



**Bob Woffinden**

## Who drives the agenda?

Media in Great Britain has undergone big changes in its coverage of crime and criminal court cases since the 1960s, when crime was considered tabloid material only. Nowadays, crime is everywhere, with the media not only reporting on crime but seemingly passing judgement on guilt and innocence before a trial has actually taken place. Bob Woffinden worries that this trend has created a massive illiberal agenda that disregards human right legislation and the right to a fair, unbiased trial.

Barely a day has passed in recent years without the government being indicted by the media for employing for those supposedly sophisticated public relations techniques characterised by that all-embracing word, spin. Indeed, the government has been lambasted so relentlessly over this that one needs to remind oneself that spin is essentially a defensive mechanism, utilised to enable an administration to withstand media assaults on its performance and policies. No one needs to be especially sympathetic to politicians to appreciate that many of those attacks are intemperate and ill-informed. It might bring a modicum of candour to public affairs if, instead of appearing shamefaced when caught out by the media in a particularly flagrant manifestation of spin, the government just for once retorted, "Well, you started it."

Developments in legal and judicial affairs provide a telling illustration of what happens when, under sustained media attack, there is no spin, or indeed self-defence of any kind. The institutions are undermined; they become unrecognisable.

Historically, the serious press reported legal matters in the higher courts of the land. The popular press, what there was of it, covered crime. But those papers existed on the premise that they traded influence for circulation, and no one expected their reports to cause a scintilla of concern in Whitehall. Even when the notorious John Straffen case was current in 1952, the middle-ground papers like the *Daily Mail* and *Daily Express* reserved their front pages for foreign affairs and domestic politics; the Straffen trial was reported inside.

The BBC, meanwhile, was firmly aligned with the serious press; crime was outside its ambit. Its abstemious approach had to change with the arrival of commercial television, but it was not until the early 60s that the corporation began to carry regular reports of criminal cases. The A6 Murder of 1961 – which became the celebrated Hanratty case – was the first to which BBC television assigned a reporter.

The case, indeed, marked an early turning-point in crime coverage because, uniquely, it featured a number of successive highly newsworthy developments, including the arrest and release of an original suspect prior to the nationwide

search for Hanratty, the second suspect. As the case began with a crime committed in August, the traditional silly season when genuine news material was scarce, and concluded with a controversial execution, it enthralled the public and received sustained coverage across the media spectrum. From being marginalised as a seedy and unwholesome interest (much in the way that "true crime" books are still presented in bookstores today), crime was moving into the mainstream.

The first major point of friction, when the media confronted the attitudes and presumptions of the legal establishment, occurred at the end of the '60s. In 1966, Ian Brady and Myra Hindley had been sentenced to life imprisonment for what were known as the Moors Murders. At roughly the same time, the old trade union newspaper, the *Daily Herald*, was re-launched as the *Sun*. The re-launch was unsuccessful, and the paper (together with the *News of the World*) was sold to Rupert Murdoch's News International.

Finding it difficult to stimulate sales, the *Sun* then hit on the gambit of publishing an extensive account of the Moors Murders case. The convention of the day was that once a case had run its course – and investigation, trial and appeal had all been concluded – then the verdict was final and the case consigned to history. There might be inspiration for others (and, indeed, a notable book was written about this case by the eminent playwright, Emyln Williams), but the case was not news and no longer appropriate material for newspapers. (The only exception concerned those cases where there were concerns about the safety of the conviction.)

This unstated, but hitherto unbroken, rule applied above all in especially sensitive or harrowing cases, like those of child murder. The idea that such a case should be resurrected, and the grief of the bereaved re-awakened, for naked commercial opportunism had been unthinkable. The Straffen case, for example, concerned three child murders and had been the sensation of its time. Yet in the years since its resolution (Straffen was condemned to death, but then reprieved by the home secretary, and the sentence commuted to life imprisonment), no newspaper had felt the need even to refer to it. Now, here was the *Sun* reviving the most sickening of recent cases for no better reason than to boost ailing circulation. The paper was widely condemned. But, faced with this challenge to longstanding convention, the legal authorities did nothing.

It could be argued that everything that happened subsequently only proved the wisdom of the former approach. Having been revived in the public imagination, the case never thereafter left it. Myra Hindley turned into one of the most vilified figures in British history. The point should be reiterated: this was not because of the case of which she had been convicted, but because of the reporting of the case in later years. (Similarly, the Mary Bell trial in 1971 attracted relatively subdued contemporaneous publicity, and only afterwards became infamous.)

Hindley then became the first British prisoner to have a whole-life tariff imposed by the tabloid press. In 1966, few would have quibbled with a recommended sentence of 30 or even 25 years. By 1996, however, the press had made her release impossible. The public outcry that would have accompanied any release would have been uncontainable and, indeed, she could not have been released safely back into the community.

It was the *Sun*, again, that introduced another far-reaching, and profoundly unhelpful, change. Another long-held convention dictated that those convicted were described in neutral and unemotive terms – as, for example, "convicted murderer". Partly because of its preference for bar-room language and its impatience with words of more than two syllables, the *Sun* swept this convention aside, referring to criminals and prisoners in words that were – like Hobbes' description of the life of man – nasty, brutish and short. "Thug", "bully", "killer", "beast" and "pervert" are but a few examples. This language was quickly adopted by all of the *Sun's* competitors, the majority of the regional press, and even broadsheets like the *Times*.

Such constant denigration of criminals meant that they could not be thought of as fellow human beings who may, in some circumstances, have been regarded with sympathy or pity and who, having served their sentences, were entitled to be rehabilitated. They were cast instead as beyond-the-pale villains who should be locked up, and the key thrown away. Again, it was difficult to tell whether it was the tabloids influencing the bar-room, or the bar-room influencing the tabloids.

However, the real turning-point in the impact of the tabloid press on the judicial process occurred with the case of Michelle and Lisa Taylor, sisters who had been wrongly convicted of the murder of Alison Shaughnessy in 1993. Alison was married to John, with whom Michelle had been having an on-off relationship. Under headlines such as "Judas Kiss" or "Cheat's Kiss", the papers used stills from a video of the wedding of Alison and John, at which Michelle had been a guest. The real cheats, however, were the press, in deliberately misrepresenting a momentary embrace between John and Michelle as something more passionate. Nor was this the only ground for complaint. The wedding video itself formed no part of the trial evidence. Trial reports should, according to contempt laws, have been restricted to matters raised during trial.

When the case went to appeal, the convictions were quashed. The appeal court judges ruled that they found it "quote impossible to say that the jury were not influenced in their decision by what they read in the press." Accordingly, they specifically instructed the attorney-general, Sir Nicholas Lyell, to examine the issue. The expectation was that several papers would have to face contempt of court proceedings.

Yet the attorney-general did precisely nothing. Even though the Taylor family tried to take forward a judicial review, he took no action. Lyell's pusillanimity in this matter had predictably catastrophic consequences. The tabloids, not unreasonably, felt they were above the law and could flout contempt laws and other reporting restrictions that they deemed inconvenient with impunity.

The media needed greater latitude to report criminal matters not least because all outlets – across newspapers, television and radio – were becoming more dependent on crime as a staple news ingredient. For the press, television (particularly regional TV) and radio, crime provided ideal news material. It was immediate, attention-grabbing and, crucially, was cheap. It required almost no journalistic input, many of the stories being taken direct from police press releases. In fact, relations between the police and tabloid newspapers became increasingly cosy. The editor of the *Sun*, Rebekah Wade, told the House of Commons select committee on culture, media and sport that the paper regularly paid police officers for stories.

It was often in the interests of both press and police to infringe *sub judice* provisions, which were meant to guarantee fair reporting of criminal cases. One of the most glaring examples occurred on 3 February 2001 when the *Daily Mail* ran a front page headline story indicating that the police were going to charge Roy Whiting for the murder of the schoolgirl Sarah Payne in three days' time. A "senior police source" was quoted as saying, "The man [already named as Whiting] is due to be arrested on Tuesday and the mood among many officers is buoyant." The *Times* also ran the story the same day, again naming Whiting.

Obviously, if Whiting were the murderer, then he was exceptionally dangerous and his arrest should not have been delayed. The actual reason for delay appears to have been to create a prejudicial pre-trial atmosphere. This was in due course complemented by the prejudicial reporting of the trial itself. The *Sun's* front-page headline of the first day's hearing (15 November 2001) was Sarah's Grinning Killer. Why go to the trouble of empanelling jurors when these matters can be pre-determined by the tabloid press?

Likewise, the press pre-empted the judicial process in the case of Dr Thomas Shanks, who was accused (and is now convicted) of the murder of his girlfriend. On 9 May 1998, the day following the murder, the front-page headline in the *Mirror* was SAS DOC EXECUTES LOVER NURSE – which tended to obviate the need for any trial at all.

When the case did go to trial, Shanks' defence was that he was a victim of Gulf War Syndrome, which had affected his mental state. He was entitled to have been able to put that argument without the defence position having been undermined in advance.

In fact, Shanks was convicted of possessing a firearm, but the conviction was quashed and a re-trial ordered after further medical evidence was heard. At the re-trial, he was convicted of murder. The tabloid press zealously covered the original dramatic incidents but had no interest in pursuing the case as it meandered through the courts. (The fact that Shanks lost his second appeal in March 2003 went virtually unreported.)

This approach to crime as sensational material, and the accompanying pressure on the police for someone speedily to be held accountable, but disdain for the legal complexities of the case almost guarantees that there will be frequent miscarriages of justice. The press reports further ensure that they will be difficult to overturn. Three notable victims of wrongful convictions have suffered from gleefully malign reports of their circumstances: Sally Clark (whose conviction has now been overturned) from inaccurate reports suggesting she had a drinking problem; Sion Jenkins from entirely untrue reports suggesting he had no educational qualifications and had assaulted members of his family; and former Squadron Leader Nicholas Tucker from grossly exaggerated reports of a liaison with a Serbian interpreter.

There are other cases that, because of the weight of media pressure, it would be almost impossible to re-examine. Rosemary West is a sort of proxy prisoner, serving someone else's sentence. There's no proper evidence that she was involved in any of her late husband's serious crimes, yet the tabloids will keep her where she is.

Defence lawyers have enduring problems in dealing with the media. Their legal training encourages them to be wholly circumspect, and the

overwhelming majority come to regard the media with such distaste that they run a mile in the opposite direction. Clearly, a more sophisticated approach is required. The high-profile cases have at least as much to do with PR (and, yes, spin) as with courtroom tactics or matters of evidence. One of the key rules of spin, formulated by the Clinton team that secured victory in the 1991 U.S. presidential election, was that if there was harmful publicity, it had to be counteracted immediately. In this other adversarial contest, between prosecution and defence, the latter, far from responding immediately, rarely responds at all. The Crown wins every time by default. There have been few attempts to redress the balance, though one recalls the solicitor in the Tracie Andrews case making a public appeal for witnesses on the basis of her original story: right tactics, sir; wrong case.

If there's not enough crime around, the press can always create its own, as the *News of the World* apparently did when reporting its story about a Victoria Beckham kidnap plot. The subsequent trial of five men collapsed after it was disclosed that the paper had paid £10,000 to the star witness, a convicted conman who seemed to have instigated the supposed plot .

Having lost their opportunity to curb the tabloids' excesses, the judiciary is now frequently powerless before them. Once judges were derided for asking apparently inane questions (albeit ones which were often necessary to establish in the court record a precise description of what may have been an ephemeral phenomenon). Now, they are taken to task on more serious issues. SACK HIM headlined the *Sun* on 6 September 2003, after a Scottish judge, Lord Reed, sentenced a man who had assaulted a 13-month-old child to five years' imprisonment. Not long enough, according to the *Sun*. "Punishment is supposed to reflect public revulsion at a crime", the paper explained. "The thousands of calls to the *Sun* reflect public revulsion at the judge." Ready as ever to dance to the tabloids' tune, the judicial authorities called for a report into the case.

A few weeks earlier, on 20 July, the *News of the World* front-page headline concerned the release from prison of Gary Hart, the man found legally responsible for the Selby rail crash. Again, the paper desired a longer sentence. However, what was truly remarkable about the paper's choice of front-page story was that, on that day, every other paper was principally concerned with the death of Dr David Kelly. There could have been no clearer demonstration of where the *News of the World's* priorities lay. Rarely does the tabloid press pause to examine the consequences of its drive to put people in prison, and, once there, to keep them locked up. Imprisoning people is in a costly business, in several senses; in other circumstances, the papers could be condemning the squandering of public funds.

With the retirement of Lord Scarman and the passing of Lord Devlin, there is scarcely a senior judicial figure of sufficient stature to inveigh against the excesses of the media. However, giving the Ditchley lecture in July, Lord Bingham, the senior law lord who is expected to lead an English supreme court, contemplated the landscape created by the media and observed, "It must sometimes be very hard for a defendant to believe that he is... enjoying the fair trial which is the birthright of every British citizen." It was perhaps significant that the report of the speech carried in the *Guardian* was coupled with another story: "Prisons face overflow".

Yet the problem goes far beyond this. The press has created a massively illiberal agenda. Most of the papers are contemptuous of human rights

legislation and will do nothing to protect individual liberties. They are not even interested in protecting the freedom of the press itself. Over the past 20 years, as a direct result of intrusive and insensitive press reports, there has been a steady increase in the area of public life fenced off from press scrutiny. After the furore over the Ealing vicarage rape case, alleged victims in rape cases cannot be named. After the much more recent furore in the John Leslie case, similar anonymity may apply, on a more limited basis, to suspects in such cases.

Nor, in almost all cases, can the names of children involved in criminal cases be reported. Nor can any proceedings in the Family Courts be reported. These may well be the most unjust courts of all. However much suspect evidence is given, however many irrational judgments are reached, nothing can be reported. On this matter, the press stays silent.

The clamour of the press makes it more difficult for the government to pass liberal laws, and easier to push through hardline ones. The prime minister even knows, in appointing a home secretary, that it may be less troublesome in the end to choose someone whose social and political instincts are already attuned to the tenor of the tabloid press.

Lest there be attempts to constrain the press in ways that would really hurt – such as the reporting of major criminal cases – an excuse is ready to hand. Any rules and restrictions that were brought in would be undermined by media outside the control of parliament: firstly, the internet; secondly, international publicity. In August 2002, a popular French magazine appeared with a cover story devoted to the Soham murders: "Jessica et Holly: Assassinees par leur maîtresse d'école." Of course, Maxine Carr was not a schoolteacher. Nor had she even been charged with the murders. Compared with this, the British press would doubtless argue, we're responsible and accurate.

That would be a fine example of its enduring hypocrisy. Certainly, it has taken on the judicial infrastructure and won almost all rounds. The media, and particularly the tabloid press, has taken all the liberties it wants while doing nothing to protect or enhance those of the general population.

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