

Managing the News Image of the Judiciary: the Role of Judicial Press Officers

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Abstract

Image making and image management is a major dimension of judicial activity. But the judiciary are not the only or today even the most influential judicial image makers and managers. Journalists play an important image making role. Their objective is to produce news reports of court and judicial activity for mass consumption. The existence of multiple image makers potentially makes the judicial work of making and managing judicial representations more complex, fraught and problematic. This paper examines one judicial initiative produced in response to this state of affairs: judicial press officers. Building upon my previous research, examining how the courts and the judiciary in particular are represented in the press the paper explores the role of judicial press officers, supporting the judiciary, working with the media and facilitating communication between the two. It uses a case study approach. The point of departure of the first case study is news reports of a criminal case in the lowest criminal court, the magistrates' court. These reports provide an opportunity to examine the work of the press office that is part of the judicial communications office for England and Wales. The point of departure for the second case study is press reports about a decision of the Supreme Court of the United Kingdom. The work of the press team within the communications office of the Supreme Court will be the focus. The study draws upon data generated by interviews with judicial press officers. These have been generated as part of a multi-jurisdictional study of the work of judicial communication initiatives. It also draws upon a range of official publications about the work of these two judicial press initiatives and court press materials relating to particular cases.

Key words

Judges; judicial image; judicial press officers; mass media; news values

Resumen

La creación y gestión de la imagen es una dimensión importante de la actividad judicial. Sin embargo, el poder judicial no es el único creador y gestor de imágenes,

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y hoy en día ni siquiera el más influyente. Los periodistas juegan un papel importante en la creación de imagen. Su objetivo es producir noticias sobre los tribunales y la actividad judicial, para el consumo de las masas. La existencia de múltiples creadores de imágenes hace, potencialmente, más compleja, tensa y problemática la labor judicial de crear y gestionar las representaciones judiciales. Este artículo analiza una iniciativa judicial puesta en marcha para responder a esta situación: los responsables de prensa judiciales. A partir de una investigación previa, y analizando cómo se representa en la prensa a los tribunales y el poder judicial en particular, el artículo estudia el papel de los responsables de prensa judiciales, apoyando al poder judicial, trabajando con los medios y facilitando la comunicación entre ambos. Utiliza una aproximación por caso práctico. El punto de partida del primer caso práctico son las noticias de un caso criminal en los tribunales de primera instancia. Estos reportajes ofrecen la oportunidad de analizar el trabajo de la oficina de prensa que es parte de la oficina de comunicaciones judiciales de Inglaterra y Gales. El punto de partida del segundo caso práctico son los informes de prensa sobre una decisión del Tribunal Supremo del Reino Unido. La atención se centrará en el trabajo del equipo de prensa dentro de la oficina de comunicaciones del Tribunal Supremo. El estudio utiliza datos generados en entrevistas con responsables de la oficina de prensa judicial. Estos datos se han generado como parte de un estudio multijurisdiccional del trabajo de iniciativas de comunicación judicial. También emplea diversas publicaciones oficiales sobre el trabajo de estas dos iniciativas de prensa judicial y los materiales de prensa de los tribunales, relacionados con casos particulares.

Palabras clave

Jueces; imagen judicial; responsables de prensa judicial; medios de comunicación; valor de las noticias

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1. Introduction

Image making and image management, scholars have argued, is a major dimension of judicial activity (Baum 2006, Bybee 2007). But the judiciary are not the only or today even the most influential judicial image makers and managers. Journalists from both the established media and lay or 'citizen journalists' play an important judicial image making role. Their objective is to produce news reports of court and judicial activity for mass consumption. The existence of multiple judicial image makers potentially makes the judicial work of making and managing representations of court and judicial activity, especially for audiences outside the courtroom, more complex, fraught and problematic. This paper examines one judicial initiative produced in response to this state of affairs: judicial press officers.

The work of two judicial press office initiatives will be considered. The first is the judicial press office (JPO) for England and Wales, part of the judicial communications office¹ located in the Judicial Office of the Lord Chief Justice. It was established in April 2005 (Phillips 2008, p. 55) when the judicial communications initiatives developed and carried out by the Lord Chancellor's Department were relocated to the Judicial Office. The press team of the Supreme Court of the United Kingdom (SCUK) began formal operations on the 1st of October 2009 when that court opened for business. The JPO for England and Wales is made up of three posts, one of whom is Head of News, currently Stephen Ward. It services all levels of courts and tribunals up to and including the Court of Appeal. Its services are available to over 30,000 court and tribunal judges. The Head of Communications of the SCUK, Ben Wilson and his deputy, Anthony Myers, make up the Supreme Court's 'Press Office'. It services one court, the highest appeal court in the United Kingdom, made up of 12 judges. Its decisions have great weight and the potential to impact upon the meaning and operation of the law across the jurisdiction.

The paper explores the work of these two judicial press office initiatives by way of two press report case studies. Each case study is an example of courtroom and judicial proceedings that appeared in the news. Each provides an opportunity to explore the work of the respective press offices in and through concrete examples of court and judicial activity reported in the news. The choice of case studies has been informed by an earlier research project on court and judicial news reported in newspapers published in England and Wales (Moran 2014a). That research was based on a one day snapshot of those press reports published on the Thursday 16th February 2012. The sample was drawn from a selection of 24 daily newspapers: 10 national and 14 from the regions in England and Wales. The first case study is made up of news reports about a criminal trial in a magistrates' court; the lowest court dealing with the vast majority of criminal matters. Nigel Keer was tried found guilty and sentenced for a minor public order offence at Leeds Magistrates court.² Reports of these events appeared in 12 of the 24 newspapers in the research sample (5 national and 7 regional).³ On the day in question this was the most widely reported instance of court and judicial activity. The second case study is made up of a much smaller number of press reports; three in total. They refer to the case of *Sugar v British Broadcasting Corporation* (Sugar 2012). The judges of the SCUK handed down of the final judgment in the case on the 15th of February 2012. These two case studies provide an opportunity to examine respectively the work of the JPO for England and Wales and the SCUK's press team.

These particular news report case studies have another significance; they were both used in interviews with the respective press office staff. Though they were not

¹ I will not be considering here the 'corporate communications' aspect of this office's work. This work is undertaken by a separate team currently headed by Andrew Tuff.

² He appealed against his conviction. The appeal was successful. See Robinson (2012).

³ A Nexis search revealed the case was also reported in the digital editions of the *Guardian* and the *Independent*. It also appeared in a smaller and cheaper sister publication of the *Independent*. This also revealed reports in other regional newspapers. These reports were not included in the analysis.

the sole means of exploring the work of the respective press offices used during the interviews they both provided an opportunity to explore the nature of press office operations through a specific example of actual news reports of court and judicial activities. In this paper they are used not only as an opportunity to consider the role of the press offices in the context of actual examples of news reports but also as vehicles to tie together other comments and insights made during the interviews that can shed light on the bigger picture of the way these two press offices work. In addition to the data generated by interviews with the individuals who carry out the role of press officers in England and Wales and the Supreme Court the following analysis also draws on data generated by interviews with other judicial communication offices. Of particular relevance here are the interviews undertaken with judicial communications office holders in the closely related jurisdictions of Scotland and Northern Ireland and the Republic of Ireland.⁴ In undertaking these interviews the experiences of judicial communications staff in one jurisdiction were used to explore similarities and differences between judicial communications initiatives in the other jurisdictions. Some of these responses will be incorporated into this analysis where they offer valuable insights to enrich the analysis of the two judicial communication offices at the heart of this paper. The other main source of data used here is official sources of information produced by judicial and court administrative bodies about the work of respective judicial communication initiatives.

2. Changes impacting on the capacity of journalists to report on court and judicial activity

Before turning to the case studies in this section a number of factors impacting on the work of journalists reporting on court and judicial activity will be outlined. A variety of organisational, technological and economic factors are driving change. Stephen Ward, head of the press office for the courts and tribunals of England and Wales, described one of the important effects of these changes;

When I started I remember there would be benches full of journalists who would report every Magistrates' Court, I exaggerate a little, but there would be a court reporter around every court. That is not the same today. Newspapers don't make the money (Ward 2012, p. 11).

Elizabeth Cutting, judicial communications officer for Scotland, estimated that in the last 10 years the reduction in the number of journalists might be as high as 50% (Cutting 2012, p. 6).⁵ The virtual disappearance of journalists with specialist knowledge of law in general and courts in particular is another dimension of these changes (Berlins 2009, Banks 2010, 2012). A shrinking labour force and loss of expertise raise questions about the capacity of the journalists that remain to fully understand court and judicial activity, identify key issues and concepts and produce news reports that are sufficiently accurate. Gerry Curran, media relations officer for the Irish Courts Service suggested that these changes are impacting on the way journalists work in general and in particular on how journalists who report on courts go about the task of writing news stories. He suggested there is a shift from what he called 'fresh air' journalism to 'cut and paste' journalism (Curran 2012, p. 15). Journalists are now less likely to generate a news story through their own time consuming observations and investigations. Now more reliance is placed on making a story from other published sources; cutting and pasting from a press release, editing a syndicated story, blog, or other social media source.

Coinciding with these developments is an increased demand for news stories including those that focus on the courts. The emergence of the 24/7 rolling news environment is one explanation for increased demand; there is more news space to

⁴ Others included New South Wales. Interviews with Canadian and Philippine staff focused on communication initiatives attached to the respective Supreme Courts.

⁵ These changes are far from being a unique or peculiar to the UK (Innes 1998).

fill. The multiplication of media platforms is another. Increased demand for stories is also closely linked with enhanced competition for audiences and the advertising revenues that depend upon their size and composition. Court related events have long been a feature of news. Their regular appearance as news in this changing media landscape is an indicator that the daily lists of court proceedings continue to be a rich source of events that is being mined to feed the increased demand for news.

Cut throat competition for limited audiences is impacting on the way events are turned into news. Longstanding news values such as 'dramatization', 'titillation' 'personalization' are being used in a hyperbolic manner influencing both the selection of potential news making events and the manner in which they are represented as news (Chibnall 1977, Jewkes 2011). This has been described by media scholars as the tabloidization of news (Fox *et al.* 2010). The impact on news reports of court and judicial activity is that it tends towards more sensational reports of extreme cases: high on individual suffering and pain, unreserved in their tragic consequences and all lavishly embellished with lurid detail. It suggests a style of reporting that has little interest in the subtle nuances of complex or disputed facts, legal principles and concepts, knotty legal arguments, fine linguistic distinctions, long convoluted judgments or the detail of judicial decisions, including sentencing comments.

The decline in members of the public visiting courts (Mulcahy 2011, Ch 5) is the other change of significance here. The news media has always played an important role in getting information about what is going on in the courts out to the public: journalists are "...the eyes and ears of the public" (Judge 2005, p. 1-2). With the virtual disappearance of the public from the vast majority of courtrooms, the media's role has become even more important, being the primary source of factual information available to the public about the work of the courts and the judiciary (Page *et al.* 2004). News reports inform public perceptions and understandings of the judiciary and thereby enable public scrutiny (Mathiesen 1997, Thompson 2000) of the judiciary and influence public confidence in that institution (Hough and Roberts 2004). But the economic demands of maintaining and growing profits, accompanying sensational tendencies of news reporting the loss of journalists and expertise, all threaten to undermine the role of a free press as the provider of accurate information about the operations of the courts and judiciary potentially generating what Stephen Ward called a 'democratic deficit' (Ward 2012, p. 11) This is not to suggest that journalists have totally abandoned the objective of accuracy or the idea that news should seek to inform engaged members of the public. But 'accuracy' in practice may be a qualified goal; formulated in a double negative, 'not too inaccurate' or given a more positive twist, 'accurate enough' (Cutting 2012, p. 10). Likewise 'information' may become marginalised when pitted against the more bankable sensationalism that stresses entertainment and voyeurism. This paper focuses on one initiative developed by judiciaries in a growing number of jurisdictions (Moran 2014b) that responds to some of these changes impacting on media reports of court and judicial activity in general and with the particular objective of improving the accuracy of news reports and the quantity and quality of the information available to the public via the news media: judicial press communications initiatives.

3. The media related role of judicial communication initiatives

The handbook 'Media guidance for the judiciary' (Judicial Press Office 2012) produced by the JPO for judges in England and Wales neatly captures the characteristics commonly associated with the media related role of judicial communication initiatives.⁶ They have three dimensions. The first is judge facing;

⁶ 'Corporate communications' which includes the judicial intranet as well as the judicial website is the other dimension of the judicial communications work.

to provide a dedicated specialist facility to support judicial office holders. This work may include providing advice and support on a wide variety of media issues which may range from how to respond to an invitation for a media interview, dealing with misreporting court and judicial activity or handling media communications about potentially controversial and high media profile cases including dissemination of information about the ultimate decisions. The second dimension of the work is media facing. This may include responding to media queries, anticipating media interest, assisting media access, drawing media's attention to judicial activity such as significant sentencing decisions, judgments, speeches and statements. The third element is work to facilitate the smooth interaction between the judiciary and the media. One term used to describe this aspect of judicial communication initiatives is 'hinge'. Judicial press initiatives are a meeting point joining separate parts: the judiciary and media. They are established to facilitate appropriate connections and interactions between the two (House of Lord Select Committee on the Constitution 2006-7, 21st January 2007, Question 213).

3.1. Press office case study 1: The work of the judicial press office of England and Wales

The trial, conviction and sentencing of Nigel Keer in Leeds Magistrates Court on the 15th of February 2012 received the widest press coverage of any court and judicial activity reported on the 16th of February 2012. 12 out of the 24 newspapers that made up the snapshot sample published news reports of the case. They vary in length from the shortest, 44 words, in a regional paper the *Sheffield Star* (2012) to the longest, 495 words, in the *Daily Telegraph* (Wood 2012) a national right of centre broadsheet. The majority (seven out of 12) are under 200 words. Four reports are over 400. Two of these appeared in the Leeds based morning and evening regional papers, respectively *The Yorkshire Post* (400) (Yorkshire Post 2012) and *Yorkshire Evening Post* (420) (Baines 2012). All reports contained basic information about the offence: the name of the defendant, the nature of the offence, 'a public order offence', the determination of guilt and the sentence, 'a fine'. There was some variation with regards to the accuracy of the reports. For example reports about the fine varied; a minority report it as £150, the majority £315. The longer press reports tend to provide more information; Mr Keer was fined £150 and required to pay £150 costs and a £15 victim surcharge. But loss of detail and accuracy are not necessarily a characteristic of short reports. For example the *Daily Mirror* story (110 words) (Daily Mirror 2012) reported the fine as £150. The *Times* (168 words) (Times 2012b) reported it as £315. Information relating to the trial itself is confined to the longer reports. For example the report in the *Daily Mail* (482 words) (Narain 2012) names participants in the trial such as the key prosecution witness, police constable Buxton, who arrested the defendant, the prosecuting lawyer, Catherine Dowson, the defendant Nigel Keer and his solicitor Peter Byrne. The report provides summaries and short quotes attributed to their statements in court.

Only a minority of the news reports, the *Daily Telegraph* (Wood 2012), *Metro* (2012) and the *Yorkshire Post* (2012) and *Yorkshire Evening Post* (Baines 2012) named the judge who decided the facts, reached the finding of 'guilty' and handed down the sentence: district judge Christopher Darnton. Absence of information identifying the judge and related inaccuracies are not necessarily caused by the limited word length. For example one of the longer reports published in the *Daily Mail* (Narain 2012) a right of centre tabloid often critical of the judiciary, miss-described the judge, using the phrase 'city magistrates...' and makes reference to 'the jury' listening to evidence presented during the trial. Both are factually incorrect. 'Magistrates' is a term that refers to part time lay judges who sit in groups of three. There is no jury in a magistrates' court. The judge in the Keer trial was a legally qualified full time office holder and acted alone. The absence of the judge's name in the majority of the news reports, my earlier research suggests, is

not necessarily evidence of a low regard for information or sloppy journalistic practices that cause inaccuracies. It appears to be more a standard journalistic convention (Moran 2014a, p. 159-161). The analysis of the news reports that make up the snapshot dataset revealed that while judicial activity was a feature of the majority of those reports only a small number named the judge. The majority used phrases such as, 'at X magistrates' court' using the court's location to refer to what takes place within it. Another common format is to represent judicial activity by way of attributing anthropomorphic characteristics to an institution using phrases such as 'He told Y magistrates' court...' or '...the Court of Appeal heard...'. Rather than being inaccurate these are more a style of reporting that disembodies and depersonalises judicial activity making its popular representation more obscure, anonymous and invisible. In the majority of the news reports of the Keir proceedings geographical phrases such as 'at the city magistrates' court' (Daily Mirror 2012) and anthropomorphic phrases such as 'the court heard' (Narain 2012) are used to refer to judicial activity.

Only two press reports, both in the Leeds based regional papers, incorporate any words spoken by the judge. The same judicial comment appears in both reports;

I do accept that Mr Keir is a naturist but I note with some interest that he would not walk with his clothes off in the city centre of Leeds. On this occasion a lady was clearly distressed by what she had seen going on. (Yorkshire Post 2012 and Baines 2012)

Neither report explains the context in which these words were spoken. Their content and use tends to echo the journalistic preoccupation with the 'facts' of the incident rather than for example with the reasons given by the judge for his sentence. Their appearance in the two regional papers geographically closest to the location of the trial, one a morning edition, the other an evening edition, may be indicative of what Soothill and Walby noted, a tendency for the local press to produce reports closer to the reality of events than news reports in the national daily papers (Soothill and Walby 1990, p. 146).

What if any input did the JPO for England and Wales have into the making and management of these news stories? Was there contact between district judge Darnton and the JPO? Was any advice requested or given? Was there any prior contact by the media with the JPO? Was any support given to journalists reporting on this case? Did the JPO in any way facilitate liaison between the judge and the press? The short answer to all these questions is 'no'.

Stephen Ward, Head of Press at the JPO suggested it was unlikely that there was any JPO input. He offered the following explanation;

There are many thousands of [the judiciary] and very few of us. Most of them have no contact with the communications office in any form and certainly the Press Office in particular from one year to the next. They won't have a need for a specialist or individual attention. They are rank and file members of the judiciary doing their job (Ward 2012, p. 3-4).

Another factor is the size and distribution of the media; it is large and whilst there is a London concentration the press is geographically spread (Ward 2012: 4). These factors impact on the way the JPO works. The support it gives to the judiciary and the press is a highly selective and is necessarily so. This is in part an effect of the practicalities of providing support to a large institution delivering justice in hundreds if not thousands of cases in multiple locations on a daily basis. The limited resources available to the JPO have to be carefully managed and targeted. But it is not just about limited resources.

One of the ways in which limited resources and targeted support is managed and realised is through a focus on particular cases;

The Press Office will only be involved in the exceptional cases and to a large extent the bigger cases or the higher court cases which are the ones with the senior

judges. They are sometimes going to be newsworthy because they are important rather than quirky or of human interest. The Leeds case is not important because it's an important legal point it is more that it is the stuff of newspaper reports (Ward 2012, p. 6).

This extract includes a number of examples of criteria shaping the JPO's case focused work; 'exceptional', 'bigger', cases before the higher courts, cases involving important points of law. The Leeds case appears to satisfy none of these criteria. Its media profile is explained by way of a different set of criteria; 'human interest' and 'quirky'. Cases that are small scale, routine, in the lower courts, that do not engage points of law, of low legal significance are unlikely to attract JPO attention. These factors all shed light on the non involvement of the JPO in the press reports of the Keer case and also suggest that this state of affairs is not so much an exception but indicative of the norm.

Other factors may play a significant role in shaping the activities of the JPO. The nature of the judicial institution and the role of the judge are particularly important. The judiciary, Stephen Ward explained;

...is very different from most organisations in that it is our role to represent judges and judges do a certain amount. It is something they have always done without civil servants being involved. That is what a lot of the job is about (Ward 2012, p. 2).

If the role of the JPO is to advise and support the judiciary with regard to media matters this takes place in a context in which communicating with the media (and through them the public) has long been a part of what judges do. The JPO operates within the context of existing judicial practice. The current 'Guide to Judicial Conduct' addresses the question of relations between the judiciary and the media in a section on 'Media' under the title of 'Activities outside of court';

Judges should exercise their freedom to talk to the media, with 'the greatest circumspection'. Lord Bingham has commented that 'a habit of reticence makes for good judges'. A judge should refrain from answering public criticism of a judgment or decision, whether from the bench or otherwise. (Judges Council of England and Wales 2011, Chapter 8 para 8.1.1)

The references to 'freedom to talk' and 'a habit of reticence' both acknowledge the existence of a need to maintain judicial independence. The work of the JPO is undertaken with that in mind.

The 'Media guidance for the judiciary' (Judicial Press Office 2012) in the section entitled, 'In the courts/tribunals' (Judicial Press Office 2012, p. 6-10) identifies a number of specific contexts in which judges might contact the JPO for advice and assistance in relations with the media. Of particular relevance here are the sections dealing with 'Misreporting' and 'Exceptional cases'. 'Misreporting' focuses on advice to judges about how to deal with incidents of factual misreporting both when they occur as well as how to avoid them. The guidance highlights the need for a swift response, the importance of communication with other senior judges and court staff holding particular managerial positions about an incident and the need for a clear record of what was or will be said. Written versions of statements made in proceedings or while sentencing, the decisions given in a controversial case, or where the sentence or decision departs from the norm circulated to journalists by a variety of means are suggested as ways of avoiding errors being made. The preparation of written versions of sentencing statements and written summaries of decisions is also a central part of advice relating to judicial management of possible media responses to 'Exceptional cases'. One type of support offered by the JPO in these contexts is to act as a 'sounding board'; responding to drafts of these texts. Stephen Ward explained how this operates;

If [a] judge were to phone up and say, 'I have a very difficult case and this is what I am planning to say', while in no way would we suggest what they should say, we might say how something might be interpreted. As with any media advice to

anybody we might say, 'This is how something will be seen by the media; is that what you intend?', or 'Do you intend to stress 'x'?' or 'This is the bit they will notice. Is that what you want?' 'Would you like to word that slightly differently?' It's just an odd word that needs to be reviewed. Or we may have no comments.... The fundamental objective is to give the media the basics that they need to do their job and in most cases they don't need this level of detail. (Ward 2012, p. 7)

The approach described here seeks to preserve judicial independence while at the same time advising on how to facilitate and better manage communication with the media. Related to this is the JPO's role in assisting in the distribution of these written texts, including by fax, email or via the Judiciary website. Another related service to assist judges in these contexts is to prepare and issue a statement to the media.

In considering how this operates in practice Stephen Ward stressed the importance of having regard to the wider context;

When you start from a newspaper cutting and work back you get a very distorted perspective about where it fits into a judge's life. It may be... no more important than and possibly less important than other life and death decisions they are making all day. You can't expect people to think 'media' all the time or even first. That is not their primary job. It may be important but it has to fit in with many other priorities and time and focus. (Ward 2012, p. 8)

Media interest in a case and the newsworthiness of the case are not the formal focus of judicial work in the court. Baum (2006) suggests that the primary audiences the judiciary have in mind when dealing with a dispute are the parties in the case and where present their lawyers, the wider legal community and fellow judges. What may be an important and exceptional case for a journalist may be mundane and routine for the judge.

Another factor is judicial media sensitivity and awareness. Some judges may be more media aware than others. Much Stephen Ward suggested may depend on the judge and the judge's professional background;

Judges who have been predominantly criminal law barristers and now hear criminal cases will tend to be more aware of what is a news story because they will have been used, through their careers, to being in courts where there have been journalists reporting their cases, because criminal cases have always been the cases that get most commonly reported. If you are a barrister appearing in a case you will see the cuttings the next day and you will get a sense of and be aware of the public, the media, context of everything you do. Barristers in civil cases will almost never have had their cases reported at the lower level. That is their sort of culture and they will be less aware and have less contact with the media, albeit at one step removed. (Ward 2012, p. 11)

Judges whose pre judicial career was steep in civil litigation may have a very different perception of what makes a newsworthy case and an awareness of how journalists report cases.

The contrast between the high profile of the Keer trial in the press and absence of JPO involvement in the reporting of that case raises another important factor that shapes the role of the JPO; the independence of journalists and the media in general. While an independent press is not a legally unfettered press, for example it can be subject to control when it interferes with or threatens the administration of justice (Judge 2011) as a general rule the judiciary neither acting in the own capacity or through the JPO seek to formally control or exercise a strong influence over the court and judicial activity journalists report on nor dictate how they report

those matters.⁷ The practical operation of the presumption and expectation of an independent media is illustrated by the following comment by Stephen Ward;

You wouldn't want to shape their conclusions; only do what we can to give them the accurate facts as the basis for their reports. Their capacity to report as they see it is incredibly important. It is as important as having an independent judiciary. You can focus on good and bad examples but you really have to look at the picture as a whole. (Ward 2012, p. 17)

In the normal scheme of reasonable independent journalistic operations the Press Office is unlikely to be involved; 'If they are doing their job within reasonable circumstances, that won't involve the Press Office.' (Ward 2012, p. 6) Intervention by the JPO over misreporting or in the context of controversial cases does not seek to interfere with the separate 'critical independences' press and judiciary (Judge 2011). Stephen Ward illustrates this in the following observation;

You mustn't trespass onto their role saying this is what you should write or this is what to put at the top. There is this disconnect between what is legally important and what is the story. That has always been the case. Journalists are in court to get a story which is of interest to their readers and that might not be about the legal point. In a libel case for example you may get arguments about allegations of dishonesty by a politician but it will emerge in evidence quite irrelevant to the legal argument that he has had an affair – and that becomes the story. That is what the journalist is there for; the story which is the unusual and the unexpected. (Ward 2012, p. 8)

The JPO has little involvement in making and managing the judicial image in the vast majority of cases. Their exceptional involvement is, '... driven by events and the nature of the job' (Ward 2012, p. 5).

3.2 Press office case study 2: The work of the judicial press office of the Supreme Court of the United Kingdom

The second case study focusing on the work of the press team attached to the SCUK in many ways provides something of a stark institutional contrast to the JPO. Like the JPO the press team attached to the SCUK is small, made up of two individuals; Head of Communications Ben Wilson and a deputy. It operates in a very different context. The scale of SCUK operations is small; 12 judges deliver between 70 and 80 decisions a year. As the highest appeal court of the UK the majority if not all of the cases considered by its judges are 'big' or 'exceptional' cases, raising important questions of law.

The judgment delivered on the 15th February 2012, *Sugar (Deceased) (Represented by Fiona Paveley) v British Broadcasting Corporation* (Sugar 2012) was the subject of three⁸ news reports in the 16th February snapshot. All were published in national newspapers. Two of the three news reports⁹ are in the 'quality', right of centre papers, *The Times* (2012a) and *Daily Telegraph* (2012). The right of centre tabloid, the *Daily Mail* (McDermott and Thomas 2012) published the third. While limited in number, the combined sales of these three newspapers amount to over two and a half million (1.8 million of which are the tabloid *Daily Mail*) (The Guardian 2013).

⁷ Research on judicial media relations in the US suggests that judges do sometimes have close links with journalists. For example see Davis (2011) and Fishman (1980). Research examining these matters in a UK context is lacking.

⁸ The one day snapshot contained four reports about the SCUK. The fourth news report appeared in a regional newspaper, the *Lancashire Telegraph* with the headline, 'Mulcaire granted hack case appeal'. This news report is about a decision of a three judge panel of the Court delivered on the 14th of February 2012, granting permission to appeal from a decision of the Court of Appeal (Civil Division). The only reference to the work of the three judge Supreme Court panel is as follows, '...given permission to appeal to the Supreme Court...' (Sun 2012).

⁹ A Nexis search revealed *The Independent* a centre left 'quality' newspaper published a news story about the decision on the 15th February on the papers website (Judd 2012). It did not appear in the paper edition on the 16th.

The length of the news reports varies; from 346 words in the *Daily Mail*, to the shortest, 66 words, published in the *The Times*. The report in the *Daily Telegraph* comes somewhere in between at 237 words. Their content varies. Only one report, in the *Daily Telegraph* makes any reference to the legal issue at the heart of the case; the meaning of provisions in the Freedom of Information Act 2000. Does freedom of information apply to information held for purposes of journalism? On the 8th of January 2005 Mr Steven Sugar made a freedom of information request to the British Broadcasting Corporation (BBC). The BBC refused the request on the basis that the document in question, the Balen report investigating the quality and impartiality of the BBC's coverage of the Israel-Palestine conflict. The BBC argued that the report was information held for purposes of journalism and was therefore exempt. The *Daily Telegraph* referred to the judges' decision in the following terms; 'The decision effectively establishes the legal test for future cases as to what constitutes a document "held for journalistic purposes"' (Daily Telegraph 2012). Only one report, again in the *Daily Telegraph*, makes reference to the fact that the decision to dismiss the appeal was unanimous.

Judicial activity, giving judgment, is referred to in all of them. None of the judges involved in the decision are named in any of the reports. The most explicit reference to the judges who delivered judgments in this case is in the report in the *Daily Telegraph*, 'Yesterday five Supreme Court justices ruled....' (Daily Telegraph 2012) The reports follow the convention identified above of describing the decision making activities of the judges by way of anthropomorphic institutional phrases: 'The Supreme Court... rejected....' (Times 2012a), '...the Supreme Court ruled...' and '...the Supreme Court's judgement...' (McDermott and Thomas 2012). None of the reports make mention of the reasons for the judgments. No mention is made in any of the press reports of the fact that each judge delivered his own judgment or that there are differences between the judges as to how the key phrase is to be interpreted. What role, if any, did the SCUK press team play in the news stories about the Sugar case?

The press team is involved in delivery of every judgment. A primary focus of its activities is the production of the 'press summary' that accompanies each judgment. Wednesday has been designated as judgment day. On that day when a judgment is being handed down a selection of judges comes into court and the designated judge reads out a summary of the judgment in open court. On the occasions when several judgments are being delivered on the same day each summary is delivered by a different judge. Immediately after the courtroom delivery a copy of the full text of each judgment, in the Sugar case it is 38 pages long, is made available via the court's website. This is accompanied by a copy of the press summary. The press summary is also the basis for the judge's courtroom speech. As of January 2013 a video recording of the courtroom event is available via YouTube.¹⁰

The press summary is a particular focus of press team activity. Drafted initially by judicial assistants and approved by the relevant judge(s) the drafts are then made available to Ben Wilson and his deputy;

...myself and my colleague Anthony, who is deputy head of communications, will probably spend some time on Monday clearing the press summaries which come in from the judicial assistants. They will have been drafting them on Friday and over the weekend. By Monday we usually want to be in a position to have them finalised for the Wednesday judgment hand down. We look at those to make sure that they are as jargon free as they might reasonably be. It is always a difficult balancing act....On Tuesday we are preparing the material to send out on Wednesday morning; so getting final versions of the press summaries and the judgments, checking that Anthony and I understand the outcomes, and looking ahead for the obvious questions we might get. (Wilson 2013, p. 7)

¹⁰ Available at <http://www.youtube.com/uksupremecourt> [Accessed 9 October 2013].

The press summary that accompanies the *Sugar* judgment is two pages long (Supreme Court United Kingdom 2012). It is divided into several sections. It begins with the formal title of the case. Below that are the names of the five judges involved in the appeal: Lord Phillips, then President of the Court, Lords Walker, Brown, Mance and Wilson. Three substantial paragraphs follow under the title 'Background to the Appeals' (sic). It takes the form of a chronology of the complaints of bias and related litigation; from 2003 when pressure groups first complained to the BBC about the coverage of the Israeli-Palestinian conflict, to 2011 when Mr *Sugar's* widow was appointed by the court to represent his estate in the appeal now before the court. It contains the bare bones of the legal arguments. There follows a short paragraph (5 lines) under the title 'Judgment'. It makes reference to the unanimous decision of the Court to dismiss the appeal and sets out the essence of the differences between the judges. Four of the five judges concluded that the BBC could refuse to disclose on the basis that the information, the Balen report, was produced partly for the purpose of journalism, art or literature. Lord Wilson dismissed the appeal because it was produced predominantly for the purpose of journalism, art or literature.

The majority of the second page of the press summary consists of four paragraphs under the title 'Reasons for the judgment'. Numbers in square brackets accompany the summary of reasons. They refer to the relevant paragraphs in the judgments where the full reasoning is to be found. A 'Note' attached to the end of every press summary gives the reason for this format;

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. (Supreme Court United Kingdom 2012, p. 2)

The press summary offers a 'readers guide' to the reasons for the decision. The press summary is embedded in a wider range of activities. Ben Wilson's work includes building relationships with journalists, particularly the main legal affairs correspondents, encouraging journalists to contact the Press Office if they have both judgement specific or more general questions about the Court (Wilson 2013).

If a large majority of these decisions are reported in the legal specialist 'trade press', only a minority make it into the popular press;

...we are probably talking about a quarter maybe, a fifth or a quarter I would say, somewhere between that, will get something. Often it is perhaps in one national, for example the *FT* might be particularly interested in a commercial tax case, or the *Guardian* might be interested in an immigration of asylum case. I know that this is rather stereotypical but those are two obvious examples where it might be the type of case where one wouldn't get wide coverage but you get a bit more than just the 'trade press'. If you are talking about cases that get wide coverage in a handful of the nationals and some broadcasts you are probably talking about one in every 8 or 9 cases. (Wilson 2013, p. 10)

There is limited research about the news media profile of SCUK decisions. One study by Richard Cornes suggests that the media reports evidence what he calls 'narrative hijack'; '... the court is being covered, not principally for what *it* has done but rather as a co-opted character *in someone else's fight* ; in some other narrative.' (Cornes 2013, 268) Is the phrase 'narrative hijack' a useful analytical tool that can help to make sense of either the press reports of the *Sugar* decision or the news profile of the court's work more generally?

Conflict is an organising theme of all three reports of the *Sugar* decision. All use the word 'battle'. The enormity of the conflict is highlighted by reference to its duration; 'A seven year campaign...' (McDermott and Thomas 2012), 'a six year legal battle' (Daily Telegraph 2012) or more obliquely '...begun in 2005...' (Times 2012a). With the exception of the *Daily Telegraph* (237 words) we learn little of the litigation history; this was the second time the conflict came before the highest court in the land. The focus of the three reports is a heroic 'David' versus 'Goliath' struggle that

for six long years has been waged through the courts. Mr Sugar's role in this drama is 'David', the little man, the ordinary man fighting the good fight to expose bias, even from his grave. He battles 'Goliath', the BBC, which is characterised as a mighty, profligate corporation with something to hide. All mention that Mr Sugar died during the course of the long legal 'battle', his widow, Fiona Paveley, taking over from him. His death is reported in a way that heightens the drama giving the conflict a gothic life and death quality. Both the *Daily Telegraph* and *Times* describe the appeal as a legal challenge from 'beyond the grave'. Last but by no means least another related theme flagged by these headlines is the substantive content of the battle; the enduring allegation of the bias of the BBC. The focus of the reports is not so much the reasons for the decision or even the meaning of the legal rule at the heart of the case that will have enduring and wide ranging significance but about 'winners' and 'losers'. 'Human interest' is the focus of these reports; the decision of the court is told as a human political tragedy.

Is the reporting of the *Sugar* decision a 'hijacking'? A useful point of departure is a comment made by Ben Wilson who suggested;

Well something can only be 'hijacked' if the sender had a different intention... [I]t is inevitable that our decisions are going to be reinterpreted through certain lenses. So I just think it would be unfruitful of me to either have unrealistic expectations or to get upset or to be disappointed when that happens. (Wilson 2013, p. 10)

This response picks up on some of the meanings of the term 'hijack' and questions their application. The different press focus is not so much an unexpected and violent appropriation of an event but 'inevitable', routine. Nor does the press focus have an illegitimate quality as the sender, neither the Court in general nor the press office in particular, attempted to fix the news focus of the press stories of decisions or express any particular position on what the nature of the decision as news might be.

Neither the judgment nor the accompanying press summary purport to be a 'press report'. Ericson (1996, p. 196), commenting on the relation between law and news noted, 'Each social institution develops a peculiar discourse. Indeed having a peculiar discourse is one of the defining characteristics of institutions.' Each institution and those within the institution identify the institution by reference to the particular cultural practices and forms that come together in the making of the texts that are particular to that institution. The most obvious of these are in the case of the court/judicial institution, the judgment and in the news context the reports that make up the paper and now also the screen formats of news organisations. Where does the court 'press summary' fit as an institutional text in this scheme of things?

The SCUK press summary makes this explicit. Its primary purpose is to act as an aid and a guide to the press to facilitate reading the judgments and making sense of the judgments. Neither the judgments nor the press summaries are ready made news stories waiting to be either cut or pasted by journalists. Nor are they preset narratives to be slavishly followed by journalists. As was noted earlier in a comment made by Stephen Ward;

Writing a summary won't tell them what their story should be. You mustn't trespass onto their role saying this is what you should write or this is what to put at the top. There is this disconnect between what is legally important and what is the story. That has always been the case. Journalists are in court to get a story which is of interest to their readers and that might not be about the legal point. (Ward 2012, p. 8)

The press summary format appears to be shaped by regard and respect for the twin pillars of an independent judiciary and an independent media must be given and maintained. This includes recognition and respect for their different preoccupations and skills (Judge 2011). The news values that shape journalistic perceptions of

what is newsworthy may be very different from the values that shape judicial determinations of the exceptional dimensions of a dispute and judgment.

'Hijack' has some heuristic significance if the journalistic process is thought of as a process of taking over an event such as a judicial in court statement or an object, the text of a judgment or a sentencing decision, shaping it by reference to the established news values. Rather than 'hijack' 'translation' may be heuristically more useful. Nietzsche uses the term to name a process that involves a taking possession of an event. It is a form of conquest during which things are left out, some features are highlighted, additions and embellishments are made (Nietzsche 1974, p. 137-8). The translation of the decision in *Sugar* into a David and Goliath battle against the alleged prejudices of the BBC is made through the deployment of a number of well known news values such as simplification, dramatization and personalisation (Chibnall 1977, Jewkes 2011, Moran 2014a). Translation is also a term that has the potential to recognize and to take account of the strong narrative, rhetorical, literary and ideological dimensions of judicial decision making that news making engages and further exploits (Aristodemou 2000, Goodrich 1987).

Joshua Rozenberg, a leading UK journalist well known for his work on law in general and the courts described the press summaries as 'certainly better than nothing' but he has suggested they fail to meet the needs of journalists;

Supreme Court press summaries do not include a headline or introductory paragraph summarising the result. Normally, you have to persevere until page two to find out whether or not the appeal has been successful. And you can't skip straight to page two because you need to read the first page to know which side had brought the appeal (Rozenberg 2012, p. 45).

In short he is calling for the Court's press summaries to be more journalist-friendly, more 'cut and paste' ready. Even a two page summary is too long for busy journalists struggling to meet deadlines. Make it easier; provide the headline. The 'introductory paragraph' can be read as a call for the judicial press staff to also provide the of news story. Other courts do it; he offers the press releases of the European Court of Human Rights as an example of this. The example Rozenberg offers as evidence of good practice, a 'press release' is, as Stephen Ward explained very different from a 'press summary';

A summary will not be to write a story for them. It is not a press release. It will just be a summary which will mainly be a statement of the key points of the judgments. And it will always make clear that this it is not the legally binding text. The summary is a way of steering them through quickly so they know who has won (Ward 2012, p. 9).

A press summary doesn't purport to provide a readymade news report. This might stray too far into the territory of journalism and journalistic independence. When I raised these matters with Ben Wilson his response was;

I think the Justices here would be reluctant to have material being issued in the name of the court even if it was only sort of quasi official that in anyway led to misunderstanding or a dumbing down of their judgments.... The position that we have reached on the press summaries, of having a two sided summary that seeks to put across the decision and the reasons for that in as concise a way as the justices feel able, is probably as far as they are willing to go. I have no doubt that journalists might prefer something that is written in a more punchy style but I think the amount of drafting, re-drafting, compromising and negotiation that would need to go on, particularly if we had three judgments in a week as we often do, that would become a very significant additional stream of work for arguably perhaps not a huge amount of benefit given that a significant proportion of our decisions however one might try to write them up, would probably not make the grade for the national newspapers on most days (Wilson 2013, p. 9).

Two challenges are identified here. The first is a perception that something might be lost in such a shift of emphasis or focus. The second is the practical difficulties of

achieving it. How are we to make sense of the perception that something may get lost, or diminished? What might be the nature of these practical difficulties?

The comments by Ben Wilson suggest that the 'press summary' is a new breed of court/judicial institution text, shaped more by that institution's culture than by the institutional culture of the news media. But Ericson's work suggests the neat division between the courts/judiciary and the news media is problematic. He begins by questioning the separation of what I have been calling 'news values' from the frames that shape legal storytelling; 'Both legal operatives and journalists work in terms of an event orientation, conflict resolution, individualization and personalization of problems, and realism.' (Ericson 1996, p. 196) There is an uncanny similarity here between Chibnall's 'news values' and Ericson's characterisation of qualities of the legal process. He then offers a catalogue of other similarities between legal and news operatives; both rely on precedent in their use of sources, use similar procedural norms, especially objectivity and fairness and both dramatize in order to engage and persuade audiences (Ericson 1996, p. 196-197). All of this suggests that the 'human drama' that is an apparent preoccupation of journalists in reporting judicial decisions is not so much pulled apart from the legal drama that is the apparent preoccupation of the judiciary and judicial press office but an intimate part of the legal drama that has to be if not denied then displaced onto the media as part of a bigger story about media and judicial independence. Producing press summaries that recognise and utilize the human drama that is necessarily a part of the legal drama as well as maintaining the institutional separation between press and media may well be one of the key challenges for those working in judicial communications that the court press summary brings into view.

4. Conclusion

Within less than ten years the judiciaries, in the various jurisdictions that make up the UK, have gone through many significant institutional changes. One of those changes that has to date attracted little scholarly attention is the development of a new judicial support institution; the judicial press office. The emergence of these small scale judicial operations is in good part a response to a changing and challenging policy and media environment. In many respects their relatively small size and low public profile poorly reflects their actual and potential importance. The various activities they perform, be it providing press and media guidance and support to members of their respective judicial families or functioning as a one stop shop for press and broadcast journalists, all play a role in making and managing the judicial image. They are intimately connected to what has been identified as an important dimension of judicial activity and the important political ideal of public scrutiny of the courts and judiciary.

The two case studies examined here have provided an opportunity to examine how judicial communications initiatives operate in two very different contexts. Much separates them. The JPO is a small cog in a large diffuse machine delivering justice on a large scale to thousands if not hundreds of thousands of individuals on a day to day basis. Only a small minority of those decisions formally have wide repercussions with a potential to impact on the lives of all citizens by changing the way the law is understood and put into operation. The press team of the SCUK is very different; serving a small group of judicial decision makers producing a relatively small number of decisions. Each and every decision has wide potential for wide repercussions. In the former setting the Press Office will deal with the exceptional case. In the latter the work of the Press office has been embedded into the routine of judgment delivery in every case.

At the same time much also connects these two judicial communication initiatives. Both acknowledge and work with a set of assumptions and expectations associated with the linked but separate 'critical independences' of the media/press and the

judiciary (Judge 2011, p. 1). Judicial decision making and delivering judgments and news formally occupy separate institutional locations. The work of judicial communications brings them together while at the same time maintaining their separation. In the SCUK the press summaries that accompany each judgment systematize this within the institutional context of the court. In different ways the two case studies presented here also suggest the judicial communications initiatives may have little impact and play only a limited role in the formation of news stories about the courts and judicial activity. One explanation is that far from being evidence of their failure it is indicative of their success; the courts/judiciary and news media are and should remain distinct and separate institutions. Another explanation for this, particularly with regard to the current state of judicial communications in England and Wales, is that judicial communications initiatives are still in an early stage of development; economically and institutionally marginal, under developed. A third explanation is that the human interest preoccupations that appear to shape press interest are not the preoccupations that drive the development of judicial communications initiatives. There is potential for judicial decisions in general and judgments in particular to be more media friendly, especially through texts designed to better engage the media as the frames that shape the representation of conflicts being undertaken through the law and courts in particular are similar to the frame that journalists use in their news-making activities. But judicial communication initiatives that exploit the human interest aspects of litigation may bring features that news and law have in common closer into view. There is some evidence that this is problematic for judges and judicial communications initiatives. It is perhaps ironic that one of the roles of judicial communication initiatives is not so much to better connect judges and media but to ensure their formal institutional division.

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