

Seminar 2: The Rights and Responsibilities of the Press 6th October 2011

**Is there a difference between the public interest and the interest of the public?
What questions does this raise in relation to a single set of journalistic ethics?**

Presentation by Trevor Kavanagh

My starting point is that everything under the sun is of interest to the public, from a local fete to a sex-and-lies political scandal or the secret location of a nuclear device.

One may be simply interesting, while the others bump up against the sometimes contentious definition of “the public interest”.

Frequently, the latter are stories someone wants to conceal but are too big to hide.

The distinction in any case is subjective. All news should – with certain exceptions to which I will return in a moment – be judged on the public’s all-encompassing right to know.

The only point at which the two definitions collide is when a story is deemed NOT to be in the public interest and therefore not for the eyes of ordinary folk. Another word for this is censorship.

Freedom of speech is a hard-won, centuries-old legal principle which did not arrive in the last shower with the Human Rights Act. It is, by its nature, in the public interest.

It is a freedom that, on occasions, has been abused and misused - sometimes, but not always, by the media. It remains one of the foundation stones of democracy and is enshrined as such in the American Constitution.

The public interest could be narrowly defined by judges or it could and should be as wide as possible. Without free speech we cannot have a free society. Once lost, it would be almost impossible to restore.

As with any legal principle, exceptions should be narrowly and clearly construed.

In the United States, for instance, one is not allowed to shout “FIRE” in a crowded theatre.

Apart from such carefully defined exceptions, everything else is permissible, even when considered in bad taste.

Without such freedom, would we have known about President Clinton’s interesting relationship with Monica Lewinsky - surely as much a matter of public interest as the President’s intimate but routinely-published medical reports?

But for circumstances beyond the control of their own supine media, would the French public have learned about the conduct of Dominic Strauss-Kahn, widely

known to the “chattering classes” but deemed unsuitable for those who might have been asked to elect him President.

The French people are a little cross about being kept in the dark by establishment Omerta, and the embarrassed French media is now shuffling all too slowly towards acting more in their interest than in the interest of public officials.

In Britain, there is a number of those narrowly construed exceptions laid down by the Press Complaints Commission in its code of conduct, for instance on the identity of children or incitement to hatred.

The PCC has clear rules on stories involving infidelity, impropriety and invasion of privacy.

But it is surely in the public interest that we all should have access to the information available to assess the character of our national figures.

If people seeking our votes - or our cash for, say, personalised football shirts - it is surely right that we should know if they are masquerading as something they are not.

Editors, sub-editors and reporters know the PCC rules by heart and do everything possible to observe them, while getting as close as possible to a story that deserves to be told.

Sometimes, they make mistakes. But, considering the number of stories and the number of editions, not that many. We have come a long way since those 1980s frontier days when caution was sometimes thrown to the wind.

However, these comparatively clear waters have been muddied by the arbitrary interpretation, some would say misinterpretation, of two articles of the Human Rights Act - the Right to a Private Life and the Right to Free Expression.

Increasingly, it seems, one is deemed to trump the other.

So it was refreshing last week to see this remorseless trend halted, even briefly, when Mr Justice Nicol rejected womaniser Rio Ferdinand’s attempt to gag and punish the Sunday Mirror for its “kiss and tell” exclusive about his infidelities.

To any sensible reader, this story about the captain of the nation’s football team was as much in the public interest as it was of interest to sports fans.

Yet the judge admitted he had been forced to “grapple with the tension” between the two clashing Articles, 8 and 10, of the European Convention on Human Rights.

With what seemed like some reluctance, he ruled in favour of free speech and against Ferdinand’s “false” account.

There was the hint of disdain towards tabloid newspapers generally, not just for unseemly “kiss-and-tell” stories, but for the “kiss-and-SELL”.

Yet, as I will argue later, news is as saleable a commodity as any other. Newspapers are commercial, competitive businesses, not a public service.

Judge Nicol's verdict will have delighted all newspaper editors, even those at The Guardian and Independent who seem perpetually to be holding their noses.

It was, I hope, a turning point for everyone who believes freedom of the press is being deliberately and systematically eroded. I have been asked to pose some questions for subsequent debate. Here's one: Should perverse rulings be allowed incrementally to lay the ground for an irreversible privacy law introduced by unelected, unaccountable and in some cases unqualified "judges" who do not represent this country, its people or its customs, still less the public interest?

Should these judges, not editors or their readers, decide whether a story is sufficiently interesting enough to be in the public interest?

And should these arbitrary rulings be bolstered by super-injunctions imposed behind closed doors on the basis of an secretive interpretation of human rights?

Since many British politicians seem prepared to stand by and allow this process to flourish, everyone at this inquiry who supports freedom of speech should ask themselves why?

Why, for instance, have Conservatives reneged on their election promise to replace the perverse Human Rights Act with our own Bill of Rights? Coalition with the Liberal Democrats is not an acceptable excuse.

So, unaccountable and unknown non-British officials in Strasbourg determine what is in Britain's public interest and what should or should not be of interest to the British public.

Lord Justice Leveson will not need me to remind him of Lord Hoffman's scathing criticism of the Strasbourg judges, but other members of this inquiry may wish to re-read his lecture to fellow judges on the Judicial Studies Board in 2009.

He said the European court "has been unable to resist the temptation to aggrandise its jurisdiction and to impose uniform rules on Member States. It considers itself the equivalent of the Supreme Court of the United States, laying down a federal law of Europe."

He went on: "There is virtually no aspect of our legal system ... which is not arguably touched at some point by human rights. But we have not surrendered our sovereignty over all these matters. We remain an independent nation with its own legal system, evolved over centuries of constitutional struggle and pragmatic change.

"Detailed decisions about how it could be improved should be made in London, either by our democratic institutions or by judicial bodies which, like the Supreme Court of the United States, are integral with our own society and respected as such."

Now, in what can only be interpreted as a further cloud over freedom of speech, we have this inquiry by Lord Leveson to examine the “culture, practices and ethics of the press”. It is difficult to avoid the fear that this will conclude without further limits on freedom of speech.

It is hard to escape the impression that it is out to “get” the tabloids, implicitly seen as uncultured, malpractised and unethical.

In the debate to follow, one question worth considering why nobody with tabloid experience, representing the overwhelming majority of readers and sales, is on this panel? Could it be that at least some of those scrutinising our activities are covertly, if not overtly, hostile to everything we stand for?

Am I paranoid in wondering if I was invited as an acceptable face of a form of journalism which is otherwise concealed in the pale pink pages of the Financial Times, or worse from our commercial perspective, borrowed from someone else to keep up with the news millions pay to read.

In any event, I would like to use this opportunity to plead on behalf of the tabloids and those who work for them.

Having been with The Sun for 30 years, 23 of them as Political Editor, I wish record my admiration for the sheer professionalism of gifted colleagues both at Wapping and among our rivals on other tabloids.

They include the finest creative professionals in the business, reporters, sub-editors and editors, men and women who could adapt just as successfully to any other paper. The reverse is not always the case.

It is the tabloids that drive the daily news agenda.

The Sun, for instance, has continuously broken major world exclusives politics, sport, the monarchy and the City which are not just interesting but in the public interest.

They are followed almost without question by the broadsheets and the BBC.

In the today’s climate, a great many of those stories would never see the light of day. The nation would be all the poorer.

The popular press ventures where unpopular newspapers sometimes fear to tread. We don’t always play by THEIR rules.

So, The Guardian for instance might plant a juicy clue in a diary item, knowing we would follow it up and do the job properly.

Once we had checked it out and published the full story they are too timid to run, they condemn us while simultaneously reproducing every salacious word.

We should not allow the so-called public interest to mask one of the motives behind the latest opprobrium towards the tabloids. We fully accept responsibility for the

shocking past practices that led to the closure of a great newspaper. But there is a commercial imperative at work here as well as a moral or legal one.

The great sin of the popular press is to be ... popular. Our lighter, brighter papers are commercially successful. We have 20 million readers – perhaps ten times as many as the “heavies”.

To their irritation, they have been obliged to imitate our lively style in order to keep in the game.

Our headlines are part of the vernacular. During last week’s heatwave, even the BBC Today programme was using “What a Scorcher”.

But without doubts our most enduring contribution to the public interest has been the subject of Europe.

The Sun led the way on what today is the biggest story of this century. It is no exaggeration to claim that without us, we would almost certainly have given up the Pound and joined the euro. Without The Sun, there would have been no promise of a referendum.

In the public interest, we invaded Belgium, Bawled at Gaul and told the architect of the single currency: “Up Yours Delors”.

We were condemned then as Little Englanders, “phobes and sceptics”. Today, not for the first time, we have been proved right.

Could we wage that sort of campaign today? I’m not sure. There have been moves in Brussels to make it illegal to write disparagingly about the Grand Project, and indeed ex-Commissioners put their pensions at risk if they make adverse comments about its endeavours. That is freedom of speech, Brussels-style, as embodied by the European Court of Human Rights.

Let me return to the issue of “kiss and sell”.

We have been condemned for cheque-book journalism. Yet the best story in recent years - Mps expenses - was bought and paid for by the Daily Telegraph, not by a tabloid.

Would Human Rights judges have stopped it being published if MPs had got wind of it early enough? And would that have been in the public interest?

Publishing news is not a public service. It is a ferociously competitive industry in a rapidly shrinking market.

But we do provide a public service. We turn complex subjects – politics, commerce, war - into crisp easily-understood copy.

The Sun’s Books for Schools have been a boon for literacy. Professor Brian Cox is encouraging a whole new Sun generation of young scientists. We are proud of the

way Help for Heroes and the Millie awards have transformed the image of our armed forces who today march home with their heads held high from the battle fields of Iraq and Afghanistan.

Our jobs campaign – Sunemployment – has found work for tens of thousands of our readers.

Yes, we do make mistakes. But I can testify we do everything possible - and sometimes perhaps too much - to avoid them. When we get it wrong, we apologise as quickly as possible.

I say all this not just to blow the tabloid trumpet, but to paint a picture of a vibrant and dynamic industry which despite all its flaws is a force for good.

It continues to flourish despite some of the world's toughest libel laws.

Journalists contend with secretive super-injunctions, an abuse of judicial power.

Information is power. And local and national government, councils and qangos, go to great lengths to keep information to themselves, even when - especially when - it is in the public interest.

Tony Blair described Labour's Freedom of Information Act as his greatest mistake. But even the doors opened by this legislation are being slammed shut by politicians and others who know how to get round it.

Much government business is now conducted not on traceable paper but through email and mobile phone calls, on the hoof.

The losers are not just diligent journalists but Her Majesty's Loyal Opposition and the civil servants who find legitimate "usual channels" blocked.

The biggest loser of all, if we go further down the road of regulation, is the British public.

When dealing with politicians it is worth remembering Jeremy Paxman's famous mantra: "Why is this lying bastard lying to me?"

It's a crude question, but it is the right point to start.

Gagging the media on the pretext of the public interest is one way to ensure the public never learns the answer.

