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'ABSOLUTELY DELIGHTED' Media coverage of the arrest of Peter Sutcliffe and the impact on the Contempt of Court ACT 1981

Richard Jones

Reporting on crime and the courts are among the classic functions of journalism. In the UK, journalists and others must abide by the Contempt of Court Act 1981, the main piece of primary legislation aimed at ensuring coverage of legal matters is fair to the participants. The restrictions are generally tighter in practice than in jurisdictions such as the US, where the media has a much freer hand to engage in pre-trial reporting. This paper argues that media coverage of the arrest of the so-called 'Yorkshire Ripper' serial killer, Peter Sutcliffe, in 1981 while Parliament was considering the question of contempt, has made the UK regime tougher than it might otherwise have been. Excessive reporting was influenced by an unusually celebratory police news conference. This news coverage coloured the contemporary debate around contempt, and any opportunity for a more relaxed approach to contempt in the UK's jurisdictions was lost.

KEYWORDS Journalism; newspapers; media law; court reporting; crime; contempt of court

Introduction

On a January evening in 1981, a crowd of journalists packed into a small room at Dewsbury Police Station in the north of England. They were told the five-and-a-half-year hunt for Britain's most wanted man was over. A suspect was being questioned over the so-called Yorkshire Ripper murders. The Chief Constable of West Yorkshire Police, Ronald Gregory, grinning alongside two jubilant colleagues, said that he was 'absolutely delighted with developments at this stage'. He strongly implied the man in custody was the Ripper.

He was right. The man, Peter Sutcliffe, was indeed the serial killer. He had murdered 13 women and tried to kill seven more. But the triumphant way in which Gregory delivered the news and how that was reported by much of the media, especially newspapers, went well beyond traditional crime coverage. Solicitor General Ian Percival described those conventions in a warning to the media later that week, reminding journalists of 'the vital principle embodied in English law that a man accused of a crime, however serious, is presumed to be innocent and is entitled to a fair trial, and of the responsibility which the law accordingly places upon editors in circumstances such as the present'.[1]

The warning came too late. Dramatic coverage of the Ripper's arrest had spread across radio, TV and, especially, the front pages. Yet it was not the relieved listeners,

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viewers and readers who were the most significant audience. Rather, it was the small group of Parliamentarians already considering legislation that would finally put the UK's unusual practices around contempt into a statute. The Contempt of Court Act 1981 has, ever since, been a daily part of the life of British journalists and a staple of training courses and university degrees, often accompanied by the acknowledgement the regime is more restrictive in practice than in other nations.[2] These include the US, where contempt restrictions to limit pre-trial reporting are invoked infrequently[3] and Canada, where the accused can ask to be tried by a judge alone to mitigate such publicity.[4] This article will examine the extent to which the content of the Act was shaped by the actions of the police and journalists, in the aftermath of Sutcliffe's arrest.

The Evolution of Contempt Restrictions

Reporting on crime and the courts is a key task of news organisations. It has remained so despite financial pressures which have affected newspapers.[5] A central tension in media reporting of legal proceedings lies between the balance of protecting the right of a defendant to a fair trial and the corresponding right of the media to be free to report on it.[6] In the UK's jurisdictions, the open justice principle gives the media and the public statutory and common law rights to attend most court proceedings, with limited exceptions.[7] Actions which risk putting undue influence on proceedings can be defined as contempt of court. Courts can protect the administration of justice by punishing those guilty of a criminal contempt, such as journalists, with a fine or even detention in custody.[8] The foundations for the modern law of contempt were laid in the 18th century,[9] with broad and vague definitions.[10] This made it harder for the media to readily publish material relating to legal matters.[11] Calls to reform the unusual summary procedure in contempt cases[12] were made throughout the 19th and 20th centuries.[13] Increasing media concerns led to the creation of the Phillimore Committee.[14] Its 1974 report proposed a law to help clarify uncertainties, a request welcomed by the media[15] but which initially went unheeded by government.[16]

An important case involved the *Sunday Times* and its coverage of the thalidomide scandal. The babies of mothers who had taken the pregnancy drug had been born with physical deformities.[17] The drug's maker, Distillers, was granted an injunction in 1972 preventing the paper publishing an article, on contempt grounds. During a long legal battle, Court of Appeal judges were broadly sympathetic to the *Sunday Times*, the Law Lords much less so, emphasising the confusion surrounding contempt law.[18] Eventually, in 1979, European judges voted 11–9 that existing UK contempt law breached the newspaper's right to freedom of expression.[19] It was this surprise legal defeat which obliged the UK government to legislate. The thalidomide battle was one of two legal and political controversies particularly significant to the creation of the 1981 Act. The second was the extensive media coverage of Sutcliffe's arrest and the subsequent criticism of newspapers, including by politicians during Parliamentary debates over the provisions of what would become the 1981 Act. Subjecting this second issue to closer scrutiny, through published material in the chosen newspapers and other sources, allows the factors which led to the development of legal restrictions on court reporters which remain in place to be seen more clearly.

Methodology

Sources consulted for this study included two UK national newspapers, *The Times* and the *Daily Mirror*, the main trade press publication, *Press Gazette*, as well as Hansard and an inquiry into the Sutcliffe coverage by then regulator the Press Council. The two newspapers were selected because they offer potentially useful contrasts, the former being a broadly right-leaning broadsheet newspaper, the latter a left-wing tabloid. *The Times* has a long-standing interest in coverage of the law and has traditionally been considered the 'newspaper of record', implying developments in media law will have been considered in its pages through news stories and leader articles. The *Daily Mirror* has a more populist tradition. Each also has relatively stable online archives available covering the period in question. All articles from the newspapers relating to Sutcliffe's arrest and the aftermath, from 5th to 9th January 1981, were consulted.

To assess the broader debates around the 1981 Act, keyword searches were carried out for 'contempt of court' in the *Times* and *Mirror* databases across 13 months between December 1980 and December 1981, tracing the period from the introduction of the Bill to the initial aftermath of the Act coming into law. All articles were examined and those not directly related to the Bill's passage were discarded. This left 50 from *The Times*, and three from the *Mirror*, reflecting the general interest of the former in both Parliamentary proceedings and legal affairs. Keyword searches are not infallible. Digitisation may have been a boon for researchers unable to easily access historical content in other ways. But searching digitised newspapers can be inconsistent and frustrating, with searches apparently turning up alternative results on different days.[20] Such discrepancies mean other sources should be utilised to help strengthen findings.[21]

Therefore, this study also relies on contemporary accounts, including from *Press Gazette*. It is now online only but was previously a specialist printed publication providing coverage of UK media news. It is therefore potentially the best available documentary source to trace perceptions of the development of journalism in the UK from the perspective of the industry. Most copies from 1980 and 1981 survive in the British Library archive. Those were consulted in person to give extra context to the debates over contempt, and to cross-check key developments with the newspaper sources. Transcripts of Parliamentary debates and the Press Council report were used in a similar way. The methodology outlined here has been used to answer the following research questions.

RQ1. To what extent did media coverage of the arrest of Peter Sutcliffe influence debates over contempt of court?

RQ2. How were debates over the Contempt of Court Act 1981 reflected in contemporary accounts?

Findings and Discussion

The Arrest of Sutcliffe

The Contempt of Court Bill was introduced to Parliament in December 1980, but the debate was given a new urgency by the arrest of Sutcliffe in Sheffield on Friday 2nd

January 1981.[22] The police inquiry had been undermined by the incompetent performance of senior officers and a sexist attitude towards the victims from both police and the media, especially those who were sex workers.[23] Indeed, a feminist critic later accused the police, media, lawyers and psychiatrists of unwittingly engaging in a 'cover up' by failing to acknowledge how Sutcliffe's actions were an example of an aggressive masculine sexuality towards women prevalent in society.[24] Media interest in the murders had intensified when letters and a tape, purportedly from the killer but much later confirmed as a hoax, were widely published and broadcast by both the police and media.[25] Coverage duly reached an 'unprecedented level' following the killing of the final murder victim, Jacqueline Hill, in October 1980.[26] During questioning on Saturday 3rd January 1981, Sutcliffe confessed.

The following evening, West Yorkshire Police held a news conference to announce the arrest. The atmosphere within police circles was celebratory and this had an impact on the way the news conference was conducted by Chief Constable Gregory.[27] Both the tone and the content would later be censured as effectively giving newspapers licence to almost print what they liked, with Gregory's remarks seen as 'flying in the face of the country's long-established contempt laws'.[28] Despite criticism, Gregory insisted nothing was said which would affect Sutcliffe's trial, and indeed it was necessary to both clarify information which had begun to circulate among journalists and to 'dispel speculation'.[29] Gregory effectively argued he was merely alerting the media to the imminence of the charge which, in the pre-1981 Act regime, was the moment at which proceedings were considered to have become active. Therefore, having given the media fair warning of this fact, he considered all subsequent publications as their responsibility.

Monday morning newspaper headlines 'screamed news of the Yorkshire Ripper's arrest' and 'the law of sub judice was abandoned as the people of Britain learned that the most wanted man in British criminal history had been apprehended'.[30] The phrase sub judice means matters which are the subject of active legal proceedings, and the publication of prejudicial material on a case which is sub judice can be considered a contempt of court. Proceedings became 'active' at Sutcliffe's arrest. Yet, despite that and following the content and tone of the 'absolutely delighted' news conference, background articles about the long Ripper investigation were published, even though Sutcliffe had only been charged with a single murder.[31] An investigation by the Press Council was quickly announced.[32] Its report ultimately found 'experienced newspapermen could remember no instance when so much publicity had been given to a man about to face a serious charge before he appeared in court'.[33] It described the media's coverage of Sutcliffe's arrest as 'generally unfair and prejudicial' and said the impression given by most newspapers was that the man who had been detained was beyond doubt the Ripper and that his trial would be no more than a formality.[34] The Council added the presumption of innocence and public confidence in a fair trial were put 'gravely at risk' first by the police and then by the press and other media,[35] suggesting the traditional balance between a fair trial and the free press had tipped too far.

This context having been established, the newspaper coverage itself will now be considered in answer to RQ1. The analysis is broken into three distinct time periods: the Monday, the Tuesday, and then Wednesday to Friday. They can be broadly seen as relating to three distinct phases of coverage. The arrest of Sutcliffe as reported in Monday's papers,

his court appearance which was covered in Tuesday's press, and then the reaction to the media coverage itself which began to play out throughout the rest of the week.

Media Coverage After Sutcliffe's Arrest—Monday

On Monday, the *Mirror* made extensive use of quotes from the 'absolutely delighted' news conference on its front page. It chose not to name Sutcliffe although it implied it did know his identity, by mentioning the home of a Bradford lorry driver was being guarded by police. Other details included that the arrested man had been picked up by a 'vice patrol' and was with a prostitute. Also noted was Gregory's quote that the arresting officers had his heartfelt thanks and the inquiry was now being scaled down. Although not naming Sutcliffe, it was clear from the article and the accompanying photograph of the beaming police chiefs taken during the news conference, that detectives thought they had their man.[36] *The Times'* main article was strikingly similar, including many of the same details taken from the news conference. It also featured brief quotes, albeit saying little more than that senior officers were 'pleased'.[37] Some aspects of this article would be criticised, presumably inadvertently, by *The Times* itself in a leader column later in the week.

Both papers published background articles inside. The *Mirror* included details of all 13 victims attributed to the Ripper along with further context, although no new detail about the arrest.[38] Interestingly, it had what would prove to be the 'correct' list, notable as there was some dispute about this both inside and outside the police during the investigation, including suggestions of a copycat killer.[39] Again, the *Times'* approach was comparable, with content broadly similar to the *Mirror*. One notable difference was its inclusion of Joan Harrison in its list of victims, a murder falsely connected to the series by the hoaxer.[40] Only some of the victims were named.[41] This implies the piece was hurriedly subbed before publication, because some early victims were afforded a full paragraphs while later ones were not named at all.

Monday's coverage across the two newspapers was therefore comparable. The news broke late on the Sunday and so journalists had little time to gather information beyond the key facts announced by the police, including during the 'absolutely delighted' news conference. The prominence afforded to the story in both titles was also predictable considering it was the apparent end of the largest criminal manhunt in British history. An event of such importance cuts across the traditional interests and priorities of different publications, as could be seen by the extensive coverage offered not just by those two newspapers, but all news media.[42]

Elsewhere on Fleet Street, *The Sun* was among the papers which did name Sutcliffe. Its headline 'Loner with the crazy eyes' ran above an interview with a barmaid who described how a man had tried to pick her up, clearly implying it was Sutcliffe. The Press Council concluded the interaction of radio, TV and newspaper coverage was significant. Newspaper editors said the immediacy of Sunday night's broadcast coverage spurred them on to publish material 'which they might not otherwise have done'. Meanwhile, broadcasting executives felt inhibited from announcing the name of Sutcliffe until they saw it in the early editions of some of Monday's papers.[43]

Tuesday

Sutcliffe appeared in court at Dewsbury on the Monday afternoon while a hostile crowd gathered outside. Tuesday's papers reported both parts of this story. While *The Times* stuck rigidly to existing reporting restrictions from the 1967 Criminal Justice Act, the *Mirror* went much further. *The Times* published a short front page article, with just six paragraphs on the court hearing, the remainder dealing with the scenes outside. It did not mention the phrase Yorkshire Ripper nor the murders beyond that of Hill, the only charge Sutcliffe then faced.[44] By contrast, the *Mirror* published three articles, plus a further two sidebars alongside the third to make a double page spread. Its front page piece focused on the disturbances but also mentioned Sutcliffe had been questioned over the 'so-called Yorkshire Ripper murders'.[45] Its court report inside went into as much detail as possible while staying within the law, going into the sort of bland detail almost always left out of conventional reports on similar hearings, such as verbatim quotes from the prosecuting lawyer and even the clerk of the court.[46] Yet in doing so the paper still generally stuck to the letter of the 1967 Act.

More contentiously, the *Mirror's* spread further inside appeared with a headline referring to Sutcliffe as a 'man of mystery'.[47] It focused on the home of the Sutcliffes and featured quotes with neighbours and a cousin. The most potentially prejudicial material was in a sidebar which reported on a separate police news conference with two prostitutes, Olivia Reivers and Denise Hall. The article stated the two were 'approached by Peter Sutcliffe shortly before he was arrested' and that Sutcliffe encountered Hall and 'asked for sex'. She turned him down before he then approached Reivers, and the article stated it was Reivers who was in Sutcliffe's car at the time of his arrest, in what was a red light area of Sheffield. The article stated that Sutcliffe had been attempting to pick up prostitutes on the night in question, potentially prejudicial because many of the victims in the Ripper series of murders had been sex workers, the implication being that Sutcliffe may have been caught in the act.

The divergence in tone and content between the two titles is notable. *The Times* held firm to norms around the reporting of active court proceedings, even declining to mention the words 'Yorkshire Ripper'. This was even though few *Times* readers can possibly have been unaware that Sutcliffe was suspected of being the serial killer, not least because of both the 'absolutely delighted' news conference and the coverage of that and other developments elsewhere. The *Mirror* certainly published material that could be considered prejudicial. Yet the involvement of the police in organising both the 'absolutely delighted' and Reivers/Hall news conferences could be seen to have reassured reporters that they were on safe ground to publish material divulged during both. The *Mirror* editor, Michael Molloy, later told the Press Council his paper had 'a duty' to link Sutcliffe to the Ripper murders to help put public minds at rest.[48] It was *The Times* which was the outlier. The restraint it showed may have been in keeping with conventions of court reporting. But this was absent from other titles, and not in just the tabloid press. Even the *Daily Telegraph* interviewed Sutcliffe's employer, colleagues and neighbours, while the *Guardian* ran an inside feature on the detection of serious crimes.[49]

Wednesday to Friday

During the rest of the week, the *Mirror* significantly scaled back its reporting while the discourse over the media coverage began in the pages of the *Times*. The *Mirror* only fleetingly considered this, using a sidebar on the Wednesday to note a letter from Labour MP Tom McNally to home secretary William Whitelaw, urging him to investigate. He was particularly concerned by the publication of interviews with Sutcliffe's neighbours. Ironically, the *Mirror* printed these concerns inches away from an interview with a neighbour on the same page, in which it revealed police had driven the Sutcliffes back to their home to collect some belongings after his court appearance.[50] On Wednesday and subsequently, the *Times* devoted more space to the debate over press behaviour than it had done to its own actual coverage of the arrest and court appearance. The *Mirror* chose not to criticise the actions of its competitors beyond noting McNally had, and on Thursday did not mention the announcement of the Press Council inquiry, perhaps anticipating its own future censure.

The Times did both, on the front page on each occasion, accompanied by an excoriating leader article on the Wednesday.[51] It thundered against its Fleet Street rivals, claiming 'rarely in modern times can the media in general have acted with such disregard for the law and the fundamental tenets of British justice'. The police were considered 'partly at fault' and the editorial ticked off the elements *The Times* found objectionable, including the 'absolutely delighted' comment and the way in which the police had praised the two policemen who arrested Sutcliffe, then made them available for interviews. This was despite *The Times* having reflected each of these in its Monday morning front page story, albeit in a much more restrained style than other titles. *The Times* acknowledged the difficulties created by the existing contempt regime and that 'the law did not clearly spell out the risk of contempt to which the media might become subject'. But it went on: 'In this case, however, the police made it clear that a suspect was shortly to be charged. The press could not have been in much doubt about imminence'. *The Times* concluded by addressing the Contempt Bill directly. 'What the coverage of the past three days has demonstrated is that it does not matter to many organs of the media what the law of contempt says. They will break it anyway if the case is spectacular enough and engenders sufficient curiosity on the part of their viewers or readers'.[52]

The *Mirror's* decision to essentially end its coverage when it did is perhaps not surprising. With Sutcliffe remanded in custody, there was relatively little 'new' to report on. *The Times*, with its long-standing interest in coverage of both the law and Parliament, was always more likely to alight on the legal ramifications of the week's events. These different approaches threw into sharp relief the dilemma facing media companies covering a criminal case of high public interest. Both offered roughly similar initial reports. But after a day, the *Mirror* had succumbed to at least some of the pressures of newspaper journalism, such as a professional desire to match or better its direct competitors by producing articles of greater interest to its readers. *The Times* went the other way, and by Wednesday was rather looking down its nose at the rest.

Impact on the Contempt of Court Act 1981

Contemporary accounts of the debates surrounding what would become the 1981 Act will now be scrutinised, in response to RQ2. Concern about the impact of the coverage

was soon evident. Besides the leader in *The Times*, *Press Gazette's* Night Lawyer column worried goodwill built up by the media during the debate over contempt and the *Sunday Times'* campaign over thalidomide, may have been frittered away by a 'squalid display of unprofessional licence'.[53] When debate resumed in the Lords, Sutcliffe featured prominently. Lord Mischon, opposition front bench spokesman and a noted solicitor, argued any relaxation of contempt should be looked at carefully following the 'salutary lesson' of recent events.[54] Speaking for the government, the Lord Chancellor Lord Hailsham said, crucially, that doubts he had previously had about timing and proceedings becoming active had been 'dissipated' by the Sutcliffe case.[55] Lord Gardiner described the 'absolutely delighted' news conference as 'the real trouble'[56] arguing it was asking a lot of editors to accept that the police could prejudice a case as much as they liked, but journalists were unable to publish what they had been told. Lord Hailsham accepted police must obey the law of contempt in the same way as editors and even suggested in circumstances when editors were apparently provoked by the police into publishing material prematurely, it was the police rather than the media which should shoulder most of the blame.[57] This might be considered a surprising contrast to the view of *Press Gazette* and its criticism of the 'squalid' and 'unprofessional' reporting from many titles.

A central issue was the matter of active proceedings. Having become more certain that proceedings should be active at arrest, a tightening of press freedom, Lord Hailsham was confronted by a similar hardening of opinion on the other side. Lord Hutchinson, another noted lawyer but, on this point, more sympathetic to journalists than some of his fellow peers, argued it was impossible for reporters and editors to know whether someone was formally under arrest, or merely helping police with their inquiries.[58] Lord Ritchie-Calder, a former court reporter, suggested the debate was taking place without proper regard to the practicalities of journalism. The vagueness of the existing regime meant a 'man on the job who is not going out to wreck law and order' may struggle to know at what point he would be involving his newspaper in contempt.[59]

The 1981 Act states proceedings become active at the initial step of criminal proceedings, with the central examples being arrest, the issuing of a warrant, the issue of a summons or the service of an indictment. The active proceedings requirement is a particularly significant element of the 1981 Act because it is what most obviously distinguishes it from existing common law. It increased restrictions on the media by making contempt possible for a longer period. That is, the media could now be held in contempt for material published after a suspect was arrested but before they were charged, when this had not necessarily been the case previously. Even though no papers were ultimately held in contempt over Sutcliffe, this was this coverage which 'finally tipped the scales' against the media,[60] obliging reporters and editors to operate in a stricter regime, ostensibly to avoid a repeat.

The Act did introduce two general defences, on the face of it to help the media. A public interest defence provides a publication made as part of a 'discussion in good faith of public affairs or other matters of public interest' is not contempt, if the risk of prejudice is merely 'incidental' to that discussion. As Krause[61] noted, the defence is narrow, as it is only available to the media if their reporting of the issue goes beyond specific proceedings and onto wider matters of public debate. An additional defence introduced was innocent publication or distribution. This allows a media company a safeguard, so long as they did not

know and had no reason to suspect at the time of the prejudicial publication, that proceedings were active. Finding out whether an individual has been arrested is therefore crucial for journalists and editors. This relies on police forces confirming those details to the media and being consistent in their approach, something which police forces have been accused of not doing.

There was a concession as the Bill continued its passage. Hailsham, having initially rejected adding the word 'substantial' as a qualifier to the risk test of when a statement could be said to be prejudicial, grudgingly agreed to accept it. The amendment was proposed by Lord Wigoder as a way of aiding the media by diminishing the scope of the new strict liability rule, under which a defendant is considered liable for a particular action, regardless of their intention. This was seen to give the effect of allowing media companies 'much more latitude' by removing the possibility of a technical contempt of court, of the kind made possible the Law Lords' wide definitions of contempt in the thalidomide case.[62] However, the Sutcliffe coverage was considered to have 'doomed' any attempt to ease the provisions further.[63]

Case law has undermined the view the 'substantial risk' test would aid media interests. A definition given by Lord Justice Auld in a case relating to remarks made about Ian and Kevin Maxwell, sons of the late, disgraced *Daily Mirror* owner Robert Maxwell, on satirical BBC TV programme *Have I Got News For You*,[64] proved significant. He considered 'substantial risk' to be a risk which is 'more than remote or not merely minimal' rather than a higher threshold. This definition has been relied on in high profile contempt actions since, including the *Condé Nast* case regarding an article in GQ Magazine on the *News of the World* phone hacking trial.[65] That was deemed to have crossed the 'substantial risk' threshold even though it was a piece of commentary which included information already available online, rather than a conventional court report. Instead, it is arguably the 'serious prejudice' element of the strict liability test which has been more in the media's favour than 'substantial risk'. It has proved a difficult obstacle for potential prosecutions to overcome. Whether any story creates a serious prejudice is judged at the time of the publication itself. Crown Prosecution Service[66] guidance points to a 'fade factor' meaning that the gap between any publication and trial can lessen the possibility of prejudice. The 'fade' argument has often been deployed by media companies and has been considered a notable factor in courts gradually becoming less ready to find publishers in contempt.[67]

The Bill, as initially drafted, allowed for the broader use of audio recorders in court. During the committee stage, MPs of both main parties explicitly favoured a presumption that recorders would be allowed for a range of court participants, including journalists, unless a judge specifically ruled it out. This was resisted by Attorney General Sir Michael Havers, who was accused of reneging on an undertaking given to the committee.[68] The Sutcliffe case was again used as justification, as Havers argued the public would have flinched at any use of recorders during that trial.[69] A Labour amendment which would have allowed for more liberal use of taping in court by journalists, albeit not for broadcast purposes, fell. The *Press Gazette* lamented the political mood was not favourable to the media at that moment.[70]

An additional outstanding issue concerned details of jury discussions. The Lords passed an amendment in July 1981 that there should be a blanket ban on such

publications. It had long been assumed this would be a contempt, a view ended by the 1979 *New Statesman* case. After it had interviewed a juror from the conspiracy to murder trial of former Liberal leader Jeremy Thorpe, the magazine published an article giving details of the jurors' reasoning for acquitting him.[71] Contempt proceedings were dismissed on the grounds that because the magazine had not threatened nor intimidated the juror, the publication was not necessarily a contempt.[72] Lord Hutchinson signalled the lawyers in the Lords wanted to close this loophole by making all such disclosures a contempt, even for the purposes of investigative journalism or academic research.[73] This indicated the extent to which legal voices were keen to re-instate the inviolability of the jury room in all circumstances. These efforts were described as a 'well-orchestrated campaign' to get a 'last minute amendment'[74] through Parliament effectively banning all communication by or with jurors. Although the 1981 Act does not mean jurors cannot say anything at all about a trial as it merely relates to the content of the jury's actual deliberations, in practice it would almost always be a contempt to disclose anything that might be considered newsworthy by a journalist. Barendt et al.[75] acknowledged this appears incompatible with freedom of expression, by severely restricting discussion in the media of jury decisions. This was therefore one more area in which media interests were outmanoeuvred by those of lawyers.

Conclusion

It was hardly surprising relieved police officers and competitive journalists alike would behave as they did in the immediate aftermath of the end of the largest manhunt in British criminal history. It was an unfortunate coincidence for the media that Sutcliffe was arrested during the early stages of Parliament's consideration of what would become the 1981 Act. A year earlier and the excesses of the initial reporting would have faded from memory, potentially allowing more concessions to media interests. A year later and a less restrictive version of the Act would have been safely on the statute book. Before Sutcliffe's arrest, there had been signals a more liberalising Act might be passed, along the lines not only of Phillimore, but also the spirit of the European ruling in the thalidomide case. Afterwards, the coverage of Sutcliffe would be an ever-present feature in Parliamentary discussions and not to the media's advantage.

The media lost the chance of securing a more relaxed definition of active proceedings as advocated by Phillimore and faced tighter restrictions on the use of audio recorders and the publication of jury room discussions. While concessions such as the addition of the word 'substantial' to the risk test and the introduction of a narrow public interest defence allowed Lord Hailsham to present the Act as a liberalising one, it could have gone much further had the debate not been coloured by the Sutcliffe coverage. If the Act did have any liberalising effects these had little to do with the actual content of the statute and was more about the fact it did at least offer some much-needed clarity to journalists and editors.

The way in which lawyers dominated Parliamentary debates over contempt meant media interests were always likely to face resistance. But the media failed to organise its supporters to have sufficient influence. *The Times* was an exception. Its particular interest in the issue of contempt during this period, especially in its leader columns, coincided with

the brief editorship of Harry Evans, previously editor of the *Sunday Times* throughout the entirety of the thalidomide battle, who regarded the European ruling as a 'powerful weapon against many of the censorships that have grown up in my generation'.[76] Yet those arguments were not enough to prevent Lord Hutchinson from ambushing the Parliamentary process at a late stage to get restrictions on the publication of jury room discussions through, even in the face of government opposition. Well-known newspaper industry figures in Parliament such as *Daily Mail* proprietor Lord Rothermere and erstwhile *Daily Mirror* editor Lord Cudlipp remained silent.

Parliament has not looked again at the substantive law of contempt. This has remained the case even in the different media landscape created by online media and social platforms, and the renewed concerns about contempt by citizens most recently raised by then Attorney General Michael Ellis in 2021.[77] So, the restrictions included in the 1981 Act have now had an impact on the daily working lives of generations of journalists. This has served to make the justice system potentially less open than it might otherwise have been.

Notes

1. Press Council, *Sutcliffe Case*, 27.
2. Jones, "Reporting the Courts," 95.
3. Krause, "Punishing the Press"; Brandwood, "You Say 'Fair Trial'."
4. Lowe and Sufrin, *The Law of Contempt*.
5. Jones, "Best Job."
6. Giglio, "Free Press-Fair Trial."
7. Smartt, *Media and Entertainment Law*.
8. See endnote 7.
9. Phillimore, *Report of the Committee*.
10. Oliver, "Contempt By Publication."
11. Eady and Smith, *Arlidge, Eady & Smith*, 21.
12. Cooke, "Contempt."
13. Rosen, *The Sunday Times*, 38.
14. Young, "Contempt of Court Act."
15. *Press Gazette*, "Phillimore: the Hinge," 3.
16. Bailey, "Contempt of Court Act."
17. Knightley, *Suffer the Children*.
18. Times Newspapers, *The Thalidomide Children*; Rosen, *The Sunday Times*.
19. Shaw, "Court Ban," 8.
20. Abel, "The Pleasures."
21. Upchurch, "Full-Text."
22. Bilton, *Wicked Beyond Belief*; Macgregor, "The Yorkshire Ripper Investigation."
23. Wattis, "Revisiting"; Burn, *Somebody's Husband*; Bilton, *Wicked Beyond Belief*.
24. Hollway, "I Just Wanted," 33.
25. 5 Bilton, *Wicked Beyond Belief*; Zakcrisson, "The Yorkshire Ripper Investigation."
26. Byford, *Sir Lawrence Byford Report*, 87.
27. Burn, *Somebody's Husband*.

28. · Burn, *Somebody's Husband*, 276.
29. · *Press Gazette*, "The Reporting," 1.
30. · Bilton, *Wicked Beyond Belief*, 490.
31. · See endnote 29.
32. · The Times, "Press Council Inquiry," 1.
33. · Press Council, *Sutcliffe Case*, 8.
34. · Press Council, *Sutcliffe Case*, 75.
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36. · *Daily Mirror*, "Man." 1.
37. · Kershaw and Osman, "Ripper Squad," 1.
38. · *Daily Mirror*, "Five–Year," 7.
39. · Bilton, *Wicked Beyond Belief*.
40. · See endnote 39.
41. · Tendler, "Five Years," 2.
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44. · Kershaw, "Lorry Driver," 1.
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55. · Hansard, 20 January 1981, col 399.
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57. · See endnote 55, col 402.
58. · See endnote 55.
59. · See endnote 55, col 398.
60. · Krause, "Punishing the Press," 545.
61. · See endnote 60.
62. · See endnote 60, 546.
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