

the Howard League for Penal Reform

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Lord Justice Leveson
The Leveson Inquiry
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Submission to the Leveson Inquiry: Culture, Practice and Ethics of the Press

Introduction

The Howard League for Penal Reform is the oldest penal reform charity in the world. In 1947 we became one of the first non-governmental organisations to be granted consultative status with the United Nations. We campaign, lobby, publish research and through our legal team, represent children and young adults in custody.

We are making this brief submission to the Inquiry to highlight some of our concerns around the reporting of crime in this country and the impact this has on public debate around law and order issues.

The effect of media reporting on sentencing policy

As of Friday 25th November, there were 88,166 men, women and children imprisoned in England and Wales, with the prison population increasing by 78% since the mid-1990s. The rate of growth has been particularly striking, with the prison population increasing by an average of 3.8% since 1995, compared to an average growth rate of 2.5% in the years 1945-1995 (Ministry of Justice 2009). This recent rapid escalation in prison numbers, which has seen numerous record populations set and broken each year, coincides with the period of tabloid dominance that is absorbing much of the Inquiry's attention.

As the retired Court of Appeal judge Sir Stephen Sedley remarked in recent evidence to the Joint Committee on Privacy and Injunctions, this is more than a coincidence:

President: The Lord Carlile of Berriew QC Chair: Sue Wade Director: Frances Crook OBE Charity No. 251926 Company limited by guarantee No. 898514

The Howard League for Penal Reform wants a safe society where fewer people are victims of crime

The Howard League for Penal Reform believes that community sentences make a person take responsibility and live a law-abiding life in the community

The Howard League for Penal Reform believes that offenders must make amends for what they have done and change their lives

I think that over the 20 years or since I first became a judge a relentless campaign accusing judges of being soft on crime and under-sentencing has led to the escalation of sentencing which has now filled our prisons to bursting, and about which something needs, it is now recognised, to be done. That is insidious; it's very difficult to put your finger on any one newspaper article or case in which it's happened, but as a trend it undoubtedly has happened. (Houses of Parliament 2011, pp 14-15)

We know that in the United Kingdom and in many other western democracies the mass media forms most people's primary source of knowledge about crime, punishment, prisons and the criminal justice process (Cavendar 2004). The media not only define and limit the scope of our understanding about the nature of crime and punishment but they also determine perceptions of the scale of the problem crime presents and the parameters of what can be done by way of 'solution'.

In England and Wales perceptions of crime and punishment have a major influence on public opinion and have encouraged the growth of what is commonly described by criminologists as 'punitive populism'. Surette (1998) captures this populism well when he describes a certain species of crime reporting as the 'law of opposites' – crime is presented as increasing when in reality it is falling; prisons are presented as holiday camps rather than the overcrowded and despairing institutions they are and that courts are soft on offenders when in fact sentences have become increasingly more severe.

Despite a national rate of violent crime of 6% one study found that in the course of one month 65% of newspaper stories in Britain dealt with personal violent crime stories (Williams and Dickinson 1993). This degree of inflation contributes to a very serious distortion in the public's understanding of crime and punishment. The Howard League for Penal Reform would contend that the resultant pressure on politicians has meant that 'governing by headline' is more rampant in the field of criminal justice than any other public policy arena.

As well as generally misrepresenting the nature of crime and sentencing, the media can also be guilty of misrepresenting specific sentences handed down by the courts. For example, in May 2009, The Sun newspaper reported that the mother of Baby P could "walk free in just over 3 years":

The 27-year-old was order to serve a minimum of five years in jail for causing or allowing the death of little Peter – who suffered nine months of horrific abuse.

But the "manipulative and self-centred" mum could out much sooner as she has already spent 644 days in custody.

Today The Sun launches a petition calling on its loyal army of millions of readers to demand the Attorney General acts NOW to get justice for tragic Baby P.

We want increased sentences handed to the child's mum, his sick stepdad and their paedophile lodger.

(The Sun 2009)

While this story's claim could possibly be true, it does not accurately reflect the nature of the indeterminate sentence for public protection that was handed down to those involved in the death of Baby P. The recommendation upon which the newspaper makes the claim represents the first point at which they could be considered for release, based on a careful risk assessment by the quasi-judicial and independent parole board. In reality, for all three individuals sentenced in that case the minimum tariff is unlikely to reflect the time they will serve before the parole board considers them safe to be released into the community. Indeed, the nature of the indeterminate sentence is such that in theory they might never be released or certainly not for many years.

Given The Sun's antipathy to the opaque nature of the indeterminate sentence for public protection in the Baby P case, it is interesting to note that newspaper's reception to recent plans by the Secretary of State for Justice to reform the sentence into a definitive sentence that would provide more clarity, under the headline "Ken Clarke: Free all the monsters":

Ken Clarke's plan to free killers, rapists and paedos early will let out the monsters who are most prolific, The Sun can reveal.

More than nine out of 10 serving indeterminate sentences – which the Justice Secretary wants to scrap – are REPEAT offenders, chilling figures show.
(The Sun 2011)

In a roll call of high profile cases where indeterminate sentences have been handed down, The Sun takes a very different tack on the sentence given to the mother of Baby P:

Baby P's cruel mum Tracey Cornnelly got an indeterminate sentence with a five year minimum tariff after admitting she allowed her son's death.

The judge said she should remain in jail until she is no longer a risk to children.

(ibid)

We recognise the need for a free press in a democratic society, and that a free press may take partisan positions on issues of public concern. But it is questionable whether this cavalier approach to the reporting of law and order is ethical.

Treatment of suspects in court proceedings

The Inquiry has already heard about concerns around the media's treatment of suspects in court proceedings. We would simply emphasise the evidence given to

the Inquiry by Chris Jeffries, which makes clear that the press coverage of his arrest was:

...calculated to vilify me and convince the public that I was responsible not only for Ms Yeates' murder but other crimes or misdemeanours as well. The coverage was disgraceful and undermines basic principles of responsible journalism and the right to a fair trial (as was recognised in the contempt of court proceedings which I deal with below).

(Jeffries 2011)

The treatment meted out to Chris Jeffries caused a great deal of personal distress, and while he was able to seek legal redress, it would clearly be preferable if the media did not engage in such behaviour in the first place. Yet the Editors' Code of Practice says very little about the reporting of crime. The relevant section reads in its entirety:

9 i) Relatives or friends of persons convicted or accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story.

ii) Particular regard should be paid to the potentially vulnerable position of children who witness, or are victims of, crime. This should not restrict the right to report legal proceedings.

(Press Complaints Commission 2011)

The Howard League for Penal Reform does not believe this guidance is sufficient. While further guidance notes have been produced by the PCC: on Court Reporting (1994), On the reporting of cases involving paedophiles (1999) and On the reporting of people accused of crime (2004), none of these substantially build on the Editors' Code of Practice and tend to be no more than a few hundred words in length.

The PCC recommends that particular regard should be paid to the potentially vulnerable position of children who witness, or are victims of, crime, while saying nothing of those children charged with crimes. Given that children in the criminal justice system are particularly vulnerable this is a serious omission:

- 71 per cent of children in custody have been involved with, or in the care of, social services (YJB, 2007) compared to three per cent of the general population (National Census, 2001)
- One in four boys report suffering violence at home and one in 20 report having being sexually abused (YJB, 2007)
- 31 per cent have a recognised mental health disorder (YJB, 2005) compared to 10 per cent of the general population (ONS, 2005)
- 15 per cent have a statement of special educational needs (YJB, 2003)
- 19 per cent suffer from depression, 11 per cent anxiety, 11 per cent post-traumatic stress disorder and five per cent psychotic symptoms (Chitsabesan et al, 2006)

Furthermore, the Code of Practice states elsewhere in section 6 on children that:

A child under 16 must not be interviewed or photographed on issues involving their own or another child's welfare unless a custodial parent or similarly responsible adult consents.

(ibid)

When it comes to children in conflict with the law, it would seem that the press will only adhere to this principle if the courts put reporting restrictions in place. Indeed, government initiatives around 'naming and shaming' children engaged in anti-social behaviour means that the media is now being positively encouraged to put potentially vulnerable children in the public eye.

More generally, research in 2005 (Ipsos Mori) showed that 57% of the media coverage of children and young people was negative, with only 12% rated positive. In addition, two out of every five newspaper stories on young people focused on crime, vandalism and anti-social behaviour. This rose to one in three of all tabloid stories.

Reporting of prisoners and prison issues

We are also concerned at the steady stream of stories misrepresenting the experience of imprisonment. Tabloid newspapers frequently carry stories of prisoners watching television or playing games consoles and derogatory terms for prisoners such as 'lags' and 'pervs' are commonplace. On academic has suggested that prison reporting has little to do with standards of accuracy and ethics, as the tabloid readership is:

...looking to their choice of newspaper to confirm what they already 'know', which is that prisons are full of dangerous individuals living the life of Riley. To this extent, it is a mistake to believe that news reporters even strive for accuracy. Newspapers are not engaged in dispassionate analysis but precisely the opposite – passionate engagement for the purposes of exercising moral sentiment. When people read news reports about prisons and prisoners, they are looking for both confirmation of their existing views – which tend to be punitive – and for further opportunity to be shocked and outraged (Katz 1987). On the whole, then, the grim and frequently inhumane conditions of incarceration only reach public attention if accompanied by a soundbite by Her Majesty's Inspector of Prisons in language that will appeal to the popular media.

(Jewkes 2005, p.26)

There are question marks over how newspapers receive stories about specific prisoners, given the secure nature of the institutions. For example, in 2008 a photograph from a Halloween party held for life sentenced prisoners at Holloway prison was splashed across The Sun's front page with the headline 'Monsters Ball' (The Sun 2008), with a number of the women under full Halloween make up identified and their offences listed. This photograph was supposedly passed to the newspaper by "disgusted prison officers" and resulted in the then Secretary of State for Justice Jack Straw banning all parties of any description across the prison estate. Interestingly, given allegations of News International titles carrying undue influence

over politicians, this concession was made *prior* to the photograph being published and was reported as part of The Sun's story.

Perhaps this photograph and the information required to identify the women was obtained legally, but there are many other stories about prisoners where the source of the information is unclear at best. In particular, we are concerned as to how stories about 'celebrity' prisoners in high security settings such as Ian Huntley reach the tabloid press. Given the Metropolitan Police is investigating allegations of illegal payments to police officers by newspaper journalists, we suggest that a similar exercise might be conducted to ascertain whether the practice may have extended to prison staff.

Yours sincerely,



Frances Crook

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