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The media and the course of justice

For the newspapers, the Jamie Bulger case is closed. The last "why oh why" article has been written, the last "sick society" headlines penned. As for the killers, it is an established fact that Jamie was killed by two ten year olds, who abducted him from a shopping centre. Everything else is footnotes. It seems almost prissy to point out that the trial has yet to take place, and that, until they are found guilty, the two kids are innocent. That principle, the famous "golden thread" that runs through British justice, has become a meaningless technicality as far as the press is concerned.

This is not just a narrow complaint about journalistic ethics - the malaise seems to go deeper. The grown men who tried to attack the two ten year olds as they were driven to court - for my money, quite the ugliest aspect of the Bulger case - were similarly infected. A few days earlier, crowds mobbed the house of a 12 year old Liverpool boy, whom the police had arrested in the course of their enquiries. Later, the boy was released without charge, and without a stain on his character, but too late to stop one family's lives being ruined. In this case, it seems as if the press can be absolved of any direct responsibility. But it has to take a share of the blame for having reversed the popular notion of where the burden of proof lies. Nowadays, we are innocent until arrested.

One of the most disturbing recent examples occurred in the case of Rachel Nickell, the woman found murdered on Wimbledon Common. Back in July, a man was arrested in Liverpool, and taken down to London for questioning. The police gave clear hints that they believed they had their man, and the press followed their lead. The BBC early evening news led with the story, live from Wimbledon. There were interviews with the man's neighbours. His parents and his sister were jostled and doorstepped by reporters. Crowds again gathered outside the police station in Liverpool to jeer. And then he was released, formally cleared. The police said he had never been a strong suspect. Then again in September, the whole thing happened again - another man arrested, this time after an item on *Crimewatch UK* and, in the customary informal way, convicted by Fleet Street. Except that he too was innocent of the murder. His solicitor complained, rightly, that his client had been "sullied by the press".

Part of the problem is the inherent

momentum of the rolling news story. The headline on day one might be "Victim tells of kidnap ordeal". Day two is "Police hunt kidnapper". Day three is "Police closing on kidnapper". Day four is "Police arrest kidnap man". By the time day five arrives, it is too late to write "Police charge alleged kidnapper." The scrupulous use of "alleged" is no help at all by then. Yet it is not really the fault of the papers, who may have behaved scrupulously throughout. But still they give the impression that the police have got their man, through the almost imperceptible transition from "kidnapper" (the unknown person who did the kidnaping) to "kidnapper" (the known person being held by police).

Not that the papers do often behave scrupulously. Take the case of Mike Sams, accused of the kidnap of Stephanie Slater. Sams' wife heard a tape of his voice broadcast on *Crimewatch UK*, and called the police. As usual, the *Sun* put it most succinctly: "Nicked!" On inside pages, the paper gave us the full works. A picture of "his lair", and another of his house. An interview with the local chip shop owner, "Jose Camacho told last night how suspect Michael Sams suddenly began splashing out with tenners in his shop. He started coming up regularly at the beginning of this week and he only ever had £10 notes." The paper noted: "Stephanie Slater told detectives she had been fed a meal of fish and chips during her long ordeal." And on and on. The coverage continued for several days, and was given a boost when Sams was charged with the kidnaping on Sunday night. Police told journalists that he was not being charged with the murder of Julie Dart "at this stage", although they let it be known that he had been questioned about it.

There ought to be a law against it. Indeed, there *is* a law against it: the Contempt of Court Act 1981. Time was when editors used to go to prison for contempt of court. In 1949, the editor of the *Daily Mirror* was gaoled for three months, and the publisher fined £10,000. The paper described a man charged with murder as a "vampire", and reported that he had committed other murders, giving the names of the victims. In the 1920s, various papers were fined for printing the results of their extensive "criminal investigations".

Under the Contempt of Court Act, it is an offence to publish anything that "creates a substantial risk that the course of justice ... will be seriously impeded or prejudiced." There is also the older common law offence of publishing anything

that is *intended* to interfere with the course of justice. (The first offence is one of "strict liability": it doesn't matter what your intention was.)

It seems to me that newspapers, though not often in the 'vampire' class, are coming dangerously close to overstepping the mark. Perhaps the worst case recently happened a couple of years ago, when the body of a missing student, Catherine Hayling, was discovered in the boot of a car at Gatwick Airport. Soon afterwards, the police applied for an extradition order for a man who had flown to America hours previously. The newspapers printed not just his name, but copious amounts of information about him, all implying that he was the murderer. The *Daily Mail* for example, reported that he was "obsessed", and that he had daubed "Cathy is dead" on the door of her sister's home.

The Attorney General takes a surprisingly relaxed line on this, letting newspapers get away with more than they used to, allowing them to publish material that blatantly prejudices someone's chances of getting a fair trial. It is all the odder when you consider what has been happening with other bits of contempt law. The Attorney General recently tried to get a *Guardian* journalist gaoled for contempt over an article in 1989 that simply reported that a defendant in one fraud trial faced charges in another trial. Recently, the High Court threw out the case against the *Guardian*. Then there was the case of Bill Goodwin, a young reporter who was fined £5,000 under the Contempt of Court Act, and narrowly escaped prison, merely for refusing to reveal the source of some information he had innocently come by.

In America, jurors are closely questioned about what they have read about highly-publicised cases, and only those who can plausibly claim to be ignorant may sit on the case. No such safeguard exists here. But the court room is where the proper sanction lies. Sooner or later, a defence barrister will successfully argue in court that his or her client cannot get a fair trial because of the advance publicity, and the judge will throw the case out. It will be most salutary. The police will have to think twice about feeding juicy tidbits to their friends in the tabloid press, for fear that they will fail to get a conviction. This will be an altogether more satisfactory solution than trying to prosecute journalists.

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