

1. A case study in ethical failure: Twenty years of media coverage of Aboriginal deaths in custody

ABSTRACT

Australia's media accountability systems (M*A*S) include the Australian Press Council, broadcasting self-regulatory schemes, public broadcasting charters, the Media, Arts and Entertainment Alliance (MEAA) Code of Ethics, journalism education and training programmes and organisations devoted to critiquing and enhancing the media. The explicit or implicit purpose of these systems is to enable the media to play its role in representative democracy, ensuring citizens can obtain information and communicate. So it is against these broader democratic goals that M*A*S and journalism itself must finally be evaluated. One way of doing this is to look at the end product—the media content produced by journalists—and examine how it reflects and responds to sources and events beyond the media itself. To explore further the implications of such an approach, in this article I have chosen a single case study—the Australian media's coverage of Aboriginal deaths in custody over a 20-year period.

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AUSTRALIA'S media accountability systems (M*A*S) include the Australian Press Council, broadcasting self-regulatory schemes, public broadcasting charters, the Media, Arts and Entertainment Alliance (MEAA) Code of Ethics, journalism education and training programmes and

organisations devoted to critiquing and enhancing the media (Pearson, 2004; Butler & Rodrick, 2004). The explicit or implicit purpose of these systems is to enable the media to play its role in representative democracy, ensuring citizens can obtain information and communicate. So it is against these broader democratic goals that M*A*S and journalism itself must finally be evaluated (See Bertrand, 2000; 2003). One way of doing this is to look at the end product—the media content produced by journalists—and examine how adequately it reflects and responds to sources, audiences and events beyond the media itself. To explore further the implications of such an approach, in this article I have chosen a single case study—the Australian media's coverage of Aboriginal deaths in custody over a 20-year period. Charting the coverage of a single issue helps move discussion of media accountability beyond rhetoric to a more practical discussion about the nature of gaps in coverage and what sort of strategies might help fill them.

Media and democracy

In reviewing what role media might be expected to play in a democracy, James Curran summarised a set of requirements for a democratic media system:

it should empower people by enabling them to explore where their interest lies; it should support sectional group identities and assist the functioning of organisations necessary for the effective representation of group interests; it should sustain vigilant scrutiny of government and centres of power; it should provide a source of protection and redress for weak and unorganised interests; and it should create the conditions for open discussion of differences rather than a contrived consensus based on elite dominance. (Curran, 2002, p. 247)

While some Australian journalists might embrace Curran's requirements, others would balk at seeing their role as one of supporting sectional group identities or protecting the weak. However, nearly all would share Curran's view that the media should 'sustain vigilant scrutiny of government' and create 'conditions for open discussion of differences rather than a contrived consensus based on elite dominance'. Such principles are encapsulated by the preamble to the MEAA Code of Ethics:

(journalists) inform citizens and animate democracy. They give a practical form to freedom of expression. Many journalists work in private

enterprise, but all have these public responsibilities. They scrutinise power, but also exercise it, and should be accountable. Accountability engenders trust. Without trust, journalists do not fulfil their public responsibilities.

When surveyed in the 1990s, 79 percent of Australian news journalists agreed with the idea that the purpose of the media was to be an independent and critical watchdog of government while only 5 percent saw the media as 'just another business' (Schultz, 1998, p. 51). Although Australia has no bill of rights nor explicit protection for media independence, constitutional protection for the media as a constitutive institution in democracy was strengthened by the High Court of Australia's decision protecting an implied right to political communication in the late 1990s (Butler & Rodrick, 2004, p. 13).

Curran's requirement of effective media representation is especially important for citizens: without a media voice, their ability to pursue their interests will be severely constrained. If the mainstream media fails to report on events which discriminate against or disadvantage particular groups, these groups will find it difficult to have their claims recognised, let alone acted upon. As Thompson wrote:

Since the development of print and especially electronic media, struggles for recognition have increasingly been constituted as struggles for visibility within the nonlocalised space of mediated publicness. The struggle to make oneself heard or seen (and to prevent others from doing so) is not a peripheral aspect of the social and political upheavals of the modern world; on the contrary, it is central to them. The development of social movements such as the civil rights movement provide ample testimony to the fact that the claims of hitherto subordinate or marginalised groups are advanced through struggles for visibility in the media by achieving some degree of visibility in the media, the claims and concerns of particular individuals can gain some recognition from others, and hence can serve as a rallying cry for individuals who do not share the same spatial or temporal context. (Thompson, 1995, p. 247)

An approach linking media accountability with the overall goals of democracy would seem to fit well with the M*A*S approach developed by Claude-Jean Bertrand (2000; 2003). In an address to the Australian Press Council, Bertrand observed that most of the attention of press councils tended to be

directed at adjudicating complaints which were ‘quite often futile as compared to the real sins of the media. I mean sins of omission and long term distortion’ (cited in Herman, 1996). Consistent failure to report on or give voice to the concerns of a social group amounts to nothing less than a failure of democratic representation and participation. If such failures are to be tackled, strategies need to be developed that address significant silences as well as merely weaknesses or ethical breaches in what is published. M*A*S need to be developed that fill significant silences as well as ethical breaches. In this case study of coverage of Aboriginal deaths in custody I have drawn on the work of the Australian Centre for Independent Journalism, a university-based organisation that seeks to link media research and criticism with professional journalism practice, a strategy suggested by Bertrand in his M*A*S framework of action.

Why Aboriginal deaths in custody?

Few Australian Royal Commissions have attracted stronger, more passionate media attention than the 1991 Final Report of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) which investigated 99 cases of Aboriginal people who died in custody between 1 January 1980 and 31 May 1989. ‘Oppression laid bare’, heralded Sydney’s tabloid daily, News Ltd’s *Daily Mirror Telegraph* headline on April 15, 1991. ‘The Royal Commission has laid bare the harshness and oppression experienced by Australia’s most disadvantaged group,’ read the lead paragraph. ‘History will record that the Royal Commission has played a vital role in laying open the harshness and oppression experienced by many Aboriginal Australians. The report stands as an indictment of the legal and corrective services system in respect of the most disadvantaged group in Australian society and of society itself in allowing that situation to develop and continue.’ ‘It’s a disgrace to the nation’, ‘Our state of shame’ and ‘Cell conditions inhuman’ were among the headlines inside the paper. Similar coverage was published in media across the nation on this and following days.

The coverage was a symbolic victory for the groups that had fought to have the issue of Aboriginal deaths in custody placed on the national political agenda. The prominence and visual presentation of the reports, appeals to ‘nation’ and the collective conscience, and the explicit labelling of the conditions of Aboriginal Australians as oppressive and discriminatory combined to

convey a powerful message. The media appeared to embrace the commission's findings. The sense of betrayal that some families of victims and activists felt about the failure to prosecute individual police and prison officers was reported but not emphasised. There was a strong message that the nation was moving forward systematically to correct past wrongs.

The Royal Commission made 339 recommendations for sweeping reforms in the education, health and criminal justice systems. Its key recommendation was that Australian governments must immediately take steps to reduce the overrepresentation of Aboriginal people in Australian prisons. If this did not happen, the commissioners found that Aboriginal people would continue to die in police and prison custody.

Aboriginal people die in custody at a rate which is totally unacceptable and which would not be tolerated if it occurred in the non Aboriginal community. But this occurs not because Aboriginal people in custody are more likely to die than others in custody but because the Aboriginal population is grossly overrepresented in custody. Too many Aboriginal people are in custody too often. (RCIADIC, 1991, vol.1, 1.3)

The media's stance at the time of the report's release is not the only reason for doing a test run of Australian media accountability from the point of view of its coverage of deaths in custody. The other reason is that the Royal Commission findings explicitly adopted the position that the media carried special responsibilities as one of the 'principal institutions in Australian society, but one that stands as a form of collective conscience, challenging and putting other institutions under pressure and often acting as a catalyst for change'. The commission noted the agenda-setting role of the media: 'It may not tell us what to think, but it does set the parameters of what we think about' (RCIADIC, vol.2, 12.6). While acknowledging the role the media played in bringing the commission into existence (see below), the commission found that the media, which had 'historically relegated Aboriginal people to the fringes of society', was part of the problem. It noted that Aboriginal people believed that the police had privileged access to the media while the voice of Aboriginal people was missing. 'Aboriginal interests are often ignored, and hence become invisible to the broader community'. By way of an example, the commission had monitored media coverage which showed that when it came to reporting Aboriginal deaths in custody, Aboriginal people were rep-

resented as dissident, disruptive, or as criminal with an overemphasis on so-called 'riots'.

The commission also commented on the unwillingness of Aboriginal people to use media complaints mechanisms. It recommended reforms for the media including new employment strategies, media monitoring, fresh news policies, encouragement awards, and creation of Aboriginal affairs content in journalism courses. It finished its analysis of the media on an optimistic note observing that although the pattern was not consistent, media coverage of Aboriginal issues appeared to have improved during the life of the commission (RCIADIC, vol.2, 12.6).

The Royal Commission led to the funding of a number of conferences, reports, employment and award initiatives and journalism education projects. It is not the purpose of this article to assess the overall impact of these on the general reporting of indigenous affairs. Within the field of journalism education, there has already been some discussion and debate about the merit of different educational strategies (Hartley & McKee, 2000; O'Donnell, 2003). but there has been no systematic attempt to evaluate the impact of these from the standpoint of the performance of the media. Since it is now more than a decade since the projects were funded, such an evaluation would seem to be due.

The period before the Royal Commission into Deaths in Custody

The Royal Commission into Deaths in Custody was a direct result of a national campaign by Aboriginal groups. A crucial aspect of the campaign strategy was to obtain national and eventually international visibility through the media. This campaign began in 1983 with grassroots protests by families and friends around several deaths in custody, including that of Eddie Murray in Wee Waa, NSW, and 16-year-old John Pat in Roebourne, Western Australia. After five police were acquitted for the manslaughter of John Pat, the Committee to Defend Black Rights (CDBR) organised a national tour of families whose members had died in custody. The CDBR called on the Federal government to hold a Royal Commission. 'Stop Aboriginal Deaths in Custody' marches were held on the anniversaries of the deaths of Murray and Pat.

Mainstream media coverage of the issue remained negligible with Aboriginal deaths in custody usually attracting a one or two-sentence item, if anything at all. However, as the campaign built, alternative newspapers and

community radio began following the issue and the protests. A significant media breakthrough came when Perth freelance investigative journalist Jan Mayman won a Golden Walkley, Australia's highest journalism award, for an investigation of John Pat's death published in Melbourne's *The Age* (Mayman, 1984). The ABC's *Four Corners* team took up the story and also won a Walkley award for their 1985 report. (Marr et al., 1985). The report was, to use a term used by Ettema and Glasser in their study of investigative reporting, 'the fearest of indignation fused with the hardest of fact' (Ettema & Glasser, 1998, p. 10).

Further protests over the deaths of seven more young Aboriginal men in custody over a six-week period led the Federal Labor Minister for Aboriginal Affairs to announce a parliamentary inquiry into Aboriginal deaths in custody. The CDBR rejected this as a solution and at a packed Sydney Town Hall meeting continued to call for a Royal Commission. Significantly, they now threatened to use the Australian bicentennial celebrations in 1988 as a platform to expose Australia's human rights abuses to the world.

By this time, Aboriginal deaths in custody had become a mainstream political story. On 15 August 1987, following the death of Lloyd Boney in the police station in Brewarrina in northern NSW, the Federal Labor Government announced a Royal Commission into 44 deaths in custody.

From the beginning, Aboriginal groups recognised that their hard won media voice could easily be lost. In Sydney, the chairwoman of the Committee to Defend Black Rights, Helen Boyle, said international pressures had played a key role in the decision to set up the inquiry. Before that, Aborigines 'came up against a brick wall', she said.

What the campaigners feared was a loss of public voice. In Perth, Aboriginal activists initially recommended a boycott on the grounds that the commission was designed to 'silence' Aboriginal people during the bicentennial. Ken Culbong, a community elder and chairman of the Black Action Group, said: 'They think they can just give us something to keep us quiet during the Bicentennial celebrations. We've been doublecrossed right from the outset.' However the coordinator of the National Federation of Aboriginal Land Councils, Pat Dodson, said the Federal government was to be commended for their prompt and effective response to the crisis.

The Australian media, which under normal circumstances would rarely visit Brewarrina, descended on the town to cover Boney's funeral. The NSW

government sent the Police Tactical Response squad. One hundred Aborigines held a protest march and demanded that Boney's death be the first to be investigated.

Goodall carried out a detailed analysis of how the television footage of these events in Brewarrina was used to convey the impression that Aboriginal people rather than police or armed whites played the most active role in generating the violence. She concluded that the cutting and repeated re-use of the material linked Aboriginal people with crime, criminal irrationality, disorder in a way which 'had some powerful meaning beyond any aim to report "what happened" and created "a profoundly false impression of what happened"' (Goodall, 1992, p. 7).

Several days later, a small uprising or 'riot' involving about 30 people occurred. The local coroner, who was also the National Party candidate for the area, accused the media of 'stagemanaged racial disharmony'. In an editorial, *The Sydney Morning Herald (SMH)* rejected the accusation and blamed the conflict instead on 'concentration camp type conditions'.

Ironically, media videotape and photographs were used by the police to identify some of the Aboriginal protesters and 17 were charged with 'riotous assembly'. One of these was Eddie Murray's father, Arthur Murray, who along with his wife, Leila, was a leader in the Deaths in Custody campaign. The trial of the Aboriginal people arrested did not take place until the Royal Commission was over. By then only the alternative newspaper *Green-Left Weekly (GLW)* reported the Aboriginal view that the riot was triggered not by Aboriginal frustration, as suggested by the *SMH*, but by white violence.

According to *GLW*, Murray said that the riot was triggered when some armed local businessmen with guns yelled from a hotel balcony: 'Shut up you mob of niggers, you black bastards, I'll blow you away, get out of the park.' Two shots were fired. Murray told the court: 'Aboriginal people got the idea that this prejudiced man really wanted trouble ... Once these words were said out of this white man's mouth, they in turn have taken to his hotel, smashing windows and throwing empty kegs through his doors and through his windows and then the police were called' (Collins & Brazil, p. 1991). Murray and the other accused were sentenced to prison on charges arising from the 'riot'. In 1991, the NSW Court of Criminal Appeal finally acquitted Murray of the charges but only after he had already spent some time in prison. The mainstream media was nowhere to be seen.

Media reporting after the Royal Commission: the broader context

In evaluating the coverage of deaths in custody since the Royal Commission we need to consider the context of overall reporting of both crime and indigenous issues, developments in Aboriginal imprisonment and deaths in custody over the last ten years. For the purposes of this discussion, it is possible only to briefly sketch this context. A snapshot of Australian rates of imprisonment and deaths in custody helps place this coverage in perspective and in the context of the RCIADIC recommendations.

Despite the strong, clear recommendation of the Royal Commission, over the past 25 years the number of people imprisoned in Australia has been consistently growing. In 1999, the Australian Institute of Criminology reported that the number of all (Aboriginal and non-Aboriginal) people in prison has doubled, growing at more than twice the rate of the general population (AIC, 1999). Over the past ten years (between 1994 and 2005) the number of people imprisoned has increased by 43 percent, compared to a growth in 15 percent in the adult population. Over the same period, the female prisoner population increased by 101 percent. In NSW alone, there are more than 9000 prisoners (ABS, 2005; ABS, 2004), a record that was a source of pride, not shame, to the recently retired NSW Labor Premier Bob Carr (Baldry, 2005).

In 2005, nearly 60 percent of prisoners had been incarcerated before. Over the last ten years, the proportion of previously unsentenced prisoners in Australian jails has increased from 12 percent to 20 percent. The patterns differ across Australia, but overall you are 11 times more likely to go to prison if you are Aboriginal. In June 2004, 20 percent of all prisoners are Aboriginal and more than 5000 Aboriginal adults were in prison of whom 77 percent had been in prison before. (ABS, 2004; ABS, 2005). Aboriginal prisoners tend to be younger than other prisoners and on any day, approximately 6 percent of Aboriginal men between 25 and 29 are locked up. Eighteen percent of indigenous prisoners have committed only public order or victimless crimes compared to 7.8 percent of other prisoners.

Since 1991, the Australian Institute of Criminology has monitored deaths in custody. While the balance between police and prison custody deaths and the immediate causes vary from year to year, its reports show that overall, there has been little improvement in the number of Aboriginal deaths in custody in Australia. It is true to say, however, that given the increased number of Aboriginal people in prison, in 2003 an Aboriginal person going to prison

had less chance of dying than in 1991, but still more chance than a non-Aboriginal person (AIC, 2003).

Criminal justice reporting in Australia

Most Australian audiences get their information about news and current affairs from commercial television (Turner, 2005). In 1996, Turner surveyed two weeks of free-to-air commercial and ABC TV news and current affairs. He found that commercial television news was dominated by crime reporting. Channel Nine's bulletin averaged 24.4 percent of crime stories as against 10.5 percent on the ABC (Turner, 2005, p. 105).

A strong law and order news agenda across all commercial media, including talkback radio, has reinforced and promoted a law and order, pro-prisonment political agenda for Australian state governments since the early 1990s. This agenda runs completely counter to the recommendations of the RCIADIC. Stories about the disadvantage experienced by prisoners runs counter to this law and order agenda. This does not mean that no stories about disadvantage will be published, but it does mean that journalists with story ideas about such disadvantage will be arguing against newsroom agendas. If unsuccessful they may move their attention to story choices more likely to appeal to editors.

As has been reported by a number of media researchers, daily crime reporting is structured in ways which systematically privilege the views of official 'authoritative' sources (Hall et al., 1978, Ericson 1989). Government and police media relations specialists both supply a steady flow of stories (in which they are often the only source quoted) and attempt to restrict the flow of information perceived as having potential negative consequences. When governments as primary definers seek electoral appeal by promoting 'law and order' agendas, the media plays a role as secondary definers in amplifying fear of crime and creating moral panics (Hall, 1978; Cohen 2000). None of this means that there will be no opportunity or space for 'counter definers' but in this environment, both critical sources and questioning journalists will struggle for space in the media. This is the media environment in which deaths in custody reporting has existed in Australia since the Royal Commission.

Indigenous reporting

There has been an overall increase in reporting of indigenous affairs, includ-

ing more positive stories, since the Royal Commission. In the context of its comments about the racist history of the media, the RCIADIC itself noted an improvement during the years of the commission (RCIADIC, vol.2, 12.6). While critiques might be made that much of this reporting continues to represent Aboriginal people as criminal or dysfunctional, it does provide information about the issues covered. In 2005, there is a distinct indigenous media sector, a slowly increasing number of Aboriginal journalists and Aboriginal programming at public broadcasters SBS and ABC.

Metropolitan newspapers, especially Fairfax's *SMH* and News Ltd's national broadsheet *The Australian*, do regularly report indigenous issues. Partly as a result of the Royal Commission, Aboriginal media awards, sporting achievement and cultural achievements do get reported more often than before 1991. Today, Aboriginal leaders are frequently quoted and indigenous organisations have a strong presence on the web. However there is a general tendency in news and current affairs reporting for only one or two stories to dominate the news agenda at any one time (Bacon & Nash, 2002; Bacon & Nash 2003). Since the Royal Commission, the Australian High Court's Mabo landrights decision, the native title political debate, petrol sniffing in remote communities, domestic violence in Aboriginal communities, mandatory sentencing and several clashes between Aboriginal people and the police have had intense coverage for short periods of time. Some of this reporting has overemphasised conflict and negative images of Aboriginal people but much of it also reported on relevant issues. There has been no such concentration on the issue of deaths in custody.

Shortly after the conservative Howard government was elected in Australia in 1996, the then Minister for Communications Richard Alston complained that the ABC's news reporting was skewed towards indigenous reporting. University of Queensland researcher Graeme Turner carried out a study following Alston's complaints, which showed that during the period surveyed the ABC averaged 3 percent of its bulletin on indigenous issues; Channel Nine news averaged 0.3 percent on indigenous affairs. He concluded that any residual accusations of privileging such issues should end and may indicate 'the need for them to be taken more seriously by the commercial sector' (Turner, 2005, p. 105). Turner's findings were confirmed by a later study which showed that apart from two major international conflict and disaster stories, there was very little reporting about humanitarian issues on commercial television over a six month period in 1999-2000 (Bacon & Nash 2003;

Bacon & Nash 2004). While this study focused on international stories, it is likely to reflect local patterns.

Reporting deaths in custody: 1991-1995

The Royal Commission included thousands of days' hearings in courts scattered around Australia and resulted in many volumes of evidence and reports. Daily reporting continued to cover some more newsworthy parts of the hearings, although when the commission travelled to remote destinations, the media was often left behind. The interim reports were covered and, as already explained, the release of the final report itself turned into a minor media event. Then the media again moved on. As suggested by the *SMH*, the 'story was over'.

Two years after the RCIADIC, the Australian Centre for Independent Journalism began a project focusing on reporting of cultural diversity. Student journalist Barbie McKee (1993) reported that the commission's recommendations were 'strangely absent from our conscience and from the media ...The salient and urgent message seems to have moved from the realm of social justice into a bureaucratic, legal and administrative roundabout' (*Voices*, 1993, p.6). *The Voices* editors found that the limited number of stories published on deaths in custody usually failed to quote key Aboriginal sources who were involved in the issue. They concluded, 'we found ourselves returning to the theme that a number of stories chosen could only be told by giving those often denied a voice, a chance to express their views. Journalists place great value on balance yet so often their so-called reliance on legitimate sources leaves important parts of a story out. Hence our title *Voices*' (*Voices*, 1993, p. 2).

McKee interviewed the National Committee to Defend Black Rights (NCD BR) spokesperson Maurice Walker who complained about the 'turtle pace' of reform and the rising numbers of Aboriginal people being imprisoned, and commented on the bitterness of relatives of those who had died. When asked what he felt had been achieved, Deaths in Custody Watch committee spokesperson Ray Jackson said, 'Absolutely nothing. In fact a sum of A\$430 million is being spent and yet deaths in custody are still continuing. In fact there have been 52 deaths since 1989 and nothing's changed' (*Voices*, 1993). These voices and views barely surfaced in the national or local media.

Just before McKee published her report in November 1993, deaths in

custody briefly returned to the headlines when young Aboriginal man Daniel Yock died in custody in Brisbane after being arrested drunk. Many local people did not accept the police version of events that Yock died of a heart attack, claiming that police had been warned by his friends that their rough handling was dangerous. After a violent clash between Aboriginal people and the police, the media focused on the death and the Queensland government ordered a public inquiry by the Criminal Justice Commission. An analysis of the reporting of Yock's death showed that the media had ignored another death of an Aboriginal woman which happened shortly before this event, and that the political strategy of appointing a commission of inquiry proved successful in focusing the media on the guilt and innocence of individuals rather than the failure of the government to implement the Royal Commission recommendations (Enders, 1995, p.12).

Early in 1995, the ACIJ reviewed the media coverage of deaths in custody since the commission's final report in Autumn 1991. The report concluded:

There has been passing media interest in the issue. But the coverage has been based on isolated news events, such as the publication of official reports. The full impact of what is happening remains hidden. There has been little indepth reporting or reporting of what is happening on the ground. The media has lapsed into a passive rather than an active role. (Bacon and Mason, 1995, p.18)

Most news reports relying on official sources during this period originated from the Australian Institute of Criminology (AIC), which specifically had been given the task of monitoring deaths in custody by the RCIADIC. Each year, the AIC did an annual report and a media release. The ACIJ did a small case study of the coverage of the 1995 AIC report which contained the news that '14 people died in custody during 1993-1994'. This was the highest figure in the four-year period and more than double the previous year's figure. The AIC reported that prison deaths in custody were at their highest level since statistics were first collected in 1980-1981 and that rather than falling, the rate of Aboriginal imprisonment was increasing. The number of Aboriginal people imprisoned across Australia had increased by 50 percent since the Royal Commission, and in some states by more than that.

AIC director Adam Graycar was quoted in the AIC media release as say-

ing that ‘the more people are locked up, the more people die in custody.’ He concluded: ‘Key recommendations of the Royal Commission are either not being fully implemented or when they are, are not operating effectively.’

This evidence that there had been an obvious failure by Australian governments to implement the key recommendation of the RCIADIC would seem to fulfill the ‘conflict’ and ‘negative’ notions of professional news. Yet in the newsrooms of Australia, it barely rated as a story. The release was not reported on Australian commercial television and radio, but in ABC news reports and ten articles in Australian metropolitan and regional newspapers. However, six of those ten articles failed to refer to the key point in the release, which was that the central reason for the increase in deaths in custody was the rising number of Aboriginal people in prison. Instead the articles focused on statistics of how people died, rather than why they died. *The Australian* report even conveyed the opposite meaning to that intended by Graycar by stating, ‘*despite the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody, indigenous Australians are still dying in custody*’ (author’s emphasis) (Bacon & Mason, 1995). Only the *Canberra Times* and *The Age* clearly emphasised the links between the number of deaths and the problem of overrepresentation of Aboriginal people in prison.

In reporting the statistics, no newspaper included a comment from an Aboriginal source, ignoring even the then Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Dodson, who had been appointed in 1992 by the Federal government as a result of a Royal Commission recommendation. Dodson had recently made a number of scathing public speeches criticising the failure of governments to implement the recommendations. Four weeks after the AIC report, his annual report devoted a chapter to deaths in custody, in which he warned of the danger of the chance for change being lost. He was particularly critical of the impenetrable bureaucratic language of government progress reports: ‘One is irresistibly reminded of the sex life of elephants: much trumpeting, a lot of activity at a high level and no outcome in three years.’ Even though his report was promoted with a press release, it was ignored by the media (Bacon & Mason, 1995, p. 20).

Although the need to reduce Aboriginal imprisonment had been the key recommendation, no media outlet decided to follow up the reasons for the rise in deaths in custody.

Coverage of Aboriginal deaths in custody: 1996–2005

In 2005, the ACIJ has again reviewed the coverage of deaths in custody using Factiva and web searching (media sites and Google) for the period from 1995-2005. (This is not as accurate and comprehensive as a more costly commercial media monitoring exercise.) This review is not based on a quantitative content analysis of all coverage, but nevertheless offers a basis for some commentary and evaluation.

Most Australians have received almost no information about deaths in custody since the Royal Commission. This is partly because there is little or no coverage on TV news or commercial current affairs, the source used most by most Australians for their news. As Turner has observed there is almost no current affairs of any kind on commercial radio (Turner, 2005). This lack of coverage mirrors similar findings in a study of media coverage of humanitarian and aid issues: most Australians receive little information about these events outside the context of major international media events such as the 2005 tsunami (Bacon & Nash 2002; Bacon & Nash 2003.)

This is not to say there has been no in-depth and investigative reporting at all. In 1997, Bonita Mason, who had worked on the ACIJ study discussed above, won a Walkley Award for an indepth investigation ‘The girl in Cell 4’ into the 1994 death of Janet Beetson, who was serving a sentence for stealing in Mulawa women’s prison. The Walkley judges described the work of Mason, a postgraduate journalism student and freelancer as ‘the cool, persistent pursuit of a bureaucratic lapse leading, in this instance, to the death of a powerless victim of the system’ Mason, 1997).

There have been several ABC *7.30 Report* and one *Four Corners* programme on the issue during the last ten years. The *Four Corners* programme was a powerful indictment of the official neglect and discrimination that led to the death of Eddie Russell, the cousin of Eddie Murray and nephew of Arthur and Leila Murray. ‘Edward Russell entered the justice system two years after the Royal Commission made its recommendations; recommendations drawn up to save people at risk, and no-one was more at risk than Edward Russell. An Aboriginal, partially deaf, with the mind of a young child, who could neither read nor write, who told of childhood rape, became a rapist himself, was bashed by police, kept away from his parents and finally consigned to a cell alone. The coroner was damning. She said she couldn’t blame his death on system failure. There was simply ‘no system there to accommo-

date Edward Russell' were the final words of reporter Andrew Fowler. The web version of the programme featured Russell's letters, a transcript of the coroner's findings as well as a forum in which the merits of the programme were hotly contested by sympathetic and unsympathetic viewers (*Four Corners*, 2002).

In January 2005, ABC's indigenous series *Message Stick* made a programme in memory of Leila Murray, the mother of Eddie Murray who had spent 20 years for campaigning to know the truth about her own son and the sons and daughters of Aboriginal people around Australia.

All of these features linked their individual stories with the implementation of the RCIDIC. They were powerful stories in their own terms but they happened very rarely. They appeared to have little or no impact on the daily news agenda.

Many deaths in custody do not get reported at all, and those that do tend to rate less than 100 words. All metropolitan newspapers have carried a smattering of deaths in custody stories, but in some years some newspapers have carried only one or two small stories. Overall, there have been very few print features, with most reports being 300 words or less.

Take for example, Western Australia where there is only one metropolitan newspaper, *The West Australian*. Between 1991 and 1999, 70 people died in custody in West Australia compared to 29 between 1982 and 1991. Fifty-eight Western Australian Aboriginals died in custody between 1995 and 2001 in WA prisons (Allen, 2001). Perth's only daily newspaper, *The West Australian*, published 63 short stories between 1996 and June 2005, many of which comprised 300 words or less. There were no long features.

The broadsheets *The Australian* and *The Sydney Morning Herald* have carried many more stories than other papers, although *The Australian's* stories focused strongly on the Palm Island death, while *The Sydney Morning Herald* stories have been more broadly spread and have included a number of features. This would appear to have been due partly to *The Sydney Morning Herald* having a dedicated indigenous affairs reporter, Debra Jopson, who joined the *SMH* after she completed her Aboriginal Studies degree in 1994. Jopson did many stories about deaths in custody, including a rare longer feature. Jopson, who was transferred to the *SMH's* investigative team in 2003, told the author that since she stopped covering indigenous issues for the *SMH*, she regularly takes stories about Aboriginal issues to the news desk. Only

occasionally are these are taken up. She also promotes stories to individual reporters, who would try to run with them but became discouraged after they were rejected. Overall, the in-depth coverage of indigenous issues decreased after she moved to the investigative team. Since 1995, the flow of stories into newspapers has not been consistent. Further reports from the AIS on the rising deaths in custody, the persistence of Social Justice Commissioner Mick Dodson, and an Amnesty International report which described the hundredth death since the Royal Commission as a 'day of shame in Australia's history' (Kingston, 1996; Macey, 1996; Phelan, 1997) were sufficient to get the issue back into the news agenda and led to a National Summit into Aboriginal Deaths in Custody which called on state, territory and Commonwealth governments to 'commit fully to implementing the recommendations of the Royal Commission into Aboriginal Deaths in Custody and to undertake immediate action to reduce the numbers of indigenous people in custody' (Parker, 1997).

After the summit meeting in February 1997, coverage of deaths in custody again faded away. The Howard government had been elected in 1996, removing the influence of Federal Labor, which although it may have been ineffectual in implementing the Royal Commission's recommendations was avowedly committed to its goals. Meanwhile state governments, both Liberal and Labor, began to pursue ever more vociferous law and order agendas.

Despite the National Summit later in 1997, the Northern Territory legislated a mandatory sentencing regime which provided for compulsory imprisonment of people convicted of property and some other offences. The laws applied to children as well adults. The campaign to end these laws was persistent and gradually attracted more media attention, particularly from the ABC. In December 1997, Chief Magistrate Grey resigned, saying the laws would have a profoundly negative effect on the numbers of Aboriginal people in custody (ABC Radio Transcript, 23 December 1997). Lawyers, magistrates and others spoke out, attracting a limited amount of news reporting.

Newspaper coverage at this time concentrated on mandatory sentencing laws rather than the general issue of deaths in custody (Zdenkowski & Johnson, 2000). Newspaper coverage between 1996 and 2005 falls into three main categories—short reports of trends in deaths in custody, short reports of individual cases which include coroners' reports and short reports flowing from media releases of Deaths in Custody watchdog groups or other Aboriginal organisations.

Short reports of statistical trends

AIC media releases accompanying annual reports of deaths in custody continued to feature prominently in the few short stories about deaths in custody in Australian newspapers until 2002. The AIC treatment of the 2002 and 2003 reports provides an interesting contrast with its treatment of the 1995 report when the then director Adam Graycar went out of his way to draw public attention to the failure to implement the Royal Commission findings (Bacon & Mason, 1995, p. 18).

In 2004, the AIC decided that it would no longer publish media releases for 'technical reports' (Bacon, 2005). This is probably the reason why there appears to be no media coverage of the AIC report for that year. However, the report was published on the internet and could have been accessed by journalists with an ongoing interest in the issue.

In a short, upbeat introduction to the 2003 AIC report, the new AIC director, Toni Makkia, noted a drop in all deaths from a very high number of 85 in 2002 to 68 (a further seven were undecided) in 2003 (AIC, 2004). He did not mention that the report showed no long term improvement in Aboriginal deaths in custody since 1991 nor that the prison custody death rate for Aboriginal prisoners was higher than it was in 1992 (AIC, 2003, p. 28). Another story angle which could have been pursued was that of seven Aboriginal people who had died in police custody, all but one had been arrested for a non-violent offence.

Short news reports of individual cases

Most newspaper reports take the form of reports about individual cases and occasionally the coroner's report which follows. Since 1991, there have been many coroners' reports criticising the failure of government to implement the Royal Commission. While these have been sometimes reported by the media, there does not appear to have been any attempt by the media to have followed up the cases.

Short news reports also result from press releases and media strategies of Aboriginal organisations. These usually quote one or more Aboriginal people voicing concerns about deaths in custody. In more than half the articles in *The West Australian*, for example, Aboriginal sources were the main and often the only sources quoted giving them a strong interpretative role in framing many stories. While the use of Aboriginal sources is improvement report-

ing in pre-Royal Commission years, journalists appear to make little effort to follow up their concerns by questioning other sources who owe a duty of care to those who die in custody.

Letty Scott, an Aboriginal woman whose husband Douglas's death was investigated by the Royal Commission and found to be suicide, has campaigned for 14 years to have the case reopened. Like several Aboriginal families, she did not accept the suicide verdict and believes her husband was murdered. After collecting forensic evidence from overseas scientists who found that her husband might have been strangled and witness statements from two prisoners who gave evidence that they heard Scott screaming 'help, help' after prison officers entered his cell, Letty Scott charged the prisoner officers with murder. Northern Territorian Justice David Angel found that he could not accept the Royal Commission finding that Douglas had hanged himself. This major breakthrough was briefly covered by a number of newspapers. Only the Indigenous Social Justice Association newsletter *Djadi Dugarang* reported important details in Justice Angel's judgement conveying the significance of the breakthrough in Letty Scott's long campaign (Jackson, 2005).

Conclusion: Implications for media accountability systems

In 2003, Erykah Kyle wrote a powerful letter to the *Townsville Bulletin* after the inquest had finished into the death of her son Brett. She wrote: 'It is over 10 years since the Royal Commission into Black Deaths in Custody. The landmark Royal Commission produced over 160 recommendations at an enormous amount of money!' She asked a number of questions about the failure to implement the recommendations. Are these coronial inquests just a waste of time in helping to avoid future deaths? How do we, as a people, get the issue of black deaths in custody back on the agenda? (Kyle, 2003)

A year later, a riot following Cameron Doomadgee's death in custody on Palm Island triggered a 'riot'. The issues of deaths in custody had finally grabbed the attention of the national media again. Kyle, now the mayor of Palm Island, said she was tired of her people being called 'troublemakers'. 'Our agenda is that Palm Island has to change, especially for our young people who are lost,' she said (Todd, 2004). Meanwhile 1000 people marched in Brisbane to raise awareness of deaths in custody. It was as if Australia had come full circle from Lloyd Boney's death in Brewarrina in 1987.

For Aboriginal people who are affected by deaths in custody and those other Australians who support them, deaths in custody will always be an im-

portant story. They know that if they do not achieve ‘visibility’, their ‘claims and concerns’ will not gain recognition (Thompson, 1995, p. 247). Aboriginal people and groups have initiated or been a presence in the limited coverage that the Australian media have devoted to deaths in custody. However, Aboriginal spokespeople complain that on many occasions important issues are missed and that although they try to alert the media to what they regard as serious issues, they are ignored (Jackson, 2005).

As suggested earlier, nearly 80 percent of Australian journalists, when surveyed, said that they supported the inclusion of the notion of scrutiny of power in the role of a journalist. Scrutiny of the powerful is particularly important when those whose lives and well being are involved are owed a ‘duty of care’ by the state. This case study suggests that collectively, Australian journalists have failed to scrutinise why Aboriginal people continue to die in custody in Australia. This is despite the importance attached to the media the Royal Commission findings and by the media’s response in 1992. This failure in accountability does not mean that the media are mainly responsible for the deaths but that journalists have contributed by failing to keep the issue in the public sphere by scrutinising those with political, judicial or coercive power. On many occasions journalists have not even reported newsworthy comments by judicial officers about the conditions in prison. To return to Curran’s notion of the role of media in a democracy, as far as this ‘story’ is concerned, Australian journalists have not sustained a ‘vigilant scrutiny’ of government, let alone protected more disadvantaged groups (Curran 2002, p. 247).

Some journalists may simply respond that the news agenda is always competitive and responds to the social and political environment of the time. The difficulty is, of course, that while this may provide an acceptable professional explanation for some, it provides no answer to the Aboriginal community or to those who support a broader democratic role for the media. Indeed such explanations may seem rather self-serving when lined up against the strong message of commitment implied by the reporting of the Royal Commission report. Indeed, the pattern of coverage might suggest that for Aboriginal deaths in custody to make the story list in the competitive world of news, Aboriginal communities must riot.

This case study is just one example of how the media often fail to deliver coverage of stories that impact on disadvantaged groups (Bacon & Nash, 2003; Bacon & Nash, 2004; Turner, 2005). Such case studies can do more

however that simply demonstrate the failures of contemporary media. As suggested by Bertrand, such research can also be seen as part of a larger framework of action to improve media accountability. In pursuing such a framework, journalists, community groups and researchers can join together in practical ways to tackle the gaps.

Journalism educators in universities are well placed to play a role in facilitating such frameworks of action. It is for this reason that the ACIJ at UTS has followed the issue of deaths in custody. By analysing the factors which have led to the gaps in coverage, we can identify what steps, policies and changes could make a difference. In these concluding comments, I will make some suggestions about what these might be.

It is apparent that deep-rooted structural issues continue to weaken Australian media. In six of eight Australian capital cities there is only one metropolitan newspaper. Current affairs is shrinking on commercial television and radio (Turner, 2005). If Australian commercial media are 'just another business', more resources and social support need to be given to other media that can maintain a public service role. The national broadcaster, ABC, has done very few longer reports on deaths in custody over the last 14 years. However, it has carried more deaths in custody stories than commercial broadcast media. The ABC has been under constant funding and editorial pressure from the Federal Howard government. This pressure needs to be resisted.

Many important stories can only be found in Australia's small independent or alternative media sector. The independence and financial viability of these media need to be supported.

This case study also suggests, however, that within media organisations, individual journalists with a brief to report on indigenous issues can make a difference. Unfortunately, the *Sydney Morning Herald*, one of the few media outlets with a dedicated indigenous affairs reporter, has recently stopped having a reporter in that role. There are still very few indigenous reporters in mainstream newsrooms. As recommended by the Royal Commission, media content initiated and produced by indigenous people is important and plays a role in keeping issues on the agenda.

A marked characteristic of the reporting of deaths in custody is its passivity. This reflects the attitude of editors and journalists to the role of reporter. A large amount of daily reporting merely relays the actions and views of powerful sources. The result is that when governments have no interest in

pushing an issue or have an interest in actually keeping it hidden, it can easily fall off the news agenda. This appears to have occurred in the case of reporting of deaths in custody. The wholesale failure, for instance, to follow up on critical findings of coroners investigating deaths may be partly due to shrinking editorial resources in newspapers and broadcast media. Web publishing has meant there is a lot more easily accessible information that should enable journalists to follow-up reports with few resources. Governments' use of public relations professionals to block questions has increased over the last 14 years and is discouraging critical reporting. In this context, journalism educators need to constantly develop their students' practical skills in fast research for multi-source and critical reporting.

The importance for journalists and journalism educators of discussing the issue with Aboriginal organisations cannot be overemphasised. Without their tireless pushing, there would have been no Royal Commission. Several under-funded community Aboriginal organisations have continued to push the issue onto the agenda. If they did not exist, there would have been even fewer stories since 1992. These organisations have also published a large amount of material on this issue on the internet, nearly all of which has been ignored by the media. They have played a significant role in enabling journalist and the public to access information about deaths in custody.

Following the Royal Commission, there were a number of conferences between Aboriginal organisations and journalists to discuss the reporting of indigenous issues (Hartley, 1994). It is time to reinvigorate this process and use that as a way of highlighting and remedying media silence.

Protocols for indigenous reporting and other codes and principles do play a role in guiding journalists, and indeed may have contributed to the high number of Aboriginal sources used in deaths in custody stories since the early 1990s. On the other hand, such codes are not sufficient when it comes to addressing gaps in coverage. Indeed if not applied in practice, they can become mere tokens.

Hundreds of students study journalism at Australian universities each year. One strategy that journalists working as educators in those universities might consider is how they might activate this very large reporting resource to address the failure of Australian media to adequately cover the issue of deaths in custody and other cases of media accountability failure.

This would not only provide a way of linking research with journalism

practice in a socially and innovative way. If coordinated at a national level and carried out in consultation with Aboriginal organisations but according to the principles of professional and ethical practice principles, such strategy could make an impact on the national media agenda.

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