

# Guilty by Reason of Public Opinion

British barrister Chris Eades worked in the American South as an attorney defending people facing the death penalty. He describes the influence of local media in a highly publicised Louisiana murder trial.

**T**he role that the media might play in a high profile prosecution, as death penalty trials almost invariably are in the Deep South of the United States, is complex and quite perturbing for an attorney for the defence. The nature of the cases themselves made it such for a number of reasons. First, the crime for which your client will face trial is one of 'murder and something'. Our government might call it murder PLUS. In the State of Louisiana, a person will not face the death penalty for merely walking up to someone in the street, shooting and killing them, and then walking away. To be 'death eligible' the murder must be committed during the course of some other crime (rape, robbery, drug dealing, and burglary are the most common), or it must be against a particular class of victim (those aged over 65 or under 12 or 'peace officers' – police or ambulance medics for example, acting in performance of their duties), or it might be a multiple homicide. Torturing the victim prior to death, or ritually desecrating the body after death, would

hearings, more witnesses, more passion, more prejudice. It is a macabre circus from arrest to verdict. These problems are made yet more acute for the defence if the crime occurred in a rural or semi-rural area, of which there are many in the South, since many will know of someone who knew the victim or victims or the defendant. These cases are quickly big news and will remain so until resolved one way or the other. So what can be done to protect a defendant from the potentially harmful effects of publicity prior to trial?

An example is a case I assisted with while working as an attorney for a specialist anti-death penalty organisation in New Orleans. In 1995, Mark Morris was accused of the murder of his mother and father, and his infant son. The family lived in rural northern Louisiana and the crime shocked the local community, particularly since it had taken four weeks to find the young boy's body after an FBI investigation and extensive searches in which many local people participated. Eventually the yellow ribbons that had been tied to trees in the hope the

***Some part of me still thinks that Mark was put on trial because of the barrage of comments, fuelled by his mental condition, that he made both in the community and to the media.***

also make a defendant eligible for the death penalty. In other words, the cases are generally the worst, the facts the most likely to turn the public's stomachs as they sit to breakfast with the local newspaper and family. Second, the cases necessarily involve an attempt to kill further and this alone is likely to entice the media and increase the intensity of public sentiment, even where the death penalty enjoys broad support. Besides, the procedural rules for the trials themselves willingly lend themselves to sensational reportage. The trials, which should – when properly defended – take at least three weeks to complete, are bifurcated. The first portion asks the jury to consider only the defendant's guilt or innocence of the crime charged. If a verdict of guilty of first degree murder is returned, the same jury is then immediately asked to sit for the 'penalty phase' of the trial at the end of which the only two possible verdicts are death, or natural life in prison. Family and friends of the victims testify, as do family of the defendant, and the lawyers often resort to begging for life or for death. More lawyers are involved, more pre-trial

boy would be safely returned were cut down. My client was always the only suspect and was, at best, disliked. He was mentally ill and prior to being charged and gaoled he made a number of unhelpful comments to the media. There were good reasons to believe that Mark was innocent, though, despite his statements and bizarre behaviour – one was a complete absence of forensic evidence linking him to the crime. Other forensic clues that might have led in other directions had been left unexplored in the initial police investigation. And there were aspects of the case that pointed to police corruption and the involvement of a local organised drug-crime network.

Prior to Mark's arrest, the local print media thought execution too good for the perpetrator; little changed after Mark's arrest.

If involved in a case such as this there are a number of measures defence counsel can take to help provide some semblance of balance to reporting. This may be of enormous importance since the local population is likely to provide the pool (barring a change of venue, more about that later) from which

the jury of twelve will be selected to consider whether your client is worthy of life. Trying to stem the tide of inflammatory reports was exceptionally difficult. The local District Attorney, Jerry Jones, prosecuted all cases in a two county area, had been in the post for twenty years, and was essentially a politician since district attorneys are elected officials. He enjoyed the limelight and the local media were accustomed to being able to call one place for comment on criminal justice matters – the office of Mr. Jerry Jones.

Making contact with the local media was an important step. I was not always asked for comment on matters pertaining to the case, but it did help and greatly reduced the perception that an outsider had come to pervert the course of justice. And when I was able to make comment, I think it was generally of assistance. Of course, this had to be done carefully. Always it had to be with the greatest respect for the traumatised family and it was never ideological. People do not care to hear that the death penalty is immoral, but they sometimes like to hear why it may not be appropriate in the case they might be involved in. Also, people generally don't care to hear bland statements proclaiming someone's innocence; it is far more constructive to espouse a belief in leaving the matter to the jury while at the same time pointing to the lack of evidence, or the inconsistencies in the state's case, and a firm personal belief in my client's innocence. If the media reports them, they might create some doubt. Any question regarding my motivation as a (British) outsider in defending such a case was best answered by reference to the Constitution, its insistence on the presumption of innocence and promotion of fairness, and its being written in response to the tyranny of the British. Also, it never hurts to remind the District Attorney and his electorate of the political nature of death penalty trials by questioning, in this instance, the decision to seek death when it had not been done in similar multi-victim cases. Some part of me still thinks that Mark was put on trial because of the barrage of comments, fuelled by his mental condition, that he made both in the community and to the media – for example he constantly insisted that D.A. did not stand for District Attorney, but 'dumb-ass'.

Although local counsel and I managed to establish reasonable relationships with local media, we failed to even the scales, and editorials assuming Mark's guilt and demanding the death penalty continued to appear. This, together with the fact that we were in a white Southern Baptist stronghold where the death penalty was widely favoured prompted us to apply for a change of venue. In this instance, the best way of dealing with inflammatory, even rabid, reporting was to leave it behind. Louisiana allows a switch of geographical location if a defendant cannot receive a fair trial where the crime occurred. News cuttings and tapes are admissible and compelling evidence when seeking to show an ingrained local prejudice.

In actual fact, by dint of the 'he's guilty, fry him now' reporting we were able to move the trial and that probably saved Mark's life. Escaping this media was good, but by moving to southern, Catholic (and thus more death penalty resistant) Louisiana, our jury pool improved more than we could have hoped for. From the moment jury selection began, the jurors were sequestered (locked up in a local motel) and barred from watching the news, reading newspapers, and making unmonitored 'phone calls. Consequently, the media we had left behind could not and did not follow. When faced with the might of the media and its ability to influence, sometimes it is better to run away. After all, discretion is the better part of valour.

*Chris Eades is the Centre for Crime and Justice Studies' Information Officer.*

*Continued from page 11*

## **Main recommendations**

The report recommends that the GLA press for more accurate, balanced, and referenced information about asylum seekers and refugees in London to be made widely available, in a variety of formats, to the media and all sectors of the community. Such information should be created for young people in particular to help counteract the misinformed views that they often hold. That the GLA discusses with refugee support agencies how they might be able to provide information in order to encourage the balanced use of sources in media coverage of asylum and refugee issues.

It also recommends that the Home Office and GLA promote better monitoring of racial incidents against asylum seekers and refugees. Police sources claim that asylum seekers and refugees are relatively unlikely to be involved in crime and more likely to be victims of crime, but the lack of data on asylum and crime makes it difficult to sustain a complaint on distortions in media coverage.

Since the research was completed the Press Complaints Commission (PCC) has issued guidance on reporting refugees and asylum seekers (October 2003) including on the use of accurate terminology. ICAR welcomes this as a step forward and is currently working with the Media Image, Community Impact team and others to assess the impact and adequacy of the guidance.

*Dr Roger Grimshaw was Academic Director for this project. He is Research Director for the Centre for Crime and Justice Studies, King's College London.*

*Kate Smart was Project Researcher, Kirsteen Tait, ICAR's then Director, managed the project and Beth Crosland leads ICAR's current work on the media.*

Interviews with local and regional newspaper editors were carried out by MediaWise. Advice and assistance was provided by a number of project advisers, agencies and volunteers. The GLA provided advice and support and set up a project advisory group. The full report is available online at [www.icar.org.uk](http://www.icar.org.uk)

## **References**

*PCC (Press Complaints Commission) Past Decisions: Refugees and Asylum seekers October 2003, [www.pcc.org.uk/reports/edit\\_detail.asp?id=20](http://www.pcc.org.uk/reports/edit_detail.asp?id=20)*

UNHCR (UN High Commissioner for Refugees) website 13 June 2003, UK: *UN concern over coverage of asylum seekers. [www.unhcr.ch](http://www.unhcr.ch)*