to identify the source.

[141] Annie Blatchford, 'Searching for online news content: The challenges and decisions' (2020) 6(2) *Communication Research and Practice* 143.

[142] See Michael Karlsson and Helle Sjøvaag, 'Content Analysis and Online News' (2016) 4(1) *Digital Journalism* 177; Michael Karlsson and Jesper Stromback, 'Freezing the Flow of Online News' (2010) 11(1) *Journalism Studies* 2; Gerd G Kopper, Albrecht Kolthoff and Andrea Czepek, 'Research Review: Online Journalism – a report on current and continuing research and major questions in the international discussion' (2000) 1(3) *Journalism Studies* 499;

a wholly representative sample of news coverage of the various IPH cases. Instead it is a collection of examples which, based on Factiva's resources, were returned according to consistent search criteria. Despite this limitation, this analysis within the broader context of national and international studies of the media's reporting of VAW provides a valuable baseline of the trends in court/crime reporting of IPHs across various outlets.

(b) Coding the content

The starting point for extracting data from media content is creating a coding framework that sets out the units of analysis (the textual element, characteristics or other elements to be counted).[143] Again, I adapted the coding schedule used by Morgan and Politoff[144] to focus on the reporting of IPHs, and incorporated questions about the legal process to capture any evidence of the law having an implicit or explicit impact on the media content.[145] After trial coding of articles and creating new iterations of the framework to ensure each variable had an exhaustive list of possible responses,[146] the final coding framework included 44 questions about the identifying details of the article, the crime, the relationship, framing, IPH dynamics, the legal process and whether family violence helplines were provided. A summary of the coding framework is provided in Appendix B. Coding results were recorded in an Excel spreadsheet.

A limitation of my content analysis was that I did not have the benefit of testing results with another coder, putting the objectivity of the results at risk. To account for this, I noted a list of questions and answers regarding the more nuanced variables as well as explicit definitions of different variables to ensure I adopted a consistent approach to coding. I also closely studied the approaches to coding of Australian VAW coverage taken by other researchers, such as Morgan and Politoff and Sutherland et al.[147] Further, the analysis was not intended to produce a standalone set of definitive results, but rather a way to explore, test and illustrate the existing literature. As is the case with all content analysis, 'perfect objectivity is seldom achieved'.[148]

Sally J McMillan, 'The Microscope and the Moving Target: The Challenge of Applying Content Analysis to the World Wide Web' (2000) 77(1) *Journalism and Mass Communication Quarterly* 80; Linda Sabelhaus and Michelle Cawley, 'Challenging Traditional Methods' (2013) *Online Searcher* 11; Blatchford (n 141).

[143] Wimmer and Dominick (n 133) 149.

[144] Morgan and Politoff (n 138).

[145] Cunliffe, *Murder* (n 122). The coding questions about the legal process were partly informed by Cunliffe's content analysis in which she coded the proportion of coverage dedicated to the prosecution or defence cases and other aspects of the legal proceedings.

[146] Wimmer and Dominick (n 133) 151.

[147] Georgina Sutherland et al, 'Media representations of violence against women and their children: Final report' (Horizons Research Support, ANROWS, 2016) ('*Horizons*'); Morgan and Politoff (n 138).

[148] Wimmer and Dominick (n 133) 141.

(c) Data analysis

The analysis of the media content comprised quantitative and qualitative components. Firstly, after coding was completed, I used the program Tableau[149] to visualise and further analyse the coding results by creating cross-tabulations for most of the questions in the framework. This process allowed me to first create a simple quantitative 'factor analysis'[150] of each variable, providing an 'eyeball view'[151] of the proportions of content that did or did not fulfil the variables. This initial analysis could answer questions such as how many articles did or did not include victim service helplines or, how 'episodic' coverage compared to 'thematic' coverage for each variable.[152] Where interesting differences arose, further cross tabulations were carried out. For example, a quantification of how often episodic and thematic articles quoted different sources compared with the stage of the criminal justice process at which those articles were published. These quantitative results were compared to the existing quantitative studies on the media's reporting of VAW, which were used to help interpret the meaning and implications of the results.[153]

The qualitative analysis of the media content was similarly guided by existing research on the media's reporting of VAW. That is, the existing literature identifies a set of common problems or themes in the media's reporting of VAW, many of which corresponded with the different variables I coded in my quantitative analysis. These themes include attribution of blame, the effects of the crime, contextual information, reliance on legal authorities, perpetrator excusing portrayals, exclusion of prior violence and the broader dynamics of VAW. If the themes were present in individual articles (as identified by the initial quantitative analysis), I carried out a framing analysis of those individual stories, observing what information was included in the report and in what manner.[154] This was guided by an understanding of the 'inverted pyramid structure' of news items and the sociological understanding that a news item is also a 'story' with a beginning, middle and end.[155] That is, a headline and lead sentence of a news article determine the most important or engaging aspect of the story followed by a description of the 'real topic' of the story, concluding with the least important information.[156] From there, I could examine how the content I was analysing aligned with the patterns identified in the existing

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[149] Tableau is a software program that allows for data to be input into the program and then prepared, cleaned and formatted for analysis. It produces cross-tabulations, graphs and allows for the customisation of data analysis.

[150] Monckton-Smith (n 117) 12.

[151] Ibid.

[152] 'Episodic' and 'thematic' will be defined in Chapter Three. Briefly, these terms refer to whether an article frames VAW as an isolated incident, or includes contextual factors such as prevalence, causes and solutions.

[153] Wimmer and Dominick (n 133) 155.

[154] The concept of 'framing' is discussed in more detail in Chapter Three.

[155] Michael Schudson, *The Sociology of News* (W W Norton & Company, 2nd ed, 2011) 171. I note that in practice, news items do not follow a traditional narrative structure, but instead priortise the most important information due to time and space constraints. Here however I am referring to the analysis of news items as a form of narrative.

[156] Ibid 180.

literature, observe first-hand how the framing of an article could give rise to certain themes and, in turn, infer a particular representation of an IPH.

Similarly, to the coding of the media content, the qualitative analysis was also subjective in two ways. Firstly, any inferences I made regarding the way an IPH was represented in media content might be different to the next person. My interpretations of the media outputs were also made without observing the processes that led to the construction of that content. That is why my thesis triangulates any findings from the media content analyses with other methods and data sets, which are described below. Another limitation was that I carried out this content analysis at the beginning of my research before embarking on journalist interviews or court observations. Regardless, the analysis was underpinned by a technical understanding of how different stages of the legal process and restrictions may have contributed to certain framing outcomes. Any observations regarding the relationship between the law and the media output were, however, speculative, and further investigated and tested throughout my research.

2 *Paulino media content*

The method used to collect the media content on *Paulino* was similar to that used in the above 18-month content analysis of IPH media coverage. However, it differed in that I could follow the media coverage in real-time as well as collect content retrospectively. This meant I could collect a near-complete body of news reports related to the trial that were published in Victorian and national publications. I collected the content through Google News and Factiva. I used Google News in addition to Factiva because of my findings regarding the unreliability of databases and the need to use more than one database to gather data more comprehensively.[157]

Factiva was used as a starting point to collect content dating back to when the homicide occurred. Several combinations of search terms were used to try to capture as much of the content as possible. For example, combinations included the terms 'Paulino', 'Fernando Paulino', 'Teresa Mancuso', 'Teresa Paulino', 'murder' and 'Reservoir'.[158] The results included content from the investigation, charge and committal hearings, as these had, for the most part, occurred before the case study was chosen. During the trial, I searched 'Fernando Paulino' in Google News during the lunch break and at the conclusion of each day. This search produced the relevant content and linked to 'related coverage', which allowed me to capture additional content. I returned to Factiva intermittently to crosscheck that I was not missing any coverage. The content was listed in an Excel spreadsheet with details of the media outlet and author. In the spreadsheet, the content was coded using the same coding framework that was used for my preliminary content analysis discussed above. The analysis of this data will be described below when outlining the 'case study' method.

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[157] Blatchford (n 141).

[158] The suburb in Melbourne where Teresa Mancuso was murdered.

C *Court transcripts*

Daily court transcripts of the *Paulino* trial were used as one set of data that informed the case study. The way I used and analysed the transcripts is described below, but transcripts as a data source requires some consideration on its own. Transcripts are an important source of data for understanding how the legal narratives emerge in court and shape the raw material available to journalists. However, learning from other scholars who have worked with transcripts as a source of data, I was aware of the limitations and challenges. Marianne Constable described this challenge in her discussion of using a similar method in her study of a US trial. She perceived the trial as a performance, and the transcript itself:

> winds up being a form of dialogic performance to be unpacked. Some things from the original performance have been reduced, and some things have been represented in a form that differs from the form in which the performance first appeared.[159]

Elizabeth Sheehy in her work with trial transcripts in Canada made similar observations.[160] She said there were many exclusions from trial transcripts including oral argument by lawyers on points of law in the absence of the jury, jury selection, final jury addresses and video or audio recordings. Sheehy said as a result, 'the researcher is acutely aware that she is not reading the whole story'.[161] Sheehy also observed that trial transcripts could have a muting effect on a woman's experience.[162] Cunliffe warned that when using court records and transcripts as a data source, it is important to be self-reflexive as a researcher. She proposed that researchers should be conscious of the 'institutional role' of court records and also be wary of imposing their own subjective interpretation of the data.[163]

Accordingly, I was cautious about viewing the transcripts as providing the 'whole story' or, in the words of Constable, one cannot assume that legal texts 'mirror reality'.[164] Therefore, like the media content analysis discussed above, the transcripts were treated as only one piece of the entire story. As will be described below in the case study description, the transcripts were a supplement to my own observations of the trial which I attended every day and was therefore able to observe those silences. For example, I could observe interactions between the media and lawyers, plus other non-verbal cues and parts of the process that are not recorded in the

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[159] Robert Burns et al, 'Analyzing the Trial: Interdisciplinary Methods' (2008) 31(2) *Political and Legal Anthropology* 303.

[160] Elizabeth Sheehy, *Defending Battered Women on Trial* (UBC Press, 2014) 13-14.

[161] Ibid 14.

[162] Ibid. See also Austin Sarat, 'Rhetoric and remembrance: Trials, transcription, and the politics of critical reading' (1999) 23(4) *Legal Studies* 355. Sarat argued that these absences, or what 'cannot-be-said', are what should be looked for in transcripts. He said 'trial transcript is as much about what is denied, repressed, or excluded as what is said': 359.

[163] Emma Cunliffe, '(This Is Not a) Story: Using Court Records to Explore Judicial Narratives in R v Folbigg' (2007) 27 *Australian Feminist Law Journal* 71.

[164] Burns et al (n 159) 310.

transcript. The transcripts were also a useful source for the times I needed clarification on the legal debates or evidence that arose throughout the day.

D *Court observation*

To complement the media and transcript content analyses, I also observed two different court cases.[165] The aim of using an observation method was to gain further insight into the relationship between what occurs in the courtroom and the media's representation of IPHs. The value of observation in the study of the media was expressed by Ericson et al who carried out direct observation of journalists reporting on the courts, legislature and police:

> Only ethnographic observation provides a means of documenting independently what people do, as opposed to what they say they do in interviews or organizational documents. Indeed, observation allows an assessment of how subjects' words in the abstract – whether in organizational documents or research interviews – are related to their deeds.[166]

Cottle, too, contended that ethnographic studies of news production also reveal constraints at work and therefore allow for a more complex and sensitive understanding of the 'discourses "at play" within news media representations'.[167]

More broadly, Danny Jorgensen set out a list of reasons why observation is valuable, many of which apply here. These include: observation is an 'exceptional' method for studying processes, there are differences in the views of insiders (journalists) and outsiders (critics) and, perhaps most importantly, the phenomenon is somehow hidden from the view of outsiders,[168] as is the case with criminal trials.[169] Other reasons I employed this method include the way observation addressed the concern, discussed above, that I could not solely rely on the trial transcripts to provide the 'whole story'. Secondly, my observations of the trial (*Paulino*) and committal hearing (*Ristevski*) were to ensure I was able to view, at least in part, the crime news production process. In doing so, I was also able to observe what parts of the day's evidence were selected and translated into media reports, and what parts of the day remained 'silent'.[170] I will now describe the approaches I took to observing the two different court cases, the challenges that arose and the steps taken to overcome them.

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[165] It should be noted, due to limitations, my use of observation was limited to observing the journalists and court proceedings, and not also following and talking to journalists as they went about their work, as is the approach taken by many news production ethnographers.

[166] Richard Ericson, Patricia Baranek and Janet Chan, *Negotiating Control: A study of news sources* (University of Toronto, 1989) 27.

[167] Simon Cottle, 'Ethnography and News Production: New(s) Developments in the Field' (2007) 1(1) *Sociology Compass* 1, 2.

[168] Danny L Jorgensen, *Participant Observation* (Sage Publications, 1989) 12-13.

[169] See Cunliffe, *Murder* (n 122) 157. Cunliffe discusses the fact that the public rarely attend court or access transcripts.

[170] Cottle (n 167) 5.

1 *DPP v Paulino*

The criminal trial of Fernando Paulino, who was charged and convicted of the murder of his ex-wife Teresa Mancuso in 2015, was chosen as a case study.[171] I observed the entire trial, which ran from May to June 2017 over six weeks. Before selecting a case study and commencing my court observations, I attended several different IPH related criminal hearings at different stages of the process. This allowed me to become familiar with the surroundings and the different protocols and carry out 'unfocused observations',[172] which would help inform my selective observations once I was focused on the one trial.

Once I had decided on a case study, I was aware that, despite the openness of Australian courts, my overt daily attendance would be considered unusual.[173] The fact I was also taking detailed notes each day of the trial may have also raised concerns I was publishing material about the case, so it was important to explain that I understood the legal rules around reporting on courts and that I was not in fact publishing material while the proceedings were on foot. I provided a plain language statement of my research and its context to the Judge's Associate. My presence was accepted and in fact facilitated by Bell J who said I could sit with the journalists. The Judge's Associate remained in contact with me throughout the trial and sent me transcripts at the end of each day.

Based on my previous experiences of observing court proceedings, I developed a system of diarising[174] who was present in the courtroom and recording the relevant and important legal debates or parts of witness testimonies. I would record how many journalists attended each day of the trial and identify which media outlets they were representing to the best of my ability. I also noted the reactions of journalists, lawyers and family members. I would then transcribe these notes into a Word document at the end of each day and add any reflections on the day's proceedings. I would refer to the daily transcripts to correct the spelling of names and clarify the day's evidence. These notes and transcripts were filed according to the week of the trial.

Participant observation requires close consideration of ethical issues and self-reflexivity in terms of how close or distant I would be to the subjects in the courtroom and journalists. The dilemma of the 'researcher effect', whereby your presence in the field can influence those you are observing, was considered by Coongh in his reflection on ethnographic field work.[175] He described the dilemma as a balancing act between immersing yourself amongst those who you are studying while also remaining sufficiently detached to be able to analyse

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[171] *DPP v Paulino* [2017] VSC 794. Reasons why this case was chosen as a case study are discussed below and details of the case are set out in Chapter Six.

[172] Jorgensen (n 168) 82.

[173] Ibid 45.

[174] Ibid 10. Participant observers commonly keep a diary of activities.

[175] Satanam Coongh, 'Doing Ethnographic Research: Lessons from a Case Study' in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (Edinburgh University Press, 2007).

and explain that which is being observed and heard.[176] Similarly, Jorgensen spoke of this dilemma in that being involved as a researcher is naturally a part of the methodology of participant observation; that the situation you are studying is defined by your own experience of that situation.[177] Regardless, the researcher must avoid disrupting the situation being studied and instead find a means of 'conducting fairly unobtrusive observations'.[178]

With these dilemmas in mind, my aim was to take on the role of a 'detached observer' or 'uninvolved spectator'.[179] However, this was challenged in two ways. Originally, with the permission of the judge, I was sitting downstairs in the courtroom with the journalists and family members. From there, I had a good view of the witnesses, prosecution and defence lawyers. However, early in the trial I was approached by the accused's family members for casual conversation. I was not comfortable with this contact as it was not my role to become involved with the family, friends or witnesses. The extent of my contact was an explanation of my research. When I realised that this contact would become too regular, I began sitting in the public gallery above the courtroom. This also put physical distance between me and the people involved in the trial, which was more conducive to my role as a detached observer rather than participant.

Another ethical issue I was conscious of while conducting this research was my background as a journalist. Paterson and Zoellner carried out a study on the dilemmas of the 'researcher effect' in journalism studies, especially when the researcher has a background in the industry. This background means that the objective distance between the researcher and subject could give rise to a risk of influencing the results.[180] At the same time, however, this background knowledge can be an asset to gaining access to the newsroom or journalists, and also help inform observations.[181] Having studied both law and journalism, practised as a journalist and worked as a Media Coordinator at the peak body Domestic Violence Victoria, my experience reflected this research. While part of the aim of the observation method was to immerse myself in the circumstances of a court reporter and understand their daily routines and practices, I made a conscious effort to remain objective and not take on the role of a journalist myself. At the same time, I also acknowledged that my background as a journalist helped inform my observations. This was complemented by my background in law, which made me aware of the legal complexities and procedures of a trial and therefore able to observe the case from two perspectives.

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[176] Ibid 81-82.

[177] Jorgensen (n 168) 15.

[178] Ibid.

[179] Norman Blaikie, *Designing Social Research* (Polity Press, 2000) 52.

[180] Chris Paterson and Anna Zoellner, 'The efficacy of professional experience in the ethnographic investigation of production' (2010) 11(2) *Journal of Media Practice* 97.

[181] Ibid.

Ultimately, the notes I recorded were used as data for the case study but also a memory aid and reference for relevant parts of the trial. This was important given the large body of evidence and witness testimonies that were outside the scope of this thesis, such as the crime scene investigation or CCTV footage-related evidence and arguments. The notes were also a record of the dynamics of the trial which, although a subjective observation, were important when analysing the media's interpretation of these interactions in the courtroom.

2 *DPP v Ristevski*

The committal hearing I observed involved Borce Ristevski, who was accused of murdering his wife Karen Ristevski in June 2016.[182] The committal hearing took place from 16 to 27 July 2018 in the Melbourne Magistrates' Court. As I had done in the *Paulino* trial, I notified the Magistrate of my research and reason for attending through her associate. I also applied for access to court transcripts but was refused on the basis that there was no protocol in place for providing access to researchers (as opposed to media). Otherwise, the same approach to court observation was taken when attending the committal hearing, though some of the challenges regarding distancing myself as a researcher were amplified in the smaller Magistrates' Court setting.

I began attending this case with the initial aim of using the data in a second case study. However, given its unusual characteristics (described in Chapter Five) and the large amounts of data that emerged from my previous court observations of *Paulino,* I instead decided to follow the case to gain a greater understanding of both the law around homicides and the crime-news production process. The *Ristevski* trial was also difficult to ignore during my period of research. It received significant public and media attention and, because the search for Karen Ristevski went for a long time, the media's coverage of the 'mystery' was extensive. For this reason, it shed light on what kind of IPHs attract heightened public and media attention and was a useful experience to inform my reading and review of literature on crime-news production. Attending this committal hearing was also an opportunity to meet more journalists whom I was able to interview for my research. The significance of this case and why it features in my thesis as an exemplar is detailed in Chapter Five.

E *Interviews*

Given my limited practical experience of crime or court-reporting, I wanted to use a method that allowed me to understand the perspectives of journalists who carry out the work on a daily basis. I had observed this sensitivity in the work of other scholars, such as Helen Benedict's research on the media's reporting of 'sex crimes' in which she also acknowledged the tendency of research to criticise journalism without understanding the conditions that can lead to unfair reporting.[183] Similarly, in Herbert Gans' study of television news, he noted the importance of not simply attacking journalists for their news content and its implications, but rather he aimed

[182] *DPP (Vic) v Ristevski* [2019] VSC 253 ('*DPP (Vic) v Ristevski*').

[183] Helen Benedict, *Virgin or Vamp? How the Press Covers Sex Crimes* (Oxford University Press, 1992).

to identify the values that contributed to the production of that news.[184] The research conducted by academics Robert Dreschel in the US[185] and Grabosky and Wilson in Australia,[186] both of which considered the reporting of courts and crime, also involved the researchers themselves becoming as immersed in the news production process as possible. These studies used interviews as a means to understand the way both values and practical influences contribute to the environment in which reporters navigate legal rules and restrictions and ultimately produce news.

1 *Participant selection*

The strategy employed to select participants was 'primary selection', which has been defined as:

> the opportunity for the researcher to sample informants using criteria such as knowledge and experience, an ability to reflect, is articulate and has time to be interviewed.[187]

I had aimed to speak to journalists who were regularly reporting on the *Paulino* case and therefore familiar with the trial. However, given the small number of reporters who now cover the courts,[188] the pool of journalists to choose from was limited. For the *Paulino* case study, there was one journalist, Wayne Flower, who followed the entire trial. However, he refused to be interviewed. Notably, he refused for reasons that frequently arise in journalism research: a scepticism towards research that scrutinises journalistic practices.[189] This left only a handful of journalists who had been in and out of the case and thus did not feel confident discussing the case with me given their limited coverage. For these reasons, I broadened the aim of my interviews from focusing on the coverage of the individual case, to crime and court reporting in general. This meant I could speak to journalists who had not necessarily covered *Paulino* but could offer their perspectives on the legal restrictions and processes or other factors that did or did not impact their work, particularly in the context of other IPHs. Many of these journalists had followed the *Ristevski* committal hearing given its high public profile and media interest.

I also had to modify the method by which I selected participants to deal with the problem of gaining access to newsrooms and journalists.[190] As well as the scepticism that some journalists seem to share, research such as

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[184] Herbert Gans, *Deciding What's News* (Constable, 1980).

[185] R E Dreschel, *News Making in Trial Courts* (Longman Inc, 1983).

[186] Peter Grabosky and Paul Wilson, *Journalism and justice: how crime is reported* (Pluto Press, 1989).

[187] Janice M Morse, 'Designing funded qualitative research' in N K Denzin and Y S Lincoln (eds), *Handbook of Qualitative Research* (Sage Publications, 1999) 220, 228.

[188] See Simons and Bosland (n 123).

[189] See Hjarvard (n 125).

[190] See, eg, Gans (n 184); Hjarvard (n 125); Philip Schlesinger, *Putting Reality Together: BBC News* (Methuen, 2nd ed, 1987); Gaye Tuchman, *Making news: a study in the construction of reality* (Free Press, 1978); Louise North, *The Gendered Newsroom* (Hampton Press, 2009).

this also has practical impositions on the journalist's and/or media organisation's time and resources.[191] Solutions included having interviewed journalists refer me to their colleagues; a traditional 'snowball' sampling method.[192] This way, the journalist had some knowledge of who I was and therefore was more willing to be interviewed. Building relationships and trust with the journalists was aided by the fact that many came to know me from my presence at the *Paulino* and *Ristevski* legal proceedings. Further, my work as a Media Coordinator also meant I was known to some journalists. As suggested above, building trust with journalists, particularly through showing an understanding or experience in the journalism industry, has proven to be helpful in gaining access to studying the production of news.[193] This process required patience and explains why my interviews span across 2017 to 2019.

The final sample of 10 participants was reflective of the range of journalists and media outlets that covered the *Paulino* and *Ristevski* cases. I included television, radio, print and online reporters from *The Age*, *ABC*, *The Australian*, *Herald Sun*, *Channel Ten* and *AAP*. I also interviewed former *The Age* journalist Peter Gregory who had worked as a court reporter for more than a decade and was able to speak to the changing nature of court reporting. This sample provided a picture of the different practices, challenges and considerations across the different media outlets and the corresponding audience demands and priorities of those organisations. See Appendix C for a list of interview participants.

2 *The interview questions*

As mentioned, the aim of the interviews was to focus on the criminal case that was the subject of my case study. Ericson et al suggested in their study that questioning participants about specific matters, and ones they had observed themselves, was more productive than discussing broader concepts and processes in the abstract.[194] In some circumstances, journalists were able to answer questions specific to either *Paulino* or *Ristevski*. However, I could not exclusively interview journalists who had covered these cases due to the small number of dedicated court reporters in Melbourne. Regardless, most journalists over their careers had dealt with VAW and/or IPH cases and were able to speak generally to the challenges involved in covering these stories.

The interview questions covered some of the following themes: daily practices and routines, decision-making processes, knowledge of media law and the legal process in general and the journalists' relationships with court staff and legal professionals. I also asked questions about how the journalists perceived the issue of VAW and

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[191] Paterson and Zoellner (n 180).

[192] Klaus Bruhn Jensen, 'The qualitative research process' in Klaus Bruhn Jensen (ed), *A Handbook of Media and Communication Research* (Routledge, 2012) 265, 270.

[193] Paterson and Zoellner (n 180).

[194] Ericson, Baranek and Chan, *Negotiating Control* (n 166) 29.

whether they had observed any changes over their careers as to how the issue was reported by them or their colleagues. My interview guide is included in Appendix C.

Using a semi-structured interview approach, I was able to let the interview response guide my questions. As described by Svend Brinkman, a semi-structured interview can follow the angles that are:

> deemed important by the interviewee, and the interviewer has a greater chance of becoming visible as a knowledge-producing participant in the process itself, rather than hiding behind an interview guide.[195]

This was particularly useful given my experience from observing the *Paulino* and *Ristevski* trials and my ability to raise some of these observations and ask the journalist about their own description of those events. However, I had to approach the subject objectively and be careful not to impose too much of my own background knowledge about the law of reporting on IPHs onto the interviewee. That is, one of the aims of the interviews was to learn how much journalists themselves understood about the laws and to describe their experiences of managing them.

3 *Data analysis*

I transcribed all interviews shortly after they were conducted. I then stored the transcripts in the qualitative data analysis program NVivo and printed hardcopies. The first step of analysis of the interview data was an exploratory read of all of the transcripts to identify recurring themes by annotating the physical copies. From reviewing my annotations, I was able to more systematically categorise and identify the themes, many of which were directed by the types of questions I asked, but there were also issues that arose independent of the questions. I then listed these expected and unexpected themes in NVivo and re-read the transcripts in softcopy. This allowed me to highlight and code the parts of the text that were relevant to the different themes I had more systematically identified.

With the interview data categorised, I was able to refer to the relevant themes while carrying out other parts of my data analysis. For example, when analysing the data collected for the *Paulino* case study, I was able to access interview data relevant to the *Paulino* case and/or relevant to the corresponding theme. I considered the interview data to be illustrative of and valuable to a number of components of my thesis, which meant this triangulation process occurred not only for the case study but also throughout my literature review chapters. This was especially the case for the *Ristevski* example in Chapter Five, as I had the opportunity to interview a number of journalists who attended the committal hearing and were therefore able to give specific and detailed accounts of the process of reporting on that case.

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[195] Svend Brinkmann, 'The Interview' in Norman Denzin and Yvonna Lincoln (eds), *The Sage Handbook of Qualitative Research* (Sage, 5th ed, 2018) 579.

A limitation of the interview data was the small sample size of 10. I acknowledge that this data is not representative of court reporters or the court reporting experience. I also acknowledge that analysing and making inferences from interview data is again a subjective process and I do not claim that either the interviewees' views, my interview approach and analysis of the data is comprehensive.[196] The small sample size and subjective nature of this data and data analysis is another reason why I employed a range of methods that I triangulate in the case study.

F *Case study*

The 'case study' has been defined to contain two important elements. Firstly, it is a 'social unit', which involves a 'real individual, social event or group of people'. Secondly, 'it treats the individual group or event as a whole'.[197] The method of a case study has also been described as 'investigating a contemporary phenomenon in its real-life context' using multiple methods to do so.[198] In this thesis, the event or phenomenon I was investigating was an IPH and the consequent legal proceedings and media coverage. Using a case study approach and a variety of methods allowed me to bring together the legal and media perspectives that were examined in my literature reviews and observe the law's interaction with the news production process as a 'whole'.

The qualitative approach of a case study brings with it several benefits. A qualitative case study approach is flexible and can be shaped to the investigation and what arises.[199] This was important as the process of following a criminal trial and the media's reporting of that trial was, at times, unpredictable and required me to adapt to the changing circumstances. A qualitative case study approach also aligns with the understanding that a phenomenon is made up of a range of processes and by either observing or participating in those processes a better understanding can be developed.[200] Therefore, using the case study method helped me to develop an understanding of the legal and media processes that precede the media outputs of IPHs. Finally, the case study was conducive to my approach of drawing on a wide range of evidence, and 'in fact, the more data sources that can be brought to bear in a case, the more likely it is that the study will be valid'.[201]

1 *Case study selection*

The murder trial of Fernando Paulino was my case study. However, before deciding on that case, I had monitored and recorded all IPH incidents, legal proceedings and trials that were occurring in Victoria from the

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[196] Jensen (n 192) 270.

[197] Blaikie (n 179) 252.

[198] Robert K Yin, *Case Study Research* (Sage Publications, 1984) 23.

[199] Blaikie (n 179) 251-53.

[200] Ibid.

[201] Wimmer and Dominick (n 133) 130.

time I commenced my research in 2016. I continued to monitor cases until November 2019. This allowed me to keep track of cases that were in the preliminary stages of legal proceedings and could therefore potentially go to a trial in the Supreme Court within my research period. As is often the case, deciding on a site of research, particularly for observation, is sometimes based on 'opportunity and convenience'.[202] In this way, the nature of criminal trials, in which accused persons could plead guilty and therefore no trials proceed, or proceedings could be delayed for a range of reasons, I had to be flexible with my choice of case and pursue more than one to mitigate the risk of not having a case at all.

When selecting what cases to follow, I was doing so based on the concept of a 'critical case', which has been defined by Robert Yin as a case that can test well-formulated theories.[203] Therefore, I chose trials based on a set of 'typical' IPH characteristics that I had developed from my literature reviews and 18-month content analysis of IPH media coverage. These characteristics included the murder occurring within a domestic setting, a series of threats or prior violence perpetrated by the accused person against the victim before the murder, and a defence narrative of either self-defence or lack of intent. Accordingly, *Paulino* was selected. Not only did this trial proceed and occur at an appropriate time for my overall research timeline, but it involved all the above-mentioned characteristics and had received substantial media coverage since the time of the murder.

Focusing on one case meant, of course, that any findings were not representative of all IPH trials and the media's reporting of those trials, and there was a risk of bias.[204] However, I argue that by focusing on the one case I could collect richer data and carry out a more in-depth analysis. That is, one of the advantages of a qualitative approach is that it allows for a 'thick'[205] description of the social setting and other details that in other circumstances may be considered trivial.[206] This approach allowed for details to emerge that may have been disregarded in previous research. I also took the approach of placing my case study within the broader context of pre-existing studies on IPH trials,[207] and my preliminary analyses of media content and interviews with journalists. This broader context helped frame the data I collected from my case study. The benefit of this process was that previous studies of IPHs (whether in the context of legal or media focused research) affirmed or challenged patterns in the dynamics and nature of the murder itself, the law's interpretation of the case and the media's telling of that story.

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[202] Jorgensen (n 168) 41.

[203] Yin (n 198).

[204] Jorgensen (n 168) 8.

[205] C Geertz, *The Interpretation of Cultures* (Basic Books, 1973) 6, 10.

[206] Blaikie (n 179) 252.

[207] Sutherland et al, *Horizons* (n 147).

2 *Case study analysis*

(a) The raw material

The first step of the analysis process was to make sense of the criminal trial through a qualitative, thematic analysis of the court transcripts aided by my observation notes. As mentioned above, the transcripts were read as a whole at the end of each day of the trial to help clarify my observations. At the end of the trial, I returned to my notes and the transcripts and re-read them, looking for recurring themes in the legal narrative. I indexed the transcripts according to when these themes appeared. After carrying out the thematic analysis which categorised the data, I was able to undertake a second, more detailed layer of analysis whereby I compared the trial transcripts and the themes to the existing legal scholarship on the trial process, cross-examination techniques and specific analyses of IPH trials. Where relevant, I also compared the legal narrative to data and literature on the social reality of IPHs.[208] Overall, this analysis provided a description of the 'raw material' which was presented in court and therefore was available to journalists to report on.

(b) The media's story

The second step in my case study analysis was to examine how the raw material was translated to a media narrative. This stage of the analysis allowed for observations about the direct impact of legal restrictions, but also the more subtle role of the legal rules and processes, combined with news values and practices. To do this, I adopted both a quantitative and qualitative approach to analysing the media coverage of the *Paulino* trial. Similar to the 18-month IPH media content analysis described above, I coded each article using the same coding framework. This created a record of categorical details such as the outlet, author, stage of the crime and stage of the trial, as well as more detailed information such as whether prior violence was mentioned in the article or not and, if so, how. As the sample was small, the quantitative data itself was not particularly useful for analysis, but it did help categorise the media reports and was valuable to use as an index. At times, this data was also useful for observing patterns in the news coverage, such as when the coverage increased or decreased or whether particular sources were used more at one stage of the process compared to another.

I also adopted a qualitative analysis of the media coverage, which involved identifying the main themes and the overarching narrative to emerge from the coverage as a whole, followed by a closer analysis of the individual articles in which I could observe the effect of different framing techniques. I carried out this analysis with the aid of scholarship that identified patterns in the way the media cover IPHs or VAW stories more broadly, which is summarised in the literature review in Chapter Three.[209] At this stage of the qualitative analysis, I also compared the media coverage to the court transcripts. For example, if a journalist would quote a lawyer, I was

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[208] For a similar approach, see Stella Tarrant, Julie Tolmie and George Giudice, 'Transforming legal understandings of intimate partner violence' (Research Report No 3, ANROWS, June 2019).

[209] Sutherland et al, *Horizons* (n 147); Morgan and Politoff (n 138).

able to refer back to the transcript and see the context from which that quote came. This process allowed me to identify the points at which journalists selected, excluded or paraphrased evidence.

This analysis was aided by my court observations and interview data, which added another layer of understanding of how and why a day's proceedings were translated by the media in a certain way. The comparison of the media content and transcripts was informed by the work of Cunliffe (discussed above) who compared media content to court transcripts in her study as a way to illuminate the selectivity of journalists while also acknowledging the broader context of the legal process and restrictions.[210] The interview data helped contextualise both my content analysis and court observations, filling in the gaps where a journalist's perspective on the court reporting process was needed. By analysing the media coverage, transcripts and interview data concurrently, I was able to create a comprehensive picture of how the representation of the IPH and its surrounding context was gradually refined and shaped throughout the police investigation, criminal trial and finally the news production process.

IV Conclusion

As my research design illustrates, there are numerous bodies of work that have examined different aspects of the IPH trial, the media's reporting of IPHs, the IPH trial context and publication restrictions. However, for the most part, these studies are all conducted in isolation. In particular, the research on the media's reporting of VAW suggests there are flaws in the media's reporting of IPHs but does not consider how the law may contribute to those shortfalls. The value of my research design is that these different perspectives have been brought together: firstly, through the literature reviews, which are supported by my own data and findings that test, confirm and expand upon the existing scholarship; and secondly, in a more practical manner through a case study. By following the one case from a legal and media perspective, the case study provides a novel and rich description of the process by which a story of an IPH is constructed by the media and the extent to which it is impacted by legal rules and restrictions.

[210] Cunliffe, *Murder* (n 122).

CHAPTER THREE:
THE MEDIA'S REPRESENTATION OF INTIMATE PARTNER HOMICIDES

I INTRODUCTION

Numerous feminist critiques of the media's reporting of VAW and media guidelines have identified what reporting should look like if it is going to help improve community attitudes and prevent VAW.[211] The ideal article would include contextual information that shows the gender-based root causes of violence.[212] The article would name the incident as 'domestic', 'intimate partner' or 'family' violence to demonstrate that it was not just another random crime.[213] It would include information from a range of sources and not just crime/legal authorities.[214] If relevant, the journalist would report on the prior violence or controlling behaviour of the perpetrator (or victim in the case of a female perpetrator who has been abused),[215] and it would also provide resources for victims of violence.[216] However, in reality, reporting does not always meet these standards. In particular, the reporting of IPHs often excludes details of prior violence and the broader dynamics of domestic violence and fails to connect the individual incident to the broader social context of VAW, thereby absolving 'society of any obligation to end it'.[217]

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[211] See Council of Australian Governments, *National Plan to Reduce Violence Against Women and their Children: Third Action Plan 2016-2019* (2016).

[212] Georgina Sutherland et al, 'Media representations of violence against women and their children: State of knowledge paper' (Landscapes Report, ANROWS, 2015) 12 ('*Landscapes*').

[213] Cathy Ferrand Bullock, 'Framing domestic violence fatalaties: Coverage by Utah newspapers' (2007) 30(1) *Women's Studies in Communication* 34; Jenny Morgan and Violeta Politoff, 'Victorian print media coverage of violence against women: A longitudinal study' (Report, VicHealth and The University of Melbourne, 2012).

[214] Morgan and Politoff (n 213); Tara N Richards, Lane Kirkland Gillespie and M Dwayne Smith, 'Exploring news coverage of femicide: Does reporting the news add insult to injury?' (2011) 6(3) *Feminist Criminology* 178; Charlotte Ryan, Mike Anastario and Alfredo DaCunha, 'Changing Coverage of Domestic Violence Murders: A Longitudinal Experiment in Participatory Communication' (2006) 21(2) *Journal of Interpersonal Violence* 209; Margaret Simons et al, 'Understanding the civic impact of journalism' (2017) 18(11) *Journalism Studies* 1400.

[215] J Fairbairn and M Dawson, 'Canadian news coverage of intimate partner homicide: Analyzing changes over time' (2013) 8(3) *Feminist Criminology* 147; Ilsa Evans, 'Desperate Lovers and Wanton Women: Press Representations of Domestic Violence' (2001) 27(2) *Hecate* 147; Cathy Ferrand Bullock and Jason Cubert, 'Coverage of domestic violence fatalaties by newspapers in Washington state' (2002) 17(5) *Journal of Interpersonal Violence* 475; Morgan and Politoff (n 213); Georgina Sutherland et al, 'Media representations of violence against women and their children: Final report' (Horizons Research Report, ANROWS, 2016) ('*Horizons'*).

[216] Kellie E Carlyle, Michael D Slater and Jennifer L Chakroff, 'Newspaper coverage of intimate partner violence: Skewing representations of risk' (2008) 58(1) *Journal of Communication* 168; Morgan and Politoff (n 213); Sutherland et al, *Horizons* (n 215).

[217] Marian Meyers, *News Coverage of Violence Against Women: Engendering Blame* (Sage Publications, 1997) 117-18.

This chapter reviews these critiques of the media's framing of VAW, focusing specifically on those relevant to the reporting of IPHs. In doing so, this chapter responds to research question one:

> To what extent do the media report, or not report, prior violence and social context when covering IPH trials?

As described in Chapter Two, to help narrow the focus of this broad set of literature and apply this question to Victorian media content, I draw on my own content analysis. The media content is of 18 months of Victorian print media's coverage of IPHs between February 2015 and August 2016. Overall, there were 100 articles identified. During this time period, and throughout this media content, 15 unique IPH cases were reported and are provided in Appendix B.

Although some of the literature does acknowledge the potential effect of the law and the reality that the media are limited to representing what occurs in the courtroom,[218] there is an absence of further interrogation. Therefore, throughout this analysis I also question the points at which either sub judice contempt, the *Family Violence Protection Act 2008* (Vic) ('*FVPA*') intervention order publication restriction, or other legal rules and processes may have played a role in the media's inclusion or exclusion of prior violence or the broader social context. This, of course, is explored in more detail throughout the rest of my thesis, but is introduced here to highlight the way in which the current critiques of the media's reporting of VAW may be ignoring the extent to which journalists are legally able to meet the standards set for them.

II RE-FRAMING VIOLENCE AGAINST WOMEN

Media scholarship has attempted to deconstruct and understand the relationship between the media and audience effects concerning a range of social and policy issues, partly through applying the concept of 'framing'.[219] According to Robert Entman, frames are a product of selection and salience, in that a certain perceived version of reality is highlighted and promoted in a text.[220] Entman explained that frames, when examined closely, can 'define problems', 'diagnose causes', 'make moral judgments' about the causes and their effects and 'suggest

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[218] See, eg, Morgan and Politoff (n 213) 45.

[219] Shanto Iyengar, *Is Anyone Responsible?: How Television Frames Political Issues* (University of Chicago Press, 1991); Shanto Iyengar, 'How Citizens Think about National Issues: A Matter of Responsibility' (1989) 33(4) *American Journal of Political Science* 878; Lori Dorfman, 'Youth and Violence on Local Television News in California' (1997) 87(8) *American Journal of Public Health* 1311; Elaine M Seiff, 'Media frames of mental illnesses: The potential impact of negative frames' (2003) 12(3) *Journal of Mental Health* 259; Itzhak Yanovitsky and Courtney Bennett, 'Media Attention, Institutional Response, and Health Behavior Change: The Case of Drunk Driving, 1978-1996' (1999) 26(4) *Communication Research* 429; Itzhak Yanovitzky, 'Effects of News Coverage on Policy Attention and Actions: A Closer Look Into the Media-Policy Connection' (2002) 29(4) *Communication Research* 422; Mira Sotirovic, 'How Individuals Explain Social Problems: The Influences of Media Use' (2003) *Journal of Communication* 122.

[220] Robert M Entman, 'Framing: Toward Clarification of a Fractured Paradigm' (1993) 43(4) *Journal of Communication* 51, 52.

remedies' for the problem.[221] News frames can be made up of 'key words, stock phrases, stereotyped images, sources of information, and sentences that provide thematically reinforcing clusters of facts or judgments'[222] and ultimately encourage readers to develop particular understandings about an event[223] Entman and other researchers have been clear that it cannot be definitively known how a reader understands media content,[224] however, there *seems* to be some relationship between media framing and the effect on how the public perceive the world and define what issues are significant.[225]

There has been a small body of research on the effect of the media's framing of VAW on readers. For example, Palazzolo and Roberto examined the connection between the context provided about a victim and perpetrator in an article about an intimate partner violence incident, the readers' emotions that were invoked and the consequential attribution of blame or responsibility.[226] The study found that, by including information purposively designed to increase perpetrator responsibility, such as a prior history of domestic violence, the reader was more likely to feel angry, attribute responsibility to the perpetrator and have a preference for punishment.[227] Other studies have found causal connections between the personalisation of news stories (e.g. using names) and greater empathy and less blame amongst readers.[228] In another study, a connection was found between the reporting of 'rape myths' and the readers' attitudes towards perpetrators.[229] Although these effects intersect with a range of factors including the gender of the audience and their prior understandings of VAW,[230] the findings show that the media play an important role in how the public perceives and responds to the social problem.[231]

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[221] Ibid.

[222] Ibid.

[223] Robert Entman, 'Framing U.S. Coverage of International News: Contrasts in Narratives of the KAL and Iran Air Incidents' (1991) 41(4) *Journal of Communication* 6.

[224] Steven M Chermak, *Victims in the News* (Westview Press, 1995) 5; Entman, 'Framing' (n 220).

[225] Richard V Ericson, 'Mass Media, Crime, Law, and Justice: An Institutional Approach' (1991) 31(3) *The British Journal of Criminology* 219; Chermak (n 224).

[226] Kellie E Palazzolo and Anthony J Roberto, 'Media Representations of Intimate Partner Violence and Punishment Preferences: Exploring the Role of Attributions and Emotions' (2011) 39(1) *Journal of Applied Communication Research* 1.

[227] Ibid.

[228] P A Anastasio and D M Costa, 'Twice hurt: How newspaper coverage may reduce empathy and engender blame for female victims of crime' (2004) 51 *Sex Roles* 9.

[229] Renae Franuik et al, 'Prevalence and Effects of Rape Myths in Print Journalism: The Kobe Bryant Case' (2008) 14(3) *Violence Against Women* 287.

[230] Sutherland et al, *Horizons*, (n 215) 25.

[231] Georgina Sutherland, Margaret Simons and Annie Blatchford, 'Emerging Evidence, Insights and Lessons: News media and the primary prevention of violence against women and their children' (Evidence Paper, Our Watch, June 2017) 9.

Changing how the media frames certain stories is not simple. Frames become embedded when they effect, or predetermine, the reporting decisions of future journalists covering a similar story. Seiff described this as a cycle, in that 'audiences may become so accustomed to particular frames that it is difficult for journalists to change those frames'.[232] Further, news production processes such as available sources of information,[233] the medium of the news,[234] editorial guidelines, advertising concerns, economic drivers[235] and the social and political context[236] filter which stories are told and how they are shaped. As my thesis will show, in the context of court reporting, this is compounded by legal restrictions which add another barrier to including information that might help re-frame the way IPHs are reported. In addition, challenging the way VAW is framed is more complex than identifying, for example, the direct link between smoking and lung cancer. To play a role in prevention of VAW, the media must tackle the gendered nature of the issue and gender inequality as the root cause of violence.[237] This goes beyond individual journalists and lies with 'social structures and values that deny male violence against women [is] a serious, systemic problem rooted in misogyny and patriarchy'.[238] This makes the task of reframing the media's representation of IPHs all the more difficult, irrespective of the journalist's intentions.

What the literature on framing makes clear is that, to understand how society understands and responds to a problem such as VAW, 'it is important to decipher the portrait provided within these frames'.[239] Next I turn to the literature that does just this: deciphering the patterns and trends in the media's framing of VAW and IPHs. While content analyses, which are criticised for being a 'barren counting of repetition',[240] are limited in their recognition of news production or legal influences, they do provide an important and necessary picture of the way different elements make up the representation of VAW.

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[232] Seiff (n 219) 267.

[233] Entman, 'Framing U.S. Coverage' (n 223) 17.

[234] Iyengar, *Is Anyone Responsible?* (n 219).

[235] N Berns, *Framing the Victim: Domestic Violence Media and Social Problems* (Aldine de Gruyter, 2004) 10.

[236] D Comas-d'Argemir, 'News of partner femicides: the shift from private issue to public problem' (2014) 30(2) *European Journal of Communication* 121, 132-3.

[237] Our Watch, ANROWS and VicHealth, 'Change the story: A shared framework for the primary prevention of violence against women and their children in Australia' (Our Watch, 2015).

[238] Meyers (n 217) ix.

[239] Chermak (n 224) 5.

[240] Richard Ericson, Patricia Baranek and Janet Chan, 'Research Approaches' in Chris Greer (ed), *Crime and Media: A Reader* (Routledge, 1987) 112.

III THE MEDIA'S REPRESENTATION OF VAW

Crime, and homicides in particular, will always be a staple of the daily news diet.[241] Consequently, much of the media's coverage of VAW is made up of crime and court reports about homicides. These types of news reports often do not meet the standards of an 'ideal' article about VAW and perpetuate many of the problems for which the media are criticised. Rather than simply criticising this reality, however, the following discussion aims to understand the subtleties of these trends in reporting, and begins to explore the potential role of the law in these patterns.

A *'One-off incidents'*

The media's framing of VAW is predominantly 'episodic' – focusing on the individual incident and persons involved, and excluding social explanations for the problem.[242] 'Thematic' framing on the other hand focuses on 'society's role in addition to the individual'.[243] Morgan and Politoff explained the implications of the media's episodic framing of VAW incidents as 'one woman after another':

> This tendency fails to represent violence against women as a systemic social problem and/or ignores the tendency for violence against victims to occur over an extended period of time, not just as one-off incidents.[244]

The following numbers from various studies demonstrate these patterns in the media's reporting internationally and locally. For example, Carlyle, Slater and Chakroff conducted a two-year study of newspaper coverage of intimate partner violence ('IPV') in the United States and found a majority of stories (88 percent) used episodic framing.[245] Also, in the United States, McManus and Dorfman[246] found in their study of IPV reporting that only one in eight stories treated IPV as an issue, trend or theme rather than a description of a particular violent episode.[247] Similarly, in Morgan and Politoff's study of Victorian media coverage of VAW, 83 percent of their print sample were what the authors referred to as 'events-based', reporting only the who, what, when and where of the violence.[248] In Sutherland et al's 2016 content analysis of Australian media coverage, 'incident-based

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[241] Belinda Morrissey, *When Women Kill: Questions of agency and subjectivity* (Routledge, 2003) 18.

[242] Carlyle, Slater and Chakroff (n 216) 172.

[243] Ibid 172.

[244] Morgan and Politoff (n 213) 27.

[245] Carlyle, Slater and Chakroff (n 216) 177.

[246] J McManus and L Dorfman, 'Functional Truth or Sexist Distortion? Assessing a Feminist Critique of Intimate Parnter Violence Reporting' (2005) 6(1) *Journalism* 43.

[247] Ibid 53.

[248] Morgan and Politoff (n 213) 28.

items', which were defined as those that primarily focused on current and/or past incidents of violence, made up 61 percent (n=271) of their print, broadcast and radio news sample (n=444).[249]

An added layer to the media's episodic reporting of VAW is the fact that a large number of these episodic articles are about homicides, rather than other forms of violence.[250] For example, Carlyle, Slater and Chakroff found that, compared to the epidemiological data which showed that IPV results in 2 million injuries a year and 1,300 deaths, stories of homicides made up over half (56.7 percent) of the media sample.[251] The authors argued that the implications of this overrepresentation of murder can 'skew representations of risk', may intimidate victims from leaving relationships and it may 'strengthen the conceptualisation of IPV as having a physical dimension only'.[252] Similarly, in an analysis of the media's exclusion of emotional abuse in its reporting, Christy-Dale Sims stated that this focus on murder gives:

> the impression that the death was the result of a normal fight between a couple that went awry, instead of reaching the understanding that domestic violence and abuse are ubiquitous social problems that need to be dealt with on a societal level.[253]

Carlyle et al's findings are also reflected in Sutherland et al's Australian study which found that 61.8 percent (217 of 351) of incident-based news items were about homicide and that this reporting was disproportionate to the actual occurrence of homicide in the community.[254]

Given this focus on homicide, it follows that a large proportion of the media's reporting of VAW is also made up of court reports. For example, Sutherland et al found that one quarter (28.4 percent) of all incident-based reports were reports of a legal proceeding.[255] As my media content sample was restricted to the reporting of individual IPHs, it was not surprising that 74 percent of all items were episodic, over a third of which were court reports. On the other hand, the 24 percent of articles in my sample that were coded as either 'thematic' or 'thematic arising from an incident' (an article using an event or incident of violence as a means to discuss broader themes), only three percent were court reports. These numbers show that thematic reporting practices, such as quoting sources outside the courtroom or including statistics to show the prevalence of a problem, are less likely to occur in reports of court proceedings.

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[249] Sutherland et al, *Horizons* (n 215) 15.

[250] Carlyle, Slater and Chakroff (n 216); Christy-Dale L Sims, 'Invisible wounds, invisible abuse: The exclusion of emotional abuse in newspaper articles' (2008) 8(4) *Journal of Emotional Abuse* 375.

[251] Carlyle, Slater and Chakroff (n 216) 182.

[252] Ibid.

[253] Sims (n 250) 386.

[254] Sutherland et al, *Horizons* (n 215) 19.

[255] Ibid 15.

B *The 'bigger picture'*

As my thesis will show, legal constraints may limit journalists' ability to report thematically on an incident. However, as acknowledged by Morgan and Politoff, 'this does not affect all stories' and it is possible for reporters to include more contextual elements (even if minor), which would ensure 'substantial improvements in more accurately representing victims of violence against women'.[256] This information might be including statistics showing the prevalence of violence, referring to causes of violence, tying a number of domestic violence cases together, quoting domestic violence experts, putting a human face on the crime, or providing information about the warning signs of violence and when women may face a higher risk of violence.[257]

Looking broadly at whether articles did or did not include information that showed the 'bigger picture',[258] the numbers clearly show that this is much more likely in articles that are 'thematic' and allow for a discussion and debate about the issue of VAW, a common finding amongst the literature.[259] For example, in the Sutherland et al study, providing information about social context more frequently occurred in news items with a thematic frame (36 percent) than those that focused on an incident of violence (4.8 percent).[260] Similarly, in my content analysis, over half of the articles that provided contextual information (60 percent) were thematic articles, while only 23 percent of the episodic articles included such context. Although small, the above results do show that *some* episodic articles did include thematic information. This suggests that there are opportunities, albeit limited, for such reports about individual incidents to acknowledge the broader context of VAW.

1 *The effect of the crime*

In court reports, one such way contextual information can be included is by displaying the 'effect' of the crime on family, friends or the community. As put by Lindsay Brisbin et al, by showing that domestic violence can affect other people 'geographically or emotionally' close to the incident and linking that incident to the wider community, the story may motivate prevention initiatives.[261] Similarly, Bullock wrote that framing the deaths as affecting people other than the victim or perpetrator has the potential to 'counteract the idea that anyone is immune to the effects of domestic violence' and act as a call to action.[262] In Bullock's analysis of Utah news

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[256] Morgan and Politoff (n 213) 29.

[257] Sutherland et al, *Horizons* (n 215); Bullock and Cubert (n 215) 494.

[258] Sutherland et al, *Horizons* (n 215) 15.

[259] See Carlyle, Slater and Chakroff (n 216); K A Maxwell et al, 'Covering Domestic Violence: How the O.J Simpson Case Shaped Reporting of Domestic Violence in the News Media' (2000) 77 *Journalism & Mass Communication Quarterly* 258; McManus and Dorfman (n 246); Jessica A Wozniak and Kathy A McCloskey, 'Fact or Fiction? Gender Issues Related to Newspaper Reports of Intimate Partner Homicide' (2010) 16(8) *Violence Against Women* 934.

[260] Sutherland et al, *Horizons* (n 215) 17.

[261] J Lindsay-Brisbin, A P DePrince and C Welton-Mitchell, 'Missed opportunties: Newspaper reports of domestic violence' (2014) 23(4) *Journal of Aggression, Matreatment & Trauma* 383, 396.

[262] Bullock (n 213).

coverage of VAW, articles that were framed in this way often recognised the impact of the violence on children of the victims and/or perpetrator.[263] However, Bullock also found that this framing was worthless unless it also recognised the causes of domestic violence and the 'power imbalances that minimize the importance of men's violence against women'.[264]

An example of this type of framing from my content analysis was titled 'Court hears of children's grief over mother's murder at hands of father'.[265] This article concerned the pre-sentencing hearing of Craig McDermott who was on trial for murdering his former partner Fiona Warzywoda. The story included quotes from McDermott and Fiona Warzywoda's children's victim impact statements, including 'It took not only my mum but my best friend away'.[266] Despite the recognition of the lasting impact the murder would have on McDermott's children however, the article was mostly focused on the individual circumstances of the case. The same article also referred to comments from the defence, such as 'it was "a relatively spontaneous murder"' and from the judge who said 'It appears to me he was armed, furious and boiling mad'.[267] Despite the victim impact statements, these quotes do the opposite of linking the individual murder to the broader social problem, and instead perpetuate the idea that it was a random isolated incident, and the perpetrator was driven by rage.

However, compared to court reports, highlighting the bigger picture of domestic violence is much more explicit and effective in a report that is not constrained to reporting only what occurs in the courtroom. This can be seen in an opinion editorial written by *Herald Sun* journalist Ellen Whinnett titled 'This is a crisis that touches all of us'.[268] This story opened with a list of victims' names, followed by a comparison of the cases and what made them all similar:

> Those four women came from different ethnic backgrounds, different socio economics groups and different generations. But all four had something in common. They were killed by their intimate partners.[269]

The story also included statistics such as 'family violence remains the leading contributor to the deaths of women under the age of 45 years'. Most notably, Whinnett referred to the impact on families, but not just an individual family. The journalist wrote:

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[263] Ibid 49.

[264] Ibid 53.

[265] Sarah Farnsworth, 'Court hears of children's grief after their father murdered their mother in Melbourne', *ABC News* (online, 17 June 2016) <https://www.abc.net.au/news/2016-06-17/court-hears-of-childrens-grief-after-mother-stabbed-in-sunshine/7521966>.

[266] Ibid.

[267] Ibid.

[268] Ellen Whinnett, 'This is a crisis that touches all of us', *Herald Sun* (Melbourne, 15 May 2015).

[269] Ibid.

> Think family violence doesn't affect you? That it's a problem for other people, other families? Think again … Criminal convictions will never bring a lost one back but, aside from upholding the law, they validate the pain and suffering the victim went through and their families continue to go through.[270]

Listing cases to show the prevalence and broader impact of domestic violence also appeared in another *Herald Sun* article, 'Killed by the hand of abuse'.[271] At the conclusion of the article, the journalists listed the 'Victims of Violent Deaths' from cases that had recently been through the courts, including their age, the length of the relationships, the perpetrator and the circumstances of each murder, including prior violence. By linking these cases together, the article effectively demonstrated the similarities between the cases, the dynamics of domestic violence and the fact that it does not just occur to 'some' families but is instead a prevalent, widespread problem.

As noted by Morgan and Politoff, the inclusion of contextual information is more likely to occur in editorial style writing, such as the above two articles. As defined by Simons et al, this type of journalism is a 'forum for debate and the exchange of ideas and opinions, enabling discourse in the public sphere'.[272] The very nature of this type of journalism allows for a much more contextual and considered discussion of IPHs and VAW. The cases referred to in both *Herald Sun* articles had concluded and were no longer before the courts, removing the sub judice contempt restriction that constrains journalists to only reporting what occurs in the courtroom.

2 *Blaming 'other' causes of violence*

Another common finding amongst the literature is that VAW is likely to be represented as a problem for which the individuals and their personal characteristics, such as drug or alcohol addiction,[273] mental health illness[274] or culture and ethnicity[275] are blamed for causing the violence.[276] This may occur in one or both of the following ways: by either portraying those involved in domestic violence as 'inherently different from other people', or blaming the victims and/or perpetrators for the violence.[277] When reporting on an individual incident of

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[270] Ibid.

[271] Monique Lore, Elissa Doherty and Shannon Deery, 'Killed by the hand of abuse', *Herald Sun* (Melbourne, 14 May 2015).

[272] Simons et al (n 214) 1409.

[273] Tahlia Dwyer, Patricia Easteal and Anthony Hopkins, 'Did She Consent? Law and the media in New South Wales' (2012) 37(4) *Alternative Law Journal* 249.

[274] See Meyers (n 217) 42-5.

[275] See, eg, Mia Consalvo, '"3 shot dead in courthouse": Examining news coverage of domestic violence and mail-order brides' (1998) 21(2) *Women's Studies in Communication* 188; Yasmini Jiwani and Mary Lynn Young, 'Missing and Murdered Women: Reproducing Marginality in News Discourse' (2006) 31 *Canadian Journal of Communication* 895; Eva Reimers, 'Representations of an Honour Killing' (2007) 7(3) *Feminist Media Studies* 239; Chloe Patton, 'Racialising domestic violence: Islamophobia and Australian forced marriage debate' (2018) 60(2) *Race & Class* 21.

[276] See Berns (n 235); Bullock and Cubert (n 215); C Greer, 'Sex Crime and the Media: Press Represetnations in Northern Ireland' in R Campa (ed), *Criminal Visions: Media Representations of Crime and Justice* (Verso, 2003) 90; Meyers (n 217); Rae Taylor, 'Slain and Slandered: A content analysis of the portrayal of femicide in crime news' (2009) 13(1) *Homicide Studies* 21.

[277] Bullock (n 213).

violence, it is no surprise that such details about the victim and perpetrator are relayed. In fact, providing information that gives a face to the victim is often encouraged by advocates.[278] However, this may be done to the extent that the crime is made to appear as if it is someone else's problem and it would 'never happen to me', therefore allowing readers to distance themselves from any responsibility.

The practice of focusing on personal characteristics of the individuals can also have the effect of perpetuating myths about VAW, such as the woman provoked the perpetrator to use violence[279] or that women lie about rape and sexual assault.[280] Sutherland et al found that misinformation was more likely to appear in episodic reporting (9.2 percent) compared to thematic news items (2.9 percent).[281] As noted by the authors, this rarely occurs explicitly and instead manifests in more subtle and indirect ways.[282] An example of this type of framing, and the *implicit* perpetuation of myths about VAW from my content analysis, was the story 'Family taught to fight'.[283] In this article, there was a significant focus on the perpetrator's culture, suggesting that the family were 'inherently different'. Within the first four paragraphs, the accused's history as having been acquitted in 'Australia's biggest terror trial eight years ago' was mentioned. This set up the article to be focused on the sensational nature of the case and the unique circumstances of the accused and his family. The article referred to a witness' description of the accused as an 'intense loner' and his controlling behaviour towards his children, who were only allowed to speak in Arabic, not allowed to watch television and encouraged to wrestle. The report also included details about how the victim and accused lived in Lebanon and that the victim was forced to wear a niqab. Again, this framing of the story gave the impression that these horrific stories only occur in families from other cultures, sidestepping the issue of power and control or the prevalence of VAW in all aspects of Australian society.

Sutherland et al also found that one such myth that is often *explicitly* represented in media reporting is that alcohol, drugs or other stressors contributed to the violence.[284] An example of this arose in my content analysis in an article headlined 'Ice addict Nelson Lai who fatally shot girlfriend Rekiah O'Donnell cleared of murder'.[285] Already in the headline, the violence was blamed not only on the individuals involved, but as a problem related

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[278] Meyers (n 217) 111.

[279] Jenny Morgan, 'Law Reform and the Media: (Re)figuring Responsibility' in Kate Fitz-Gibbon and Arie Freiberg (eds), *Homicide Law Reform in Victoria* (Federation Press, 2015) 42; Paul Mason and Jane Monckton-Smith, 'Conlflation, collocation and confusion: British press coverage of the sexual murder of women' (2008) 9(6) *Journalism* 691.

[280] Dwyer, Easteal and Hopkins (n 273).

[281] Sutherland et al, *Horizons* (n 215) 24.

[282] Ibid.

[283] James Dowling and Cassie Zervos, 'Family taught to fight', *Herald Sun* (Melbourne, 7 July 2016).

[284] Sutherland et al, *Horizons* (n 215) 2016.

[285] 'Ice addict Nelson Lai who fatally shot girlfirend Rekiah O'Donnell cleared of murder', *ABC News* (online, 13 May 2015) <https://www.abc.net.au/news/2015-05-13/ice-addict-who-shot-fatally-girlfriend-cleared-of-murder/6467516>.

to drugs. The article went on to prioritise information about Lai, who was found guilty of manslaughter, being a 'former chronic ice addict'. Aspects of prior violence were mentioned throughout the article and Rekiah O'Donnell's mother was quoted in the last sentence:

> Outside court, Ms O'Donnell's mother Kerryn Robertson said she hoped the decision would once again highlight domestic violence.

Although court reporting does rely on what is presented in the courtroom, there was an opportunity to include these details of prior violence and the mother's statement higher up in the article. This would have countered the myth that drugs caused the violence and more effectively labelled the murder as 'domestic violence'. Comparatively, in an opinion editorial regarding the murder of Karen Belej, in which the accused Brandon Osborne was also involved with ice, the journalist explicitly rejected the argument that the perpetrator's temporary psychosis could mitigate 'such a horrendous crime for which there can be no excuse'.[286]

3 *'Classic story of good versus evil'*

The narrowing of domestic violence as only occurring to certain types of individuals often contributes to the representation of these murders as a 'classic story of good versus evil'.[287] In particular, when there is no way of rationalising or excusing the motivations for why a man murdered a current or former partner, the perpetrator is represented as 'deviant or provoked', a 'beast' or a 'pervert'.[288] This tendency has become known more popularly as the 'monster myth'.[289] Researchers have referred to this pattern in the media's reporting as distilling individuals into 'principle characters' by using 'durable stereotypes'[290] and constructing the story 'as a morality tale rather than as a slice of life'.[291] If, however, the crime cannot be rationalised in such a way, research has also shown that homicides are often romanticised and conveyed as 'passion killings' or 'love inspired', particularly in circumstances where the perpetrator may have been perceived as a 'good guy'.[292] Sutherland et al observed in their study that 'sensational, curious, unusual [or] fatal' stories would be prioritised over those that were more 'typical of the realities of women's lived experiences'.[293]

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[286] Keith Fagg, 'Another tragic addition to the domestic violence toll', *Geelong Advertiser* (10 May 2016).

[287] Bullock and Cubert (n 215) 491.

[288] Mason and Monckton-Smith (n 279).

[289] See, eg, Joan Smith, *Misogynies* (Faber and Faber Limited, 1989) 122. Smith discusses the media's portrayal of the enigma 'Jack the Ripper'. Ultimately, the responsible person was an ordinary man. See also Tom Meagher, 'The danger of the monster myth', *ABC News* (online, 22 April 2014) <https://www.abc.net.au/news/2014-04-18/meagher-the-danger-of-the-monster-myth/5399108>.

[290] Mason and Monckton-Smith (n 279) 694.

[291] Bullock and Cubert (n 215) 491

[292] See Jane Monckton-Smith, *Murder, Gender and the Media: Narratives of dangerous love* (Palgrave Macmillan, 2012); Cleonicki Saroca, 'The absent and silenced voice in media representations of Filipina victims of homicide in Australia' (2013) 21(3) *South East Asia Research* 517.

[293] Sutherland et al, *Horizons* (n 215) 3.

An example from my content analysis of the simplification of an IPH into a narrative of 'good versus evil' was the cold case of 'hairdresser' Margaret Penny and her client Claire Acocks. The two women were murdered in 1991 at the salon in which Penny worked, located in a building called the Old London in Portland, Victoria. In 2015, Margaret Penny's husband was charged with the murder, leading to significant media coverage of the preliminary legal proceedings as well as some thematic articles about the town in which the murder occurred. These articles included headlines such as 'Portland's darkest day'[294] and 'The mystery of the Old London'.[295] Journalist Tony Wright wrote in an article for *The Warrnambool Standard*, 'The inexplicable ghastliness of what happened within its stone walls all those years ago would spook you out of your thirst'.[296] The double murder itself was described as follows: 'someone walked into The Old London "then a hairdressing salon" and used a knife and possibly a pair of scissors to slash the lives out of two grandmothers'.[297] The article, which goes on to discuss theories about the murder, 'clues' and that many in the town 'hunkered down in fear' as a result of the murders, reads more like a murder mystery than a case of an IPH or VAW.

This example demonstrates how the media's representation of IPHs can trivialise and ignore the complex and devastating reality of IPHs and VAW. As stated by Morgan and Politoff, the sensationalising of violence can have a particularly 'painful effect' for the victims represented in the reports and family and friends.[298] The authors added, 'Certainly, this aspect of reporting is among the most ethically troubling and directly harmful effects of media coverage'.[299]

C *Domestic violence or 'just another murder'*

Identifying a homicide as a 'domestic violence' distinguishes the incident from other murders and ensures that the context of prior violence that culminated in the homicide is clear to the reader.[300] Further, and as Karen Burstein said, '[n]aming domestic violence forces us to confront the cost of power imbalance in relationships'.[301] Marian Meyers found through her interviews with victims' advocates that articles that treat IPHs as just another murder 'den[y] the pain and abuse the battered women endure, and it makes the cause of death inexplicable or the result of a man having 'snapped''.[302] Journalists can avoid this by simply naming the incident as 'domestic

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[294] Alex Sinnott, 'Portland's darkest day still the talk of the town', *The Warrnambool Standard* (13 April 2015).

[295] Tony Wright, 'The mystery of the Old London: murders that changed the town', *The Age* (Melbourne, 14 April 2015).

[296] Tony Wright, 'A tragedy that remains close to a city's heart', *The Warrnambool Standard* (13 April 2015).

[297] Ibid.

[298] Morgan and Politoff (n 213). See also Keith Soothill and Sylvia Walby, *Sex Crime in the News* (Routledge, 1991) 147.

[299] Morgan and Politoff (n 213) 12.

[300] Tara N Richards et al, 'Framing Deadly Domestic Violence: Why the Media's Spin Matters in Newspaper Coverage of Femicide' (2013) 19(2) *Violence against Women* 222, 226.

[301] Karen Burstein, 'Naming the Violence: Destroying the Myth' (1995) 58 *Albany Law Review* 961.

[302] Meyers (n 217).

violence', providing domestic violence resources at the end of a story as a means of appropriately framing the incident, and identifying prior violence or highlighting the dynamics of the relationship between perpetrator and victim to show it was more than just a random event.

1 *Naming the violence*

The practice of identifying 'domestic violence', or as put by Bullock and Cubert, providing readers with the 'vocabulary with which to discuss domestic violence',[303] is not common in the media's reporting of VAW. For example, in Bullock and Cubert's study, key terms such as 'domestic violence', 'domestic abuse', 'violent history' and 'battered woman' were only used in 4.3 percent of their sample.[304] This was despite the authors identifying that 74 percent of their stories did involve domestic violence. In my content analysis, the terms 'domestic violence', 'family violence', 'intimate partner violence' or 'violence against women' were used in only 27 percent of the stories. Again, this was despite the fact that my sample of news articles was restricted to reports on IPHs where a relationship existed between the accused and the deceased.

Interestingly, just under half of those articles which identified domestic violence were episodic, which might have suggested that there was a steady practice of identifying this background in IPH court reports. However, a majority of those episodic articles were all concerning one unique case where the victim, Karen Belej, was a 'White Ribbon advocate' in her workplace. The 'tragic irony',[305] as one journalist called it, was that Karen Belej was a 'domestic violence' advocate who was murdered by her partner, and this appeared to be a newsworthy angle across the coverage. Many news articles prioritised this information in the headlines, such as the following: 'Council worker and domestic violence advocate found dead in her home as 36 year old man arrested'.[306] This case also attracted thematic reporting in which Karen Belej's death became symbolic of the many domestic violence cases in Australia.[307] This example suggests that there must be something in the story that gives journalists permission to explicitly identify the domestic violence, otherwise the nature of the homicide remains vague.

2 *Reporting prior violence*

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[303] Bullock and Cubert (n 215) 493.

[304] Ibid.

[305] Fagg (n 286).

[306] Freya Noble, 'Council worker and domestic violence advocate found dead at her home as 36-year-old man is arrested', *Daily Mail* (online, 3 May 2016) <https://www.dailymail.co.uk/news/article-3570211/Mildura-Council-worker-White-Ribbon-advocate-Karen-Belej-dead.html>.

[307] See, eg, Fagg (n 286).

Many researchers have emphasised the importance of including prior violence in reports of IPHs to show the incident was not random or isolated.[308] By placing the homicide in this context, questions arise about the broader social context or, as Fairbairn and Dawson explained:

> reporting if and when there was a known history of violence may encourage questions about how this killing could have been prevented and highlight the way in which social structures continue to condone and allow violence against women to persist.[309]

Morgan and Politoff explained that, on the other hand, when prior violence is not included in the story, the incident appears random and the reader may excuse the perpetrator, believing he 'just snapped', was provoked or is 'mad' not 'bad', and 'thus can be forgiven'.[310] Rarely, however, is this information provided in news reports of IPH. For example, Morgan and Politoff found that prior violence was explicitly noted in under 20 percent of the articles where men had killed their intimate or former partners, and in under 40 percent of cases where the perpetrator was a female. The authors found that this was a significant under-representation of the actual incidence of prior violence in IPHs.[311]

Even when prior violence is mentioned, it is often not framed as the most important part of the story.[312] In Meghan Sweeney's analysis of US newspaper coverage of IPHs, she found that the cause of most IPHs, being domestic violence escalating to murder, was mostly absent.[313] Instead, the method of the murder was reported more frequently, creating a 'sensationalized slant' that does 'little to support prevention; it only satisfies voyeuristic curiosity'.[314] Possible reasons for this include: the prior violence is sometimes not yet known in the early stages of the legal processing[315] or because previous violence may not have been reported to the police.[316] Fairbairn and Dawson observed in their sample of news coverage of IPHs that journalists rarely ever mentioned that a history of violence was unknown, uncertain or did not exist, 'suggesting that journalistic inquiry into prior history of violence is not, in practice, a routine part of news framing of intimate partner homicide'.[317]

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[308] Evans (n 215).

[309] Fairbairn and Dawson (n 215) 166.

[310] Morgan and Politoff (n 213) 39.

[311] Ibid 39.

[312] Sutherland et al, *Horizons* (n 215) 44.

[313] Meghan Sweeney, 'Listening Rhetorically to Textual Silence: Intimate Partner Homicide Media Coverage' (2012) 26(3) *International Journal of Listening* 146.

[314] Ibid 154.

[315] Morgan and Politoff (n 213).

[316] Fairbairn and Dawson (n 215).

[317] Ibid 166.

In my content analysis, another factor to consider is the impact of the publication restriction on reporting intervention orders,[318] which may explain the small number of articles (11) that mentioned an IVO. Notably, all of these mentions concerned the *McDermott* case. As will be discussed in Chapter Five, in this case the *Herald Sun* successfully applied to the court for permission to report on the IVO under the *FVPA* exception that publication be allowed if the court considers it to be in the public interest. [319] This case was unique in that the victim, Fiona Warzywoda, had just been to the Magistrates' Court to obtain an IVO before being attacked in public by McDermott, adding to the somewhat extraordinary nature of the homicide. Regardless, in one article, the IVO was not mentioned at all and instead the evidence that showed McDermott had bought a knife 'minutes earlier' was prioritised.[320] In another article, the journalists did summarise the IVO circumstances and other evidence of McDermott's violent behaviour, including evidence that his daughter had overheard him say he was 'going to slice her'.[321] However, the reasons for getting the IVO were not made clear and it was instead mentioned as a tangential piece of information, somewhat lost amongst the details of the violent threats and public murder. As I will also discuss in Chapter Five and examine in my case study, the publication restriction and the way evidence about IVOs is presented in a criminal trial may play a role in this inconsistent and vague reporting of such orders.

When compared to articles that were published after the *McDermott* verdict, the above threats and IVO were placed in a broader context. These post-verdict articles explicitly showed the ongoing, systemic and widespread nature of domestic violence. For example, in another opinion editorial, Ellen Whinnett revealed the full extent of McDermott's violence, including a suspended sentence he had received 'for attacking her, choking her and threatening to burn down the house'.[322] In the same article, Whinnett emphasised the similarities in the homicides of Fiona Warzywoda and Abuk Akek:

> Both had children with the men who killed them. Both had suffered violence at the hand of those men. Both had been previously choked or grabbed around the throat, an indicator of escalating violence. Both were trying to escape the violent relationships and had taken appropriate legal steps.[323]

Notably, Whinnett did not explicitly mention the IVOs that both victims had taken out against the perpetrators. This suggests she may have been avoiding breaching the IVO publication restriction, but in a way that she was

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[318] *Family Violence Protection Act 2008* (Vic) s 166 ('*Family Violence Protection Act*').

[319] Shannon Deery, Jon Kaila and Kathryn Powley, 'Sunshine stabbing victim had been in court just hours before the attack', *Herald Sun* (Melbourne, 18 April 2014); *Family Violence Protection Act* (n 115) s 169.

[320] Simon Lauder, ''Angry' partner bought knife minues before stabbing Fiona Warzywoda to death, court told', *ABC News* (online, 10 November 2015) <https://www.abc.net.au/news/2015-11-10/man-bought-knife-minutes-before-fatal-sunshine-stabbing-court/6928120>.

[321] Mark Russell and Bianca Hall, 'Man guilty of murder of former Bendigo woman', *Bendigo Advertiser* (26 May 2016).

[322] Ellen Whinnett, 'Work goes on, but our women are still dying', *Herald Sun* (Melbourne, 19 August 2016).

[323] Ibid.

still able to implicitly point towards the failed legal intervention. Similarly, in another *McDermott* post-verdict article, there were quotes from a former parliamentarian and VAW advocate, Phil Cleary, who had been speaking publicly about VAW since the murder of his sister Vicky Cleary in 1987. Cleary's comments highlighted the fact that Fiona Warzywoda had sought protection and yet she was still 'murdered in a busy street',[324] placing the incident within the context of broader structural systems.

More commonly, my content analysis showed that the presence of prior violence was indicated by the reporting of violent threats.[325] Threats were mentioned 17 times in my content analysis, making them the second most mentioned type of violence after 'beating/bashing/stabbing'. Some examples from the content include Bona Lual who stalked and threatened to kill the victim, Suzi Oghia, or anyone she dated for about a month before the murder,[326] and Nelson Lai who had sent threatening messages to Rekiah O'Donnell, as well as evidence that showed he would beat and bash her and had repeatedly threatened to kill her in the last months of her life.[327] Compared to the reporting of the IVO in the McDermott case, these violent threats did feature in the lead paragraphs.

Significantly, in the case of Lai, one article's headline was 'Rekiah O'Donnell begged partner Nelson Lai to seek help months before he allegedly shot her dead, court hears'.[328] However, despite evidence of this prior violence, the court reports of Lai's case predominantly focused on his ice addiction and the circumstances of the death, in that he 'accidentally' shot his girlfriend.[329] In keeping with the trend I have identified above, however, when the case concluded, the threats were put into context. In an article published in the *Herald Sun*, it was reported that Rekiah O'Donnell's mother wrote a submission to the Royal Commission into Family Violence in which she outlined Lai's 'violent history' and her disappointment in the police.[330] At the end of this article, a list of statistics was provided about family violence, as well as help-seeking resources. Compared to the reports of Lai's court proceedings, this article shed light on the escalating violence that preceded Rekiah O'Donnell's death, the systemic failures in protecting her during that time and the prevalence of family violence.

3 *Help-seeking resources*

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[324] Alesha Capone and Tamara Heath, 'Calls for Fiona Inquest', *Melton Leader* (31 May 2016).

[325] For a discussion about an apparent cultural blindness to prior violence unless it is excessive and visible, see Monckton-Smith (n 292) 81-2.

[326] Ashlynne McGhee, ''Jealous' killer Bona Lual, who mutilated estranged wife in Melbourne home, jailed for 21 years', *ABC News* (online, 26 June 2015) <https://www.abc.net.au/news/2015-06-26/jealous-killer-bona-lual-jailed-for-21-years-over-wifes-murder/6575352>.

[327] 'An ice addict told his girlfriend his misison', *Northern Daily Leader* (Tamworth, 7 May 2015).

[328] Ashlynne McGhee, 'Rekiah O'Donnell begged partner Nelson Lai to seek help months before he allegedly shot her dead, court hears', *ABC News* (online, 22 April 2015) <https://www.abc.net.au/news/2015-04-22/woman-begged-partner-to-seek-help-months-before-alleged-shooting/6413018>.

[329] 'An ice addict told his girlfriend his mission' (n 327).

[330] Elissa Doherty, 'Rekiah Mum: Police reply inexcusable', *Herald Sun* (Melbourne, 1 June 2015).

Another means of framing the individual incident as related to domestic violence is to include resources at the end of the article for women seeking help.[331] Carlyle et al wrote that a failure to provide IPV resources, such as hotlines, shelters or other forms of services could 'exacerbate perceptions of isolation and inability to receive help' and misses an opportunity to show the prevalence of the problem beyond the individual.[332] In their study of US news coverage, only 5.3 percent of the articles provided such information.[333] In another US study, Lindsay-Brisbin et al found that only eight percent of the print media content provided resources for victims on where to find help.[334] The authors argued that despite word limit constraints, a 'nine-word sentence' at the conclusion of an article only takes up three percent of the average article (358 words), which seemed to be a 'feasible' option.[335]

Similarly, in Sutherland et al's study, they found only a 'mere' 4.3 percent of items (19 out of 444 items) included help, advice, or further information and a majority of those were thematic reports.[336] In their analysis of Australian media reports of two IPH cases, Easteal et al found that only three reports included resources for women experiencing violence. The authors suggested that this was because reporting guidelines were yet to 'filter through to newsrooms and journalistic practices, such that those details are readily included in news reports'.[337] In my content analysis, only five articles included references to victim services and all but one were thematic articles, again suggesting that this practice is more likely to occur outside of the episodic reporting of court proceedings. Arguably providing such resources, before it is explicitly clear that the homicide was related to domestic violence or before the accused person is found guilty, could be prejudicial and therefore breach sub judice contempt.

4 *Risks of leaving or 'jealousy'*

Another common reality of domestic violence is the increased risk a woman faces when she tries to leave a relationship.[338] This is a dynamic that frequently appears in the context of IPHs and shows that the homicide was not 'just another murder' but an attempt to maintain power and control.[339] And yet this information is rarely

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[331] Lindsay-Brisbin, DePrince and Welton-Mitchell (n 261); Carlyle, Slater and Chakroff (n 216).

[332] Carlyle, Slater and Chakroff (n 216) 181.

[333] Ibid.

[334] Lindsay-Brisbin, DePrince and Welton-Mitchell (n 261) 395.

[335] Ibid.

[336] Sutherland et al, *Horizons* (n 215) 17.

[337] Patricia Easteal et al, 'Australian Media Messages: Critical discourse analysis of two intimate partner homicides involving domestic violence' (2018) 25(4) *Violence Against Women* 441, 453.

[338] Actual or intended separation was a feature of 55.4% of the 121 homicides in which the male killed a female intimate partner: Australian Domestic and Family Violence Death Review Network, *Australian Domestic and Family Violence Death Review Network: 2018 Data Report* (Domestic Violence Death Review Team, May 2018) 12.

[339] See Ruth E Fleury, Cris M Sullivan and Deborah I Bybee, 'When Ending the Relationship Doesn't End the Violence: Women's Experiences of Violence by Former Partners' (2000) 6(12) *Violence Against Women* 1363.

represented in media reports. Sutherland et al found that less than ten articles included contextual information, such as the warning signs of domestic violence and the increased risks when a woman attempts to leave a relationship.[340] In Morgan and Politoff's study, only two percent of the episodic stories discussed these risks, while 40 percent of thematic articles included this information.[341] Instead of demonstrating the reality of domestic violence relationships, and the many barriers to women leaving relationships, estrangement is often framed in a way that excuses or justifies the perpetrator's actions. This might include narratives of jealousy or blaming the violence on the victim's decision to reject the man who killed her, giving rise to sympathy for the perpetrator.[342]

In my content analysis, seven of the 10 articles that mentioned the risks associated with leaving a violent relationship were thematic. On the other hand, the notion of jealous love arose in the reporting of three cases in my sample. One such case was the murder of Abuk Akek by Makeny Banek, the framing of which can be summarised by the following headline, 'Ex-boyfriend pleads guilty to stabbing a young Sudanese mother to death then laying her on her bed next to a white rose because "she didn't love him anymore"'.[343] The action of placing a rose next to Abuk Akek's body was reported in all three episodic articles about the case, either in the headline or lead paragraphs. While some articles also reported the prior violence between the couple, it was reported that Banek 'snapped' and his comments to police were quoted, including 'I love her very much but she did not love me'.[344] Comparatively, in a thematic article linking a number of IPHs together, Ellen Whinnett did not mention Banek's 'love' or the 'rose' and instead inserted the voice of the victim Abuk Akek. Using her preferred name of 'Jackie Deng', Whinnett described the victim as a 'woman who had a son at 17 and raised her child while studying an advanced diploma in legal studies'.[345] Again, this was published after Banek's legal proceedings had concluded. Notably, this was another article authored by Whinnett, suggesting a connection between the content and an individual journalist's approach to reporting VAW.[346]

There was one example of an episodic article published *during* proceedings, that highlighted the risks of leaving a violent relationship. In a court report titled, 'Boy, 12, "certain" abusive father would murder mother, court

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[340] Sutherland et al, *Horizons* (n 215) 17.

[341] Morgan and Politoff (n 213) 31.

[342] Monckton-Smith (n 292) 98.

[343] Sinead Maclaughlin, 'Ex-boyfriend pleads guilty to stabbing a young Sudanese mother to death then laying her on her bed next to a white rose because "she didn't love him anymore"', *Daily Mail* (online, 16 August 2016) <https://www.dailymail.co.uk/news/article-3743078/Boyfriend-pleads-guilty-frenzied-murder-young-mother-Melbourne-s-outer-west.html>.

[344] Ibid; Emma Younger, 'Melbourne man pleads guilty to murdering former girlfriend before laying her body on bed with rose', *ABC News* (online, 16 August 2016) <https://www.abc.net.au/news/2016-08-16/melbourne-man-pleads-guilty-to-murdering-former-girlfriend/7748810>.

[345] Whinnett, 'Work goes on' (n 322).

[346] See Jenny Morgan and Margaret Simons, 'Changing Media Coverage of Violence Against Women: The Role of Individual Cases and Individual Journalists' (2018) 12 *Journalism Practice* 1165.

hears', the journalist began the article by describing the fear the victim, Suzi Oghia, had after she separated from the accused, Bona Lual. The author wrote that the relationship was one 'characterised by violence and his control over her'. The article went on to quote prosecution lawyer Andrew Tinney towards the end:

> "He believed he was entitled to tell her what to do … he made threats to her leading up to the murder.
>
> "She had a fear for her life"[347]

Here the journalist clearly identified the escalation of that risk when the victim tries to leave and gives a voice to the victim. This report stands in stark contrast to a later article from the same outlet regarding the same case, titled '"Jealous" killer Bona Lual, who mutilated his wife in Melbourne home'.[348] The sensational headline and focus on the narrative of a 'jealous' lover does not tell the same story of power and control that was present in the former article.

In another article about a different case, the victim had told the accused, Brian Browning, that she was wanting a separation. According to the article, this led the accused to stab and murder his wife, which he also blamed on the sleeping tablets he was taking, as also reflected in the headline.[349] The following quotes from the presiding judge were used:

> Justice Lex Lasry called it an "all too familiar incident of fatal domestic violence" prompted by drinking gambling and financial problems.
>
> But he accepts Browning had acted impulsively.
>
> "I have no doubt that at the time you killed your wife you were in a rage which can be directly linked to the hostility and anguish you felt about the prospect of your marriage ending," he said.

Although domestic violence is acknowledged, the quotes from Lasry J suggested that alcohol and financial problems caused the violence. This example is significantly different to the messages that were conveyed in the quotes from prosecution lawyer Andrew Tinney mentioned above, highlighting the influence of what is said in the courtroom on how the media frame an IPH. As will be discussed in more detail in the following section on sources and in Chapter Five, how a court report is framed and the material reported is partly dependent on the evidence given in court and the remarks made by the lawyers, witnesses and judges.

D *Who is telling the story?*

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[347] Peta Carlyon, 'Boy, 12, 'certain' abusive father would murder mother, court hears', *ABC News* (online, 19 June 2015) <https://www.abc.net.au/news/2015-06-19/court-told-12yo-expected-his-mother-would-be-killed-by-father/6559766>.

[348] McGhee, ''Jealous' killer Bona Lual' (n 326).

[349] 'Man who murdered wife, blamed actions on sleeping tables, jailed for 18 years', *ABC News* (online, 9 October 2015) <https://www.abc.net.au/news/2015-10-09/man-who-blamed-sleeping-tablets-for-wifes-murder-jailed/6841418>.

Feminist scholars have been critical of the media's overreliance on legal authorities in its reporting of VAW and therefore the framing of the issue as a criminal justice problem.[350] Instead, the literature and guidelines recommend that VAW experts or advocates are quoted to contextualise the incident, or the victim, family or friends be used to give a face to the story, as opposed to presenting just another criminal incident.[351] However, as the media are often limited by how much information the police provide them following a homicide, and then further constrained by sub judice contempt once the case reaches court, quoting sources from outside the courtroom is not straightforward.

1 *The police and legal authorities*

As put by Bullock and Cubert, relying on legal authorities can dehumanise the story by omitting information from people who knew the victim or perpetrator and emphasising the where, what and when of the incident. The authors referred to this as the 'police frame', which includes 'just the facts' without speculation about the nature of the relationship and whereby the incident is represented as an isolated incident that the police or courts are now dealing with.[352] They added, 'it places the case within the context of law enforcement rather than the context of domestic violence as a social problem'.[353] The projection of legal authorities' voices is particularly evident in the reporting of legal proceedings. Jenny Kitzinger, in her review of sexual violence media representations, referred to this tendency as 'echoing courtroom discourse',[354] which is problematic because 'courtrooms are places where traditional patriarchal understandings of rape are reified'.[355]

In Morgan and Politoff's study, legal professionals and police were the most cited source with 46 percent of articles quoting or paraphrasing legal professionals and 34 percent police.[356] In Sutherland et al's study, police were the most frequently cited source, followed by legal and criminal justice professionals, which accounted for half of all sources.[357] These findings reflect the fact that a large proportion of both studies' samples were made up of reports of criminal incidents of VAW. The amplification of police and legal authorities' voices was

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[350] Meyers (n 217) ; Bullock (n 213); Bronwyn Naylor, 'Reporting Violence in the British Print Media: Gendered Stories' (2001) 40(2) *The Howard Journal* 180; Ryan, Anastario and DaCunha (n 214); Wozniak and McCloskey (n 259).

[351] See, eg, Our Watch, 'How to report on violence against women and their children: 2019 Victorian Edition' (Our Watch, 2019) 6.

[352] Bullock and Cubert (n 215) 490.

[353] Ibid 493; Ryan, Anastario and DaCunha (n 214); C M Byerley and Karen Ross, *Women and Media: A Critical Introduction* (Blackwell Publishing, 2006); Taylor (n 276).

[354] Jenny Kitzinger, *Framing Abuse: Media Influence and Public Understanding of Sexual Violence Against Children* (Pluto Press, 2004).

[355] The gendered nature of the legal process was discussed in Chapter Two. Jenny Kitzinger, 'Media Coverage of Sexual Violence Against Women and Children' in C M Byerley and L Ross (eds), *Women and Media: International Perspectives* (Blackwell Publishing, 2004) 13, 26.

[356] Morgan and Politoff (n 213) 60.

[357] Sutherland et al, *Horizons* (n 215) 29.

also reflected in my content analysis, which was also mostly made up of reports of criminal and legal proceedings.

An example of an article that relied solely on the police was an early report of the murder of Karen Belej, which was titled 'Mildura council staff member and family violence campaigner dies of gunshot wound'.[358] This was a report about the police finding a deceased woman and the arrest of a male 'from the same address'. The only source in this article was Inspector John Nolan, and the only information he was quoted as giving about the arrest was the fact that the police would be carrying out forensic examinations, and that the victim was an employee of Mildura Rural City Council and a 'strong advocate against family violence'. Relying on the police as a source is not necessarily an entirely negative practice.[359] For example, in another article discussing the broader implications of the Karen Belej IPH case, a police officer was used as a source for contextual information. The article read, 'Supt Daryl Clifton spoke last week about a disturbing 30 per cent rise in reported family violence in Geelong'.[360]

As mentioned, the projection of legal authorities' voices is most evident in the reporting of legal proceedings, which is problematic given some of the 'injustices' that can occur in the courtroom.[361] For example, Morgan and Politoff found in their content analysis that judges' victim-blaming comments were often the main angle of the story with little counter-argument, albeit victim-blaming was rarely explicit.[362] I did not find any explicit victim-blaming in my content analysis, however I did find that discussions about what 'caused' the violence, or the personal characteristics of the accused, could give rise to excusatory narratives. These arose from judges' comments about 'mitigating factors' considered in sentencing and defence arguments. For example, in an article on the sentencing of Bona Lual who was guilty of murdering Suzi Oghia, the following was reported:

> Justice Forrest said he took Lual's difficult upbringing into account in the sentence ... 'Your early life was characterised by great hardship and acts of cruelty,' Justice Forrest said.[363]

A confusing tension exists here, as it is the court reporter's role to provide a fair and accurate report of what is said in court,[364] but without the appropriate context, that report can perpetuate gendered stereotypes or myths.[365]

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[358] Lauren Henry, Matt Tribe and Verity Gorman, 'Mildura council staff member and family violence campaigner dies of gunshot wound', *ABC News* (online, 3 May 2016) <https://www.abc.net.au/news/2016-05-03/homocide-detectives-investigate-death-of-cardross-woman/7379492>.

[359] Margaret Simons and Jenny Morgan, 'Changing Media Coverage of Violence Against Women: Changing sourcing practices?' (2017) 19 *Journalism Studies* 1202.

[360] Fagg (n 286).

[361] Morgan and Politoff (n 213) 60.

[362] Ibid. See also Deb Waterhouse-Watson, 'News media on trial: towards a feminist ethics of reporting footballer sexual assault trials' (2016) 16(6) *Feminist Media Studies* 952, 961.

[363] McGhee, ''Jealous' killer Bona Lual' (n 326).

[364] Peter Gregory, *Court reporting in Australia* (Cambridge University Press, 2005) 47.

[365] Waterhouse-Watson (n 362) 954.

The practicalities of court reporting, and the extent to which journalists have the ability to contextualise such statements, is explored in more detail in the following chapters.

2 *The victim, friends and family*

Another consequence of relying on legal authorities is that the victim's voice is often lost,[366] particularly in the case of IPHs in which dead women cannot speak on their own behalf.[367] Lindsay-Brisbin et al found that information sourced from witnesses, victims and perpetrators was reported in fewer than half of the articles analysed compared to law enforcement sources which were cited in nearly all cases. The authors stated that the implication of this pattern was that the victim's voice and perspective, or the voices of their advocates such as friends and loved ones, were not heard.[368] As a result, the stories told about the victims are distorted and do not take account of their lived experience.[369] Having said that, Morgan's examination of the media's reporting of the high profile IPH case *Ramage*, found that once the cases were over or a verdict was reached, the sources used were much broader.[370]

Similarly, I found family and friends were often used as sources once proceedings had ended, and it was through these sources that the reports began to show the broader context of the homicide. For example, following the sentencing of Craig McDermott, journalist Kathryn Powley wrote an article titled 'Life as brutal as her death'.[371] In this article, Powley interviewed the victim Fiona Warzywoda's sister and reported extensively on the prior instances of violence, the relationship between McDermott and Fiona Warzywoda and also Fiona Warzywoda's personality, dreams and life in general.[372] Another case in which a family member spoke on behalf of the victim was that of Rekiah O'Donnell. As mentioned, once that case had concluded, the mother was quoted in an article about the prior violence experienced by Rekiah O'Donnell before her death, and how the system had failed her.[373] However, not all cases were given the same attention as that of Fiona Warzywoda and Karen Belej, in that once the proceedings had concluded, family and friends were not quoted in follow up reports. A possible reason for this may be the willingness of family and friends to be involved with media activities and whether or not there was something newsworthy about the case to garner further media attention.

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[366] Saroca (n 292); Kitzinger, 'Media Coverage of Sexual Violence' (n 355); Michelle Dunne Breen et al, 'Exploring Australian journalism discursive practices in reporting rape: The pitiful predator and the silent victim' (2017) 11(3) *Discourse & Communication* 241.

[367] Morgan (n 279).

[368] Lindsay-Brisbin, DePrince and Welton-Mitchell (n 261) 395.

[369] Saroca (n 292) 527-33.

[370] Morgan (n 279) 48.

[371] Kathryn Powley and Wayne Flower, 'Life as brutal as her death', *Herald Sun* (Melbourne, 27 May 2016).

[372] Ibid.

[373] Doherty (n 330).

3 *VAW advocates and experts*

Guidelines recommend journalists use VAW advocates, experts and organisations as a way to introduce information about the gendered nature of VAW. However, studies have found this to be a rare practice, and again, when these sources are included, it is predominantly seen only in thematic articles.[374] Not surprisingly, only three percent of my sample quoted a VAW advocate. However, even in studies that had a broader scope, VAW experts were still underrepresented. In Morgan and Politoff's study, a domestic violence advocate was quoted in only six percent of articles.[375] In Sutherland et al's study, only 10 percent of articles quoted or paraphrased an advocate or spokesperson.[376]

Researchers have speculated as to why advocates are not used as sources, including that they can be seen as one-sided,[377] individual incidents of VAW may not be immediately recognised by journalists as part of the broader social problem and therefore they do not seek sources beyond the legal authorities,[378] or poor relationships between advocates, experts and the media.[379] In Simons and Morgan's study of sourcing practices, it was found that there were a number of difficulties which hindered the process of VAW experts being heard in the media. For example, they would need time and resources to draft responses to media requests, by which point the journalist's deadline had passed. Simons and Morgan also found that there was a need for the sector and experts to reach out to journalists and play a more proactive role. However, this is limited by resources and the fact that these organisations, for the most part, do not have a public relations or communications staff member to aid this process.[380]

When advocates were used throughout my content analysis, it was only in thematic articles published after the conclusion of criminal trials. Although infrequent, the effectiveness of this practice can be seen in the following examples. The *Melton Leader* article 'Calls for Fiona Inquest', also mentioned above, included the following from VAW advocate Phil Cleary:

> Mr Cleary said the recent Royal Commission into family violence had 'not properly examined' the killing of women by their partners and ex-partners.

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[374] Helen Benedict, *Virgin or Vamp? How the Press Covers Sex Crimes* (Oxford University Press, 1992); Taylor (n 276); Meyers (n 217).

[375] Morgan and Politoff (n 213).

[376] Sutherland et al, *Horizons* (n 215) 29.

[377] Taylor (n 276).

[378] Morgan and Politoff (n 213).

[379] Ibid 61.

[380] Domestic Violence Victoria have produced a strategic framework and guide on how the family violence sector can work more effectively with the media. See Domestic Violence Victoria, 'Working with News and Social Media to Prevent Violence against Women and their children: A Strategic Framework for Victoria' (2015) <http://dvvic.org.au/publications/working-with-news-and-social-media-to-prevent-violence-against-women-and-their-children-a-strategic-framework-for-victoria/>; ibid.

> ‘How could she have been killed despite her telling people she was frightened by this man?’ he said.
>
> ...
>
> ‘We’ve had an inquest into Luke Batty, we’ve had an inquest into Sarah Cafferky, it’s about time we had an inquest into women who are killed by intimate partners who are in the process of estrangement, because every case of ‘wife killing’ is connected to separation and the figures don’t lie.’[381]

This was an effective way of placing one incident into the broader context of the risks of leaving domestic violence relationships and directly called for more action from the government. In another article about the ‘appalling’ rise of VAW in Australia, a representative from The Centre for Non Violence was quoted as calling for ‘stronger criminal justice responses and accountability for family violence, community awareness raising and education to challenge all forms of violence’.[382] The same source also referred to the increased vulnerability for women in regional and rural areas, the difficulties for women trying to access services, and the inadequacy of men’s behaviour change programs in rural and regional areas.[383] From this one source alone, the various solutions to domestic violence, including the need for prevention approaches, and the complexity of how it affects different groups are all raised in the one story.

In another article about a Supreme Court judge who conceded that, when a murder occurs in a domestic environment and in the ‘spur of the moment’, the courts may give a lighter sentence, two advocates were quoted as responding to these comments. Domestic Violence Victoria CEO Fiona McCormack and advocate Jenna Price both referred to the prevalence of domestic violence and that perpetrators need to be held accountable. Price also spoke about the need for primary prevention and educating children. This article stands in stark contrast to a *Herald Sun* opinion editorial that also referenced the same comments made by the Supreme Court judge.[384] There was some recognition of the broader context of VAW in this article, but it did not reference advocates or experts. Instead the author listed the violent and upsetting details of a number of domestic violence cases with language such as ‘remorseless killer stabbed his wife’, ‘brutality’, ‘murderous intent’ and ‘bashed his wife with a metal chair’.[385] Although, like the above example, the author calls for perpetrators to be held accountable, the author does so by demanding heavier penalties for domestic violence and longer sentences, framing VAW only as a criminal justice problem.[386]

IV Conclusion

[381] Capone and Heath (n 324).

[382] ‘Violence on the rise’, *Riverine Herald* (Echuca-Moama, 18 May 2015).

[383] Ibid.

[384] Editorial, ‘No mercy for violent men’, *Herald Sun* (Melbourne, 12 October 2015).

[385] Ibid.

[386] Ibid.

The above literature review and content analysis clearly shows that, in the reporting of IPHs as they proceed through the courts, episodic framing is inevitable. These reports focus on the individual victims and perpetrator, and sometimes the family and friends affected, highlighting characteristics that differentiate those individuals from the norm, such as ethnicity or drugs. As established by previous research, there is a tendency to prioritise the sensational aspects of the story, such as the mysterious circumstances of the murder or the accused's jealousy and/or love for the victim. Legal authorities are often quoted, perpetuating perpetrator-excusing myths or, in the case of police sources, simplifying the case to the bare facts of the crime. The IPH is rarely explicitly named as 'domestic violence' and the inclusion of domestic violence resources is inconsistent and infrequent. Prior violence does appear in the reporting, but often only when it is of a sensational nature, such as violent threats or the fact that the victim had only just finalised an IVO before her death. These aspects of the reporting of IPHs are not ideal. Together, these trends in reporting have the effect of individualising the incident and distancing the reader and society from any responsibility.

However, there were also examples of court reporting which did frame the story in a way that either showed the dynamics of domestic violence and/or the broader social context of the problem. This occurred when journalists quoted evidence or comments from legal authorities that demonstrated the power and control that exists in domestic violence relationships, the prevalence of the problem or the risks of leaving a relationship. Most commonly, however, it was in the articles that were published once legal proceedings (and therefore the risk of sub judice contempt) had concluded, when journalists reflected on the ongoing 'toll' of domestic violence, listing several cases and pointing out the similarities amongst them, quoting domestic violence advocates and experts, and calling for prevention efforts as well as greater perpetrator accountability. These articles were, of course, few and far between, and not every IPH received the same treatment.

It is pivotal that research continues to analyse the way the media reports VAW, given its role in framing how the public perceive the problem and thereby improving community attitudes. However, media analyses alone only identify the problems and not the causes of those problems. More needs to be done to explain patterns in reporting, such as the extent to which journalists can contextualise problematic quotes from judges or lawyers, or why resources are not included in all reports of domestic violence. I begin this process in the next chapter, in which I consider the crime-news production process and how these media outputs are the product of a combination of news values, source-media relationships and journalistic constraints.

CHAPTER FOUR:
THE MEDIA'S PRODUCTION OF CRIME NEWS

I INTRODUCTION

Content analyses alone only provide a 'partial explanation' of media representations.[387] To understand and potentially change the trends in media reporting that were identified in the previous chapter, there also needs to be an understanding of the values, processes and relationships that play a role in the shaping of media outputs. Accordingly, this chapter now turns to the first missing piece of the story, being the crime-news production process. Both the crime and court news 'beats' are subject to a unique set of influencing factors that contribute to the production and framing of stories. This 'complex, interactive' and 'iterative' process[388] that surrounds crime reporting has been extensively examined by scholars.[389] However, news production research that focuses on the media's reporting of VAW related crimes and court proceedings is lacking.[390]

The IPH criminal proceedings on which the media report and the various legal rules, processes and restrictions that shape how the media reports on those proceedings are, of course, central to the production of IPH news stories, however, they will be addressed in the following chapter. Before considering the law, this chapter concentrates on news production research to first establish how the reality of crime and court reporting also shapes how the IPH story is told. In doing so, this chapter responds to research question two:

> What news values, practices and relationships do journalists encounter when reporting IPHs as they proceed through the criminal justice system?

As in the previous chapter, to answer this question, I also adopt the unique method of interweaving my own observations of an IPH committal hearing and interviews with journalists who reported on the related police investigation and court proceedings. This approach emphasises the importance of considering the journalists' perceptions of their role as crime and court reporters, and allows for a current and Victorian-centred

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[387] Steven M Chermak, *Victims in the News* (Westview Press, 1995) 14; Richard Ericson, Patricia Baranek and Janet Chan, *Negotiating Control: A study of news sources* (University of Toronto, 1989).

[388] Moira Peelo et al, 'Newspaper reporting and the public construction of homicide' (2004) 44(2) *The British Journal of Criminology* 256, 257.

[389] Ericson, Baranek and Chan, *Negotiating Control* (n 387); Richard V Ericson, Patricia M Baranek and Janet B L Chan, *Representing Order: Crime, Law and Justice in News Media* (Open University Press, 1991); Philip Schlesinger, Howard Tumber and Graham Murdock, 'The media politics of crime and criminal justice' (1991) 42(3) *The British Journal of Sociology* 397; Stuart Hall et al, *Policing the Crisis: Mugging, the State and Law and Order* (Macmillan, 1978); Steve Chibnall, *Law and Order News: An Analysis of Crime Reporting in the British Press* (Tavistock, 1977).

[390] Georgina Sutherland et al, 'Media representations of violence against women and their children: State of knowledge paper' (Landscapes Report, ANROWS, 2015) ('*Landscapes*') 26.

understanding of the daily routines and practices the journalists carry out when reporting on crime and the courts.

The chapter will begin with a review of the literature on news values and practices that contribute to the production of all news stories, but particularly the selection of crime stories. The remainder of the chapter then follows the criminal justice process, beginning with an overview of the production processes at play during the criminal investigation period following a homicide and the unique and delicate police-media relationship. This chapter then goes on to consider the relevant scholarship about the reporting of court proceedings including the court-media relationship, the clashes of discourse between the law and media and the practicalities of reporting on the courts in today's media landscape. Finally, this chapter addresses the media's coverage of sentencing and community responses to court decisions.

A *The changing media landscape*

The context of today's media climate is important to revisit at the outset of this chapter. Digital platforms, such as Google and Facebook, have significantly disrupted Australian media. Traditional media outlets are fighting to maintain audiences as advertising revenues, and readers, divert towards these digital platforms.[391] As a result, media outlets have fewer resources, leading to staffing cuts, and less resources dedicated to the court round.[392] Consequently, the courts are becoming an 'increasingly journalist free zone',[393] a trend that has also been observed overseas.[394] Simons and Bosland reported in their empirical study of court reporting that a journalist counted a loss of five court reporters in Melbourne over two and a half years.[395] In 2020, the closure of 100 News Corporation local and regional print newspapers and the threatened shutdown of the newswire service, *Australia Associated Press*,[396] both of which were relied upon for their reporting of local court, council,

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[391] See Australian Competition and Consumer Commission, *Digital Platforms Inquiry* (Preliminary Report, December 2018) ('*ACCC Digital Platforms Inquiry*').

[392] Senate Select Committee on the Future of Public Interest Journalism, Parliament of Australia (Report, 5 February 2018) 34-35; Margaret Simons and Jason Bosland, 'From journal of record to the 24/7 news cycle' in David Banes and Agnes Gulyas (eds), *The Routledge Companion to Local Media and Journalism* (Routledge, 2020) 193, 197.

[393] Justice Peter Applegarth, 'Coverage and Critcism of the Courts' (Speech, Judicial Conference of Australia Colloquium, 8 June 2019).

[394] Roy Greenslade, 'New studies suggest continuing decrease in court reporting', *The Guardian* (online, 29 October 2016) <https://www.theguardian.com/media/greenslade/2016/oct/28/new-studies-suggest-continuing-decrease-in-court-reporting>; Jon Robins, 'More than half of local newspapers don't have a court reporter', *The Justice Gap* (online, 25 October 2016) <https://www.thejusticegap.com/half-local-newspapers-dont-court-reporter/>; Helena Spector, 'Local justice 'invisible' as a result of collapse in court reporting', *The Justice Gap* (online, 5 September 2019) <https://www.thejusticegap.com/local-justice-invisible-as-a-result-of-collapse-in-court-reporting/>.

[395] Simons and Bosland (n 392) 198.

[396] At the time of writing, a consortium of investors had been convened to buy and fund AAP. Zoe Samios, 'Australian Associated Press to be sold for $1', *The Sydney Morning Herald* (online, 15 June 2020) <https://www.smh.com.au/business/companies/australian-associated-press-to-be-sold-for-1-20200614-p552db.html>.

government and public events, has amplified concerns about the future of court reporting.[397]

The pressure brought on by the changing media landscape adds to an already demanding 24/7 news cycle and logistical difficulties of covering multiple courts with fewer reporters. As a result, crime and court reporting has been, and continues to be, a 'selective' process in that only some crimes and cases can be reported, and sometimes these stories are only partially covered.[398] Research has suggested that the type of crime and court reporting that has survived the impact of technology is that which has become 'an arm of the burgeoning entertainment industry',[399] prioritising stories that are sensational, quirky or extraordinary.[400] There are concerns that these shifts are eroding the traditional function of the media, which is to ensure the criminal justice system is transparent and accountable through accurate, comprehensive and balanced reporting.[401]

B *An example: Ristevski*

In this chapter, I illustrate the crime-news production process through an examination of one case. The case concerns Borce Ristevski, who was convicted of manslaughter in 2019. Karen Ristevski, at 47 years old, went missing from her home in Avondale Heights, Victoria, in July 2016. The police did not find her body until December 2016, hidden in the Mount Macedon Regional Park. During the extensive and heavily reported police investigation, Ristevski was photographed carrying his wife's funeral casket and also filmed standing next to his daughter, 21-year-old daughter Sarah, at a press conference pleading with the public to help them find his wife and Sarah's mother. One reporter asked Ristevski at the conference 'did you kill Karen?' Throughout the investigation, the media's reporting of the case was 'punctuated with rumour and theory'.[402] Ristevski initially pleaded not guilty to murder.

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[397] Margaret Simons, 'AAP is Australian democracy's safety net - its closure will affect us all', *The Guardian* (online, 3 March 2020); Amanda Meade, 'News Corp announces end of more than 100 Australian print newspapers in huge shift to digital', *The Guardian* (online, 28 May 2020) <https://www.theguardian.com/media/2020/may/28/news-corp-announces-end-of-nearly-100-australian-print-newspapers-in-huge-shift-to-digital>.

[398] Peter Grabosky and Paul Wilson, *Journalism and justice: how crime is reported* (Pluto Press, 1989) 9; Simons and Bosland (n 392) 197, 199.

[399] Schlesinger, Tumber and Murdock (n 389) 398; Robert Reinger and Chris Greer, 'Mediated Mayhem: Media, Crime, Criminal Justice' in Rod Morgan, Robert Reiner and Mike Maguire (eds), *The Oxford Handbook of Criminology* (Oxford University Press, 5th ed, 2012) 245; C Danielle Vinson and John S Ertter, 'Entertainment or Education: How Do Media Cover the Courts?' (2002) 7(4) *Harvard International Journal of Press/Politics* 80; Ray Surette and Charles Otto, 'A test of a crime and justice infotainment measure' (2002) 30 *Journal of Criminal Justice* 443; Yvonne Jewkes, *Media and Crime* (Sage Publications, 2004).

[400] Lezandra Grundlingh, 'Identifying markers of sensationalism in online news reports on crime' (2017) 48(2) *Language Matters* 117; Sara Sun Beale, 'The news media's influence on criminal justice policy: How market-driven news promotes punitiveness' (2006) 48 *William and Mary Law Review* 397; Simons and Bosland (n 392) 200.

[401] Jason Bosland and Judith Townsend, 'Open Justice, Transparency and the Media: Representing the Public Interest in the Physical and Virtual Courtroom' (2018) 23(4) *Communications Law* 1, 1.

[402] Tammy Mills, Cameron Houston and Anthony Colangelo, 'Borce Ristevski charged with the murder of Karen Ristevski', *The Age* (Melbourne, 13 December 2017).

There was a large media following during Ristevksi's committal hearing, with a group of at least seven, and up to 13, court reporters attending each day. After a two-week committal hearing, mostly filled with technical evidence about phone tracking, CCTV footage of Paulino's car and some evidence from family members, including Sarah, who supported her father's not-guilty plea, Ristevski was committed to trial for murder by Magistrate Suzanne Cameron. However, before his trial was due to commence, Beale J ruled that the prosecution's evidence of 'post-offence conduct', which went towards showing Ristevski's intention to murder, was inadmissible.[403] This evidence included inconsistent statements made to the police and acts that seemed to show he was more concerned about the media's representation of him rather than his wife's disappearance. This was the only evidence that showed Ristevski's alleged intention that was needed to prove a murder charge. Before the trial was due to begin, Ristevski pleaded guilty to manslaughter and the prosecution accepted. In April 2019, Beale J convicted and sentenced Ristevski to nine years' imprisonment with six years' non-parole.[404] In the sentencing judgment, Beale J described the murder was an instance of domestic violence, albeit unique because there was no evidence of a history of violence.[405] There was significant backlash to the sentencing of Ristevski.[406] The Director of Public Prosecutions lodged an appeal[407] and Ristevski was resentenced in December 2019 by the Victorian Court of Appeal to 13 years' imprisonment, with a minimum of 10 years.[408]

I observed Ristevski's committal hearing in the Melbourne Magistrates' Court in July 2018 and his sentencing in April 2019. *Ristevski* was a unique case that captured the attention of Victoria's media and public. The heightened publicity of this homicide compared to others provided an opportunity to further observe and learn about the crime-news production process and the interactions between journalists and the criminal justice system. In particular, it highlighted the various aspects of a crime and IPH that make the media pay attention and dedicate significant resources to its coverage. These observations helped inform my reading and analysis of the literature on crime and court reporting, which will now be discussed.

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[403] *DPP (Vic) v Ristevski (Ruling No 1)* [2019] VSC 165.

[404] *DPP (Vic) v Ristevski* [2019] VSC 253 ('*DPP (Vic) v Ristevski*').

[405] Ibid.

[406] Marnie O'Neill, 'Fury builds over Ristevski sentence', *news.com.au* (online, 26 April 2019).

[407] 'Borce Ristevski's sentence for killing wife Karen to be appealed, DPP says', *ABC News* (online, 13 May 2019) <https://www.abc.net.au/news/2019-05-13/borce-ristevskis-sentence-for-killing-wife-karen-to-be-appealed/11108472>.

[408] Rohan Smith, 'Borce Ristevski's sentence increased for death of wife Karen', *news.com.au* (online, 6 December 2019) <https://www.news.com.au/national/victoria/courts-law/borce-ristevski-back-in-court-for-court-of-appeal-decision/news-story/f6e18ca0b287f16e9cf6bf2026a43c6b>.

II THE 'NEWS VALUE' OF HOMICIDES

Previous media studies have identified that some practitioners vehemently reject the suggestion that when they report the news they are 'constructing reality' based on a set of criteria,[409] but instead perceive their role as reflecting reality.[410] News production scholars have referred to the process of selecting and reporting news as being an intuitive and internalised process, or what has been called a 'professional ideology' of what is newsworthy.[411] This ideology has been examined by numerous researchers resulting in a common taxonomy of 'news values'.[412] News values have been likened to 'selection criteria'[413] and determine:

> which stories are "newsworthy" and which are not, which stories are major "lead" stories and which are relatively insignificant, which stories to run and which to drop.[414]

News values have also been described as representing 'social order' and so events that breach our 'normal expectations' of social life[415] are considered unusual and extraordinary and therefore rate high on the newsworthiness scale.[416]

As shown in the previous chapter, a key indicator of whether a story of VAW will be newsworthy is if it involves murder.[417] However, not all homicides are given the same attention as others. So, what makes an IPH worthy of the media's attention? Drawing on Jewkes' more recent reiteration[418] of news values, the following elements interplay to create a newsworthy event: threshold, predictability, simplification, individualism, risk, sex, celebrity or high-status, proximity, violence, spectacle, children or conservative ideology.[419] Although news values may be similar across all news organisations, they also differ depending on the current economic or political environment[420] and some values will be given greater priority than others depending on the interests of

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[409] Michael Schudson, 'The Sociology of News Production Revisited (Again)' in James Curran and Michael Gurevitch (eds), *Mass Media and Society* (Arnold, 2000) 175.

[410] Belinda Morrissey, *When Women Kill: Questions of agency and subjectivity* (Routledge, 2003) 14.

[411] Hall et al (n 389) 53.

[412] Chibnall (n 389); Hall et al (n 389); Jewkes (n 399).

[413] Peelo et al (n 388) 258.

[414] Hall et al (n 389) 54.

[415] Ibid.

[416] Ericson, Baranek and Chan, *Representing Order* (n 389).

[417] Jane Monckton-Smith, *Murder, Gender and the Media: Narratives of dangerous love* (Palgrave Macmillan, 2012) 67; Georgina Sutherland et al, 'Media representations of violence against women and their children: Final report' (Horizons Research Report, ANROWS, 2016) 19 ('*Horizons*').

[418] Jewkes adapted her set of news values from the 'classic' studies of Galtung and Ruge and Chibnall (both from the mid-20th Century): Jewkes (n 399) 61.

[419] Chibnall (n 389); Jewkes (n 399). The original taxonomy of news values was developed in Johan Galtung and Mari Holmboe Ruge, 'The Structure of Foreign News' (1965) 2(1) *Journal of Peace Research* 64.

[420] Jewkes (n 399) 61.

the audience.[421] This latter point is especially pertinent in today's context when the need to maintain audiences and revenue is significant.[422] A consequence of this selection process is that only certain types of homicides are reported to the public. These are often the extraordinary cases that create a sense of 'otherness' and distort the social reality of homicides.[423]

The *Ristevski* case was an example of a homicide that satisfied several news values and was considered newsworthy by a number of media outlets. This was shown simply by the resources numerous state (*The Age*, *Herald Sun*, *Channel Nine*, *Seven* and *Ten*) and national (*The Australian*, *ABC*, *news.com.au*) media publications and broadcasters invested into sending court reporters to every day of the committal hearing. The intense scrutiny of the *Ristevski* case overshadowed other cases involving women who had been killed.[424] As put by Pritchard and Hughes, when one important and unexpected event occurs, it can dominate the news and depress the 'newsworthiness of other stories'.[425] Drawing from my journalist interviews and observation of the committal hearing, the news values that seemed to apply to this case included proximity, individualism, family, threshold and conservative ideology.

A *Proximity or 'that could have been me'*

The news value 'proximity' refers to an audience's ability to relate to a story either geographically or culturally and plays a significant role in what crimes are reported.[426] Notably, Jewkes observed that an ordinary local event might not garner much national attention. However, if the event is either particularly dramatic or relatable to the journalist and their audience, such as the disappearance of a 'young, female, white, middle-class and conventionally attractive' person, media interest will follow.[427] In addition, when high-status individuals in 'ordinary' life are involved in a crime, this can add to the newsworthiness of a story.[428] These news values were identified in Jenny Morgan's analysis of the media's reporting of the high profile *Ramage* case, in which James Ramage argued a lack of intent to kill his wife Julie Ramage and that he was provoked. Morgan observed that

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[421] Ibid. See also Chibnall (n 389) 13; Chermak (n 387) 24.

[422] Simons and Bosland (n 392).

[423] See Peelo et al (n 388).

[424] I recorded at least 20 cases where the accused was a current or former partner of the victim that were in the courts throughout the period between Karen Ristevki's disappearance in 2016 and Ristevski's sentencing in 2019. For a summary of other cases being dealt with by the courts during this time, see Erin Pearson and Adam Cooper, 'Coroner urges reviews of family violence deaths after murder of Joy Rowley', *The Age* (online, 2 August 2018) <https://www.theage.com.au/national/victoria/coroner-urges-reviews-of-family-violence-deaths-after-murder-of-joy-rowley-20180802-p4zv3j.html>.

[425] David Pritchard and Karen D Hughes, 'Patterns of Deviance in Crime News' (1997) 47(3) *Journal of Communication* 49, 65.

[426] Jewkes (n 399) 51.

[427] Ibid 52.

[428] Ibid 51. See also Jenny Morgan, 'Law Reform and the Media: (Re)figuring Responsibility' in Kate Fitz-Gibbon and Arie Freiberg (eds), *Homicide Law Reform in Victoria* (Federation Press, 2015) 42, 45-7.

although the family's position and wealth made the story somewhat 'exotic', it was also their 'ordinary' life and 'middle classness' that made it proximate and relatable to the Victorian public, giving rise to the sentiment of 'this could happen to us'.[429]

Although Karen Ristevski's disappearance and homicide had little relevance beyond Melbourne, it still attracted national media attention, as shown by the above list of outlets that covered the case. The 'proximity' of this case therefore did not arise in a geographical sense, but rather from the dramatics and relatability of the story. These news values were reflected in the journalist interview responses. Journalists explained it was because Karen Ristevski was glamorous, lived in a wealthy suburb of Melbourne and was a 'suburban mum' who ran a small business. *ABC* reporters Karen Percy and Emma Younger both described her as 'relatable',[430] to which Younger added 'which I think in family violence is quite unusual'.[431] Similarly, *Herald Sun* reporter Rebekah Cavanagh, who covered the entirety of the committal hearing and subsequent court appearances said:

> There are so many suburban families living the same life, they go off to work, they run their businesses, they come home … And it gets people thinking, jeese, that could be me.[432]

Similarly, *The Age* crime reporter Tammy Mills said that a 'white, wealthy woman will invariably get more prominent coverage than a woman of colour from Broadmeadows', acknowledging the readership as a cause for that selectivity.[433] *Channel Seven* reporter Sharnelle Vella, who reported the entire case from Karen Ristevski's disappearance to the end of the committal, explained that for all of these reasons 'we all became obsessed with it'.[434]

B *Individualism and a 'human face'*

The personal and humanised aspect of a story also satisfies the values of 'individualism' and 'simplification', which require a crime story to be constructed in a way that focuses on the individuals involved, rather than complex stories about concepts or institutions.[435] Jewkes wrote that the values of individualism and simplification cause the media to:

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[429] Morgan (n 428) 46.

[430] Interview with Emma Younger, ABC Court Reporter (Annie Blatchford, Melbourne, 5 September 2018); Interview with Karen Percy, ABC Court Reporter (Annie Blatchford, Supreme Court Victoria, 16 September 2019).

[431] Interview with Younger (n 430).

[432] Interview with Rebekah Cavanagh, Herald Sun Court Reporter (Annie Blatchford, Telephone, 3 September 2019).

[433] Interview with Tammy Mills, The Age Crime and Court Reporter (Annie Blatchford, Telephone, 17 September 2019).

[434] Interview with Sharnelle Vella, Channel 7 Court Reporter (Annie Blatchford, Telephone, 26 November 2018).

[435] Jewkes (n 399) 43.

> engage in a process of personalisation in order to simplify stories and give them a "human interest" appeal, which results in events being viewed as the actions and reactions of people.[436]

The focus on the individuals in a story can often extend to the family of the victim and/or perpetrator. Jewkes observed that a family's compliance with media activities, such as press conferences, will bolster the news value of a story by providing more human faces, making the story more relatable and proximate.[437] Similarly, Morgan acknowledged that a possible reason for the newsworthiness of particular IPHs was the role played by victims' family members. For example, Morgan acknowledged the role of Julie Ramage's twin sister Jane Ashton, who was outspoken, and therefore frequently quoted, about the inadequacy of the provocation defence throughout and after James Ramage's trial.[438] Also making a crime more newsworthy is the presence of children, whose involvement in a horrific crime such as murder can add to the shocking nature of the story.[439]

The family and children angle was apparent in the *Ristevski* case. Percy commented on the public profile Ristevski and his daughter, Sarah, took throughout the police investigation, which she said made the story particularly enticing.[440] For example, the family were central to an early police press conference following Karen Ristevski's disappearance. Images from the conference of Ristevski comforting his clearly upset daughter reappeared throughout the media's coverage of the legal proceedings, an early sign that the relationship between the two was of interest to the media. Vella referred to the way in which Ristevski played the role of a devastated husband ('crying at her funeral, standing beside his daughter and crying'), which, Vella said, made the story all the more controversial and newsworthy when it became clear that he was the only suspect.[441] I also observed a heightened interest in Sarah's evidence at the committal hearing with an increase in court reporters attending that day's proceedings, many of whom reported on Ristevski's visibly upset reactions to his daughter giving evidence.[442] This reflected the newsworthiness of a child (albeit she was a young adult by this point) being involved in a crime, and the fascination the media had in her relationship with her father.

C *Threshold and 'primary stories'*

Jewkes defined 'threshold' as meeting a 'certain level of perceived importance or drama in order to be considered newsworthy'.[443] Jewkes also stated that, once a crime has passed the threshold requirement, it may

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[436] Ibid 45. See also Jenny Morgan and Violeta Politoff, 'Victorian print media coverage of violence against women: A longitudinal study' (Report, VicHealth and The University of Melbourne, 2012) 15.

[437] Jewkes (n 399) 45.

[438] Morgan (n 428) 48.

[439] Jewkes (n 399) 56-7.

[440] Interview with Percy (n 430).

[441] Interview with Vella (n 434).

[442] Tom Cowie, 'Borce Ristevski breaks down as daughter gives evidence', *The Age* (online, 17 July 2018) <https://www.theage.com.au/national/victoria/borce-ristevski-breaks-down-as-daughter-gives-evidence-20180717-p4zryg.html>.

[443] Jewkes (n 399) 41.

then have to meet further criteria to receive sustained coverage.[444] This notion of needing to 'sustain coverage' emerged in Steven Chermak's news production study of victims in the news. From the author's ethnographic observations of various media outlets' reporting of crime, he observed that some crimes were treated as 'primary stories': crimes that received priority space in a publication over a long period of time, and were refreshed at each stage of the criminal justice process, continuing to 'bring the public into the court room, updating it on the trial's progress'.[445] Morgan identified the above-mentioned *Ramage* case as such a primary story that received sustained news coverage. That is, the intrigue of the murder, the status of the family and the broader public discussions about the provocation defence all saw to the ongoing coverage that went beyond the conclusion of the legal proceedings.[446]

Both 'threshold' and the concept of a 'primary story' were evident in the *Ristevski* case, as it continued to receive significant media attention from the time of Karen Ristevski's disappearance, right through each stage of the criminal justice process. *The Australian* court reporter Tessa Akerman described the intrigue and drama of the case. She said:

> it became stranger and stranger and there was everyone saying, he did it and … did he slip in any way? Or was it the perfect murder type thing?[447]

Cavanagh said the media continued to push for stories when Karen went missing: 'we were constantly looking for updates to keep the story going, to keep the people talking about it'.[448] Younger said the very fact she was missing for so long grabbed people's attention and brought them along with the story. She speculated that if the police had found her body immediately, 'it would not have been as newsworthy'.[449] Journalists also referred to Ristevski's deceit as a contributing factor to the ongoing drama and therefore newsworthiness of the story.[450] A reflection of just how valuable this story was, despite it unfolding over such a long period of time, is Vella's reaction when she found out he had been charged. She said, 'I just felt this rush go through me … and in that moment you need to get to court quick, you need to get a seat at the front'.[451]

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[444] Ibid 41.

[445] Chermak (n 387) 36-7.

[446] Morgan (n 428) 45, 47.

[447] Interview with Tessa Akerman, The Australian Court Reporter (Annie Blatchford, Telephone, 29 August 2019).

[448] Interview with Cavanagh (n 432).

[449] Interview with Younger (n 430).

[450] Interview with Percy (n 430).

[451] Interview with Vella (n 434).

D *Conservative ideology and punitive responses*

Jewkes also refers to the news value 'conservative ideology', which means the way in which newsworthy stories often align with a punitive agenda, calling for more police or tougher sentences.[452] This trend could be seen in the media's reporting of Ristevski's original sentencing of nine years, which attracted significant backlash for being too lenient.[453] This backlash and calls for a tougher sentence, in turn, became the focus of the news coverage. This story angle deflected from the broader problem, being a husband's murder of his wife and the issue of family violence. The value of such an angle can be seen in Percy's interview response, in that her immediate interest in the story was the sentencing and what she perceived to be an unfair decision.[454] The media's response to the sentence is discussed in more detail in the final section of this chapter.

E *What news values were missing?*

Many of the news values identified by Jewkes did not appear relevant to the *Ristevski* case, including the more common values of 'risk', 'violence' or 'sex'. Jewkes referred to risk in the sense that the media push a narrative of crime being random, often committed by strangers and thereby we are all in danger.[455] This is particularly prominent in the reporting of sex crimes, which, despite the reality that violence is more commonly inflicted by people known to us, is portrayed as a 'stranger' crime.[456] Although there was some sense that Karen Ristevski was so 'normal', this crime could happen to anyone, overall this news value was not a theme that arose in the journalist interviews. The news values of violence and sex, which immediately make a crime more 'salient'[457] and fulfil the media's desire to present events as graphically as possible,[458] were not applicable given the lack of evidence about the murder itself. That is, Ristevski never disclosed how Karen Ristevski was killed and there was nothing to show that a murder had occurred in the home. There was also little to show any discord between Ristevski and Karen Ristevski, as emphasised in Sarah's evidence where she insisted the two got on, and if there was an argument, her father was 'always the calm one'.[459] Perhaps it was the lack of these more common news values that appear in crime news, and a real question of whether or not Ristevski was responsible given the lack of evidence,[460] that made the case all the more intriguing.

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[452] Jewkes (n 399) 59.

[453] O'Neill (n 406).

[454] Interview with Percy (n 430).

[455] Jewkes (n 399) 47.

[456] Sutherland et al, *Landscapes* (n 390) 31; Paul Mason and Jane Monckton-Smith, 'Conlflation, collocation and confusion: British press coverage of the sexual murder of women' (2008) 9(6) *Journalism* 691.

[457] Jewkes (n 399) 48.

[458] Ibid 53.

[459] 'Ristevski daughter says 'dad was the calm one' during arguments', *SBS* (online, 17 July 2018) <https://www.sbs.com.au/news/ristevski-daughter-says-dad-was-the-calm-one-during-arguments>.

[460] See Morgan (n 428) 47.

III MEDIA REPORTING OF POLICE ACTIVITIES

Although my thesis is primarily concerned with the impact of the law on the media's reporting of IPH criminal proceedings, the court news 'beat' cannot be considered in isolation from the reporting of police investigations. This section will briefly consider the literature on the police's role in defining the way the media report on domestic violence and scholarship on the police-media relationship more broadly. The significance of examining this pre-trial period of a police investigation and the media's reporting of it, is that it is the period when sub judice contempt is not yet active and so the opportunity for the media to carry out their own investigations and potentially contextualise an isolated IPH is available.

A *The police and domestic violence*

The media's reporting of police investigations must be considered within the broader context of the police's role as 'primary definers' of crime news.[461] That is, the 'raw material' provided to the media by police is significantly relied upon and in turn can create an image of crime that is in accord with the police's ideas of what crime is and is not important.[462] In Australia, domestic violence is not a new issue. The police have always been dealing with domestic violence, and yet it was not considered a 'public' problem or a priority on the police or media's agenda in Victoria until recently.[463] In Simons and Morgan's study of the media's sourcing practices when reporting on VAW, *Herald Sun* reporter Ellen Whinnett spoke about her experience as a police reporter and the way in which VAW in the 'early days' was not considered news.'[464] The authors said Whinnett's experience:

> gave a potent picture of the reactive nature of the crime-reporting task, and the manner in which the police view of what was newsworthy was largely accepted by the reporter.[465]

These police and media perceptions of domestic violence have evidently changed as illustrated by the Victorian police involvement in the *Herald Sun*'s 'Take a Stand' campaign. This campaign included the then Police Commissioner Ken Lay featuring on the front page of the newspaper as 'taking a stand' against domestic violence. The authors argued that there was a need to consider the role of police as media sources as more

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[461] Hall et al (n 389).

[462] Mark Fishman, 'Police News: Constructing an Image of Crime' (1980) 9(4) *Urban Life* 371, 387. See also Chibnall (n 389); Alyce McGovern and Murray Lee, ''Cop[ying] it Sweet': Police Media Units and the Making of News' (2010) 43(3) *The Australian and New Zealand Journal of Criminology* 444.

[463] Margaret Simons and Jenny Morgan, 'Changing Media Coverage of Violence Against Women: Changing sourcing practices?' (2017) 19 *Journalism Studies* 1202. See also Women's Coalition against Family Violence, *Blood on Whose Hands?* (Federation Press, 1994) 126.

[464] Simons and Morgan (n 463) 1204.

[465] Ibid.

nuanced and in some circumstances as playing a pivotal role in drawing the media's attention to domestic violence as a 'serious social issue'.[466]

This shift in the framing of VAW by the police, and how that narrative then filtered through to the media's understanding of the crime, was also demonstrated in my interviews. *The Age* journalist Mills reflected on her early days as a crime reporter in country Victoria where the police had an 'old school' attitude towards domestic violence, which she and her colleagues shared. Mills said that, if the police told her there was 'just a few domestics last night', she would not take it as seriously as a story about a break in. Mills said that her approach then 'seems absolutely ridiculous now'.[467]

B *The homicide investigation*

Research has shown that the police have become increasingly sophisticated and professionalised in their dealings with the media, seeing to a shift from 'police as sources' to police having the power to frame and construct news narratives.[468] This depends, of course, on the police maintaining a cooperative relationship with the media, feeding them information when it might be useful to the investigation.[469] As *Herald Sun* reporter Cavanagh said in her interview, the police-media relationship is characterised by a 'you scratch my back and I'll scratch yours' dynamic. She explained that the police provide information to the media when it helps the investigation, but just as quickly can cut off information when they are not needed anymore.[470] The reproduction of the police's narrative was evident in the *Ristevski* case. Journalists I interviewed explained that the media were heavily relied on during the investigation to get information out to the public.[471] These types of stories, such as 'Car clues sought',[472] are usually brief and lacking in contextual information. They are a product of the select information fed to the media by the police and make for immediate and newsworthy stories, particularly in the context of high-profile crimes.[473]

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[466] Ibid.

[467] Interview with Mills (n 433).

[468] McGovern and Lee (n 462) 453. The authors showed, through their analysis of the NSW Police Media Unit's press releases compared to media reports, that there was a significant 'over-reliance' on the police's version of events. It was found that 67 percent of all crime-related stories in two Sydney newspapers over one-month were attributable to police media releases.

[469] Martin Innes, 'The media as an investigative resource in murder enquiries' (1999) 39(2) *British Journal of Criminology* 269, 275.

[470] Interview with Cavanagh (n 432).

[471] See, eg, 'Police appeal for tips in hunt for missing woman', *Moonee Valley Leader* (20 July 2016). Tammy Mills, ''Check your properties': Police plead for public help in missing Karen Ristevski case', *Bendigo Advertiser* (25 August 2016).

[472] 'Car clues sought', *Sunbury Leader* (20 June 2017).

[473] Innes (n 469) 273.

On the other hand, the media are also known for carrying out their own investigations in the 'pre-trial' stage, seeking out sources beyond the police.[474] This is allowed because sub judice contempt does not begin until someone is charged for the crime. This practice was reflected in Mills' response about her approach to reporting on homicides just after they have occurred. She said that she would try and get as much information as possible about the relationship between the victim and offender and whether there was a history of violence from 'people like neighbours that may have had interaction with that person'.[475] Mills said that seeking information from other sources could be seen as an insensitive practice and was not always a rewarding experience. She added that there were occasions when neighbours or other sources provided prejudiced or stereotyped views of the victim but conceded that 'someone has to do it'.[476]

The 'investigative' nature of pre-trial publicity was also seen in the *Ristevski* police investigation, through which the media published several stories sourced from people outside the police. Cavanagh said in her interview that once the police stop feeding information, the media will 'continue sniffing around'.[477] These media inquiries, however, do not always lead to considered reporting of the issue of domestic violence or VAW, but can instead fuel rumours about the case which hinder the police investigation. A clear example of the media's independent investigations included the family press appeal involving Sarah and Borce Ristevski, in which a journalist questioned Ristevski about his guilt despite the fact he was not a police suspect.[478] Other examples included a series of articles in the *The Australian*, which uncovered details about the family's financial situation with insinuations that these matters might be related to an alleged murder,[479] an allegation that the 'Ristevski marriage was a fake',[480] and that Borce Ristevski had taken over Karen Ristevski's business just before she disappeared.[481] News also emerged about Borce Ristevski's stepson who was an 'ice addict'[482] and who made numerous allegations about the family,[483] including that Karen Ristevski was unhappy and had planned to leave

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[474] McGovern and Lee (n 462) 450.

[475] Interview with Mills (n 433).

[476] Ibid.

[477] Interview with Cavanagh (n 432).

[478] Rebecca Urban, 'Missing mum's family walk out after 'inapproprate' question', *The Australian* (Sydney, 15 July 2016).

[479] Greg Brown, 'Missing mum's shop shut down amid mounting debt', *The Australian* (Sydney, 12 August 2016).

[480] Greg Brown, 'Ristevski marriage a fake', *The Australian* (Sydney, 11 August 2016).

[481] Ben Butler and Greg Brown, 'Husband took over missing woman's firm', *The Australian* (Sydney, 20 August 2016).

[482] Ben Hill, 'Ice addict stepson, 33, of murdered mother Karen Ristevski sues Channel 9 over claims he demanded $200 000 to tell his side of the story', *Daily Mail* (online, 2 September 2017) <https://www.dailymail.co.uk/news/article-4845840/Ice-addict-stepson-sues-Channel-9-murdered-stepmother.html>.

[483] Brianne Tolj, 'Karen Ristevksi's ice addict stepson in Facebook outburst accusing a family member of being a 'f***ing maggot'', *Daily Mail* (online, 20 March 2017) <https://www.dailymail.co.uk/news/article-4331142/Karen-Ristevski-s-stepson-Facebook-rant-f-ing-maggot.html>.

Ristevski.[484] These and other speculations helped frame the case as a sensational murder mystery. This coverage was criticised by the police who told the media that speculation was hindering the investigation.[485]

Ultimately, this pre-trial coverage may become a part of the legal proceedings themselves, further influencing the narrative of the IPH. In Innes' study of the use of the media as an investigative resource, he found that in a number of cases the police expressed concern about the actions of journalists contaminating witnesses.[486] This played out in Ristevski's committal hearing, where it became clear that witnesses had come forward to police because of this media coverage.[487] A further layer of complexity between the media and police in this case was the fact that journalists were in contact with Ristevski throughout the investigation, with one *Channel Nine* reporter, Kieran Jones, being called to give evidence about those communications.[488] The negative impact of the intense media coverage was also commented on by other members of the family, including Sarah Ristevski, in their evidence and victim impact statements.[489]

What this example shows is that a mixture of news production factors, including the police's use of the media as an aid to the investigation and the independent media inquiries, created a significant media event. The coverage was flavoured with mystery and intrigue and featured the elements of an entertaining and dramatic crime story, rather than a discussion of broader issues that may have been at play.

IV MEDIA REPORTING OF COURT PROCEEDINGS

The need to study court reporting in isolation from other forms of journalism, and to examine the role of the court itself as a source, has been widely recognised by scholars.[490] The aspects of court reporting that distinguish it from other types of journalism include the unique relationship between the courts and media, the starkly different discourses of each profession, and the everyday practicalities of court reporting, particularly in today's media landscape. The aim of this section of the chapter is to demonstrate the way in which the court-media

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[484] Emily Crane, 'Is Karen Ristevski in hiding? Missing mother may have 'run away' and planned to leave her husband, says stepson - as police search river amid fears she was murdered', *Daily Mail* (online, 10 August 2016) <https://www.dailymail.co.uk/news/article-3733822/Missing-Melbourne-mum-Karen-Ristevski-run-away-stepson-claims.html>.

[485] 'Rumours aren't helping', *Moonee Valley Leader* (1 March 2017).

[486] Innes (n 469) 274.

[487] For example, witness Rosemary Davis was questioned about her call to Crime Stoppers in July 2017 in response to an article in the Sunbury and Macedon Star Weekly for any witnesses of a black Mercedes car. She recalled seeing the car and that the driver appeared to be hesitant. The defence insinuated that Davis was influenced by the surrounding media coverage at the time and that her recollections were inaccurate.

[488] Kieran Jones gave evidence on 24 July 2018.

[489] *DPP (Vic) v Ristevski* (n 404).

[490] Ericson, Baranek and Chan, *Negotiating Control* (n 387); R E Dreschel, *News Making in Trial Courts* (Longman Inc, 1983); Chibnall (n 389).

interactions interplay with the production of IPH stories and the opportunities and challenges that arise in conveying both complex legal proceedings and the broader context of an individual crime.

A *The court-media relationship*

Court reporting has long been seen to be a part of the democratic process as journalists act as the 'eyes and ears' of the public and ensure the courts processes are transparent and the judiciary held accountable.[491] The media's reporting of the courts also serves an educative function, as it is rare that the public will attend court themselves.[492] As noted by Simons and Bosland, it is these shared aims between the courts and media, and a commitment by the press to 'comprehensively and impartially report the courts', that has allowed for a 'symbiotic relationship between the media and court to develop'.[493] This can be seen in the speeches and writings of judicial officers who have spoken about the importance of open justice and therefore the need to work with, rather than against, the media.[494] The media have also been shown to perceive their role as having a 'civic impact' and that their reporting of the courts is imperative to 'holding the courts accountable to the public', despite new business models and commercial pressures.[495]

My interviews with journalists also showed that their perceptions of their role as court reporters fit with the notions of open justice. Vella demonstrated an understanding that her role as a court reporter played a function in government decisions and that she and her colleagues 'fight for the public's right to know'. She added:

> Especially with court reporting, you can't expect the public to go and sit in courts every single day to go and find out what's going on with law and order. That's our job.[496]

Vella also spoke about the importance of court reporting for victim's families and closure: 'the public need to know how these crimes affect people because it's part of deterrence and it's closure for victims'.[497] Similarly, Cavanagh referred to the rewarding nature of holding convicted individuals accountable through court reporting: 'if you put them on the front page of the newspaper or put them on the 6pm news, it holds them even more

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[491] Sharon Rodrick, 'Achieving the aims of open justice? The relationship between the courts, the media and the public' (2014) 19(1) *Deakin Law Review* 123, 125.

[492] Bosland and Townsend (n 401) 2.

[493] Simons and Bosland (n 392) 194.

[494] Phillip Cummins, 'Justice and the Media' (Speech, Melbourne Press Club, 17 August 2010); Phillip Cummins, 'Open Courts: Who Guards the Guardians?' (Speech, Open and Shut: Suppression Orders and Open Justice in Australia and the United Kingdom Seminar, 4 June 2014); Beverley McLachlin, 'Courts, Transparency and Public Confidence' (2003) 8(1) *Deakin Law Review* 3; Beverley McLachlin, 'The Relationship between the Courts and News Media' in Patrick Keyzer, Jane Johnston and Mark Pearson (eds), *The Courts and the Media: Challenges in the Era of Digitial and Social Media* (Halstead Press, 2012) 24; Frank Vincent, 'Open Courts Act Review', *State of Victoria* (September 2017) <https://engage.vic.gov.au/open-courts-act-review>; Applegarth (n 393).

[495] Simons and Bosland (n 392) 195.

[496] Interview with Vella (n 434).

[497] Ibid.

accountable for their crimes'.[498] Akerman expressed a view that court reporting can make a difference when it accumulates to the point of pressuring government to make changes.[499]

The 'symbiotic' nature of the court-media relationship can be seen in the proactive efforts made by the courts to assist the media in ensuring open justice. Jane Johnston has written about the recruitment of court information officers and explained that their primary role was to 'act as an interface between the media, the judiciary and the community'.[500] This proactive effort by the court is especially needed in the context of a reduction of specialist court reporters and the need to ensure accuracy and a 'reliable and systematic flow of information to the public'.[501] Sharon Rodrick listed other forms of assistance the courts have provided the media including providing listings of cases online, publishing guidelines, allowing journalists to sit in on closed proceedings and publishing judgment summaries for high-profile cases.[502] In the Victorian County Court, there is also an accreditation system which gives accredited journalists access to a 'media portal', email notifications and access to a media room.[503] In the Supreme Court of Victoria, regular court reporters also have shared offices. Daniel Stepniak has discussed the court's allowance of audio-visual recordings and web-casting of proceedings as a way of promoting open justice. Despite a persisting reluctance to allow the televising of proceedings, Stepniak wrote that the courts are 'increasingly proactive in collaborating with and assisting the media with a view to enhancing the accuracy, quality and quantity of reporting'.[504]

I observed this proactive approach of the court in the *Ristevski* committal hearings. As mentioned, this case was attended each day by a large cohort of journalists. Magistrate Cameron frequently acknowledged the media's interest in the case and made efforts to make their job easier. For example, Magistrate Cameron recognised the tight deadlines the journalists would be working to and made sure that each witness's statement was efficiently processed by the lawyers, tendered to the court and then made available to the media as soon as practicable. Magistrate Cameron often had to prompt the lawyers when this had not been done. In doing so, however, she did say that the efficient running of the case was her priority. Channel 10 reporter Trent Dann, referring to

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[498] Interview with Cavanagh (n 432).

[499] Interview with Akerman (n 447).

[500] Jane Johnston, 'Public relations in the courts: A new frontier' (2001) 28(1) *Australian Journal of Communication* 109; Jane Johnston, 'Are the courts becoming more media friendly?' (1999) 21(1) *Australian Journalism review* 109.

[501] Jane Johnston, 'Three phases of courts' publicity: reconfiguring Bentham's open justice in the twenty first century' (2018) 14 *International Journal of Law in Context* 525, 529.

[502] Rodrick (n 491) 145.

[503] County Court of Victoria, 'Media Guide' (Web Page, 3 October 2018) <https://www.countycourt.vic.gov.au/news-and-media/media-guide>.

[504] Daniel Stepniak, 'Cameras in Court: Reluctant Admission to Proactive Collaboration' in Jane Johnston Patrick Keyzer, Mark Pearson (eds), *The Courts and the Media: Challenges in the era of digital and social media* (Halstead Press, 2012) 66.

another homicide case[505] in which the magistrate released statements following a media application, said such decisions can be very helpful:

> Any information, the more information you can get reporting in court, gives you less chance of making errors and that's what we try and stress to both the defence and prosecution, we are there to report the facts and we are not in the business of getting things wrong.[506]

Gregory, in his book about court reporting, advised new journalists that it was also up to them to be proactive and form relationships with legal officers, court staff and lawyers.[507] Gregory said it was only by showing up to court and getting to know the sources that they would trust the reporters and 'reward them with knowledge' such as a hearing date, copy of a judgment or sentencing remarks.[508]

In the *Ristevski* case, I observed journalists checking details with the lawyers and those who attended regularly did appear to form familiar relationships with legal counsel, as well as the Magistrate's clerk. Gregory reported to me in an interview that these relationships formed on the basis of both the journalist and lawyers wanting the facts to be accurate, and was most productive when the journalist was a regular and therefore trusted by the legal professionals.[509] Journalists interviewed also noted the support provided by other reporters in the courtroom when they needed to check details for accuracy or discuss legal concerns about what could or could not be published.[510] During the *Ristevski* committal hearing, I observed this camaraderie between journalists as they gathered together to discuss the case in the breaks as well as the relationships some built with the defence and prosecution lawyers. For example, I would observe journalists approach the lawyers before proceedings began to ask questions about that day's evidence, checking the accuracy of quotes and other facts. Younger added however that these relationships depend on the person, explaining that defence lawyers in particular sometimes refuse to share or confirm any information, which she said can be frustrating given 'we're the eyes and ears in the courtroom and it's public space'.[511] These relationships also, of course, depend upon the capacity journalists have to attend the court in person and on a regular basis.

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[505] I attended Mehmed Solmaz's committal hearing on 6 March 2018 where Magistrate Luiza Bazzani granted an application to release the charge sheets and the statements of the doctors who were giving evidence.

[506] Interview with Trent Dann, Channel 10 General Reporter (Annie Blatchford, Melbourne, 26 March 2018).

[507] Peter Gregory, *Court reporting in Australia* (Cambridge University Press, 2005) 22.

[508] Ibid.

[509] Interview with Peter Gregory, Former The Age Court Reporter (Annie Blatchford, Melbourne, 21 March 2018).

[510] Interview with Percy (n 430); Interview with Younger (n 430).

[511] Interview with Younger (n 430).

B *Translating legal proceedings into media reports*

Criminal trials can have 'the organized combat of spectator sports, the emotional tumult of a soap opera, and the heightened suspense of a thriller'.[512] This, of course, provides the media with a large pool of news stories. However, to reproduce every detail that occurs in the courtroom would not convey that drama, nor would it fit within the time and space constraints of a news piece.[513] Instead, only certain stages of the legal process, witnesses or evidence satisfy certain news values and are therefore included in the final news report.[514] Consequently, these reports are criticised by academics, members of the judiciary and lawyers for being 'distorted, selective and sensationalist',[515] as lacking 'accuracy, balance and comprehensiveness',[516] and for only picking up the 'juicy bits' and thereby giving a 'false impression of trials'.[517] This translation and simplification of what occurs in court gives rise to the one-dimensional media representations of homicide discussed in Chapter Three, such as the 'monster' murderer. Belinda Morrissey observed that often these 'sensationalist horror stories' are reproduced across all media outlets, with no alternative angles provided.[518] Even when new information about a homicide comes to light, it may be ignored if it does not fit the trajectory of the set narrative.[519]

Feminist legal and media studies have observed the way in which legal proceedings are translated into media narratives by comparing court transcripts, documents or judgments with media coverage.[520] This research illustrates the stark difference between what occurs in the courtroom and media outputs. For example, media coverage of a trial may give disproportionate attention to one side of the legal debate than the other, [521] or reproduce witness statements and legal rhetoric without contextualising where in the entire trial process such

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[512] Paul Gerwitz, 'Victims and Voyeurs at the Criminal Trial' (1995-1996) 90(3) *Northwestern University Law Review* 863, 886.

[513] Roderick Campbell, 'Access to the courts and its implications' (1999) 1 *UTS Law Review* 127.

[514] Jane Johnston and Rhonda Breit, 'Towards a narratology of court reporting' (2010)(137) *Media International Australia* 47.

[515] Craig Jones and Don Weatherburn, 'Public Confidence in the NSW Criminal Justice System: A Survey of the NSW Public' (2010) 43(3) *The Australian and New Zealand Journal of Criminology* 506, 521.

[516] Simons and Bosland (n 392) 196. See also Paul de Jersey, 'Courts and the Media in the Digital Era' in Jane Johnston Patrick Keyzer, Mark Pearson (eds), *The Courts and the Media* (Halstead Press, 2012) 35; Grabosky and Wilson (n 398).

[517] Grabosky and Wilson (n 398) 45. See also Justice John Basten, 'Court and media relationships' (Speech, National Judicial College Conference, 30 October to 4 November 2005).

[518] Morrissey (n 410) 14-15.

[519] Ibid.

[520] Emma Cunliffe, *Murder, Medicine and Motherhood* (Hart Publishing, 2011) ch 8; Morrissey (n 410); Deb Waterhouse-Watson, 'News media on trial: towards a feminist ethics of reporting footballer sexual assault trials' (2016) 16(6) *Feminist Media Studies* 952; Morgan (n 428).

[521] Deb Waterhouse-Watson, *Athletes, Sexual Assault, and "Trials by Media": Narrative Immunity* (Routledge, 2013) 960; Cunliffe (n 520) 165.

information arose and for what side of the case.[522] However, these studies also acknowledged that the media's simplification or misrepresentation of the legal proceedings may not always be deliberate. For example, Cunliffe noted the causal relationship between the 'asymmetrical' burden of proof (that the prosecution must prove its case beyond a reasonable doubt) and therefore, the media's equally asymmetrical reporting of the prosecution's narrative instead of the defence case.[523] Sandra Harris in her study of rape trials also acknowledged the rules of evidence as a constraint on how legal proceedings are reported, particularly the way they may prevent any form of personal narrative by excluding hearsay, opinion, speculation or belief.[524] The impact of the rules of evidence on how the media report IPHs will be considered in Chapter Five.

My interviews with journalists revealed efforts to report court proceedings in a fair and accurate manner within the constraints of what unfolds in the courtroom. For example, Akerman explained in her interview that she would always try, when possible, to refer back to the defence and/or prosecution's openings to contextualise that day's evidence and ensure the report was balanced. However, this was not always possible, particularly if it was the first day of a trial and only one side gave their opening address.[525] Similarly, Younger reported to me her conscious efforts to make sure material was always attributed to the right witness and in what context, such as cross-examination by the defence. She said, 'I feel like it's important to let the audience know in what environment those answers have been elicited'.[526] Notably, she acknowledged the importance of contextualising her reports about IPHs as best she could within the constraints of what is said in court. She said:

> rather than just saying another woman has been killed … trying to put some context around it and show where the holes in the system are. And it's not always like that, but if we can do that at least it makes a much stronger story as well.[527]

Younger's approach is reflective of news-production research that has indicated the influence of individual journalists who take the initiative to support feminist goals and reflect this in their research and reporting, despite the constraints of traditional journalistic practices.[528]

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[522] Morrissey (n 410) 19.

[523] Cunliffe (n 520) 162.

[524] Sandra Harris, 'Telling Stories and Giving Evidence' in Joanna Thornborrow and Jennifer Coats (eds), *The Sociolinguistics of Narrative* (John Benjamins, 2005) 215, 216; See also Morgan (n 428) 49.

[525] Interview with Akerman (n 447).

[526] Interview with Younger (n 430).

[527] Ibid.

[528] See Nancy Worthington, 'Negotiating news representations of rape: Reporting on a college sexual assault scandal' (2005) 33(4) *Media Report to Women* 6; Jenny Morgan and Margaret Simons, 'Changing Media Coverage of Violence Against Women: The Role of Individual Cases and Individual Journalists' (2018) 12 *Journalism Practice* 1165.

Ultimately, there is a reality that an entire legal proceeding cannot be conveyed by a journalist, and further, journalism is a business that runs on maintaining audiences. Percy described in her interview the process of translating court proceedings into print and broadcast news:

> It's all formularised and you just need to find the right pieces of the puzzle and you can still write in a really interesting way and highlight interesting parts of it, but it's a formula.[529]

Despite acknowledging the simplification of court proceedings and the overrepresentation of typically entertaining stories, Percy also expressed frustration at the criticisms that the media's portrayals of the courts are inaccurate, particularly when the media are denied access to all of the information that the judge and jury are privy to. She said:

> yes, we highlight certain things, because we are not transcribers. Our job here isn't just to sort of say, this is what happened and then that's what happened and then you said this. We don't lay it out in your narrative. But to say it's inaccurate or out of context or whatever, well that's kind of inaccurate and out of context because we don't have all of the information that you do.[530]

This reality also includes the immense time and economic pressures on court reporters and the media more broadly, which will now be discussed.

C *The logistics of court reporting*

A common complaint about court reporting, and a reality of the job which partly explains the media's simplification of legal proceedings, is that journalists are mostly unable to follow an entire trial. This is not a new problem. In 1989, Ericson et al recorded a number of criticisms from both journalists and court sources that journalists would not attend the whole proceeding and rely on lawyers to fill them in on missed information.[531] One lawyer commented that journalists did not usually have 'continuity within a case', which meant that the public did not get a proper 'flavour' of what goes on in the context of a trial.[532] Also in 1989, in Grabosky and Wilson's Australian study of crime news, the authors recognised the 'real impediments to coverage of courts and criminal procedure'.[533] Some of the practical difficulties the authors found through interviews with journalists included the inconvenient timing of court sittings making it difficult for journalists to meet afternoon deadlines,[534] and limited resources which meant journalists were only able 'pop into' court proceedings.[535]

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[529] Interview with Percy (n 430).

[530] Ibid.

[531] Ericson, Baranek and Chan, *Negotiating Control* (n 387) 38.

[532] Ibid 40.

[533] Grabosky and Wilson (n 398) 43.

[534] Ibid.

[535] Ibid 45.

These practical challenges have only been compounded in today's media landscape. For example, Simons and Bosland found that court reporters were increasingly unable to be in court for the duration of an entire case and will often not attend at all, relying instead on information provided by court liaison officers, judgment summaries or transcripts.[536] The authors identified the loss of experience, with a number of older reporters retiring or 'falling to newsroom cutbacks' being replaced by more junior reporters. With this, there is also a loss of networks between reporters, court staff and lawyers.[537] Another consequence is the loss of legal commentary and analysis, with journalists reporting that there is less capacity to 'wrap up' court cases, the time at which the broader context of a trial and the social problem will be analysed.[538]

Given the high-profile nature of the *Ristevski* case, there were journalists from the most prominent media outlets attending every day of the committal hearing. Even in these circumstances, however, only one news outlet was able to send the same journalist to each day of the trial. The *Herald Sun* dedicated one court reporter, Rebekah Cavanagh, to reporting the entire hearing. Cavanagh told me in her interview that the *Herald Sun* were fortunate to have a number of dedicated court and crime reporters which freed her up to attend the entire case and explained that coverage was also driven by the 'clicks' her stories were getting.[539] After Ristevski was committed for trial, Cavanagh convinced her bosses to allow her to sit through the pre-trial hearings so she could have a better understanding of what was going to happen in the trial. Speaking generally, she said by sitting in on the pre-trial hearings you are privy to legal arguments over the admissibility of evidence which may or may not be presented to the jury.[540] She explained that she could use that information in a post-verdict report explaining the evidence that the jury was not allowed to know. Given the high-profile nature of *Ristevski*, Cavanagh was given permission to attend the pre-trial hearings and, as a result, she was the only reporter in court on the day the murder charge was thrown out and Ristevski pleaded guilty to the manslaughter of Karen Ristevski. She explained that, on the same day, another high-profile case involving Cardinal George Pell had drawn a representative from every media outlet to the County Court. She reflected on her push to be in the pre-trial argument as a 'weighing up of resources', a process which she said is difficult to articulate but, in this case, worked in her favour.[541]

For the most part, however, journalists need to make daily decisions about which cases to follow.[542] Throughout the interviews, journalists reported strategies such as searching through court lists for known names, to attend

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[536] Simons and Bosland (n 392) 198.

[537] Ibid.

[538] Ibid 199.

[539] Interview with Cavanagh (n 432).

[540] Ibid.

[541] Ibid.

[542] Grabosky and Wilson (n 398) 9; Simons and Bosland (n 392) 199.

sometimes only administrative hearings to find out about upcoming court dates, keeping a diary they shared with their editors of these dates or speaking to the court clerks about the timing of hearings and other details, such as whether the accused is appearing by video link. These details would help the journalist make a judgment as to where that day's story might come from. Vella explained that there were certain types of hearings she would always attend because of a guaranteed story, such as plea hearings and sentences, but she said, overall, the job of court reporting is like 'being in a lot of places at once'.[543] *ABC* journalist Jane Lee also described the logistical dance of having to run around to different court rooms, communicate with colleagues about where they were and asking them to come and cover her in one court room so she could attend another. She added, 'You're kind of taking a bit of a gamble on what's going to be the most newsworthy thing of the day'.[544]

Lee explained that it would be preferable to follow cases through, even if on a certain day the evidence was uninteresting and no story came from it, but in today's context 'there's less ability to have the day go by and produce nothing'.[545] Many of the interviewees shared this view and would prefer to follow trials in their entirety, however, in today's media landscape that was rarely a possibility. Reflecting on the rare occasion he was able to follow an entire trial, *The Age* reporter Adam Cooper said:

> you get a bit of satisfaction and feel like you're across the story … In an ideal world, we would know everything about each case so we could write a really informed, considered and accurate and balanced story.[546]

V MEDIA REPORTING OF THE COMMUNITY'S RESPONSE

After the police investigation and legal proceedings, there is an opportunity for the media to expand its sources beyond those directly involved in the criminal justice process to the broader community. Often, it is at this stage that individual cases become a vehicle for examining broader social issues. Soothill and Walby explained that the cases that were made into large media events at the time of the investigation or court proceedings, and therefore 'linger in the public eye', are often those that continue to receive media attention after sentencing.[547] Schlesinger and Tumber described this moment as closing off 'one phase in the process of bringing retribution to those who have broken society's rules as expressed in the law' and is also the time at which the media can elaborate on the implications of the crime.[548] It is also often at this stage of the criminal justice process that the

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[543] Interview with Vella (n 434).

[544] Interview with Jane Lee, ABC Journalist (Annie Blatchford, Melbourne, 22 June 2018).

[545] Ibid.

[546] Interview with Adam Cooper, *The Age* Court Reporter (Annie Blatchford, Telephone, 28 August 2017).

[547] Keith Soothill and Sylvia Walby, *Sex Crime in the News* (Routledge, 1991) 87.

[548] Philip Schlesinger and Howard Tumber, *Reporting Crime: The Media Politics of Criminal Justice* (Clarendon Press, 1994). See also Gerwitz (n 512) 885.

representation of issues such as gender or race 'crystallises' in the media's reporting of the case.[549] Researchers have referred to cases which do invoke such a response as 'signal crimes': crimes that impact the broader public, beyond the individuals involved in the incident, and which can lead to a debate about wider systemic issues and solutions.[550] However, it is not all homicides that 'make societies reconsider where their values lie',[551] and even when a crime is considered worthy of attention and further debate, the way the problem is framed and the solutions offered are not always the most appropriate.[552]

In the context of domestic violence, scholars have observed how cases, and the female victims involved, become the faces of 'family violence', sometimes leading to productive conversation and positive change.[553] For example, Clifford and White described the murder of Luke Batty by his father Greg Anderson in 2014 as a 'signal crime' which, thanks to the advocacy of Luke's mother Rosie Batty, led to significant social and legal reform, including the establishment of the Victorian Royal Commission into Family Violence.[554] Other scholars have also examined what became known as the 'Batty effect', observing that her role in the conversation contributed to a shift from perceiving family violence as a private matter to a public issue that affected everyone.[555] In another study, the fact Rosie Batty embraced her victim identity at a time when there was growing awareness of family violence made her story one that was taken up by all of society, rather than another homicide that remained silent.[556] Another study, however, showed an opposite effect arising from the media's focus on the female victim. Janine Little examined the media phenomenon that surrounded the murder of the 'everyday mum-next-door' Allison Baden-Clay by her 'brutal antithesis' husband, Gerard Baden-Clay.[557] Little found that the four years of legal proceedings and media coverage about the case led to a narrative of a 'female tragedy', which revolved around the theme of 'love' and the accused man's affair with another woman.[558] Eventually Allison Baden-Clay became, according to one news article, the 'definition of domestic violence –

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[549] Schlesinger and Tumber (n 548) 230.

[550] Martin Innes, 'Signal crimes and signal disorders: notes on deviance as communicative action' (2004) 55(3) *The British Journal of Criminology* 335.

[551] Peelo et al (n 388) 257.

[552] N Berns, *Framing the Victim: Domestic Violence Media and Social Problems* (Aldine de Gruyter, 2004) 8.

[553] Erin Hawley, Katrina Clifford and Claire Konkes, 'The "Rosie Batty Effect" and the Framing of Family Violence in Australian News Media' (2018) 19(15) *Journalism Studies* 2304; Sandra Walklate et al, 'Victim stories and victim policy: Is there a case for a narrative victimology?' (2018) 15(2) *Crime, Media, Culture* 199.

[554] Katrina Clifford and Rob White, *Media and Crime: Content, Context and Consequence* (Oxford University Press, 2017) 37.

[555] Hawley, Clifford and Konkes (n 553).

[556] Walklate et al (n 553).

[557] Janine Little, 'Domestic violence beyond representation: finding a feminist subject in Allison Baden-Clay murder case' (2020) 20(1) *Feminist Media Studies* 1.

[558] Ibid 10.

the murder of a woman by her husband in her home'[559]. However, despite the broader conversations about power and control, Allison Baden-Clay was afforded no real agency and was represented as a 'tragic loss more than the cultural trauma that male violence against women actually is'.[560]

The connection between the *Ristevski* case and domestic violence only entered the narrative once Beale J expressly referred to the manslaughter as a 'serious case of domestic violence' that occurred in Karen Ristevski's own home, which 'should have been a sanctuary for her'.[561] This led to some coverage that connected the individual IPH to the broader problem of family violence including the use of sources such as family members,[562] family violence organisations[563] and politicians.[564] However, the discussion was narrow and mainly focused on Ristevski's 'inadequate sentence' rather than the victim's experience or the broader social reality of family violence.[565] The media coverage moved from immediate outrage to calls for change, in line with the concept of a 'signal crime', which has the capacity to result in 'impacts and effects on public sentiments and views far beyond those felt by people directly connected to the crimes'.[566] The public sentiment in the *Ristevski* case, however, was related to a punitive response rather than any preventative or social measures.[567] Further, as demonstrated throughout this discussion, no journalists when asked about *Ristevski* seemed to perceive the case as newsworthy because of its relationship with the broader issue of domestic violence.[568]

When speaking generally about court reporting, journalists did indicate that there was great satisfaction in writing stories once a verdict or sentence was handed down and sub judice contempt was no longer a risk.[569] At this point, journalists could report evidence that had not been admissible at trial, comments from family members or other sources outside the court room, or even publish commentary or analysis of the broader social

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[559] Ibid 12.

[560] Ibid.

[561] *DPP (Vic) v Ristevski* (n 404) [37].

[562] Melissa Davey, ''We didn't get justice': family anger as Borce Ristevski gets nine years for killing his wide Karen', *The Guardian* (online, 18 April 2019) <https://www.theguardian.com/australia-news/2019/apr/18/borce-ristevski-sentenced-nine-years-jail-killing-wife-karen>.

[563] Emma Younger, 'Borce Ristevski sentenced to nine years in jail for killing his wife Karen in unexplained manslaughter', *ABC News* (online, 18 April 2019) <https://www.abc.net.au/news/2019-04-18/borce-ristevski-jailed-for-manslaughter-of-wife-karen/11020540>; Domestic Violence Victoria, 'Response to the Sentencing of Borce Ristevski' (Media Release, 18 April 2019) <http://dvvic.org.au/media-releases/response-to-the-sentencing-of-borce-ristevski/>.

[564] Rebekah Cavanagh, 'Karen's brother: 'We didn't get justice today'', *Herald Sun* (online, 17 April 2019).

[565] See, eg, Rohan Smith and Natalie Wolfe, 'Borce Ristevski sentenced to nine years for killing wife Karen', *news.com.au* (online, 18 April 2019) <https://www.news.com.au/national/victoria/courts-law/borce-ristevski-sentenced-for-killing-wife-karen/news-story/fcaf9ace7a45405ccc8a9ef36ed2b4b5>.

[566] Martin Innes, *Signal Crimes: Social reactions to crime, disorder, and control* (Oxford University Press, 2014) 2.

[567] Editorial, 'Domestic death review', *Herald Sun* (22 April 2019).

[568] Interview with Percy (n 430).

[569] Interview with Cooper (n 546); Interview with Lee (n 544).

problem. Despite this opportunity, my interviews revealed that the court reporters, first and foremost, saw their role as reporting legal proceedings and not providing commentary or analysis. For example, Younger only embarked on an investigation of the police and family violence when she was taken off the court round,[570] and Percy reflected that she would one day like to write more analysis and commentary, but felt she needed training for that type of journalism.[571] Lee emphasised that she saw her role as a court reporter as providing an objective, fair and accurate report of proceedings which is why she was often frustrated by criticisms of the media for misrepresenting women's experiences of VAW. She said that such criticisms did not account for the restrictions court reporters are working within and that the debate should be more nuanced. She added:

> for some reason there is this bizarre standard that if we don't write everything that you believe about violence against women it means that we are also not against violence against women which is ludicrous because we see it more than they do every day.[572]

VI CONCLUSION

This chapter has reviewed literature on the media's production of crime news, tracing the process through the police investigation, legal proceedings and post-sentencing. By triangulating that literature with my observations of *Ristevski* and journalist interviews, I have demonstrated that a complex matrix of factors contribute to the media's often simplified and selective reporting of crime (and VAW). The starting point for understanding this process was the way news values guide which crimes attract media attention and drive the reporting of the more sensational and entertaining stories. My interviews showed that *Ristevski* satisfied a number of news values, in that the female victim was relatable, while the circumstances of the murder were also intriguing and, at times, scandalous, ensuring the story maintained the media and public's attention throughout the entire criminal justice process.

During the murder investigation, the complex police-media relationship clearly plays a role in the initial reporting of the crime. The police will feed information to the media, particularly when it will help the investigation, but just as easily go silent when the media are not needed. As shown in *Ristevski,* if the case is of particular interest, the media may carry out their own investigations, seeking information from sources beyond the police. While this may be an opportunity to contextualise an IPH, in *Ristevski*, this only led to speculative and sensational news reporting. In turn, this type of reporting can become detrimental, negatively affecting both the police investigation and the later legal proceedings. Beyond the reports of police investigations and court proceedings, the police have been shown to play a positive role in the broader discussion of VAW.

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[570] Interview with Younger (n 430).

[571] Interview with Percy (n 430).

[572] Interview with Lee (n 544).

During legal proceedings, the media's limited ability to accurately translate the complexity of legal proceedings is understandable given the practical realities of court reporting. These include managing multiple cases and courts at once, a demand to produce regular stories that fit within a specific formula, and the rarity of being given the opportunity to follow an entire trial. Despite these constraints, the journalists interviewed were all conscientious about the need for their reports to be accurate and, in some cases, made concerted efforts to explain the context of both the legal proceedings and VAW more broadly in their court reports. The courts have also attempted to alleviate the risk of inaccurate reporting with a more proactive approach to dealing with the media. Further, journalists' relationships with other court reporters and lawyers also appear to be integral to accessing information and checking for accuracy. However, the ongoing ability of journalists to build these relationships and use these strategies to help interpret complex court proceedings in today's media landscape is questionable.[573]

Once the proceedings have ended and sub judice contempt is no longer a constraint, the media are free to use sources beyond the criminal justice system. On the one hand, this can lead to constructive conversations about VAW, but may also entrench a simplified view of the crime and therefore simplified community responses, such as harsher sentencing. This was demonstrated in *Ristevski*, in that the post-sentencing media reporting was focused on the lenient sentence rather than the issue of domestic violence. Further, research and my interviews have shown that journalists do not always have the opportunity to 'wrap-up' court cases,[574] or they do not perceive their role as providing commentary or analysis about cases. Instead the journalists interviewed perceived their role as providing fair and accurate reports of the proceedings before them, which cumulatively help to ensure accountability, transparency, a voice for victims and, in some circumstances, societal change.

Without court reporting, there would also be a large part of the domestic violence story missing from the public discourse. However, in the current media landscape, the media's court-reporting function is becoming increasingly diminished. If the reporting that does survive these disruptions is reserved only for the entertaining stories which tend to misrepresent the reality of IPHs, the question arises as to how helpful this news coverage is in the endeavour to prevent VAW.[575] As suggested by journalist Jane Lee, a more 'nuanced debate' that goes beyond a simple critique is needed if the media's reporting of VAW related crimes is to be improved. This chapter has contributed to that debate by shedding light on the various factors that influence what IPHs are reported and how they are reported. The next chapter will also add to that debate by describing the legal constraints within which journalists work.

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[573] See, eg, Chief Justice Marilyn Warren, 'Open Justice in the Technological Age' (2014) 40(1) *Monash University Law Review* 45.

[574] Simons and Bosland (n 392) 199.

[575] See Peelo et al (n 388) 274.

CHAPTER FIVE:
THE LAW THAT SHAPES AND RESTRICTS THE INTIMATE PARTNER HOMICIDE STORY

I INTRODUCTION

Having mapped the literature on the media's representation of IPHs and the crime-news production process, I now turn to the legal discourse relevant to the rules, processes and restrictions that shape and restrict the media's reporting of IPH news stories. In particular, I consider how the law may play a role in the media's exclusion of prior violence and the broader social context of VAW in its representation of IPHs. Therefore, this chapter responds to research question number three:

> What are the legal rules, processes and restrictions which impact an IPH trial, and the media's reporting of IPHs, how do they operate and how do journalists understand them?

I answer this question in two parts. Firstly, I consider how the law shapes the raw material available to journalists to report. To do this, I draw on feminist legal analyses of the ways legal rules and processes often distort the reality of VAW in criminal proceedings.[576] Some of this work has contributed to significant legal reform addressing procedural and substantive laws that inadequately addressed the reality of domestic violence and women's experiences.[577] In particular, I look at the rules of evidence that exclude or decontextualise evidence of prior violence or the broader context of an IPH, the process of cross-examination and how it may discredit the witnesses' or victim's account of events, and the sentencing process. I do not intend to critique the legal rules or processes, as this has already received significant attention and is beyond the scope of my thesis. Instead, I use the existing literature to contextualise how legal rules and processes shape a legal narrative and the raw material available to journalists to report.

Secondly, I consider the publication restrictions that both reinforce the legal narrative by restricting journalists to a fair and accurate report of proceedings, and further restrict what information can and cannot be reported. I begin by outlining the rationale and operation of sub judice contempt, which

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[576] See, eg, Regina Graycar and Jenny Morgan, *The Hidden Gender of Law* (Federation Press, 2nd ed, 2002); Carol Smart, 'Law's Truth/Women's Experiences' in Regina Graycar (ed), *Dissenting opinions: Feminist explorations in law and society* (Allen & Unwin Australia, 1990) 1; Rosemary Hunter, 'Narratives of Domestic Violence' (2006) 28(4) *Sydney Law Review* 733.

[577] Jenny Morgan, 'Homicide law reform and gender: Configuring violence' (2012) 45(3) *Australian & New Zealand Journal of Criminology* 351; Bronwyn Naylor and Danielle Tyson, 'Reforming defences to homicide in Victoria: Another attempt to reform the gender question' (2016) 6(3) *Crime Justice Journal* 72.

prohibits the publication of material that may prejudice a fair trial. I consider the problems with the law that have been identified by numerous law reform bodies, locally and internationally.[578] In this section, I also consider the rationale and operation of the *Family Violence Protection Act 2008* (Vic) ('FVPA') publication restriction on intervention orders ('IVOs').[579] In the circumstances of an IPH, this restriction prevents the media from identifying the existence of the IVO, even though the victim has been murdered. I also outline the perspectives and approaches of journalists who I interviewed about these two publication restrictions.

Overall, this chapter examines the legal context in which IPH legal narratives are formed, and the complex legal restrictions that further constrain journalists' ability to contextualise IPHs. Like the previous chapter, this chapter acknowledges that court-reporting is a unique process and that any critiques of the media's representation of court proceedings require an understanding of the institution on which they report and the restrictions that arise. This knowledge and background of the trial context and how legal restrictions operate and impact journalists' reporting on IPHs, is later employed in the analysis in Chapters Six and Seven of both the trial process and media's reporting of *DPP v Paulino*, my case study.

II THE TRIAL PROCESS

Feminist legal scholars who have examined the criminal trial have argued that, through legal rules, processes and long-held assumptions, the law's findings of fact and thereby 'truth' often do not reflect the social reality of a problem, excluding context and discrediting women's stories.[580] The legal narratives constructed in VAW-related court proceedings give rise to similar gendered myths and stereotypes, for which the media are also criticised. These include a focus on individual and recent 'incidents' at the expense of recognising prior violence or coercive control,[581] and the perpetuation of

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[578] Australia Law Reform Commission, *Contempt* (Report No 35, June 1987) ('*ALRC: Contempt*'); Law Reform Commission of Western Australia, *Contempt by Publication* (Report No 93, March 2002) ('*WA Commission: Contempt by Publication*'); New South Wales Law Reform Commission, *Contempt by Publication* (Report No 100, June 2003) ('*NSWLRC: Contempt by Publication*'); Law Commission of New Zealand, *Reforming the law of contempt of court: A modern statute* (Report No 140, May 2017) ('*NZ Law Commission: Reforming the law of contempt of court*'); Law Reform Commission of Ireland, *Contempt of court and other offences and torts involving the administration of justice* (Issues Paper, 2016) ('*Law Reform Commission of Ireland: Issues Paper (2016)*'); Law Reform Commission of Ireland, *Report on Contempt of Court* (Report, September 1994) ('*Law Reform Commission of Ireland: Report (1994)*'); The Law Commission (England and Wales), *Contempt of Court (1): Juror Misconduct and Internet Publications* (Report No 340, December 2013) ('*The Law Commission (England and Wales): Juror Misconduct and Internet Publications*').

[579] *Family Violence Protection Act 2008* (Vic) s 166 ('*Family Violence Protection Act*').

[580] Smart, 'Law's Truth/Women's Experiences' (n 576) 2.

[581] Judith Buckingham, 'Romantic and "Real Life" Relationships in Criminal Law: Reconstructing Red Flags for Dangerousness/Lethality' (2010) 93 *New Zealand Law Review* 93, 94; Regina Graycar, 'Telling tales:

victim blaming or perpetrator excusing narratives, such as the victim could have left the relationship,[582] the perpetrator was acting 'out of character',[583] or the murder was caused by the perpetrator's mental health issues[584] or culture.[585] Overall, the court narratives 'deny and minimise' family violence.[586]

This is, of course, a product of the adversarial legal system. Carol Smart described the law as a 'binary system of logic' that condenses issues into oppositional terms such as guilty/innocent, with little room left for the nuances and complexities of a crime.[587] Instead, the legal process 'translates everyday experience into legal relevances' and 'makes its judgment on the scripted or tailored account'.[588] In this section, I consider the various legal rules and processes that shape this 'scripted and tailored account'. Alongside the body of feminist critiques of the criminal trial process and other sources such as law reform reports, I draw on a recent analysis of Victorian homicide and manslaughter trial sentencing judgments and transcripts between 2004 and 2015.[589] This research provides a useful, large-scale understanding of the how IPHs play out in Victorian courts from a feminist perspective.

A note on homicide law reform in Victoria

Before considering the different rules and processes, it is worth summarising the reforms of homicide laws and defences[590] that occurred in Victoria in 2005. These reforms followed years of calls from the community for the legal system to deal with the gender bias in legal responses to IPHs[591] and a Victoria Law Reform Commission ('VLRC') inquiry.[592] Unlike previous reforms to occur in Victoria, this

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legal stories about violence against women' (1996) 8(2) *Cardozo Studies in Law and Literature* 297, 303; Hunter (n 576) 753.

[582] Mandy McKenzie et al, 'Out of Character? Legal responses to intimate partner homicide by men in Victoria 2005-2014' (Discussion Paper No 10, Domestic Violence Resource Centre, 2016) 62, 71-2; Hunter (n 576) 751.

[583] McKenzie et al (n 582) 69-71; Linda Coates and Allan Wade, 'Telling it like it isn't: Obscuring perpetrator responsibility for violent crime' (2004) 15(5) *Discourse & Society* 499.

[584] McKenzie et al (n 582) 66-7; Coates and Wade (n 583) 514.

[585] Hunter (n 576) 754.

[586] Ibid 752.

[587] Carol Smart, 'The Woman of Legal Discourse' (1992) 1 *Social & Legal Studies* 29, 33.

[588] Carol Smart, *Feminism and the Power of Law* (Routledge, 1989) 11.

[589] McKenzie et al (n 582).

[590] *Crimes (Homicide) Act 2005* (Vic) ('*Crimes (Homicide) Act'*).

[591] McKenzie et al (n 582) 17; Naylor and Tyson (n 577) 73.

[592] Victorian Law Reform Commission, *Defences to homicide* (Final Report, October 2004) ('*VLRC: Defences to Homicide*').

reform reference and the outcomes were informed by an approach that appropriately considered the social context within which IPHs occur.[593]

These reforms, followed by further reforms in 2014,[594] saw the abolition of the controversial[595] partial defence of provocation.[596] Provocation operated to downgrade a murder charge to manslaughter in circumstances where the accused 'lost control' in response to the actions of the victim.[597] There were changes to the rules of evidence which expressly provided for the introduction of evidence that showed the social context of family violence.[598] In later reforms to the *Evidence Act 2008* (Vic) ('*Evidence Act*'), there were changes[599] to the admissibility of 'hearsay statements' made by a person, such as a deceased person, who is not available to give evidence.[600] Together, these reforms had the effect of providing guidance on how contextual information about family violence is 'explicit and relevant' to the trial process,[601] 'expressly recognising the gendered nature of the defences to homicide'.[602]

However, despite these and other legal reforms regarding IPHs, feminist legal scholars have found that misogynistic and dated paradigms and assumptions about VAW continue to persist in IPH trials.[603] With this context in mind, I consider the current operation of the rules of evidence, the legal processes of

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[593] As cited in Morgan, 'Homicide law reform and gender' (n 577) 361, the following empirical studies informed the VLRC inquiry: Kenneth Polk, *When Men Kill: Scenarios of Masculine Violence* (Cambridge University Press, 1994); Jenny Morgan, 'Who Kills Whom and Why: Looking Beyond Legal Categories' (Victorian Law Reform Commission, 2002); Alison Wallace, *Homicide: The Social Reality* (NSW Bureau of Crime Statistics and Research, 1986).

[594] *Crimes Amendment (Abolition of Defensive Homicide) Act 2014* (Vic) ('*Crimes Amendment (Abolition of Defensive Homicide) Act*').

[595] See Morgan, 'Homicide law reform and gender' (n 577); *VLRC: Defences to Homicide* (n 592).

[596] *Crimes Act 1958* (Vic) s 3B ('*Crimes Act*'). A new and lesser offence of 'defensive homicide' was introduced that was to be available for women who killed in circumstances where they had a 'genuine belief' that they needed to kill in self-defence. After its introduction, the offence was disproportionately used by men who killed other men and was consequently abolished in the 2014 reforms.

[597] Morgan, 'Homicide law reform and gender' (n 577).

[598] *Evidence Act 2008* (Vic) s 322J (formerly s 9AH) ('*Evidence Act*').

[599] These changes were recommended in *VLRC: Defences to Homicide* (n 592) 131.

[600] McKenzie et al (n 582) 22.

[601] Naylor and Tyson (n 577) 73.

[602] McKenzie et al (n 582) 25.

[603] Stella Tarrant, Julie Tolmie and George Giudice, 'Transforming legal understandings of intimate partner violence' (Research Report, ANROWS, June 2019); McKenzie et al (n 582); Naylor and Tyson (n 577). Feminist scholars have also warned that legal reform alone will not bring about change to the gendered nature of the law: see Smart, *Feminism and the Power of Law* (n 588); Heather Douglas, 'A consideration of the merits of specialised homicide offences and defences for battered women' (2012) 45(3) *Australian & New Zealand Journal of Criminology* 367.

cross-examination and sentencing, and how these various legal rules and methods shape the raw material of an IPH.

A *The rules of evidence*

The rules of evidence are a form of procedural law that governs what material can be considered by the court to determine factual issues, how it is presented and how the court decides the factual issues on the basis of the evidence.[604] The way the rules of evidence operate to allow and exclude evidence is complicated, or as put by the Queensland Taskforce on Women and the Criminal Code:

> The artificial way in which the law isolates pieces of evidence as inadmissible and removes them from the picture is incomprehensible to most ordinary people who encounter the criminal justice system. The jury is often asked to decide what happened in a situation when they have only been given some of the jigsaw pieces. And they do not even know what proportion of the pieces they have![605]

However, as stated by the Australian Law Reform Commission ('ALRC') in its 1987 review of evidence law, given the practical context of a criminal trial, which necessarily involves factors such as human testimony and bias, the rules of evidence cannot realistically establish 'the truth'.[606] The ALRC argued that the aim of the rules is instead to establish the facts, rather than seek the truth.[607] In the context of IPHs, this is particularly challenging given 'one of the most important witnesses to the event is dead'.[608]

With that constraint in mind, evidence that does often feature in IPH trials includes that of prior violence or threats, evidence from friends, family or police and health workers who have either witnessed violence or the physical signs of violence, and evidence about conversations between those people and the deceased about violence.[609] Evidence is also sometimes given by expert witnesses.[610] The purposes for which this evidence is brought varies, but I focus specifically on three categories that commonly give rise to evidence of prior violence and the broader context of both the relationship and VAW. These are: hearsay, relationship and expert evidence.

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[604] Stephen Odgers, *Uniform Evidence Law in Victoria* (Thomson Reuters, 2010) 1.

[605] Office for Women, Department of the Premier and Cabinet, Queensland Government, *Report of the Taskforce on Women and the Criminal Code* (2000) 133.

[606] Australian Law Reform Commission, *Evidence* (Report No 38, June 1987) [38] ('*ALRC: Evidence Report 38*').

[607] Ibid [35].

[608] *VLRC: Defences to Homicide* (n 592) 131.

[609] McKenzie et al (n 582) 80; *VLRC: Defences to Homicide* (n 592) 130.

[610] *VLRC, Defences to Homicide* (n 592) 130.

Before considering these types of evidence, the foundational principle and first hurdle that determines the admissibility of all evidence is the test of 'relevance'.[611] In a criminal trial, the evidence must be relevant to the 'facts in issue', which are the elements of the offence and any defences that are not agreed upon by both the defence and prosecution.[612] Evidence is considered relevant when it makes a fact in issue more probable.[613] In a murder, a fact in issue may be whether the accused had an intention to kill the victim, or whether there was a lawful defence for committing the act.[614] Even once evidence introduced by the prosecution in a criminal trial is found to be relevant to a fact in issue, on an application by the defence, the trial judge can choose to exclude the evidence if its probative value is outweighed by the danger of unfair prejudice it poses to the accused.[615] The judge may also decide that the evidence be used in a different way to reduce its prejudice, such as editing the content, which may distort the evidence or take it out of context.[616] There are also a number of exclusionary rules that may apply and further filter what material can be brought before the court.

1 *Hearsay evidence*

Hearsay evidence is evidence of 'previous representations' that were made by someone (such as the deceased person in a homicide trial) who is not the witness giving the evidence, if the statement is being used to prove the asserted fact.[617] The hearsay rule excludes this type of evidence and operates to ensure that only reliable material that can be tested through cross-examination is put before a court.[618] The rule also recognises the possibility that previous representations may potentially have been fabricated or misleading at the time they were made.[619]

The hearsay rule is problematic in an IPH trial given the 'hidden nature of family violence', where often the only evidence available to prove prior violence is 'representations' restated by the victim to family, friends or others.[620] Hearsay therefore has the effect of limiting the opportunities available to have the

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[611] *Evidence Act* (n 598) s 55.

[612] *Smith v The Queen* (2010) 206 CLR 650, 654 [7] (Gleeson CJ, Gaudron, Gummow & Hayne JJ) ('*Smith*').

[613] *Martin v Osborne* (1936) 55 CLR 367, 375 (Dixon J) ('*Martin v Osborne*').

[614] 'Bench Notes: Intentional or Reckless Murder', *Judicial College of Victoria* (Web Page, 27 March 2019) <http://www.judicialcollege.vic.edu.au/eManuals/CCB/4478.htm>.

[615] *Evidence Act* (n 598) s 137. See also Australian Law Reform Commission, *Evidence Interim Report* (Interim Report No 26, August 1985) 549 [957] ('*ALRC: Evidence Interim Report 26*').

[616] *Calderwood v The Queen* (2007) 172 A Crim R 208, 217 [41] ('*Calderwood* ').

[617] *Evidence Act* (n 598) s 59(1).

[618] *ALRC: Evidence Interim Report 26* (n 615) [663].

[619] *ALRC: Evidence Report 38* (n 606) [126].

[620] McKenzie et al (n 582) 81; *VLRC: Defences to Homicide* (n 592) 143 [4.36].

victim's voice heard in a trial.[621] However, there are exceptions that provide for the admission of hearsay evidence, such as those introduced when Victoria adopted the Uniform Evidence Laws in 2008. For example, 'first hand hearsay' allows for a witness to retell the deceased's person's 'previous representation' if the deceased person saw, heard or otherwise perceived the 'asserted fact' first hand,[622] rather than having learnt about the fact from another person.[623] The deceased person must have also made the representation to the witness shortly after the asserted fact occurred and in circumstances where the statement was unlikely to be a fabrication.[624] Or, if a witness is giving evidence of a previous representation made by the deceased person, which was contemporaneous and was about that person's 'health, feelings, sensations, intention, knowledge or state of mind', the hearsay rule may not apply.[625] If these (or other) exceptions apply, the previous representation can be admitted as going towards the truth of the asserted fact.

As will be discussed below, it is also possible for otherwise hearsay evidence to be admitted as 'relationship evidence', which is used to prove the state of mind of the deceased or accused and the state of the relationship.[626] However, the implications of this is that the evidence of, for example, the deceased's admission to a friend about the accused's violence, cannot be used to prove that what the deceased person said was true. Instead, it may only be used to show the accused's state of mind or the nature of the relationship between the deceased and accused. The distinctions in how evidence can be used by the jury are not only considered to be 'artificial and often illogical',[627] but also distort the reality of any prior violence. The VLRC stated:

> This may not only affect the jury's assessment of the accused's actions, but may also misrepresent what has occurred and be deeply upsetting for friends and family members of the victim.[628]

2 *Relationship evidence*

Evidence of the broader context of homicides has always, to an extent, been admissible and often introduced by way of 'relationship evidence', which is evidence that shows the nature of the relationship

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[621] See Neal A Hudders, 'The problem of using hearsay in domestic violence cases: is a new exception the answer?' (2000) 49(4) *Duke Law Journal* 1041; Paul Gerwitz, 'Victims and Voyeurs at the Criminal Trial' (1995-1996) 90(3) *Northwestern University Law Review* 863.

[622] *Evidence Act* (n 598) s 65(2).

[623] Ibid s 62(2).

[624] Ibid s 65(2)(b).

[625] Ibid s 66A.

[626] *VLRC: Defences to Homicide* (n 592) 144 [4.39].

[627] Ibid 154 [4.72].

[628] Ibid 147 [4.46].

between two relevant people.[629] This can include evidence of prior violence and may go towards proving motive or intention to murder, particularly in cases where the accused argued it was an accident or denied any involvement.[630] Relationship evidence may also be used to show the state of mind of the accused and the deceased at the time of the homicide.[631] For example, this may include evidence that showed the deceased's fear of the accused, or evidence of the accused saying derogatory things about the deceased.[632] This is particularly noteworthy given that fear is a common experience expressed by family violence victims,[633] as is the pattern of perpetrators demeaning their partners.[634] Two limitations on the use of relationship evidence are that it cannot be used if it is referring to an incident that was 'isolated or remote in time from the death',[635] and it cannot be led as evidence of 'bad character or of a propensity towards violence of an accused'.[636] In the High Court case *Wilson v R*, Menzies J stated that relationship evidence was necessary to assist the jury in understanding the context of a homicide, which may be one of a 'tense and bitter relationship' between the accused and deceased, rather than perceiving the incident to have occurred in a 'vacuum'.[637]

As mentioned above, relationship evidence is another means through which the prosecution can adduce evidence of the deceased's statements or, more broadly, 'evidence of family violence', without it being classified and excluded as hearsay.[638] McKenzie et al noted this practice in the case study of Soltan Azizi, who was accused of murdering his wife Marzieh Rahimi. In the first trial, hearsay evidence was adduced from various witnesses about statements made by the victim.[639] This evidence showed Azizi had a violent history and that Marzeih Rahimi was afraid of him and considering leaving him. Azizi appealed his guilty conviction, at which point some of this evidence was ruled inadmissible by the Victorian Court of Appeal and a retrial was ordered.[640] In the second trial, the prosecution took a

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[629] McKenzie et al (n 582) 81. See *Wilson v R* (1970) 123 CLR 344 ('*Wilson*').

[630] McKenzie et al (n 582) 82; *VLRC: Defences to Homicide* (n 592) 133 [4.12].

[631] *R v Gojanovic* (2002) 130 A Crim R 179, 184 [21] (Coldrey J) ('*Gojanovic*').

[632] *Frawley v R* (1993) 69 A Crim R 208, 220 (Gleeson CJ) ('*Frawley*') cited in the Victorian cases *R v Anderson* (2000) 1 VR 1, 13 [32] ('*Anderson*') and *R v Parsons* (2000) 1 VR 161, 167-8 [17] (Brookings JA) ('*Parsons*').

[633] Helen McLaren, Jane Fisher and Lana Zannettino, 'Defining quality of life indicators for measuring perpetrator intervention effectiveness' (Research Report, ANROWS, March 2020).

[634] See Evan Stark, *Coercive control: the entrapment of women in personal life* (Oxford University Press, 2007).

[635] *Gojanovic* (n 631) 180 [3].

[636] Ibid.

[637] *Wilson* (n 629) 344 (Menzies J, McTiernan and Walsh JJ concurring).

[638] McKenzie et al (n 582) 83.

[639] *R v Azizi* [2010] VSC 112 ('*R v Azizi*').

[640] *Azizi v R* (2012) 224 A Crim R 325 ('*Azizi v R*').

different approach to having this evidence of prior violence introduced. The prosecution argued that Marzieh Rahimi's statements were relevant to the deceased's state of mind, proving the she was fearful of her husband and unlikely to have provoked him (which had been argued by Azizi). The evidence was therefore admitted as 'relationship evidence' rather than hearsay evidence, as the statements were not being used to prove that violence occurred but instead to show the nature of the relationship.[641] Despite the complicated legal constraints on how evidence of family violence and representations made by the victim can and cannot be used, this example shows that the use of relationship evidence is a valuable avenue to ensure the victim's voice is heard at trial.

3 *Expert evidence*

The VLRC stated in its review of homicide laws that:

> it cannot be assumed that all judges and jurors have a good understanding of the nature and effects of family violence and some may therefore misinterpret what has occurred.[642]

Therefore, the VLRC emphasised the importance of supplementing case-specific evidence with expert evidence from family violence researchers or practitioners to help jurors and judges challenge biases and common myths about family violence.[643] Such evidence can demonstrate the perspective and behaviour of a domestic violence victim,[644] explain why the victim did not leave the relationship,[645] explain how the perpetrator appeared as a 'good guy' outside the privacy of his home,[646] as well as provide contemporary knowledge about the dynamics of violent relationships and assist the jury and judge to understand their own biases.[647]

The VLRC argued that the relevance of expert evidence should be made explicitly clear in legislation.[648] Following that recommendation, the scope of evidence that goes to the broader context of family violence which can be admitted is now specified in the *Crimes Act 1958* (Vic). This includes: the history of the relationship between the accused and the deceased, the cumulative psychological effect on the deceased, the impact of social, cultural and economic factors and the general nature and dynamics of

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[641] McKenzie et al (n 582) 83.

[642] *VLRC: Defences to Homicide* (n 592) 174 [4.99].

[643] Ibid 161-9, 183.

[644] McKenzie et al (n 592) 87; Carolyn Copps Hartley, '"He Said, She Said"' (2001) 7(5) *Violence Against Women* 510, 540.

[645] Lisa A Linsky, 'Use of Domestic Violence History Evidence in the Criminal Prosecution: A Common Sense Approach' (1995) 16(1) *Pace Law Review* 73, 83.

[646] Hartley (n 644) 540.

[647] *VLRC: Defences to Homicide* (n 592) 183 [4.125].

[648] Ibid 184 [4.127].

family violence.[649] In 2011, the Director of Public Prosecutions also announced a family violence policy, which encouraged solicitors and prosecutors to consider calling expert evidence to 'help explain some of the social, economic and psychological factors which operate in the context of family violence'.[650]

However, despite these measures, McKenzie et al found that expert evidence was rarely used by the prosecution in the cases they considered, despite the fact that at least half of the accused men had histories of violence towards intimate partners.[651] For example, the authors suggested that in the Victorian case *R v Lubik*,[652] in which the accused was found guilty of manslaughter instead of murder, there may have been a different outcome had expert evidence about the social context of family violence been introduced. In this case, the defence argued that Lubik's wife Barbara Lubik had been the one to attack the accused. In response, the prosecution led evidence of Barbara Lubik's fear of the accused and therefore it was unlikely that she would have initiated a physical confrontation. The authors suggested that further expert evidence about the way domestic violence victims behave in such a context may have pointed the jury towards a different verdict.[653]

B *Cross-examination*

Aside from the opening and closing addresses, cross-examination is the process whereby the lawyers have the opportunity to present their versions of the dispute to the judge and jury.[654] Lawyers do this through challenging, weakening or casting doubt on the opposing parties' version of events.[655] In the context of rape and sexual assault trials, it has become a recurring observation of feminist researchers[656]

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[649] *Crimes Act* (n 596) s 322J.

[650] John Champion, 'Director's Family Violence Policy Launch' (Speech, 10 November 2011).

[651] Expert family violence evidence was found to be used in cases where the accused claimed to be a victim of domestic violence and the evidence was therefore introduced by the defence: see McKenzie et al (n 582) 87. The use of expert evidence on the social context of domestic violence has recieved significant attention in the context of homicides where the accused person was the primary victim of domestic violence perpetrated by the deceased person. See, eg, Julie Stubbs and Julia Tomie, 'Falling Short of the Challenge? A comparative assessment of the Australian use of expert evidence on the battered woman syndrome' (1999) 23 *Melbourne University Law Journal* 709.

[652] *R v Lubik* [2011] VSC 137 ('*Lubik (2011)*'); *R v Lubik* [2010] VSC 465 ('*Lubik (2010)*').

[653] McKenzie et al (n 582) 88. See also Naylor and Tyson (n 577) 73.

[654] Susan Ehrlich, 'Perpetuating - and resisting - rape myths in trial discourse' in Elizabeth A Sheehy (ed), *Law, Legal Practice and Women's Activism* (University of Ottowa Press, 2012) 392.

[655] Ibid. See also Hartley (n 644).

[656] See, eg, Smart, *Feminism and the Power of Law* (n 588); Peggy Reeve Sanday, *A Woman Scorned: Acquaintance Rape on Trial* (Doubleday, 1996); Alison Young, 'The waste land of the law, the wordless song of the rape victim' (1998) 22 *Melbourne University Law Review* 442; Susan Estrich, 'Palm Beach Stories' (1992) 11(1/2) *Law and Philosophy* 5; Ehrlich (n 654); Coates and Wade (n 583); Nan Seuffert, 'Domestic Violence, Discourses of Romantic Love, and Complex Personhood in the Law' (1999) 23(1)

that the victim's credibility is questioned and their life 'marshalled' by the defence to 'fulfil the requirement of casting doubt upon the prosecution's case'.[657] For example, Nan Seuffert identified the tendency for defence lawyers to assume, through cross-examination, that it was 'contradictory for women to love men who abuse them physically, psychologically and sexually'; suggesting that they are in fact not credible witnesses and/or lying about the abuse.[658] Similarly, Kim Lane Scheppele noted in her analysis of the United States Senate Judiciary Committee inquiry into Anita Hill's allegations of sexual harassment against Supreme Court candidate Clarence Thomas, that the Senators' use of cross-examination techniques decontextualised and discredited her 'evidence'[659]. In particular, some questioning suggested that it was doubtful she would continue to work for someone who had harassed her.[660] Alison Young, in her analysis of rape trial transcripts, described the way cross-examination techniques were used to make victims 'rub up against the fantasy that informs the defence account, made to perform as a character in its narrative'.[661]

The use of cross-examination techniques in IPH trials can also contribute to a narrative that decontextualises the social reality of VAW and discredit the victim's version of events. This has been observed in studies of trials in which the accused is on trial for the murder of their partner who was the primary perpetrator of domestic violence.[662] Tarrant et al analysed the case *Western Australia v Liyanage*,[663] in which Chamari Liyanage was found guilty of the manslaughter of her husband, Dinendra, who had sexually, physically and emotionally abused her for years. In her trial, the prosecution's cross-examination of Chamari involved repeatedly asking her about the one occasion when she did successfully leave her partner but then eventually returned.[664] The authors argued this line of questioning suggested she could have easily left the abusive relationship,[665] discrediting her argument

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Melbourne University Law Review 211; Patricia Easteal and Keziah Judd, ''She Said, He Said': Credibility and sexual harassment cases in Australia' (2008) 31 *Women's Studies International Forum* 336.

[657] Young (n 656) 445.

[658] Seuffert (n 656) 211-12.

[659] Kim Lane Scheppele, 'Manners of Imagining the Real' (1994) 19(4) *Law & Social Inquiry* 995, 1003-1006.

[660] Ibid, 1017-8.

[661] Young (n 656) 456.

[662] Elizabeth Sheehy, *Defending Battered Women on Trial* (UBC Press, 2014); Tarrant, Tolmie and Giudice (n 603).

[663] *The State of Western Australia v Liyanage* [2016] WASC 12 ('*The State of Western Australia v Liyanage*'); *The State of Western Australia v Liyanage [No 2]* [2016] WASC 18 ('*The State of Western Australia v Liyanage [No 2]*'). Liyanage's appeal against the conviction of manslaughter was rejected by the Court of Appeal: see *Liyanage v The State of Western Australia* [2017] WASCA 112 ('Liyanage v The State of Western Australia').

[664] Tarrant, Tolmie and Giudice (n 603) 49.

[665] Ibid.

that killing her partner was the only viable option to escape the abuse.[666] Similarly, Elizabeth Sheehy observed that, in the trial of a woman accused of murdering her partner after years of domestic abuse, a number of cross-examination tactics were used to discredit the woman and decontextualise the dynamics of a domestic violence relationship.[667] These included blaming the accused for not disclosing the abuse, portraying the deceased man's actions as reasonable, minimising the abuser's violence, and rationalising the deceased's sexual behaviour.[668] Sheehy also observed the common narrative of sexual assault claims being fabricated as arising in the context of an IPH trial. For example, in a string of questions to which the accused woman could only reply 'yes', the prosecution suggested that her failure to report being sexually assaulted by the deceased (which triggered the events preceding the murder) did not 'make a whole lot of sense' implying fabrication.[669] What is excluded and ignored in these narratives is the reality that women cannot just 'get out' of such relationships.

C *Sentencing*

Myths and misconceptions can also arise in sentencing judgments, particularly when the judge is considering 'mitigating factors' that diminish the responsibility of the accused, such as intention, provocation or the accused's character.[670] Further, the rules and purposes of sentencing can restrict the extent to which certain information can be considered, such as prior violence.[671] However, this stage of the trial process is also an opportunity for the judge to include context on family violence and raise awareness about gender inequality.[672] The judgment can therefore 'send a message to the broader community about social expectations of men and women in relationships'.[673]

Despite the abolition of provocation, studies have found that provocation-type narratives still emerge in the sentencing process. Through a consideration of mitigating factors, the accused can be framed as acting 'out of character'[674] or 'losing it', and that the homicide was triggered by the victim's

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[666] Ibid 51.

[667] Sheehy (n 662).

[668] Ibid 217-8.

[669] Ibid. See also Young (n 656).

[670] McKenzie et al (n 582) 106, 108. See also Sarah Krasnostein, 'Character assessment in sentencing decisions', *The Saturday Paper* (online, 1 June 2019).

[671] *Sentencing Act 1991* (Vic) ('Sentencing Act').

[672] McKenzie et al (n 582) 115-6.

[673] Ibid 117.

[674] Ibid.

behaviour.[675] McKenzie et al found that a 'loss of control' in response to the victim's behaviour was considered as a mitigating factor in five cases.[676] However, they also found that the judges did not give much weight to this argument, suggesting that such excuses would not be tolerated. Mental illness, however, was accepted as a mitigating factor by judges in 12 cases.[677] The authors found that the accused's mental condition was often 'triggered or exacerbated by the victim's desire to separate or other problems in the relationship',[678] a finding reflected in other studies on sentencing judgments.[679] Although mental health problems are a part of the reality of IPHs, the authors contended that these representations distorted the 'role of the offender's attitude towards his partner and the relationship'.[680]

Offending committed in a context of domestic violence, especially when there should have been a relationship of trust between the offender and victim, is strongly condemned by the Victorian Courts.[681] Despite this stance however, prior violence or 'past history',[682] is often not given much weight in sentencing due to the high standard of proof for aggravating factors. Aggravating factors, which include those that are adverse to the accused, must be proved beyond a reasonable doubt by the prosecution.[683] Further, the *Victorian Sentencing Manual* stated that past history or prior criminality cannot be used as an aggravating factor, but rather, may contextualise other considerations such as moral culpability or the likelihood of rehabilitation.[684] Notably however, the manual also stated that a breach of a family violence intervention order will 'exacerbate the seriousness of offending'.[685] Further, McKenzie et al. wrote that it is unclear whether 'past history' includes evidence beyond the offender's recorded previous criminal history.[686] Not surprisingly, because of this legal framework and the reality that much prior

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[675] Danielle Tyson, *Sex, Culpability and the Defence of Provocation* (Routledge, 2013) 126-8; McKenzie et al (n 582) 63-4. See also Coates and Wade (n 583): The authors similarly found sexual assaults trial judgments to excuse violence on the basis of the accused acting out of character or losing control.

[676] McKenzie et al (n 582) 108.

[677] Ibid 112.

[678] Ibid 115.

[679] See, eg, Guy Hall, Marion Whittle and Courtney Field, 'Themes in Judges' Sentencing Remarks for Male and Female Domestic Murderers' (2016) 23(3) *Psychiatry, Psychology and Law* 395; Monica Burman, 'The Ability of Criminal Law to Produce Gender Equality: Judicial Discourses in the Swedish Criminal Legal System' (2010) 16(2) *Violence Against Women* 173.

[680] McKenzie et al (n 582) 115.

[681] See, 'Victorian Sentencing Manual', *Judicial College of Victoria* (Web Page, 2018) 5.2.8.3 <http://www.judicialcollege.vic.edu.au/eManuals/VSM/index.htm#13888.htm> ('*Victorian Sentencing Manual*').

[682] *Sentencing Act* (n 671) s 5(2).

[683] *Evidence Act* (n 598) s 141. See also R v Stratton [2008] VSCA 130, [35] (Ashley JA) ('Stratton').

[684] Ibid 6.3.1.2.

[685] *Victorian Sentencing Manual* (n 681) 21.3.3.

[686] McKenzie et al (n 582) 105.

violence goes unrecorded, McKenzie et al found that the histories of violence in the cases they analysed tended to 'fade from view' in the sentencing process.[687]

While an individual offender's patterns of prior violence may not enter sentencing narratives, Mckenzie et al did find many examples of judgments that highlight the broader context and dynamics of family violence. For example, McKenzie et al found that, in nine out of 51 cases, judges made 'implicit or explicit comments affirming the woman's right to leave a relationship to commence a new relationship or to otherwise act autonomously'.[688] Judges also acknowledged the breach of trust between a victim and the accused and the fact that the victim should have been safe in her own home.[689] Other studies have also observed that judges seem to be 'picking up on the spirit of the reforms',[690] with judges affirming women's rights to equality and showing an understanding that family violence is both physical and emotional.[691] Some scholars have noted that this shift began before the most recent reforms, as early as 2000.[692]

However, McKenzie et al observed that, overall, family violence was discussed in the sentencing judgments in a way that reflected 'misconceptions that continue to be common in the wider Victorian community'.[693] The authors argued that, ultimately, the legal professionals' and judges' understandings (or misconceptions) about family violence play a significant role in whether prior violence and family violence evidence was perceived as relevant.[694] This is an argument echoed in several feminist legal studies of the gendered nature of the law, many of which advocate for the education of legal professionals and the judiciary on the broader context of family violence.[695]

While the major focus of my thesis is the influence of publication restrictions on media reporting, it is important to acknowledge that there are a wide range of other constraints on the material available for media reporting. Above, I have canvassed the relevant rules of evidence and legal processes that can restrict material on prior violence, the relationship between the accused and victim, and the broader

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[687] Ibid.

[688] Ibid 115.

[689] Ibid.

[690] Naylor and Tyson (n 577) 82.

[691] See, eg, Rosemary Hunter and Danielle Tyson, 'Justice Betty King: A study of feminist judging in action' (2017) 40(2) *UNSW Law Journal* 778.

[692] Naylor and Tyson (n 577) 82.

[693] McKenzie et al (n 582) 124. See also *Victorian Sentencing Manual* (n 681). The manual emphasised the need to deter dometic violence.

[694] McKenzie et al (n 582) 124.

[695] Ibid; Naylor and Tyson (n 577) 85; Hunter (n 576).

social context of domestic violence in open court. The next section moves to my primary focus, the direct restrictions on publication.

III PUBLICATION RESTRICTIONS

Beyond what material is made available in court, there are a range of legal restrictions that further hinder a journalist's ability to report on prior violence and the broader social context of VAW. Journalist Madeleine Morris explained the impact of the numerous legal restrictions on her reporting of VAW:

> This [laws and rules] is one of the reasons that the truth about the extent of family violence and its devastating impact on our community and individuals remained suppressed for so long.[696]

This sentiment was shared by journalists and editors who were consulted by the Australian Press Council ('APC') in 2016 to support the development of guidelines for the reporting of family violence. In one interview, the then APC Chair David Weisbrot compared the reporting of domestic violence to a legal 'minefield'.[697] The resulting APC guidelines issued in 2016 articulated the burdensome nature of reporting on family violence, referring to the numerous and often inconsistent state, territory and Commonwealth laws.[698] The guidelines were supported by a one-page document focused solely on these legal restrictions.[699]

Further to the direct impact of legal restrictions, is the confusion caused by the nature of the media landscape today. As discussed in the previous chapter, the impact of digital platforms has significantly disrupted how the media, and court reporters, operate.[700] The international reach of online publications and the ability for content to be reproduced and shared widely has also impacted the operation and

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[696] Madeleine Morris, 'ABC journalist Madeleine Morris reflects on the difficulties of reporting on domestic violence', *ABC News* (online, 18 March 2015) <http://www.abc.net.au/news/2015-04-02/journalist-reflects-difficulties-reporting-on-domestic-violence/6369430>.

[697] Interview with David Weisbrot, Former Australian Press Council Chair (Annie Blatchford, Telephone, 16 November 2016). This interview was conducted as part of the Australian Research Council project 'Violence against women: A media intervention' (Grant number LP150100321).

[698] 'Advisory Guideline on Family and Domestic Violence Reporting', *Australian Press Council* (Web Page, 2016) < https://www.presscouncil.org.au/uploads/52321/ufiles/Guidelines/Advisory_Guideline_on_Family_and_Domestic_Violence_Reporting.pdf>.

[699] 'Legal Restrictions on Family and Domestic Violence Reporting', *Australian Press Council* (Web Page, 2016) < https://www.presscouncil.org.au/uploads/52321/ufiles/Guidelines/Legal_Restrictions_on_Family_and_Domestic_Violence_Reporting.pdf>. See also Our Watch, 'How to report on violence against women and their children: 2019 Victorian Edition' (Our Watch, 2019); ABC, 'Reporting on Domestic and Family Violence' (Webpage, 2015) <https://edpols.abc.net.au/guidance/domestic-violence/>.

[700] See Senate Select Committee on the Future of Public Journalism, Parliament of Australia, *Report* (February 2018); Sora Park et al, 'Digital news report: Australia 2018', *News and Media Research Centre* & *University of Canberra* (14 June 2018) <https://apo.org.au/node/174861>.

effectiveness of publication restrictions.[701] These changes give rise to the question of whether attempts to control the flow of information are futile.[702] This question has been the subject of local and international concern, made especially obvious following the trial and conviction of Cardinal George Pell for sexual abuse in 2018. Despite a suppression order made by the County Court on the reporting of the trial and verdict, the guilty verdict was published widely by overseas media outlets which the Australian public could easily access, while local outlets cryptically commented in their own reports, referring to the 'biggest story' that could not be told.[703] At the time of writing, 21 publications and 19 journalists were facing contempt charges for their reporting of the Pell case.[704] Many law reform bodies and governments are now considering how to protect criminal trials in this environment.[705] This uncertainty around the definition, application and enforcement of publication restrictions in today's digital age may, in turn, be impacting the way journalists do or do not report on the courts.[706]

With this context and the above discussion of the trial process in mind, the second part of this chapter describes two prominent publication restrictions that apply to journalists reporting on IPHs. The first restriction considered is sub judice contempt which primarily aims to protect the jury from being exposed to inadmissible or extraneous information that might prejudice a fair trial. Suppression orders will also be discussed to the extent they interact with sub judice contempt and impact journalists' reporting of legal proceedings. The second publication restriction considered is the *FVPA* restriction on reporting IVOs, which has a direct impact on the media's ability to report on prior violence.

A *Sub judice contempt*

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[701] Victoria Law Reform Commission, *Contempt of Court* (Consultation Paper, May 2019) 3 [1.17] ('*VLRC: Contempt of Court*').

[702] See Jacqueline Horan and Roxanne Burd, 'Protecting the right to a fair trial in the 21st century - has trial by jury been caught in the world wide web?' (2012) 103 *Criminal Law Journal* 105; Roxanne Burd, 'Is there a case for suppression orders in an online world?' (2012) 17(1) *Media & Arts Law Review* 107; Zac Rich, 'The past and future of sub judice contempt: A historically contingent rhetoric, a modern age threat, and the lessons to be learned from the United States' (2010) 15 *Media & Arts Law Review* 361; Karin Derkley, 'Suppression orders in the open courts era' (2019) April *Law Institute Journal* 13.

[703] Richard Ackland, 'Pell's trial shows courts can't keep secrets in the internet age', *The Guardian* (online, 27 February 2019) <https://www.theguardian.com/australia-news/commentisfree/2019/feb/27/pells-trial-shows-courts-cant-keep-secrets-in-the-internet-age>.

[704] Melissa Davey, 'George Pell contempt case: charges over media that allegedly breached suppression orders will go to trial', *The Guardian* (online, 26 May 2020) <https://www.theguardian.com/media/2020/may/26/cardinal-george-pell-contempt-case-charges-over-media-that-allegedly-breached-suppression-orders-will-go-to-trial>.

[705] See, eg, Culture Department of Digital, Media & Sport, Home Office (UK), *Online Harms White Paper* (8 April 2019); *VLRC: Contempt of Court* (n 701); *NZ Law Commission: Reforming the law of contempt of court* (n 578) ; *The Law Commission (England and Wales): Juror Misconduct and Internet Publications* (n 578).

[706] *NZ Law Commission: Reforming the law of contempt of court* (n 578) 3 [9].

Sub judice contempt is known as the 'golden rule' of court reporting, and, in the context of a criminal trial, restricts the reporting of extraneous information about a case that has not been put before the jury.[707] Sub judice contempt is a manifestation of contempt law, which includes a suite of different types of contempt that all aim to protect against conduct that may affect the proper administration of justice.[708] Although contempt is an indictable offence, which would usually require a trial by jury, a summary procedure is used in that the charge is heard by a judge alone.[709] A conviction for sub judice contempt can attract a significant monetary fine or imprisonment.[710]

The elements comprising sub judice contempt are that there is a 'publication' which has a 'real and definite tendency' as a 'matter of practical reality' to prejudice or embarrass particular legal proceedings.[711] The material must have been published at a time when proceedings were 'pending', which can be from when a person is charged and/or arrested, until all avenues of appeal are exhausted.[712] The publication does not need to be shown to have had an actual effect on proceedings,[713] nor that the publisher intended to interfere with, prejudice or embarrass proceedings.[714] Persons who may be responsible include journalists,[715] editors,[716] proprietors,[717] printers,[718] distributors,[719] production companies,[720] executive producers[721] and television stations.[722]

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[707] *DPP v Johnson & Yahoo!7* [2016] VSC 699, [25] ('*DPP v Johnson & Yahoo!7*'). See also 'Covering the Courts: A Basic Guide for Journalists', *Supreme Court of Victoria* (Web Page, 26 September 2016) <https://www.supremecourt.vic.gov.au/for-the-media/covering-the-courts-a-basic-guide-for-journalists>.

[708] *A-G (UK) v Leveller Magazine* [1979] AC 440, 449 ('*A-G (UK) v Leveller Magazine*').

[709] *Witham v Holloway* (1995) 183 CLR 525, 534 ('*Witham v Holloway*').

[710] Derryn Hinch was sentenced to prison for four weeks. The case was appealed, but not on the grounds of penalty. See *Hinch v A-G* (Vic) [1987] VR 721 ('*Hinch v A-G (Vic*)').

[711] *John Fairfax & Sons Pty Ltd v McRae* (1955) 93 CLR 351, 372 ('*John Fairfax & Sons Pty Ltd v McRae*'); *Hinch v AG (Vic)* (1987) 164 CLR 15, 70 (Toohey J) ('*Hinch v AG (1987)*').

[712] *James v Robinson* (1963) CLR 593, 607 (Kitto, Taylor, Menzies, Owen JJ) ('*James v Robinson*').

[713] *Bell v Stewart* (1920) 28 CLR 419, 432 (Isaacs and Rich JJ) ('*Bell v Stewart*'); *Witham v Holloway* (n 709) 547; *R v David Syme & Co Ltd* [1982] VR 173, 177 ('*R v David Syme & Co Ltd*').

[714] *John Fairfax & Sons Pty Ltd v McRae* (n 711) 371 (Dixon CJ, Fullagar, Kitto and Taylor JJ).

[715] *R v Spectator Staff* [1999] VSC 107 ('*Spectator Staff*').

[716] *R v The Age* [2006] VSC 479 ('*R v The Age*'); *Spectator Staff* (n 715).

[717] *James v Robinson* (n 712); *Spectator Staff* (n 715).

[718] *R v David Syme & Co Ltd* (n 713).

[719] *R v Collins* (1984) 15 A Crim R 148 ('*Collins'*); *R v Griffiths* [1957] 2 All ER 379 ('*Griffiths'*).

[720] *Attorney-General (NSW) v Willesee* [1980] NSWLR 2 ('*Attorney-General (NSW) v Willesee*').

[721] *R v General Television Corp Pty Ltd* [2009] VSC 84 ('*General Television Corp Pty Ltd*').

[722] *A-G (NSW) v TCN Channel Nine* (1990) 20 NSWLR 368 ('*A-G (NSW) v TCN Channel Nine*').

Sub judice contempt is aimed at protecting a person's right to a fair trial.[723] The law operates as a reinforcement of the rules of evidence, both of which uphold the assumption that the accused is innocent until proven guilty.[724] That is, any material deemed inadmissible under the rules of evidence and therefore not tested in court and put before a jury, cannot be published under the rules of sub judice contempt. Other common types of material that the courts have held to prejudice or interfere with proceedings include references to the accused's guilt or innocence,[725] prior convictions,[726] confessions or admissions by the accused,[727] statements about the character of the accused,[728] or any opinions about the quality of the case.[729] Sub judice contempt will not be committed, however, if the publication is a 'fair and accurate' report of the proceedings.[730]

Sub judice contempt requires the courts to balance the principles of open justice, the right to a fair trial and freedom of expression in circumstances that are never the same and constantly changing due to the evolving media landscape. As a result, the application of the law must be flexible,[731] so the courts can deal with unforeseen and novel types of conduct that may interfere with the proper administration of justice. As stated by the VLRC in its review of contempt of court, this means:

> [T]he public are not able to know in advance what behaviour might be regarded as sufficiently unacceptable to warrant a conviction and punishment for contempt.[732]

Due to its uncertain nature and the impact of new media on the application and enforceability of sub judice contempt, the law has been the subject of many local and international reviews that have called

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[723] *DPP v Johnson & Yahoo!7* (n 707) [23].

[724] New South Wales Law Reform Commission, *Contempt by Publication* (Discussion Paper No 43, July 2000) 19 [2.18] ('*NSW Law Commission: Contempt by Publication (Discussion Paper)*'); Law Reform Commission of Western Australia, *Report on Review of the Law of Contempt* (Project No 93, June 2003) 18-19 ('*WALRC: Report on Review of the Law of Contempt*').

[725] *DPP v Wran* (1987) 7 NSWLR 616 ('*DPP v Wran*').

[726] *Hinch v AG (1987)* (n 711).

[727] *A-G (NSW) v TCN Channel Nine* (n 722).

[728] *Hinch v AG (1987)* (n 711).

[729] *Packer v Peacock* (1912) 13 CLR 577 ('*Packer v Peacock*').

[730] *Ex parte Terrill; Re Consolidated Press* (1937) 37 SR 255, 259 (Jordan CJ) ('*Ex parte Terrill; Re Consolidated Press*').

[731] Ian Cram (ed), *Borrie & Lowe: The Law of Contempt* (LexisNexis, 4th ed, 2010) 78.

[732] *VLRC: Contempt of Court* (n 701) 25 [3.11].

for the law to be, in whole or part, a statutory offence to provide greater clarity and consistency.[733] Some jurisdictions have codified contempt law including the UK[734] and, as recently as 2019, New Zealand.[735]

The following section will describe the ways sub judice contempt impacts the media's reporting of legal proceedings. Referring specifically to IPH trials and interview responses from journalists, I argue that the impact occurs on two levels: firstly, the more granular effect of the elements of the law itself being unclear; and secondly, the effect of the broader uncertainty of the law's operation and enforcement in the modern media landscape.

1 *Problems with the definition and scope of sub judice contempt*

Problems with the definition and scope of sub judice contempt all stem from the discretionary and unique nature of contempt law more broadly. There is no certainty as to what may constitute contempt, and no requirement to prove that the journalist had an intention to prejudice legal proceedings or that the conduct did, in fact, impact the administration of justice.[736] This uncertainty is compounded by the Internet, in that there is now, more than ever, uncharted territory as to what types of publication may constitute contempt and who may be liable.

There are several reviews that set out the elements of sub judice contempt and the related problems. Here, however, I will consider the elements that I argue directly shape the media's reporting of IPH trials and determine what journalists may or may not include in their reporting. This includes the conceptualisation of the 'tendency test', which determines whether a publication has the requisite tendency to prejudice or embarrass legal proceedings, the timing of the 'pending period' and the public interest principle. Issues of liability, procedure and related legal reforms that have been suggested but are not directly relevant to the media's reporting of IPHs, will be set aside for the purposes of this thesis.

(a) What material has a tendency to prejudice?

Although the 'golden rule' of reporting only information put before the jury appears straightforward, determining what content may or may not be considered prejudicial is slightly more complex and can

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[733] See *ALRC: Contempt* (n 578); *WA Commission: Contempt by Publication* (n 578); *NSWLRC: Contempt by Publication* (n 578); *NZ Law Commission, Reforming the law of contempt of court* (n 578); *Law Reform Commission of Ireland: Issues Paper (2016)* (n 578); *Law Reform Commission of Ireland: Report (1994)* (n 578).

[734] The UK Law Commission has conducted further reviews of contempt, in particular, looking at the compatibility of its legislation with Internet publications. See *The Law Commission (England and Wales): Juror Misconduct and Internet Publications* (n 578).

[735] The Act has not yet commenced, but has received Royal Assent. *Contempt of Court Act 2019* (NZ) ('*Contempt of Court Act (NZ)*').

[736] *VLRC: Contempt of Court* (n 701) 25 [3.8].

change on a case-by-case basis. The test to determine whether a publication constitutes sub judice contempt is set out in the 1987 case *Hinch v Attorney General (Victoria)*:

> That the matter published has, as a matter of practical reality, a tendency to interfere with the due course of justice. The impugned material must exhibit a real and definite tendency to prejudice or embarrass pending proceedings …[737]

The publication's tendency to prejudice is assessed at the time of publication and involves a consideration of a range of contextual factors including: the nature of the proceedings that may be affected,[738] the profile of the person who made the statement,[739] the size of the publication,[740] the size of the audience,[741] the time between publication and proceedings,[742] and whether the prejudicial material has been published before.[743] More recent cases looking at the tendency of an online publication to prejudice a trial have also considered factors unique to the Internet, such as the number of 'hits' the article received, the layout of the page on which it was published, how easily the content was accessed and how long it stayed online.[744] As mentioned, an actual effect on the legal proceedings does not need to be shown. Further, the courts have put forward different versions of the tendency test which take different approaches to the balancing of the administration of justice and freedom of expression. For example, Mason CJ stated that there should be a 'substantial risk of serious interference' to the administration of justice, so as to more appropriately balance the interests of a 'free press' and a 'fair trial'.[745]

In practice, it does not appear that journalists follow the legal definitions set out in the case law, but rather use a sense, based on experience, of what material may be prejudicial. This was described by Younger in the following way:

> I feel like you are always, that's the lens that your reporting is always coming from. It's something that is always in my mind but not something that I'm probably consciously thinking about. You sort of know when you walk into those courtrooms the playing field that you're on.[746]

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[737] *Hinch v AG (1987)* (n 711) 34 (Wilson J).

[738] Ibid.

[739] Ibid.

[740] *DPP v Johnson & Yahoo!7* (n 707) [44].

[741] Ibid [46].

[742] *R v Hinch* [2013] VSC 520, [94] ('*R v Hinch [2013]*') citing *A-G (NSW) v John Fairfax & Sons Ltd* (1985) 6 NSWLR 695, 699 (Samuels JA), 711 (McHugh JA) ('*A-G (NSW) v John Fairfax & Sons Ltd*').

[743] Ibid.

[744] *DPP v Johnson & Yahoo!7* (n 707).

[745] *Hinch v AG (1987)* (n 711) 27 (Mason CJ).

[746] Interview with Emma Younger, ABC Court Reporter (Annie Blatchford, Melbourne, 5 September 2018).

Younger also said that, through experience, she had developed an ability to apply discretion when deciding whether or not to publish material. She said, in some instances, the *ABC*'s lawyers who followed the law more strictly would be more cautious in their decisions about what could be published. However, with experience on her side and the benefit of being in the courtroom, she understood the nuances of a case and the evidence, and could 'push back' to have material published, confident that it would not prejudice the legal proceedings.[747]

The ability to 'push back' is something that inexperienced reporters may not have the confidence or legal knowledge to do. This may lead to more situations where possibly contextual material is excluded because of the 'if in doubt, leave it out' approach indicated by some of the journalists interviewed.[748] An unclear definition of the test, the range of circumstantial factors taken into account, and the ambiguity that arises from there being no requirement that the publication be proven to have had an actual effect on proceedings, or indeed that the publisher intended to interfere with proceedings, do not allow for any predictability or certainty as to when the law will apply.[749] Law reform commissions have made a range of recommendations as to how the test should be defined, predominantly arguing for a definition similar to Mason CJ's 'substantial risk' test, in that there must be a serious likelihood that the material would influence jury members.[750] Commissions have also advocated for a list of the common types of material that would be found to meet this test, thereby providing more clarity in the law.[751]

(b) When are proceedings pending?

This discretion is particularly apparent when considering the time when sub judice contempt is technically active. Officially, proceedings are considered 'sub judice'[752] or 'pending' when criminal proceedings have commenced and are not completed. Criminal proceedings have commenced when a court has become 'seised of the case and the criminal law has been "set in motion"'.[753] That is, from the time when someone has been arrested upon warrant, arrested and charged, or arrested with a view to being charged.[754] The pending period ends when the charges are dropped, the accused is acquitted or

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[747] Ibid.

[748] Interview with Jane Lee, ABC Journalist (Annie Blatchford, Melbourne, 22 June 2018); Interview with Sharnelle Vella, Channel 7 Court Reporter (Annie Blatchford, Telephone, 26 November 2018).

[749] *ALRC: Contempt* (n 578) [288]-[295]; *NSW Law Commission: Contempt by Publication (Discussion Paper)* (n 724) [4.6]-[4.9].

[750] *NSWLRC: Contempt by Publication* (n 578) 64 [4.3].

[751] This was a recommendation of the following commissions: *ALRC: Contempt* (n 578) 180 [311]; *NSWLRC: Contempt by Publication* (n 578) 80 [4.40]-[4.45].

[752] 'Sub judice' is a Latin term that means 'before a Judge'.

[753] *VLRC, Contempt of Court* (n 701) 90 [7.55] citing *James v Robinson* (n 712) 607.

[754] Ibid.

convicted and the time for lodging an appeal has elapsed, or all possible appeals have been heard.[755] Although the boundaries of this period appear clear cut, journalist practice reflects a more arbitrary decision-making process as to when the sub judice period ends.

As sub judice contempt is understood to operate to protect jurors from extraneous information, it may be assumed that, once a jury has given its verdict, the media are free to report on information that was previously restricted. This is despite the fact that further proceedings, such as sentencing or appeals, are still pending. Such an approach rests on the assumption that judicial officers are not prone to prejudice or bias from publicity because of their training and expertise.[756] The Law Commission of England and Wales found that many well-known publishers treated the final verdict as the end of the pending period.[757] In my interviews, I found that journalists adopted a similar practice. *Channel Seven* court reporter Sharnelle Vella said that, even though sub judice is still a risk at the point of a verdict, in high profile cases a decision is often made to publish someone's priors regardless of the fact that proceedings are technically still 'pending'. Vella stated:

> It is really a risk versus reward kind of thing that we have to play up, but I'll always get advice from our lawyers.[758]

Similarly, *ABC* journalist Jane Lee said she felt confident reporting extraneous material once a sentence had been handed down, unless the lawyers had announced that they were going to appeal the verdict.[759] Again, a less-experienced court reporter, however, may not have the confidence or legal resources to make such a call. As has been discussed in previous chapters, it is often at the verdict or sentencing stage that the media report the broader context of a case or the accused's prior history of violence that was not admissible during the trial. More clarity on whether extraneous material can be published at this stage would potentially allow for more of this kind of reporting.

(c) When is material in the public's interest?

Another discretionary aspect of sub judice contempt is whether a publication is in the public's interest. The public interest principle was established in the 1937 New South Wales case *Ex Parte Bread Manufacturers Ltd* as follows:

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[755] *NSWLRC: Contempt by Publication* (n 578) 168 [7.46] ; Des Butler and Sharon Rodrick, *Australian Media Law* (Lawbook Co, 3rd ed, 2004) 236.

[756] *WA Commission: Contempt by Publication* (n 578) 25.

[757] Law Commission (England and Wales), *Contempt of Court* (Consultation Paper, 2012) 10 [2.24] ('*Law Commission (England and Wales): Contempt of Court Consultation Paper*').

[758] Interview with Vella (n 748).

[759] Interview with Lee (n 748).

> if in the course of the ventilation of a question of public concern, matter is published which may prejudice a party in the conduct of a law suit, it does not follow that a contempt has been committed. The case may be one in which as between competing matters of public interest the possibility of prejudice to a litigant may be required to yield to other and superior considerations.[760]

The test was originally applied in a way that only allowed for publications discussing court proceedings that arose as an 'incidental but not intended by-product' of a broader discussion about a matter of public concern.[761] Since then, however, the High Court in *Hinch v A-G (Vic)* has held that a balancing approach should be taken, which considers whether the interests of the administration of justice are outweighed by the public's interest in the free discussion of public affairs. However, the only guidance given by the court as to where the public's interest in a matter would outweigh the administration of justice was when it was concerning a 'major constitutional crisis' or 'imminent threat of nuclear disaster'.[762]

Whether VAW is a matter in the public's interest was considered in the 2013 Victorian Supreme Court case *R v Hinch*.[763] In this case, Derryn Hinch wrote about the extensive criminal history of the accused, Adrian Bayley, who was on trial for the rape and murder of Jill Meagher.[764] Hinch argued that VAW was of legitimate interest to the public and Kaye J agreed. However, the principle was held not to apply to Hinch's publications because the central point of the articles was Bayley's prior convictions and the danger he posed to society. Therefore, the publications were not perceived as a discussion about VAW that would outweigh the public's interest in a fair trial.[765] Had the publications focused more on VAW as a social issue and less on the prejudicial aspects of Bayley's case, the public interest test may have applied. Regardless, the application of this principle is subject to the discretion of the court and the balancing of principles. Similarly, the unclear definition of the tendency test may discourage the discussion of matters typically related to IPH cases, such as domestic violence, IVOs or police interventions, despite it being clearly in the public's interest.

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[760] *Ex parte Bread Manufacturers Ltd; Re Truth and Sportsman Ltd* (1937) 27 SR(NSW) 242, 249 (Jordan CJ) ('*Ex parte Bread Manufacturers Ltd; Re Truth and Sportsman Ltd*').

[761] Attorney General's Office (UK), *Response to Call for Evidence on the Impact of Social Media on the Administration of Justice* (5 March 2019) 187 [8.8].

[762] *Hinch v AG (1987)* (n 711) 26 (Mason CJ).

[763] *R v Hinch [2013]* (n 742).

[764] Jill Meagher was raped and murdered in 2012 while she was walking home from a pub in Brunswick. The accused and convicted man, Adrian Bayley, was out on parole at the time of the crime and had a history of sexual assaults. The case sparked significant media and public attention. See generally Anastasia Powell, Caitlin Overington and Gemma Hamilton, 'Following #JillMeagher: Collective meaning-making in response to crime events via social media' (2017) 14(3) *Crime, Media, Culture: An International Journal* 409.

[765] *R v Hinch [2013]* (n 742) [120].

On the other hand, as discussed in the previous chapter, journalists interviewed did not perceive their role as court reporters as one where these broader issues should be critiqued. Karen Percy acknowledged that the public are often frustrated that court reports do not express more outrage about a crime or report on extraneous material such as an IVO. She explained, however, that:

> we have a system where people need to go through a court system, a judgment process, an analysis and assessment of the evidence, so that's when the outrage needs to stop and we have to actually allow the process to happen.[766]

Potentially, if there was greater clarity regarding the extent to which individual legal proceedings could be discussed in the context of broader issues of public interest, journalists would take a different view as to how they report on court proceedings.

2 *Problems with the enforcement of sub judice contempt in the modern age*

There is a sentiment amongst former judicial officers and journalists that sub judice has become a futile law.[767] In particular, judges appear to have lost confidence in the law as a means of preventing prejudicial publicity,[768] and concurrently there has been a lack of prosecutions over the last decade.[769] Both a cause and consequence of the lack of prosecutions of sub judice contempt is the judiciary's reliance on the pre-emptive practice of issuing suppression orders to prevent contempt of court.[770] Suppression orders are often made to restrain the publication of material external to legal proceedings,[771] as the latter should already be restricted by sub judice contempt.[772] For example, suppression orders have been made to restrict the publication of 'any reference to the antecedents, current charges or pending charges, or any reference which reflects adversely upon the character or

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[766] Interview with Karen Percy, ABC Court Reporter (Annie Blatchford, Supreme Court Victoria, 16 September 2019).

[767] See Justice Betty King, '"Underbelly" - A true crime story or just sex, drugs and rock and roll?' (Speech, Medico-Legal Society of Australia, 13 November 2009); Justice Anthony Whealy, 'Contempt: Some Contemporary Thoughts' (2008) 8 *The Judicial Review* 441; Margaret Simons, 'A bridge too far in sub judice contempt', *Crikey* (online, 18 March 2009) <http://www.crikey.com.au/2009/02/03/a-bridge-too-far-in-sub-judice-contempt/>; Ackland (n 703).

[768] Des Butler and Sharon Rodrick, *Australian Media Law* (Thomson Reuters, 5th ed, 2015) 434; Jason Bosland, 'Restraining 'extraneous' prejudicial publicity: Victoria and New South Wales compared' (2018) 41(4) *UNSW Law Journal* 1263, 1266.

[769] King (n 767) 12; Bosland (n 768) 1266.

[770] See, eg, *News Digital Media Pty Ltd v Mokbel* (2010) 30 VR 248 ('*News Digital Media Pty Ltd v Mokbel*'); *General Television Corporation Pty Ltd v DPP (Vic)* (2008) 19 VR 68 ('*General Television Corporation Pty Ltd v DPP (Vic)*'); *Nationwide News Pty Ltd v Farquharson* (2010) 28 VR 473 ('*Nationwide News Pty Ltd v Farquharson*').

[771] These types of suppression orders are known as 'broad suppression orders'. 'Proceeding suppression orders', which are not considered here, restrain the publication of material that arises from or is derived from the court proceedings: *Open Courts Act 2013* (Vic) s 17 ('*Open Courts Act*').

[772] Phillip Cummins, 'Justice and the Media' (Speech, Melbourne Press Club, 17 August 2010).

credit' of the accused,[773] or the 'previous convictions, sentences or previous criminal cases' of an accused.[774]

Academics and some members of the judiciary have criticised this reliance on suppression orders as undermining the law of sub judice contempt[775] and going beyond what is necessary to protect a fair trial.[776] The judiciary's reliance on suppression orders as an alternative to sub judice contempt has been suggested to be a consequence of a relationship of distrust between the judiciary and media.[777] This is in a context of trials becoming longer and more complex with far more media attention and therefore a more cautious approach by judges to protect their trials.[778] As discussed in the previous chapter, the changing media landscape has also seen to a loss of experienced journalists replaced by junior journalists, and therefore a preference to make specific orders to ensure the media are clear about what can be published.[779] This risk is exacerbated by the 24-hour news cycle, market pressures, and a demand for immediate news, all while operating with fewer resources and less rigorous systems overseeing publication. In this context, suppression orders may be a more attractive alternative, particularly given that, once material is published online, a sub judice contempt prosecution may be too late to prevent prejudice to a trial.

The facts of the *Yahoo!7* case illustrate these problems in the context of an IPH trial.[780] The case concerned the *Yahoo!7* journalist Krystal Johnson, who published material online about a homicide trial without editorial advice because she noticed her editors were busy. Johnson, who was not present in court for the proceedings, wrote an article entitled 'Brittany Harvie predicted her death on Facebook'

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[773] *Herald and Weekly Times v A* (2005) 160 A Crim R 299, [1] ('*Herald and Weekly Times v A*').

[774] *R v Hinch [2013]* (n 742) 2 [6].

[775] See Roxanne Burd (n 702); Jacob J Spigelman, 'The Principle of Open Justice: A Comparative Perspective' (2006) 29 *University of New South Wales Law Journal* 147; Phillip Cummins, 'Open Courts: Who Guards the Guardians?' (Speech, Open and Shut: Suppression Orders and Open Justice in Australia and the United Kingdom Seminar, 4 June 2014).

[776] Bosland (n 768) 1291-3. Cf Butler and Rodrick (n 768) 435 [6.790]: The authors stated that the notion that suppression orders were taking over sub judice contempt should be treated with caution and not be overstated. They referred to the NSW COA in *Fairfax Digital Australia and New Zealand Pty Ltd v Ibrahim* (2012) 83 NSWLR 52, which stated that non-publication orders should only be made if sub judice contempt is considered an inadequate means of preventing prejudice.

[777] Frank Vincent, 'Open Courts Act Review', *State of Victoria* (September 2017) 66 [253] <https://engage.vic.gov.au/open-courts-act-review>.

[778] Prue Innes, 'Report of the Review of Suppression Orders and The Media's Access to Court Documents and Information' (Report, Australia's Right to Know Commission, 2008).

[779] Bosland (n 768) 1267; Vincent (n 777) 82; Annie Blatchford, 'Contempt and the reporting of domestic violence: Hard lessons', *Uncovered* (Web Page, 16 December 2016) <https://uncovered.org.au/contempt-and-reporting-domestic-violence-hard-lessons>; Australian Competition and Consumer Commission, *Digital Platforms Inquiry* (Preliminary Report, December 2018) ('*ACCC Digital Platforms Inquiry*').

[780] *DPP v Johnson & Yahoo!7* (n 707).

including material sourced from other articles published at the time of the victim's death. This information (originally sourced from the victim's social media posts) suggested that the victim predicted the accused man would put her 'six feet under'.[781] Such evidence was not being led by the prosecution and in fact, there were no allegations being made in the trial that the accused had been violent towards the victim before her death.[782] As a result of the publication, the jury was discharged.[783] Lasry J stated that the case exposed 'serious flaws' in the media outlet's systems to prevent prejudicial material and that it was driven by 'commercial pressures … and incentives, in the form of larger audiences and substantial profit'.[784] Lasry J convicted *Yahoo!7* for contempt and fined the outlet $300,000. Taking into account Johnson's 'vulnerability' for being assigned a high-level role with little experience, as well as the public condemnation she experienced, a conviction was not made against her.[785]

When asked about sub judice contempt, journalists interviewed either referred to the *Yahoo!7* case or, more broadly, the problem of junior journalists with less experience in the courts.[786] Percy said that a lot of the 'corporate knowledge' and 'seniority' in the industry had been lost, giving rise to scenarios such as the *Yahoo!7* case.[787] Regardless, while acknowledging that the law was a constraint on their reporting, in particular IPHs, almost all journalists interviewed expressed an understanding and respect for the principles underlying the law – '[s]o we don't negate a fair trial'[788] or jeopardise a victim's 'day in court'.[789] Some journalists even perceived the publication of domestic violence helplines or the broader context of IPHs as something that could put these rights at risk and therefore equate to sub judice contempt,[790] a fair assumption given the lack of clarity around the scope of the law discussed above. In addition, it appeared that to cause a trial to be delayed or aborted would be a serious embarrassment to the journalist and something they would want to avoid.[791]

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[781] Ibid [8]-[11].

[782] Ibid [10].

[783] Ibid [7].

[784] *DPP (Vic) v Johnson & Yahoo!7 (No 2)* [2017] VSC 45 [28] ('*Yahoo!7 (No 2)*').

[785] Ibid [22].

[786] Interview with Lee (n 748); Interview with Percy (n 766); Interview with Peter Gregory, Former The Age Court Reporter (Annie Blatchford, Melbourne, 21 March 2018).

[787] Interview with Percy (n 766).

[788] Interview with Tammy Mills, The Age Crime and Court Reporter (Annie Blatchford, Telephone, 17 September 2019).

[789] Interview with Tessa Akerman, The Australian Court Reporter (Annie Blatchford, Telephone, 29 August 2019).

[790] Interview with Percy (n 766); Interview with Lee (n 748).

[791] Interview with Vella (n 748).

I argue that, despite the lack of sub judice prosecutions, the law does still appear to have a role to play. There are circumstances where the threat of prosecution, and the related financial and reputational cost, may be ensuring journalists continue to comply with the law. For example when interviewed, former court reporter Peter Gregory said he hoped the lack of prosecutions in Victoria was 'because people knew what the rules were'.[792] Many journalists interviewed referred to their own practices of exercising caution when reporting on the courts, such as checking with other court reporters about what was said in court, the accuracy of different statements,[793] or getting content 'legalled' when they were unsure of whether something would be potentially in contempt.[794] These interview responses and, as mentioned above, recent events involving the charging of several journalists and publications for contempt during the Pell trial, indicates that the law has not lost its relevance in the eyes of prosecuting authorities and the risk of being prosecuted for contempt still looms large for journalists reporting on the courts.

B *Restriction on the reporting of intervention orders*

A family violence intervention order ('IVO') is a civil court order made to protect a victim against future abuse or violence.[795] A breach of this type of order is a criminal offence.[796] In Victoria, IVOs are governed by the *Family Violence Protection Act 2008* (Vic) ('*FVPA*') which, in section 166, restricts the publication of information that may lead to the identification of any person involved in IVO proceedings, except where consent to publication is given by the adult victim or where the court reasonably considers that publication is in the public interest.[797] As it stands, the restriction continues to apply, even when a protected person has been, or allegedly been, murdered by a respondent to the order. The penalty for breaching the provision can be up to two years' imprisonment.[798]

Given the frequency of homicides that involve prior violence and the existence of IVOs leading up to the murder, this restriction has a direct impact on the media's ability to confidently and consistently report on the broader context surrounding IPHs.[799] This context not only includes the prior violence that existed in the relationship, but the broader systemic issues related to the effectiveness of IVOs. For a range of reasons, including inconsistent responses from police, courts and services, and an IVO's lack

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[792] Interview with Gregory (n 786).

[793] Interview with Percy (n 766); Interview with Younger (n 746).

[794] Interview with Younger (n 746).

[795] Renata Alexander, *Family Violence in Australia: The Legal Response* (Federation Press, 2018) 132.

[796] Ibid.

[797] *Family Violence Protection Act* (n 579) s 169.

[798] Ibid s 166.

[799] Some of the IPHs mentioned throughout my thesis already, and that arose in the Chapter Three content analysis, involved intervention orders preceding the murder. These included the murders of Sargun Ragi, Fiona Warzywoda, Abuk Akek and Kylie Cay.

of effectiveness for some women, the legal intervention has earned itself a reputation as being 'just a piece of paper'.[800] Victims have also reported that breaches of IVOs are not taken seriously. Indeed, the Victorian Royal Commission into Family Violence found that IVO breaches increased by 140 percent from 2009 to 2014.[801] That figure does not include unreported breaches.

This section will consider the rationale for suppressing the details of IVOs, how the restriction and its exceptions operate, and the different approaches the media take when reporting on IVOs. This discussion highlights a need to reconsider the restriction's rationale and operation in the context of an IPH, where the privacy concerns of the victim disappear and the public's interest in raising awareness about family violence becomes pertinent.

1 *The rationale*

The rationale behind the publication restriction can be found in the then Attorney-General Robert Hulls' second reading speech introducing the Family Violence Protection Bill 2014 (Vic) and the consideration of its compatibility with the *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('*Charter*').[802] In the speech, justifications for the restriction's infringement on open justice included maximising safety for persons who have experienced family violence, reducing family violence, and promoting perpetrator accountability.[803] Safeguarding the person's privacy, in line with the *Charter* was also stated as a rationale for the restriction. [804] The purpose of the *FVPA* restriction was also elaborated on in the Supreme Court of Victoria case *AA v BB*.[805] In this case, Bell J considered whether to grant a non-publication order restricting reporting of all or part of the proceedings before him, which involved an appeal against a conviction for breaching a family violence IVO. In making his decision to grant the order, his Honour referred to the *FVPA*'s aim of empowering people affected by family violence to seek protection without fear of being traumatised by publicity. Bell J stated:

> It was also intended that other persons who may need to be involved in proceedings would not experience the same fear. The non-publication provisions try to remove or minimise this

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[800] Matt Johnston and Elissa Doherty, 'New laws to target thugs breaching family violence intervention orders', *Herald Sun* (online, 1 April 2016) <http://www.heraldsun.com.au/news/new-laws-to-target-thugs-breaching-family-violence-intervention-orders/news-story/4fa3c35d088d78c3fe89e985745de113>.

[801] *Victorian Royal Commission into Family Violence* (Report and Recommendations, 2016) vol III, 21 ('*Victorian Royal Commission into Family Violence*').

[802] Victoria, *Parliamentary Debates*, Legislative Assembly, 26 June 2008, 2637 (Robert Hulls, Attorney-General).

[803] Ibid.

[804] Ibid. See also: For discussions about the need to protect the protected person's privacy and reputation, see *AA v BB* (2013) 296 ALR 353 ('*AA v BB*'); *YY v ZZ* [2013] VSC 743 ('*YY v ZZ*').

[805] *AA v BB* (n 804).

> fear so that people needing protection will not be deterred from going to the police or the court and other persons will not be discouraged from participating in a proceeding.[806]

Another possible rationale may be the ongoing stigma that attaches to victims of domestic violence.[807] For example, the ALRC and NSWLRC, in a review of family violence laws, suggested that a victim's feelings of shame and perception they will not be believed may prevent them from coming forward and disclosing violence.[808] While domestic violence has traditionally remained a 'private' issue, feminist activism over the last 40 years has played a significant role in bringing the issue into the public realm.[809] However, there may still be some way to go, as demonstrated by the facts of *AA v BB*, in which the domestic violence victim was seeking a non-publication order to protect her privacy because she was about to stand for election to Federal Parliament.[810]

2 *The restriction and its exceptions*

The publication restriction prevents the reporting of 'any particulars' that may identify a party to proceedings or an order under the *FVPA*. Identifying particulars includes the person's name, address, physical description, employment, the relationship of the person to identified relatives and friends, recreational interests, or the religious beliefs of the person.[811] The penalty options for breaching the restriction includes up to two years' imprisonment. Other jurisdictions vary in the extent of their restrictions, some of which give the discretion to the court to impose a restriction[812] or limit the restriction to the identities of children unless otherwise ordered.[813]

Even when an IVO is raised in the context of legal proceedings other than an application for the order in the Magistrates' Court, the IVO or the identities of the individuals involved cannot be identified. It should be noted, however, that in *AA v BB*, Bell J was of the view that the *FVPA* restriction did not continue to apply in proceedings brought under another Act. The same issue was also considered by Cavanough J in a judicial review case involving an IVO.[814] Cavanough J similarly considered the

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[806] Ibid 383 [155].

[807] See Annie Blatchford, Jenny Morgan and Margaret Simons, 'Making violence against women (in)visible? Restrictions on media reporting of intervention orders' (2020) 46(1) *Monash University Law Review* (forthcoming).

[808] Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence: A National Legal Response* (Report No 114, 128, October 2010) 832 [18.4].

[809] Graycar and Morgan, (n 576) 10-23.

[810] *AA v BB* (n 804).

[811] *Family Violence Protection Act* (n 579) s 168.

[812] *Family Violence Act 2004* (Tas) s 32.

[813] *Domestic and Family Violence Act 2007* (NT) ss 26 and 123; *Crimes (Domestic and Personal Violence) Act 1997* (NSW) s 45.

[814] *YY v ZZ* (n 804).

proceedings before him to fall outside the purview of the *FVPA* restriction. However, in both cases, the issue was not decided upon and, in both cases, non-publication orders were granted preventing the publication of the parties' identities. In doing so, Bell J recognised the value of a statutory privacy protection extending beyond proceedings under the *FVPA*; those being initial proceedings in which the IVO was granted.[815] My own view is that the restriction operates beyond proceedings under the *FVPA*; the provision is expressed as a general prohibition so that when an IVO is part of the evidence in a prosecution for homicide, even when mentioned in open court, that information cannot lawfully be published.

The first exception to the publication restriction is a court order allowing for publication if it is found to be in the public interest. Interestingly, the legislative example included under these subsections provides:

> The court may consider it in the public interest and just to allow a protected person to publicise the person's case to raise awareness of family violence.

That is, the legislation explicitly recognises one of the most important countervailing cultural values to publication restrictions: the need to increase public knowledge of domestic violence. Until 2014, seeking the court's permission was the only available route if the media wanted to report on an IVO in a way that identified the parties, even if the victim-survivor consented, or indeed lobbied for public identification.[816] However, following a campaign led by a domestic violence victim and the *Herald Sun*, a new exception was added to the legislation, allowing the victim to publish or give consent to someone else publishing information about a family violence safety notice or IVO, where there is a context of a family violence related criminal offence.[817] Obviously, where the victim is dead, she cannot give permission. Thus, when a protected person has been murdered and the media want to publish that there was an IVO, the only option is to go to court and seek permission.

The *Herald Sun*, on two occasions, have taken this course in the context of high-profile homicides involving IVOs. In 2014, the media outlet obtained consent from a magistrate to report on the existence of an IVO taken out by the homicide victim Sargun Ragi against her former husband, who went on to stalk, contact and eventually murder her. The media outlet's editor, Alan Howe, wrote about the difficulties this restriction caused in the reporting of VAW.

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[815] *AA v BB* (n 804) 390 [189].

[816] See *Family Violence Protection Amendment Act 2014* (Vic) s 20; Explanatory Memorandum, Family Violence Protection Amendment Bill 2014 (Vic) 12.

[817] See *Family Violence Protection Act* (n 579) ss 169A and 169B, introduced by the *Family Violence Protection Amendment Act 2014* (Vic) and amended by the *National Domestic Violence Order Scheme Act 2016* (Vic).

> However, it also means that we are unable to give our readers the full story surrounding some of the most horrific crimes in this state…
>
> The *Herald Sun* was able to tell you about the intervention order failings in Ms Ragi's case only by seeking a court order, which was granted mostly because Singh [the perpetrator] was dead.[818]

Howe also explained that the IVO revealed a long history of violence including rape, beatings, starvation and imprisonment. These details put into context the previous victim-blaming media commentary that said she had been having an affair. Or as Howe said, 'there can be no surprise that she formed a relationship with another man'.[819]

In 2014, the *Herald Sun* also sought permission from the court to publish information about an IVO taken out against Craig McDermott by his former de-facto partner and the homicide victim Fiona Warzywoda who was murdered not long after the order was finalised (as discussed in Chapter Three). Magistrate Peter Reardon granted the *Herald Sun* permission to report this information. According to a *Herald Sun* editorial, the Magistrate said, 'in light of a number of recent events … in these circumstances it is in the public interest'.[820] On this occasion, another editorial was published stating that the *Herald Sun* called for the publication restriction to be changed because it prevents:

> the identity of a victim being revealed even if the victim is no longer alive. This in turn has the effect of preventing the identity of the person against whom the order has been issued because it might identify the victim.[821]

However, these efforts by the *Herald Sun* occurred in the lead up to and during their campaign against domestic violence, which launched in 2013.[822] The campaign was called 'Take a Stand'. The campaign allowed for an unusual level of editorial and financial support to apply to the court for the orders to publish IVOs and to generally pursue these types of stories. Typically, media outlets do not have the interest, time or resources to take these measures.

3 *The media's approach to the restriction*

Interviews with court and crime reporters indicated diverging views as to whether they could report on IVOs at the point at which a victim had been murdered. In line with the approach taken by the *Herald*

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[818] Alan Howe, 'Time to speak out for Sargun Ragi', *Herald Sun* (Melbourne, 14 October 2012).

[819] Ibid.

[820] Shannon Deery, Jon Kaila and Kathryn Powley, 'Sunshine stabbing victim had been in court just hours before attack', *Herald Sun* (Melbourne, 18 April 2014).

[821] Editorial, 'Name these violent men', *Herald Sun* (online, 17 April 2014) <http://www.heraldsun.com.au/news/opinion/name-these-violent-men/story-fni0ffsx-1226888504521>.

[822] See generally Jenny Morgan and Margaret Simons, 'Changing Media Coverage of Violence Against Women: The Role of Individual Cases and Individual Journalists' (2018) 12 *Journalism Practice* 1165; Margaret Simons and Jenny Morgan, 'Changing Media Coverage of Violence Against Women: Changing sourcing practices?' (2017) 19 *Journalism Studies* 1202.

Sun above, a court reporter for the outlet told me that she consistently adhered to the restriction, even when a victim had been killed. Rebekah Cavanagh stated that the legal advice she received restricted using the words 'family violence' or 'intervention order', and the best she could do to contextualise the homicide without breaching the legislative provision would be to report that there was a 'court order'.[823] Even reporting 'court order' involved a balancing of the risk of doing so. Cavanagh said that the situation remained the same even when the IVO was mentioned in open court at a criminal trial.[824] This response, alongside the *Herald Sun*'s approach of applying for court permission to publish the IVOs in the cases of Sargun Ragi and Fiona Warzywoda, indicates that the outlet strictly complies with the restriction.

Other interviewees indicated they were aware of the publication restriction, but in practice, when the victim has been murdered, they assumed that the restriction was no longer relevant and the IVO could be reported. In their view, there was no longer a need to protect the privacy of the victim and, therefore, no need to apply to the court to report on the order. *Channel Seven* reporter Sharnelle Vella stated that, when the victim has been murdered, the 'rules change'.[825] She said that when there was an IVO prior to a murder, it was imperative that information be included to show what the victim had done to protect herself and encourage a broader public conversation.[826] Younger also said:

> It can sound callous, but a lot of the time once someone has died you almost give up your rights to things like anonymity because you would never identify a victim of sexual assault, but once they, if they've been murdered and sexually assaulted in the same attack we often do report that and identify them.[827]

These journalists and others recognised that, in this context, there was value in reporting IVOs as a nod towards broader systemic issues. Sitting in the middle of these two approaches was a more cautious perspective from *The Age* court reporter Adam Cooper. Cooper said IVOs were a legal minefield and, although he could ask the legal team for advice, he would normally avoid reporting them or find a way to 'write around it'.[828]

The current operation of this restriction is allowing important information to be left out of reports about IPHs, or journalistic publications that actually contravene the restriction. The impact of this restriction on media outputs is considered in Chapter Seven in my analysis of the media's reporting of the *Paulino*

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[823] Interview with Rebekah Cavanagh, *Herald Sun* Court Reporter (Annie Blatchford, Telephone, 3 September 2019).

[824] Ibid.

[825] Interview with Vella (n 748).

[826] Ibid.

[827] Interview with Younger (n 746).

[828] Interview with Adam Cooper, The Age Court Reporter (Annie Blatchford, Telephone, 28 August 2017).

case, which involved an IVO. Pre-empting that chapter and my final recommendations, I argue that, when a protected person has been murdered, and therefore the original rationale of privacy and safety interests has shifted, the restriction should no longer apply. Allowing publication on the murder of a protected person would more appropriately account for broader interests in ensuring the accurate reporting of IPHs and the broader context within which they occur.

IV Conclusion

This chapter has mapped the different legal rules, processes and restrictions that directly and indirectly shape the material available to journalists to report. In the first section on the trial process, I provided context on the trial rules and processes that act as an initial filter, not only on the evidence that is admitted to court, but on the way it is shaped and decontextualised, contributing to the perpetuation of gendered stereotypes and myths about VAW. While I am not critiquing the operation of these laws and processes, this discussion was important in demonstrating the legal filters an IPH story has already been through before journalists enter the picture.

Acknowledging that journalists are already constrained by what is produced in court, publication restrictions act as a secondary filter on the material that can be reported by journalists. With regards to sub judice contempt, the law constrains journalists in two ways. Firstly, there is the direct impact of restricting journalists to only reporting a 'fair and accurate' report of court proceedings. Broader contextual material such as information about prior violence or commentary from family violence experts cannot be published unless it has come out as admissible evidence in the trial, at least not until the proceedings have concluded. The second way sub judice contempt constrains journalists is the vague and inconsistent nature of the law. My interviews showed that experienced court reporters have the skills and experience to make decisions about what is and is not prejudicial, but others also indicated an approach of 'if in doubt leave it out'. This latter approach could be hindering the media's ability to appropriately contextualise IPH legal proceedings. Despite the uncertainty around the scope and application of sub judice contempt, my interviews also suggested an ongoing role for the law. Journalists showed a respect for law's purpose of protecting a fair trial, as well as a fear of getting it wrong, both of which guided their reporting practices.

The situation is somewhat different when it comes to the IVO publication restriction. While s 166 of the *FVPA* is relatively clear, in that IVOs cannot be published in way that identifies any of the persons involved, the approaches of journalists vary. Some journalists perceive the privacy rationale for the publication restriction to no longer exist once the victim has been murdered. However, this approach does not accord with the legislation. On the other hand, the *Herald Sun* comply with the law by not identifying that there was a family violence IVO at the time of the homicide, investigation or legal proceedings. When taking this latter approach, the effort required to report on the IVO (such as seeking

legal advice and/or applying for a court order) may not be considered worthwhile unless the story is newsworthy and there is time and resources available. Ultimately, the restriction prevents the consistent and confident reporting of a piece of factual information that shows an IPH was not 'just another murder', but the result of a history of domestic violence.

The interaction between these rules, processes and legal restrictions and the media's reporting practices, directly and indirectly shape the final media outputs of IPHs. This detailed understanding of how and why these various legal rules and restrictions operate will now be applied to my case study analysis in the following two chapters. Ultimately, this chapter and my case study will contribute to constructive recommendations for potential changes to the law and better practice reporting that does not impede an accused's fair trial, but also represents legal proceedings in a way that appropriately accounts for the social reality of IPHs.

CHAPTER SIX:
PAULINO CASE STUDY – THE 'RAW MATERIAL'

I INTRODUCTION

The use of a case study in my thesis provides an opportunity to apply the findings from the previous literature reviews and data to an individual IPH. The case study also brings together the legal and media disciplines, employing methods and concepts from both to answer the final research question:

> How do the legal influences identified interact with the media's production of stories of IPHs?

The value of looking at the one case from various angles is that the subtle and often hidden impacts of the law and media practice can be observed. The indirect and direct impact of the law on the news production process has otherwise been disregarded in broader, media output-focused studies of the media's reporting of IPHs and VAW.

The case study is in two parts. The first part, addressed in this chapter, is largely descriptive, providing an overview of the 'raw material' produced by the court in the six-week homicide trial of Fernando Paulino, who was charged with, and found guilty of, the murder of his ex-wife Teresa Mancuso. Part two of the case study, set out in the following chapter, considers the way the media interpreted, selected and reported the raw material within the constraints of the publication restrictions discussed in Chapter Five, and extent to which the law or media practices contributed to the way the IPH story was told.

What I have categorised as the 'raw material' is drawn from the court transcripts[829] and my notes from observing the trial, which is then broken down into themes I identified throughout the legal narrative. In this case, the legal narrative revolved around the prosecution's argument that Paulino was filled with hatred for Teresa Mancuso and her newfound life, and therefore had the motive to kill her. The defence argument was that much of the evidence about Paulino and his conduct was exaggerated or untrue. I will set out how the rules of evidence and legal processes significantly tailored the evidence to fit within these narratives, leading to the exclusion of evidence of prior violence and the decontextualisation and discrediting of Teresa Mancuso's and various witnesses' accounts of events. I also identify several occasions on which evidence or legal arguments did contextualise the domestic violence dynamics evident in Paulino's relationship with Teresa Mancuso. Throughout the chapter, I consider how the

[829] *R v Fernando Manuel Paulino*, trial conducted in Supreme Court of Victoria, 4 May-16 August 2017, Justice Kevin Bell presiding.

social reality of IPHs is reflected, or not, in the evidence. I do not, however, provide a unique critique of how the rules of evidence operate in an IPH trial, which is beyond the scope of this thesis.

A *The names*

Fernando Paulino	Accused (referred to as Paulino)
Teresa Mancuso	Victim (I refer to the victim by her full name, using her maiden name)
Dermott Dann	Defence lawyer
Andrew Tinney	Prosecution lawyer
Luke Paulino	Son of Teresa and Fernando
Daniel Paulino	Son of Teresa and Fernando
Lauren Vaccaro	Daniel's ex-girlfriend
Lily Safarewiscz	Teresa's family law lawyer
Francesca, Melina and Patrick Mancuso	Teresa Mancuso's siblings
Dario Ferella	Teresa Mancuso's boyfriend
Michelle Collier	Police officer from the Family Violence Division

B *An overview of the story*[830]

On 15 July 2013, Teresa Mancuso[831] was found dead in the garage behind her mother's Reservoir home. It was not until 2015, after a long police investigation, that her ex-husband Fernando Paulino was arrested and charged with her murder. He pleaded not guilty. A significant proportion of the six-week trial was made up of evidence about Paulino and Teresa Mancuso's relationship and Paulino's negative feelings towards his ex-wife. The jury found Paulino guilty of murder on 15 June 2017 and he was sentenced by Bell J on 21 December 2017 to 30 years' imprisonment, with 25 years' non-parole.

Paulino and Teresa Mancuso were married in 1987 and had two sons, Daniel (born in 1990) and Luke (born in 1992). Although not included as evidence in the trial, there were alleged incidents of physical violence prior to the couple separating in 2010 after a family argument that took place at their holiday

[830] The 'story' is based on my observations of the court proceedings, court transcripts and media coverage.

[831] Also referred to throughout media coverage and trial as Teresa Paulino.

home in Rye. After the separation, the sons lived with Paulino and Teresa Mancuso lived with her parents.

Between 2010 and 2013, Teresa Mancuso commenced new employment, started a relationship with Dario Ferella, and sought advice from a family law solicitor about her rights to the family assets. The family law proceedings that eventuated were lengthy, leading to growing tensions between Paulino and Teresa Mancuso.

In 2011, Paulino downloaded a pornographic video in which, he claimed, Teresa Mancuso was the featured woman. Paulino sent the video to Teresa Mancuso and tried to get his sons and numerous family and friends to watch it, accusing Teresa Mancuso of being a 'slut'. Paulino also incessantly called and messaged Teresa Mancuso's phone.

Teresa Mancuso went to the police on more than one occasion about the phone calls and messages, which led to an application for an intervention order ('IVO') that was eventually granted without contest from Paulino. Despite the IVO, there were occasions when Paulino approached Teresa Mancuso in public. On one occasion, Paulino followed Teresa Mancuso to her car from the supermarket, banged on her window and threatened her. Many witnesses also spoke about all the times Paulino had called Teresa Mancuso a 'slut', blamed her for everything that was wrong or threatened to kill her.

On the night of the murder, Teresa Mancuso had been at her sister's house with her sons for a family dinner. After cleaning up and watching an episode of *The Block* with her sister, she went home to shower before meeting her boyfriend Dario. While speaking to her friend on the phone, Teresa Mancuso heard a noise from outside. Still in her bathrobe and slippers, she went through the backyard into the garage where she was stabbed 16 times.

Teresa Mancuso's elderly neighbours were at home watching television when they heard screams coming from next door. The woman looked over the fence to see lights on in the garage and after trying Teresa Mancuso's phone, she called her sister Francesca Mancuso to alert her of the disturbance. Teresa Mancuso's brother-in-law and his friend went straight over and found Teresa Mancuso's body.

Paulino claimed that at the time of the murder he had been on a hard rubbish run looking for items he could fix and resell, something he had habitually done in the past. Then he went to a supermarket and to his elderly mother's home to check in. Paulino claimed to have left his mobile at home. During this time, Daniel and Luke tried unsuccessfully to call their father, having arrived home to find the lights and television on but Paulino absent. CCTV footage showed a vehicle similar to Paulino's in a location that was inconsistent with his story. If the vehicle in the footage was his, it showed he had a significant opportunity to commit the crime.

Police investigators did not find blood staining on any of Paulino's belongings, except for some DNA test results that showed stains in his car were 'probably' blood. They also did not find any shoes that matched the imprints made in the front garden bed of the house where Teresa Mancuso was killed. The prosecution speculated that Paulino had disposed of his clothes, shoes and the murder weapon, which was never found. Evidence of planning, including signs of interference with sensor lights at the rear of the house, led the prosecution to speculate that the killer knew the property. The nature of the killing and injuries inflicted revealed that the killer had a strong motive.

The prosecution's case was circumstantial in that it relied on the accumulation of the relationship evidence and the evidence that cast doubt on Paulino's story of what he was doing on the night of the incident. The defence's case argued that many of the accounts were exaggerated or made up. They also argued that many of the procedures carried out by the police were unjust, biased and weak.

After being found guilty by the jury, Paulino continued to claim his innocence. At a pre-sentence plea hearing where his son Luke read a victim impact statement he yelled out from the dock, 'You know I didn't do it Luke. You know that' and 'It's wrong. The media. It's wrong'.[832] Bell J took a strong stance in his sentencing judgment, condemning domestic violence and the unequal treatment of women. Paulino appealed his conviction in November 2018 on the basis of an 'accumulation of irregularities' throughout the trial.[833] The appeal was dismissed.

II THE 'RAW MATERIAL'

With the above context in mind, I move now to discuss the raw material as it pertains to the themes I identified in the legal narrative. These themes include: the nature of the relationship between Paulino and Teresa Mancuso before and after the separation, the possessive and jealous conduct of Paulino, his attempts to blacken Teresa Mancuso's character, incidents of stalking, Teresa Mancuso's fear of the accused, the IVO, family law proceedings and sentencing.

A *The relationship*

As stated by Bell J in an early pre-trial ruling ('Ruling Number One') on the admissibility of various pieces of evidence,[834] this case was one that wholly relied on circumstantial evidence, mainly to do with the relationship between the accused and Teresa Mancuso.[835] There was no evidence directly linking

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[832] Wayne Flower, 'Fernando Paulino dragged from Supreme Court after outburst during pre-sentence hearing', *Herald Sun* (Melbourne, 16 August 2017).

[833] *Paulino v R* [2018] VSCA 306 ('*Paulino v R*').

[834] *DPP v Paulino (Ruling No 1)* [2017] VSC 343 ('*DPP v Paulino (Ruling 1)*').

[835] Ibid.

Paulino to the murder and no eye-witnesses. Bell J ruled that much of this evidence, as will be described, was admissible for the purpose of showing the animosity of Paulino towards his former wife and therefore the possibility of a motive for murder and whether, in fact, there was a murder.[836] In making this ruling, Bell J cited Menzies J in the High Court case *Wilson v The Queen*[837] as stating the relevance of relationship evidence regarding an accused and his wife who was murdered. The relevant issue was whether the relationship was one of enmity and distrust, or whether they were like 'an ordinary married couple, with a good relationship despite differences and disagreements'.[838]

As discussed in Chapter Five, the admissibility of such evidence is limited by whether or not the evidence was too remote from the date of the crime. That is, if it occurred too long ago, it may not be relevant, or the 'passage of time' might mean that its probative value is reduced and therefore there is a danger of unfair prejudice.[839] As will be shown, although a significant amount of evidence about the relationship was admitted at trial, evidence of violence that preceded the separation of Paulino and Teresa Mancuso was not allowed based on these evidentiary rules. Instead, most of the relationship evidence was made up of examples of Paulino's possessive, jealous, suspicious and degrading behaviour preceding the murder, as this evidence was directly relevant to Paulino's hatred for the victim.

1 *The marriage is not on trial*

Evidence heard at trial regarding Paulino and Teresa Mancuso's marriage and the nature of their relationship before they separated was limited. There were signs throughout the evidence and legal discussions that prior violence and aggressive behaviour on Paulino's part did exist in this relationship. However, the evidence that was admissible was filtered, decontextualised and vague. The only evidence that was put before the jury in full was that Teresa Mancuso would often sleep in her son Luke Paulino's bed when he was young. The prosecution implied that this was because she was unhappy with Paulino and because of the frequent arguments the couple had.[840] Defence lawyer Dermott Dann cross-examined Luke on this issue and suggested that it was because he often asked Teresa Mancuso to sleep with him

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[836] Ibid.

[837] *Wilson v R* (1970) 123 CLR 344, 344 ('*Wilson*').

[838] Ibid.

[839] *Evidence Act 2008* (Vic) s 137 ('*Evidence Act*').

[840] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 8 May 2017) 416 ('*Transcript, 8 May 2017*').

as a child when he was sick. He also suggested that Luke's assertion that his mother did not sleep with his father at all for several years was 'false and exaggerated'.[841] Luke did not agree.[842]

The second piece of evidence that was partly heard at trial concerned an 'incident' that led to the separation. The incident occurred at the family's holiday home in Rye. During the trial, no detail was given as to what caused the incident, what was said or done, who was at the holiday home or what was witnessed. In pre-trial submissions, the 'incident in Rye' was described by prosecution lawyer Andrew Tinney, as follows:

> The trigger for the eventual separation was an incident which took place in January 2010 at a family get together in Rye. On this occasion, the accused initiated an angry exchange with the deceased and members of her family at her parent's beach house. During the incident, the accused screamed at the deceased and others and tipped up a table. His son Daniel stepped towards the accused and pushed him away, telling him to "fuck off".[843]

Paulino also allegedly made a threat to kill his wife on this occasion.[844] The defence argued that this incident was relevant only to issues at the trial because it marked the timing and the 'occasion of the separation', while the words and conduct of the accused were not relevant. In Ruling Number One, Bell J agreed with the defence, particularly because the incident occurred three years before the murder.[845] The threat to kill was specifically excluded because it was not 'proximate' enough to the killing.[846] His Honour ruled that the evidence could only be led in a 'neutral' way.[847] What Bell J meant by 'neutral' was not explained but, based on what was successfully led during the trial, it appeared to mean that only the fact that there was an 'incident' that led to the separation and the timing of the incident could be disclosed.[848] The condition that evidence be led in a 'neutral' way arose more than once during the trial and had the effect of removing details of evidence that the defence saw as prejudicial to the accused or irrelevant.

Other pieces of evidence regarding the pre-separation relationship were laid out in the depositions and committal hearings but were not allowed in the trial. This evidence concerned occasions where the accused pushed and shoved his wife, and times when Teresa Mancuso would run to her neighbours'

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[841] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 9 May 2017) 542 ('*Transcript, 9 May 2017*').

[842] Ibid.

[843] *DPP v Paulino (Ruling No 1)* (n 834) [60].

[844] Ibid.

[845] Ibid [61].

[846] Ibid [62].

[847] Ibid [61].

[848] *Transcript, 8 May 2017* (n 840) 473 (D Dann).

houses in fear of the accused.[849] Bell J accepted the defence's submission that the jury only needed to know that it was an 'unhappy marriage' and therefore evidence about incidents of violence prior to separation were not admissible. His Honour reasoned that the evidence concerned 'specific events' rather than the nature of the relationship more generally.[850] Bell J also ruled that these events were too remote from the murder and added, 'The marriage is not on trial in the proceedings'.[851] This ruling meant that evidence recorded in 58 pages of the depositions and committal transcripts where witnesses had referred to incidents of the accused's aggressive behaviour towards the deceased were not tendered at trial.[852]

The above shows how the rules of evidence have the effect of limiting the extent to which contextual information about the relationship can be admitted in court. Of course, the focus of the proceedings is the murder, and as Bell J cited, the courts have cautioned against:

> [Slipping] into a habit of admitting evidence which … cannot tend to prove motive or to explain the acts charged merely because it discloses some incident in the history of the relations of the parties.[853]

Regardless, what this shows is how details of alleged violence and the accused's aggressive behaviour are erased from the trial narrative, or only brought before the jury in a 'neutral' and therefore stripped-back manner.

2 *Possessive, jealous and suspicious*

Evidence of the relationship after the separation was more likely to be admitted. Reasons for this included the temporal proximity of the evidence to the murder and the relevance of the 'feelings of hatred and enmity that the accused had for the deceased'.[854] These aspects of the evidence went towards whether Paulino in fact killed Teresa Mancuso and whether he had a motive to do so.[855] In this section, I consider the evidence of Paulino's 'possessive', 'jealous'[856] and 'suspicious'[857] behaviour – a common pattern that precedes IPHs. That is, research has identified that separation, or even the victim's intention

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[849] *DPP v Paulino (Ruling 1)* (n 834) [85].

[850] Ibid [88].

[851] Ibid.

[852] Ibid [89].

[853] Ibid [38] citing *R v Barbour* [1939] 1 DLR 65, 67 (Duff CJ) ('*R v Barbour*').

[854] *DPP v Paulino (Ruling 1)* (n 834) [40]-[41].

[855] Ibid 13.

[856] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 6 June 2017) 2199 (A Tinney) ('*Transcript, 6 June 2017*').

[857] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 4 May 2017) 206 (A Tinney) ('*Transcript, 4 May 2017*').

to separate, is a common characteristic of IPHs.[858] It is also well known that the risk of violence escalates when a woman leaves a domestic violence relationship, as it is a time when the abuser might seek to keep her from leaving or retaliate.[859] Further, in one international study, the abuser's 'sexual suspicion' prior to the separation was identified as being a constant characteristic in women's experiences.[860]

A significant part of the evidence demonstrating Paulino's suspicious behaviour after the separation was that given by Luke Paulino regarding his father's request that he and his brother take a paternity test because he suspected they were not his children. During Luke's examination in chief, the witness was answering questions about Paulino's suspicions of Teresa Mancuso cheating on him. Luke at one point asked Tinney, 'Am I able just to say something else along the lines of that?' Tinney then confirmed with the witness that what he was about to say was in relation to the evidence regarding Paulino's suspicions and not his opinion about something. The witness said it was 'in relation' and went on to start describing when he was asked by Paulino to take a mouth swab. To which Tinney had to interrupt and say: 'All right, I might just stop you there'.[861] In a break, the prosecution then put the defence on notice that they would lead this evidence when the witness was recalled. The defence indicated an intention to contest this evidence. From observing the discussions between Bell J and the lawyers, it became apparent that the issue of the DNA test was questioned during the 2016 committal hearings as it had been mentioned in another witness' statement. At the time, Bell J reserved his ruling on this issue until the witness was due to give evidence at the trial. The way this evidence arose was a good example of how witnesses, in an attempt to contextualise their answers, would begin talking about a topic that was inadmissible and therefore had to be interrupted or stopped by legal counsel.[862]

Tinney suggested that Luke be recalled under a voir dire (a hearing in the absence of the jury) to give the full evidence regarding the paternity test, giving the defence the opportunity to be on notice as to what the evidence was and to cross-examine Luke. Tinney also stated that he would argue the evidence

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[858] Australian Domestic and Family Violence Death Review Network, *Australian Domestic and Family Violence Death Review Network: 2018 Data Report* (Domestic Violence Death Review Team, May 2018) 12. Actual or intended separation was identified in 55.4% of the IPHs the Death Review Network analysed (total being, 121 homicides). See also Patricia Easteal, *Killing the Beloved: Homicide Between Adult Sexual Intimates* (Australian Institute of Criminology, 1993) 85-87; Women's Coalition against Family Violence, *Blood on Whose Hands?* (Federation Press, 1994) 54.

[859] Martha R Mahoney, 'Legal Images of Battered Women: Redefining the Issue of Separation' (1991) 90(1) *Michigan Law Review* 1, 65.

[860] Ruth E Fleury, Cris M Sullivan and Deborah I Bybee, 'When Ending the Relationship Doesn't End the Violence: Women's Experiences of Violence by Former Partners' (2000) 6(12) *Violence Against Women* 1363, 1374.

[861] *Transcript, 9 May 2017* (n 841) 439.

[862] Throughout the trial, Bell J referred to this as evidence that had 'popped out': Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 12 May 2017) 833 ('*Transcript, 12 May 2017*').

was relevant to the issues of how Paulino treated his children and the 'vindictive' manner he exhibited towards Teresa Mancuso.863 During the voir dire, the full extent of the evidence was given in which Luke explained when and how he was asked by Paulino to take the mouth swab. Dann argued that this evidence about the DNA test would operate to 'introduce a degree of unfair speculation into this trial'.[864] This was one of the many times throughout the trial the defence argued that evidence was either irrelevant or should be excluded under s 137 of the *Evidence Act*, which provides that evidence must not be admitted if its probative value is outweighed by the 'unfair prejudice to the accused'. The way this argument would unfold in the trial was firstly a discussion about why the evidence was irrelevant, followed by a qualification that, even if it was considered relevant, the nature of the evidence was more prejudicial than probative and should therefore be excluded under s 137.

Dann was also concerned that, if this evidence was led, there was no further evidence about the results of the test.[865] That is, if there was evidence that showed the results in fact indicated Luke was his son, then it would follow that Paulino would have known this at the time of the murder, countering the argument that he was motivated by such suspicions. Dann also argued it was inflammatory and that it could give rise to the speculation that Paulino had knowledge about DNA testing procedures.[866] The prosecution argued that the fact there were no results was irrelevant, as Paulino's actions of asking his sons to take the test in the first place was what was relevant to the central issue (i.e. Paulino's hatred of the victim). Tinney stated:

> For a father to say such things to his sons in the context of his deteriorating relationship with his former wife, the Crown would submit is very telling as to his level of animosity towards her, and the proposition is not, in my respectful submission, remotely dependent on whether a test was ever carried out, and if one was carried out, what the result of it was.[867]

Dann then argued that, if the evidence were to be admitted, that it be brought in a 'neutral' way, avoiding concepts about DNA testing and sampling. The defence asked that the evidence be framed as a 'paternity test' rather than a DNA test. Unlike Bell J's decision regarding the 'incident' at Rye discussed above, Bell J disagreed with the defence and said there was no need to 'sanitise' the evidence.[868] When the evidence was finally given in court, Luke told the jury that Paulino had said: 'I want you to do this to see if you guys are actually my boys. I don't trust your mum.'[869]

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[863] *Transcript, 9 May 2017* (n 841) 458.

[864] Ibid 470.

[865] Ibid.

[866] Ibid 472.

[867] Ibid 477-8.

[868] Ibid 490.

[869] Ibid 494.

On the following day, before the defence had begun cross-examining Luke about this topic, Bell J expressed that he was concerned the evidence could go towards creating a negative image of Paulino's relationship with his sons. The problem with this depiction was that Paulino and his sons' relationship was not considered relevant to the murder charge, and therefore it would be prejudicial.[870] I have described the trajectory of this evidence here because, despite these complicated debates, limitations and Bell J's concerns about the evidence, the media's reporting of the DNA tests did exactly what Bell J was worried about – create a negative image of Paulino as a father. This is also interesting because, despite this legal reasoning that the father-son relationship was not relevant to the murder, the Paulino sons were a focal point throughout the media coverage (discussed in the next chapter).

The narrative of Paulino's suspicions of Teresa Mancuso was somewhat turned on its head by the defence when they attempted to introduce evidence of Teresa Mancuso's suspicions of her boyfriend Dario Ferrella having an affair.[871] The defence wanted to introduce evidence regarding Dario Ferella's alleged relationship with his former partner Michelle. On the night of Teresa Mancuso's murder, Ferella was at a work dinner where Michelle was present. Dann questioned Ferella about the fact that he had not told Teresa Mancuso about this dinner and had instead told her he was at work. Further, the defence tried to introduce evidence through other witnesses of Teresa Mancuso's concerns that Ferella was cheating on her.[872] The defence's argument was that, given this was a circumstantial case, it would make sense that the jury has the opportunity to infer from Teresa Mancuso's suspicions of her partner that it was completely reasonable and innocent for Paulino to do the same thing.[873] Bell J accepted that the alternative explanation for Paulino's suspicions was 'ordinary human frailty', however, the evidence about Teresa Mancuso's suspicions was irrelevant and it would not assist the jury to hear about that behaviour. His Honour added that Teresa Mancuso and Paulino could not be compared, particularly when the accused was subject to an IVO.[874] It was notable that this portion of the evidence, which discredited Teresa Mancuso's character, did not receive much more attention throughout the trial or the media's coverage.

The prosecution's evidence that showed Paulino's suspicions and jealous and possessive nature was summarised in the closing address. Tinney's summary of this type of evidence transforms what were

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[870] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 10 May 2017) 530-1 ('*Transcript, 10 May 2017*').

[871] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 11 May 2017) 764 ('*Transcript, 11 May 2017*').

[872] *Transcript, 12 May 2017* (n 862) 776.

[873] Ibid.

[874] Bell J made a ruling on this matter which was not included in the transcript. Bell J's statements are sourced from my observation notes from 12 May 2017.

disjointed witness examinations throughout the trial into a story of Paulino's control and, to an extent, paints a picture of the life Teresa Mancuso was attempting to live.

> After many years of a shocking marriage – an unsatisfactory, an unhappy marriage – she was out the door and away. She had a new job. In time she met a new man. She retained that close and loving bond with her sons but her life with the accused was over. She said it, he knew it. She had moved on, and he knew that too, but what about him? What about the accused? Was he ready to move on? Was he willing to move on? No, he was not. Nor did he like the fact that she was moving on. He had wanted her back and she refused to comply. There's evidence that indicates that multiple requests by him to her to come back were made and she said "no", and he found out about Dario Ferella, who he called a "weasel" and he was very unhappy about Ferella being on the scene, and as if he had some right to control whom she would and would not see. As if her being with another man was some act of unfaithfulness to him, even though they were separated. When in reality, of course, it was no more than entirely her right, and no more than she was perfectly entitled and justified in doing.[875]

Tinney's description is an example of the lawyer's own recognition of the effect of power and control in a domestic violence relationship. The notion of Paulino not letting Teresa Mancuso go was a thread throughout the prosecution narrative.

The defence's response to the prosecution's overall narrative regarding suspicions and controlling behaviour focused on the limited nature of this type of evidence, in that it was circumstantial and indirect evidence which needed to be considered in relation to the whole body of evidence and not on its own.[876] Further, it could only be considered relevant to the 'feelings of extreme negativity that the accused…had towards the deceased which goes towards motive'[877]. However, the evidence could not be used to reason that, because Paulino behaved in that way, he therefore did or may have committed the crime.[878] The notion that circumstantial evidence, which in this case was made up mostly of the relationship context, can only be used in a particular way by counsel and the jury, recurred throughout the trial. As mentioned above and will be discussed in more detail in Chapter Seven, the media's reporting of this type of evidence constructed a picture that starkly contrasted with the legal purpose of the evidence.

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[875] *Transcript, 6 June 2017* (n 856).

[876] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 9 June 2017) 2514 (D Dann) ('*Transcript, 9 June 2017*').

[877] Ibid 2529 (Bell J).

[878] Ibid.

3 *Blackening Teresa Mancuso's character*

As mentioned in Chapter Five, the discrediting of a victim's story or character is a common finding in the feminist legal critiques of sexual assault[879] or domestic violence trials.[880] Scholars have also identified the discrediting and blaming of female victims in the context of IPH trials, particularly in cases where the female accused was the victim of domestic violence and is pleading self-defence.[881] Although victim blaming was not explicit in the *Paulino* case, given Paulino was arguing that he was not the person to have murdered Teresa Mancuso, I still found that the victim's character was subjected to significant scrutiny. This occurred mostly through the prosecution's amplification of Paulino's deliberate attempts to degrade, blame and discredit his former wife. Introducing this type of evidence was, of course, necessary to show Paulino's jealous and controlling behaviour. However, I also observed occasions on which the defence tried to introduce evidence (similar to the attempt mentioned above to introduce evidence of her suspicions of her boyfriend) that showed Teresa Mancuso and her family in a bad light, although these attempts were not successful. As will be discussed in Chapter Seven, this picture did not come through in the media reporting, in which Teresa Mancuso was instead portrayed as a 'doting mum'.[882]

A large proportion of the prosecution's case consisted of evidence of Paulino's attempts to discredit Teresa Mancuso by falsely implicating her as being involved in the pornographic video or otherwise speaking ill of her to 'poison the minds of others, including her children, against her'.[883] Similarly, in relation to the DNA test evidence discussed above, it was made clear that this evidence was not led to go towards Paulino's bad character but rather to establish his extremely negative feelings towards Teresa Mancuso. This evidence included Paulino calling Teresa Mancuso degrading names, often in front of his sons, such as 'slut', 'bitch' and 'whore'.[884] Lauren Vaccaro, Daniel Paulino's ex-girlfriend said that Paulino had asked her, 'How is that slut going? I know what she's up to, I have people everywhere, eyes everywhere. She doesn't know what I'm capable of, she'll get what's coming.'[885] On

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[879] See Alison Young, 'The waste land of the law, the wordless song of the rape victim' (1998) 22 *Melbourne University Law Review* 442; Deb Waterhouse-Watson, *Athletes, Sexual Assault, and "Trials by Media": Narrative Immunity* (Routledge, 2013).

[880] See Carolyn Copps Hartley, '"He Said, She Said"' (2001) 7(5) *Violence Against Women* 510.

[881] Elizabeth Sheehy, *Defending Battered Women on Trial* (UBC Press, 2014); Stella Tarrant, Julie Tolmie and George Giudice, 'Transforming legal understandings of intimate partner violence' (Research Report No 3, ANROWS, June 2019).

[882] Wayne Flower, 'Fernando Paulino guilty of murdering estranged wife Teresa Paulino', *Herald Sun* (online, 15 June 2017) <https://www.heraldsun.com.au/news/law-order/fernando-paulino-guilty-of-murdering-estranged-wife-teresa-paulino/news-story/787f099e115ca3833a1c91deba884d8e>.

[883] *Transcript, 6 June 2017* (n 856) 2199.

[884] *Transcript, 8 May 2017* (n 840); *Transcript, 9 May 2017* (n 841).

[885] *Transcript, 10 May 2017* (n 870) 582.

a number of occasions, evidence was also given that indicated Paulino blamed Teresa Mancuso for his financial position. Paulino said to Daniel: 'Your mother is fucking this whole thing up. She's putting us in this position.'[886] Luke also gave evidence that Paulino blamed Teresa Mancuso for the family law issue dragging on and for the fact that the house had to be sold.[887]

The pornographic video, titled 'Teresa's Magic Moments' on Paulino's devices, was the central piece of evidence that showed Paulino's conduct and attempts to discredit Teresa Mancuso. The actual showing of the pornographic video footage, which was relatively graphic, was contested by the defence as being inflammatory, prejudicial and unnecessary.[888] The prosecution argued that the focus of this evidence was not necessarily the content itself but what the accused decided to do with the video. Again, the evidence was not to be used to put Paulino in a bad light but, instead, to show his feelings of animosity and hatred towards Teresa Mancuso.[889] Seeing the footage would also make clear that there was no reasonable basis on which anyone could think the woman in the video was actually Teresa Mancuso.[890] Bell J ruled that the footage was admissible given that the accused had shown the footage to his son and it was a significant attempt to 'blacken the name' of the deceased.[891] It was therefore relevant to the accused's negative feelings towards Teresa Mancuso. The judge directed the jury to not engage with prejudicial reasoning when considering the evidence.[892]

Although the footage was uncomfortable to watch, the prosecution argued it was instead the plethora of evidence from the witnesses who had encountered the video that demonstrated Paulino's deliberate and repetitive attempts to blacken Teresa Mancuso's name. This included Paulino's sons. To Luke he said, 'Your mum is in a video just, pretty much, just being a slut. Just putting shame on herself and the family.'[893] When Luke asked why he was being shown the video Paulino 'rambled on about how she was, she wrecked the family and look what she's doing and pretty much just, yeah, using degrading words towards her'.[894] Other examples included: Paulino told Patrick Mancuso, 'I've got it, trust me,

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[886] *Transcript, 8 May 2017* (n 840) 395.

[887] *Transcript, 9 May 2017* (n 841) 434-5.

[888] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 31 May 2017) 1882 (D Dann) ('*Transcript, 31 May 2017*').

[889] Ibid 1887-8 (A Tinney).

[890] Ibid 1899. The ruling was not included and so Bell J's comments are sourced from my observation notes from 31 May 2017.

[891] Ibid.

[892] Ibid.

[893] *Transcript, 8 May 2017* (n 840) 427.

[894] Ibid.

that's her';[895] Paulino attended the home of Alex Rizzolio, a former friend, out of the blue and showed him the video; a friend Salva Pusello said the accused had called her and told her Teresa Mancuso had been in a video; and another friend Karen Paulo had received via text message a still image from the video.[896] There was also an occasion where Paulino telephoned an acquaintance from years earlier and asked him if he knew anything about the pornographic video.[897] As put by the prosecution, the reality was that it was these actions, rather than the video, that would arouse more disgust in the jury than the actual showing of the footage.[898]

Other evidence that showed Paulino's attempts to discredit and blame Teresa Mancuso included vague mentions of the Mancuso family's experience with the courts in the past. In a covert police recording, Paulino disclosed to police that Teresa Mancuso's uncle was charged and convicted for molesting his nieces and nephews. Paulino referred to the criminal proceedings as contributing to the breakdown of their marriage.[899] Paulino referred to Teresa Mancuso as a 'sick girl' after what happened when she was young (referring to the uncle and being molested).[900] Also, during this conversation with the police, which Tinney quoted in his closing address, Paulino claimed that Teresa Mancuso had made drunken phone calls to him demanding half a million dollars, and threatening to 'take him to the cleaners'.[901] He also claimed he told her 'You've got two kids. What are you going to do? Are you going to blow it all on fucking drugs? Are you going to smoke it all?'[902] Tinney added that these comments, which Paulino attributed to Teresa Mancuso, appeared to be 'like something just made up by him to put her in a bad light'.[903] Also, in Paulino's first statement to police, he claimed Teresa Mancuso had bipolar disorder, was on medication for depression and was a cannabis smoker. He also claimed that he had been told by an unknown person that she was using ice (methamphetamine).[904] While this evidence was used to show Paulino's feelings for Teresa Mancuso, it is also indicative of the reality that victims of domestic violence are often blamed for the problems in the relationship.

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[895] *Transcript, 10 May 2017* (n 870) 649.

[896] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria SCR 2016 0220, Bell J, 17 May 2017) 992 ('*Transcript, 17 May 2017*').

[897] Ibid 993.

[898] *Transcript, 31 May 2017* (n 888) 1888.

[899] The police recording was not included into the transcript. These quotes are sourced from my own observation notes from 30 May 2017.

[900] Ibid.

[901] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 7 June 2017) 2340 ('*Transcript, 7 June 2017*').

[902] Ibid.

[903] Ibid.

[904] Ibid 2326.

The topic of Teresa Mancuso's uncle arose again in Dann's cross-examination of a family friend, Maryanne Micalizzi, in which he asked about the uncle and court proceedings.[905] The question arose at the end of Dann's cross-examination and appeared out of context. It was clearly upsetting for the witness. In the absence of the jury, Dann explained to Bell J that he had questioned the witness about this situation because it was going to come up in later evidence.[906] The relevance of this family history to the defence's case was not made clear at any stage. From my observations, it seemed to be an attempt to cast doubt on Teresa Mancuso's mental health and her family's (a lot of whom were witnesses) history and character as well. The defence's attempt to introduce Teresa Mancuso's suspicions of her boyfriend, discussed in the above section, was another instance in which the defence unsuccessfully tried to poke holes in the victim's character. None of this information was reported by the media, most likely because journalists were not in attendance at the time the evidence was given.

B *Teresa Mancuso's voice in the trial*

Teresa Mancuso's voice was present through evidence from witnesses to whom she had expressed her fear of the accused in the years and months leading up to her death. This included: witnesses themselves recounting times when Paulino had made threats to kill in their presence, or times when Teresa Mancuso had told them that, if she died, Paulino was responsible, or other occasions when she had shared details about Paulino following and harassing her. Some witnesses were able to provide first-hand accounts of these incidents. This evidence reflects the reality of domestic violence in that threats to both the victim and family and stalking are common risk factors for lethality.[907] However, as discussed in Chapter Five, a victim's voice in a homicide trial is often distorted, decontextualised or in some circumstances silenced. In this case, although much of this evidence was admissible, it was somewhat stifled by complicated legal rulings.

Much of this evidence was admissible on the basis that it was relevant to the accused's state of mind and therefore motive to commit murder and the actual killing.[908] Evidence of Teresa Mancuso's 'subjective' fear of the accused, however, unless brought in the context of showing the nature of the relationship, could not be raised as a stand-alone subject. This was because, on its own, the evidence was either not relevant to the accused's motive or the killing itself, or was unfairly prejudicial to the

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[905] *Transcript, 12 May 2017* (n 862) 798.

[906] Observation notes from 12 May 2017.

[907] Mandy McKenzie et al, 'Out of Character? Legal responses to intimate partner homicide by men in Victoria 2005-2014' (Discussion Paper No 10, Domestic Violence Resource Centre, 2016) 49; Judith McFarlane, Jacquelyn C Campbell and Kathy Watson, 'Intimate Partner Stalking and Femicide: Urgent Implications for Women's Safety' (2002) 20 *Behavioural Sciences and the Law* 51; Daniel Webster et al, 'Assessing Risk Factors for Intimate Partner Homicide' (2003) 250 *NIJ Journal* 15.

[908] *DPP v Paulino (Ruling 1)* (n 834) [65].

accused.[909] Consequently, evidence in which Teresa Mancuso had expressed that she thought Paulino would kill her was ruled to be inadmissible because it had a weak probative quality and was highly prejudicial.[910] To an extent, therefore, Teresa Mancuso's voice was diminished and distorted. Further, this fine (and confusing) line between Teresa Mancuso's subjective fear of the accused, and general evidence of her fear as it arose in the context of relationship evidence, became a constant source of contest throughout the trial.

Bell J also had to consider a list of statements made by Teresa Mancuso that were to be retold by witnesses and therefore were subject to the hearsay rule. For example, Teresa Mancuso told her friend Maryanne Micalizzi that the accused had threatened to kill her mum and dad.[911] She had also told another friend Carmel Cotroneo that the accused had yelled out to her 'slut' when she was attending court proceedings concerning the property dispute.[912] These and other statements that were not already ruled inadmissible because they were too prejudicial, were otherwise ruled to be admissible under one or more of the hearsay exceptions discussed in Chapter Five. One of the most prominent factors considered by Bell J when deciding whether any exceptions applied was that Teresa Mancuso was telling trusted friends with whom she had a close relationship and, accordingly, her statements were highly likely to be reliable.[913] After having to jump the hurdles of 'relevance' and probative value outweighing prejudice, the further hearsay conditions that had to be satisfied to have Teresa Mancuso's voice included in the trial narrative brings into question how much of her perspective (as told by friends and family) was left out by the prosecution. The way this evidence was presented at trial and the way in which the defence challenged the credibility of the evidence will now be considered.

1 *Paulino's threats to kill*

A series of threats towards Teresa Mancuso, her sons and even her parents were retold by witnesses. This included witnesses retelling the court what Teresa Mancuso had told them or speaking of their own accounts of Paulino making these threats to them or in front of them. Most of these threats were contested by the defence as being exaggerated or false. A recurring strategy adopted by the defence was to suggest that it was unbelievable that a man such as Paulino would be capable of making such threats given other evidence of his hard-working nature and being a good father. In Daniel Paulino's examination, Dann noted how he had said in a statement that his father was being immature and an idiot

[909] Ibid [67].

[910] Ibid [71].

[911] Ibid [110].

[912] Ibid [104].

[913] *Evidence Act* (n 839) s 65(2).

at the time of making the threats.[914] Dann suggested that, because Daniel and Luke had not taken the threats seriously at the time and because the two sons continued to live with Paulino, it meant that their recounting of the threats was exaggerated.[915] Tinney attempted to contextualise this situation in his closing address by arguing that Paulino's sons did not take the threats seriously because they did not want to believe that their father was capable of acting on them.[916]

The defence's counternarrative, that these threats were exaggerated or not true because Paulino was a 'nice' man, was also raised during Lauren Vaccaro's cross-examination.[917] Dann referred to evidence given by Lauren Vaccaro during the committal hearings that suggested Paulino was a nice, hardworking man and a good father. Dann argued that it did not make sense that a 'nice' man would threaten to murder Teresa Mancuso.[918] In cross-examination, Lauren Vaccarro attempted to explain why she never expressed to Daniel that Paulino had made threats against his life. The exchange between Lauren Vaccaro and Dann also showed the way witnesses were often cut off from explaining their responses or providing context.

> Dann: I suggest to you the reason that you never spoke to Daniel about this threat and that conversation was because it never, ever occurred; what do you say about that?
>
> Lauren Vaccaro: It did occur. It did happen.
>
> Dann: You did say this...
>
> Lauren: How am I supposed to tell...
>
> Dann: And you say this, do you
>
> Bell J: Mr Tinney [sic] she hadn't finished. Please go ahead and say what you wanted to say?
>
> Lauren: Being a young girl, how am I supposed to tell my boyfriend that his dad has just threatened to kill him? Knowing the relationship between Fernando and Teresa and how aggressive Fernando was and thing [sic] that he could say, I went and told her first.
>
> Dann: This is the...
>
> Lauren: And she never wanted her boys to be turned against them [sic]. She wanted their situation to be between them two. They were still living with him. She never tried to brainwash them and turn them against their dad.
>
> Dann: This is the same man that was always very nice to you?
>
> Lauren: Yes, it's the same man.

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[914] *Transcript, 8 May 2017* (n 840) 396.

[915] Ibid 395-6.

[916] *Transcript, 6 June 2017* (n 856) 2209-10.

[917] *Transcript, 10 May 2017* (n 870) 592.

[918] Ibid 603.

Dann: The same man that was always very nice to his son.

Lauren: He was nice to me. I was his son's girlfriend.[919]

This defence strategy and argument is notable given the reality that conventional and ordinary family men are also capable of being controlling, abusive, and even murderers.[920] The tactics used by the defence also echo those discussed by scholars in Chapter Five in which the defence's cross-examination questions are framed in such a way that the witness has no option other than to reply in the affirmative and without context.[921] In this way, the witness is made to 'rub up against' the defence's version of events.[922]

2 *Stalking or a different 'version of events'*

The various instances of Paulino's stalking and public harassment of Teresa Mancuso which arose throughout the trial paint a clear picture of what is a common scenario preceding domestic homicides.[923] However, like the evidence regarding Paulino's threats to kill, the way these incidents were retold in the courtroom was disjointed and continuously challenged by the defence as being exaggerated and inconsistent with another version of events.

The incidents of stalking included a series of phone calls and messages to Teresa Mancuso's phone late at night and the early morning hours. This prompted Teresa Mancuso to attend a police station which led to her getting an IVO.[924] This occurred around the same time that Paulino had sent her the pornographic video. There was also an incident where Paulino followed Teresa Mancuso back to her car from the Le Manna shopping centre in Essendon. Her recounting of this incident to friends and family differed, but overall it was conveyed that he put his hand on her window and to one witness she said he yelled 'Open the fucking window'.[925] On another occasion, Teresa Mancuso was at the Essendon Fields shopping centre with a colleague and friend David Brady.[926] This shopping centre was close to her work and so she often went there, however, it was not close to Paulino's home. Brady had left Teresa Mancuso outside Coles to go to the bathroom and came back to see and overhear Paulino calling

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[919] Ibid 609.

[920] See R Emerson Dobash et al, 'Not an ordinary killer - Just an ordinary guy' (2004) 10(6) *Violence Against Women* 577.

[921] Danielle Tyson, *Sex, Culpability and the Defence of Provocation* (Routledge, 2013).

[922] Young (n 879) 88.

[923] McFarlane, Campbell and Watson (n 907).

[924] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 19 May 2017) ('*Transcript, 19 May 2017*').

[925] *Transcript, 11 May 2017* (n 871) 734-5.

[926] *Transcript, 17 May 2017* (n 896).

her a slut and whore and intimidating her. On yet another occasion, Brady was with her at the café and she told him she had seen Paulino and was frightened. Teresa Mancuso had relayed to many family and friends that she felt like she was being followed and had retold, in different ways at different times, the occasions on which she had been confronted by Paulino.

The defence's strategy with this body of evidence was not to deny outright that the incidents had happened, but instead juxtapose these incidents with occasions when the two had met consensually. Dann would refer to these two different sets of meetings between the accused and Teresa Mancuso as a different 'version of events'.[927] For example, when cross examining Francesca Mancuso (Teresa Mancuso's sister), Dann asked her about whether she had been told about a time when Paulino and Teresa Mancuso went for a drive to the lake together to talk.[928] He also asked about Daniel's 21st birthday and the fact that Teresa Mancuso and Paulino both attended without conflict. Francesca did not recall these occasions or being told about them, nor did most of the witnesses who Dann posed these questions to.[929] Dann posed these different scenarios where Teresa Mancuso and Paulino allegedly spent time together harmoniously to a number of witnesses, the repetition of which honed the insinuation that these stalking incidents may have been exaggerated and out of context. Albeit, as will be shown, this version of events did not arise in the media's narrative.

3 *Teresa Mancuso's predictions of her murder*

As discussed above, in Ruling Number One, it was made clear that Teresa Mancuso's prediction of her own death at the hands of Paulino was, on its own, inadmissible because of its 'weak' probative value and its prejudicial nature. Regardless of this ruling, this evidence did incidentally appear throughout the trial. On the first day, the defence applied for a jury discharge because of one sentence in the prosecution's opening address which concerned Teresa Mancuso telling her friend David Vaccaro, 'If I'm found dead in a car park it was the accused who was responsible'.[930] The defence argued that this type of evidence fell into the category that Bell J had ruled inadmissible and stated their concerns about the media reporting this piece of evidence:

> So we're left in a position, it seems, that open to the jury [is] a graphic threat and a graphic prediction of what was going to happen, circumstances where that's admissible. Now if that is in fact the case, we seek an opportunity to obtain instructions in relation to that matter.

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[927] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 16 May 2017) 952 ('*Transcript, 16 May 2017*').

[928] *Transcript, 10 May 2017* (n 870).

[929] Ibid.

[930] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 4 May 2017) 219 ('*Transcript, 4 May 2017*').

> We're concerned that there are members of the press here that, depending on what flows, whether that has the potential for finding its way into reporting coverage of the trial.[931]

Tinney did accept that he was mistaken to include the statement but argued that in the broader scheme of the opening address, the jury would not place much significance on that one sentence.[932] Bell J ruled that, although the piece of evidence, being Teresa Mancuso's prediction of her death, was inadmissible, it was not significant or prejudicial enough to cause a discharge of the jury. He also added that, given the jury have been instructed not to read the media, he did not see it necessary to issue a suppression order on the topic.[933]

This type of evidence also appeared in the witness examinations of Teresa Mancuso's sister Melina Mancuso. Melina Mancuso also mentioned her sister's fear of the accused and that she was afraid to go through with the family law proceedings for fear Paulino would kill her.[934] The defence referred to this as an 'utterance' from the witness which should have been inadmissible, however, did not raise the issue until a day after the evidence had already been given. Bell J expressed frustration with both the defence and prosecution for not raising the issue earlier. The defence sought leave to get instructions on whether to apply for a trial dismissal. Ultimately, they did not make an application. As will be discussed in Chapter Seven, this utterance from Melina Mancuso was reported in the media despite Bell J's ruling that such evidence was inadmissible.

C *Intervention order*

As was discussed in Chapter Five, IVOs commonly precede IPHs,[935] and Paulino was no exception. However, the admissibility of this evidence was contested. During the committal hearings, the defence had argued that evidence of the IVO was prejudicial. In Ruling Number One, Bell J said:

> The risk arises because the jury might impermissibly reason that the intervention order was granted because the accused was a person who would mistreat his wife and would breach an intervention order by making contact with her (as suggested by other evidence). However, this danger does not outweigh the probative value of the evidence …[936]

Bell J accepted as relevant the 'fact' the IVO was made, but ruled that the evidence should be limited to the essentials.[937] This was another example of evidence needing to be presented in a 'neutral' way.

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[931] Ibid 229.

[932] Ibid 235.

[933] Ibid 240. Ruling was not included into transcript; observation notes from 4 May 2017.

[934] *Transcript, 10 May 2017* (n 870) 665.

[935] See Australian Domestic and Family Violence Death Review Network (n 858) 13.

[936] *DPP v Paulino (Ruling 1)* (n 834) [92].

[937] Ibid.

This narrowing of context, or 'neutralising' of information, also occurred in the admission of evidence about when the IVO application was made. In the pre-trial hearings, the defence raised the issue of the admissibility of evidence about phone calls made by Paulino to Teresa Mancuso while she was with the police officer Michelle Collier preparing the IVO.[938] Collier answered one of the phone calls to inform him there was now an IVO and that he needed to stop contacting Teresa Mancuso. Paulino told the police officer, 'I have a friend in the force and they'll fuck you up'. This statement was ruled inadmissible as the threat was too prejudicial and not relevant to the relationship between Teresa Mancuso and Paulino.[939] This was another example of violent and aggressive conduct on the part of the accused that was not put before the jury, taking away from the context of his behaviour and responses to Teresa Mancuso asserting control over her life. Having said that, Paulino's statements to Collier concerning Teresa Mancuso, such as 'It's none of your business, I can call my wife whenever I want', were admissible because they directly related to the victim.[940]

D *Family law proceedings*

Although the relationship between domestic violence and property and spousal disputes has not been extensively investigated,[941] difficult family law proceedings are a common experience for women who have left violent relationships.[942] Such proceedings can act as a 'lightning rod' for 'pent up emotions', especially in those relationships characterised by power and control.[943] Seven in ten women who leave a violent relationship also leave behind property or assets,[944] up to 90 percent of women who are seeking a property settlement after violence find it exceptionally difficult,[945] and the domestic violence victim is three times more likely to receive an unfair outcome.[946] It has also been found that the dominant party will continue to assert his or her position by stubbornly escalating the conflict, rather than giving in.[947]

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[938] Observation notes from 2 May 2017.

[939] *Transcript, 19 May 2017* (n 924) 1184-5.

[940] Ibid.

[941] Renata Alexander, *Family Violence in Australia: The Legal Response* (Federation Press, 2018) 90.

[942] House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *A better family law system to support and protect those affected by family violence* (Report, December 2017) 160.

[943] Bruce Smyth and Grania Sheehan, 'Spousal Violence and Post-separation Financial Outcomes' (2000) 14(2) *Australian Family Law Journal* 1, 1-2.

[944] Peta Cox, *Violence against women in Australia: Additional analysis of the Australian Bureau of Statistics' Personal Safety Survey, 2012* (ANROWS Horizons, 2015) 3.

[945] Emma Smallwood, 'Stepping Stones: Legal Barriers to Economic Equality After Family Violence' (Research Report, Women's Legal Service Victoria, 2015) 36.

[946] Ibid.

[947] Claire Downey, 'Family law mediation: Compromising justice for women?' (2000)(8) *Women Against Violence* 45, 47.

The escalating conflict between Paulino and Teresa Mancuso regarding the division of assets was a central component of evidence. This evidence arose in the examination of Teresa Mancuso's family law solicitor Lily Safarewicz, much of which reflected this common experience and demonstrated Paulino's further assertion of power. This part of the story was crucial to the prosecution's narrative that Paulino had grown increasingly angry as the court proceedings went on, was difficult throughout the negotiations, and was particularly angry about having to sell the family home.[948] From the evidence, it was clear that the family law proceedings were a stressful time for Safarewicz. For example, Paulino, who eventually dismissed his lawyer and represented himself, accused her over the phone of conducting her work in a way for 'personal gain'.[949] The evidence also showed the stress these proceedings placed on Teresa Mancuso. Throughout Safarewicz's interactions with her client, she observed that Teresa Mancuso was frightened to attend court on her own, so would accompany her.[950] On one of the occasions Safarewicz attended court, she witnessed Paulino telling Teresa Mancuso she should be 'ashamed of herself', to which Safarewicz told him he should not be speaking to her client as there was an IVO in place. Paulino replied, 'you shut up' in what she said was a 'pretty aggressive voice'.[951]

Safarewicz's evidence took up two days of the trial and involved extensive and detailed cross-examination by Dann.[952] The defence's counternarrative was that Paulino had been cooperative and that Teresa Mancuso's valuations of the properties were unfair.[953] The defence also emphasised that Teresa Mancuso's death would not cause the proceedings to end and that 'Paulino would just walk away with the assets'.[954] The cross-examination was often heated and Dann would frequently cut Safarewicz off from contextualising or explaining her responses. At one point, Bell J warned Dann that he needed to allow Safarewicz to respond properly.[955] Dann, in what seemed to be an attempt to discredit her evidence, referred to Safarewicz's communications with Paulino as 'threatening'[956] and at times suggested that she had a 'personal' rather than professional relationship with Teresa Mancuso to which she responded strongly in the negative.[957] Although this evidence reflected a common experience of

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[948] *Transcript, 4 May 2017* (n 930) 198.

[949] *Transcript, 17 May 2017* (n 896) 1032.

[950] Ibid 1041.

[951] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 18 May 2017) 1132 ('*Transcript, 18 May 2017*').

[952] *Transcript, 17 May 2017* (n 896) 1050.

[953] *Transcript, 18 May 2017* (n 951) 1100.

[954] Ibid 1098.

[955] *Transcript, 17 May 2017* (n 896) 1065; *Transcript, 18 May 2017* (n 951) 1102.

[956] *Transcript, 18 May 2017* (n 951) 1075.

[957] Ibid 1104-5.

family violence victims, the media reporting did not cover this aspect of the case beyond the fact that there were pending family court proceedings. This missed opportunity will be discussed in Chapter Seven.

E *Sentencing*

Sentencing often attracts a strong media presence providing an opportunity for the court to 'send a message to the broader community about social expectations of men and women in relationships'.[958] Before considering how the media portrayed the sentencing to the public in Chapter Seven, it is important to consider how the process was undertaken by Bell J, as it is his statements and the way he framed his judgment that made up the raw material available to journalists.

1 *'Holding up a mirror to society, and particularly men'*

As discussed in Chapter Five, sentencing judgments can be the point at which excusatory narratives emerge through a discussion of mitigating factors, such as the accused 'lost it'. On the other hand, there is also evidence that judges have considered women's equality rights in their decisions as well as the broader context of family violence. The sentencing of Paulino was an example of the latter approach. Bell J took a strong stance against family violence, an issue that he said repeatedly came before the court.[959] In doing so, Bell J identified the individual circumstances of the *Paulino* case while also linking them to the broader context in which family violence occurs.

Within the first six paragraphs of the judgment, Bell J had identified the issues of coercive control, the breach of an IVO, the equality, independence and freedom Teresa Mancuso deserved, the impact on the victim's family and friends, and the need for strong condemnation of family violence. Bell J made a particularly resonant statement that summarised the nature of his judgment:

> Once again the court and the community have to confront the ugly reality that there are men who would kill their wives or other intimate partners because they think they can, regardless of the consequence for family and friends. Teresa speaks silently from the grave holding up a mirror to society, and particularly to men, for us to look deeply at what lies within. There is clearly something wrong.[960]

Bell J also emphasised the 'fundamental value of respect for women' throughout his judgment. He spoke about Ms Mancuso's desire to be 'equal, independent and free, or more simply just wanted to be'[961] and her right to 'personal dignity and autonomy, to physical and psychological integrity and to

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[958] McKenzie et al (n 907) 117.

[959] *DPP v Paulino (Sentence)* [2017] VSC 794 ('*DPP v Paulino (Sentence)*').

[960] Ibid 3.

[961] Ibid 2.

live an independent and fulfilling life free of fear from your violence'.[962] His Honour also spoke about the role of gender in family violence and that women 'are vastly overrepresented as victims and profoundly affected in particular ways that are not typical of men'.[963] He discussed the way in which the courts and legal system more broadly have developed their understanding and expectations of the treatment of women and family violence. From these statements, Bell J's judgment also placed Paulino's conduct and murder of his former wife within the broader context of VAW and went further to call 'society' into action.

2 *The context of violence preceding the murder*

As discussed in Chapter Five, breaches of IVOs are frequently referred to in sentencing judgments;[964] and are considered to be an important factor that will 'exacerbate the objective seriousness of other offending'.[965] Bell J emphasised the purpose of IVOs and the seriousness of a breach which he considered to be an aggravating factor:

> To murder a person protected by a family violence intervention order is a very serious matter. Family violence intervention orders are not worthless pieces of paper. The general purpose of such an order is to provide legally enforceable protection for the safety of the individual, usually a woman at risk of violence from a man.[966]

Bell J's comments about IVOs *not* being 'worthless pieces of paper' is noteworthy given the public discourse around IVOs being just that, as was discussed in Chapter Five.

As also discussed earlier, many acts of family violence are not charged criminal acts and therefore are difficult to draw on when imposing a sentence.[967] However, judges have used these uncharged acts as a means of providing context for the offence, regardless of whether they can be considered an aggravating factor. This can be seen in Bell J's judgment where he repeatedly summarised the context of the individual murder:

> the context was one in which you made threats towards Teresa and others, character assassinated her with abuse of various kinds, including promiscuity, and made spurious allegations of involvement in pornography, and nuisance called, followed and made unwelcome contact with her; there were proceedings in the Family Court on foot to which

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[962] Ibid 10.

[963] Ibid 7.

[964] McKenzie et al (n 907) 104-5.

[965] 'Victorian Sentencing Manual', *Judicial College of Victoria* (Web Page, 2018) 5.2.8.3 <http://www.judicialcollege.vic.edu.au/eManuals/VSM/index.htm#13888.htm>.

[966] *DPP v Paulino (Sentence)* (n 959) 5.

[967] McKenzie et al (n 907).

> the crime was in some way related in your mind; and an intervention order was in place. This is, therefore, a very serious example of the crime of murder.[968]

Bell J's listing of Paulino's actions that preceded the murder align with the 'red flags' or warning signs of escalated risk identified in domestic homicide cases. These risks, as discussed throughout this chapter, include separation, obsession/jealousy, prior controlling or abusive behaviour, threats to harm or kill the victim or others and breach of IVOs.[969] Judith Buckingham has written about the importance of recognising these factors in criminal trials given the powerful message the courts can send about the causes and nature of family violence.[970]

3 *Prevalence of family violence*

Bell J recognised that the prevalence of family violence may be a 'valid sentencing consideration' and he noted that this had not been raised by the prosecution or in any other case.[971] This outcome seems to reflect the research discussed in Chapter Five, which showed that expert evidence on family violence, despite being explicitly deemed admissible by legislation,[972] was not being introduced by the prosecution in cases where it would have been relevant and valuable in challenging the biases held by juries and judges.[973] Bell J stated that 'it is nonetheless a crime deserving of utter condemnation and condign sentence'.[974] However, on the face of Bell J's comments, there appeared to be a missed opportunity for both the legal professionals and thereby the media to discuss the prevalence of IPHs.[975]

III CONCLUSION

Given the circumstantial nature of this case, a large proportion of the *Paulino* trial was made up of evidence that did show the context of the relationship of the accused and Teresa Mancuso. This included a (limited) picture of the marriage before separation, the possessive, jealous and suspicious words and behaviour of Paulino post-separation, including threats and stalking and the multiple accounts of Teresa Mancuso's state of fear. There was evidence of the existence of an IVO, a direct and factual indication of a pattern of violence preceding the murder, and the context of the Family Court proceedings

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[968] *DPP v Paulino (Sentence)* (n 959) 4.

[969] McKenzie et al (n 907).

[970] Judith Buckingham, 'Romantic and "Real Life" Relationships in Criminal Law: Reconstructing Red Flags for Dangerousness/Lethality' (2010) 93 *New Zealand Law Review* 93.

[971] *DPP v Paulino (Sentence)* (n 959) 9.

[972] *Crimes Act 1958* (Vic) s 322J ('*Crimes Act*').

[973] McKenzie et al (n 907) 87.

[974] Ibid.

[975] Bell J referred this case to the Victorian Systemic Review into Family Violence Deaths unit at the Coroners Court. The unit identifies risks and contributory factors associated with deaths resulting from family violence.

throughout which Paulino was uncooperative and aggressive towards Teresa Mancuso and her lawyer. The prosecution lawyer, Tinney, highlighted the broader dynamics of domestic violence throughout the trial, referring to Teresa Mancuso's newfound independence and Paulino's loss of control over his former wife. Bell J's sentencing also tied the evidence together in a way that further contextualised the IPH by discussing the role of gender inequality, the significance of prior violence and the broader social context of VAW. Overall, much of this evidence reflected the social reality of family violence and the common patterns of behaviour that precede IPHs.

However, the way this evidence was presented throughout the trial was often disjointed, tapered to a 'neutral' format, and interrupted by legal argument and debate, much of which was based on the complex ruling made by Bell J before trial. Evidence of Teresa Mancuso's 'subjective fear' and evidence of violence before the couple separated was not allowed at all. The cross-examination of several witnesses throughout the trial also showed the way witnesses were often interrupted and prevented from contextualising their responses. There were also numerous examples of witnesses being made to 'rub up' against the defence's 'version of events', which suggested that Teresa Mancuso and Paulino had a harmonious relationship and/or that Paulino was a 'nice man' and could not have behaved in the way being alleged. The requirement that the evidence be restricted to the issue of Paulino's negative feelings towards Teresa Mancuso also meant that the overarching story was simplified into one of hatred and jealousy driving Paulino to murder. Although necessary, this prosecution narrative had the effect of placing intimate details of Teresa Mancuso's life, including her relationship with Dario Ferella and Paulino's allegations of her being in a pornographic video, on display with only limited opportunities for her own voice to be expressed.

This chapter has provided a layout of the homicide trial and the raw material that was available to the journalists to report on. As demonstrated, the available raw material had been significantly filtered by previous evidentiary rulings before the trial and further decontextualised throughout the trial process. What is clear is that much of what the media are blamed for, such as focusing on the isolated incident of violence, excluding prior violence or emphasising the 'mad' or 'bad' character of the accused, already takes place in the courtroom, before the media enter the equation. Now I turn to consider how these legal rules and processes interacted with publication restrictions and the media production process.

CHAPTER SEVEN:
PAULINO CASE STUDY – THE MEDIA'S STORY

I INTRODUCTION

The aim of this chapter is to compare the raw material set out in the previous chapter to how the media reported the *Paulino* case. In doing so, this chapter also responds to the final research question:

> How do the legal influences identified interact with the media's production of stories of IPHs?

The previous chapter outlined how legal rules and processes were responsible for shaping the raw material that was available to journalists. The second part of the analysis will show the extent to which this shaped the media's narrative and how journalists were, or were not, further constrained by publication restrictions. This analysis will also consider what media practices, values and framing decisions also play a role in how an IPH is represented. This analysis draws on my observations from the previous chapter and the following sets of data: news coverage of the crime, investigation and trial and journalist interviews.

The media narrative was one in which Paulino was characterised as an 'evil killer', hating Teresa Mancuso with a 'white hot passion'.[976] The story included details of Paulino's threats, stalking and the pornographic video he shared widely. The IVO and other evidence indicating prior violence was only briefly mentioned. Another focus of the coverage was the impact the investigation and trial had on Teresa Mancuso's sons and the 'overwhelming prosecution case'[977] against Paulino. Throughout this narrative, the voice of Teresa Mancuso was mostly absent and instead she was condensed into the role of a 'doting mum' or 'flight attendant'. Although limited, much of the available raw material that pointed to the broader context of the relationship and VAW was not reported on, or at least not prioritised in the coverage. There were also instances where the media's coverage was contrary to the rulings about evidence made in the trial to avoid prejudice to the accused.

In this chapter, I identify a range of legal and media factors that interplayed with each other to contribute to the production of this media narrative. Briefly, these factors include: the limited amount of information available during a police investigation, the effect of sub judice contempt restricting

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[976] Wayne Flower, 'Husband murder accused hated wife with white hot passion', *Herald Sun* (Melbourne, 4 May 2017); Melissa Iaria, 'Accused wife killer hated her', *9News* (4 May 2017); Emma Younger, 'Melbourne man Fernando Paulino found guilty of murdering ex-wife', *ABC News* (online, 15 June 2017) <https://www.abc.net.au/news/2017-06-15/fernando-paulino-found-guilty-of-murdering-ex-wife/8614854>.

[977] Wayne Flower, 'Fernando Paulino jailed for at least 25 years for murdering his estranged wife', *Herald Sun* (online, 21 December 2017) < https://www.heraldsun.com.au/news/law-order/fernando-paulino-jailed-for-at-least-25-years-for-murdering-his-estranged-wife/news-story/51438fc0bd2593b5e2be3f4d162e3d8a>.

journalists to the dominant prosecution narrative, the impact of the *Family Violence Protection Act 2008* (Vic) ('*FVPA*') publication restriction leading to inconsistent and vague mentions of the IVO, the journalists' selection of raw material that aligned with news values and, occasionally, their own subjective observations of what was occurring in the courtroom. Finally, I also observe a relationship between the reality that only so many reporters could attend the entirety of the trial and the lack of diversity and nuance in the overall media narrative. Through this detailed and up-close examination of the media content and news production process, a more nuanced understanding of the relationship between the criminal justice system, law and the media in the production of IPH stories will be developed.

The media content and interview data

As outlined in Chapter Two, media content was collected over the course of the trial and retrospectively. In total, 76 print and online articles were collected from the *ABC*, *Yahoo!7*, *Herald Sun*, *The Age*, *9News*, *Preston Leader*, *StarWeekly*, *The Australian* and *Daily Mail*. This included articles from the date the murder occurred, the subsequent investigation and arrest of Paulino, and the criminal trial and sentencing.

Throughout the trial, there were a total of nine print journalists who covered the case. Most of the journalists attended during the prosecution's opening address, when the sons gave evidence on the first and second days of the trial, the verdict, pre-sentencing plea hearings and sentencing. A *Herald Sun* journalist, Wayne Flower, attended most of the trial and, occasionally, an *Australian Associated Press* ('*AAP*') journalist, Melissa Iaria. As discussed in Chapter Two, unfortunately, both journalists declined to be interviewed. Therefore, this chapter includes interviews with the journalists who have been referenced throughout this thesis. Some of these journalists covered parts of the trial and the others were able to speak more broadly about the reporting of IPHs.

II THE MEDIA'S STORY

At conclusion of the evidence, Bell J stated in his charge to the jury:

> The experience of the courts is that media reports, however accurate the journalist may try to make them, may be wrong or inaccurate. They cannot be the subject of the testing process that you have seen unfold in this trial. Journalists are not subject to directions that I might make. They may be here for part of the time and not others. For all sorts of reasons, therefore, media reports can be wrong. Media reports not only often, but usually take a particular slant or direction in cases. That is not to criticise them, it is just a fact. You do not have that luxury.

> The only slant that you have got to take is the one that the burden of justice brings upon your shoulders, and that is completely different to a media organisation, as you well understand.[978]

As acknowledged by Bell J, the media's version of the *Paulino* story did not reflect the complexity of the six-week trial. Instead, the long and arduous trial, which was already a fragmented version of reality, was further condensed into a familiar plot of a jealous husband murdering his former wife in the midst of ongoing family drama, featuring very little context about the relationship and the broader social problem of family violence. Not surprisingly, all but one of the articles about the *Paulino* case was episodic, hence the focus on the individuals involved and lack of broader discussions about VAW.

A *Family drama*

In *Paulino*, the media coverage was focused on the family drama, the elements of which included a 'volatile relationship'[979] between the husband and wife, Paulino's 'white hot hatred'[980] for his ex-wife, arguments between the accused and his sons (acutely illustrated by the sons giving evidence against Paulino), allegations of infidelity, disputes over property, pornography, threats and stalking. At the centre of this drama was the 'villain' Paulino, who was framed as an irrational, hateful and vengeful killer. This representation separated Paulino from the idea of an 'ordinary man', such as a loving father or friendly neighbour, and feeds into the idea of the monster myth.

1 *A domestic homicide*

As discussed in Chapter Three, a common criticism of the media is the failure to identify that a murder was related to 'domestic' or 'family violence'. This failure to name the relationship between the killer and the dead woman denies the reality of domestic murder. The deaths seem random, with no explanation. In *Paulino*, the coverage of Teresa Mancuso's death does suggest that the murder was a family-related incident but, in the early stages of the criminal investigation this identification was vague and implicit, and terms such as 'domestic violence' were rarely used to describe the relationship throughout the trial.

Throughout the murder investigation, the main source of information was the police, unless the media were to carry out their own investigations, which did not appear to occur here. Therefore, the early coverage of the homicide, before Paulino was charged, was bare and vague in terms of whether the homicide was related to domestic violence. As the investigation proceeded, some articles hinted at Paulino being a suspect. For example, in the final paragraphs of a *Herald Sun* article, the police detective was quoted as saying 'It's possible she knew her killer', followed by a confirmation that police had

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[978] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 9 June 2017) 2493 ('*Transcript, 9 June 2017*').

[979] Flower, 'Husband murder accused hated wife with white hot passion' (n 976).

[980] Melissa Iaria, 'Jealous ex jailed for 30 years for murder', *Australian Associated Press* (21 December 2017).

spoken to Paulino.[981] The fact that Paulino was potentially a suspect also appeared in an article published by *The Age*, in which it was reported that 'Ms Paulino's ex-husband has spoken with police "on a number of occasions"'.[982] As no arrests were made for over a year, coverage declined. However, in 2014, it appeared that new police information had become available, as there was renewed media interest in the case. For example, journalists Nino Bucci and Tammy Mills wrote the article, 'Murderers still on the loose a year on', in which they directly expressed the connection between Paulino and Teresa Mancuso's death.[983] Although not an explicit identification of the murder being a 'domestic violence' incident, this and another article[984] reported that the two Paulino sons had organised a Say No To Domestic Violence fundraising dinner to be held 'in honour of his mother'. This is perhaps the best the journalists could do to label the murder as 'domestic violence', without further information from police or Paulino's arrest. Given sub judice contempt was not yet a risk for journalists, this type of suggestive reporting was not necessarily a potentially contemptuous publication.[985]

There were only two other occasions where the term 'domestic violence' was used. The first time was in an *AAP* report of the committal hearings, which included evidence about Paulino's repeated abuse of Teresa Mancuso that she 'hid from her parents because she didn't want to concern them'.[986] This evidence was never heard in the trial and was assumedly ruled inadmissible. The second time the term 'domestic violence' was used was in Flower's report of the prosecution's opening address in the following passage:

> The court heard the couple had a volatile relationship before their separation in January 2010, with allegations of domestic violence.[987]

Flower used the term 'domestic violence' (albeit within the same sentence as 'volatile relationship' – a term criticised for mutualising the blame between the victim and perpetrator),[988] despite the fact Tinney did not use these words in his opening address. This could possibly have arisen from Flower's background knowledge of other evidence raised in the committal hearings, such as the abuse mentioned

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[981] Jon Kalia, 'Sons appeal for information about the death of Teresa Paulino amid new footage of 4WD seen near murder', *Herald Sun* (Melbourne, 22 October 2013).

[982] Rania Spooner, 'Police move on new clues in Teresa Paulino murder case', *The Age* (online, 22 October 2013) <https://www.theage.com.au/national/victoria/police-move-on-new-clues-in-teresa-paulino-murder-case-20131022-2vy8q.html>.

[983] Nino Bucci and Tammy Mills, 'Murderers still on the loose a year on', *The Age* (Melbourne, 14 July 2014).

[984] Tessa Hoffman, 'Sons wait for murder answers', *Preston Leader* (22 July 2013).

[985] There may be defamation concerns if any of the reporting was not truthful.

[986] 'Dead woman abuse victim: Vic court', *Australian Associated Press* (13 October 2015).

[987] Flower, 'Husband murder accused hated wife with white hot passion' (n 976).

[988] 'Introduction to Domestic Violence: Participant Handbook' (Domestic Violence Resource Centre, 2015).

in the *AAP* report above, or his own perceptions of the situation. Flower did not use the term 'domestic violence' again throughout his coverage.

The domestic violence help line 1800 RESPECT was only mentioned five times (6 percent) throughout the coverage, all of which was *AAP* copy written by journalist Melissa Iaria. Only two of these five articles were republished on news websites *Yahoo!7* and the *Daily Mail*. Iaria's consistent use of the helpline suggests some form of decision-making at *AAP*, or by the journalist, to include the helplines. The lack of articles that identified the circumstances as 'domestic violence' or used helplines may be an indication of the media's reluctance to report such information before a trial verdict. When interviewed, *ABC* reporter Karen Percy said that including helplines in court reports was problematic as it would presume that domestic violence was involved in the matter and could therefore prejudice the accused.[989] Contrary to this approach, however, was *The Age* crime reporter Tammy Mill's view that there were no legal reasons why she or her editors should not include a domestic violence helpline in an article about an IPH and that they had in fact 'gotten better at that'.[990]

2 *The grieving sons*

As discussed in Chapter Four, crimes become more newsworthy when children are involved as either the victims or perpetrators. Not only does the story become more relatable, but media scholars also suggest this is because the involvement of children in something so shocking represents a serious deviation from moral norms.[991] In that same chapter, I also highlighted the role of Sarah Ristevski, the daughter of the victim and accused, in the media's reporting of the *Ristevski* case. Similarly, in *Paulino*, the media narrative revolved around Paulino and Teresa Mancuso's sons, Luke and Daniel Paulino.

From as early as the police investigation, the two sons were involved in a police press conference appealing for information about the disappearance of Teresa Mancuso. The two men were quoted in several news articles, inciting sympathy and concern for the family as is demonstrated by the following quotes:

> 'She always did everything for everyone, she was the best mum'
>
> 'All we want is answers so we can try and get past this'
>
> 'We're sticking together one day at a time.'

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[989] Interview with Karen Percy, ABC Court Reporter (Annie Blatchford, Supreme Court Victoria, 16 September 2019).

[990] Interview with Tammy Mills, The Age Crime and Court Reporter (Annie Blatchford, Telephone, 17 September 2019).

[991] Yvonne Jewkes, *Media and Crime* (Sage Publications, 2004) 56; Stuart Hall et al, *Policing the Crisis: Mugging, the State and Law and Order* (Macmillan, 1978).

> ‘We’re just trying to get through this for mum, make her proud.’[992]
>
> ‘Whoever has done this, come in and turn yourself in’
>
> ‘She was loved by everyone. No one should have to go through this.’[993]

The first two days of trial (8 and 9 May 2017), on which Luke and Daniel Paulino gave evidence, received broad media coverage, with the *ABC*, *The Age*, *Herald Sun*, *Yahoo!7* and *9News* each publishing articles. The main themes selected from the Paulino sons’ evidence and featured in these articles were: the threats Paulino made towards Teresa in front of his sons, Paulino’s attempts to show the pornographic video to Luke Paulino, and that he asked his sons to take a paternity test because he was suspicious that Teresa Mancuso had had an affair.

What was not reflected in the media reports, however, was the complexity of this evidence and the debate that went on in the courtroom. This was particularly obvious in relation to the evidence about Paulino’s request that his sons take a DNA test. As outlined in Chapter Six, this evidence came as a surprise to both the defence and prosecution. Luke’s ‘utterance’ of the DNA test led to Tinney asking him to stop. Afterwards, there was a legal debate between the defence and prosecution as to its relevance and admissibility, all of which occurred before the lunch adjournment. As a side note to the legal arguments, before the adjournment in which the defence sought to seek instructions from Paulino, Bell J said to the media:

> Without telling you your job, obviously the evidence that has just been given has not been given in the presence of the jury. We don’t want anything untoward happening and I prefer not to have to make a suppression order but rather rely upon your professionalism.[994]

Despite this, during the lunch break, Flower published an online report that opened with ‘Accused killer Fernando Paulino asked to take a swab from his son’s mouth as his paranoia over her infidelity increased, a court has heard’. This headline was later edited to be ‘Accused murderer had wife followed, son says.’[995] Flower even reported the fact that Tinney had told the witness to stop.

Although I observed that Flower had left the courtroom before Dann raised his concerns about the evidence, the fact Flower recognised Tinney’s interruption in the report implied that he would have also known that the evidence was contentious and possibly prejudicial. After the break, the defence alerted Bell J to the fact that ‘contrary to Your Honour’s admonition to members of the press’ the material had

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[992] Spooner (n 982).

[993] Kalia, ‘Sons appeal for information about the death of Teresa Paulino’ (n 981).

[994] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 9 May 2017) 465 (D Dann) (‘*Transcript, 9 May 2017*’).

[995] Wayne Flower, ‘Accused murderer had wife followed, son says’, *Herald Sun* (online, 9 May 2017) <https://www.heraldsun.com.au/news/law-order/accused-murderer-had-wife-followed-son-says/news-story/356d28a7edad6f41e55163dfdce13a2e>.

been reported.[996] Bell J said he had read the report and acknowledged that the journalist reported that Luke had been stopped from continuing. His Honour added that he would deal with the report after the legal argument regarding the admissibility of the evidence.[997] Fortunately for Flower, the evidence was admitted and eventually heard in full by the jury, which meant his report was not potentially in contempt.

This piece of evidence continued to be controversial throughout the trial. As discussed in Chapter Six, Bell J expressed concern about his decision to allow the evidence to be admitted, as the way it developed placed Paulino in a bad light as a father, which was prejudicial and irrelevant.998 Despite this, an *AAP* article published on the 9News website reported the following:

> Luke Paulino said his father asked him and his older brother to take a DNA mouth swab test, shortly after accusing their mum of being in a pornography video.
>
> "He said, 'I want you to do this to see if you guys are my boys, I don't trust your mum," Luke said.
>
> He said his brother refused but he eventually agreed after his father persisted.[999]

Despite the limitations of the evidence being obvious to those involved in or observing the trial, once the raw material had been simplified and framed in the media report, the evidence took on a meaning that could be seen as prejudicial. Regardless, the reporting played into the narrative of a family drama in which the sons were central characters. The DNA test evidence was also summarised in a second report from Flower (following the article published during the lunch adjournment). The first sentence read: 'Accused killer Fernando Paulino asked his sons to take paternity tests as he was worried his wife of 23 years had cheated on him, a jury has heard'.[1000] It is interesting to note that this small piece of evidence, which was 'uttered' by Luke in his examination-in-chief, then became the lead for two outlets' news stories.

Following Paulino's conviction and before sentencing, Luke Paulino was again the centre of news coverage. At the pre-sentence hearing, Luke had chosen to read out his victim impact statement from the witness stand. The media reported that, while Luke attempted to read his statements, Paulino spoke

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[996] *Transcript, 9 May 2017* (n 994) 472.

[997] Ibid 473.

[998] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 10 May 2017) ('*Transcript, 10 May 2017*').

[999] 'Alleged killer asked sons for DNA test', *9News* (online, 9 May 2017) <https://www.9news.com.au/national/vic-murder-trial-hears-threats-to-ex-wife/64b8baf0-7ea8-423d-a1eb-ad27fd0103ba>.

[1000] Wayne Flower, 'Accused murderer Fernando Paulino asked sons to take paternity tests, court hears', *Herald Sun* (online, 9 May 2017) <https://www.heraldsun.com.au/news/law-order/accused-murderer-fernando-paulino-asked-sons-to-take-paternity-tests-court-hears/news-story/c924a9764ad6cabe6c9993335e57f767>.

out a number of times claiming his innocence and that the trial had been a media conspiracy inciting further sympathy for the sons. *The Age* court reporter Adam Cooper reported in his lead paragraphs:

> A killer who stabbed his ex-wife to death was marched from the Supreme Court after shouting at his grieving son from the dock.
>
> Fernando Paulino's cries protesting his innocence interrupted his son Luke as Luke prepared to read his victim impact statement to the court on Wednesday.[1001]

While Paulino's outbursts did dominate most of the coverage of the pre-sentencing hearing, towards the end of the news reports, journalists reported parts of Luke's lengthy statement. For example:

> Luke Paulino returned to the witness box to face his remorseless father as he read his impact statement.
>
> He described his mother as his "rock", a "loving, selfless soul."
>
> "Nothing can come close to the difficulty and pain from burying my mother before I even turned 21 and before her beautiful soul could even celebrate her 50th birthday," he said.[1002]

Cooper also included details about Luke's mental health and other conditions that had been exacerbated by the murder of his mother, as well as the fear he had of his father.[1003] While focusing on the individual family may distance the homicide from the broader social problem, this detail highlighting the impact the murder had on the sons, at the very least, shows a part of the reality and broader context of the crime. This was also a rare opportunity to give a voice to the victim through Luke's words.

3 *A united family*

Bolstering the human interest appeal of the sons' involvement with the case was the extended family members who supported the sons and Teresa Mancuso. When interviewed, *The Age* journalist Adam Cooper acknowledged he did not have the opportunity to follow the trial in its entirety. However, from his exposure to the committal hearings, verdict and also from following Flower's coverage, Cooper identified the unity of the family in their belief that Paulino was guilty as an angle he would have pursued:

> I found it really interesting, this is what stood out for me in terms of the committal, was both the level of hostility he had towards her and also, just how their sons really, gave evidence against him I found really interesting. Even just the reactions from all the family. It didn't seem like it was, you know in these situations you could have half the family sort of thinking

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[1001] Adam Cooper, 'Man who killed ex-wife marched from Supreme Court after outburst aimed at son', *The Age* (online, 16 August 2017) <https://www.theage.com.au/national/victoria/man-who-killed-exwife-marched-from-supreme-court-after-outburst-aimed-at-son-20170816-gxxe5w.html>.

[1002] Wayne Flower, 'Fernando Paulino dragged from Supreme Court after outburst during pre-sentence hearing', *Herald Sun* (online, 16 August 2017) <https://www.heraldsun.com.au/news/law-order/fernando-paulino-dragged-from-supreme-court-after-outburst-during-presentence-hearing/news-story/6d4748e015467fc17065d42f4790048b>.

[1003] Cooper, 'Man who killed ex-wife marched from Supreme Court' (n 1001).

> one thing, one version of events and the other … it just seemed like they were unified in not believing what he said, his version of events.[1004]

From my own observations, the sons, their two maternal aunties and uncle, cousins and family friends attended every day of the trial. They would come and go together and support one another outside the courtroom after they had finished giving evidence, which was often captured on the television news coverage. In court, the family sometimes could not conceal their emotions, reacting to some of Dann's suggestions and questions put to different witnesses.

The way this was captured in the print media coverage was predominantly through the observations of the journalists themselves. One of Flower's observations was regarding the defence strategy discussed in the previous chapter. That was when Dann insinuated during the cross-examination of Luke and Daniel Paulino that their claims their father had threatened their mother were exaggerated or a lie because they continued to live with him. This arose again in the defence's closing address. Flower reported the reaction of Luke and Daniel Paulino:

> In a day of drama the jury looked on as Mr Paulino's sons stormed from the court during Mr Dann's closing address.
>
> The incident came as Mr Dann continues to suggest both of Mr Paulino's sons were liars.
>
> He told the jury it made 'no sense' for them to remain living with their father while he allegedly made repeated threats to kill their mother.
>
> The suggestion caused Mr Paulino's youngest son Luke to angrily storm out of the court.
>
> His brother Daniel followed his clearly distraught brother outside before returning alone a few minutes later.[1005]

Similarly, on the day the verdict was given, many journalists reported on the number of family members present at the court, their emotional response and how one of the family members cried 'justice' after hearing Paulino was found guilty. Younger wrote in her report: 'The court was packed with Ms Paulino's family members and shouts of joy were heard when the verdict was delivered' and 'Ms Paulino's family were in tears and hugged outside the court room after the decision'.[1006] Melissa Iaria's report published on *Yahoo!7* included: 'Ms Mancuso's supporters, including her two sons, erupted in a loud cheer, with one saying 'justice'. They hugged and sobbed outside court.'[1007]

[1004] Interview with Adam Cooper, The Age Court Reporter (Annie Blatchford, Telephone, 28 August 2017).

[1005] Wayne Flower, 'Fernando Paulino's defence on the attack as trial draws to an end', *Herald Sun* (online, 7 June 2017) <https://www.heraldsun.com.au/news/law-order/fernando-paulinos-defence-on-the-attack-as-trial-draws-to-end/news-story/abdb40035d510d52c8c738ababe3e761>.

[1006] Younger, 'Melbourne man Fernando Paulino found guilty of murdering ex-wife' (n 976).

[1007] Melissa Iaria, 'Melbourne man guilty of murdering ex-wife', *Yahoo!7* (online, 15 June 2017).

While journalists are restricted to reporting only what is said in court in front of the jury, in practice, this does not seem to preclude reporting observations of the people involved in the proceedings. As *Channel 7* reporter Sharnelle Vella said when interviewed about the *Ristsevksi* case, when she heard the accused had been charged and was to appear in court, her immediate reaction was:

> You need to get a seat at the front, you need to see what he's wearing, what he's doing, is he nervous? Was he arrested in his pyjamas …[1008]

Interestingly, it is details such as this that err on the side of prejudice to the accused, as a journalist's perception of an accused's reaction or that the Paulino sons were 'distraught' is not material that is tested in the courtroom, or indeed relevant to the proceedings. Rather, such characterisations add to the drama and emotional power of the narrative. Whether such embellishments contribute to a better understanding of IPHs and family violence is also questionable.

4 *The 'despicable killer'*

As discussed in Chapter Three, in IPHs where the perpetrator is categorised as acting out of hate, as opposed to love, it is likely they will be represented as evil and different to other men.[1009] In *Paulino*, the prosecution had already created a negative image of the accused and, in turn, the characterisation of the accused as an 'evil killer' was amplified in the media coverage. For example, in the closing address words such as 'vitriolic', 'vicious', 'irrational', 'threatening', 'extraordinary and in some cases frightening' were used to describe Paulino and his behaviour.[1010] In Dann's closing address, he referred to the prosecution as painting a 'dark picture' of Paulino.[1011] Bell J also acknowledged in his charge to the jury that this case had given rise to a large body of evidence that could influence a member to feel prejudice against the accused and instructed the jury not to be influenced by such feelings.[1012]

Regardless of such warnings in court, the media's narrative aligned with the prosecution's, in that Paulino was portrayed as a jealous, irrational and threatening villain. Occasionally, this portrayal of Paulino went beyond the facts laid out in court and used descriptive words to sensationalise his characterisation. This was particularly the case in Flower's coverage, in which Paulino was portrayed

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[1008] Interview with Sharnelle Vella, Channel 7 Court Reporter (Annie Blatchford, Telephone, 26 November 2018).

[1009] Paul Mason and Jane Monckton-Smith, 'Conflation, collocation and confusion: British press coverage of the sexual murder of women ' (2008) 9(6) *Journalism* 691.

[1010] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 6 June 2017) 2181 ('*Transcript, 6 June 2017*').

[1011] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 7 June 2017) 2386 ('*Transcript, 7 June 2017*').

[1012] *Transcript, 9 June 2017* (n 978) 2507-9; Observation notes from 9 June 2017.

as a 'despicable killer',[1013] 'cocky killer'[1014] or 'ruthless thug'.[1015] Most, if not all, of these types of descriptions were drawn from Flower's own perceptions rather than the evidence. For example:

> Paulino was seen grinning like a Cheshire cat as details of a sickening wife murder were read out in court.[1016]

This observation of Paulino 'grinning' reinforced the cold and callous image that had been created by Flower throughout the trial. This stands in contrast to reports from the *ABC* and *The Age*, which were consistently more factual and rarely digressed far from what could be attained from the court transcript or at least a neutral retelling of what occurred in court. For example, in a report of the same pre-sentence hearing, *The Age* reporter Cooper also prioritised the material about Paulino's 'outburst aimed at son', and that he was 'marched' from court. However, the tone in Cooper's reporting of the hearing was neutral and did not include any adjectives or subjective descriptions of what had occurred.[1017]

The presence of Paulino's two sisters throughout the trial and their support of him indicated to me a more complex and ordinary image of Paulino. This can be seen in Dann's arguments to Bell J in the pre-sentencing plea:

> His sisters are present in court, Elizabeth Marasco, aged 48, Anna Paulino, aged 46, I think I've taken you to their background previously, Your Honour, in the course of the bail application, but certainly they have their own families, and own lives, as I said, in Queensland, but certainly for the purposes of this trial they have, I think, attended every day and continue to provide support, which is important for this man …[1018]

However, their presence was not once covered by the media, despite the fact the journalists sat directly behind the two women in court. The exclusion of this information and the emphasis on the attendance of the victim's family and friends in the media's coverage shows how the media can select what information and evidence is relevant to their narrative and exclude contextual information that may not seem to fit with the story the media is telling.

[1013] Flower, 'Fernando Paulino dragged from Supreme Court' (n 1002).

[1014] Wayne Flower, 'How killer Fernando Paulino almost got away with murder', *Herald Sun* (online, 15 June 2017) <https://www.heraldsun.com.au/news/law-order/how-killer-fernando-paulino-almost-got-away-with-murder/news-story/69745127caf4112c7c24a4a8333521ab>.

[1015] Wayne Flower, 'Case against Fernando Paulino: Details the jury never heard about the murder of Teresa Paulino', *Herald Sun* (online, 15 June 2017) <https://www.heraldsun.com.au/news/law-order/case-against-fernando-paulino-details-the-jury-never-heard-about-the-murder-of-teresa-paulino/news-story/1aec5b8ffd8a5ee4ff61b2fed1d73d3d>.

[1016] Flower, 'Fernando Paulino dragged from Supreme Court' (n 1002).

[1017] Cooper, 'Man who killed ex-wife marched from Supreme Court' (n 1001).

[1018] Transcript of Proceedings, *DPP v Paulino (Plea)* (Supreme Court of Victoria, Bell J, 16 August 2017) 22 ('*Transcript (Plea), 16 August 2017*').

5 *The 'flight attendant' or 'doting mum'*

As has been addressed in a number of studies looking at the media's reporting of crimes against women, the female victim is often 'stripped of her personal identity',[1019] defined by her role in society and assigned to either a 'good' or 'bad', 'virgin' or 'vamp' character description.[1020] Working in tandem with this is the silencing of the female victim.[1021] In the case of domestic homicides, this silencing is particularly obvious given the rules of hearsay that prevent much of what the victim had said from being brought before the court and therefore the media. Although Teresa Mancuso was mostly portrayed in a positive light, she was, like Paulino, represented as a one-dimensional character throughout the media coverage, characterised by her role as a mother, her employment and her relationship with a new man.

At the time of the murder and during the police investigation, Teresa Mancuso was referred to as a 'middle aged woman',[1022] 'mother of two',[1023] 'Reservoir mum',[1024] 'Melbourne woman'[1025] and 'murdered Reservoir woman'.[1026] This can be explained by the fact that, during the police investigation phase of news coverage, police were the primary source of information.[1027] As noted in Chapter Four, crime reporter Mills said it was only when journalists sought out further comments from friends, family or neighbours that a more detailed picture of the victim and/or suspect will be attained.[1028] Throughout the trial, the descriptions of Teresa Mancuso became more sensational, particularly in Flower's

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[1019] See Marian Meyers, *News Coverage of Violence Against Women: Engendering Blame* (Sage Publications, 1997).

[1020] Helen Benedict, *Virgin or Vamp? How the Press Covers Sex Crimes* (Oxford University Press, 1992); Emma Cunliffe, *Murder, Medicine and Motherhood* (Hart Publishing, 2011) ch 8; Belinda Morrissey, *When Women Kill: Questions of agency and subjectivity* (Routledge, 2003); Deb Waterhouse-Watson, *Athletes, Sexual Assault, and "Trials by Media": Narrative Immunity* (Routledge, 2013); Deb Waterhouse-Watson, 'News media on trial: towards a feminist ethics of reporting footballer sexual assault trials' (2016) 16(6) *Feminist Media Studies* 952; Women's Coalition against Family Violence, *Blood on Whose Hands?* (Federation Press, 1994).

[1021] Cunliffe (n 1020); Jenny Morgan, 'Provocation law and facts: dead women tell no tales, tales are told about them' (1997) 21 *University Law Review* 237; Cleonicki Saroca, 'The absent and silenced voice in media representations of Filipina victims of homicide in Australia' (2013) 21(3) *South East Asia Research* 517; Danielle Tyson, *Sex, Culpability and the Defence of Provocation* (Routledge, 2013).

[1022] 'Woman's body found in backyard of a Reservoir property after neighbours heard noises', *ABC News* (online, 16 July 2013) <https://www.abc.net.au/news/2013-07-16/homicide-squad-investigates-the-discovery-of-womans-body/4822288>.

[1023] 'Car clue to murder of mother of two in Reservoir', *ABC News* (online, 23 July 2013) <https://www.abc.net.au/news/2013-07-23/car-clue-to-reservoir-murder/4836856>.

[1024] Jon Kalia, 'Vehicle may provide clue in murder of Reservoir mum', *Herald Sun* (Melbourne, 15 July 2013).

[1025] Jessica Evans, 'Car footage key to mum's murder mystery', *The Australian* (Sydney, 22 October 2013).

[1026] Spooner (n 982).

[1027] Peter Grabosky and Paul Wilson, *Journalism and justice: How crime is reported* (Pluto Press, 1989); Women's Coalition against Family Violence (n 1020).

[1028] Interview with Mills (n 990).

coverage of the case. For example, his descriptions would vary from 'doting mum'[1029] and 'loving mother of two',[1030] to 'stabbed mum'[1031] and 'butchered mum',[1032] depending on the theme of evidence he would be covering in that report. These representations align with news values such as proximity, in that her role as a mother was relatable, or violence and threshold, in that the way she was murdered was shocking and out of the ordinary.

After Paulino's arrest there was a clear identification of the relationship between the victim and accused, and Teresa Mancuso began to be labelled as an 'ex-wife',[1033] 'estranged wife'[1034] and 'former wife'.[1035] Despite identifying Teresa Mancuso as Paulino's 'ex-wife', throughout the news coverage, her surname and title interchanged between Teresa Paulino, Teresa Mancuso, Ms Paulino and Mrs Paulino or, in one case, 'Teresa Paulino also known as Teresa Mancuso'.[1036] Although this is a seemingly insignificant error, these types of inconsistencies, alongside the media's overall distortion of the facts of the case and the reality of the victim and her experience, have been reported by family members to be offensive.[1037]

Teresa Mancuso's position as a 'flight attendant' was also used to identify her – predominantly in reports published by the *Daily Mail*. This was despite the fact she was not working as an attendant because of shoulder injuries at the time of her murder. This information was fleshed out repeatedly in evidence, in that Teresa Mancuso was on Work Cover payments and doing administrative duties while she was injured.[1038] Despite this, Teresa Mancuso's position as a flight attendant was emphasised by

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[1029] Wayne Flower, 'Fernando Paulino guilty of murdering estranged wife Teresa Paulino', *Herald Sun* (online, 15 June 2017) <https://www.heraldsun.com.au/news/law-order/fernando-paulino-guilty-of-murdering-estranged-wife-teresa-paulino/news-story/787f099e115ca3833a1c91deba884d8e>.

[1030] Flower, 'Fernando Paulino dragged from Supreme Court' (n 1002).

[1031] Wayne Flower, 'Paulino murder trial: Stabbed mum told sister 'He's going to kill me'', *Herald Sun* (online, 11 May 2017) <https://www.heraldsun.com.au/news/law-order/paulino-murder-trial-stabbed-mum-told-sister-hes-going-to-kill-me/news-story/263d362038980fe96f0690ca2d0584f6>.

[1032] Wayne Flower, 'Murder trial jury watches graphic crime scene video of butchered mum Teresa Paulino', *Herald Sun* (online, 23 May 2017) <https://www.heraldsun.com.au/news/law-order/murder-trial-jury-watches-graphic-crime-scene-video-of-butchered-mum-teresa-paulino/news-story/cb931f124578f8ec3a2107e89703ede7>.

[1033] Shannon Deery, 'Accused wife killer Fernando Paulino denied Christmas bail bid', *Herald Sun* (online, 19 December 2016) <https://www.heraldsun.com.au/news/law-order/accused-wife-killer-fernando-paulino-denied-christmas-bail-bid/news-story/b088030905364414b872885e790325fc>.

[1034] 'Husband in Vic court over wife's murder', *Australian Associated Press* (24 June 2015).

[1035] Esther Lauaki, 'Hillside man charged with murder', *StarWeekly* (Melton and Moorabool, 30 June 2015) 3.

[1036] 'Woman's body discovered in Melbourne', *Australian Associated Press* (16 July 2013).

[1037] Women's Coalition against Family Violence (n 1020) 124.

[1038] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 17 May 2017) 965-6 ('*Transcript, 17 May 2017*').

the media and other details were ignored, potentially because this characterisation aligned well with her image as a nurturing and feminine figure.

Again, this may also come down to the way the prosecution framed their own narrative in court. That is, the prosecution also made use of Teresa Mancuso's new positions as a flight attendant and 'extra' on television shows as a means of illustrating her newfound freedom, now that she was not under Paulino's control.[1039] Similarly, this was a point emphasised in one of Flower's post-verdict reports in which he wrote:

> She had scored a dream job as a flight attendant, picked up work as an extra on television productions and had taken on a new boyfriend.[1040]

While this description of Teresa Mancuso is somewhat one-dimensional, Flower and the other journalists were of course limited to what information was available throughout the trial. However, the media have been shown on occasions to take the opportunity once trials have concluded to interview friends and family to find out more about the victim.[1041] Accepting that the family may have declined or there may have been other unknown impediments, this was not done in this case.

Although the 'good' image of Teresa Mancuso prevailed in the media coverage and, overall, the media did not incite any victim-blaming attitudes, there were times when the more controversial parts of the case were embraced for their sensational qualities. Those subjects were the pornographic video in which Paulino claimed Teresa Mancuso was the woman being filmed,[1042] allegations from Paulino that she had been unfaithful throughout their marriage, as well as the derogatory name calling such as 'Your slut of a mum destroyed this family'.[1043] The prosecution needed to lead evidence that showed how Paulino degraded and blamed Teresa Mancuso in the lead up to her murder to demonstrate his 'negative feelings' towards his ex-wife. The prosecution also made clear that Paulino's allegations about Teresa Mancuso were made up and outlandish. However, when these aspects of the case were reported out of context in a single news article, this material incidentally tainted the image of Teresa Mancuso and reinforced the sensational aspects of the story.

[1039] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 4 May 2017) 204 ('*Transcript, 4 May 2017*').

[1040] Flower, 'Fernando Paulino guilty of murdering estranged wife Teresa Paulino' (n 1029).

[1041] See discussion in Chapter Three about the post-verdict reporting of the trial of Craig McDermott.

[1042] Wayne Flower, 'Accused Melbourne wife killer Fernando Paulino made son Luke Paulino watch pornographic video, saying it was wife Teresa Paulino', *Herald Sun* (online, 8 May 2017) <https://www.heraldsun.com.au/news/victoria/dad-fernando-paulino-son-daniel-paulino-in-court-over-mum-teresa-paulinos-murder/news-story/cddcae35199422c2ffe45145c8f83f7a>.

[1043] Melissa Iaria, 'Accused wife killer Fernando Manuel Paulino hated her: court hears', *Yahoo!7* (online, 4 May 2017).

Flower's coverage in particular picked up on these 'deviant' themes. For example, he published two articles that revolved around the pornographic video evidence, including 'Accused Melbourne wife killer Fernando Paulino made son Luke Paulino watch pornographic video, saying it was wife Teresa Paulino'[1044] and 'Fernando Paulino murder trial: Jurors forced to watch hard core porn'.[1045] The second article was particularly detailed, describing what Paulino had named the video file – 'Teresa's magic moments' – and the contents of the video:

> The video showed the profile of a woman, whose eyes were hidden by her hair, giving oral sex to an unknown man.
>
> Friends and family of Ms Paulino, including her sons, watched on as the video was played in the Supreme Court.[1046]

No other media outlet attended or reported on the trial the day the pornographic video was viewed. Flower was also the only journalist to report the defence's suggestions that Dario Ferella had been cheating on Teresa Mancuso. In a report of the defence's cross-examination of Ferella, Flower introduced the terms 'love rat' and 'two-timing' – phrases that had not been used by Dann in his questioning but were instead Flower's own interpretation of the evidence.[1047] This interpretation clearly fitted with the dramatic nature of the story and introduced further scandal to the plot of a family drama.

B *Absence of past violence*

As outlined in the previous chapter, evidence of violence that preceded the separation was ruled irrelevant because it was too remote from the murder itself.[1048] Further, any evidence that was related to Teresa Mancuso's fear of the accused or predictions of her own death was either excluded or was restricted in the way it could be led from the witness and used by the jury.[1049] Consequently, material that gave Teresa Mancuso a voice and illustrated the nature of the marriage was decontextualised and limited. The remaining raw material that was included in the media narrative included Paulino's hatred of Teresa Mancuso, as illustrated by his threats, stalking and the pornographic video. What did not receive as much attention, however, was the IVO.

[1044] Wayne Flower, 'Prosecutor defends detective from 'outlandish' attack in murder trial', *Herald Sun* (online, 6 June 2017 <https://www.heraldsun.com.au/news/law-order/prosecutor-defends-detective-from-outlandish-attack-in-murder-trial/news-story/ffd90e508329478bb0e1aec3b10c0a55>).

[1045] Flower, 'Fernando Paulino jailed for at least 25 years' (n 977).

[1046] Ibid.

[1047] Flower, 'Paulino murder trial: Stabbed mum' (n 1031).

[1048] *DPP v Paulino (Ruling No 1)* [2017] VSC 343 ('*DPP v Paulino (Ruling 1)*').

[1049] Ibid.

1 *'Extremely negative feelings' becomes 'white hot passion'*

As has already been demonstrated in the context of how Paulino was represented, the media's narrative was very much aligned with the prosecution case, which revolved around Paulino's hatred for Teresa Mancuso. However, the selectivity of which parts of that legal narrative the media emphasised suggests that other journalistic values and practices were at play.

On the first day of the trial, this selectivity was particularly obvious. Journalists from six news outlets attended and the day received the second broadest news coverage of the trial. While the prosecution gave their opening address, I observed a moment when all the journalists wrote a note. That was when Tinney outlined the prosecution's case:

> The prosecution case will establish that there was no other person. All there was, was a resentful, angry, embittered former husband, a man who hated his former wife with a white hot passion, a man who blamed her for everything that was wrong in his life, a man who said to a number of people that he would kill her, a man who did exactly that.[1050]

The three words 'white hot passion' was a neat and emotive way to summarise the central argument used by the prosecution to prove Paulino's motive, that being his 'extremely negative feelings' towards Teresa Mancuso. This phrase was said only ten paragraphs into Tinney's address, which took almost two days. Out of the dense amount of information in that address, 'white hot passion' was what caught the media's attention. The phrase made it into the lead paragraphs of every article that covered the first day of trial.[1051]

Arguably this choice of wording reinforces the stereotype that domestic homicides occur in a blaze of anger and 'passion'.[1052] The prosecution and media's description of the murder itself also invoked the idea of a 'passion' killing, in that the stabbing of Teresa Mancuso showed signs of a deliberate, personal and planned attack. This was emphasised in Tinney's closing address, which was covered by Flower in the following way:

> "People can be murdered in a number of ways … but Teresa Paulino was not hit once to the head, not stabbed once."
>
> The court heard Ms Paulino suffered catastrophic injuries to her heart, lungs and liver.
>
> "This was no frenzied, panicked attack," Mr Tinney said.[1053]

[1050] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 4 May 2017) 199-200 ('*Transcript, 4 May 2017*').

[1051] The *AAP*-sourced articles misquoted the prosecution and used the phrase 'white hot hatred'.

[1052] Tyson (n 1021).

[1053] Flower, 'Husband murder accused hated wife with white hot passion' (n 976).

Again, these details of the crime and Paulino's 'burning hatred' satisfy the news values of violence and threshold, in that the circumstances of the crime were shocking, brutal and extraordinary. These reports also give credence to the criticism of court reporting for picking out the 'juicy bits',[1054] given there was a significant portion of the prosecution opening address that was not reported.

2 *The 'intervention order meant to protect her'*

The fact there was an IVO taken out by Teresa Mancuso was a clear indication of her fear of the accused and that the violence against her had reached a point where she needed legal intervention. Further, the IVO was in place at the time of Teresa Mancuso's murder – a situation that is all too common in domestic homicides. However, the media's reporting of the IVO was inconsistent, vague and sometimes entirely absent.

Before the trial, the IVO was not mentioned at all. As discussed in Chapter Five, this mostly likely comes down to journalists either complying with the *FVPA* publication restriction or at least exercising caution in reporting the order until it was mentioned in open court. In addition, this information may not have been made available to the media by the police. The first time the IVO was mentioned was in an *AAP* report of the committal hearings, when Francesca Mancuso told the court that her sister had mentioned the IVO and said 'He is going to kill me when he gets this'.[1055] Once the trial had begun, the first time the IVO was mentioned was in another *AAP* report of the prosecution's opening address, which was then republished by *The Age* and *9News*.[1056] This detail, however, was not included until the final two sentences of the article, an indication that such detail was not considered to have much news value.

During the trial, the different approaches to the restriction were evident. The presence of the IVO did not appear in Flower's coverage until four days into the trial and, even then, he reported that 'supposedly' there had been an IVO,[1057] casting doubt on whether it was in place or not at the time of the murder. As discussed in Chapter Five, another *Herald Sun* reporter explained that the outlet's approach to reporting IVOs was strict, even if the existence of the order had been mentioned in open

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[1054] Grabosky and Wilson (n 1027) 45. See also Justice John Basten, 'Court and media relationships' (Speech, National Judicial College Conference, 4 November 2005).

[1055] 'Dead woman abuse victim: Vic court' (n 986).

[1056] Melissa Iaria, ''She'll die before I give her anything': accused wife killer hated her, court told', *The Age* (online, 4 May 2017) <https://www.theage.com.au/national/victoria/shell-die-before-i-give-her-anything-accused-wife-killer-hated-her-court-told-20170504-gvyvjj.html>; Melissa Iaria, 'Accused wife hiller hated her: court', *Australian Associated Press* (4 May 2017).

[1057] Flower, 'Accused murderer Fernando Paulino asked sons to take paternity tests' (n 1000).

court. This perhaps explains Flower's vague approach to reporting the order. Conversely, in Melissa Iaria's report of the same day of the trial, she wrote with much more confidence:

> At the time she was killed, Teresa Paulino had started family court proceedings and had an intervention order out against her former husband.[1058]

Similarly, on the day of the jury's verdict, *ABC* journalist Younger reported the presence of the IVO in the opening paragraph of her report:

> A Melbourne man who hated his ex-wife with "white hot passion" stabbed her to death as she tried to secure her share of their assets, despite an intervention order meant to protect her, a court has been told.[1059]

In this first paragraph, Younger identified the situation in which a woman had tried to leave her partner and sought legal protection which failed – a scenario the reader could potentially recognise as similar to previous cases or public debates and therefore part of a broader pattern. By placing this information in the first paragraph of the report, the importance of this aspect of the story is also emphasised. Although this practice is desirable in terms of raising awareness about the dynamics of family violence, it does fall foul of s 166 of the *FVPA* in its current legislative form.

For those journalists who take the approach that the restriction does *not* apply in the context of an IPH, the vague reporting may also have been a result of the 'neutral' way in which the evidence was led in court. However, context that was available and could have been reported in a way that did not explicitly identify the IVO, was the circumstances in which Teresa Mancuso and the police officer met to prepare the order. Unfortunately, on the day police officer Michele Collier gave evidence about the meeting she had with Teresa Mancuso when she prepared the order, there were no journalists present in court. Consequently, missing from the media's reporting was evidence about the terrified state of Teresa Mancuso when she met with Collier, as well as the series of threatening phone calls made by Paulino to Teresa Mancuso and Collier at the time of this meeting.

Flower had already published this evidence back in 2016 when he was reporting on Paulino's application for bail. This included evidence that was eventually ruled inadmissible at trial:

> But in documents tended in court police allege Mr Paulino boasted: 'I am not scared of the police.'
>
> He allegedly told one officer: 'I have friends who are in the force and I can have them f*** you up. How about I come down there and smash you're [sic] f***ing head in'.[1060]

[1058] Melissa Iaria, 'Son says dad threatened mum: Vic court', *Yahoo!7* (online, 8 May 2017) <https://au.news.yahoo.com/son-says-dad-threatened-mum-vic-court-35356332.html>.

[1059] Younger, 'Melbourne man Fernando Paulino found guilty of murdering ex-wife' (n 976).

[1060] Deery (n 1033)

Given the ease of accessing archived online news content this information about the violent exchange was therefore available to be reported on after the verdict, when sub judice contempt was no longer a risk. Flower or another journalist could have referred back to this evidence after the verdict. This did not occur.

3 *'He's going to kill me'*

As shown in Chapter Three, violent threats were a common feature across the media's coverage of IPHs and, although sensational at times, were an indication of the patterns of violence that preceded IPHs. Similarly, in *Paulino*, the media consistently and prominently reported the series of threats made by Paulino against Teresa Mancuso. Threats were mentioned throughout the articles 32 times compared to the total of 10 mentions of the IVO. This was not surprising given that a majority of Teresa Mancuso's family and friends had, in some form, witnessed Paulino speaking ill of Teresa Mancuso or threatening her life. Or, as put by Flower:

> Witness after witness has told the jury Mr Paulino made his hatred for his ex-wife clear in the months leading up to her shocking murder.[1061]

The range of threats reported reinforced the angry and intimidating image of Paulino. There was also an emphasis on how the threats and Paulino's anger escalated as family court proceedings progressed, something that was emphasised by the prosecution and constantly debated by the defence. Again, it is seen that the media remained in step with the prosecution narrative which suggested that, in the context of the Family Court property proceedings, Paulino would have gained from Teresa Mancuso's death. For example:

> Paulino, 55, had told one of their two sons: "She'll die before I give her anything," the Supreme Court trial was told on Thursday.[1062]

It was also reported that Paulino made several threats in front of his sons, contributing to his portrayal as an irrational and irresponsible father. For example, Luke Paulino said his father's anger increased as a legal battle over the family assets dragged on. One report stated:

> Luke Paulino claimed his father told him he would have no problem going to jail as long as his mother suffered.[1063]

[1061] Wayne Flower, 'Paulino murder trial: Accused told ex-wife he would kill her parents court hears', *Herald Sun* (online, 12 May 2017) <https://www.heraldsun.com.au/news/law-order/paulino-murder-trial-accused-told-exwife-he-would-kill-her-parents-court-hears/news-story/f1bfd1f388b7579425e883acab1b00bc>.

[1062] Iaria, 'Accused wife killer hated her' (n 1056).

[1063] Flower, 'Accused murderer had wife followed, son says' (n 995).

While the reporting of Paulino's threats went towards showing his violent behaviour, they said little about Teresa Mancuso's experience of being the target of these threats. This could be a consequence of the decision that evidence of Teresa Mancuso predicting Paulino would kill her was inadmissible.

Despite this ruling, however, there was one occasion where this type of evidence slipped out and it was quickly reported by Flower. As discussed in Chapter Six, while Melina Mancuso was giving evidence, she 'uttered' that Teresa Mancuso had told her she thought Paulino was going to kill her.[1064] The defence raised this issue the following day of the trial, leading to a legal debate about its admissibility and the consideration of whether an application for a dismissal of trial was needed. In the meantime, however, Flower published an article with the headline 'Paulino murder trial: Stabbed mum told sister: "He's going to kill me"'.[1065] This situation was similar to the reporting of the DNA test evidence that arose from Luke Paulino's examination and had not yet been ruled admissible when Flower's report had been published. Here, the defence did not raise their concern about the 'He's going to kill me' evidence until after Flower's report had been published, and so it cannot be said that Flower necessarily ignored any kind of judicial warnings. However, Flower would have been privy to debates throughout the trial regarding this evidence and been aware of its prejudicial nature.

This information, which was now published, was considered so prejudicial by Bell J that he had to give a warning to the jury to disregard the evidence.[1066] Flower was also quick to report on this fact in the article 'Jury told to ignore murdered mum's fear of estranged husband'.[1067] In the article, Flower published the exact statement made by Melina Mancuso that was considered inadmissible and almost caused a discharge of jury:

> Last week, Melina Mancuso told the court her sister confided in her just days before she was killed that she feared Mr Paulino would kill her.[1068]

This publication ignored Bell J's ruling on the evidence and shows that, even though the rules of evidence can be restrictive most of the time, there are loopholes through which the media may report prejudicial material without repercussions. Having said that, Flower's reporting of Melina Mancuso's evidence did illuminate the violent context of the relationship, albeit in a somewhat sensational manner.

Another means of portraying Paulino's behaviour before the murder and the state of fear Teresa Mancuso was living in post-separation, would have been to report the stalking incidents at La Manna

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[1064] *Transcript, 10 May 2017* (n 998) 665.

[1065] Flower, 'Paulino murder trial: Stabbed mum' (n 1031).

[1066] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 16 May 2017) 889-92 ('*Transcript, 16 May 2017*').

[1067] Flower, 'Accused murderer Fernando Paulino asked sons to take paternity tests' (n 1000).

[1068] Ibid.

and Coles where Paulino approached and intimidated Teresa Mancuso despite the IVO. The La Manna incident, for example, was examined in detail during the evidence of Teresa Mancuso's colleagues, who conveyed how afraid and upset she had been afterwards.[1069] Similarly, there was no coverage of the police officer Michelle Collier's or family law solicitor Lily Safarewiz's evidence, in which both witnesses gave evidence that showed Teresa Mancuso's fear of the accused.[1070] All of these witnesses appeared in the middle of the trial when fewer to no media were present, and Flower and Iaria were only intermittently attending.

Overall, it was the shocking and violent threats and Paulino's hatred for Teresa Mancuso that caught the attention of the media rather than the evidence in the second half of the trial, which comprised the crime scene investigation, CCTV footage and forensic evidence. Although these subjects were mentioned towards the end of news reports, clearly the relationship evidence was the newsworthy angle and remained the prominent angle throughout the coverage. This conveys the journalists' interpretation of what was important, but also shows the influence of the prosecution's decision to begin their case with the relationship evidence and how that flowed to the media's framing. Conversely, the defence focused on the evidence about the investigation because that was where they were able to challenge the procedures taken and poke holes in the prosecution's theories. The media did not engage with that narrative, save for Flower's criticism of it towards the end of the trial.[1071]

C *Following the lead*

As mentioned, the *Paulino* media coverage I collected was made up of 76 articles across five years, 42 of which were reporting the 2017 trial. A majority of that content came from the *Herald Sun* and *AAP*, resulting in thin and repetitive coverage across the outlets. The same pieces of evidence (mainly picked up in the opening address and the early days of evidence) were reported, most articles would quote the same phrases (such as 'white hot passion'), and the same overall representation of the case as a family drama was conveyed. I argue that the small number of dedicated court reporters in Melbourne and the demands they face to produce stories on a daily basis contributed to this repetitive and somewhat surface-level coverage of the case.

[1069] *Transcript, 17 May 2017* (n 1038).

[1070] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 18 May 2017) ('*Transcript, 18 May 2017*'); Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 19 May 2017) ('*Transcript, 19 May 2017*').

[1071] Flower, 'How killer Fernando Paulino almost got away with murder' (n 1014); Flower, 'Case against Fernando Paulino' (n 1015); Flower, 'Prosecutor defends detective from 'outlandish' attack in murder trial' (n 1044).

Cooper referred to the fact that, during the opening days of the trial, he and his colleagues at *The Age* were on strike and so they had to rely on *AAP* copy.[1072] The situation was somewhat different at the *Herald Sun*, where Flower was one of four court reporters and clearly had editorial support to attend a large proportion of the trial. Similarly, Rebekah Cavanagh, also from the *Herald Sun*, had the luxury of following the entire *Ristevski* committal hearing and pre-trial hearings. Arguably, poor time and resource constraints meant journalists who were not regularly attending would be more likely to stick to the prosecution's overarching argument, given this was laid out in the early days of the trial when media interest was high. This plays out in the numbers that arise from the quantitative analysis of the media content, which showed 49 percent of the articles were dedicated to the prosecution case and 11 percent to the defence case.

Further, due to limited resources, the value of newsworthiness plays an even greater role in whether a trial is covered or not. During the *Paulino* trial, the Hollywood celebrity Rebel Wilson's defamation case also took place,[1073] with the verdict occurring on the same day as Paulino's. When interviewed, Cooper referred to the *Wilson* case, to which *The Age* assigned at least one journalist per day, including himself.[1074] On 15 June 2017, the *Wilson* verdict was handed down about 15 minutes after Paulino's verdict.[1075] From a Factiva search of 'Fernando Paulino' compared to 'Rebel Wilson' on 15 June 2017, there were five reports on Paulino compared to 13 on the *Wilson* case. This is not surprising and supports *Herald Sun* reporter Cavanagh's suggestion that cases involving celebrities will always be newsworthy.[1076]

It was also interesting to observe the role of *AAP* in court reporting. In my content analysis, I analysed both the original *AAP* copy as well as that reproduced by different outlets. Combining both the original copy and republished news, *AAP* was responsible for 34 percent of the news coverage, followed by the *Herald Sun* at 33 percent. *Yahoo!7, 9News* and *The Age* used the *AAP* journalist Melissa Iaria's copy on the opening address, various parts of the trial and the verdict. This meant that a similar story structure and content was repeated significantly throughout the coverage. When interviewed, *ABC* journalist Jane Lee noted the lack of diversity in court reporting arising from the decline in specialised reporters, as there was less ability to follow different cases. In this context she acknowledged the important role the

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[1072] Interview with Cooper (n 1004).

[1073] *Wilson v Bauer Media* [2017] VSC 521.

[1074] Ibid.

[1075] See e.g. Emma Younger, 'Rebel Wilson wins defamation case against 'bully' magazine publisher Bauer Media', *ABC News*, (online, 15 June 2017) <https://www.abc.net.au/news/2017-06-15/rebel-wilson-wins-defamation-case-against-bauer-media/8609670>

[1076] Interview with Rebekah Cavanagh, *Herald Sun* Court Reporter (Annie Blatchford, Telephone, 3 September 2019).

wires, such as *AAP*, play in court reporting by sharing key information such as dates and other facts. She stated that, despite what people think about journalists needing to be independent, 'the wires are owned by everyone and it is kind of the only way you can manage it every day'.[1077] The *Paulino* media coverage and Lee's response emphasise the state of court reporting in Victoria, much of which relies on the *AAP* service, and without those journalists in the courtroom there will be even less variety.[1078]

In addition, because Flower's reporting dominated the overall coverage, I argue that his story took the lead and framed the case for other journalists who may have only attended for the verdict, pre-sentence hearing or sentencing. For example, when Cooper was discussing the *Paulino* case in his interview, he said that he had been following Flower's coverage.[1079] As I have shown, this coverage was at times problematic, and did not necessarily show an understanding of the dynamics of family violence. It is therefore concerning that this coverage became the dominant narrative and suggests missed opportunities to interpret and frame the case in a way that could have more productively, and less dramatically, highlighted the social reality of IPHs.

D *The post-verdict story*

Reports written post-verdict are an opportunity to air the details and context that was restricted from publication during a criminal trial, as sub judice is no longer as great a risk for journalists.[1080] The breadth and slant of these post-verdict stories, however, depends on the journalist's interpretation of the case. In the *Paulino* coverage, there were two post-verdict reports written by Flower and published immediately after the verdict was handed down. These were 'How killer Fernando Paulino almost got away with murder'[1081] and 'Case against Fernando Paulino: Details the jury never heard about the murder of Teresa Paulino'.[1082]

The focus of these articles was not the broader context of domestic violence but instead the drama and controversy that occurred throughout the investigation and trial. Flower scrutinised the evidence that was blocked by the defence and Bell J which, supposedly, almost let Paulino 'get away with murder'. For example:

[1077] Interview with Jane Lee, ABC Journalist (Annie Blatchford, Melbourne, 22 June 2018).

[1078] Margaret Simons, 'AAP is Australian democracy's safety net - its closure will affect us all', *The Guardian* (online, 3 March 2020) <https://www.theguardian.com/commentisfree/2020/mar/03/aap-is-australian-democracys-safety-net-its-closure-will-affect-us-all>.

[1079] Interview with Cooper (n 1004).

[1080] Although sub judice contempt technically continues until all avenues of appeal have been exhausted, as discussed in Chapter Five, journalist practice is that it ends upon a verdict or sentence.

[1081] Flower, 'How killer Fernando Paulino almost got away with murder' (n 1014).

[1082] Flower, 'Case against Fernando Paulino' (n 1015).

> Paulino was given every chance in the world by the trial judge to get off the murder rap.
>
> DNA evidence had been scrapped, CCTV dumped, and his threats to kill were wiped from the court's memory.[1083]

And in the second article, Flower wrote:

> The *Herald Sun* can reveal trial judge Justice Kevin Bell did his very best to ensure the ruthless thug got his version of a fair trial.
>
> The various rulings saw every piece of direct evidence police had gathered to put Paulino at the murder scene ruled out.[1084]

Although I could not ask Flower directly, it appeared the prosecution police informant Detective Tony Harwood would have been an important source. The post-verdict articles never directly quoted Harwood but did speak about his frustration at various rulings and the investigation in general.

I had also observed throughout the trial that Flower regularly spoke with members of Teresa Mancuso's family and friends. Although not the sole focus or angle of the article 'How killer Fernando Paulino almost got away with murder', Flower did use the opportunity to describe Teresa Mancuso in more detail than what was allowed for in court. For example:

> Brought up in a caring Italian family, Teresa was affectionately known as "Mother Teresa" by those that loved her.[1085]

Flower also revealed prior violence that was not admitted in court, being the details of the 'incident in Rye'. As discussed, the incident was vaguely referred to throughout the trial as the final argument before the couple separated, but details beyond that fact were inadmissible.[1086] Not surprisingly, until this article, no information was ever given about what occurred. Flower reported:

> The couple split in January 2010 after a particularly nasty incident at a family gathering in Rye.
>
> Paulino tipped over a table in a fit of rage and needed to be restrained after launching himself at his elderly mother-in-law.
>
> For Teresa Paulino, enough was enough.[1087]

Further, in the second post-verdict article, Flower described the situation in which witnesses were being prevented from giving evidence about Teresa Mancuso's fear of the accused:

[1083] Flower, 'How killer Fernando Paulino almost got away with murder' (n 1014).

[1084] Flower, 'Case against Fernando Paulino' (n 1015).

[1085] Flower, 'How killer Fernando Paulino almost got away with murder' (n 1014).

[1086] *DPP v Paulino (Ruling 1)* (n 1048).

[1087] Flower, 'Fernando Paulino guilty of murdering estranged wife Teresa Paulino' (n 1029).

> Mrs Mancuso said her sister had become frightened of her husband as a legal battle over their assets continued through the courts.
>
> "I don't want to go through with this anymore. He's going to kill me," Ms Paulino told her sister.
>
> Justice Bell told the jury to "absolutely disregard" evidence about what Ms Paulino told friends and family about what the killer might do to her.
>
> Even then, it was a carefully worded instruction that deliberately avoided the words "kill her" so as not to remind the jury about what they'd already heard.[1088]

The above examples speak to the journalist's comments discussed in Chapter Four about holding on to information throughout a trial with the hope of revealing that information after the verdict. Having said that, Flower had already reported on Melina Mancuso's evidence that her sister feared Paulino.[1089] He had also already reported on the time Bell J told the jury to disregard evidence, or that Tinney had told a witness to 'stop' when giving prejudicial evidence. These later articles, again, seem to suggest Flower was aware that the evidence was contentious but decided to publish it anyway, despite sub judice contempt.

Flower's post-verdict articles were valuable in shedding light on the nature of the relationship and Teresa Mancuso's life, by reporting evidence that was not admissible and able to be published during the proceedings. However, details about Teresa Mancuso and her relationship with Paulino were overwhelmed by the large amount of information about the investigation, trial, police interviews with Paulino and unfairness of decisions made about the admissibility of evidence. This news angle could be attributed to Flower's own perceptions of what was important, editorial directions, what his sources had to say and the sources who he either did not seek or those who decided not to speak to him. Regardless, I argue that this was a missed opportunity to report on the broader social problem at hand, such as the complexity and difficulty of post-separation legal proceedings or the red flags of an IPH, such as stalking and degrading conduct. Notably, this reporting contrasts with the *Herald Sun*'s history of campaigning against domestic violence which was discussed in Chapter Five.

E *Sentencing*

Similar to the reporting of the opening addresses, early witnesses and verdict, the sentencing of Paulino received significant media attention, with approximately 10 journalists present in court. Overall, the news coverage was mostly focused on the individual circumstances of the crime and the sentence. For example, there was a strong emphasis on the fact that the murder was a 'stabbing', with one article

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[1088] Flower, 'Case against Fernando Paulino' (n 1015).

[1089] Flower, 'Paulino murder trial: Stabbed mum' (n 1031).

stating, 'she had been stabbed 16 times' and 'was found in a pool of blood',[1090] and another used the term 'bloody body'[1091] within the first two paragraphs. Every article included Bell J's comment that the murder was motivated by 'jealousy, hatred and rage', with *The Age* article referring to Paulino as a 'wife killer' and the *Herald Sun* using the term 'Evil killer' to reinforce the monster characterisation. Also central to the coverage was the sentence itself, which was 30 years' imprisonment with a 25-year non-parole period. This information made all the headlines in one form or another. Such as, 'Jealous ex jailed for 30 years for murder'[1092] or 'Hate-filled killer Fernando Paulino jailed for 30 years'.[1093] However, there was little analysis or discussion about the context of the murder, the significance of the sentence or the reasons behind Bell J's decision.

The Age and *ABC* articles did go into more depth about the circumstances surrounding the murder, laying out the nature of the couple's separation, Paulino's stalking and threats, the pornographic video and IVO. Of note was Emma Younger's article, which led with the following:

> A Melbourne man has been jailed for 30 years for stabbing his estranged wife to death just weeks before they were due to finalise the division of their assets.[1094]

It succinctly but comprehensively provided details about the context surrounding the murder and was one of the few articles to quote Bell J regarding IVOs:

> The murder was committed in the face of an intervention order…the court absolutely condemns what you have done.[1095]

The news outlets that used *AAP* copy (*Daily Mail* and *Yahoo!7*) also included the 1800 RESPECT helpline at the end of their articles.[1096]

Bell J's sentencing judgment included statements about the gendered nature of VAW, the growing awareness of VAW within the court and police, the need for equality for women and the importance of

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[1090] Jayde Vincent, 'Paulino jailed 30 years for wife's stabbing murder', *9News* (online, 21 December 2017) <https://www.9news.com.au/national/fernando-paulino-jailed-30-years-for-wife-stabbind-murder/fdda777e-8624-4107-8c4b-00ff83cc28f2>.

[1091] Flower, 'Fernando Paulino jailed for at least 25 years' (n 977).

[1092] Iaria, 'Melbourne man guilty of murdering ex-wife' (n 1007).

[1093] Adam Cooper, 'Hate-filled wife killer Fernando Paulino jailed for 30 years', *The Age* (online, 21 December 2017) <https://www.theage.com.au/national/victoria/hate-filled-wife-killer-fernando-paulino-jailed-for-30-years-20171221-p4yxy7.html>.

[1094] Emma Younger, 'Fernando Paulino sentenced for murdering estranged wife Teresa Paulino in Melbourne', *ABC* (online, 21 December 2017) <https://www.abc.net.au/news/2017-12-21/fernando-paulino-sentenced-for-murdering-his-ex-wife/9276454>.

[1095] Ibid.

[1096] 'Husband who stabbed his flight attendant ex-wife, 49, to death in a jealous rage is jailed for 30 years', *Daily Mail* (online, 21 December 2017) <https://www.dailymail.co.uk/news/article-5200649/Fernando-Paulino-jailed-fatally-stabbing-ex-wife.html>; Iaria, 'Jealous ex jailed for 30 years for murder' (n 980).

IVOs.[1097] The judgment therefore provided the media with rich material about the broader context of IPHs. However, aside from some articles quoting Bell J's statement that this case was 'family violence of the most extreme kind'[1098] and two articles quoting the emotive phrase 'Teresa speaks silently from the grave',[1099] there was very little in the coverage that spoke about the broader social context. These articles also suggest that, even in situations where there is raw material available on the broader social context of VAW, it may not be reported.

Later on the day Paulino was sentenced, the high profile sentencing of Gregory Davies also occurred.[1100] Gregory Davies had been found guilty of the rape and murder of a six-year-old girl in 1984, a case that had received ongoing media attention. Potentially, this contributed to what were mostly short, episodic news reports of Paulino's sentencing, as there would have been little time for the court reporters to write anything more extensive before having to file additional copy on the next sentencing. Emma Younger, Adam Cooper and Melissa Iaria reported on both sentences. Again, this is a reminder of the limitations of the job, particularly when there are so few dedicated court reporters.

III CONCLUSION

By comparing the raw material with the media's narrative, this analysis has demonstrated that there is a myriad of legal and journalistic factors that contribute to a simplified representation of an IPH, for which the media are often solely blamed. Here the legal narrative was translated into a relatable but also dramatic story of a 'family drama', featuring an angry and hate-filled 'monster' and an innocent 'doting mother' victim who left behind two grief-stricken sons. The various factors that were identified as shaping and contributing to this narrative included: the limited amount of information available during the police investigation, the effect of sub judice contempt which restricts journalists to reporting the raw material pre-determined by legal rules and processes, uncertainty around the reporting of IVOs, the selectivity of journalists in what material they report and how they frame the story and the effect of the small number of court reporters who can intermittently attend the trial.

The criticism of the media for failing to explicitly label homicides as 'domestic' or 'family violence' or include helplines was borne out in *Paulino*. During the investigation, there were some vague implications that Paulino was a suspect and some journalists reported on Luke and Daniel Paulino's

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[1097] *DPP v Paulino (Sentence)* [2017] VSC 794.

[1098] Younger, 'Fernando Paulino sentenced for murdering estranged wife' (n 1094); Iaria, 'Jealous ex jailed for 30 years for murder' (n 980); 'Husband who stabbed his flight attendant ex-wife' (n 1096); Cooper, 'Hate-filled wife killer Fernando Paulino jailed for 30 years' (n 1093).

[1099] Flower, 'Fernando Paulino jailed for at least 25 years' (n 977); Vincent (n 1090).

[1100] *The Queen v Davies* [2017] VSC 800.

fundraising efforts, perhaps hinting that the murder was related to domestic violence. Once Paulino was charged and legal proceedings had commenced, mentions of 'domestic violence' continued to be inconsistent and vague, with only a small portion including domestic violence helplines. My interviews indicated that journalists would have been constrained to the information made available to them by police. Further, from observing the trial, it was clear that domestic violence was never a term used by the legal counsel, at least not until Bell J spoke about the issue openly during sentencing. Further, concerns expressed by journalists about presuming the guilt of the accused may have factored into this lack of explicitly labelling the homicide as related to the social issue.

The trial itself saw to the exclusion of evidence that demonstrated Paulino's prior violence towards his wife before they separated. Even when evidence that showed prior violence was admitted, it was often decontextualised, such as 'the incident at Rye'. Journalists reporting the case were then, of course, restrained by sub judice contempt to the raw material available. This is one obvious point at which the media were not even given the opportunity to report previous violence, showing that criticisms of the media for ignoring this aspect of the story may not always be fair. Similarly, the inconsistent and vague reporting of the IVO may also have been a consequence of the *FVPA* publication restriction, which, if complied with, does not allow for the publication of IVOs even in the context of an IPH. However, the fact that some journalists were confident in reporting this detail also confirms the inconsistent approaches journalists take to this publication restriction.

Despite the constraints of sub judice contempt, there were occasions where Flower published contentious evidence that was potentially not going to be admitted. This included Melina Mancuso's 'utterance' regarding Teresa Mancuso's fear that Paulino would kill her and also the earlier evidence about Paulino asking his sons to take a DNA test. It was obvious that the defence counsel were frustrated by the reporting, bringing these publications to the attention of the judge. Observing this exchange play out in court illustrates the reasons behind the legal profession's and court's mistrust of the media and criticisms of what is sometimes brash and dangerous coverage of trials. This also suggests that, despite the existence of legal restrictions, journalists are willing to oscillate between complying and not complying with the law, depending on the material and whether it fits the chosen narrative.

This case study demonstrated the importance of newsworthiness and how that may have shaped the material journalists selected to include. The six-week trial, which at times included long, complex and arduous evidence, was simplified into a story of 'good' versus 'evil' featuring a monster villain and relatable victim. The narrative drew on the emotional power of the Paulino sons and emphasised the violent and scandalous aspects so as to make the homicide extraordinary. Throughout Flower's coverage, this simplified and sensational version of the trial was often punctuated by the journalist's own subjective observations of the drama occurring in the courtroom. The sensational coverage was

more prominent in the *Herald Sun* coverage, compared to the *ABC* and *The Age*'s reporting, which was mostly neutral and rarely went beyond what was presented in court.

The term 'selectivity' is used lightly, as the reasons journalists report some parts of the story and not others can often be attributed to the lack of resources available and number of court reporters in the newsroom. There is also the practical reality that a court report cannot reflect the complexity, length and nuance of a criminal trial. Material that was not reported included the family law proceedings, the circumstances in which Teresa Mancuso applied for an IVO, and Bell J's various statements about domestic violence in his sentencing. These parts of the trial demonstrated common patterns in family violence relationships and the broader context of VAW, and would have been an ideal opportunity to contextualise the homicide. But for the sentence, journalists were not always present for these parts of the trial. There was also evidence that there were competing and more newsworthy trials occurring at the same time as *Paulino*, preventing journalists from attending parts of the trial that did not promise a guaranteed story for the day, and potentially from covering Bell J's sentence in more detail.

This case study has shown that legal rules and processes pre-determine what raw material about prior violence or the broader VAW context is available to journalists to report. This is reinforced by sub judice contempt, which restricts journalists to reporting that raw material, and the IVO publication restriction which sees an important part of the story either excluded or at least reported on inconsistently. However, this case study also demonstrated that these legal impacts are further compounded by the media's selectivity of what parts of the raw material are amplified and what parts are ignored. The journalists' focus on the more sensational aspects of Teresa Mancuso's death and Paulino's behaviour only bolsters the criticism that the media treat murder as entertainment.[1101] In today's media climate, however, in which there is increased pressure faced by outlets to maintain readership and fewer resources, it is questionable whether it is a practicable expectation that court reporters follow and report upon an entire trial and its broader social context. Instead, in the final chapter, I aim to use these observations to provide nuanced recommendations that account for the reality of court reporting and the role of the law and publication restrictions in the news production process.

[1101] Women's Coalition against Family Violence (n 1020) 127.

CHAPTER EIGHT: CONCLUSION – THE WHOLE STORY

I INTRODUCTION

> Most of what occurs underground stays underground. But in court-houses around the country, the public gets to glimpse the shocking reality of domestic abuse.[1102]

The courts are a window to the visible aspects of VAW: intervention order proceedings, sexual assaults, child custody disputes and, at the extreme end of the continuum, intimate partner homicides. However, the public's view of the courts usually depends on the media's reporting of these cases and the manner in which they report them. As has been demonstrated throughout my thesis, the media's reporting of VAW, particularly when it is of court cases, does not always reflect the whole story of family violence. The reports are episodic, focusing on the individuals involved, echoing courtroom discourse and thereby perpetuating myths and stereotypes, such as only 'monsters' murder their wives or the violence was caused by drugs and alcohol. What is missing from these reports is the patterns of violence that often precede a homicide and how the individual incident connects to the broader social problem of VAW.

My thesis has argued that the current literature on the media's reporting fails to consider how the law may be impacting the media's ability to reflect the full reality of IPHs and VAW. To answer this broader research question, a series of sub-questions were asked and addressed throughout the thesis.

RQ 1 To what extent do the media report, or not report, prior violence and social context when covering IPH trials?

RQ 2 What news values, practices and relationships do journalists encounter when reporting IPHs as they proceed through the criminal justice system?

RQ 3 What are the legal rules, processes and restrictions which impact an IPH trial, and the media's reporting of IPHs, how do they operate and how do journalists understand them?

RQ 4 How do the legal influences identified interact with the media's production of stories of IPHs?

To answer these research questions, an approach was needed that went beyond a critique of media content alone. My research design therefore consisted of a variety of methods including content

[1102] Jess Hill, *See what you made me do* (Black Inc, 2019) 46.

analysis, interviews, observation and a case study, all of which aimed to pull back the curtain on the news production process.

The first three research questions were the focus of Chapters Three to Five, which discussed the current scholarship and other primary and secondary sources on: the state of media coverage of IPHs, the various factors that influence how crime news content is produced, feminist critiques of the legal narratives that emerge in a criminal trial, and the operation of sub judice contempt and the *FVPA* s 166 restriction. I used my own data throughout these literature reviews to compare how the current scholarship aligns with the Victorian media's reporting of IPHs, the journalists' perspectives on the news production process, as well as highlight the gaps in the existing body of work. It was then in my case study that I aimed to fill those gaps by bringing the various discourses together to interrogate the relationship between the law and media in the production of IPH news stories.

This process showed how the law acts as an initial filter on the raw material available to journalists to report, significantly curtailing information about prior violence and social context from the IPH narrative. This occurs through the criminal trial itself and is reinforced and further restricted by the publication restrictions, which, in themselves, are either unclear or inappropriate and lead to inconsistent reporting practices. My thesis also demonstrated that, despite the constraining effect of the law, journalists maintain responsibility in how they select and frame the available raw material. In this final chapter, I will set out the findings that arise from triangulating all the components of my thesis. I will then discuss my recommendations including the need for clarifying the publication restrictions considered, journalist education and future research. I finish this chapter with an anecdote from my court-observations that shows the potential the media have to reflect the reality of IPHs within the boundaries of the law.

II FINDINGS

Throughout my thesis I touched on various findings that arose from the different sets of data and analysis. Here, I bring these findings and analyses together to tell the whole story of the interaction between the law and the news production process in the reporting of IPHs. These findings expand upon existing research by adding the unique perspective which was informed by an approach that incorporated an understanding of both the relevant legal rules, processes and restrictions, as well as media framing, values and practices. The findings can be categorised into those regarding the media's framing of IPHs, how the media perceive legal restrictions and the impact of the restrictions on reporting, and finally, the complex process of translating a legal narrative into a news report.

A *Framing IPH news stories*

The sets of media content analysed (the 18-month period of IPH reports and the *Paulino* media coverage) confirmed the existing literature on the media's reporting of IPHs.[1103] The broader content analysis results confirmed that the media's coverage of IPHs was primarily episodic, lacked contextual information, focused on the individuals and their personal circumstances, rarely used sources beyond legal authorities, and prior violence reported on was mostly limited to threats or physical incidents that occurred in relative proximity to the murder. Domestic violence helplines were infrequently mentioned, and the reports rarely stated that the homicides were related to domestic violence. Overall, the IPHs were framed as isolated incidents or 'just another murder', a law enforcement problem, or something that happens to people who are different from the norm.[1104] In my case study, the media framing of the *Paulino* trial followed the well-known stock story of a jealous, hate-filled man killing his former wife in the context of escalating family drama. This framing was at the expense of highlighting the broader social context and, thereby, society's responsibility in preventing VAW.[1105]

Beyond confirming the problems identified in the existing literature, I also observed patterns in how the media framed reports of IPHs that had not yet been observed in detail. As my content analysis samples were made up of crime and court-reporting, which is inherently episodic, I had the opportunity to look in more detail at the extent to which these types of reports could or could not contextualise IPHs within the constraints of only being able to report on an individual incident. These findings differ to existing studies, which often compare thematic to episodic reporting practices, and conclude that episodic reporting is bad practice without further interrogation. Most interestingly was the finding that some episodic crime or court reports pointed towards broader systemic issues within the constraints of the law and the available raw material. Further, I observed that this seemed to occur at different stages of the criminal process, reflective of the criminal justice process and the times at which sub judice contempt operates.

[1103] See Georgina Sutherland et al, 'Media representations of violence against women and their children: State of knowledge paper' (Landscapes Report, ANROWS, 2015); Jenny Morgan and Violeta Politoff, 'Victorian print media coverage of violence against women: A longitudinal study' (Report, VicHealth and The University of Melbourne, 2012).

[1104] N Berns, *Framing the Victim: Domestic Violence Media and Social Problems* (Aldine de Gruyter, 2004); Marian Meyers, *News Coverage of Violence Against Women: Engendering Blame* (Sage Publications, 1997); Tara N Richards et al, 'Framing Deadly Domestic Violence: Why the Media's Spin Matters in Newspaper Coverage of Femicide' (2013) 19(2) *Violence against Women* 222; Cathy Ferrand Bullock, 'Framing domestic violence fatalities: Coverage by Utah newspapers' (2007) 30(1) *Women's Studies in Communication* 34; Cathy Ferrand Bullock and Jason Cubert, 'Coverage of domestic violence fatalities by newspapers in Washington state' (2002) 17(5) *Journal of Interpersonal Violence* 475.

[1105] Kellie E Carlyle, Michael D Slater and Jennifer L Chakroff, 'Newspaper coverage of intimate partner violence: Skewing representations of risk' (2008) 58(1) *Journal of Communication* 168, 170; Elizabeth K Carll, 'News portrayal of violence and women: Implications for public policy' (2003) 46(12) *The American Behavioral Scientist* 1601, 1603.

Reporting that immediately followed a homicide was mostly limited to the who, what, when and where of the crime, most likely because of the limited information made available by police. Sometimes reports included comments from family, friends or neighbours, the use of which journalists reported to me was common practice immediately following a homicide in an attempt to contextualise the incident. However, during the police investigation phase, other sources of information including rumour and speculation about the homicide were introduced, given that sub judice contempt does not begin until someone is charged and the media is free to report potentially prejudicial information. Journalist interviews revealed that it was often during this stage that the police might use the media as a tool to aid the investigation, or on the other hand, restrict the flow of information if the media were not needed. This dynamic was evident in the analysed content, in that some articles continued to take a police frame, focusing on the investigation, police press conferences and other developments, while other reports began to introduce other sources from the journalists' own investigations. Although this would appear to be an ideal time to potentially discuss broader issues about family violence, in the *Paulino* and *Ristevski* cases at least, these reports were mostly focused on the police investigation or rumours about the murder. This appears to be a dangerous period in that the reporting can be sensational and give rise to 'aggressive',[1106] albeit legal, reporting.

There were some examples of reporting during the police investigation period that identified the homicide as one related to domestic violence or provided helplines, however, this was limited. The cases in which the media did identify domestic violence appeared to feature some obvious indication of family violence and therefore allowed the media to identify the homicide as such. For example, the victim was a 'domestic violence advocate',[1107] the victim had taken out an IVO just before she was murdered,[1108] or the sons of the victim were holding a domestic violence fundraising event.[1109] This indicated that, at the early stage of the crime, there must be some explicit reason to identify this broader context which may depend on what the police decide to make available[1110] or, as one journalist indicated in an interview, might be sourced from witnesses, neighbours, family or friends.[1111]

[1106] Peter Gregory, *Court reporting in Australia* (Cambridge University Press, 2005) 47.

[1107] Freya Noble, 'Council worker and domestic violence advocate found dead at her home as 36-year-old man is arrested', *Daily Mail* (online, 3 May 2016) <https://www.dailymail.co.uk/news/article-3570211/Mildura-Council-worker-White-Ribbon-advocate-Karen-Belej-dead.html>.

[1108] 'The killing of Fiona Warzywoda on the streets of Sunshine', *Warnambool Standard* (19 April 2014).

[1109] Tessa Hoffman, 'Sons wait for murder answers', *Preston Leader* (22 July 2013).

[1110] Alyce McGovern and Murray Lee, ''Cop[ying] it Sweet': Police Media Units and the Making of News' (2010) 43(3) *The Australian and New Zealand Journal of Criminology* 444; Peter Grabosky and Paul Wilson, *Journalism and justice: how crime is reported* (Pluto Press, 1989).

[1111] Interview with Tammy Mills, *The Age* Crime and Court Reporter (Annie Blatchford, Telephone, 17 September 2019).

Once someone was charged and sub judice contempt was enlivened, the reporting was suddenly stripped down to what occurred in court. At this stage, I observed that framing decisions were integral to how the IPH was represented. For example, a subtle difference between one report explicitly stating the existence of an IVO in the opening sentence compared to another report that did not mention the IVO at all, made the difference between the individual incident being placed in the broader context of domestic violence or not.[1112] Another subtle framing decision was whether quotes from a legal source (such as the defence lawyer) that excused the accused were balanced with countering evidence or comments from the judge or prosecution.[1113] As discussed in Chapter Five, *ABC* court reporter Emma Younger explicitly referred to her own practice of framing a court report in a way that the audience understands the context in which evidence was given and, if possible, providing context about failures in the system in cases involving domestic violence.[1114]

The content analyses also showed that reports were more likely to contextualise IPHs after the verdict and/or sentence had concluded and sub judice contempt was no longer as significant a risk. There were some examples in the broader content analysis of reports that did contextualise the incident by way of including VAW advocates as sources or relating the homicide to other similar cases, thereby showing the broader patterns and dynamics of domestic violence. A number of these positive examples were written by the one *Herald Sun* journalist, Ellen Whinnett, suggesting a relationship between an individual journalist's awareness of VAW and the quality of their reporting. However, this 'post-verdict' opportunity was not always taken or used effectively. For example, Wayne Flower's post-verdict reporting of *Paulino* focused on the police investigation and other sensational aspects of the trial, rather than the broader context of domestic violence.

Broadly, my findings from the various content analyses echoed the existing literature in that reporting of IPHs is episodic and fails to report prior violence and/or the broader context. However, when combined with an analysis that paid particular attention to the different stages of a crime and legal proceedings, and triangulated with journalist interviews, my findings demonstrate how the patterns in

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[1112] Emma Younger, 'Fernando Paulino sentenced for murdering estranged wife Teresa Paulino in Melbourne', *ABC News* (online, 21 December 2017) <https://www.abc.net.au/news/2017-12-21/fernando-paulino-sentenced-for-murdering-his-ex-wife/9276454>; Wayne Flower, 'Fernando Paulino jailed for at least 25 years for murdering his estranged wife', *Herald Sun* (online, 21 December 2017) <https://www.heraldsun.com.au/news/law-order/fernando-paulino-jailed-for-at-least-25-years-for-murdering-his-estranged-wife/news-story/51438fc0bd2593b5e2be3f4d162e3d8a>.

[1113] Peta Carlyon, 'Boy, 12, 'certain' abusive father would murder mother, court hears', *ABC News* (online, 19 June 2015) <https://abc.net.au/news/2015-06-19/court-told-12yo-expected-his-mother-would-be-killed-by-father/6559766?>. Cf Ashlynne McGhee, ''Jealous' killer Bona Lual, who mutilated estranged wife in Melbourne home, jailed for 21 years', *ABC News* (online, 26 June 2015) <https://www.abc.net.au/news/2015-06-26/jealous-killer-bona-lual-jailed-for-21-years-over-wifes-murder/6575352>.

[1114] Interview with Emma Younger, ABC Court Reporter (Annie Blatchford, Melbourne, 5 September 2018).

media reporting change throughout the criminal justice process and where opportunities lie for better practice. How to facilitate these opportunities is discussed in more detail in the recommendations below.

B *Inconsistent approaches to legal restrictions*

Throughout the thesis, there were various points at which it was clear that journalists, while mostly conscious and respectful of publication restrictions, took inconsistent and varying approaches to the laws. This finding goes back to one of the original impetuses of this research, being the plethora of restrictions that apply to the media's reporting of VAW, which can, in turn, act as a gag on those attempting to report on the issue.[1115] At the time of carrying out the research and writing the thesis, the Victoria Law Reform Commission ('VLRC') was also in the process of reviewing contempt law for a variety of reasons, but predominantly because of its vague and uncertain nature and its relevance in today's digital media landscape.[1116]

With regards to sub judice contempt, I observed a number of practices evident throughout the content as well as interview responses that demonstrated varying understandings of the law. The interviews demonstrated that journalists became more confident about what they could and could not report with experience, and it was an intuitive process more than a strict understanding of the law. They also emphasised the importance of camaraderie with other journalists and building relationships with legal counsel, who they would turn to when clarifying what had been said in court, what could be reported and so forth. Overall, journalists demonstrated a foundational understanding that their reports must be fair and accurate, and they respected the need to protect the administration of justice and a fair trial. However, other interview responses and the content analyses painted a different picture.

To begin with, there appeared to be an understanding that sub judice contempt was no longer relevant once a verdict or sentence had been given, although some journalists judged this on a case-by-case basis.[1117] This was despite the fact that the law states that sub judice contempt does not end until all avenues of appeal have been exhausted.[1118] There also appeared to be uncertainty as to what material

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[1115] See Madeleine Morris, 'ABC journalist Madeleine Morris reflects on the difficulties of reporting on domestic violence', *ABC News* (online, 18 March 2015) <http://www.abc.net.au/news/2015-04-02/journalist-reflects-difficulties-reporting-on-domestic-violence/6369430>; Jane Gilmore, *Fixed It: Violence and the representation of women in the media* (Viking, 2019) 81-2; Interview with David Weisbrot, Former Australian Press Council Chair (Annie Blatchford, Telephone, 16 November 2016).

[1116] See Victoria Law Reform Commission, *Contempt of Court* (Consultation Paper, May 2019) ('*VLRC: Contempt of Court*'). At the time of writing, the Final Report and recommendations were not yet publicly available.

[1117] Interview with Sharnelle Vella, Channel 7 Court Reporter (Annie Blatchford, Telephone, 26 November 2018).

[1118] New South Wales Law Reform Commission, *Contempt by Publication* (Report No 100, June 2003) 168 [7.46] ('*NSWLRC: Contempt by Publication*'); Des Butler and Sharon Rodrick, *Australian Media Law* (Lawbook Co, 3rd ed, 2004) 236.

would have the 'tendency' to prejudice proceedings. For example, including family violence statistics in a report while proceedings were on foot, or including a domestic violence helpline, could be seen as pointing towards the guilt or innocence of the accused if that person is an intimate partner. While some journalists did not perceive doing either of those things would be prejudicial, one journalist did explicitly say that she thought referencing domestic violence would imply guilt, and she would not include helplines.[1119] This aligns with the motto expressed by some of the journalists: 'if in doubt, leave it out'.[1120]

There were also examples of reporting that clearly went beyond a fair and accurate report of proceedings arising from the *Paulino* case study. Reports that bordered on prejudicial mostly arose from Wayne Flower's perceptions of the *Paulino* case, which included observations of the Paulino sons storming out of court during the defence's closing address,[1121] references to the character of the accused as a 'ruthless thug', as well as comments about the quality of the case, albeit only after the jury verdict was given. Flower's reporting of evidence before it was ruled admissible also pushed the boundaries of what material can be published. These articles did not go unnoticed by the court, with the defence raising concerns about the media publishing material that Bell J had previously warned the journalists in court not to report.[1122] While that particular piece of evidence was eventually ruled admissible, there were other examples of similar conduct and in all circumstances there appeared to be no repercussions for such publications. Of course, determining whether sub judice contempt has been committed also requires a consideration of all the circumstances of the publication, such as the likelihood a juror would come across the content.[1123] Therefore, it may not be worth pursuing prosecution in some circumstances, as to do so could attract more attention to the publication than existed in the first place or the offence might not be made out. However, this apparent disregard for the risks of breaching sub judice contempt and obvious attempts to portray the accused in a negative light speaks to the observation that the law is inconsistently and rarely enforced.[1124]

[1119] Interview with Karen Percy, ABC Court Reporter (Annie Blatchford, Supreme Court Victoria, 16 September 2019).

[1120] Interview with Vella (n 1117); Interview with Jane Lee, ABC Journalist (Annie Blatchford, Melbourne, 22 June 2018).

[1121] Wayne Flower, 'Fernando Paulino's defence on the attack as trial draws to an end', *Herald Sun* (online, 7 June 2017). <https://www.heraldsun.com.au/news/law-order/fernando-paulinos-defence-on-the-attack-as-trial-draws-to-end/news-story/abdb40035d510d52c8c738ababe3e761>.

[1122] Transcript of Proceedings, *DPP v Paulino* (Supreme Court of Victoria, SCR 2016 0220, Bell J, 9 May 2017) 472 ('*Transcript, 9 May 2017*').

[1123] *DPP v Johnson & Yahoo!7* [2016] VSC 699 ('*DPP v Johnson & Yahoo!7*').

[1124] Justice Betty King, 'Underbelly" - A true crime story or just sex, drugs and rock and roll?' (Speech, Medico-Legal Society of Australia, 13 November 2009); Justice Anthony Whealy, 'Contempt: Some Contemporary Thoughts' (2008) 8 *The Judicial Review* 441.

My thesis also showed that the media take an uncertain and inconsistent approach to the *FVPA* publication restriction on reporting IVOs. For example, the *Herald Sun* appeared to strictly comply with the legislative provision by not reporting on the IVO, even if the victim had been murdered, unless the court provided permission. This approach was reflected in the history of the *Herald Sun*'s dealings with the legislative provision, including applying for a court order to report on the IVO in Sargun Ragi's and Fiona Warzywoda's murders. Interview responses from the outlet's court reporter Rebekah Cavanagh also demonstrated an understanding that she could not report on IVOs, even when the victim had died or if it was mentioned in open court at a criminal trial. Flower's reporting of the IVO in the *Paulino* case (which was only mentioned once throughout his reporting) also suggested he adopted the same perspective on the restriction. The implications of the law operating in this way is that the media outlet will most likely only apply for permission from the court when the story is considered newsworthy, meaning there are a great many IPHs in which the IVO is not being identified. The reason we still do hear about IVOs in the media's reporting of homicides, despite the publication restriction, is a result of the approaches taken by other journalists and outlets. The content analysed and interview responses showed that some journalists believe that once the protected person has been murdered, the publication restriction is irrelevant and the IVO can be published. Some journalists reflected that the murdered victim does not have a right to privacy once they have died.

Depending on the circumstance of the IPH, I argue that defining the homicide as related to domestic violence, including helplines or stating the existence of IVOs can be done in a way that is neutral and does not prejudice the accused's fair trial. As it stands, however, the publication restrictions considered deem such practices as risky or against the law. In the case of sub judice contempt, the potential risk and consequences of publishing such material is uncertain and vague, leading to an over-cautious approach that simply omits the information. In terms of the *FVPA* publication restriction, the rationale for its existence once the protected person has been murdered appears groundless, in that the importance of contextualising the IPH and holding the perpetrator accountable surely outweighs the privacy of any other individuals involved with the order. For this reason, some journalistic practice goes against the way the law is currently drafted, although that practice is inconsistent. How best to deal with this uncertainty and find a more appropriate balance between open justice, the accused's right to a fair trial, and the interests that the *FVPA* promotes, will be discussed in the recommendations below.

C *Translating the raw material*

Existing literature on the gendered nature of the law and socio-legal studies of IPH trials has demonstrated the way legal rules and processes can tailor a narrative that does not reflect the social

reality of VAW.[1125] Just like the media's reporting of crime and VAW,[1126] legal narratives also follow stock stories of 'good' versus 'evil', and, in the context of domestic violence related crimes, can see to the exclusion of prior violence, the victim's voice and the broader social context of the social problem.[1127] Some literature has acknowledged how these criminal justice narratives predetermine and frame the story then echoed by the media,[1128] but there is little that directly compares an IPH trial narrative with the media's version of the story. My case study, alongside my observations of the *Ristevski* legal proceedings and journalist interviews, allowed for rich and nuanced observations of the different legal and media factors that contribute to the translation of a legal narrative into the media narrative.

From observing the *Paulino* legal proceedings and analysing the court transcripts, my thesis demonstrated how the raw material available to journalists to report was already a filtered version of the IPH reality. Given the prosecution's case in *Paulino* was circumstantial, the legal narrative was largely driven by evidence about the relationship between Paulino and Teresa Mancuso. However, much of this evidence was significantly curtailed or decontextualised by legal rules and processes. Evidence of prior violence in the relationship before the couple separated was completely excluded because it was too remote from the murder. Teresa Mancuso's predictions of her own death were also ruled to be inadmissible. Evidence of the argument that led to the couple's separation and the IVO was allowed, but it could only be brought in a 'neutral' form, stripping the narrative of any detail. Evidence that was admitted had to be directly relevant to Paulino's 'extremely negative feelings' for the accused, which meant the prosecution narrative largely revolved around evidence of Paulino's jealous, suspicious and controlling behaviour. Through cross-examination, the defence challenged the prosecution's (and, implicitly, Teresa Mancuso's) version of events by suggesting they were exaggerated and questioning how Paulino could have said and done the things put forward by the prosecution when witnesses such as his sons continued to live with him or call him a 'nice man'. Notably, Bell J's sentencing judgment placed the IPH within the broader context of gender inequality and VAW, condoning Paulino's controlling behaviour and calling on society to take a look in the mirror.

[1125] See, eg, Carol Smart, 'Law's Truth/Women's experiences' in Regina Graycar (ed), *Dissenting opinions: Feminist explorations in law and society* (Allen & Unwin Australia, 1990) 1; Regina Graycar and Jenny Morgan, *The Hidden Gender of Law* (Federation Press, 2nd ed, 2002); Nan Seuffert, 'Domestic Violence, Discourses of Romantic Love, and Complex Personhood in the Law' (1999) 23(1) *Melbourne University Law Review* 211.

[1126] Meyers (n 1104); Jane Monckton-Smith, *Murder, Gender and the Media: Narratives of dangerous love* (Palgrave Macmillan, 2012).

[1127] Carol Smart, 'The Woman of Legal Discourse' (1992) 1 *Social & Legal Studies* 29, 33. See also Emma Cunliffe, *Murder, Medicine and Motherhood* (Hart Publishing, 2011) ch 8.

[1128] Monckton-Smith (n 1126); Cunliffe (n 1127); Belinda Morrissey, *When Women Kill: Questions of agency and subjectivity* (Routledge, 2003).

When compared to the legal narrative, it was clear that the media's version of the *Paulino* story was significantly predetermined by the way the raw material was presented in court and publication restrictions. Firstly, the media narrative closely followed that of the prosecution narrative, being Paulino's hatred for his wife. For example, despite frequent instructions by the judge that evidence could not be used to taint the accused's character, the prosecution and media's depiction of Paulino was entirely negative, helped by language such as 'white hot passion'. Secondly, the media's reporting of prior violence and details around the IVO was sparse, a direct result of the 'neutral' and decontextualised way the evidence was led in court, and perhaps also because of the publication restriction on reporting IVOs. However, some important parts of the story that were available in the raw material were missing from the media narrative. This was most obvious in the lack of reporting of the difficult family court proceedings that preceded Teresa Mancuso's murder, the circumstances in which Teresa Mancuso applied for an IVO, and large parts of Bell J's sentencing judgment that highlighted the broader social context of VAW. I argued that not reporting these parts of the case were missed opportunities to contextualise the IPH within the constraints of the legal restrictions and court reporting. As a result, the media's version of the story was significantly tailored to follow a simplified plot of a 'family drama'; an entertaining tale that could be easily dismissed by readers as someone else's problem rather than a very real example of domestic violence.

My findings showed that there was a mixture of influences both inside and outside the journalists' control that contributed to this simplified narrative. On the one hand, it is impracticable to expect journalists to be able to reflect the full complexity of a six-week homicide trial due to the many challenges of court reporting. The most obvious constraint was the inability of journalists to attend the entire *Paulino* trial. As acknowledged by journalists interviewed, court reporters only attended on the days when there was a 'guaranteed story',[1129] such as the opening address, closing address, the verdict and sentencing. In both the *Ristevski* and *Paulino* case, the *Herald Sun* was the only outlet to send a reporter consistently throughout the proceedings, suggesting an editorial decision to prioritise crime stories. The lack of reporters who were able to attend the entire *Paulino* trial also meant that the media coverage of the case lacked diversity and followed a similar narrative. Second to Wayne Flower, the *AAP* journalist Melissa Iaria produced the most content. This is concerning given the precarious state of the *AAP* service.[1130] My thesis also showed a number of other practicalities that make it difficult to follow an entire trial. These included the commercial pressure to prioritise cases of a higher profile, juggling which hearings in which courts to attend on a daily basis, the pressure to produce a story at the

[1129] Interview with Vella (n 1117).

[1130] Margaret Simons, 'AAP is Australian democracy's safety net - its closure will affect us all', *The Guardian* (online, 3 March 2020) <https://www.theguardian.com/commentisfree/2020/mar/03/aap-is-australian-democracys-safety-net-its-closure-will-affect-us-all>.

end of each day, and the reality that court reports must follow a certain formula and so only certain parts of complex legal proceedings can be highlighted.

Accepting the role of legal rules and restrictions and the daily pressures faced by journalists, I also found that there were examples of problematic reporting that were more related to the journalists' own framing decisions. For example, sensational reporting was more evident in some news outlets than others. The *Herald Sun*'s reporting of the *Paulino* case used language such as 'butchered mum', whereas *The Age* and *ABC* reports of the case remained neutral and rarely reported material or descriptions that went beyond what appeared in court. Flower's post-verdict summary of the case also chose to focus more on the dynamics of the police investigation and trial rather than domestic violence, even though journalists would have had the opportunity to include other sources and information about the social problem, given sub judice contempt was no longer a risk. Perhaps one of the most obvious examples of the journalists' ability to frame the story according to their preferred narrative regardless of journalistic or legal restrictions was Flower's reporting of evidence that was either inadmissible or not yet ruled admissible, as discussed above. That reporting indicated a willingness to push the boundaries of the law, but also select parts of the raw material that suited a certain plot and angle, rather than providing a fair and accurate report of proceedings.

Further, interviews with journalists confirmed that news values, such as individualism or proximity, are a strong force in guiding what cases are reported and how. As put by several journalists, the *Ristevski* case was reported because the victim was a white, middle class, attractive woman, and the circumstances left readers wondering 'that could have been me'. Similarly, Teresa Mancuso was an attractive and 'normal' suburban mother. Both cases also featured young adult children who could articulate the pain and grief they were going through in their evidence and actions in court, also contributing to the newsworthiness of the story. These scandalous, engaging and entertaining aspects of the story were at the forefront of the news reports and commentary before, during and following the legal proceedings. While some of these editorial decisions are at the hands of more senior staff, they still reflect a deliberate choice to focus on the isolated incident and individual characteristics of the people involved rather than consider the broader social context of the IPHs.

While accepting that itis impossible to reflect the entire 'court's narrative' in a news story,[1131] and that journalists are restricted to reporting the raw material available to them, these findings also suggest there are deliberate framing decisions made by journalists that steer the direction of the narrative. Recommendations for harnessing this agency and ensuring it is used to report on IPHs in a way that highlights the dynamics of family violence and broader social context, are discussed below.

[1131] Interview with Percy (n 1119).

III RECOMMENDATIONS

Current guidelines and recommendations for improved reporting of VAW focus on, amongst other things, the need to report prior violence, provide context on the prevalence of the problem and quote experts, not all of which are always possible in crime and court reports. Rather, these practices are more prevalent in thematic reports that include analysis and commentary about VAW. However, the reality is that a majority of VAW media reporting is in fact episodic crime or court reports about homicides.[1132] My thesis has shown there are several legal and journalistic factors that interact to make the process of crime and court reporting one that is not necessarily conducive to how an 'ideal' article on VAW should be written. At the same time, however, my thesis has also demonstrated opportunities for the media to constructively report on IPHs within the boundaries of these constraints. My recommendations focus on how this reporting can be facilitated and improved by clarifying aspects of the law that lead to problematic reporting, journalist education and support for the sustainability and future of court reporting and further research.

A *Clarifying the law*

1 *Sub judice contempt*

Sub judice contempt has long been the topic of numerous reviews, which, in Australia, date back to 1987.[1133] Broadly, these reviews have argued the law is vague and inconsistent and, more recently, they have considered whether the law continues to be relevant in the context of a changing media landscape.[1134] My thesis findings have confirmed many of the issues raised in these reviews, albeit in the specific context of the media's reporting of IPHs. The relevant findings included: inconsistent understandings as to what type of material would be considered prejudicial; a perception that it was mostly acceptable to publish extraneous material, such as prior criminal charges, once a jury verdict had been given (despite this not being the technical definition of the 'pending' period); and either an 'intuitive' approach to the law that was gained through experience or an over cautious approach excluding material that was too risky to report. Further, my findings provided an example of a journalist

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[1132] Georgina Sutherland et al, 'Media representations of violence against women and their children: Final report' (Horizons Research Report, ANROWS, 2016) 15, 19.

[1133] Australia Law Reform Commission, *Contempt* (Report No 35, 1987) ('*ALRC: Contempt*').

[1134] Law Commission of New Zealand, *Reforming the law of contempt of court: A modern statute* (Report No 140, May 2017) ('*NZ Law Commission: Reforming the law of contempt of court*'); Law Reform Commission of Ireland, *Contempt of court and other offences and torts involving the administration of justice* (Issues Paper, 2016) ('*Law Reform Commission of Ireland: Issues Paper (2016)*'); Culture Department of Digital, Media & Sport, Home Office (UK), *Online Harms White Paper* (8 April 2019); The Law Commission (England and Wales), *Contempt of Court (1): Juror Misconduct and Internet Publications* (Report No 340, December 2013) ('*The Law Commission (England and Wales): Juror Misconduct and Internet Publications*').

pushing the boundaries of the law by publishing material that had not yet been ruled admissible and, on another occasion, had been ruled inadmissible with no repercussions for such conduct.

For a criminal offence that can cause a criminal trial to be aborted and result in significant penalties, imprisonment[1135] and serious reputational costs for journalists and media outlets,[1136] these inconsistent and uncertain understandings of the law are inadequate. These problems may also become more pronounced as newsrooms lose the capacity to resource experienced court reporters, leaving inexperienced, junior or general reporters to attempt the court round. Although the VLRC's final report and recommendations for reform was not publicly available at the time of writing, the options the Commission was considering included abolition of the law, statutory reform or introducing other mechanisms to deal with prejudicial publicity.[1137] With this in mind, I make recommendations here that argue for the retention of a sub judice contempt offence and that statutory reform is an appropriate path to provide greater certainty and consistency in the practice of fair and accurate court reporting.

(a) An ongoing need for sub judice contempt

Many of the problems with sub judice contempt arise from its unclear definition and scope, as well as the fact that its application is largely discretionary, does not require an intention to prejudice and depends on the unique circumstances of each case. This uncertainty is exacerbated by the impact of the Internet on both the nature and dissemination of publications and the way the public access and consume information. These changes give rise to the question of whether a law such as sub judice contempt can control the flow of information.[1138] There is also a view that jurors are in fact 'robust' and can be trusted to make a decision based on the evidence before them.[1139] Therefore, the need to shield jurors through sub judice contempt may be redundant. Looking at these problems through the lens of my research, I argue that there is still a role for sub judice contempt to play in today's media landscape, however, a reassessment of the definition and scope of the law is required.

The very fact our criminal justice system continues to rely on the rules of evidence suggests there is still a need to prevent the publication of information that is irrelevant or prejudices an accused's right to a fair trial.[1140] While I acknowledge there may be flaws in the way legal rules and processes can filter

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[1135] *Hinch v AG (Vic)* (1987) 164 CLR 15 ('*Hinch v AG (1987)*').

[1136] See *DPP (Vic) v Johnson & Yahoo!7 (No 2)* [2017] VSC 45 ('*DPP v Johnson & Yahoo!7 (No 2)*').

[1137] *VLRC: Contempt of Court* (n 1116) 105-111.

[1138] Australian Competition and Consumer Commission, *Digital Platforms Inquiry* (Preliminary Report, December 2018) ('*ACCC Digital Platforms Inquiry*'); Sora Park et al, 'Digital news report: Australia 2018', *News and Media Research Centre & University of Canberra* (14 June 2018) <https://apo.org.au/node/174861>.

[1139] *VLRC: Contempt of Court* (n 1116) 97 [7.104].

[1140] Ibid 99 [7.116].

and distort a woman's experience of VAW-related crimes, it cannot be ignored that they play an imperative role in ensuring juries do not assume guilt before it has been proven. Even within the constraints of sub judice contempt, my thesis revealed problematic journalistic practices, such as sensationalising what occurred in the courtroom or using colourful language to describe the accused. Without the publication restriction, this type of reporting could become more prolific and do little to help raise awareness about the reality of IPHs and VAW, let alone protect a fair trial. While not all of this reporting falls foul of sub judice contempt, it does suggest that, without restraints, potentially prejudicial reporting could be amplified, particularly when the need to engage and maintain audiences increasingly drives media outputs.[1141] Although the law is not frequently enforced, this suggests it is effectively preventing prejudicial publicity.[1142]

Further, my thesis also showed promising signs of journalist practice within the current operation of sub judice contempt, which could be further facilitated if the law was more clearly defined. My content analyses provided examples of 'fair and accurate' court reports that described the court proceedings in a neutral manner and even managed to frame the raw material in a way that highlighted broader systemic issues related to VAW. Interviews with journalists also indicated a willingness to contextualise court reports within the constraints of the law. In addition, sub judice contempt operates only when legal proceedings are before the courts, and so there are opportunities before and after those proceedings for the media to expand its sources beyond the courtroom, discuss the prevalence and patterns of IPHs and emphasise society's role in the prevention of VAW. While this better practice reporting depends on the raw material available, the media outlet's audience, editorial priorities and the individual journalist's own understanding of the law and VAW, it does suggest that the law, if clarified, does not unnecessarily prevent the improvement of IPH reporting practices.

(b) Clarifying the law in statute

Setting out in statute the definitions of the different elements of the offence and how the factors are to be considered by the court, could facilitate more consistent and confident reporting practices. Detailed suggestions about the contents of a contempt statute and how the different elements of the law, including liability, penalties and procedure, should be defined and applied has been sufficiently covered by many

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[1141] An illustration of this potential outcome is the 'uninhibited' nature of crime and court reporting in the United States, where often a case is fought in the court of public opinion as well as in the courtroom. For a comparison between Australia and the US, see Michael Chesterman, 'OJ and the Dingo: How Media Publicity Relating to Criminal Cases Tried by Jury Is Dealt with in Australia and America' (1997) 45(1) *The American Journal of Comparative Law* 109; See also C Danielle Vinson and John S Ertter, 'Entertainment or Education: How Do Media Cover the Courts?' (2002) 7(4) *Harvard International Journal of Press/Politics* 80.

[1142] Former court-reporter and academic Peter Gregory made this suggestion when he was interviewed about sub judice contempt. See Chapter Five n 213.

law reform reviews, and I also await the VLRC's pending recommendations. However, for the purposes of responding to my research problem, I argue that the specific areas of the offence that would benefit from clarification in statute are: the timing of sub judice contempt, a clear and consistent version of the 'tendency' to prejudice a fair trial test, and a guide of what factors are considered by the court when determining whether a publication is in the public's interest and thereby outweighs the accused's right to a fair trial. In particular, I draw on New Zealand's *Contempt of Court Act 2019* ('*NZ Act*'), which received Royal Assent in August 2019.[1143]

(i) Defining the risk of prejudice

Currently, at common law, the test for determining whether a publication falls foul of the law broadly asks whether the publication has the tendency to prejudice or interfere with a fair trial.[1144] As discussed in Chapter Five, the test is articulated throughout the case law in a variety of ways and sometimes with differing thresholds as to what would constitute a risk of prejudice.[1145] As a result, the test for what type of publication would be found to prejudice is unclear and is only made more precarious by the fact the offence does not require there to be an intent to prejudice or that an actual effect on the legal proceedings be shown. This means an honest or ignorant mistake by a journalist could lead to criminal charges and penalties for the journalist and media outlet.[1146] It is therefore no surprise that many journalists take the approach of 'if in doubt, leave it out'.

While determining whether a publication gives rise to a risk of prejudice is a circumstantial exercise, given the range of court cases and related publications that can come before the court, that does not preclude setting a consistent threshold and setting out how the court makes its assessment in statute. For example, the *NZ Act* clearly defines that an offence is committed if there is an intention to publish, the information is relevant to legal proceedings concerning an accused person, and 'there is a *real risk* that the publication could prejudice' an accused person's right to a fair trial.[1147] This provision sets a clear and high threshold by requiring there be a '*real* risk', which implies it must be 'more than speculative'.[1148] This definition is supported by s 8, which steps through different factors the court will consider when determining whether the publication meets this threshold. The factors listed, such as the

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[1143] The Act has not yet commenced. *Contempt of Court Act 2019* (NZ) s 2 ('*Contempt of Court Act (NZ)*').

[1144] *Hinch v AG (1987)* (n 1135) 34 (Wilson J).

[1145] Ibid 27-8 (Mason CJ). Cf *Bell v Stewart* (1920) 28 CLR 419, 432 (Isaacs and Rich JJ) ('*Bell v Stewart*'); *Ex parte Bread Manufacturers Ltd; Re Truth and Sportsman Ltd* (1937) 27 SR(NSW) 242, 248 (Jordan CJ) ('*Ex parte Bread Manufacturers Ltd; Re Truth and Sportsman Ltd*').

[1146] See, eg, *DPP v Johnson & Yahoo!7* (n 1123); *DPP v Johnson & Yahoo!7 (No 2)* (n 1136).

[1147] *Contempt of Court Act (NZ)* (n 1143) s 7(2)(c) (emphasis added).

[1148] The 'real risk' test comes from NZ common law, which requires that the risk be more than speculative. For a discussion, see *NZ Law Commission: Reforming the law of contempt of court* (n 1134) 37.

likelihood the publication would be made available to a juror or potential juror, the medium of the publication and how the publication can be accessed,[1149] demonstrate an understanding of the way publications are disseminated in today's media environment and reinforce that there must in fact be a 'real' risk that a juror would come across the content.[1150] The section also lists the types of content the court would be looking for in its assessment of whether the publication creates a 'real risk' of prejudice, such as information about the accused's character or credibility, information given at trial in the absence of the jury or information that has been ruled inadmissible.[1151] These types of content not only reflect the common types of publication that have been found to breach sub judice contempt at common law, but also the types of material that research shows to have an impact on the impartiality of a juror.[1152]

Arguably, establishing these details in statute could create a more strict and rigid application of the law and impose on freedom of expression.[1153] However, provided the legislation sets a high threshold and is informed by current understandings of how jurors may be affected by prejudicial publicity in today's media environment, an appropriate balance between freedom of expression and a fair trial could be struck. Further, this type of clarity would ensure a consistent starting point for experienced and inexperienced journalists and potentially more confidence when reporting on the courts. Similar provisions would also ensure there is no excuse for publishing material that is clearly prejudicial, such as evidence that has been ruled inadmissible.

(ii) Refining the time-period

I argue that the time period of sub judice contempt should be more finite and end upon the jury's verdict. Setting this out in statute would align the law with current media practice[1154] and allow greater media freedom to publish material once the risk of influencing a jury has been significantly reduced. As noted throughout my research, the reporting that occurred once a verdict had been given was often the point

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[1149] *Contempt of Court Act (NZ)* (n 1143) s 8(1).

[1150] The NSWLRC recommended that a statutory version of the sub judice contempt offence also require there be a substantial risk that the material would be recalled by the jury member. *NSWLRC: Contempt by Publication* (n 1118) 64 [4.3].

[1151] *Contempt of Court Act (NZ)* (n 1143) s 8(2). Providing a non-exhaustive list of the types of content that may be considered prejudicial was also recommended by the following commissions: *ALRC: Contempt* (n 1133) 180 [311]; *NSWLRC: Contempt by Publication* (n 1118) 77-80 [4.40]-[4.45].

[1152] For a summary of studies that consider what types of publication are so prejudicial that they should be restricted by law, see *VLRC: Contempt of Court* (n 1116) 99-100.

[1153] Ibid 107 [7.163].

[1154] As established in my research findings but also found in Law Commission (England and Wales), *Contempt of Court* (Consultation Paper, 2012) 10 [2.24] ('*Law Commission (England and Wales): Contempt of Court Consultation Paper*').

at which broader issues of VAW were raised. If the definition of the 'pending' time period was clarified in law, perhaps this type of reporting would become more common practice.

Counter arguments to this approach include the possibility that an appeal will be allowed and post-verdict reporting could influence future witnesses or jurors in a retrial. To address this concern, I agree with the WA and NSW law reform commissions' recommendations that sub judice contempt begin again if an appeal is successful and a retrial is ordered.[1155] For example, the *NZ Act* sets this out clearly by listing the circumstances in which the offence ceases to apply, including when the jury has delivered its verdict.[1156] Another counter argument is that reports published before sentencing could affect the sentencing judge, or at the very least place undue public pressure on the judge to make a certain decision.[1157] However, it has been generally accepted that the risk of influencing judicial officers is low given their training and expertise,[1158] and to continue to restrict freedom of expression at this stage of legal proceedings would 'make significant inroads on the freedom to discuss a topic of vital public interest'.[1159] The *NZ Act* reflects this view in that the offence for publishing prejudicial material ceases to exist if a judge-alone trial is ordered.[1160]

(iii) Articulating the public interest principle

At common law, like the 'tendency' test, the public interest principle is unclear. It has been established that the court will take a balancing approach in determining whether or not the public's interest in knowing about a subject matter outweighs the public's interest in ensuring a fair trial.[1161] It has also been recognised that this principle could capture publications that refer directly to legal proceedings, rather than the former approach of requiring the publication to refer to proceedings as an 'incidental but not intended by-product'.[1162] However, guidance as to when public discussion might outweigh the risk of prejudice is limited to the examples of a 'major constitutional crisis' or 'imminent threat of nuclear disaster'.[1163] Therefore, a consistent explanation of this principle, when it applies, and an outline of the

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[1155] Law Reform Commission of Western Australia, *Report on Review of the Law of Contempt* (Project No 93, June 2003) 33 ('*WALRC: Report on Review of the Law of Contempt*'); *NSWLRC: Contempt by Publication* (n 1118) 177.

[1156] *Contempt of Court Act (NZ)* (n 1143) s 7(1)(b)(ii).

[1157] *VLRC: Contempt of Court* (n 1116) 91 [7.60]-[7.65].

[1158] See *R v Herald & Weekly Times* [2006] VSC 94 ('*R v Herald & Weekly Times*'). Harper J decided that an editorial published before a sentencing judgment did not give rise to a 'serious risk' of prejudice: [30].

[1159] *ALRC: Contempt* (n 1133) 222 [384].

[1160] *Contempt of Court Act (NZ)* (n 1143) s 7(1)(b)(iv).

[1161] *Hinch v AG (1987)* (n 1135).

[1162] *Ex parte Bread Manufacturers Ltd; Re Truth and Sportsman Ltd* (n 1145).

[1163] *Hinch v AG (1987)* (n 1135) 26 (Mason CJ).

court's decision making process in applying the principle should be included in a statutory version of sub judice contempt.

Articulating the public interest principle would provide a more consistent guide for journalists when assessing what they can publish and potentially encourage journalists to take a more thematic approach to their reporting of issues that are before the courts. For example, the statute could be consulted when a journalist is considering whether they can publish a report discussing the problem of VAW, including details of a pending IPH criminal trial as an example without referring to the guilt or innocence of the accused. It could also be referred to when considering whether including a domestic violence helpline at the end of an IPH court report would be sufficiently in the public's interest. Arguably, in both those circumstances, where the guilt or innocence of the accused is not the central subject matter, the cases being referred to clearly reference intimate partner violence (a matter of public concern), and the publications are not unduly sensational or make comments on the nature of the specific legal proceedings, the publications would be considered in the public's interest. However, without a clear understanding of to how to make this assessment, such reporting may continue to be avoided.

2 *Family Violence Protection Act 2008 (Vic), s 166*

My thesis has demonstrated that the *FVPA* restriction on publishing IVOs is preventing the media from telling the whole story of IPHs.[1164] That full story includes the reality that IPHs are commonly preceded by a history of violence, and that the victims have often done everything they can to protect themselves, and that protection has failed. My findings indicated inconsistent understandings of the restriction, with some believing the restriction was not relevant once a protected person had been murdered, or that the restriction required IVOs to never be reported under any circumstances.[1165] Similar to sub judice contempt, for an offence that could give rise to imprisonment and also has a significant (albeit subtle) chilling effect on the media's reporting of IPHs, the provision in its current state is inadequate. I recommend that the s 166 publication restriction be amended to reflect what is, for some journalists, already common practice. That is, the restriction should cease to apply once a protected person has been murdered and the suspect or person charged with the murder was the respondent to the order.

As discussed in Chapter Five, the rationale for the publication restriction's imposition on open justice includes ensuring the safety of those affected by family violence and protecting the privacy of the persons involved with the order.[1166] Once a protected person has been murdered, however, clearly their

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[1164] Alan Howe, 'Time to speak out for Sargun Ragi', *Herald Sun* (Melbourne, 14 October 2012).

[1165] Annie Blatchford, Jenny Morgan and Margaret Simons, 'Making violence against women (in)visible? Restrictions on media reporting of intervention orders' (2020) 46(1) *Monash University Law Review* (forthcoming).

[1166] Victoria, *Parliamentary Debates*, Legislative Assembly, 26 June 2008, 2637 (Robert Hulls, Attorney-General). For discussions about the need to protect the protected person's privacy and reputation, see also

safety is no longer a factor and there are no privacy interests requiring protection. Privacy operates to protect the dignity and autonomy of right holders and once someone is dead, there is no autonomy to protect.[1167] Beyond that, I also argue that a person's dignity would not be affected by publicising details of the violence that preceded the murder of that person. If anything, the reality of the victim's lived experience would be respected by allowing the full context of their murder to be known.

A potential counter argument may be the ongoing privacy rights of others involved with the IVO. The respondent to the IVO could argue that the order was taken out against him on claims that were untrue and which he did not have the opportunity to contest, and so the order should remain private.[1168] However, if the respondent is either suspected or charged with the murder of the protected person, the importance of contextualising the circumstances of the relationship and murder are more important than the possibility that the basis of the IVO application was false or unfair. As for the privacy of relatives, or other parties to the original IVO proceedings, the gravity of a murder, and the value of having that story told accurately by the media, would eclipse any interests in keeping details of the IVO suppressed.[1169] Once criminal proceedings related to the murder commence and the IVO is raised in open court as evidence, the principle of open justice should also take precedence over any privacy concerns.

The public's interest in raising awareness of family violence is stated in the *FVPA* itself as a legislative example of when the court may decide to grant permission for publication under s 169. Further, the *FVPA* also recognises the need to 'promote the accountability of perpetrators of family violence for their actions', a goal strongly endorsed by the family violence sector more broadly.[1170] These two interests were reflected in the decision to amend the *FVPA* to allow for a victim to consent to publication of IVOs, or as put by the then Attorney-General Robert Clark, to ensure the restriction protected

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AA v BB (2013) 296 ALR 353 ('*AA v BB*'); *YY v ZZ* [2013] VSC 743 ('*YY v ZZ*'); Blatchford, Morgan and Simons (n 1165).

[1167] Paul Roth, 'Privacy Proceedings and the Dead' (2004) 11(2) *Privacy Law and Policy Reporter* 50.

[1168] Family violence IVOs can be made in the absence of the responding party. See Renata Alexander, *Family Violence in Australia: The Legal Response* (Federation Press, 2018) 217.

[1169] For a reflection on how victims' family members are upset by the filtered versions of their loved one's stories being told by the media, see Women's Coalition against Family Violence, *Blood on Whose Hands?* (Federation Press, 1994); Jennifer Scherer, ''My father murdered by mother. Domestic violence survivors need better support'', *SBS News* (online, 23 January 2020) <https://www.sbs.com.au/news/my-father-murdered-my-mother-domestic-violence-survivors-need-better-support>.

[1170] *Royal Commission into Family Violence* (Summary and Recommendations, March 2016) 10 ('*Royal Commission into Family Violence (Victoria)*').

'victims and children, not those convicted of breaching family violence orders'.[1171] In the second reading speech concerning the amendment, the Hon Minister Edward O'Donohue also stated:

> The proposed amendments will allow honest and open reporting and discussion about the extent of family violence and its impact on Victorian families by giving victims the right to tell their stories publicly without having to seek permission from the court. These amendments will also contribute to perpetrator accountability, consistent with the action plan.[1172]

Allowing for the publication of IVOs in the context of an IPH would also support these interests. For example, allowing the media to publish an IVO that preceded an IPH would explicitly counter any excusatory narratives about the perpetrator such as, he 'just snapped' or was drunk, thereby keeping his actions in view and ensuring accountability. Allowing the publication of IVOs when there has been an IPH would also help raise awareness about the circumstances in which these legal instruments are failing to protect victims and thereby encourage ongoing scrutiny and change.

As for the argument that restricting the publication IVOs helps to minimise the stigma felt by family violence victims, again, this would appear to be redundant once the victim has been murdered despite having taken the step of seeking legal protection. Publicising the reality of IPH homicides, to which many victims may be able to relate, would more likely have the effect of alleviating the stigma. This approach can be seen in the efforts put towards reforming publication restrictions that gag sexual assault survivors from identifying themselves and telling their stories publicly.[1173] In the context of sexual assault, it has been suggested that the ongoing suppression of names of sexual assault survivors has the effect of maintain the stigma that attaches such victims.[1174] Accordingly, allowing the story of an IPH to be told in full could help raise awareness about the prior violence that commonly precedes IPHs and thereby encourage other victims or bystanders to recognise the warning signs, hold perpetrators to account and feel confident in coming forward to seek help.

[1171] Quoted in Ellen Whinnett, 'Government backs survivor Carla Gagliardi's fight to name and shame thugs', *Herald Sun* (online, 31 August 2013) <https://www.heraldsun.com.au/news/law-order/government-backs-survivor-carla-gagliardi8217s-fight-to-name-and-shame-thugs/news-story/59ef5b784b9161a28650a64a3ca73aa7>.

[1172] Victoria, *Parliamentary Debates*, Legislative Council, 20 August 2014, 2622 (E J O'Donohue, Minister for Liquor and Gaming Regulation).

[1173] *Judicial Proceedings Reports Act 1958* (Vic) s 4 ('*Judicial Proceedings Reports Act*'); Nina Funnell, 'Gang rape victim becomes first Tasmanian to speak out following gag law reform', *news.com.au* (online, 24 April 2020) <https://www.news.com.au/lifestyle/real-life/news-life/gang-rape-victim-becomes-first-tasmanian-to-speak-out-following-gag-law-reform/news-story/333ec2d6797147548180d1249c0f7dfb>.

[1174] See Ellen Coulter, 'Tasmanian sex crime survivors seek right to be publicly identified', *ABC News* (online, 8 May 2019) <https://www.abc.net.au/news/2019-05-08/sex-crime-survivors-seek-right-to-be-publicly-identified/11089016>; Jane Doe, 'What's in a name? Who benefits from the publication ban in sexual assault trials?' in Ian Kerr, Valerie Steeves and Carole Lucock (eds), *Lessons from the identity trail: Anonymity, privacy and identity in a networked society* (Oxford University Press, 2009) 265, 281.

Allowing for publication of IVOs in the context of IPHs would align the legislation with what already is relatively common practice in the media, as well as current cultural values around raising awareness about family violence and holding perpetrators to account. It would also see to more consistent and accurate reporting of IPHs that involve IVOs, rather than the current reporting, which is either silent on the issue or only mentions the orders in a brief and infrequent manner. Ultimately, this would ensure that when the public read about 'another homicide', they would be able to identify the broader pattern and prevalence of IPHs and the violence that precedes them.

B *Journalist education and support*

As has been emphasised throughout my thesis, a large proportion of the media's reporting of VAW is made up of court reports, given the visibility of incidents as they proceed through the criminal justice system. It is for this reason that my research has taken the narrow focus of analysing court report processes and media outputs. In doing so, my thesis has confirmed that experience and confidence are valuable qualities in a court reporter, particularly when making decisions about what can be reported and how to frame a court story in a way that (legally) contextualises the incident.[1175] Further, my analyses of the media outputs demonstrated the significant difference framing decisions can have on the myths and stereotypes a court report either perpetuates or challenges. To help foster this awareness and confidence in court reporters, I recommend dedicated education on the legal restrictions that arise in the reporting of VAW court cases, as well as training on how raw material presented in court can be presented fairly and accurately but also in a way that does not sensationalise or misrepresent the reality of IPHs.

While university and professional training exists in both of these areas, it is often done in isolation from one another. That is, the focus is only on media law as it applies broadly to court reporting, or specifically on VAW reporting with a brief section dedicated to the law.[1176] Similar to my thesis research design, I suggest that bringing the two together in a more comprehensive and integrated way is imperative to improving media practices. Such education and support should go beyond the provision of guidelines on either legal restrictions and/or VAW reporting. Fact sheets can be useful as a reference tool and for listing potentially relevant publication restrictions and laws, as well as the 'do's' and 'don'ts' of VAW reporting. However, they cannot be relied on to permeate newsrooms or reach the editors or even media legal counsel who make final decisions about what content can be published and how or what stories are covered in the first place. Confidence in understanding the laws that apply to a

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[1175] See Jenny Morgan and Margaret Simons, 'Changing Media Coverage of Violence Against Women: The Role of Individual Cases and Individual Journalists' (2018) 12 *Journalism Practice* 1165; Nancy Worthington, 'Negotiating news representations of rape: Reporting on a college sexual assault scandal' (2005) 33(4) *Media Report to Women* 6.

[1176] Our Watch, 'Media Making Change' (Web Page, 2020) <https://media.ourwatch.org.au/>.

court reporter's job, and how to work within those laws rather than avoid the cases that may be too risky or complicated to report on, would not only help improve media reporting on VAW but also play an important role in ensuring open justice.

Supporting the work of court reporters is particularly important in a time when there is a steady decline in resources being put into the court round and public interest journalism more broadly.[1177] Of particular concern is the loss of experienced journalists and court reporters who traditionally would have played the role of mentoring junior journalists.[1178] Dedicated training such as this would be an expedient option for junior journalists who do not have the benefit of shadowing and learning from experienced court reporters, as was often the practice in the past. Alternatively, if we continue in the current direction of fewer court reporters and an absence of expertise, circumstances that arose in the *Yahoo!7* sub judice contempt court case could become more common.[1179] Those circumstances were a junior reporter publishing a prejudicial online article about an IPH court case (without attending court) under a tight deadline with little senior or editorial support, leading to a criminal trial being aborted. In addition, the loss of dedicated court reporters and diversity amongst media outlets may see a large portion of VAW and IPH stories not being told to the public. As with all public interest journalism, such reporting often leads to important news commentary and analysis, as well as reform and societal change. Without it, efforts to prevent VAW would be severely hindered.

C *Limitations and future research*

Given the time and resources available for a PhD, the scope of my thesis was narrow in a variety of ways. Firstly, it was focused on Victorian media reporting and IPH cases that went through the Melbourne Magistrates' Court and Supreme Court. My analysis was focused on only two of the many legal restrictions that apply to the reporting of VAW. These being sub judice contempt, s 166 of the *FVPA* and, as a subsidiary to those restrictions, the legal rules and processes that unfold in an IPH trial. The number of journalists interviewed were limited as there were only so many dedicated court reporters in Melbourne who were willing to be involved. In addition, the journalists interviewed were relatively experienced and, of course, only provided one perspective on the media/law relationship. Choosing a case study was also partly based on practicalities, in that only so many IPH cases to occur throughout my research period proceeded to a trial that I was able to observe in full. Finally, the small media content samples analysed, small number of interviews carried out and the individual case study means that my

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[1177] Margaret Simons et al, 'Understanding the civic impact of journalism' (2017) 18(11) *Journalism Studies* 1400; Margaret Simons and Jason Bosland, 'From journal of record to the 24/7 news cycle' in David Banes and Agnes Gulyas (eds), *The Routledge Companion to Local Media and Journalism* (Routledge, 2020) 193.

[1178] Senate Select Committee on the Future of Public Journalism, Parliament of Australia, *Report* (February 2018) 30.

[1179] *DPP v Johnson & Yahoo!7* (n 1123); *DPP v Johnson & Yahoo!7 (No 2)* (n 1136).

findings are not representative. With these limitations in mind, I suggest there would be great value in pursuing some of these gaps in future research.

While observing the courtroom and my interviews allowed for some insight into the news production process, it was limited to only what occurred at court and the interpretation and perspective of the journalists, and did not account for the subtle daily occurrences that also impact their work. I recommend there would be value in carrying out further research that includes shadowing court reporters, with a focus on their reporting of VAW-related crimes and court cases. This way, the researcher could view their interactions with their colleagues, editors and sources, such as police and lawyers. This could also provide an opportunity to ask questions about their decision-making processes or any legal dilemmas arising when writing their reports. Such newsroom observation work has been done in the past,[1180] but little has been done in today's vastly different media context or with a specific focus on the media's reporting of VAW. Observing these practices within the context of a greater variety of IPH criminal proceedings (rather than the one case study) would also shed more light on the types of IPHs that are considered newsworthy and how they are reported. I also recommend that future research undertake more expansive interviews including less-experienced reporters, a greater variety of media outlets and regional and rural journalists. This would allow for a deeper investigation into issues such as the differences between media outlets, the challenges faced by junior journalists or the state of court reporting in areas of Victoria that may have lost their local newspapers.

The role of legal sources in the news production process is also integral to understanding why the media report IPHs the way they do. My research went some way to understanding the impact of legal rules and processes through analysis of court transcripts and court observation. However, further research could also include interviews with legal professionals both as media sources in the reporting of IPHs and media law experts who advise media outlets.[1181] Doing so would further integrate the legal perspective into research on the media's reporting of VAW, and provide more context on the source-media relationship and how the media's reporting does or does not affect the running of trials.[1182] I also recommend dedicated research into other laws that impact the media's reporting of VAW, such as defamation, access to court documents and restrictions on identifying sexual assault victims.

[1180] See R E Dreschel, *News Making in Trial Courts* (Longman Inc, 1983); Philip Schlesinger, *Putting Reality Together: BBC News* (Methuen, 2nd ed, 1987).

[1181] See, eg, Richard Ericson, Patricia Baranek and Janet Chan, *Negotiating Control: A study of news sources* (University of Toronto, 1989); Philip Schlesinger and Howard Tumber, *Reporting Crime: The Media Politics of Criminal Justice* (Clarendon Press, 1994).

[1182] Margaret Simons and Jenny Morgan, 'Changing Media Coverage of Violence Against Women: Changing sourcing practices?' (2017) 19 *Journalism Studies* 1202.

Overall, there would be great value in future research on the media's reporting of VAW continuing to refine the interdisciplinary and mixed method approach taken in my thesis. It should integrate legal and media concepts and approaches, and adopt sociological methods that go beyond critiquing media content. The law interacts with the media's reporting of VAW far beyond IPHs alone. Legal restrictions arise in stories about family court disputes, children, sexual assault – the list goes on. To critique media content without acknowledging and understanding the relationship between the law, VAW and media outputs ignores a large and incredibly influential part of the story. As my thesis has shown, an interdisciplinary approach helps identify 'hot spots'[1183] between journalism and the law and allows for a more nuanced understanding of what factors contribute to the problematic reporting of VAW. This approach also allows for recommendations that are sensitive to the boundaries within which journalists work, and therefore may constructively aid the journalism profession in tackling these challenges and improving their reporting practices.

III CONCLUSION

The aim of this thesis was to gain a nuanced understanding of the way the law and media interact in the production of IPH news stories and determine the extent to which the law constrains what journalists can and cannot report. The significance of this research aim, and the resulting empirical evidence, arises from the integral role the media plays in the prevention of VAW. On one of the days I was observing the courts, a series of events unfolded that highlighted not only these reasons for carrying out my research, but also the potential the media have to improve the community's understanding of VAW and help prevent the murder of one woman every nine days by an intimate partner.[1184]

An anecdote from my research

On 1 August 2018, Melbourne's news cycle was dominated by headlines about women who had been killed. I was in the Magistrates' Court observing the committal hearing of Borce Ristevski. It was the day Magistrate Cameron was giving her decision as to whether Ristevski would go to trial for murder or manslaughter. The other cases colliding that day included Samantha Fraser who had recently been murdered on Phillip Island. Samantha Fraser's ex-husband Adrian Basham was charged with her murder and was appearing in court.[1185] Joy Rowley was murdered by her former partner James Mulhall

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[1183] Jane Johnston and Rhonda Breit, 'Towards a narratology of court reporting' (2010) 137 *Media International Australia* 47, 56.

[1184] Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story 2019* (Catalogue No FDV 3, 2019) 50 <https://www.aihw.gov.au/reports/domestic-violence/family-domestic-and-sexual-violence-in-australia-c/contents/table-of-contents>.

[1185] Anthony Colangelo and Simone Fox Knobb, 'Ex-husband's DNA all over Samantha Fraser crime scene, court told', *Sydney Morning Herald* (online, 2 August 2018) <https://www.smh.com.au/national/ex-

in 2011 and Coroner Hinchey's findings on the inquest into her death were released.[1186] The death of Snezana Stojanovska was also before the Coroners Court and had been referred to the police for a homicide investigation.[1187] All of these women died in their own homes.

A court reporter also observing *Ristevski* that day spoke to me about the Coroners Court cases that were playing out at the same time. He observed that, if there was ever a time to report on the broader context around IPHs, particularly the number of IPHs before the courts, today was the day. That evening, *The Age* social affairs reporter Miki Perkins tweeted a screenshot of these four stories which all featured at the top of *The Age*'s online website.[1188] A public conversation erupted about the horror of the cluster of cases all in the news on the same day. An article authored by Perkins' was then published online the next morning in which she tried to make sense of this public reaction:

> At least 39 women have died violently in Australia so far this year, according to Destroy the Joint's Counting Dead Women project.
>
> But somehow we are so inured to this staggering tally that we need some grisly extra quantum to react. Four women dead, not just one. A god-awful day in court and coroner's court where even seasoned reporters shake their heads. How do we make sense of this? And, more importantly, how the hell do we make it stop? [1189]

A print version of the article was then published on the front-page of *The Age* newspaper on 3 August 2018, accompanied by the headline 'This Must Stop' and large photos of the four women murdered.[1190] The front page and first five pages of the newspaper were dedicated to these cases with 'This Must Stop' across each page as a banner. These reports included one written by the court reporter who had approached me the previous day, in which he included information, partly provided by me, about the number of IPH cases involving intimate partners that were currently before the Victorian courts.[1191]

The online version of Perkin's story read:

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husband-s-dna-all-over-samantha-fraser-crime-scene-court-told-20180802-p4zv73.html> (originally published on *The Age* website).

[1186] Erin Pearson and Adam Cooper, 'Coroner urges reviews of family violence deaths after murder of Joy Rowley', *The Age* (online, 2 August 2018) <https://www.theage.com.au/national/victoria/coroner-urges-reviews-of-family-violence-deaths-after-murder-of-joy-rowley-20180802-p4zv3j.html>.

[1187] 'Coroner finds Melbourne woman Snezana Stojanovska was strangled', *ABC News* (online, 2 August 2018) <https://www.abc.net.au/news/2018-08-02/coroner-finds-snezana-stojanovska-was-strangled-homicide/10065228>.

[1188] See Appendix D for Tweet posted on 1 August 2018 and front page of *The Age* newspaper published 3 August 2018.

[1189] Miki Perkins, 'We are right to be horrified by Victoria's toll of dead women', *The Age* (online, 2 August 2018) <https://www.theage.com.au/national/victoria/we-are-right-to-be-horrified-over-victoria-s-toll-of-dead-women-20180802-p4zv6u.html>.

[1190] Miki Perkins, 'This must stop', *The Age* (Melbourne, 3 August 2018).

[1191] Pearson and Cooper (n 1186).

> Another day, another slew of grim stories about women who have been killed. The grind of the police hunts in each case, the incremental criminal trials and the coronial inquests.
>
> Samantha Fraser, 38, Karen Ristevski, 47, Joy Rowley, 60, mothers all. Their traumatised young and adult children left to grieve.
>
> And Snezana Stojanovska, 26, who was three-months pregnant with a child who will never take its first breath.
>
> These women were victims of entirely separate violent crimes, and their killers are yet to be convicted in a court (with the exception of James Martin Mulhall, who has pleaded guilty to murdering Joy Rowley).
>
> Each case will be dealt with separately and *The Age* is not accusing any individual of guilt. The justice system will take its course, and it would be foolish to jump to conclusions.
>
> But we know these women probably died terrifying deaths. And we know that in the three cases where charges have been laid, the accused men had been their husbands or partners.[1192]

Perkin's article went on to discuss systemic issues with the police, the gendered nature of homicides, the vulnerability of certain groups such as women with disabilities and the key to prevention being gender equality.

Significantly, in what appeared to be an acknowledgment of sub judice contempt, Perkins wrote in the article that she could not comment on the individual cases or the guilt of any of the accused men. Arguably these reports were an example of what may satisfy the 'public interest' principle in contempt law.[1193] That is, the article did not comment directly on the guilt or innocence of the accused men but instead the cases were incidental to a broader discussion about VAW. Further, the subject matter of VAW should be in the interest of the public who had a 'right to feel horrified'.[1194] Although the above set of circumstances were unique in terms of the timing of the relatively high profile cases, it does show that the court reporters following the different cases, a social affairs reporter and the editors had the awareness, initiative and knowledge of the law to pursue publishing these articles.

My thesis has shown that the law does filter and restrict the raw material in direct and indirect ways, impacting the media's ability to report the social reality of IPH. However, as illustrated by this anecdote, there are opportunities for journalists to do better. Journalists can be supported in this endeavour by further education about the law, VAW and why the way they report court cases matters. This depends on improving the clarity of the laws that affect what court reporters can and cannot report, and ensuring an appropriate balance is struck between ensuring a fair trial, open justice, the safety and privacy of victims and raising awareness about VAW. Alongside these specific measures is a pressing need to ensure the role of court reporters, as providing the public with a view of the criminal justice system and

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[1192] Perkins, 'We are right to be horrified by Victoria's toll of dead women' (n 1189).

[1193] VAW being a matter in the public's interest was raised in this case: *R v Hinch* [2013] VSC 520.

[1194] Perkins, 'We are right to be horrified by Victoria's toll of dead women' (n 1189).

the social problems that fall before it, is recognised and prevented from further disintegration. Ultimately, these findings, recommendations and future research will facilitate ongoing conversations about how violence against women ‘Must Stop’.

APPENDICES

APPENDIX A: CONTENT ANALYSIS

Table 1: Media outlets included in content analysis

ABC online	Melton Leader
Ballarat Courier	MX Melbourne
Bendigo Advertiser	Mail Online
Berwick Leader	News.com.au
Brimbank Leader	Northern Daily Leader
Brimbank & Northwest Weekly	Riverine Herald
Geelong Advertiser	Shepparton News
Herald Sun	The Age
The Australian	Warrnambool Standard
The Courier	Whittlesea Leader
The Guardian	

Figure 1: Factiva search string for 18-month content analysis

(beat or beaten or beating or bash* or attack* or strangl* or stab or stabbed or stabbing or murder* or kill* or violence or homicide or domestic homicide or manslaughter or batter*) near4 (partner or wife or spouse or lover or girl* or boyfriend or woman or women or mother or female or husband or her or she or relation* or family) near (**court or trial or judge or jury or charged or arrest* or police or committal or hearing or lawyer or defence or prosecution or search or hunt**)

Table 2: Unique IPH cases included in content analysis

#	**Victim**	**Accused/partner**
1	Abuk Akek	Makeny Akek
2	Cathy Browning	Brian Browning
3	Fiona Warzywoda	Craig McDermott
4	John Reid	Gayle Dunlop
5	Margaret Penny	Robert Penny
6	Rekia O'Donnell	Nelson Lai
7	Sam Abraham	Sofia Sam
8	Sharnee Ngatai	Steve Ray Cook
9	Simone Quinlan	Brendan Neil
10	Suzi Oghlia	Bona Lual
11	Yu Tung Lo	Arum Kamalasanan
12	Rosemary Gibson	Alan Gibson
13	Karen Belej	Brandon Osborne
14	Keinab Taleb	Bassam Raad
15	Kylie Cay	Justin Turner

APPENDIX B: SUMMARY OF CODING FRAMEWORK

Section 1: Basic information including headline, media outlet, publication type.

Section 2: Details of the crime such as, what stage of the criminal proceedings were being described (e.g. arrest, committal or sentencing), the court in which proceedings were taking place, how the incident was identified (e.g. homicide or manslaughter), other types of violence mentioned (e.g. stalking or sexual harassment).

Section 3: Details about the relationship such as, the primary relationship between victim and perpetrator (e.g. husband/wife, dating or former partners).

Section 4: Framing information, including episodic or thematic framing, whether the story mentioned contextual information about VAW (e.g. statistics, causes or effects of VAW), whether the story attributed blame for VAW on the individuals, systems or society and what sources were cited and how frequently.

Section 5: Information relevant to the homicide such as, mentions of the perpetrator being provoked, discussion of the risks of leaving a domestic violence relationship, whether prior violence was mentioned and what terms were used to describe the homicide (e.g. domestic violence or family violence).

Section 6: Mentions of the legal process such as, the defence or prosecution's addresses to the jury, voir dire, suppression orders, cross-examination, self-defence and what proportion of the article was dedicated to the prosecution, defence, both or neither.

Section 7: The inclusion of helplines or resources for domestic violence, mental health, suicide or Crime Stoppers.

APPENDIX C: INTERVIEW PARTICIPANTS AND QUESTION GUIDE

Table 1: Interview participants

#	**Name**	**Media Outlet**	**Medium**
1	Adam Cooper	*The Age*	Print
2	Peter Gregory	Formerly *The Age*	Print
3	Trent Dann	*Channel 10*	Broadcast
4	Jane Lee	*ABC*	Radio and print
5	Emma Younger	*ABC*	All
6	Sharnelle Vella	*Channel 7*	Broadcast
7	Tessa Akerman	*The Australian*	Print/online
8	Rebekah Cavanagh	*Herald Sun*	Print/online
9	Karen Percy	*ABC*	All
10	Tammy Mills	*The Age*	Print/online

Interview question guide

1. Background as a journalist and your experience in court and/or crime reporting?
2. What is your daily routine?
3. How do you choose a crime or court case to follow and/or report on?
4. What has been your experience when reporting on all or some of the following stages of an intimate partner homicide:
    - The incident
    - Preliminary court hearings/mentions etc.
    - The trial
    - Verdict and post-verdict
    - Sentencing
5. What is your understanding of the following legal restrictions and can you explain how they impact your reporting of intimate partner homicides:
    - Sub judice contempt
    - *Family Violence Protection Act 2008* (Vic) s 166: restriction on reporting of intervention order proceedings
    - The legal process itself and what information is and is not put before the court
6. What are some of the patterns you notice in your reporting of intimate partner homicides?
7. Have there been times when you are frustrated by what you cannot report?
8. Who are your sources when reporting on crimes/court?
9. What are your outlet's legal processes/training?
10. Are there any other challenges you face when reporting on crime/courts?
11. Has domestic violence become a more newsworthy topic?

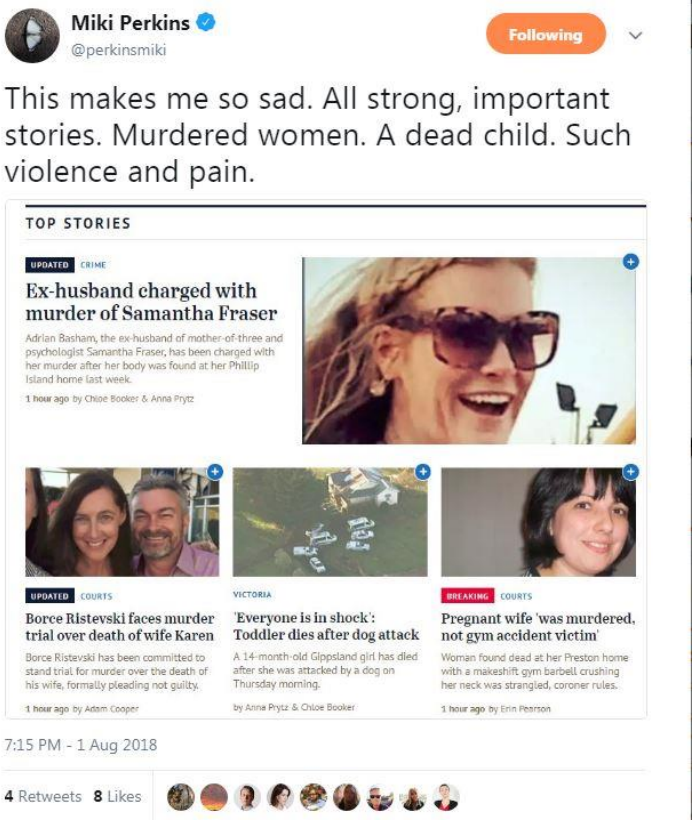

Image 1: Miki Perkin's Tweet, 1 August 2018

Image 2: *The Age* front page, 3 August 2018

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