



# How To Handle The Media

*High Profile Defendants*

Presentation by Andrew Bousfield & Lucy Kinder

22 November 2023

# WE WILL COVER:

---

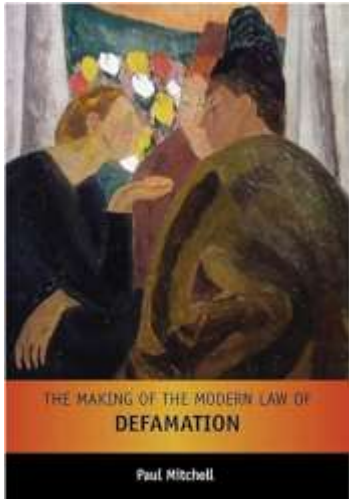
1. Libel Law And Criminal Law
2. Privacy Law And Criminal Law
3. Contempt And Reporting Restrictions
4. Investigation – How To Represent Your Client
5. Arrest – How To Represent Your Client
6. Trial – How To Represent Your Client

# THE CRIMINAL PROCESS



	<b>Investigation</b>	<b>Arrest</b>	<b>Charge and Trial</b>
<b>Libel Law</b>	Action Lies	Action Lies	A fair report of proceedings is privileged.
<b>Privacy Law</b>	ZXC v. Bloomberg	ZXC v. Bloomberg	No reasonable expectation of privacy
<b>Contempt Law</b>	Common Law	Contempt of Court Act 1981	Reporting Restrictions

# LIBEL LAW IN 5 MINUTES



- Response to many members of aristocracy dying in duels.
- Victorian gentlemen needed to protect their reputations and they still felt responsible for the honour of their female relations.
- In 1844 the Articles of War, which governed the conduct of all serving soldiers, were amended to deprive officers' widows of a military pension should their husbands be killed in a duel. This, it was hoped, would be a major disincentive for officers to fight a duel.
- Duelling persisted abroad.
- So how did the law respond?

# A VICTORIAN HEADACHE

---

- The law of defamation is a Victorian anachronism.
- In 1843 Libel Act introduced criminal libel.
- Also you could sue in libel in civil courts and unlike any other civil action you were entitled to:
  - i. **Presumption of damage**
  - ii. **Presumption of falsity**
- So you simply had to issue and present at court and the burden shifts.
- This is why the UK is attractive to the whole world as a libel destination.
- Even America requires Claimant/Plaintiff to prove falsity.
- Changed by Defamation Act 2013:

## **Serious harm**

(1) A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.

# PRIVACY LAW IN 5 MINUTES

The Protestant faith did not encourage privacy or secrecy, churches were torn down, ornaments removed. It was an individual transparent relationship with your God.



Oliver  
Cromwell  
1599 - 1658



“A portrait believed to be of William Dowsing, on show at Christchurch Mansion in Ipswich.

On the cold morning of 21st December 1643, a group of men marched into the ornate chapel of Peterhouse, the oldest university college in Cambridge.

In the presence of the college’s president, fellows and other dignitaries, they began to smash, pull down, and deface religious imagery on the walls and pews. Statues of two large winged angels and four saints were brought down, stained glass was smashed, an image of St Peter on the chapel door was removed along with those of about a hundred cherubim and angels, while bible passages illuminated in gold letters were erased.

But this was not sudden mob violence or a secular attack on the church. It was an official and systematic purging of ‘idolatry’ in one of the key centres of Christian study in England.

And watching over all of it was a man called William Dowsing.

From late 1643 to 1644, armed with a commission from the Parliamentarian general and Peer, the Earl of Manchester, this previously-unknown yeoman farmer visited some 250 university colleges and parish churches in Cambridgeshire and Suffolk, stripping them of religious pictures, crosses, crucifixes, stained glass, monumental brasses, and altar rails – anything that could be construed as encouraging Roman Catholicism, ‘religious idolatry’, or the worship of physical objects.”

Source: <https://earlofmanchesters.co.uk/smashing-churches-to-save-souls-who-was-the-iconoclast-general/>

# ENGLISH CONCEPT OF PRIVACY

---



- Privacy Law had never been developed in English law.
- There was an equitable action for breach of confidence.
- This covered confidential, often business related, information.
- Not intimate or private information.



# ENGLISH VS. CONTINENTAL PRIVACY



# ENGLISH VS. CONTINENTAL PRIVACY



## ENGLAND

- The English press have a tradition of tearing down “false idols” be they celebrities or public figures.
- Always based on exposing hypocrisy.
- The press is “red in tooth and claw”.
- No right to privacy.
- America has a limited right to privacy, but more focussed on commercial image rights.

## FRANCE

- A right stemming from the French Revolution to protect citizen from the power of the state.
- Article 9 Civil Code, “Chacun a droit au respect de sa vie privée.”
- It is a criminal offence to breach privacy.
- The political establishment run by ENS/Grandes Ecoles graduates and newspaper coverage like dry porridge.

## GERMANY

- Right of privacy drafted in Constitution by Allies after WWII.
- Carefully policed and protected by Constitutional Courts.
- Very limited tabloid press – Bild.
- Criminal defendants have their name and image protected.



News | June 5, 2020 | updated 07 Nov 2023 5:42am

## UK Madeleine McCann suspect front pages censored in caution over strict German laws

By Charlotte Tobitt



Strict German privacy laws have led to the censoring of images of the new prime suspect in the disappearance of Madeleine McCann, including in the UK.

Most UK national newspapers named and pictured the suspect, officially known as Christian B, on their front pages today, with the exception of the Financial Times.

But the BBC and Sky News blanked out the parts of the front pages featuring the suspect's name and photo on their papers round-ups on TV and online.

On the BBC News Channel's papers round-up last night, viewers were told: "We have blanked out his identity as well along with the German guidelines which the German press are using."

And the BBC website said: "Because of German privacy law, and the BBC website being accessible in Germany, the BBC has not pictured him."

# THE SEX SCANDAL

## ALWAYS FOCUSSED ON HYPOCRISY

“A number of exemplary sex scandals stand out: Ryan Giggs and the sister-in-law, John Terry and the girl next door, David Beckham and the Senorita, Jude Law and the Nanny, Wayne Rooney and the Granny, Jeffrey Archer and the prostitute, Max Mosley and the prostitutes, David Mellor and the Chelsea top, Brooks Newmark and the paisley bottom, Ron Davis and the badger.”

Source: Inform



# RED TOP CULTURE EXPORTED TO UGANDA



# THE FRENCH CONCEPT OF PRIVACY

## MITTERAND 1996



# THE NEW ENGLISH LAW OF PRIVACY (HRA 1998)

---



## Article 8 of the Convention– Right to respect for private and family life

- 1) Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2) There shall be no interference by a public authority with the exercise of this right except such as is in:
  - accordance with the law and is necessary in a democratic society in the interests of national security,
  - public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the
  - protection of health or morals, or for the protection of the rights and freedoms of others.

# THE NEW ENGLISH LAW OF PRIVACY (HRA 1998)

## 1998 Human Rights Act

### 12 Freedom of expression.

- 1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.
- 2) If the person against whom the application for relief is made (“the respondent”) is neither present nor represented, no such relief is to be granted unless the court is satisfied—
  - a) that the applicant has taken all practicable steps to notify the respondent; or
  - b) that there are compelling reasons why the respondent should not be notified.
- 3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.
- 4) **The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—**
  - a) the extent to which—
    - i. the material has, or is about to, become available to the public; or
    - ii. it is, or would be, in the public interest for the material to be published;
  - b) any relevant privacy code



# THE END OF THE SEX SCANDAL



## PRIVACY LAW BITES

### **PJS v. News Group Newspapers (*Sun On Sunday*) [2016] UKSC 26**

4. .. PJS, the claimant (now the appellant) is in the entertainment business and is married to YMA, a well known individual in the same business. They have young children. In 2007 or 2008, the claimant met AB and, starting in 2009, they had occasional sexual encounters. AB had a partner, CD. By text message on 15 December 2011, the claimant asked if CD was “up for a three-way”, to which AB replied that CD was. The three then had a three-way sexual encounter, after which the sexual relationship between PJS and AB came to an end, though they remained friends for some time.

#### ANY PUBLIC INTEREST?

##### **Cranston J.**

“identified the claimant and his partner as portraying an image to the world of a committed relationship, accepted that “commitment may not entail monogamy”, but concluded that there was a public interest in correcting the image by disclosing that the claimant had engaged in the sort of casual sexual relationships demonstrated by the evidence” (§13 SC Judgment)

##### **Court of Appeal**

“(once it was accepted that “commitment may not entail monogamy”, there was no false image to require correction by disclosure of the claimant’s occasional sexual encounters with others. In this connection, the Court of Appeal concluded positively that on the evidence before it the image presented by the claimant and his partner had been one of commitment not monogamy.”

# PJS v. NGN

## Supreme Court (Mance, Neuberger, Hale, Reed – majority; Toulson – dissenting)

21.... In identifying this interest, the Court of Appeal relied upon a point made by an earlier Court of Appeal in *Hutcheson* (and before that by Tugendhat J in *Terry*), namely that the media are entitled to criticise the conduct of individuals even where there is nothing illegal about it. That is obviously so. But criticism of conduct cannot be a pretext for invasion of privacy by disclosure of alleged sexual infidelity which is of no real public interest in a legal sense. It is beside the point that the claimant and his partner are in other contexts subjects of public and media attention - factors without which the issue would hardly arise or come to court...

22. That criticism of supposed infidelity cannot be the guise under which the media can disclose kiss and tell stories of no public interest in a legal sense is confirmed by a series of European Court of Human Rights (“ECtHR”) judgments. Thus, in *Armoniene v Lithuania* [2009] EMLR 7, para 39, the court emphasised the duty of the press to impart information and ideas on matters of public interest, but noted that

“a fundamental distinction needs to be made between reporting facts - even if controversial - capable of contributing to a debate in a democratic society and making tawdry allegations about an individual’s private life . . .”

# THE SUN SAYS... 2016





UK bill of rights

This article is more than 1 year old

# Raab says UK bill of rights will stop free speech being 'whittled away by wokery'

Deputy PM says proposals to replace the Human Rights Act will enable principle of free speech to be a legal 'trump card'

Nadeem Badshah  
Fri 25 Mar 2022 23:35 GMT



Deputy prime minister and justice secretary Dominic Raab arriving in Downing Street on 23 March 2022. Photograph: DW Images/Res/Shutterstock

Dominic Raab has disclosed proposals to replace Labour's Human Rights Act with a British bill of rights which he believes will enable the principle of free speech to become a legal "trump card".

Raab, the deputy prime minister and justice secretary, has argued that the plan will better protect the press in exposing wrongdoing and said he feared free speech was being "whittled away" by "wokery and political correctness".

Raab told the Daily Mail that under plans being drawn up for the bill of rights, there would be only limited restrictions placed on the protections on free speech with checks to stop people abusing it to promote terrorism.

He said it would be given a "different status in the pecking order of rights" with the main ramifications expected to be on legal disputes.

Raab told the Daily Mail: "We will still be clamping down on those who try and use either media or free speech to incite violence, to radicalise terrorists, or to threaten children. All of those safeguards will be in place.

"But we've got to be able to strengthen free speech, the liberty that guards all of our other freedoms, and stop it being whittled away surreptitiously, sometimes without us really being conscious of it.

"So it will have a different status in the pecking order of rights and I think that that will go a long way to protecting this country's freedom of speech and our history, which has always very strongly protected freedom of speech."

The proposals, currently out for consultation, are expected to be included in the Queen's speech later this year.

The Human Rights Act (HRA) was introduced in 1998 to enable UK nationals to rely on rights contained in the European convention on human rights before the domestic courts.

Raab added: "Effectively, free speech will be given what will amount to 'trump card' status in a whole range of areas.

"I feel very strongly that the parameters of free speech and democratic debate are being whittled away, whether by the privacy issue or whether it's

Advertisement

Most viewed

Live Rishi Sunak w 'revisit domestic le frameworks' as Rw: deportation policy unlawful - UK polit

Supreme court reje Sunak's plan to sen seekers to Rwanda

Suella Braverman v forgotten after 'tira abuse', says Michae

'I was overeating': t nutrition app found diet, raising million perfect microbiom

Live Israel-Hamas WHO says contact

# TABLOID FIGHT BACK 2022

# PRIVACY AND CRIMINAL LAW

---



**This area has been subject to rapid change recently.**

## **Questions To Ask:**

1. What is privacy?
2. Is this really privacy law? Or the protection of reputation?
3. Why is a privacy action advantageous over a libel action?

# LEVESON INQUIRY

---

## 2012 - Sir Brian Leveson Inquiry – Inquiry Into Culture And Practices Of Press

“For example, I think that it should be made abundantly clear that save in exceptional and clearly identified circumstances (for example, where there may be an immediate risk to the public), the names or identifying details of those who are arrested or suspected of a crime should not be released to the press nor the public.”

## 2013 – College Of Policing “Guidance on Relationship With The Media”

Para 3.5.2, “save in clearly identified circumstances, or where legal restrictions apply, the names or identifying details of those who are arrested or suspected of crime should not be released by police forces to the press or public. Such circumstances include a threat to life, the prevention or detection of crime or a matter of public interest and confidence. This approach aims to support consistency and avoid undesirable variance which can confuse press and public.”

## Jimmy Saville Died: 2011



Date	Event
29 October 2011	Jimmy Saville dies.
3 October 2012	ITV Exposure documentary.
4 October 2012	Operation Yewtree begins, Met Police state, The operation was "dealing with alleged abuse on an unprecedented scale" and that it "empowered a staggering number of victims to come forward to report the sexual exploitation which occurred during their childhood".

# OPERATION YEWTREE CONVICTIONS (2012-2015)

9BR



## June 2013

Sentence: 15 Months Increased To 30 Months AG  
Appeal  
Offences: 14 indecent assaults, 13 girls (Age 9-17)

RESULTED in further victims coming forward  
Additional Sentence: 2 Years 6 Months  
Offences: 1 indecent assault



## July 2014

Sentence: 5 year 9 Months  
Offences: 12 indecent assaults, 4 victims



## March 2015

Sentence: 5 years  
Offences: 2 indecent assaults, 2 teenage boys at school

RESULTED in further victims coming forward  
Additional Sentence: 4 years  
Offences: 7 charges of indecent assault



# OPERATION YEWTREE NFA

9BR

**UK news**

This article is more than 10 years old

## Jim Davidson to face no further action over sex offence allegations

Comedian had been arrested by detectives from Operation Yewtree, the investigation sparked by Savile abuse scandal

**David Batty**  
Wed 21 Aug 2013 22:24 BST

f t e



Jim Davidson has been told he will face no further action relating to sex offence allegations. Photograph: Felix Clay

Jim Davidson will face no further action over alleged historic sexual offences, the Crown Prosecution Service has said.

The 59-year-old comedian was first held in January by detectives from Operation Yewtree, set up in the wake of the Jimmy Savile abuse scandal, although his arrest was not linked to the late BBC DJ and TV presenter. Davidson was re-arrested in March after further allegations emerged.

21 August 2013 - NFA

# OPERATION YEWTREE NFA



October 2014 - NFA

## The Met behaved like the Mob but have now had to pay me £250,000: Paul Gambaccini reveals his landmark payment after agonising public ordeal of fake sex abuse claims and tells why he went to war with the police

By [STEPHEN WRIGHT FOR THE DAILY MAIL](#)

**PUBLISHED:** 22:01, 30 October 2020 | **UPDATED:** 01:32, 31 October 2020



Share



76  
shares

76  
View comments

All **Paul Gambaccini** ever wanted was an apology. What he never imagined is that it would take so long to achieve — nor that it would exact such a heavy mental toll.

We meet at his home, an immaculate high-rise apartment he shares with husband Chris that boasts stunning views of the Thames and across **London**.

The walls are adorned with framed vintage movie posters and the shelves neatly lined with thousands of books, records and CDs — testament to the much-loved broadcaster's twin passions, music and film.

# OPERATION YEWTREE - NFA

---



## **June 2016 – NFA**

**May 2017** – South Yorkshire Police admitted liability for identifying Sir Cliff Richard as a suspect and allowing BBC cameras to film execution of warrant from helicopter. South Yorkshire Police apologised, made a statement in open court and paid £400,000 damages.

# OPERATION MIDLAND (2014-2016)



## CARL BEECH

November 2014, Met announced investigation in Beech's claim, initially published as a blog.



## HARVEY PROCTOR

In 2015, home searched and questioned twice by police. In March 2016, NFA.

Reported to have received £900,000 from the Met.



## LORD BRAMALL

In March 2015, house searched and interviewed by the police. In January 2016, NFA.

Reported that Metropolitan Police had paid substantial compensation for searches that were unjustified.

# HENRIQUES REPORT 2016

---



Sir Richard Henriques's (31 October 2016) *Independent Review of the Metropolitan Police Service's handling of non-recent sexual offence investigations alleged against persons of public prominence*

“1.39 In the case of prominent people, it appears that they are more vulnerable to false complaints than others. The cases I have reviewed involve individuals, most of whom are household names. Their identities are known to millions. They are vulnerable to compensation seekers, attention seekers, and those with mental health problems. The internet provides the information and detail to support a false allegation. Entertainers are particularly vulnerable to false allegations meeting, as they do, literally thousands of attention-seeking fans who provoke a degree of familiarity which may be exaggerated or misconstrued in their recollection many years later. Deceased persons are particularly vulnerable as allegations cannot be answered.

1.40 A further and significant category of false complainant is referred to by Paul Gambaccini, as a “bandwagoner”; namely a person who learns that a complaint has been made and decides to support the original complaint (true or false) with a false complaint. It can be seen that, when an arrest or bail renewal is publicised involving a prominent person, further complaints are frequently made. These may be, and often are, true complaints. There is, however, within the cases I have reviewed, significant evidence of false complaints immediately following upon publicity. In many cases those complaints were withdrawn or the complainants simply disengaged, declining to make a statement in support of the complaint.”

1.94... It is difficult, if not impossible, to articulate the emotional turmoil and distress that those persons and their families have had to endure. The allegations have had a profoundly damaging effect upon the characters and reputations of those living and those deceased. In differing ways those reputations have been hard-won, over several decades, and yet in Operation Midland they were shattered by the word of a single, uncorroborated complainant . . . In short, these men are all victims of false allegations and yet they remain treated as men against whom there was insufficient evidence to prosecute them. The presumption of innocence appears to have been set aside.”

# OPERATION MIDLAND

---



## **July 2019**

Sentence: 18 years

Offences: 12 counts of PCJ, 1 fraud

Prosecution said not a victim but a  
“manipulative, prolific, deceitful liar”.

## **The hero who died without justice: As Lord Bramall dies aged 95, not one of the detectives who hounded him over false claims he was a member of a 'VIP paedophile ring' has been punished**

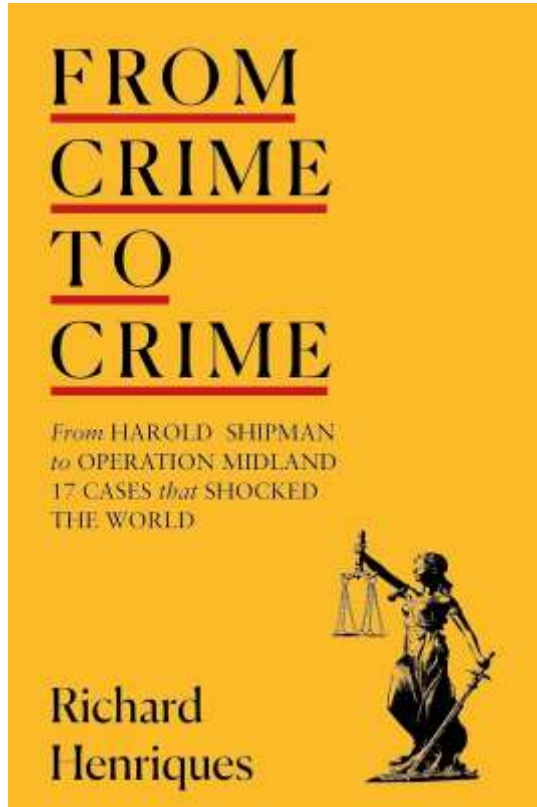
- **The final years of Lord Bramall, 95, ruined by Scotland Yard's disgraceful inquiry**
- **A fantasist nearly ruined the reputation of the former head of the Armed Forces**
- **The field marshal's home was raided on the uncorroborated word of Carl Beech**
- **Beech jailed for 18 years in July but Lord Bramall called for police in the dock too**

By [STEPHEN WRIGHT, ASSOCIATE NEWS EDITOR FOR THE DAILY MAIL](#)

**PUBLISHED:** 22:01, 12 November 2019 | **UPDATED:** 22:14, 12 November 2019

# HENRIQUES “From Crime To Crime”

9BR



“A grossly incompetent investigation and the misleading of a district judge by the Metropolitan Police Service (MPS) exposed men who had demonstrated the very highest standards in public life to the most vile accusations fabricated by a liar and fantasist. The conduct of police officers resulted in one award of compensation in the sum of £500,000, together with costs of £400,000, and two awards of £100,000....

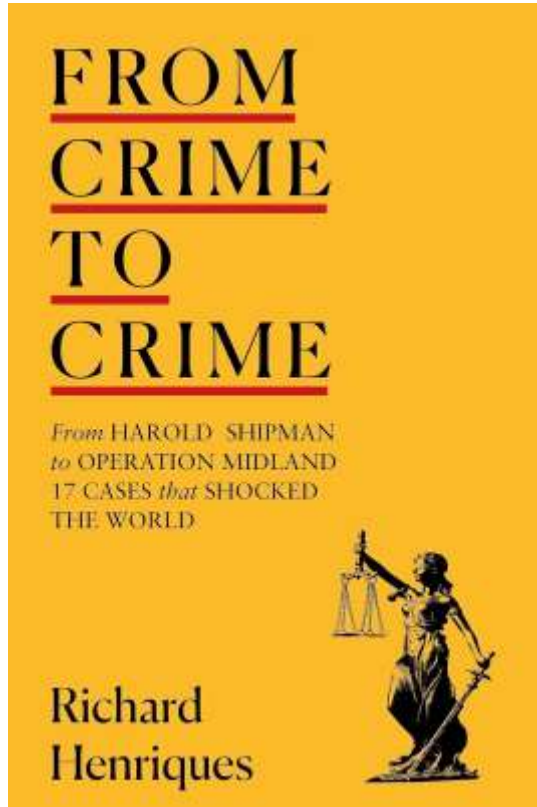
Five officers were referred to the IPCC/IOPC by the MPS for possible misconduct. After an investigation lasting for almost three years, all five officers were exonerated....

I read three books written by accused persons in cases that I was to review, namely Credible and True by Harvey Proctor, Love by Paul Gambaccini, and No Further Action by Jim Davidson. All three authors had individually been falsely accused of sexual offences and in Harvey Proctor’s case, three cases of murder. All had remained under investigation for a lengthy period....

In a nutshell, ‘Nick’ had alleged that between the ages of seven and sixteen, on numerous occasions, he had been collected by car from his schools, first in Wiltshire, then Oxfordshire and finally Surrey, and driven to London, where he and other young boys were anally raped, burned, stabbed and tortured by a circle of abusers including Sir Edward Heath; Lord Brittan, former Home Secretary; Lord Bramall, former Chief of General Staff; Maurice Oldfield, former head of MI6; Sir Michael Hanley, former Director-General of MI5; General Sir Hugh Beach, Master-General of the Ordnance; Lord Janner, a former Labour MP; Jimmy Savile; his stepfather Major Ray Beech; and Harvey Proctor, who allegedly murdered two children in Nick’s presence and organised the killing of the third....



# HENRIQUES “From Crime To Crime”



“I remain firmly of the view that one or more of the officers have either perverted the course of justice and/or committed misconduct in public office in the obtaining of the search warrants. I had called for ‘a rigorous investigation’. The two most senior officers were never investigated. The process was unreasonably protracted and reached a conclusion that no competent tribunal could have reached....

On 24 August 2015, Harvey Proctor was again interviewed and shown a penknife. The proposition was put to him that he had threatened to cut Nick’s genitals with the knife and that Edward Heath had intervened and said ‘no’. Mr Proctor told the officers that ‘the fantasy gets bigger by the minute’. He told them that they had been taken for a ride...”

Henriques, Richard. *From Crime to Crime: Harold Shipman to Operation Midland - 17 cases that shocked the world* (p. 232). Hodder & Stoughton. Kindle Edition.

# **Sir Cliff Richard v. BBC**

## **[2018] 3 WLR 1718**

---



Mr Justice Mann

232. The pleaded case of Sir Cliff is that both the fact of the investigation and the search were matters in respect of which he had a legitimate expectation of privacy as against SYP and as against the BBC. That was a position maintained to the end of the trial.

248. It seems to me that on the authorities, and as a matter of general principle, a suspect has a reasonable expectation of privacy in relation to a police investigation, and I so rule. As a general rule it is understandable and justifiable (and reasonable) that a suspect would not wish others to know of the investigation because of the stigma attached. It is, as a general rule, not necessary for anyone outside the investigating force to know, and the consequences of wider knowledge have been made apparent in many cases: see above.

251. That is not to say, and I do not find, that there is an invariable right to privacy. There may be all sorts of reasons why, in a given case, there is no reasonable expectation of privacy, or why an original reasonable expectation is displaced. An example was given by Sir Brian Leveson in the extract quoted above, and others can be readily thought of. But in my view the legitimate expectation is the starting point. I consider that the reasonable person would objectively consider that to be the case.

# **Sir Cliff Richard v. BBC**

## **[2018] 3 WLR 1718**

---



Mr Justice Mann

*“Contribution to a debate of public interest*

281. It seems to me to be right to break this claim down into two parts. The first is whether the report of an investigation into (and search of the premises of) a well known but unidentified celebrity would fall under Mr Millar’s point. In my view it would. Some of the background to this has appeared already. In 2012 it became apparent that Jimmy Savile had used his celebrity position to carry out many acts of sexual abuse. He was never charged in his lifetime, despite police investigations. In the years that followed various celebrities and others in public life were charged with sexual abuse offences, and several were convicted. Rolf Harris, Stuart Hall and Max Clifford were all convicted. Gary Glitter was investigated and had been charged by the time of the events with which this action was concerned, and he was subsequently convicted. Others were charged but acquitted (I shall use my discretion so as not to enshrine their names in this judgment, but their position was publicly known), and yet others were known to have been the subject of investigations. Sexual abuse by others without celebrity status had also been very much in the news, particularly in Rochdale and Rotherham. The whole thing was very much a source of legitimate public interest and concern, and the public had a legitimate interest in knowing at a general level that the police were pursuing alleged perpetrators, and particularly those who might have abused their celebrity status. At that level, therefore, information about the inquiry did, in the terminology of the Axel Springer case [2012] EMLR 15 contribute to a debate of general public interest.

282. The second part involves the element of identifying the individual concerned. It does not follow that, because an investigation at a general level was a matter of public interest, the identity of the subject of the investigation also attracted that characterisation. I do not think that it did. Knowing that Sir Cliff was under investigation might be of interest to the gossipmongers, but it does not contribute materially to the genuine public interest in the existence of police investigations in this area. It was known that investigations were made and prosecutions brought. I do not think that knowledge of the identity of the subject of the investigation was a material legitimate addition to the stock of public knowledge for these purposes.”

# ZXC V Bloomberg LP [2022] AC 1158, Supreme Court

---



Bloomberg had obtained a Letter of Request from UK Agency to Foreign Agency. Investigation into ZXC, individual, and X Ltd, public traded company.

- §15... “The investigation is at an evidence gathering stage. There have been interviews with some witnesses and suspects. There have been no searches of properties linked to the suspects at this time. Nobody has been charged with any offence.”

§16.... The UKLE’s investigation concerned possible offences of corruption, bribery, offences under the Proceeds of Crime Act 2002, and various offences under the Fraud Act 2006 together with conspiracy to commit certain offences.

# ZXC V. Bloomberg [2022] FINDINGS

## Investigation

§81 “... there is uniformity of judicial approach, at first instance in a series of cases and in the Court of Appeal in this case, based on judicial knowledge that publication of information that a person is under criminal investigation will cause damage to reputation together with other damage, irrespective of the presumption of innocence. This has led to a general rule or legitimate starting point that such information is generally characterised as private at stage one.”

## Charge/Trial

§77 “... it was common ground that if someone is charged with a criminal offence there can be no reasonable expectation of privacy. We consider, generally, that to be a rational boundary, as the open justice principle in a free country is fundamental to securing public confidence in the administration of justice: *Scott v Scott* [1913] AC 417. Consequently, whenever a person is charged with a criminal offence the open justice principle generally means that the information is of an essentially public nature so that there can be no reasonable expectation of privacy in relation to it.”

# RESPONSE FROM BLOOMBERG

## [U.K. Judges Are Helping the Next Robert Maxwell](#)

John Micklethwait, Editor In Chief

“It is always convenient for editors to pontificate about press freedom when they lose court cases. However, the U.K. Supreme Court's decision in *Bloomberg LP v. ZXC* is something that should frighten every decent journalist in Britain — as well as anybody who cares about justice, the conduct of capitalism or freedom of speech.

In Britain, we are stumbling toward a system in which tabloids can still peek into celebrities' bedrooms but serious journalists cannot report on potential wrongdoing at public companies by powerful people....

*Let's be clear about what privacy means in this case. This was not a story about what most of us might see as ZXC's private life — a picture of his children, his health details, his romantic history. This was reporting on his business activities — and an investigation by the authorities into possible malfeasance at a huge company that could have an effect on many people who invested in it.*

*It gets worse. If you can't report about potential wrongdoing before any charge is brought, then, once somebody has been charged (and ZXC has not), all the proceedings become sub judice with potential reporting restrictions added.*

*Somewhere Robert Maxwell is smiling.* Imagine the long list of British corporate scandals, from Polly Peck to Arcadia to Libor, that would have gone unreported, or only been summed up at the end. If some British version of Elizabeth Holmes were to appear in Nottinghamshire, with a miraculous method of interpreting blood genetics and sucking in billions of pounds to a British Theranos, it would be far harder for dogged journalists to track her down in the same way that the Wall Street Journal pursued the real Holmes in California, long before her trial.”

# THE LAW OF CONTEMPT

---

## *Civil vs Criminal contempt*

*"The question whether a contempt is a criminal contempt does not depend on the nature of the court to which the contempt was displayed; it depends on nature of the conduct. To burst into a court room and disrupt a civil trial would be a criminal contempt just as much as if the court had been conducting a criminal trial. Conversely, disobedience to a procedural order of a court is not in itself a crime, just because the order was made in the course of criminal proceedings."*

*R v O'Brien* [2014] UKSC 23

- Procedure for criminal courts dealing with civil contempt procedure is governed by CrimPr 48.9

## Man calls judge a 'clown' and threatened to 'slit barrister' throat' before storming out of court

Warning: offensive language. Steven Caven stormed out of the courtroom and yelled 'f\*\*\* you, you bacon!' at Chelmsford resident judge Christopher Morgan during a contempt of court hearing

An Essex man launched into a vicious tirade in open court, calling the judge a "clown" and threatening to "slit his barrister's throat". Steven Caven launched into a string of abusive comments to Judge Christopher Morgan who was overseeing a contempt of court hearing where Caven called another Chelmsford judge a "nonce".

Caven, 38, had appeared in Chelmsford Crown Court on November 6 this year for an unrelated matter when he became aggressive and angry towards Judge Timothy Walker, using the word "f\*\*\*" multiple times before calling the judge a "nonce" and telling him "I will f\*\*\* your mother".

As the hearing continued, Caven became angrier and shouted at Judge Walker "Don't play with kids you f\*\*\*ing nonce" and "Shut up you f\*\*\*ing prick", before being taken away to the cells. The judge referred the case to Judge Christopher Morgan, the resident judge of Chelmsford, and Caven appeared at crown court again today (November 14).

**Read more:** [Woman found dead in Essex Travelodge died from 'insulin toxicity', inquest hears](#)

**Read more:** [Fit and active 30-year-old said he has 'no idea' he was having a stroke during gym session](#)

Caven, of no fixed abode in the Chelmsford district, was initially represented by Jerry Hayes. However, at the start of the hearing, Mr Hayes said: "He doesn't want to talk to me and I understand he wants to slit my throat. You don't get that in legal aid." During this, Caven could be heard saying "What's he talking about".

At this point, Mr Hayes was excused by the judge as representation in the case. Judge Morgan attempted multiple times to explain the reason for the court hearing to Caven, however, the defendant kept interrupting and became more and more angry.

## Contempt In the Face of the Court

Conduct that is in wilful defiance of, or disrespect towards, the court/ wilfully challenges or affronts the authority of the court.



# Solicitor General v. Cox [2016] EWHC 1241 (QB)



"Where the act which constitutes a contempt in the face of the court, or one closely akin to such a contempt, is not a crime, the deliberate breach of a court order of which he has notice will be sufficient. It is not necessary that the person additionally intended by his breach to interfere with the administration of justice, though for the reasons we have set out and which were considered in Dallas, it will generally readily be inferred that such an intention is established. It does not matter in principle whether the order is specific, as in a judge's direction to a jury on internet searches, or general, as in the public notices in court buildings. The latter are there, either reflecting the criminal law, or, where not, expressing what every judge requires and relies on to let the public and participants know what is required for the administration of justice."

## **'F\*\*\* the judge': Yobs who took 'trophy photographs' inside court of friend as he was sentenced for murder and shared them on Facebook face jail**

- **Damien Parker-Stokes and Kyle Cox took photos in Bristol Crown Court**
- **Uploaded pictures of judge and convicted murder friend on Facebook**
- **Facebook posts mocked the law and 'glorified' killer Ryan Sheppard**

# CONTEMPT BY PUBLICATION

---

## **Common Law**

- Must prove intent

## **Strict Liability**

- Contempt Of Court Act 1981 (s1)
- When proceedings are active
- Substantial risk of serious prejudice



# STRICT LIABILITY

## AG v. NGN [2012] 1 WLR 2408

“2. The proceedings arise from the killing of a young woman, Joanna Yeates, in Bristol on 17 December 2010. Her landlord, Christopher Jefferies, was arrested on 30 December on suspicion of her murder. He was released from custody on unconditional police bail during the evening of 1 January 2011. On 22 January another man, Vincent Tabak was charged with the murder of Miss Yeates. On 4 March Mr Jefferies was informed that he was released from police bail. On 5 May Tabak admitted that he was responsible for killing Miss Yeates when, at the Central Criminal Court, he pleaded guilty to her manslaughter.

11. The submission on behalf of the Attorney General in relation to the articles in the Daily Mirror is that the core information on 31 December 2010 is to the effect that Mr Jefferies: (a) is a sexually perverted voyeur who spies and spied on his tenants in their bedrooms and elsewhere; (b) was a friend of a convicted paedophile guilty of very serious offences; and (c) was regarded by the police as a prime suspect for another murder of a young woman in 1974, whose body was found very close to that of Miss Yeates and in strikingly similar and unusual circumstances.

31. In our judgment, as a matter of principle, the vilification of a suspect under arrest readily falls within the protective ambit of section 2(2) of the 1981 Act as a potential impediment to the course of justice. At the simplest level publication of such material may deter or discourage witnesses from coming forward and providing information helpful to the suspect, which may (depending on the circumstances) help immediately to clear him of suspicion or enable his defence to be fully developed at trial. This may arise, for example, because witnesses may be reluctant to be associated with or perceived to be a supporter of the suspect, or, again, because they may begin to doubt whether information apparently favourable to the suspect could possibly be correct. Adverse publicity may impede the course of justice in a variety of different ways, but in the context we are now considering, it is not an answer that on the evidence actually available, the combination of the directions of the judge and the integrity of the jury would ensure a fair trial.”





[Home](#) > [Crime, justice and law](#)

Press release

## Media Advisory Notice: Russell Brand

The Attorney General confirms the requirement not to publish material which could prejudice any potential criminal investigation or prosecutions.

From: [Attorney General's Office](#) and [The Rt Hon Victoria Prentis KC MP](#)

Published 22 September 2023



Following the airing of "Russell Brand: In Plain Sight: Dispatches" on 16 September 2023, there has been extensive reporting about Russell Brand.

The Attorney General, the Rt Hon Victoria Prentis KC MP, wishes to amplify the importance of not publishing any material where there is a risk that it could prejudice any potential criminal investigation or prosecutions.

Publishing this material could amount to contempt of court.

Editors, publishers, and social media users should take legal advice to ensure they are in a position to fully comply with the obligations to which they are subject under the common law and Contempt of Court Act 1981.

The Attorney General's Office is monitoring the coverage of these allegations.

	<b>Contempt In the Face Of Court</b>	<b>Publication Contempt/Strict liability</b>	<b>Civil Contempt – Breach Of Court Order</b>
<b>Who Brings The Action?</b>	Either on court's own motion or Attorney General	Attorney General	Aggrieved party
<b>Where?</b>	All courts have jurisdiction	Generally only in High Court	All courts have jurisdiction except MC is very limited)
<b>Penalty</b>	2 years custody/unlimited fine (except in the Magistrates' Court where it is 1 month's custody/fine of £2,500	2 years custody/unlimited fine	2 years custody /unlimited fine (unless in MC for unauthorised use of disclosed prosecution material maximum 6 months' custody/ fine of up to £5,000)

# SUMMARY HEARING PROCEDURE

## Procedure on enquiry

48.8.—(1) At an enquiry, the court must—

- (a) ensure that the respondent understands (with help, if necessary) what is alleged, if the enquiry has been postponed from a previous occasion;
- (b) explain what the procedure at the enquiry will be; and
- (c) ask whether the respondent admits the conduct in question.

(2) If the respondent admits the conduct, the court need not receive evidence.

(3) If the respondent does not admit the conduct, the court must consider—

- (a) any statement served under rule 48.7;
- (b) any other evidence of the conduct;
- (c) any evidence introduced by the respondent; and
- (d) any representations by the respondent about the conduct.

(4) If the respondent admits the conduct, or the court finds it proved, the court must—

- (a) before imposing any punishment for contempt of court, give the respondent an opportunity to make representations relevant to punishment **[F1]** and a final opportunity to apologise;

**[F2]** (b) in deciding how to deal with the respondent take into account—

- (i) the gravity of the contempt,
- (ii) the extent of any admission of the conduct and the stage at which that admission was made,
- (iii) any apology and the stage at which that apology was offered, and
- (iv) any period during which the respondent was detained pending the enquiry;

- (c) if imprisonment is imposed, impose the shortest period that is commensurate with the preservation of good order in the administration of justice;]

**[F3]** (c) explain, in terms the respondent can understand (with help, if necessary)—

- (i) the reasons for its decision, including its findings of fact, and
- (ii) the punishment it imposes, and its effect; and

**[F3]** (d) if a magistrates' court, arrange for the preparation of a written record of those findings.

(5) The court that conducts an enquiry—

- (a) need not include the same member or members as the court that observed the conduct; but
- (b) may do so, unless that would be unfair to the respondent.



# REPORTING RESTRICTIONS

## Automatic orders in certain circumstances

(For example complainants in sexual offences, young people in youth court)

## Discretionary orders in certain circumstances

(For example adult witnesses in certain cases, young people in Crown Court)

## Additional discretionary 'blanket' orders

### S 4(2) Contempt of Court Act

- Postponement apply when publication would result in a “substantial risk of prejudice” to justice in that case.

### S11 Contempt of Court Act

- Courts can impose a *permanent* ban on publication

**Breach is often a statutory offence but can amount to contempt**



# THE CRIMINAL PROCESS



	<b>Investigation</b>	<b>Arrest</b>	<b>Charge and Trial</b>
<b>Libel Law</b>	Action Lies	Action Lies	A fair report of proceedings is privileged.
<b>Privacy Law</b>	ZXC v. Bloomberg	ZXC v. Bloomberg	No reasonable expectation of privacy
<b>Contempt Law</b>	Common Law	Contempt of Court Act 1981	Reporting Restrictions



# CONTACT

---



**Andrew Bousfield**

andrew.bousfield@9brchambers.co.uk



**Lucy Kinder**

lucy.kinder@9brchambers.co.uk

Visit our website: [www.9brchambers.co.uk](http://www.9brchambers.co.uk)