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Guilty or innocent? Let the courts decide

KATIE SAMBROOKS 9 August 2013

How pre-trial publicity threatens the administration of justice.



Katie Sambrooks is undergraduate joint winner of the John Howard Essay Prize 2013. The question was: Trial by tabloids: Do the media facilitate or threaten the administration of justice in England and Wales? The other winners are [Christian Rowlands](#) and [Rose Harvey](#).

Trial by tabloids, or more generally trial by media, refers to when media outlets create a widespread perception of an individual's guilt of a criminal offence through the release of prejudicial material. In instances of trial by media, due process gives way to moral speculation and, regardless of the outcome of the court of law, a verdict is arrived at in the 'court of public opinion' [1]. This leads to conflict between the media's prerogative to report on judicial processes via their right to freedom of expression, and the right of the accused to a fair trial with an impartial jury [2]. These rights collide when pre-trial publicity infringes upon the right to a fair trial and instead initiates a trial by media. For justice to be administered correctly, guilt or innocence must be determined in the courtroom, where the full facts can be considered, not through media outlets where selective elements are reported for the purpose of sensation [3]. However, with pre-trial publicity there is a possibility jurors have been exposed to prejudicial information which will be taken into account in determining a defendant's guilt. This would render a trial

unfair. When the media disrupt a criminal trial in this way they pervert the judicial process and threaten the administration of justice [4].

In a society which can now be described as media-saturated, with the accessibility of the internet and broadcasting of 24-hour news channels, the potential for prejudicial pre-trial publicity is increased. Newspapers, which now face intense competition from the Internet, may feel a greater pressure to cover major crimes and tend to push the envelope further with the content they publish [5]. Therefore, it is now virtually impossible for potential jurors to be unaware of the circumstances surrounding major crimes [6]. These highly publicised cases tend to create an atmosphere that is extremely anti-defendant [7], and so it has been claimed that "never before has the judicial system been challenged with such an obstacle to fairness as that caused by today's excessive reporting for entertainment rather than education." [8]

The main impediment that arises as a result of the media's sensationalism in their coverage of crimes is the possibility of appeals [9]. We have seen an exponential increase in appeals on the grounds that defendants cannot obtain a fair trial and therefore in the number of overturned convictions [6]. If otherwise proper convictions are continually reversed solely due to violations of the right to a fair trial by the media, the public's interest in convicting criminals may diminish. Should the media's freedom of expression be regulated in favour of the proper administration of justice?

Although courts in the UK have been reluctant to find pre-trial publicity prejudicial enough to render a trial unfair, they are willing to do so in extreme cases. For example, in the Taylor and Taylor case, it was confirmed that if media coverage creates a substantial risk of prejudice, the convictions should be quashed [10]. In this case, two sisters were convicted of stabbing to death the wife of Michelle Taylor's lover. The Court of Appeal described the publicity surrounding the case as "unremitting, extensive, sensational, inaccurate and misleading". For example, the Sun had published the headline: The "Killer" Mistress Who Was At Lover's Wedding [11]. The Court concluded it was "impossible to say that the jury were not influenced in their decision by what they read in the press", and was therefore satisfied that the conviction was unsafe [12]. Their lawyer believed that a jury would have been unable to ignore the "unremitting, collective pressure from the media" [13].

Levi Bellfield was convicted of murdering Milly Dowler, but the jury was still considering the charge of attempted abduction of Rachel Cowles when the release of prejudicial material meant they were discharged before reaching a verdict [14]. The High Court ruled that the Daily Mail and the Daily Mirror had published seriously prejudicial articles referring to Bellfield's sexual interest in young girls and were found guilty of contempt of court. It was the Court's belief that if the jury had not been discharged, the subsequent conviction was likely to be overturned due to a lack of a fair trial [15]. The media's actions deprived Cowles of a verdict and the chance for justice. She stated that she was "extremely hurt and angry" about the trial collapse [16].

Excessive media coverage surrounding a trial does not automatically render the trial unfair [8] and therefore convictions are not always overturned. Rosemary West, who was convicted of 10 murders, appealed on the basis that the extensive press was so hostile that it precluded a fair trial. Her lawyer claimed that the media exercised "a malign influence" on the proceedings [17]. Nevertheless, the court stated that to hold that a fair trial could not be held "would mean that if allegations of murder are sufficiently horrendous as inevitably to shock the nation, the accused cannot be tried. That would be absurd." They felt that juries are capable of following the judge's instructions and thus are able to resist the media's "sensationalist excesses" [18]. In other words, a guilty defendant should not be allowed to evade punishment merely because their crime is abhorrent enough to garner intense media coverage – justice must still be done.

There is conflicting empirical evidence concerning whether jury verdicts are influenced by media coverage. Laboratory research has found that jurors exposed to high levels of pre-trial publicity were more likely than others to judge the defendant as guilty.[19] In opposition, field research in the US has found that pre-trial publicity has little influence on the final verdict. Murder cases that received high publicity (11+ articles) and no publicity produced equal conviction rates (79.9 per cent and 79 per cent respectively) [20], suggesting that pre-trial publicity does not create biased juries and render the judicial process unfair. Additionally, a study of juries in England and Wales which focused on the 'fade factor' – the greater the gap between when prejudicial media content is published and when the trial begins the weaker the effect of publicity on the jury's verdict – concluded they are fair [21]. A large proportion of jurors could not recall whether media reports before a trial had suggested the defendant was innocent or guilty, providing evidence that the fade factor plays a role in insulating a jury from potentially prejudicial coverage [22]. Given this, it could be argued that pre-trial publicity is mostly insignificant to the outcome of trials. However, the rise of online sources has raised concerns as they may be immune to the fade factor, since the internet allows highly efficient archiving and retrieval of data – the material would still be there when a case came to trial.

The sensationalism that frequents today's media has "severely threatened the judicial system's ultimate goal of justice" [8] by jeopardising the notion of a fair trial. To allow for the proper administration of justice, the democratic ideals of the right to a fair trial and the freedom of the press must be balanced. It is arguable that a defendant's life is too valuable to be compromised by the media's commercial desires to raise readerships and in turn profits. In support of this, a UK Judge, Andrew Gilbart, said that the right to a fair trial by jury was one of our most precious civil liberties [23]. Perhaps freedom of expression should yield to the proper administration of justice. After all, due process is meant to act as an important safeguard for the defendant, the victims and the public interest in seeing justice done. Therefore, the media should endeavour to be ethically responsible and not risk impairing judicial proceedings.

However, the media's rights must be upheld since responsible media coverage of criminal trials serves an important function by informing and educating the public regarding often complicated judicial procedures. In this way, the media facilitates justice in allowing greater transparency in the judicial process and thus enabling open justice. As Lord Judge stated "a fundamental aspect of the proper administration of justice is the principle of open justice" [24]. Hence, the media plays a crucial role in subjecting the administration of justice to critical analysis by exposing matters of concern to scrutiny and bringing the information necessary to hold governments accountable to a wide audience. The Telegraph's exposé of MPs' expenses abuses acted as a catalyst in the process of dispensation of justice. [25]. Exposure prompted resignations, sackings, repayment of expenses and criminal prosecutions. One MP was jailed for 18 months. [26] This clearly demonstrates the importance of the media in allowing for democratic accountability.

OurKingdom publishes the winners of the John Howard Essay Prize 2013 in association with the Howard League for Penal Reform and Hacked Off. The competition was judged by the Guardian's Eric Allison. Prizes will be presented at the Howard League's [National Student Conference](#) on 20 November 2013.

Bibliography

1. Greer, C. and McLaughlin, E. (2010). 'Trial by media': Policing, the 24-7 news mediasphere and the 'politics of outrage'. *Theoretical Criminology*, 15, 23-46.
2. BBC News (2000). *Human Rights Act: What the articles say*. Retrieved March 1, 2013, from BBC News website: <http://news.bbc.co.uk/1/hi/uk/946400.stm>
3. Bjork, S.A. (1989). Indirect Gag Orders and the Doctrine of Prior Restraint. *University of Miami Law Review*, 44, 165-196
4. Hermida, M. (1995). Trial by tabloid. *St. Thomas Law Review*, 7, 197- 216.
5. BBC News (2011). *Sun and Mirror accused of Jo Yeates contempt*. Retrieved March 1, 2013, from BBC News website:www.bbc.co.uk/news/uk-14024079
6. Minow, N.N. & Cate, F.H. (1991). Who is an Impartial Juror in an Age of Mass Media? *American University Law Review*, 40, 631-639.
7. Imrich, D.J., Mullin, C., & Linz, D. (1995). Measuring the extent of prejudicial pretrial publicity in major American newspapers: A content analysis. *Journal of Communication*, 45, 94-117.
8. Stephen, R.S. (1992). Prejudicial Publicity Surrounding a Criminal Trial: What a Trial Court Can Do to Ensure a Fair Trial in the Face of a "Media Circus". *Suffolk University Law Review*, 26, 1063-1106.
9. Swartz, M.E. (1990). Trial Participant Speech Restrictions: Gaggling First Amendment Rights. *Columbia Law Review*, 90, 1411-1417
10. Contact Law (2013). *What is the law regarding media influence in criminal trials?* Retrieved March 1, 2013, from Contact Law website: www.contactlaw.co.uk/what-is-the-law-regarding-media-influence-in-criminal-trials.html
11. BBC News (2011). *How prejudicial reporting has lead to collapsed trials*. Retrieved on March 1, 2013, from BBC news website: www.bbc.co.uk/news/uk-13905765
12. McFayden, N. (2006). Pre-Trial Publicity: Guilty Until Proven Innocent. *International Society for the Reform of Criminal Law*,1-13.
13. Davies, N. (1994). *The newspapers which hounded the Taylor sisters*. Retrieved March 1, 2013, from: www.nickdavies.net/1994/11/01/the-newspapers-which-hounded-the-taylor-sisters
14. BBC News (2012). *Newspapers guilty of contempt in Levi Bellfield case*. Retrieved on March 1, 2013, from BBC News Website: www.bbc.co.uk/news/uk-18885958
15. Greenslade, R. (2012). *Mail and Mirror Guilty of Contempt*. Retrieved on March 1,2013, from the Guardian website: www.guardian.co.uk/media/greenslade/2012/jul/18/contempt-of-court-medialaw
16. Hough, A (2011). *Levi Bellfield trial: Rachel Cowles angry over trial collapse after 'media coverage'*. Retrieved March 1, 2013, from the Telegraph website: www.telegraph.co.uk/news/uknews/crime/8597461/Levi-Bellfield-trial-Rachel-Cowles-angry-over-trial-collapse-after-media-coverage.html
17. Bennett, W. (1996). *Dearth of Evidence at Rose West Trial*. Retrieved on March 1, 2013 from the Independent website: www.independent.co.uk/news/dearth-of-evidence-at-rose-west-trail-1342798.html
18. Phillips, G. (2011). *Contempt of Court: A matter of legal judgement*. Retrieved on March 1, 2013, from the Guardian website: www.guardian.co.uk/media/2011/jan/10/contempt-of-court
19. Steblay, N.M., Besirevic, J., Fulero, S.M. & Jimenez-Lorente, B. (1999). The effects of pretrial publicity on juror verdicts: A meta-analytic review. *Law and Human Behaviour*, 23, 219-235.
20. Brusckhe, J. & Loges, W.E. (2004). *Free Press vs. Fair Trials: Examining Publicity's Role in Trial Outcomes*. Mahwah, New Jersey: Lawrence Erlbaum Associates
21. Casciani, D. (2010). *Do media reports influence juries?* Retrieved March1, 2013, from BBC News website: <http://news.bbc.co.uk/1/hi/uk/8519995.stm>

22. Thomas, C. (2010) Are Juries Fair? *British Ministry of Justice*, 43-44. Retrieved March 1, 2013, from: <http://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/are-juries-fair-research.pdf>
23. Carter, H. (2012). *Dale Cregan judge warns media, police and politicians to allow fair trial*. Retrieved March 1, 2013, from the Guardian website: <http://www.guardian.co.uk/uk/2012/sep/24/dale-cregan-judge-media-trial>
24. BBC News (2011). *Tweeting from court is given the go-ahead by top judge*. Retrieved March 1, 2013 from BBC News Website: www.bbc.co.uk/news/uk-16187035
25. BBC News (2009). *Cabinet expenses under scrutiny*. Retrieved on March 1, 2013, from BBC News website: http://news.bbc.co.uk/1/hi/uk_politics/8039108.stm
26. BBC News (2010). *Politicians tell court they are not guilty on expenses*. Retrieved March 1, 2013 from BBC News website: http://news.bbc.co.uk/1/hi/uk_politics/8561359.stm
27. BBC News (2011). *MPs' expenses: David Chaytor jailed over false claims*. Retrieved March 1, 2013 from BBC News website: <http://www.bbc.co.uk/news/uk-politics-12127327>