

Reporting the courts in the UK during the financial crisis in local journalism

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Abstract

Local journalism in the UK is in crisis. Local newspapers have experienced years of declining circulations and staff cuts, leading to questions about how effectively these institutions can continue to perform normative functions of journalism, such as its fourth estate role and its contribution to the health of the public sphere. One central way in which local journalism fulfils such functions is by reporting on the courts.

This thesis brings to bear two different research frameworks to investigate the evolution and current state of court reporting in the UK's local press, with a particular focus on the newswork of journalists who report on the courts. A historiography is used to examine the development of court reporting in the UK, to trace the origins and evolution of the practices of covering the courts. Then, an analysis of 22 semi-structured interviews with local newspaper reporters who cover the courts beat, agency court reporters who supply the local press, as well as broadcast journalists involved in both local and national court coverage, is conducted. This will give insights as to how court reporting is practised in contemporary journalism, amid a range of financial and other industrial pressures facing legacy media institutions such as newspapers.

Operationalising these two frameworks helps to establish how the daily newswork of court journalists has developed amid during the recent, turbulent period in journalism in the UK, especially local journalism. It finds that local court reporters consider their work to be a central feature of local journalism, undermining narratives of a decline in the perceived quality of local media. Yet it is now heavily reliant on those journalists who work for major local press companies. It is those legacy institutions which have faced particularly acute financial challenges, meaning court reporting faces a potentially precarious future.

The courts 'beat' will be shown to be one that is now rather different to other journalism jobs, with reporters based outside the office, a relative rarity in pre-pandemic modern local newspaper journalism, and able to produce exclusive stories for their employers and readers. Indeed, the prestige of daily local newspaper court

reporters has if anything been enhanced by the decline in the number of agencies and other reporters covering court cases. Counter-intuitively, two widespread tranches of closures of local courts in England and Wales have also helped preserve the role of the local newspaper court reporter, because it has become easier for those journalists to report on larger numbers of cases from centralised court locations, rather than having to travel to a range of courts in different towns to try to cover stories of public interest.

The more central the local press becomes to the provision of court reporting, challenges facing the local news business could affect the ability of court reporters to perform these functions in future. The conclusion of this thesis includes a series of recommendations which could help to maintain and even enhance this coverage of the courts, including the potential use of some public funding to help guarantee the future of court reporting at the local level, even as newspaper publishers continue to face the financial crisis which has affected local journalism.

Chapter 1: Introduction

1.1 Overview

This thesis is about how the UK's local media reports on the courts, especially local newspapers and their websites. The origins and evolution of court reporting in the UK will be examined, to help establish how court reporters do their jobs and the constraints under which court journalists operate. The thesis will then examine local newspaper journalism in the UK and its relationship with local courts, including the newswork of reporters who cover courts for local newspapers and agencies. It will also consider the evolution of those working practices amid the background of declining financial resources within the local press. Relevant factors including the use of cameras in courts throughout the UK's jurisdictions, cuts to the local criminal justice system, the roles of other court participants such as lawyers, and the introduction of the Local Democracy Reporting Service (LDRS) will be assessed for their impact on local court reporting. To investigate these issues, an historical study of several pertinent aspects of court reporting will take place, and interviews with working journalists, court reporters drawn from the UK's local daily newspapers and other outlets, will be conducted.

Those journalists are part of a long tradition of court reporting. The reporting of the courts is a classic feature of local journalism. It helps local media companies such as newspapers fulfil their fourth estate role and contribute to the health of the public sphere. Local journalism itself is a contested term, and what I mean by it will be explored further in section 1.3. By focusing a part of this thesis on the history and evolution of the role of court reporter, I will be able to illuminate the challenges to, and restrictions on, the daily working lives of local newspaper journalists tasked with reporting on the courts. How those constraints and opportunities came to be, and their continuing influence, will help us to understand the ways in which today's court reporters do their jobs.

The local newspaper sector has faced financial challenges. A sharp decline in print advertising and falls in revenue from the circulation of print products over the past

two decades, has led to significant job losses among journalists and a concern about the financial viability of local newspapers in the UK (Barnett 2010b, Moore 2015, Edge 2019). Similar trends have been noted in France (Rouger 2008), Ireland (Cawley 2017), Sweden (Wadbring and Bergstrom 2017, Karlsson and Rowe 2019), the US (Anderson 2013, Kennedy 2013) and elsewhere (see also Picard 2014, Nielsen 2016b, Cohen, Hunter and O'Donnell 2019). Within the UK, concern has developed among journalists and legal commentators that local court reporting has withered away and become ineffectual (see Davies 2009, Hanna 2015, Langdon 2017, Thornton 2017), putting in question the ability of the local press to cover the courts. The alarm has been raised that “the greatest challenge facing journalism today lies in the collapse of local news provision” (Wahl-Jorgensen 2019, p163). This research will add further evidence to studies such as that of Chamberlain et al (2019a), to help assess the extent to which such a claim might be justified within the context of UK court reporting. Ways in which coverage of local courts might be strengthened and sustained in the face of that perceived challenge will be explored, culminating in recommendations.

In the sections to follow, I will first consider my own role as the researcher and explain why I have chosen to examine this topic. Then I will examine what is meant by the word ‘local’ in the context of local journalism. The theoretical framework for this thesis, the public sphere, will be introduced. Consideration will be given to normative functions of local journalism, including its civic role and what effective coverage of the courts ought to look like. Further detail of the developing context of the UK local media market will be discussed. This will include the intervention made in 2019, as this research project was being conducted, of a government commissioned report into the sustainability of high-quality journalism in the UK by Dame Frances Cairncross. This introduction ends with an explanation of the research questions and the structure of the thesis.

1.2 The researcher

Before continuing, I will explain why I have chosen to research these issues and be self-reflexive of my own status as a researcher. Tracy (2013) noted that every

qualitative researcher brings their own worldview to a project and should reflect on those active interests. I will follow that advice and acknowledge my own interests here.

My decision to investigate the evolution and practices of court reporting can be traced to two distinct phases of my own journalism career. I began working at Sky News as a text producer in 2002, creating live graphics for the TV news channel. The following year, I worked on Sky's innovative live text coverage of the Hutton Inquiry into the death of former weapons inspector Dr David Kelly held at the Royal Courts of Justice in London (Deans 2003). This was the first time such coverage had been attempted. My role was as a producer based in a media annexe on site, watching proceedings on a screen and typing short news lines and quotes directly into Sky's content management software using a laptop. This technique meant Sky reporters standing outside delivering live two-ways, and producers back in the newsroom, could broadcast and publish those news lines almost immediately, without having to wait for summaries to drop on the Press Association news wire service. Sky's main rivals in UK broadcast news, the BBC and ITV, soon adopted similar practices.

Shortly afterwards the system was used at a criminal case for the first time, the Soham trial of Ian Huntley and Maxine Carr following the murders of schoolgirls Jessica Chapman and Holly Wells. This was heard at the Old Bailey and attracted significant national media attention (Jones and Wardle 2008, Greer and McLaughlin 2012). Again, there was a media annexe, but journalists there were not allowed to use laptops, and so I worked in a corridor, while a runner passed me notes handwritten by another journalist inside. Sky also employed a stenographer throughout the trial, who provided full transcripts of proceedings which were handed to me by the runner on memory sticks, for me to file back to the newsroom. The transcripts were reproduced on Sky's red button interactive service. Although the Soham coverage attracted criticism for being too intrusive because of how extensive it was compared with the briefer reports more typical of TV court stories (see Street-Porter 2003), these developments were considered to have increased the pressure on the judiciary to allow a pilot scheme of cameras in the Court of Appeal (Wells and Dyer 2003). At the time it appeared to those of us

involved in the coverage, that more widespread use of such technology to cover the courts would soon become routine. Part of the purpose of this thesis is to examine the extent to which this has, or has not, come about.

Another key personal interest is local journalism. I began the local website *Saddleworth News* in early 2010, as I combined my freelance journalism career with a new role as a full-time stay-at-home parent. Hyperlocal had become a media buzzword, generally describing an online outlet covering news and information from a smaller local area than that traditionally considered the 'patch' of a local newspaper (eg Jarvis 2009, Hartley 2010, Harte, Howells and Williams 2018). Such accounts proposed that new players might fill gaps left by declining titles such as the *Oldham Evening Chronicle*, the paper which covered Saddleworth and which would indeed duly collapse into administration seven years later following sharp falls in print circulation (Ruddick 2017). Another local weekly paper, the free *Oldham Advertiser*, had recently stopped being delivered in Saddleworth for financial reasons at the time I created the site, providing further impetus for my decision to launch it.

The expulsion from Parliament of local MP Phil Woolas and subsequent Oldham East and Saddleworth by-election of 2011, put my site at the centre of a national news event (Hartley 2011, Jones 2012). Woolas had become the first Parliamentarian expelled from the House of Commons by an election court in almost a century, for lying about an opponent on leaflets during the general election campaign of 2010. *Saddleworth News* provided far more extensive coverage of the Woolas story than any other media outlet, including the *Chronicle*. Indeed, during the general election, I had published lengthy interviews with all local candidates, while the *Chronicle* merely published short pre-prepared statements supplied by the parties, blaming a lack of space in the paper. Unburdened by the need to produce a daily print product or to provide comprehensive coverage of a wide range of news every day, I focused primarily on the Woolas story over many months. With the by-election taking place in a closely contested constituency, and with it being the first to be fought under the Coalition government, it attracted widespread media interest. Journalists called on me for both interviews and background information. The campaign included a memorable media flurry amid a claim Deputy Prime Minister Nick Clegg had kicked my daughter over. This was untrue, it was a BBC cameraman

walking backwards while trying to film Clegg who was the culprit, but the incident drew further attention to my reporting (see *Total Politics* 2011, *Guido Fawkes* 2011).

My experiences in Saddleworth demonstrated to me that hyperlocals had the potential to complement traditional local news coverage, by going deeper on matters of public interest in a way that newspapers were either unwilling or unable to. Yet coverage of the courts was one area I did not attempt beyond the Woolas election court case itself, because my own childcare responsibilities made it impractical. This led me to consider whether coverage of the courts might be an element of local journalism at risk because of the reduction in size and scope of the traditional local press, exemplified by the decline of the Oldham newspapers already mentioned. The path to this research project therefore runs through both Sky and Saddleworth.

The attention paid to *Saddleworth News* led to opportunities for me to teach at universities and, in 2013, a full-time academic job at the University of Huddersfield. As a former journalist turned university lecturer, I am what has been described as a 'hackademic'. This role brings challenges. It involves informing journalism practices and education by training student journalists, while also being part of the academy (Niblock 2007, Carlson et al 2018), at a time when the gradual transfer of journalism education into universities has meant a rift between journalism theory and practice (Zelizer 2009, Hermann 2017). Arguably, few journalists have engaged with academic literature on journalism, perhaps in part because early work within journalism studies concentrated on criticising the media for various shortcomings, leading to defensiveness (Calcutt and Hammond 2011, Blumler and Cushion 2014, and for an example see Linford 2010). Meanwhile, hackademics have perceived hostility from within the academy about the quality of their scholarship (Harcup 2011). A potential risk of research conducted by hackademics is therefore that it will be critical of the media in such a way that it is dismissed by those within journalism, while at the same time be considered not rigorous enough to meet traditional academic standards. My aim here is to try to navigate these pitfalls. I will begin by putting under further scrutiny a term already used several times in this thesis, the 'local' in local journalism.

1.3 What do we mean by local?

This project is primarily concerned with court reporting in UK local journalism. I will briefly examine what exactly is meant by 'local' in this context. A traditional definition has been that local journalism can mean anything from small, rural communities served by a weekly paper to large cities with a significant daily title (Nielsen 2015a). However, journalism can flow across conventional boundaries more easily in an era in which much content consumed in a particular geographic area was not produced there, which can make analysing the 'local' in local journalism problematic (Hess 2013, Hess and Waller 2014, Napoli et al 2017). For Usher (2019), studies into local journalism have suffered because such factors have led to a lack of clarity on what 'local' is. She has argued for greater focus on the 'place' where journalism happens because of trends which have affected the geography of local news production, such as local newspapers moving away from city and town centre locations, journalists being less active in their communities, and local titles seeking national and global scale through the publication of general interest news online which may not have an obvious local dimension at all. Indeed, this blurring of the local and the global online in the networked digital media environment, allows a two-way relationship to form between local and global media practices, each influencing the other as part of a process of 'glocalisation' (Rao 2010, Baines 2010).

Yet words such as 'glocalisation' remain largely confined to academic journals. Within the everyday context of UK media, the words 'local' and 'regional' remain commonplace, although these are sometimes used almost interchangeably. 'Regional' usually relates to a large physical area of the country including several distinct conurbations, with 'local' more typically referring to one of those cities or towns. For clarity I have used the word 'local' to describe all sub-national media entities. That is, all outlets that are not national are considered 'local' in this thesis. Despite suggestions that discussing 'newspapers' has become problematic when titles are so widely read online (Hess 2013), I have stuck to the term, again for ease of understanding. Although the landscape of the local press may have changed, with widespread publishing online and across social platforms, most local court reporters still work for organisations which produce newspapers in print form, alongside

websites and social media output. The role those reporters and newspapers play in the connection between the public and democracy, especially around the courts, will now be examined.

1.4 The public sphere and local journalism

Observation of court proceedings by outsiders has been considered central to open justice (Bentham 1843). This principle of openness, requiring courts to generally sit in public, is a long-standing feature of democratic societies such as the UK. The *Scott* case (*Scott v Scott* [1913] AC 417) emphasised a presumption in favour of allowing publication of reports of court proceedings, with limited exceptions such as to protect the welfare of children. This allows scrutiny of court participants by journalists, and that scrutiny in turn helps to maintain the quality of justice administered by courts (Rodrick 2014). Yet the days when courtrooms were packed with members of the public, offering a sometimes-rowdy backdrop to proceedings, are gone for all but the biggest cases (Lemmings 2012). The long-term decline of public attendance at court (Mulcahy 2011) means there is necessarily a close relationship between the local press, the courts and the wider public, because it falls to the media to play the central role in providing information about, and forming people's understandings of, the justice system (Hough and Roberts 2004, Moran 2014, Marsh and Melville 2014).

An independent judiciary is generally considered a key linchpin of democracy. Journalists are essential to that, because media coverage allows judges' voices to be heard, especially as it is rare for judges to enter policy debates outside their own rulings (McNamara 2012). Media reporting also allows for judges' decisions to be amplified and mistakes corrected (Taras 2018), for example if news coverage draws attention to a sentence later considered too harsh or too lenient. In addition, the public can be kept informed of ways in which it is governed, with local court reporting described as the "invisible backbone" of such journalism (Phipps-Bertram 2014, p62). Issues may be brought to the attention of the public and others by a local newspaper court story and a broader debate may ensue, even if those participating in that debate have not followed the original case. But if no reporters are there to

witness and describe events taking place within courts, justice effectively takes place behind closed doors (Clifton 2019). The importance of this relationship between the media, the courts and the public underlies this thesis. So far, I have used the word 'public' in a traditional sense, but I will now put this notion under further scrutiny, by exploring the concept of the 'public sphere' (Habermas 1989) in the context of local court reporting.

Media and the 'public' have long been connected. For example, newspapers have been considered to have played a central role in the development of nationalism, by allowing people who lived in more remote geographic areas to imagine themselves as part of communities (Anderson 1983). Critical theorist Jurgen Habermas in his influential account of the public sphere, first published in 1962 and translated into English in 1989, at which point it prompted widespread discourse within Anglo-Saxon media and cultural studies, designated it as a space within society in which citizens could discuss and debate common issues of public concern. For Habermas (1989), this arena of discourse allows for public opinion to be formed and for political actors to be influenced. A key feature of Habermas' conception of the public sphere is rational-critical debate. That is, the way in which reasoned and well-informed discussion of matters of public interest among citizens can help to resist oppression by the state or church, and therefore improve decision-making in society by holding power to account. For Habermas (1989), such discourse took place in an atmosphere of parity between participants ensuring that the best argument could win the day, allowed the debate of issues which had previously been unquestioned, and, at least in theory, permitted anyone with the ability and knowledge to do so to participate.

For Habermas (1989), the press, starting with forerunners of the newspaper, is a central force as the mediator of these discussions within the public sphere, and the mechanism by which such public consensus can be communicated to and challenge those in power. He considered the rise of the newspaper as central to the development of the rational-critical public sphere. Yet Habermas was in turn critical of the modern mass media for merely creating a space for a sort of pseudo public debate, rather than the more idealised, informed discussions that bourgeois citizens may have had in the coffee houses of 17th century Europe. He argued that,

increasingly, from the mid-19th century onwards, the primary motivation of newspapers was to make a profit through advertising revenue, not to engage in debates and exercise influence. He considered that increasing exposure to such privately-owned mass media, and in turn, messaging and propaganda informed by modern techniques of public relations, had transformed citizens into unthinking consumers. In Habermas' view, this is a 'refeudalisation', by which power gradually returns to a relatively small number of political actors, and away from a public often too distracted to engage in political action. In this process, "public discussion is downgraded into publicity" (Livingstone 2005, p27).

Habermas' work was praised for its insight into the transformation of the public sphere in the early modern world. But criticisms include its focus on elite society legitimising only a relatively narrow section of the population as the 'public', its blindness to the exclusion of women and working-class men from political participation before the era of universal suffrage, and its monolithic conception of public life which is particularly insufficient when considering the increasing complexity and stratification of societies (Fraser 1990, Livingstone 2005, Susen 2011). Habermas' focus on the national, rather than the global, also appears outdated in the internet era, as a huge range of online public spaces have emerged in which debates can take place among participants around the world (Iosifidis 2011). Yet Born (2013) in turn critiqued much academic work on the public sphere as it related to emerging digital media technologies, for implicitly assuming a highly fragmented American media model would become the norm elsewhere, ignoring the continuing strength of public service media in other national contexts such as the UK. Acknowledging the criticisms of Habermas, Wahl-Jorgensen (2007) used his concept as a jumping off point for an examination of the news media's failure to give the public adequate space to engage in any kind of public sphere, demonstrating how they instead choose to monitor the work, plans and actions of politicians and institutions at the expense of reflecting the views of citizens. Coleman (2013), focusing on television as still the primary source of political information for citizens, bemoaned that medium's failure to foster deliberative debate of political issues, preferring instead to issue repeated calls "for viewers to text and tweet, usually with no conspicuous relation to any outcome whatsoever" (p25), although he was

optimistic about the role online media might play in creating new channels for political discussion as part of a reinvigorated public sphere.

Conceptions of publicness have been further complicated by the development of such online media and social platforms, and the accompanying use of more forms of mediated communication. This has allowed the creation of new and fast-changing public spaces online, in which networked publics (boyd (sic) 2007) can engage in discourse in a wide range of places, as the traditional vision of an overarching, singular public sphere has faded. As the relationship between governments and the public has become increasingly mediatised, a 'media logic' can be seen, as different organisations adapt to the media and media influence (Stromback 2008, Hjarvard 2013). This process of mediatisation has led to more decentralised forms of political communication, allowing citizens to take part in politics in new ways, both inside and outside traditional structures. For Brants and Voltmer (2011), impacts of such decentralisation include falling audiences for traditional mass media public interest journalism, even as citizens are engaged, perhaps increasingly so, in single issues. Supplementing and challenging the work of Habermas, the widening use of online media has been characterised as a 'networked public sphere' which, significantly, is seen to erode at least in part some of the traditional authority and agenda-setting power of the legacy media (Friedland, Hove and Rojas 2006), as conventional forms of communication, especially political communication, are destabilised by an explosion of new actors and channels of information (Dahlgren 2005). For Castells (2008), this networked society constitutes a 'global public sphere', within which a mass media both global and local, along with emerging forms of online media, could help lead to increasingly international forms of governance. This allows nation states to operate more multilaterally, notwithstanding contradictions such as revivals of nationalism within some countries. In the UK context, notable examples of the latter include both the rise of the movement for Scottish independence and the 2016 vote to leave the European Union.

Barton (2005) posited that many emerging forms of online media, especially forums and wikis, had the potential to recreate and foster the sort of rational-critical debate so important to Habermas, in a way that modern mass media had largely abandoned, although he warned that this was at risk unless the inherently

decentralised structure of the internet was not preserved. Yet over time, such online activity has become dominated by the 'platform society', of which Google and Facebook are among the biggest players. That is, a world in which global communication is increasingly dominated by an ecosystem of online platforms which facilitate and profit from our internet use, driven by algorithms and the use of customers' data (van Dijck, Poell and de Waal 2018, Gillespie 2018). Journalists, political actors and the public now all engage in a hybrid public sphere on these platforms, also notably including Twitter, in which news is broken and shared in increasingly novel ways (Skogerbo and Krumsvik 2015). This allows individuals to bypass traditional mass media and communicate directly with each other (Paulussen and Harder 2014).

This blurring of journalism and other content on social platforms, and related concerns around the spread of disinformation, has cast doubt on earlier optimistic accounts about the potential of the participatory internet. It has raised new questions about the health of online public spheres, in particular because of ways in which false stories can be readily shared (Ehrenfeld and Barton 2019). Concerns have been identified about the developing incivility of political discourse both online (Engesser et al 2017) and in traditional mass media (Berry and Sobieraj 2014), with political, media and legal elites and experts among common targets for populist anger. Some of the most trenchant criticism from both right and left has come from new, online-only, media outlets which take an alternative and hyper-partisan approach, using social media platforms to attract attention and an audience (Wolfson 2014, Heft et al 2019, Rae 2020). Their combative style is often in stark contrast to the more staid approach of conventional news reporting, potentially posing a further challenge to the traditional primacy of newspapers and broadcasters within the public sphere.

Within the context of law, the courts and crime, Habermas noted the significance of the concept of the 'public' as a carrier of public opinion, as being the factor which makes the public nature of court proceedings meaningful. Yet because attendance at court by the public is rare, the general population must rely on commercial mass media to be the personification of the 'public' character of courts, by both bearing witness to proceedings and then reporting on them. Lemmings (2012) argued that

the nature of court coverage in 18th and 19th century newspapers already demonstrated a desire among the public for informative accounts of cases, coupled with an expectation that the law would be administered in a just fashion, providing “an important space for negotiating justice in the public sphere” (p21).

In the UK today, the role of fostering such a space involves the work of court journalists reporting for local newspapers, whose work is a central concern of this thesis. Scholars have argued that such specialists play a central role in keeping a local public sphere informed of matters before the local courts (O’Neill and O’Connor 2008), because courts are one of the key sources of stories in local newspapers. Furthermore, the local press has traditionally been a central method by which a police force can inform residents of crime issues in general, by providing details of local crime news and appeals for information to journalists for use in published stories (Mawby 2010). Howells (2016), in her application of the public sphere to local journalism, argued that local media companies and journalists, along with political and other institutions, and local communities, engage in a range of these local public spheres. These could exist at local, hyperlocal or even street level, forming a complex and overlapping network of spaces in which matters of local interest can be debated, public opinion formed and then disseminated to local political actors. She argued that damage to one such local public sphere would damage the whole, because potentially important information left unreported at a local level could not filter up to national media, and therefore never become part of broader debates. “In a machine, crucially, when one cog is missing or broken – when its organ of communication is shut down or the number of journalists cut back – the machine will falter.” (Howells 2016, p51). The health of public discourse therefore relies in part on local journalism being able to fulfil its civic role, and that is a role which will be examined next.

1.5 The civic role of local journalism

Reporting the courts is one of the central ways in which journalism, especially local print journalism, has fulfilled key normative functions. This involves informing citizens and taking on an interrogatory role, as well as representing the popular voice to

elites and campaigning in the public interest (Barnett 2009, McNair 2009). It is the role of the newspaper as a watchdog, playing an important role in local communities and scrutinising the work of institutions such as the courts, that is among the most central in explaining its significance (Matthews 2014). Scholars have also seen the mere presence of reporters in a locality, for example through physically attending court cases, as a factor in improving the quality of such proceedings. This was defined by Anderson, Bell and Shirky (2014) as 'scarecrow journalism'. They argued that the continuity of long-standing media companies in covering beats and watching proceedings such as the courts was even more significant than the publication of stories in constraining "bad behaviour on the part of powerful institutions" (p55). The phrase 'scarecrow journalism' implies that any reduction in the scope of local journalism, including the ability of local journalists to be physically active in the communities they cover, would negatively affect these 'watchdog' and 'scarecrow' normative functions.

Yet a court reporter is not just a watchdog or scarecrow. As already noted, keeping citizens informed is also a key normative role of the local news media, and this is a further normative role which court journalists fulfil. Media coverage is an important source of information for the public on local events, and much of what the public perceives about local institutions is filtered through the media. The more politically active a person is, the more likely they are to read a newspaper (Dahl 1961), along with other local news sources (Pew Research Center 2015) and, in turn, be better informed about local events (Nielsen 2016a). In western countries, a hegemonic model of journalism has been seen to exist since the late 19th century. For Nerone (2012), in this conception of journalism, the reporter is an "independent public-spirited verifier of factual information." (p451) Much of this model emerged from traditional, dominant outlets such as daily local newspapers, the decline in size and scope of which has posed a threat to how well they can fulfil their normative roles (NUJ 2015, Cawley 2017, Boehmer, Carpenter and Fico 2018). Even if alternative funding models such as local paywalls were to prove successful, and evidence so far is mixed at best, the resultant drop in reach would have implications for a newspaper's civic functions (Olsen, Kammer and Solvoll 2019), presenting an additional hurdle for the local press as it tries to remain financially viable. Scholars have sought to reframe normative models for journalism to better fit with the digital

age, suggesting it should seek to be participatory, deinstitutionalised, innovative and entrepreneurial (Kreiss and Brennen 2016). Thomas (2019) argued there has often been an over-emphasis on these potential qualities, because they risk over-estimating the importance of technological trends and under-estimating the obligations journalism has to the public. For legacy newspapers, trying to innovate while at the same time uphold traditional coverage of the courts and other matters of public interest in a local area, in the context of declining financial resources and a fast-changing landscape of online platforms, has proved challenging.

As difficult as the current landscape of local journalism might be, and I will consider this further in the UK context in section 1.7, we must still consider what local journalism should be trying to do. The local press has a social responsibility to the communities it covers. The notion of a general social responsibility theory was one of four press theories broadly summarised by Peterson (1956), as a standpoint which recognises familiar key functions of the press in a democratic society. This includes helping to maintain the political system by acting as a space for information and debate, as well as being a watchdog and entertaining to readers. Yet the theory reflects a dissatisfaction with the way the media sometimes carries out those tasks, and that if the press cannot live up to its responsibilities, other bodies must ensure these functions are carried out. This typology has been challenged and revised by a variety of scholars (for reviews of this, see Christians 2009, Blumler and Cushion 2014).

The most relevant critiques for a study of the local press are those which have emerged from alternative (Harcup 2012), grassroots (Gillmor 2006) and hyperlocal (Harte, Howells and Williams 2018) media. A central thread of each of these critiques is that traditional journalistic institutions such as local newspapers are in decline and are therefore less willing or able to cover the courts and other matters of local public interest and uphold their social responsibilities. Those critiques consider that newer media outlets from blogs and local websites to alternative print publications, allow new voices to enter local debates. They have the potential to at once both compete with legacy news media and to complement and improve it, by helping to keep newspaper journalists better informed. This busier local media landscape begs the question of what local newspapers should now be for. Applying

a conventional definition of social responsibility theory to the UK's local newspapers, I would argue they ought to facilitate a sense of community, encourage positive citizenship and help to uphold the social order. Regular coverage of local courts emphasises the centrality of those proceedings within communities, reaffirming the justice system not only as a source of entertaining or interesting news stories, but also as important for local democracy. Those are functions that are particularly at risk from any erosion in traditional local journalism.

Some of the normative functions of the local press may differ from journalism that is more commercially successful, especially online. There is a particular danger that local titles with national or international owners, seeking global scale through the process of 'glocalisation' already described, are tempted to invest less in public interest journalism in favour of publishing stories on other topics more likely to attract readers, and therefore increase online advertising revenue. This requires us to consider whether local journalism in the public interest such as reporting of the courts is a public good, even if it is not necessarily funded from the public purse (Firmstone 2018, Wahl-Jorgensen 2019), or a merit good, defined as something under-produced by the market which should be provided for by public funds (Ali 2016). Policy interventions such as the introduction of the Local Democracy Reporting Service (LDRS), funded using money from the BBC licence fee, indicate a direction of travel within UK media policymaking towards the latter. As will be outlined in more detail later in this thesis, the LDRS funds local newspaper and other coverage of public bodies such as councils, albeit not yet courts. In this thesis I will argue that, in the context of local court reporting specifically, we should indeed consider public interest local journalism to be a merit good, and that the scope of such journalism should include regular, high-quality coverage of local courts.

The impact of journalism on levels of civic engagement is the subject of competing scholarly accounts. A so-called 'media malaise' has been seen to exist since the 1970s, when critical news coverage of American politics was blamed for lowering trust in the political system (Robinson 1975). This notion blames journalism for negative trends such as reducing political participation and the dumbing down of political discourse. Within local journalism, the concept of 'media malaise' has been connected to the idea of a 'democratic deficit' or 'media desert', seen to emerge

when a geographical area loses access to a regular supply of original local journalism (see Hackett and Carroll 2006, Abernathy 2018 and, in the UK context, Ramsay and Moore 2016, Howells 2016, Coughlan 2019).

Optimists have fought back against the malaise narrative, arguing that a trend such as tabloidsation, in which news is presented in a more sensational, populist form, are harmless or even beneficial, in so far as it can make public interest news more accessible to a broader audience. Considering local newspapers in the UK, the largest publishers of local press titles regularly claim the more populist online versions of their brands far outstrip losses in print circulation, giving them a far larger audience than was once the case (see Cairncross 2019). But even optimists acknowledge challenges such as declining voter turnout and the influence of money in election campaigns, especially in the US (Hackett 2005).

Norris (2000) offered an alternative viewpoint, describing a 'virtuous circle' in which the media can maintain and even enhance political knowledge and participation. She argued key functions of journalism, such as acting as a civic forum for debate and fulfilling a watchdog role, were being constrained because of increasing criticisms of the news media. Norris argued that less political news was not necessarily a bad thing and that it was male, elitist conceptions of what news 'should' be that were suffering from the 'malaise'. Stromback and Shehata (2010) found evidence to support the 'virtuous circle' hypothesis, concluding that interest in politics has a positive causal impact on attention to political news, and in turn attention to political news has a positive causal impact on interest in politics. Yet the relatively optimistic standpoint of the 'virtuous circle' is something of an outlier, with the idea of a 'media malaise' having become an orthodoxy (Hackett 2005). For all the value in the 'virtuous circle' approach, asserting that the media is not solely to blame for the problems of mature western democracies, does not counter evidence pointing to a decline in participation in conventional politics (Wahl-Jorgensen 2007).

Recent studies have rejected the notion of a binary choice between the 'media malaise' and 'virtuous circle'. Avery (2009) argued that exposure to political media coverage discouraged trust in politicians in some circumstances, but promoted it under others, most notably with those with higher levels of political trust becoming

more trusting through reading newspapers, but less trusting after viewing television news. Similarly, Curran et al (2014) argued both the 'media malaise' and 'virtuous circle' approaches needed to change to reflect more nuance among different forms of media, noting for example how public service television seems better at fostering civic engagement than commercial outlets. However, it is commercial outlets in the form of local newspapers which are the main subject of this thesis, and it is the way in which such outlets ought to cover the courts which will be examined next.

1.6 Normative coverage of the courts

Having established claims about the importance within local journalism of both acting as a watchdog and keeping the public informed, I will now consider what such normative court coverage might look like. Within the context of local court reporting, the press should aim to report fairly, accurately and contemporaneously on cases of significance occurring within the circulation area of a local newspaper. To this end, a newspaper reporter should physically attend the courts in question to report on those cases, helping that journalist act as an independent verifier of factual information (Nerone 2012), and allowing them to fulfil the normative watchdog role. It is useful for this journalist to be a court specialist, so they can develop the knowledge, skills and contacts which allow them to cover their beat more efficiently and accurately. Within English law, having physical access to the courts is one of the ways in which journalism is given special treatment, especially where journalists can attend hearings such as proceedings in the youth court or family court, which members of the public are not allowed to observe (Danbury 2014). This physical presence helps a newspaper avoid being obliged to rely on second-hand information from those involved in proceedings such as police, prosecutors or others with a vested interest (Davies 2009, Wagner 2012). Indeed, it helps provide scrutiny of those important institutions, allowing the local press to fulfil its watchdog role.

A court reporter's articles should not only provide watchdog-style scrutiny of the justice system but should also help keep the public as well as civic leaders informed about court cases. This helps the local news media fulfil the normative journalism function of acting as a public informer. As already discussed, it is impractical for

many citizens to go themselves, so court journalists must act as the public's eyes and ears (Mulachy 2011, Tilley 2014). The news media is therefore central to providing information about, and forming people's understandings of, the justice system (Hough and Roberts 2004, Moran 2014, Marsh and Melville 2014, Taras 2018). This helps to ensure that justice is 'seen to be done', a phrase often cited by newspaper editors and journalists as a rationale for providing court coverage (Pape and Featherstone 2005). Should journalists not be present at cases of significance, there is a developing risk that aggrieved parties or other players who are not reporters may seek to fill this gap by using journalistic-style methods to further their own political agendas (Elsrud, Lalander and Staff 2016, Langdon 2017, Rusbridger 2018). Examples include the right-wing political figure Tommy Robinson, whose case will be considered in more detail in section 6.2 (see also Finnegan 2019). The 'coverage' of court proceedings published by such individuals or organisations is much less likely to meet the normative standards of court journalism.

Local court reporting can have an impact far beyond the confines of a geographical area. Perhaps the most notable example is under-appreciated because it concerns arguably the most significant journalistic story in history, Watergate. *Washington Post* reporter Bob Woodward, who typically covered the local police, attended a court hearing on a Saturday morning and heard one of the burglars arrested at the Watergate building admit to having worked for the CIA (Bernstein and Woodward 1974). Neither Woodward nor his colleague Carl Bernstein were political reporters, instead covering local news for the paper's 'metro' section. While a break-in at political party's Washington headquarters would have been notable enough on its own to feature at least briefly in national news, I would argue it was the physical presence of Woodward in the court building as part of his local reporting duties that led to his discovery of key details that began the unravelling of that scandal. At the time, Washington political reporters were memorably characterised as being *The Boys On The Bus*, covering the same stories in a similar fashion, leading to a lack of variety in news coverage and, potentially, stories being missed (see Crouse 1973). Without the professionalism of a local reporter covering the courts and following up on an interesting lead, it is not certain that journalism's greatest triumph would have happened at all. An additional broader impact of any decline in local court reporting is the lack of historical record. As Thornton (2017) argues, with transcripts of court

cases routinely destroyed after a few years, the lack of newspaper stories about trials raises the prospect that research into potential miscarriages of justice might also become much harder, further eroding another form of scrutiny of the justice system.

1.7 The UK local newspaper market

This thesis is focused on court reporting in the UK amid the financial crisis in local journalism, and I will now consider that news market. Court reporting has traditionally been a central feature of the local printed press and it is that area of journalism which has faced arguably the greatest financial challenges. In the UK, most local newspapers are concentrated under the ownership of one of the major local press companies. The most significant in 2021 include Reach, National World, Archant and Newsquest. These have sometimes been referred to as the ‘big four’, although Reach, previously known as Trinity Mirror, is notably bigger than the others, while other companies also continue to produce local newspapers. Each of these publishers has seen their traditional business model come under “extreme pressure” (Carnegie UK Trust 2014, p1) as part of a “cataclysmic financial crisis” in journalism (Barnett 2010a, p13). Between 2007 and 2017, the total weekly circulation of local newspapers in the UK more than halved from 63.4 million copies to 31.4 million, and the number of titles fell from 1,303 to 982. Including both national and local press, advertising revenue in printed newspapers declined from £4.625 billion to £1.432 billion over the same period, with a corresponding increase in digital advertising only amounting to £487 million (Mediatique 2018). Advertising has been a key revenue source for local newspapers since their earliest days (Temple 2008, Matthews 2014). They became financially successful by attracting large numbers of readers, a commodity they could then sell to advertisers which helped make them among the most profitable of all businesses (Edge 2019). This means the decline of the advertising market in the news industry has been felt especially keenly in the local press. This financial crisis has led to notable cuts in staffing, with the number of journalists employed by newspapers falling from 23,000 to 17,000. Reach, the largest of the ‘big four’, was responsible for more than 1,000 job losses. These

mostly came from its local titles, as part of a series of restructurings across a decade, and latterly a response to the Covid-19 pandemic (Mayhew 2020).

Forces behind this decline of the local newspaper business included corporate debt, a profit-driven mentality, a sharp drop in classified and display ads, and increasing competition from new online-only players in the market and, in turn, cuts in reporters and coverage (Kennedy 2013, Brock 2013, Nielsen 2016b). More general societal factors include the growth of bigger cities and commuting leading to a decline in interest in traditional aspects of local news concerned with neighbourhood relations (Rouger 2008). Newspapers' reliance on expensive production and well-paid employees meant they were swiftly outmanoeuvred as the popularity of online journalism grew, while a "group think and a stubborn belief that people valued newspapers held sway in many newspaper boardrooms" (Hill 2016, p7). Despite savings in the variable costs of distributing content as newspapers have switched towards online from print publication, the fixed costs of paying journalists' salaries have remained relatively high (Nielsen 2016b). The 2008 financial crisis meant that what had been a gradual decline arguably typical of a mature industry, snowballed into something more dramatic (Kurpius, Metzgar and Rowley 2010). The subsequent recession had a particularly severe impact on UK local papers which had a higher reliance on advertising revenue than circulation income (Edge 2019). Local titles have often struggled to maximise advertising revenue from mobile readers, because of an uneven quality in how newspaper websites load on smartphones (Heckman and Wihbey 2019).

Newspapers have typically responded by increasing prices to gain additional circulation revenue from loyal customers, in turn prompting concern such policies have hastened overall falls in print readership, feeding the narrative that 'print is dying' (Chyi and Tenenboim 2019). Companies which might have considered leaving the newspaper business have also faced 'exit barriers' such as a lack of buyers, and financial commitments including pensions, leaving them to remain in an increasingly hostile environment (Hill 2016). For Picard (2014), it has become easy to be pessimistic about the future of journalism, for so long as it is equated with the fortunes of such legacy institutions, while calls have been made for more charitable and not-for-profit ownership of local titles (Barnett 2010b, Greenslade and Barnett

2014), although larger ones have taken the opportunity presented by digital distribution to become quasi-national or even international (Nielsen 2016b). Yet whether such global scalability would be an option for smaller UK daily titles which produce locally-focused court stories is questionable.

The UK's 'big four' have been particularly criticised for compounding their problems through expensive acquisitions and neglecting local communities, with content increasingly produced at centralised locations (Williams 2013, Media Standards Trust 2014, Moore 2015, Hutton 2018). Editorial cuts have been so severe as to risk choking off the democratic contribution of local journalism (Cawley 2017). However, despite dire predictions of the 'end of print' (eg Enders 2011), relatively few UK local daily newspapers, as opposed to weekly or free titles, have closed altogether. Exceptions include the *Oldham Evening Chronicle* as described in section 1.2, and the *Liverpool Daily Post*, although its sister title the *Echo* has endured. This suggests the sector has proved surprisingly resilient (Edge 2019), even if staff cuts mean the titles which remain have arguably been hollowed out. They remain valued by readers, with the *Reuters Institute Digital News Report* finding the local press is more trusted than all UK national papers save the *Financial Times* (2019).

The story of the newspapers now published by National World perhaps best exemplifies the turbulence of the UK's local newspaper market. At the time the interviews for this study were conducted in 2017, titles such as the *Yorkshire Post* were owned by a company still in its former guise as Johnston Press. From a 35% profit margin in the mid-2000s (Engel 2009), when it bought *The Scotsman* and its sister titles for £160 million, JP collapsed into administration in 2018, by then worth just £3m, with assets transferred to a new company, JPI Media (Fraser 2018). It changed ownership again at the end of 2020, sold for £10.2m (Ponsford 2020), re-emerging in 2021 under the name National World. Its Irish investments suffered a similar loss in value (Cawley 2017). While perhaps the most remarkable decline experienced by a member of the 'big four', JP was not alone in this dramatic reversal of fortune. Yet despite falls in circulation, staff cuts and savings in other areas meant the 'big four' were still turning healthy profits of well over 10%, even in the aftermath of the economic shock caused by the 2008 global financial crisis (Enders 2011). For Barnett (2010b), this was not altogether surprising, as publicly traded news

corporations naturally come under pressure to cut spending on journalism to maximise shareholder dividends. Yet the scale of the retrenchment of the local press since that time, means that notable towns with very little surviving newspaper coverage, such as Scarborough and Port Talbot, have been identified (BBC 2015a, Howells 2016).

Platform services have inexorably moved into the local media space, further weakening the prospects of established news companies (Moore 2015). Snippets from and links to local newspaper articles routinely appear on these platforms. They have attracted display and classified advertising revenue that would previously have been spent with the originators of that content. Publishers have complained their relationship with the platforms is weighted unfairly in favour of the tech giants (Cairncross 2019), something tacitly acknowledged through limited funding for local journalism made available by Google (Sweney 2015) and, latterly, Facebook (Waterson 2018). Industry figures have called for such subsidies to be extended to local court reporting in the UK (Walker 2018), although the effectiveness of such schemes has been questioned (Bell 2019). The UK's online advertising industry is larger than the next three European markets of Germany, France and Russia combined (Adshedd et al 2019), which further helps to explain why the financial headwinds facing the UK's local press have been particularly severe. Continued uncertainty about the business prospects of the primary employers of local journalists, continues to cast doubt on the long-term sustainability of the practices of court reporting.

1.8 The Cairncross Review

The challenges faced by journalism in the UK in general, and local newspapers in particular, were examined by Dame Frances Cairncross as part of an independent report commissioned by government and published during the writing of this thesis. Its central aim was "to examine the current and future market environment facing the press and high-quality journalism in the UK" (Cairncross 2019, p114). The review paid almost no attention to court reporting. This was a surprising silence, considering the centrality of reporting the courts to the discourse around the value of local

journalism. The report itself did acknowledge “the proceedings in a local magistrates’ court” alongside councils as being a key area of “public interest news” of great significance to democracy, albeit perhaps not always of much interest to the public (Cairncross 2019, p17). But aside from a paragraph addressing the preliminary findings of this thesis (Jones 2018), court reporting was the sole subject of just one other paragraph in the entire 157-page report. This may in part reflect the relative lack of research into court reporting, a silence which this project aims to address. Yet I argue Cairncross was an opportunity missed to strengthen the reporting of local courts.

Among the more significant recommendations was a proposal for more direct funding of local public interest news, based on an expansion and refinement of the LDRS. Another was for a new regulator to address concerns about the relationship between news publishers and online platforms (Cairncross 2019). The BBC’s Director General, Lord Hall, suggested evolving the LDRS into a Local Democracy Foundation to allow for contributions from technology companies and others (BBC 2019). The government indicated that while some of the proposals might be brought forward quickly, others, including the potential broadening of the LDRS, would require further consultation (Hansard, 12 February 2019). The eventual response, delayed by the 2019 general election, rejected government funding for an expanded scheme, putting the ball back in the court of the journalism industry (DCMS 2020), at a time when the Covid-19 outbreak has left local newspapers in an even tougher financial position.

Cairncross was unsympathetic to the plight of the major local publishers, writing that the ‘big four’ continued to generate profits, and that much of that was being spent on, in the case of JPI Media, as it then was, paying off debts accrued by past acquisitions of newspapers, and with Reach, addressing large pension liabilities. Those and other publishers have “reduced staffing, closed local offices, and have less money available for investment in the substantial innovation that a successful digital future requires” (Cairncross 2019, p5). The ‘big four’ made a joint submission to Cairncross which they declined to allow the review to publish, although it is known they asked for a dramatic increase in the number of LDRS local news reporters paid for with BBC money, from 150 to 1,737 (Cairncross 2019, p85). This was

accompanied by a promise that such resources would be spent on journalism, and not profits (Snoddy 2019). Considering the reluctance with which many in the newspaper industry acquiesced to the scheme when it was first proposed in 2015, on the grounds that it marked an unwelcome step towards the state-funding of privately-run media companies, this was a remarkable about turn. I argue this emphasises how the urgency about the financial crisis in the UK's local press has accelerated.

Recommendations on court reporting were absent although the report did note ongoing efforts to improve infrastructure such as wifi access and the provision of court lists and moves towards more online courts and digital justice (Cairncross 2019). Observers responded with a call for more consultation, noting how such discussions appear to be limited to a small number of media representatives (Townend 2019). While any improvement in facilities for court reporters would be welcome, both Cairncross itself and the government's response were superseded in this area by the far wider adoption of online hearings in the courts during the 2020 Covid-19 outbreak. It is unclear the extent to which this will lead to lasting changes in the typical working practices of court participants, including journalists. The News Media Association, which represents publishers, did offer suggestions for improving transparency, including support for further use of cameras, better access to court lists and other documents, and more (News Media Association 2018). I suggest this indicates the local press companies would welcome most if not all of the recommendations which I will make later. I hope this thesis contributes to these ongoing debates.

1.9 Structure of the thesis

This introduction has given an overview of themes which will be explored in the thesis. Chapter 2 is a literature review, with a focus on journalism studies and research into local journalism and news production. This includes studies of newswork which forms a body of research which this thesis builds on. Formulating the literature review in these terms sets the stage for findings gleaned from the series of semi-structured interviews carried out with court reporters, allowing me to

layer their experiences in this specific area of newswork on top of insights from broader studies conducted in the past.

Chapter 3 outlines the research questions, and the chosen methodological approaches of historiography and semi-structured interviews. The chapter will justify those choices and reflect on the strengths and potential limitations of their use.

Chapters 4 to 6 are the findings chapters. Chapter 4 traces the development of court reporting through a historiography. This provides the context for chapters 5 and 6, which utilise the findings of the semi-structured interviews with court reporters. They are asked to consider developing trends in their newswork, especially related to the affordances and constraints of digital technologies, and amid the financial crisis in the local newspaper market. They are further questioned for perceptions on why they believe their job is and remains an important one, and for reflections on legal restrictions which impact their work. Reporters are also asked for proposals on how their jobs might be made easier, to help inform recommendations in the concluding chapter.

Chapter 7 is the conclusion of the thesis. There will be consideration of its contribution to relevant academic discourse, in particular journalism studies. The central points which emerge from the findings will be further analysed. Then, I will make a series of recommendations informed by those findings, with the aim of stimulating further debate about the future of local court reporting in the UK, and to help all interested parties navigate its future in a way that maintains and enhances coverage of our courts.

Chapter 2: Local journalism, crime and the courts

2.1 Overview

Court reporting has traditionally been an important feature of the UK's media, and its local newspapers. I will now address relevant academic work which will inform this project. The creation of this literature review used the narrative method, defined as a style in which a body of literature is summarised and evaluated qualitatively (Aveyard and Bradbury-Jones 2018). I followed a strategy described by Oliver (2013). The first step was a preliminary survey of literature relevant to the title, using keywords including 'court reporting' and 'local journalism'. Next, publications from related fields were identified, and so work perhaps better classified as sitting within law, criminology, media sociology and politics is considered in this chapter, along with journalism and media studies. This helps to ensure a wider range of relevant sources outwith the narrower confines of journalism studies. Then, to organise the review more coherently, the literature was subdivided into broad areas. Three general themes were identified, those of local journalism, crime and the courts, and the job of being a journalist, the latter incorporating more specific work on beat reporting and the courts. I felt the narrative approach was most appropriate for this study rather than the more quantitative, scientific systematic method. This was both because of the qualitative nature of much of the relevant literature, and because the style has been considered more appropriate for relatively new researchers due to its flexibility and its facility to adapt as the review progresses (Kiteley and Stogdon 2014).

As already implied, this thesis fits best within journalism studies, a field relatively young in academic terms (often considered to have begun with White 1950, see also Wahl-Jorgensen and Hanitsch 2009), although it is important to consider it as a distinct scholarly area because of journalism's particular function in the sourcing, production and sharing of information about public affairs (Carlson et al 2018). In the UK, its emergence as a field discrete from media and cultural studies, and journalism training, is more recent (Calcutt and Hammond 2011), helping to explain why certain gaps may exist in the literature. This includes local journalism and local court reporting, which underlines the rationale for this thesis as a contribution to

knowledge. Journalism studies is characterised by its multidisciplinary nature and it integrates and synthesises approaches from established disciplines (Peters and Broersma 2018, Steensen et al 2019), also a feature of this project, not only in this literature review but also in the methodological use of historiography in chapter 4. Zelizer (2009) critiques journalism studies as featuring too much of this sort of borrowing from other disciplines, hindering the development of a shared knowledge considered crucial to general academic inquiry. However, the increasingly blurred boundaries of journalism itself make it difficult to examine without drawing on a range of perspectives (Steensen and Ahva 2015). Considering the relevance of other fields to the legal, sociological and political contexts of court reporting, I believe consulting such a range of multidisciplinary perspectives is a strength of this thesis and of this literature review, rather than a weakness.

2.2 Local journalism and crime reporting

2.2.1 Local journalism

The scope of this thesis is focused on the work of journalists who cover the courts in local media. Local journalism, as defined in section 1.3, is an area relatively under-examined when set against the amount of research conducted into more glamorous areas of the national media (Bromley 2005, Canter 2012, Wahl-Jorgensen 2019). There has been particular concern at a relative lack of recent research into UK local journalism (Harte, Howells and Williams 2018), while a similar shortfall has been noted in Germany (Arnold and Wagner 2018), although as Usher (2019) suggested, studies of local journalism in the US are more plentiful, not surprising considering its traditional lack of national newspaper titles. Examining academic studies and other accounts of UK local journalism which have been published, allows us to trace more about how the sector has developed, before and during the turbulence in the local press market outlined in section 1.7.

The bitter Wapping dispute of 1986, and its predecessor in the UK's local press involving proprietor Eddy Shah (Neil 1996), marked a moment at which the craft skills of newspaper workers ceased to be a guarantee of future work (Marjoribanks

2003). But as staff reductions were made this began to have an impact on the working lives of reporters (Pilling 1998, Schultz and Voakes 1999) and the volume of stories published about certain locations (Townend 2015, Howells 2016). Such concerns have been identified in the UK and elsewhere, with politicians frustrated at what they perceived to be a lack of good journalistic output, with not enough analysis (Engan 2015). Traditionally, cities and towns often had competing titles, obliging them to keep editorial standards higher (Engwall 1978). But one trend of the local printed media has been the gradual erosion of that through corporate consolidation (Franklin and Murphy 1991, Schultz and Voakes 1999, Schulhofer-Wohl and Garrido 2013), as newspapers went from being relatively simple, local businesses into companies that were far more complicated, leaving them ripe for mergers (Jones 2009). Newspaper chains reduced opportunities for journalists to enjoy career mobility with more dissident voices ending up simply conforming to a more corporate agenda or leaving the industry (Hackett and Carroll 2006). This was part of a general reduction in local editorial autonomy, which developed in the UK alongside individual contracts for journalists, and increased pressure from alternative sources of news such as freesheets and more local broadcast outlets (see Franklin 1997, 2008, Bromley 2005), even before the online revolution had really taken hold. In places around the world where local newspapers have closed, this has been linked to falls in voter turnout and campaign spending in local elections, as well as a greater likelihood that incumbent politicians will win re-election (Schulhofer-Wohl and Garrido 2013, Baekgaard et al 2014). Local papers that remain have arguably been superseded by local broadcast news as a forum for discussion of key issues, in part because local radio and TV have not yet suffered the same financial decline as has affected the printed press (Firmstone and Coleman 2014, Wadbring and Bergstrom 2017), although more use of centralised programming and voice-tracking has affected the 'localness' of local commercial radio (Napoli 2019).

Nielsen (2015a) contends there is a paradox at the heart of our understanding of local journalism. On the one hand scholars often view it as not very good, and at worst damaging to democracy in that skirts controversy and avoids proper scrutiny of local institutions. Complaints about the quality of the local press are a regular theme of studies of local journalism (Pilling 1998, Townend 2015), with supine coverage of potentially contentious events serving to favour the status quo (Frost 2015). Local

papers also use the national wire PA to help fill pages (Clough 2000, Williams and Franklin 2007), a service itself criticised for a perceived decline in standards (Whitaker 1981, Davies 2009). Outwith academia, a range of media, trade press and union accounts habitually bemoan the quality of the UK's local press (recent examples include Di Stefano 2018, Hutton 2018, Mayhew 2018, NUJ 2018, Waterson 2019, and for a counterpoint see Higginson 2018). Although even well-regarded online-only digital publishers have been obliged to cut staffing levels, suggesting that even the most adept journalism performers have struggled financially in today's media marketplace (Abramson 2019, Bell 2019). Yet, as Nielsen (2015a) also argues, it can also be said that local journalism is especially important, because it provides information about local affairs and binds communities together and can at least somewhat hold those in authority to account. Scholars have argued that local journalism is stronger when trying to reflect local areas, with reporters often seeing their titles as the voice of those communities (Franklin and Murphy 1991, Matthews 2014). Citizens who perceive their local title as being particularly relevant and as 'our paper' are more likely to read it (Nielsen 2016a). The ability of reporters on British local papers to get out of their newsrooms and into the areas they cover has been highlighted (Esser 1998) as a key strength of the traditional UK system of media work. With the notion that local journalism plays a significant civic role to the fore, and despite its shortcomings, I would argue it is an area of journalism worth of continuing and deeper academic scrutiny.

The extent to which local media maintains an interest in providing coverage of the courts is a key theme of this thesis. But before narrowing the focus to the courts later in this chapter, first I will consider perspectives on media coverage of crime.

2.2.2 Covering crime

Crime has been a staple of UK newspapers since the 18th century and rose to prominence in the 20th when sensational stories and loose ethics on the part of crime reporters were commonplace (Roodhouse 2018). Editors and journalists have traditionally covered crime because they believe their audience is interested in it (Walker 1996, Pape and Featherstone 2005, Røssland 2007). That holds true for

newspapers even though advertisers may be less keen on seeing their products alongside stories about unpleasant events (Tunstall 1971). These include violent and sexual offences which are significantly over-represented in the press (Ditton and Duffy 1983, Moore 2014), although in the case of sexual assaults, there is evidence that local newspapers report crimes more responsibly than other media outlets (Sacks et al 2018). In the UK's local press, newspapers have responded to continuing interest in crime coupled with pressures on staff time, by prioritising not just sexual offences, but also other eye-catching cases involving very young offenders, serial criminals and 'public order' offences of the sort thought most likely to most resonate with readers (Aldridge 2007). This suggests the tendency to sensationalise crime is not a purely historical practice.

Only a small number of media consumers who read a story about a serious crime will ever experience one directly. Crime news therefore offers an opportunity for media companies such as local newspapers to speak on behalf of a community in advocating a response, while warning of the consequences of deviance, and praising established norms of behaviour (Chibnall 1977). This does not mean that local newspapers tell their readers what to think of crime stories, although this may sometimes happen. Wykes (2001, p203) pointed to the power of "familiar and satisfying narrative forms" of journalism to help shape readers' understanding of crime. It was her contention that the UK press has routinely upheld the interests of conservatism. Indeed, those who rely on their local paper for crime information are typically more pessimistic about crime issues (Smith 1984), while TV viewing in general, and watching local TV news, has been linked to an increase in fear of crime, even where this is not related to actual local crime rates, described as cultivation theory (Gerbner 1969; for a broader review see Morgan and Shanahan 2010). An over-emphasis in the press on sensational crimes and a generally pro-police standpoint have also been widely noted (see eg Marsh 1991). Dolliver et al (2018) expanded cultivation theory, finding that increased consumption of crime news can amplify support among the public for tougher criminal justice policies such as the death penalty, suggesting that reporting the local courts could have a similar effect in a localised area, although much of the published research in this area relates to American local TV news rather than UK local newspapers.

News coverage of law and order has often been criticised for a dramatic style of reporting on rare crimes such as the 1993 murder of toddler James Bulger by two older children (Franklin and Petley 1996, Walker 1996, Jewkes 2015), sometimes focused on the perceived role of violent entertainment products (Young 1996, Hill 2001) or criticism of judges for an alleged leniency in sentencing, in turn constraining politicians and policymakers (Berry et al 2012). In their study of newspaper coverage of crime in the early 1970s, Hall et al (1978) argued the media played a significant role in turning the issue of 'mugging' into a topic for national debate, reproducing dominant ideologies because of reasons to do with the way journalistic content is produced, such as news values, of which more in section 6.3, along with pressure of time and the availability of elite contacts. This landmark study further claimed that, for a time, the 'mugging' label was used to bring many disparate and unconnected crimes to broader attention because they had, at least temporarily, become more newsworthy than they otherwise would have been. It described as 'primary definers' political actors who enjoy easy access to hard-pressed journalists working against the clock, which in turn allows those sources to help set the terms of public discourse on a particular issue. However, a notable silence of the study was a failure to appreciate the specific context of the newspaper market at the time, in particular the resurgence in crime reporting within a tabloid environment shaken up by Rupert Murdoch's takeover of *The Sun* (Tunstall 1971, Chibnall 1977). In the period immediately before the study, newspapers had begun to compete more fiercely for crime stories with extra journalists assigned to the beat. Indeed, general media interest in crime continued to expand throughout the 1980s (Schlesinger, Tumber and Murdock 1991), including in the UK's local press (Franklin and Murphy 1991). More recent research has found *The Sun* continues to report on crime, for example domestic violence, in a more sensational fashion than its more sober broadsheet counterparts, even if such coverage conflicts with its own campaigns on the same issue (Lloyd and Ramon 2016).

The police have long played a significant role in the flow of crime information to journalists (Tunstall 1971). A key critique of media coverage of crime outlined by Hall et al (1978), was that journalists were satisfied to reproduce what they were being told by official sources, and that because the media is 'in the know' in the way members of the public cannot be, this is central in forming public opinion on a matter.

The 'mugging crisis' took place when the UK faced a variety of law and order threats, including unrest in Northern Ireland, other domestic terrorism, and civil rights protests. Hall et al (1978) were notably critiqued for ignoring ways in which sources might organise themselves in order to influence media coverage (Schlesinger, Tumber and Murdock 1991), while Chibnall (1977) argued the limitations of crime reporters were brought into focus by the Angry Brigade bombings of the early 1970s, because crime specialists had little experience of covering political violence and were happy to accept what police sources were telling them, in turn leading to the attacks being covered as a crime story rather than a political one. This implies crime reporters who produced much of the material analysed by Hall et al, and the court reporters interviewed for this study, may be less capable of putting their stories into a broader societal context, because of their more blinkered focus on their own beat.

It has been argued crime news has changed significantly since those studies. Wardle (2007, 2008) suggested newspapers have increasingly tried to influence public discourse around criminal matters, with more emotive coverage focused on rare crimes. Phipps-Bertram (2014) noted in high-profile cases, national press coverage focused on defendants, while local newspapers included more detail about victims and their families, something that we might attribute to the community spirit of local journalism already discussed. For Young and Hermida (2015), familiar practices in crime reporting such as featuring tearful relatives in news coverage exist to supply the emotional and human interest context to stories. Similarly, local TV and radio editors have been almost obsessed with finding 'real people' to appear on their programmes, and to minimise official voices, perhaps because editors perceive those sources as having less credibility with the public (Anderson, Coleman and Thumim, 2015). Yet despite the changing contexts of journalism, the relationship between the police and reporters remains symbiotic and in favour of the police (Mawby 2010), with the Operation Elveden corruption investigation into allegations of payments by journalists to police and other public officials, and the general aftermath of the Leveson Inquiry into press standards, considered to have had a further chilling effect on informal contact between press and police (Campbell 2013). Those will be discussed further in section 5.7. Franklin (2008) described how journalists with relatively little video training are obliged to create such content for local newspaper websites, in turn leading to more pre-packaged material, such as CCTV clips sent

through by police press offices, being republished virtually 'as is'. This suggests local journalists have even less capacity to put crime stories into context than in the 1970s. This is in part because a lack of technical skills effectively cedes control over the content of published videos to the 'primary definers' of the police press office, and because the speeding up of the news cycle and virtually unlimited space afforded by content-hungry websites and social feeds means a greater volume of crime stories would be considered newsworthy than was once the case. The increasing pressure on journalists and the changing structures of local journalism have been the subject of research, which will be considered next.

2.2.3 Media deserts and the 'democratic deficit'

Predictions for the future of journalism, and especially local journalism, have become increasingly stark. McChesney (2016) argued it is in a "deep structural crisis" that could be a "death spiral" (p129). More soberly, Nielsen (2015a) considered even as the overall quantity of media available to citizens increases, there will be less independently reported, genuinely local news. The perceived difference between the kind of news content supplied by media companies, and that which is demanded by consumers, has come under scrutiny. Bockowski and Mitchelstein (2013) described this as a 'news gap' adding that it was hidden in the past because of the market power of leading news companies.

With broadcasters less able to rely on local newspapers to do some of the legwork of journalism, such as reporting on court cases, it is unlikely they will fulfil this role themselves. While they have been more resilient financially than their press cousins, broadcasters tend to be organised on a more regional rather than local basis and devote much less time and effort to doing actual local journalism (Nielsen 2015b). In the UK, regional TV output remains widely viewed, yet it is criticised for being anodyne with a focus on 'people-led' forms of storytelling and magazine-style items rather than hard news. This is in part a legacy of having to cover large geographical regions as well as the resource-intensive nature of producing television news (Harrison 2000, Aldridge 2007), while the provision of commercial regional TV news on ITV has also faced financial difficulties (Barnett 2010a). The inability of

broadcasters to mitigate the dwindling resources of newspapers, has led to the prospect of 'news deserts' or 'media deserts' defined as geographical areas lacking access to fresh local news and information (Ferrier, Sinha and Outrich 2016). In the UK, Howells (2016) used the term 'news black hole' in a comparable way, while Townend (2015) warned citizens were being "starved of information" (p85). Evidence from the US suggests this experience is already pronounced there, with 1,400 cities and towns having lost a local paper since the mid-2000s (Bauder and Lieb 2019) and 200 counties now left without any local newspaper at all (Abernathy 2018). Citizens affected are often most likely to be among the poorest and most isolated, for example elderly people and those in rural communities. Some studies (see also Anderson 2013, Firmstone and Coleman 2015, Napoli et al 2017) have used the terms 'media ecology' or 'news ecology' to attempt to trace ways in which information flows around a local area, as well as which actors are involved as producers of news as well as intended consumers. Usher (2019) noted such research had been useful in measuring the availability of news in a community but has done less to consider the ways in which news media connects to other local resources.

The mere presence of journalists in a locality, and at key events such as court hearings, has been identified as important in and of itself. As discussed in section 1.5, Anderson, Bell and Shirky (2014) described this as 'scarecrow journalism', claiming that having reporters in a community "is often enough to constrain bad behaviour on the part of powerful institutions" (p55). Even where local titles survive, staff cuts have led to claims that many are now 'ghost newspapers' (Abernathy 2018), meaning they are much less able to act as local scarecrows, with small, generalist editorial teams unable to provide adequate scrutiny of more specialist topics (Culver 2014). In areas where a local editorial office has closed and journalists are obliged to cover events more remotely, a 'distance decay' has been noted, in which the extra time and effort required to cover stories makes it less likely such reporting will take place (Karlsson and Rowe 2019), although the impact on this of the growing trend of homeworking, accelerated by the Covid-19 pandemic, remains to be seen. In addition to their watchdog role, audiences also expect local media to be engaged in community events (Nielsen 2015a), a further normative function hard to maintain at previous levels in a hollowed-out news organisation. Local news

remains genuinely informative, even increasingly so, but this has led to a gap between well-informed citizens who closely follow their local news, and those who ignore it. Yet, as the platform society has developed, celebratory accounts of the potential for new entrants in the market to help fill that gap have proliferated.

2.2.4 Independents, hyperlocals and the 'digital interlopers'

A notable prediction of how technological change and the proliferation of platforms would allow smaller players to shake up the media market was provided by Shirky (2008), memorably summarised by a switch in mindset from 'why publish this?' to 'why not?'. That is, as barriers to entry to publishing media content reduce, the possibility for individuals to complete tasks previously the preserve of media professionals, increases. However, the general idea of small, independent media outlets seeking to fill perceived holes in local news coverage did not begin in Silicon Valley. During the 1970s and 1980s, there was a growth in alternative printed publications in several UK cities, reflecting various local contexts and priorities (Whitaker 1981, Harcup 2012). This alternative local press had run out of steam by the 1990s, with the increasingly competitive local media market, a lack of capital resources and an inability to invest in modern technology all blamed (Franklin 1997). This was a blow to local democracy as these independent titles often raised issues later followed up by mainstream papers (Temple 2008). Today, as outlined by Jones (2017), 'alternative media' is a broad term that can be used to describe a variety of different approaches by groups with a range of ambitions, while different media ecosystems have led to new players of various kinds emerging in certain countries. For Robinson, Brennan and Schiffrin (2015), political upheaval and technological innovation offer fertile ground and, in the US, a wider variety of news startups and partnerships have been noted, with non-traditional publishers playing an increasing role in coverage of local politics (see also Pew Research Center 2014). By contrast in France, government supported for the media has crowded out new entrants, cementing the status quo (Powers et al 2015).

Definitions of hyperlocal have proved elusive (Metzgar, Kurpius and Rowley 2011), although the term has been attached to new, independent media websites, such as

my own *Saddleworth News*, which typically cover geographical areas smaller than legacy outlets. They, along with the adoption of a renewed local focus from some established news companies, have been touted as having the potential to contribute to local media provision (Jarvis 2009, Hartley 2010, Carnegie UK Trust 2014, Media Standards Trust 2014). Hyperlocals have been praised for beginning to perform some important democratic functions, even while their survivability on financial grounds remains in question (Baines 2010, Pickard 2011, Harte 2013a, Hatcher and Haavik 2014, Coen and Jones 2014, Ramsay and Moore 2016), an issue which also effectively ended my own involvement with *Saddleworth News* (Jones 2012), although the site endures after more than a decade online, as *Saddleworth Life*. Williams, Harte and Turner (2015) found stories under the banner of 'crime/legal' only accounted for 7% of UK hyperlocal posts. A later study put the 'local crime' topic at 21%, although again it did not include a separate category for court stories, implying they are rare (Radcliffe 2015 and, in the US context, Kennedy 2013). UK hyperlocals have often been concentrated in cities such as London and Birmingham where legacy publishers still have a major presence, so have done little to address the decline of journalism in other places (Moore 2015). A similar metropolitan focus has been identified in the US (Abernathy 2018), although there are examples of sites covering smaller UK towns, villages and suburbs (Talk About Local 2014). The turnover of sites can be significant from year to year and networks of hyperlocals have come and gone (Harte 2013b, 2014; St John III, Johnson and Nah 2014). Globally, few sites have fully succeeded, although many are considered to do at least one thing well, through focusing on ultra-local community matters (Karlsson and Rowe 2019) or reflecting a founder's background in journalism (Thurman, Pascal and Bradshaw 2012, Robinson, Grennan and Schiffrin 2015). Reliable audience data is also patchy if it exists at all, leading to a further challenge for scholars in assessing the contribution of hyperlocals (Napoli 2019).

Mainstream journalists at legacy companies remain trusted by local officials because their working methods are clearly understood, whereas uncertainty may surround the motives of hyperlocal practitioners (Firmstone and Coleman 2015), with politicians unable to readily identify replacements for their declining local press (Engan 2015). Hyperlocal editors have often embraced the contrast with reporters working for newspapers, criticising them for being too deferential to local institutions and overly

reliant on press releases (Williams, Harte and Turner 2015). But van Kerkhoven and Bakker (2015) argued many hyperlocals were operating in ways which undermined their stated goals of filling a news gap, for example by failing to make clear the difference between genuinely original content and republished press releases. Other studies have found hyperlocal practitioners presenting themselves as conventional journalists, rather than accentuating any alternative approach (Thurman, Pascal and Bradshaw 2012, Le Cam and Domingo 2015). Attempts at collaboration between newspapers and new, independent players have proved mixed, often undermined by the focus of resources on the daily tasks of traditional reporting, as well as difficulties in bridging differences in working practices (Anderson 2013), with legacy newspapers typically slower to utilise innovative technologies than online-only competitors (Paulussen 2016). There is little evidence of court reporting by hyperlocals. On one occasion reported in the UK trade press, a hyperlocal journalist was denied permission to report from a coroner's court while a reporter from a newspaper was allowed to remain (Townend 2010). But no alternative press journalists were spotted during Chamberlain et al's Bristol study, beyond the ones who helped conduct it (2019a).

Larger online-only players have also provided competition for legacy newspapers. The more successful among them have become prominent not by becoming a new home for established journalists, but by fostering new "web-native journalistic talent" (Agarwal and Barthel 2015, p377). While such reporters go along with journalistic norms of fairness and accuracy, others are rejected. Those of objectivity and neutrality are sometimes dismissed as old-fashioned. BuzzFeed has been regarded as the best publisher at melding tech and journalism and was able to raise significant venture capital funding (Brock 2013, Kung 2015). These relatively new entrants to the media market have sometimes struggled for legitimacy among peers and the public, despite making major investments in journalism (Stringer 2018, Abramson 2019), although there is evidence that some of these 'digital interlopers' have increasingly seen their work positively appraised by the traditional core of the field (Eldridge 2019). Yet there is little sign of any such publisher taking a close interest in the daily run of court reporting that is the central concern of this thesis.

Examining research on local journalism, crime and the courts leaves us with a view of an industry, the local press, which is considered important as a central means by which the public can be kept informed of matters of public interest, including court cases. Yet it is suffering significant financial strife. Even if the media is often accused of being too quick to follow the line of police and other official sources in the justice system, without newspapers it is not clear whether there would be very much coverage of the courts at all, certainly not local courts, and so the threat of 'news deserts' becoming drier becomes ever more alarming. Broadcasters and independent local media alike seem unlikely so far to fulfil these functions in anything more than a piecemeal fashion. Therefore, to dig further into the issue of local court coverage, it is the working practices of journalists which we must put under closer scrutiny.

2.3 Journalists and their jobs

2.3.1 The classic news production studies

News production studies have been considered useful as a way of shining a light on 'behind the scenes' practices of the news media, such as the daily routines of news workers, the professional ideologies at work in newsrooms, and the ways in which journalists and others depend on their sources (Cottle 2007). Several notable studies were carried out in the 1960s and 1970s, a unique moment of interest on the part of sociologists in news production. Arguably the most important were those of Gans (1979), Tuchman (1978), Fishman (1980) and Epstein (1973). They are useful to consider here, because they help identify the traditional routines and working practices of journalists, and this thesis is concerned in part with the practices of court reporters today. These ethnographies portrayed journalists as caught between wanting to achieve the normative functions of journalism, and the structural pressures of media workplaces. They revealed news companies as operating in the service of profit and efficiency, rather than democratic knowledge. The exception is Gans (1979), who argued that journalists' adherence to mainstream values and the power of elites as sources, were actually more significant. A second key thread of the four studies identified by Stonbely (2015) is that of a critique of professionalism,

and how that term meant two different things: for journalists, it was about autonomy and objectivity, yet the scholars considered this to be a way in which organisational imperatives were internalised in the service of established power, legitimising the status quo.

Tuchman's study describes news as "a window on the world" through which we learn of what we want to know, need to know and should know (1978, p1). Study of media companies involved in news production and the practices of newswork employed by their journalists is therefore vital to developing knowledge of the ways in which this information is made available to consumers. The significance of the media institutions as a framework by which individual journalists make decisions was highlighted by Gans (1979), who argued that reporters were not free agents when it came to applying news judgments but worked within organisations which allowed them only a limited amount of leeway in decisions around story selection. Gans argued that one factor particular to the study of journalism is the existence of the deadline, which is immutable. In the more traditional media landscape of the 1970s, when reporters might only have to file copy or complete a TV news package once per day, this point might well have seemed particularly apposite. However, in an era of not only 24-hour television news but, importantly for this study, local news websites and social media feeds needing to be regularly refreshed with articles, liveblogs and rolling updates on stories such as ongoing court cases, I would argue the notion of the deadline itself needs updating.

Similar themes were a central concern of Tuchman (1978), who wrote about the importance in daily journalism of time, noting the news media imposes structures on time and space to allow for better planning. Tuchman highlighted that because most reporters work office hours, events taking place outside of those times would need to be considered big stories to get significant coverage. Stories breaking in the afternoon might receive less attention as reporters are assigned their daily duties in the morning. Similar themes were considered by Fishman (1980), who pointed out that reporters face time pressures for finishing stories about events that pay no heed to those deadlines and argued the daily routine of a news worker is what helps that journalist navigate those competing pressures. He noted reporters on beats are obliged to produce certain amounts of material every day, with such journalists

encouraged by editors to think of them as a bottomless pit of stories that can be mined even when nothing big is happening.

The court reporters featured in this study are mostly assigned to that beat full-time, albeit sometimes in conjunction with also covering general crime matters. Fishman's mini ethnography of a newspaper reporter covering both crime and the courts found the journalist only spending about 60 to 90 minutes per day at court, the rest of their time handling leads generated from the police. I would argue a full-time court reporter routinely based outside the office, as is the case for most of the journalists interviewed for this thesis, might have the potential for more flexibility in their work, and story choice, than the reporter followed by Fishman. For instance, the full-time courts beat usually follows predictable hours, something not necessarily true of other common local news specialities. Fishman also argued it is the beat reporter who is best placed to see events in the context of other things, for example a trial that took place following a recent crackdown on crime in that locality. Accepting that point means that the practices described by Franklin (2008) and referred to in section 2.2.2 of an overworked, desk-based general journalist, tasked with turning a CCTV clip from the local police into a publishable story as soon as possible, is a trend likely to lead to stories shorn of that context.

Epstein (1973) focused on the team effort necessarily involved in making television news, outlining the much greater complexity when compared with radio or newspaper stories. He argued influence over the content of stories which might be the preserve of journalist in the field, is diluted by the influence of producers back in the newsroom. This is different to the work of newspaper journalists, especially court reporters. Such journalists typically work alone, and are routinely based outside the office, so have less in person daily contact with their editors even than their newspaper colleagues. Again, we could therefore expect local newspaper court reporters to have more autonomy in their newswork than, say, a local TV journalist. Expectations about what constitutes a good piece of television news, described by Epstein, could mitigate against local TV coverage of the courts, with available video likely to be restricted to images of defendants walking into court and a reporter standing outside delivering a summary of evidence. This paucity of pictures within UK broadcast news coverage of courts is a product of reporting restrictions and,

especially, the long-standing ban on cameras within the precincts of most criminal courts, which will be discussed in section 6.5.

Further insight into this era of American media was provided by Halberstam (1979), who described a dramatic change in the press during the 20th century, as politicians increasingly used broadcast media to communicate more directly to the public, and the media in general began to set the national agenda rather than simply report on the actions of others. Individual reporters became more influential, and those attracted to the career of journalism were in turn better educated and more serious about their work. Later, Halberstam (2000) considered his book detailed a high watermark for American journalism, and that its quality had declined in the face of competition from cable TV and the desire to focus on a more tabloid agenda. Such 'golden age' thinking has been critiqued within the context of the UK's local newspapers, with Franklin and Murphy (1998, p1), arguing such a time never really existed, instead claiming that nostalgia of this kind was merely a longing for the days of ink, hot metal and "long lunchtimes in the high street pub." In a further ethnography of broadcast news conducted in the 1970s, offering a UK counterpoint to the American studies, Schlesinger (1987) noted how broadcasting was a more reactive enterprise than other forms of journalism. Epstein's point about the complexity of television news was supported by Schlesinger's study, which found BBC editors were afforded time to prepare for shifts not required in the simpler medium of radio, a complexity that later increased further through moves to 'bimedia' working (Harrison 2000). However, the relevance of such research for the local press is limited because of the relative simplicity of newspaper newswork, usually conducted solo, especially when compared to the team working required in television news.

The classic news production studies discussed here may be landmarks in the history of the field, but their relevance has receded. They were concerned with working practices in the pre-digital era and were mostly carried out at well-resourced national and international media companies in the US, a contrast to this study's focus on court reporting in the UK's local newspapers. Cottle (2007) wrote that the significance of the studies led to 'orthodox ideas' about journalists which he wrote no longer apply, including a prevailing view that journalists were relatively

homogenous (see also Niblock 2007, Vark and Kindsiko 2019, Bunce 2019). He argued that newsroom studies were a product of their time and should be re-considered because of changes since. Addressing Cottle's critique, Stonbely (2015) concluded those studies took place in a news oligopoly era, which has since been replaced by a much more fragmented system of media outlets, as already outlined in section 2.2.5. This changed media landscape further underlines the potential limitations of relying on these studies as a way of telling us how journalists work today. However, traditional centres of power in the news business have endured, with local newspapers still having a major influence on the news ecologies of cities despite dwindling print circulations (Willig 2012), which again highlights the value of putting such institutions and the reporters who work for them under scrutiny. I will now turn to past studies which have specifically addressed the work of local journalists.

2.3.2 Newswork in the local press

The daily newswork of court reporters in the local press is a central theme of this thesis. Yet well before the journalism crisis, the general content of local newspapers had often been criticised on grounds of the quality of reporters' work and the editorial agenda of titles, amid worries over 'newszak' (Franklin 1997), 'dumbing down' (McNair 2009) and an increasing focus on global lifestyle trends rather than matters of genuine local interest (Niblock 2008). Temple (2008) suggested such claims were difficult to substantiate and that even if papers were devoting less space to local public affairs, such coverage may have become less deferential and therefore better. Yet the perceived declining connection between media and local communities and an increasing amount of generic material produced centrally, packaged with 'local flavour' inserts, has been derided as the 'Walmartisation' of local media (Hackett and Carroll 2006), a reference to the ubiquitous American supermarket. Jones (2009) expressed concern that such newspapers risked simply becoming 'just another business' in a local area, eroding the unique quality of the local press and in turn the prestige involved in working in the sector.

Worries about staffing levels at local newspapers, and the working conditions of the journalists who remain, have persisted for decades. Salaries have often been poor, with a prevailing view that journalists of real talent would eventually graduate to the national press (Aldridge 2007). Even before much digital transformation had taken place, concerns were rife about the “shrinking local newsroom” and an emerging “sweatshop” culture (Pilling 1998, pp56-57), although issues of work and labour have remained on the periphery of journalism studies in general (Cohen 2019). Bromley (2005) argued that by the 1990s local journalism in the UK had already started to become the preserve of white-collar workers who were overworked, office-bound, underpaid and under-appreciated within larger corporate structures. Evidence has increased that the cuts and centralisation of local news operation have had a negative effect on the flow of local information within communities (Townend 2015). While local newspapers have often operated on limited means and performed their normative functions imperfectly, the alarm now being raised is that editorial cutbacks have been so severe as to effectively choke off the democratic contribution of local journalism (Cawley 2017), while the very corporate structures of the news business have been considered exploitative of individual journalists (Deuze 2019). Nielsen (2015b) even goes as far as to suggest local papers may no longer be mainstream media, because most people no longer rely on them for information. Instead, he argues, they could be considered ‘keystone’ media, because of their enduring role in enabling coverage of local stories by other outlets such as broadcasters (see also Pew Research Center 2010). In the context of this thesis, this could mean local radio stations and TV programmes following up cases first reported in the local press.

Perhaps the most memorable description of the developing practices of local journalists was delivered by then *Guardian* journalist Nick Davies, in a book widely cited within academia (2009). He described a ‘news factory’ in which a young trainee reporter spent just three hours out of the office during the working week yet wrote ten stories per day. Davies called this ‘churnalism’, or journalists failing to perform the basic functions of their jobs, and unable to tell the readers the truth about their local area. He complained journalism now often consisted of rapid repackaging of unchecked, second-hand material. Davies also wrote of low morale in the local press, with journalists frustrated by the realities of their jobs, yet also by the profits which continued to be made by the big local media companies. I will now turn to

research which has focused in greater detail on the work of local journalists with responsibility for covering the courts.

2.3.3 Covering the courts

Local newspapers and the local courts are both long-standing institutions. Tracing the relationships between journalists and courts is therefore important in understanding how court reporting has developed. Approaches to court-media relations vary around the world. Courts have used press officers to manage their relationships with journalists since the 1930s (Davis and Strickler 2000, Johnston 2018), and increasing media criticism of judges and their decisions has led to yet more proactive media management in jurisdictions such as Canada (Harada 2018) and certain Australian states (Spencer 2018). The Netherlands (Gies 2005), Germany (Machill et al 2007) and Israel (Bogoch and Anat 2018) are among those where judges are encouraged to communicate directly with reporters, either as de facto media spokespeople or through regular background meetings, to aid the media's understanding of criminal proceedings. This could be particularly helpful in an era where cuts in the journalism workforce have disproportionately affected veteran reporters, more likely to include experienced court journalists, a trend noted in the UK (Phipps-Bertram 2014) and US (Denniston 2007, Policinski 2014). Yet published studies regarding court-media relations (eg Davis 2018) often relate to high-level civil and appeals courts in various jurisdictions, rather than local, criminal, UK court focus of this research, leaving a partial gap in the understanding of the daily work of journalists as they report local courts.

Covering the courts has been described as one of the toughest roles a journalist can be assigned, because they must navigate complex legal and ethical issues with little guidance (Hochberger 2006). Indeed, they may lack detailed knowledge of the courts and legal system (Ericson, Baranek and Chan 1987). The job can also be extremely busy. Drechsel (1983), in an in-depth study of a court reporter's working life, found that the journalist only went into a courtroom on two occasions during a four-day period. The reporter spent the rest of their time getting stories from sources including court staff and lawyers, underlining the crucial nature of the court reporter's

relationship with such sources. Ericson, Baranek and Chan (1987) considered that the primary source of reality for the news is not what happens in the real world but is embedded in the relationships that exist between journalists and sources. In observing a court reporter, they noticed that several days which appeared promising fell apart, including some on which the journalist filed no stories at all. While court, as discussed in section 2.3.1., provides a predictable forum for production of routine news, cases often do not go ahead as planned. Gregory (2005) cited a range of typical reasons why a reporter might have to change plans, such as participants in a case turning up late, potentially newsworthy cases clashing with each other, or even the sinking realisation that a rival journalist has not been seen all day and might be working on a potential exclusive elsewhere. However, in the newsrooms of today, studies of which will be examined further in section 2.3.4., it is harder to conceive of a journalist being routinely allowed to finish a shift with no content to show for it. Those general changes to working practices in journalism have impacted court reporters. Ryfe (2009a, 2009b) recounted the testimony of a local newspaper court journalist who, when told he could no longer go to court every day as part of a management directive to produce deeper and more exclusive stories instead, refused and soon quit. Yet, as we will see in the findings chapters, the court reporters interviewed for this study regularly combine all these tasks while also spending much more time physically within courtrooms, than the journalist studied by Drechsel.

Alongside tip-offs, court reporters can save time by keeping across cases in several courtrooms at once, dropping in for key moments (Danilov 1955, Whitaker 1981). This may go against the normative conceptions of court reporting outlined in section 1.6, by which a journalist ought to be physically present throughout a case to report on it more accurately. Considering coverage of civil cases, Haltom and McCann (2009) argued that not being present throughout a case “greatly increased the chances that a substantial judgment would generate sensational but incomplete, misleading and even erroneous coverage” (p198). Yet such a practice is instead a product of more practical concerns, ranging from the uneven pace of many court cases to the financial incentive to a freelance journalist of producing as many stories to sell as possible. Certainly, this sort of activity was once the preserve of freelancers, but budgets for that kind of work have all but disappeared in local

newspapers (Howells 2016), with one recent study finding that most new freelancers work in sport journalism (Hayes and Silke 2019). This has led to both big stories and the daily run of local court events being left unreported, prompting concern in legal circles (Langdon 2017). Even as most local editors continue to use at least some agency copy (Robins 2016, Thornton 2017), pressures on newspaper editorial budgets have meant there is much less money for court stories from either agencies or freelancers, leaving judges “as likely to see a zebra as a reporter” (Davies 2009, p78). For Hanna (2015), cost-cutting in the local media has undoubtedly led to fewer journalists attending court cases, and this has in turn led the police to consider alternative ways to publicise their work and successful prosecutions. However, beyond the occasional study (eg Chamberlain et al 2019a), hard data on any reduction of media coverage of the courts remains scant, something this thesis aims to help address.

2.3.4 Contemporary news production studies

The relevance of the classic news production studies discussed in section 2.3.1 has receded as the production of online journalism has spread, even in companies still primarily focused on creating content for traditional outlets (Paterson 2008) such as the UK’s local newspapers. Media workers have been grappling with the weakening of established structures of journalism, for example between the local and the global (Olausson 2014) and the quickening of evolution in media organisation and production (Anderson 2013, Steensen and Ahva 2015). Complaints about the relative lack of new sociological studies exploring the impact of these trends on newsrooms have been made (Klinenberg 2005). Ryfe (2009a) agreed these meant academics had little idea of how newsrooms were adapting to technological changes, and later (2018) contended that while many studies published in the intervening period had described changing working practices, few had considered ways in which journalists navigated these. Among other critiques, Deuze (2011) described a dearth of knowledge about what goes on within media companies, while Carlson (2013) wrote that attempting to grasp complex transformations during unpredictable change was a particularly difficult challenge facing journalism scholars. Mitchelstein and Boczkowski (2009) criticised academics for failing to put online

news production into historical context, for example by neglecting to highlight the antecedents of current practices. A good deal of what we know about working conditions of today's digital journalists comes from non-academic sources (Cohen 2019), such as media, trade press and trade union accounts. A lack of investment from universities was blamed in part for the arguable paucity of relevant academic studies (Paterson 2008).

The desire within journalism studies to take a renewed look at what goes in newsrooms has itself been critiqued, as far as such research tends to be too newsroom-centric (Wahl-Jorgensen 2009). Anderson (2011b, 2016) even called for 'blowing up the newsroom' as an object of ethnographic study, with a shift in focus to the 'post-newsroom' landscape. This was not least because of the rise of distributed journalism, the notion of individuals working together on stories from various locations and relying on digital technologies to collaborate (Gillmor 2006). This trend has been accelerated by communication tools such as the channel-based messaging platform Slack, which has become widely used in media companies (Bunce, Wright and Scott 2018) and may yet be speeded up still further by the impact and legacy of the Covid-19 pandemic, as working from home becomes more routine. The newsroom focus of many studies has been critiqued for privileging certain actors in the study of journalistic production, in turn meaning that conventional production processes become fixed elements in coursework within journalism department at universities (Deuze and Witschge 2018). Yet, while newsrooms may have shrunk, they have retained a key role in news production in the UK's local newsrooms, at least pre-pandemic. This had been enhanced as more newswork was hubbed centrally (Moore 2015, Townend 2015, Howells 2016), a trend seen as making it harder for researchers to disentangle what is truly local about 'local' media (Napoli 2019). Despite such difficulties, scholars have more regularly taken up the challenge of identifying emerging practices in news production. Some of those studies will be assessed next.

2.3.5 Trends in newswork

A variety of trends in local news production have been identified. Deuze and Marjoribanks (2009) noted a rise in less typical forms of newswork, with more casual employment, contract work and attempts to capitalise on free labour in the form of contributions from readers and citizen journalism (see also Cottle 2003, Canter 2013), which has itself become more prevalent in tandem with a decline in public deference to authority more generally (Greer and McLaughlin 2010b). This atypical newswork was more prevalent among newcomers to the media industry (Deuze and Fortunati 2011). Yet while the media industry may have welcomed many newcomers, it has also struggled to retain its existing workforce. The 2000s have been described as featuring a 'Great Newspaper Exodus' (Reinardy 2017), characterised by high levels of burnout, as the news industry adapts to the new skillsets required because of technological change (Kosterich and Weber 2019), with reporters obliged to adapt their working practices while often lacking the security afforded to workers in other areas of the economy (Deuze and Witschge 2018). Journalists have also been prompted to consider leaving the field by hitting an early ceiling early in their careers, a path eased by being in regular contact with potential future employers (Davidson and Meyers 2016) and the better quality of life available in other jobs (Cohen, Hunter and O'Donnell 2019). Anderson (2011a) noted the increasing focus on metrics in digital publishing means the process of, as Gans (1979) put it, *Deciding What's News*, was increasingly being changed by quantitative factors. These included feedback from analytics tools (see also MacGregor 2007, Singer 2011b, Usher 2013, 2018, Cohen 2019, Bunce 2019) and the incorporation of techniques aimed at ensuring high rankings in search engines (Dick 2011), all of which are likely to influence the production of local court journalism.

The phrase 'convergence culture', coined by Jenkins (2006), was often used as a way of describing the collision of old and new media practices. But studies have cast doubt on the real-world impact of the theory, with scholars regarding it as too deterministic and unviable (Paterson 2008). Robinson (2011b) noted the idea of convergence had certainly lodged in the minds of editors, who wanted journalists to be proficient in a much wider range of tasks than before, implying that court reporters, for example, would no longer be able to simply report cases in purely written form for their paper. But this desire proved almost insurmountable, helping to stymie the 'convergence' ideal, with journalists shying away from producing content

outwith their core skillset. Rushed attempts to force local newspaper journalists to become multimedia reporters too quickly were considered to have given convergence a bad name (Matthews 2014), with journalists also finding their creativity constrained by the increasing precarity of their jobs (Deuze 2019). In global media companies such as the BBC and CNN, with a stronger corporate culture, journalists have seemed more willing to experiment (Kung-Shankleman 2003), although even in larger newsrooms the picture is mixed, with notable resistance to digital change at *The Times* seen as a legacy of the Wapping dispute (Marjoribanks 2011), outlined in section 2.2.1. A clear division has been identified between the ideals set out for online journalism and the actual ways in which that journalism is carried out. Domingo (2008a) argued for moving away from the deterministic view that organisational ideals were a goal, allowing researchers to explain more about the complex processes through which journalistic norms were being established and changed. Thomas (2019) saw journalism studies literature as being too ready to portray journalists as desperately trying to hang on to their professional standing in the face of a new breed of plucky citizens aiming to take part in news production, thereby ignoring the view that journalism is an essential useful activity conducted by journalists who want to be helpful, especially within their own local communities.

Much news is now defined by the interaction between journalists and readers, in a conversation with the 'people formerly known as the audience' (see Gillmor 2006, Rosen 2006, Scott, Millard and Leonard 2015). This has been characterised as putting journalists in the role of hosting a gigantic virtual dinner party, keeping everyone happy across comments sections and social media platforms, while also heading off any potential fights, a potentially challenging idea for older journalists used to a certain distance from the public (Singer 2011b). *The Guardian* changed its production processes to put an increased focus on interaction by journalists with its readers as part of what it called 'open journalism' (Kung 2015). Eventually, the paper would mostly be made up of the best of what had been on the website the previous day (Rusbridger 2018). Journalists have tended to value user-generated content more for the aid it can provide in traditional newsgathering through witness accounts and story tip-offs (Williams, Wahl-Jorgensen and Wardle 2011). The ways in which journalists make use of material posted on social media by members of the public caught up in a news event have been defined as 'citizen witnessing', a refinement of

previous accounts of citizen journalism, itself usually traced back to the *Indymedia* coverage of anti-globalisation protests in Seattle in 1999 (Allan 2013). Yet while these interactive elements of newswork might be a daily reality for local journalists in general, the specialist nature of court reporting and the strict contempt rules which apply to court journalism in the UK, for example restricting the ability of reporters and others to comment on ongoing cases, mean these are potentially less likely to feature as prominently in the regular workload of a court reporter.

Further problems associated with such an interactive approach have been readily highlighted. Publishers seeking to maintain quality in comments sections by pre-moderating reader contributions were often overwhelmed by the scale of the task, leading to policies of relying on users to flag offensive content (Gillespie 2018). Initial claims about the democratic potential of the participatory internet have given way to concerns over incivility, the spread of conspiracy theories and the potential for co-ordinated manipulation of public debate. Among journalists, this has led to negative perceptions about these forms of interactivity and participation, with hopes for an expanded and improved journalistic practices outweighed by a decline in professional norms, summarised by the oft-repeated phrase 'don't read the comments' (Russell 2016, Smith 2017). Female reporters suffer disproportionately from trolling online (Franks 2013). Journalists have often refrained from much interaction with the public, with participation on platforms such as Twitter still tacitly understood as pushing out links and stories in a broadcast-type fashion, rather than engaging in two-way dialogue (Usher 2014). Firmstone and Coleman (2015) found almost no interaction from either journalists or local civic officials in comment threads under news stories, leaving that 'engagement' at best a discussion among commenters, and at worst just a series of comments left in a 'black hole', arguably replicating the disdain some journalists have traditionally had for their readers as 'cranks' (see Wahl-Jorgensen 2006). Comment threads often peter out within 24 hours of a story's publication anyway (Pew Research Center 2015). Online-only media companies have sometimes bucked this trend and have been able to generate more engaged communities around their readerships, leading to a regulars' club feel (Smyrnaio, Marty and Bousquet 2015). When analysing comments by newspaper journalists when they did make them, Smith (2017) found that reporters

often commented using authority arguments, demonstrating why some aspect of their story was correct.

Facebook is the world's largest social network and has been identified as a key distributing platform for local news (Gulyas, O'Hara and Ellenberg 2018). But Twitter has developed a particular prominence within newsworld and journalism (Ju, Jeong and Chyi 2014). Twitter was not created for journalists but has become established as a key platform where they interact with readers and peers (Bilton 2013). The mixture of fact, comment, experience and emotion on Twitter rubs up against traditional journalistic norms separating reporting from opinion. Indeed, Twitter has emerged as a hybrid space in which citizens have joined journalists in the flow, framing and interpretation of news (Hermida 2013, 2016). Some newspaper journalists have embraced this more willingly than others (English 2016). Barnard (2016) noted the way in which journalists may use Twitter to amass social capital by establishing ties with other actors, and its prominence as a medium within journalism means this form of journalistic capital flows swiftly through the network. Twitter is an adaptable tool, with senior journalists more likely to use it to promote brands and drive traffic, with others focusing on building relationships with sources (Canter and Brookes 2016). Male journalists are more likely to be prominent on Twitter than female reporters, entrenching gender imbalances seen within journalism over decades (Usher, Holcomb and Littman 2018). Twitter has been widely used as a form of live reporting of court cases (Lambert 2011), although the extent to which this has been the case for journalists working in the UK's local newspapers has been less clear before this study.

2.3.6 Working routines

The 'hierarchy of influences' model was proposed by Shoemaker and Reese (1991) to more clearly understand different factors which shape media content. Their model features five levels of analysis from the micro to the macro to pick apart "how influence at one level may interact with that at another" (2014, p1). They defined the five different layers of their hierarchical model as a series of concentric circles: the individual, the media routine, the media organisation, the social institution and the

social systems. As summarised by Ha (2017), this takes us from the worldview of an individual journalist, up to the dominant ideology of an entire society. When considering the second of these specifically, working routines, these structures relate to the immediate environment of a journalist's workplace, often analysed by news production studies of the kind examined earlier in this chapter. Notwithstanding how widely cited it has been within journalism studies, the increasingly fluid professional and organisational structures of journalism in the digital era have presented a challenge to the continued utility of the hierarchy of influences model (Keith 2011, Schwalbe, Silcock and Candello 2015). As Reese himself more recently reflected (2019), routine structures which influence a journalist's work at this level now range from the more traditional such as a publication's news values and how its stories are typically written, to recent innovations such as routines aimed at more engagement with readers or increasing the number of readers who may click on an online story, of the sort just outlined in section 2.3.4.

A range of online and social media tools are now commonplace in journalistic work, including in the UK's local press (MacGregor 2013). News organisations are both enthusiastic about their potential and wary of threats to the traditional independence and integrity of individual reporters (Duffy and Knight 2019). The introduction of the smartphone has been described as the largest technological change in newspaper work over the past decade, with the flexibility it provides to gather material and publish content across platforms potentially allowing reporters more agency in their working routines than ever before (Dean 2019). However, some changes have taken hold more slowly (Robinson 2011b), including gradual technological developments such as e-mail, instant messaging and laptops. This helps to underscore the argument that commentary about digital change in journalism can be too deterministic, and that studies of journalists and news production help reveal that is a slower, messier, more uneven process.

'Golden age' nostalgia has continued to have an impact on attempts by editors to update newsroom working routines, including in local journalism, with managers often seeing their far-reaching plans given a sceptical response by journalists (Deuze and Fortunati 2011, see also Gade and Earnest 2003, Marjoribanks 2011). Ryfe (2009a) found that changes trickled through, although as they did, he noted that

staff felt less and less like 'real' journalists. Blogging is an example of a practice often resisted initially in newsrooms, before its key storytelling strengths such as informality of voice became widely adopted, only for these to be stripped away as the format became used for simply pumping out news stories faster than ever before (Mitchelstein, Boczkowski and Wagner 2017). That said, when used in conjunction with other new reporting methods in journalism, it has the potential of freeing journalists from some of the more mundane aspects of their newswork, even if that potential has mostly gone unfulfilled up to now (Young and Hermida 2015). Cultural resistance to changing working practices has been regarded as more prevalent on the part of local newspaper journalists, and in online newsrooms which were part of existing printed publications, producing digital content is more likely to be viewed as an obstacle or problem by staff (Domingo 2008b). There are even examples of newsrooms in the UK's local press which have reverted away from a 'digital first' policy, to try to protect print sales (MacGregor 2013). Print journalists have often tended to view other reporters such as broadcasters with distrust around the quality of their newswork. Meanwhile, TV journalists can consider their newspaper cousins to be conservative, slow and oblivious to the wants and needs of their audiences. Indeed, the format of TV news reports has changed over the decades, with more edits and shorter soundbites, because of changes in production processes and responsiveness to audience demand, whether real or perceived (Cummings 2014). In the smallest newspapers the picture is uneven, with examples of both successful digital experimentation and a virtual refusal to have anything but the most basic online presence, with a lack of resources and poor rural broadband among factors encouraging the refuseniks (Ali et al 2018).

The working routines of journalists do not just concern their conventional working hours. Reporters often find it harder to switch off when not at work. Boczkowski (2010) found journalists would routinely check rival outlets as soon as they got home, while even those working remotely struggling to resist the temptation to look at not just Twitter, but also newsroom content management systems (Bunce, Wright and Scott 2018). It was thought laptops and mobiles could allow journalists to no longer be 'tethered' to the newsroom in the old way. However, a new tethering has emerged through a requirement to always be connected (Robinson 2011b). For Wheatley and O'Sullivan (2017), the idea of timeliness has changed, in that on one

level journalists may feel the pressure of being 'always on'. But on the other hand, there are few strictly enforced deadlines in online media, as websites are updated throughout the day. This is a contrast to traditional print or broadcast routines, further underlining the need to reassess the notion of the deadline in journalism, as discussed in section 2.3.1. This could suggest local court reporters may enjoy the flexibility of being able to publish their stories when they are ready, rather than waiting for the next day's paper. Yet they may also face the competing pressure of, for example, checking emails into the evenings for details of the following day's cases.

The concept of time remains as significant to the working routines of journalists as it was in Tuchman's day, although what this means in practice has changed. Klinenberg (2005) found the time cycle for news making in the age of digital production had already spun into an erratic and unending pattern that he described as a "news cyclone" (p54), spurred on first by 24-hour TV news and latterly by online news sites. Quandt (2008) discovered online news teams were typically small and often carried out tasks very quickly, as much of their work involved simply tuning up content that already existed rather than doing much original reporting. Anderson (2013) found both traditional journalism and online aggregation had become established alongside each other as the two dominant forms of newswork, implying at least some displacement of conventional reporting skills. Discussion of such digital trends in journalism has often been most pronounced among media executives. While radio news producers studied by Usher (2011) were gradually more accepting of changes in the industry than their print cousins, she found they were simply too busy to incorporate much digital experimentation into their daily working routines. In newspapers, some of the rhythms of print production have remained in place up to a point, even as newsrooms have switched to an online-first policy. Anderson (2013) noted that little seemed to have changed, although the emphasis on speed had increased during the 2000s, with reporters typically writing initial online pieces to be developed into more conventional articles later. Stories are regularly published throughout the day, implying a clear need to keep newspaper brands in the social feeds of readers, and in turn remain a relevant part of the local news ecosystem (Wheatley and O'Sullivan 2017, Usher 2018). Meanwhile, changes to the physical layout of newsrooms have been noted, with desks staffed by online teams moving to

centre stage (Robinson 2011a), although cultural clashes involving journalists from different traditions have sometimes made it tricky to find coherent ways of working in multimedia organisations such as the BBC (Larrondo 2014). Kung (2015) noted how, at *The Guardian*, editorial and technical staff were now seated together “to allow digital culture to permeate journalistic mindsets” (p14) and to make sure digital tools worked well for both journalists and the user experience. Yet those national and international trends, while interesting on their own terms, may have minor impact on the shrinking local newspaper newsrooms, especially with court reporters often working at court rather than out of the office.

One central complaint of reporters and observers has been that journalistic work has been reclassified as ‘content’ and that craft distinctions between different forms of journalism are becoming blurred, with reporters typically making material for different platforms (Klinenberg 2005). This has eroded the unique attractiveness in producing material for a prestigious, printed local newspaper (Reinardy 2017), with journalists obliged to publish short breaking news items at the expense of a thoroughly reported ‘long read’ (Usher 2018). Yet professional norms about journalism have endured (Ross 2017), even among young reporters with little prior experience of newswork beyond what they have internalised from simply consuming journalism. Where changes to working practices have been implemented more effectively, it is often because journalists themselves have taken the initiative, either by retraining, leaving, or deferring to new colleagues (Bunce 2019).

Scholars have sometimes used the word ‘intensification’ to describe newswork trends, with a range of previously discrete craft skills now part of a newspaper journalist’s daily job (Marjoribanks 2003). Cohen (2019) described the way in which the intensification of working practices manifested itself through erratic styles of work, including a lot of multitasking. Boczkowski (2011) noted a separate but related intensification, in the way journalists monitored output from competitors. This has in turn led to a homogenisation of news, with more outlets covering fewer stories, and a weakening of specialist reporting such as investigative journalism (Higgins-Dobney and Sussman 2013), although the notion of repetitive coverage of certain issues leading to ‘fatigue’ for that topic among journalists has also been noted (Matthews 2003). That homogeneity has in turn led to certain newer players in the media

market seeking distinctive approaches rather than keeping an eye on rivals (Kung 2015).

Developments in technology have led to more variety in the job of court reporter specifically, including tasks related to liveblogging and tweeting ongoing cases. Reporters are forced to strive for more brevity than ever before (Lambert 2011), with the accompanying challenge that important nuances may be difficult to communicate in such a short space. Research has found that when many journalists tweet about the same trial, a standardised language soon develops, influenced by traditional practices of court reporting (Knight 2017). Live tweeting details of a story that can emphasise a reporter's insider access can help differentiate professional journalists from those simply following from afar, for example in sport reporting (Shermak 2018) as well as when covering court cases. Yet, as already noted in this section, having access to Twitter and other online tools can oblige journalists to be 'always on' in a way that might not once have been the case, especially if they are recognised by followers and readers as being a key source on a particular beat. This extra pressure is having an impact on the working routines of journalists, and their lives more generally, both inside and outside the office. Before completing this review of relevant literature, I will consider two more areas central to the thesis, the concept of 'beat reporting' and the nature of local criminal justice.

2.4 Beat reporting and the courts

2.4.1 Beat reporting

Court reporting is often described as a typical 'beat' within journalism. Beat reporting is a classic feature of newsrooms even if the origin of the term in this context is not clear (Becker and Vlad 2009). Fishman (1980) outlined three key elements: a history in the news organisation that outlives a particular reporter, the beat being an effective office for the reporter, and a beat reporter seeing the tasks they perform to be coherent. For Fishman, the beat reporter can link together apparently disparate events and put them into a proper context, forming topics which arise repeatedly within the beat, coming to define it.

Beat reporters invest energy in cultivating source relationships, of the sort discussed in section 2.3.2. Fishman (1980) considered journalists were predisposed to treat official accounts of events as factual because they are involved in upholding a normative order of what he described as 'authorised knowers'. That is, a police spokesperson is not just making a claim about a crime that is said to have taken place but is delivering a credible piece of knowledge the reporter can take as read because of the legitimacy of the source. Within the context of criminal justice, and as argued by Munnik (2018), it is possible for individual lawyers to achieve such status, aided by familiarity with both the law and media production processes. Senior police officers are among those with a privileged position within the hierarchy of 'authorised knowers' (Greer and McLaughlin 2010a), hardly surprising considering studies which have pointed to the police as being central to the setting of the crime news agenda (Chibnall 1977, Hall et al 1978).

Gans (1979) found beat reporters tended to develop symbiotic relationships with their most regular sources, but that this was often of limited value in terms of publishing stories, because much of the inside knowledge picked up by journalists would not be particularly interesting to readers. For science journalists, therefore, a key task is to preserve the scientific credibility of their articles while also removing technical detail, to make them understood to a general audience (Brennen 2018). Within court reporting, this might involve boiling down several hours of complex testimony to a few paragraphs (Waterhouse-Watson 2016). Although as the media management of public bodies has developed, they are more likely to produce even official documents in a news-friendly style (Ronnberg, Lindgren and Segerholm 2013), making the working lives of journalists easier. Competition between reporters covering the same beat can increase the volume and potentially sensationalise the treatment of stories about that topic (Lacy, Coulson and St Cyr 1999), and within the context of court reporting, newspaper accounts can privilege one version of events, for example the prosecution, leading to perceptions about the case which can endure regardless of a trial's eventual outcome (Waterhouse-Watson 2016). Beat reporting fell out of favour in the 1990s as journalists being too close to regular sources (see Revers 2014) began to be perceived as a negative, rather than a positive way of helping time-poor journalists maximise their output efficiently (Dick

2012), while the complexity and relative powerlessness of local government was also perceived to be a reason affecting the decline of public affairs beats in the UK's local press (Aldridge 2007). Some editors favoured switching to a flexible team system, but experiments ran into trouble with journalists who valued their autonomy at work (Gade and Earnest 2003). The emergence of online and social tools have allowed for a new form of beat reporting, helping reporters find stories more quickly through personalised 'wires' (Broersma and Graham 2012, Dick 2012). Yet such an approach would not necessarily be useful for the courts beat, considering the lack of available sources of public information about events taking place within courts.

2.4.2 The local courts and local justice

This thesis will particularly consider local newspaper coverage of the criminal courts, and those courts will now be given brief consideration. In England and Wales, 95% of all criminal cases begin and end at the magistrates' court, with only more serious matters being sent on to Crown courts (Hanna and Dodd 2016). Local court reporters are obliged to cover both, although today magistrates' and Crown courts are often housed within a single courts complex. This trend has in part been accelerated by two tranches of closures of local magistrates' courts since 2010, which will be explored in section 6.2. While a diverse picture of the work of the courts has traditionally featured in both local and national newspapers each day, most court and judicial activity taking place at any one time is not subject to media scrutiny (Moran 2014, Chamberlain et al 2019a, 2019b). Indeed, the greater media attention devoted to more serious Crown court criminal matters has helped give the public a stronger awareness of jury trials rather than the more humdrum functions of magistrates (Herbert 2002). This is also reflected in academia, where magistrates' courts have been neglected as a subject of inquiry (Welsh 2016).

The legal system in England and Wales makes use of non-professional, unpaid justices in magistrates' courts, an old way of doing things which has the modern benefit of being fast and cheap (Gibson, Gordon and Wesson 2001). The lay magistracy is one of the oldest legal institutions and can trace its history back to the Middle Ages (see Hostettler 2012, Donoghue 2014) and is still considered central to

the justice system (Gibb 2010a). These individuals are volunteers from the local community and do not need to hold a legal qualification, although a legal adviser is present in the court to give guidance and ensure correct procedures are followed. Sometimes, professional District Judges preside in magistrates' courts instead, a trend which has increased due to the growing workload at this level of the justice system and managerialism within the public sector (Smith 2004). District Judges have been considered more efficient and to apply legal rules more fairly and quickly, not least because they sit alone and so do not need to retire to consider sentencing as a panel of magistrates do (Morgan and Russell 2000, Ministry of Justice 2011, Welsh 2016). Whether presided over by magistrates or District Judges, the "overwhelming" number of criminal cases begin and end in a single hearing, with most completed within 15 minutes and a quarter less than five (Chamberlain et al 2019a). Although routine and often dealing with minor matters, even these short cases can include details that might be considered newsworthy for a journalist. The news values of local court reporting will be examined in more detail later in this thesis in conjunction with findings from interviews, in section 6.3.

2.5 Summary

This review of the literature has demonstrated there is some alarm within academia not only at a perceived lack of research into local journalism in the UK, but also that this partial silence exists at the same time as structural changes have been wrought within local journalism by the ongoing financial crisis and technological developments affecting the sector. It is surprising, considering the normative value of covering the courts, and the apparent ongoing academic interest in crime matters in general, that the work of local newspaper court reporters in the UK has not been the subject of more research.

Alongside the financial crisis in journalism, the criminal justice system has faced financial and technological challenges. While studies of court-media relations exist from many jurisdictions, they often relate to high level civil and appeals courts rather than the local, criminal, UK focus of this research, again leaving a partial silence in the understanding of the daily work and motivations of journalists who report on the

criminal courts. The more general newswork of reporters has been the subject of several landmark studies, and it has returned to some prominence as the field of journalism studies has become more established and the currency of that earlier, pre-digital work has faded. While studies of national newsrooms and the 'digital interlopers' of online-only media suggest widespread adoption of new working practices among journalists, including online and social media tools for the gathering, creation and publication of news content, the picture is a little more uneven and, at times, contradictory within the local press.

This thesis can contribute to that developing body of contemporary research into the courts and newswork. Many, sometimes celebratory, claims about the impact of digital technologies on journalism have been made. This thesis will provide further evidence of the extent to which these practices and trends have permeated the newswork of one of the more classic journalism roles, that of the local newspaper court reporter, amid what has been a turbulent period. This literature review has revealed there is a partial gap to be filled, tracing the development of court reporting, how those who conduct it now do their work, and the extent to which those journalists can continue to fulfil the civic role of covering the courts. I will next turn to how that research will be conducted.

Chapter 3: Methods

3.1 Research questions

So far, I have outlined the context of the crisis in local newspapers, and the local newspaper market in the UK. Chapter 1 also included consideration of the importance of court reporting to a local public sphere, and what normative reporting of the local courts might look like. The financial challenges facing the sector and threatening its future have taken place at the same time as the use of digital technologies have become commonplace, as the contemporary newswork studies reviewed in chapter 2 demonstrate. Major technology platforms have played a significant role in affecting the financial viability of press companies, but their digital products have allowed and even obliged journalists to adapt their working practices. Taken together, these trends have raised questions about the ability of journalistic institutions to continue to perform the key normative function of reporting on local courts.

As Bryman (2016) notes, academics carry out research because, as they read literature on a topic or reflect on what they observe in the world, certain questions occur to them. Those questions may come from unresolved debates, gaps or silences in that literature. During the review of the literature conducted in the previous chapter, the trends mentioned above emerged. To investigate those further, three research questions were formulated.

RQ1: What is the history and development of court reporting in the UK?

RQ2: What are the working practices of court reporters in the UK and how have they been affected by financial and industrial pressures on journalism?

RQ3: How might any changes to the working practices of court reporters alter the civic function of journalism, particularly in relation to local communities?

RQ1 concerns the origins and evolution of court reporting in general. As has been noted already, court reporting is considered a classic function of journalism. Yet I

have paid little attention so far to how it came to be considered as such. The way in which court journalism has been conducted through history from its earliest days, in particular in the UK, will offer insight into the centrality of court reporting to journalism, the traditional working practices of court reporters, and what constraints have been placed on those practices within the UK's jurisdictions.

RQ2 asks how court reporters in the UK are doing their jobs today, especially considering the changes to journalism already discussed. This question is the heart of the thesis. By establishing the working practices of court reporters, it will be possible to assess the extent to which the news industry's ability to cover local justice has been affected. It will also consider the important relationships that court reporters must navigate with a variety of actors within the criminal justice system.

RQ3 considers the broader implications of the findings of RQ2. To put another way, it asks the extent to which it matters that local court reporters may now be working in new ways or in straitened circumstances. RQ3 examines the ways in which journalism may be struggling to uphold the normative conceptions of court reporting discussed in section 1.6, and in turn what that could imply for the future health of local public spheres.

Answering these research questions requires an approach involving different methods. Choosing effective research methods is important. It is perhaps especially so in this project so I can defend it from the potential criticism it could receive from within both the journalism industry and the academy, as described in section 1.2. The methods selected – and rejected – will be discussed next.

3.2 Research methods and approaches

3.2.1 Qualitative methods

Qualitative research methods are those “primarily concerned with stories and accounts including subjective understandings, feelings, opinions and beliefs” (Matthews and Ross 2010, p142). This contrasts with quantitative methods, which

involve the collection of numerical data which can be more readily analysed statistically. Debates over qualitative and quantitative methods have taken place for decades. Within the humanities, researchers have often been considered to favour qualitative methods. This has been attributed to scepticism of the value of quantitative research in explaining the social world, as well as difficulty in learning how to use such methods effectively among researchers more used to excelling in a more creative or artistic field (Davies and Mosdell 2006). As already noted in section 1.2, I worked as a professional journalist before becoming an academic and teach journalism and related skills at the University of Huddersfield rather than research methods or statistics. This last point did influence my selection of research methods, in so far as I began the project more comfortable with qualitative methods.

Within journalism studies, qualitative methods have tended to dominate (de Beer 1993). Quantitative or semi-quantitative methods are prevalent within the sub-field of digital journalism, and calls have been made for further methodological innovation to meet the needs of journalism's contemporary digital setting (Karlsson and Sjoavaag 2016, Steensen et al 2019). Yet the research questions formulated in section 3.1, relating as they do to history and journalistic practices, do suggest qualitative methods would be the more obvious choice for this project. Before outlining the chosen methods, I will discuss one which was considered and discarded, ethnography.

Ethnography involves the researcher observing participants being studied. The term is often used interchangeably with participant observation, although the term ethnography does imply additional forms of data collection beyond the observation. So, an ethnographic field worker will immerse themselves in the culture of the group and setting under observation, listening to conversations and taking detailed notes on what takes place. They may also collect documents and interview the participants (Bryman 2016). It can allow a researcher to get close to those being studied and to develop a deep understanding of a particular social setting (Gilbert 2008) and can be applied in a huge range of areas, a flexibility which has helped it thrive (Atkinson 2001). As discussed in chapter 2, ethnography has been used in past and more recent studies of journalistic practices. Perhaps of most significance for this project, it was used by Drechsel (1983) as the central research method in his book-length

study of court reporting. A benefit of ethnography within journalism studies is that it can allow for the work of journalism to be studied in its natural setting (Stonbely 2015, Vark and Kindsiko 2019). It is also often attractive to researchers with a journalism background (Singer 2009, Hermann 2017), because it can allow former journalists to conduct research in a newsroom, a location with which they will be comfortable.

Drawbacks to conducting an ethnography include potential ethical issues, as well as considerations of time and expense. Ethical concerns include considerations as to whether the researcher will be acting overtly or covertly, difficulties in accurately assessing the future impact of any published ethnographic work on the individuals or groups being studied, and the possibility that a researcher may form friendly or tense relationships with those being studied in such a way that may affect the quality of their work (Anderson 2001, Gilbert 2008). Additionally, there is the prospect that simply observing the behaviour of someone will change that behaviour, a change that may even continue after the observation is complete, the so-called Hawthorne effect (Matthews and Ross 2010). Expense can be a factor, in that it involves the researcher carrying out fieldwork at a particular location or locations over a period of weeks or months, leading to travel, accommodation and other costs needing to be covered. Even if such funding can be secured, there is the problem of how long a sustained ethnography can take. Observing a participant or setting can be a full-time task for the duration of the fieldwork. This may make it impractical for academics in full-time employment, as opposed to students conducting a PhD full-time or academics who have been granted research leave.

3.2.2 Historiography

It is time to consider the methods which have been used. RQ1 asks about the history and development of court reporting in the UK. To answer this, I selected historiography. Historiography can be considered as the study of the way in which historians go about their work or, more generally, as simply the writing of history. As Thompson (2000) writes, historical understanding of a topic is vital to a study of the

present. Yet he notes the distinction between simply writing about things have happened and producing a more critical historical investigation, thereby turning 'the past' into 'history'. This echoes the similar contrast drawn by Carr in his widely read *What Is History?* (1961), between a cataloguing of events in the form of a chronicle, and a history, the latter being an attempt to interpret the past and explain the causes and origins of events, and the connections between them. Carr argued a fact only becomes a historical fact once it has been recorded as such by a historian, and that the work of a historian is necessarily selective. For Carr, a historian is the product of his or her own society, and what makes historical events or trends interesting to them is their potential value in solving problems of the historian's own time. Cannadine (2002) considered Carr's desire for a more scientific approach to history fell on fertile ground because it came at a time when the tools to achieve it were becoming more readily available.

Approaches to historiography can vary from choosing to analyse source material in detail perhaps to the exclusion of broader discussion, to combining such analysis with the context to a wider knowledge of the period (Tosh 2015). This last is what is more commonly considered a work of history and is the approach which will be used here. Within historiography a range of schools exist, each a group or network of historians and their concepts, with shared outlooks on how to write historiography. For Lloyd (2009), each of the schools sits somewhere on the scale of two broader traditions of historical inquiry, objectivism and interpretivism. Objectivism holds that there is a world external to a researcher which can be studied in a fashion influenced by the natural sciences, while interpretivism requires a more subjective approach requiring the researcher to analyse and interpret data. As the discussion of qualitative research methods in section 3.2.1 indicates, the approach which will be taken here fits the latter. The range of theories and schools within historiography is large and because this is only a secondary method being utilised within this project, I will not spend time outlining them in depth. As Dahl (1994) wrote, the use or misuse of such approaches is a source of fierce debate among historians, and he warned media historians that devoting space to fully tracing that discourse risks overwhelming most studies of media history. Indeed, he wrote that media history "is essentially an empirical venture, assessing the probability of facts and events, and providing them with a reliable chronology" (p561), a necessarily more limited

conception of historiography which I feel is more appropriate to its use in this project than a digression into competing theoretical perspectives of history. But I will now briefly consider some academic contributions to the use of historiography as it relates to media and journalism studies.

The study of media history emerged gradually during the second half of the 20th century, in part as historians began to realise the increasing centrality of mass media and communications to societies and, in turn, historical investigation (O'Malley 2002). Curran (2002) considered the writing of media history to be affected by three key problems, namely too strong a focus on individual media forms, a media-centrism which fails to make connections between the development of media and broader societal trends, and then the resulting weakness of published work leaving the field clear for non-historians to dominate accounts of media's development with Marshall McLuhan-style technological determinism. Media history has also been criticised for focusing on the period of increasing professionalism in journalism and mass communication in western Europe and the United States from the late 19th century onwards, at the expense of both earlier media landscapes (Cronqvist and Hilgert 2017), and more recent developments in newer media forms (Park, Jankowski and Jones 2011), because of a tendency among scholars to focus on 'constitutive moments' when dominant forms of media became established. Furthermore, O'Malley (2002) traced how the influence of cultural studies in UK universities and the centrality of theoretical perspectives to that discipline, left the study of media somewhat divorced from the actual experiences of those people who worked in the media or as journalists. Dahl (1994) blamed this supposed lack of interest in empiricism in media studies on sociologists having seeded the academic ground first. In the context of this project, therefore, I might run several risks. Those include focusing on the origins of court reporting and of local newspapers, at the expense of tracing how those practices and institutions have developed and indeed how those developments connect to broader trends in society. Additionally, attempts to engage heavily with heavily theoretical cultural studies approaches to the study of media, might lead to analysis which bears little relation to the experiences of the court reporters I will interview to help answer RQ2 and RQ3.

Considering historiography within journalism studies, Conboy (2011) argued the growing sub-field of journalism history ought to overcome such tensions and engage more with others studying the past to help realise the full potential of this potentially fertile academic ground. Yet, perhaps mirroring relative gaps in the academic literature around local journalism discussed in chapter 2, local journalism has also been relatively overlooked by media historians (Matthews 2014). Williams (2012) noted limitations to the study of journalism in history, including a narrow focus on published output, when other accounts might be just as valuable to understanding its practices and performance. Wahl-Jorgensen (2018) concurred that research into journalism history has provided strong insights based on analyses of texts but has been less helpful when trying to reflect the everyday lives of journalists and their working practices, because of a lack of available and relevant historical sources which deal with those experiences. Yet even such a focus on the experiences of journalists would not be able to adequately address the more hands-on approach to technical aspects of media history outlined by Hall and Ellis (2020), and the insights that might provide. Attempting to tackle all these potential approaches to journalism history is beyond the scope of the use of historiography in this project, so a narrower focus is required.

3.2.3 Historiography in this project

The task of creating a historiography has been described as constructing “interpretations of the past from its surviving remains” (Tosh 2015, p98). Yet with a potentially huge range of documentary evidence available in archives and elsewhere, often more accessible than ever before because of increasing digitisation, it is difficult for a scholar to know where to start. Even a specialist in a narrowly focused topic is now unlikely to be aware of, let alone be able to read, everything of relevance to their project (Cannadine 2002). This leaves the researcher more open than ever to the criticism of having missed something of central importance after not spotting it amid the flood of available sources. Yet there is a contrast when studying the history of media, in that much media content has been produced in forms and using technologies which may have become obsolete, serving to make them harder to access, not easier (Hall and Ellis 2020). Valuable

material potentially crucial to a historical study of media might be effectively locked away forever.

In assessing the suitability of a topic for historical research, Cortada (2011) outlined three factors: the lack of an existing comprehensive history, the general importance of the topic in question, and access to relevant documentary evidence. He also stressed the value of personal familiarity with the language and context of the subject being investigated, to aid understanding of sources which are to be consulted. He was writing from the perspective of a background in diplomacy, but for me, journalism fills that role. I was a professional journalist, so am perhaps inevitably more familiar with the language and practices of journalism than another researcher would be. Answering Cortada's three points in relation to this project, I have already outlined throughout chapter 2 the absence of an existing study of the history and development of court reporting in the context of the UK's local media, notwithstanding the fragments of such work available in other sources which take a more general approach to journalism's history and development. The general importance of the topic relates to the centrality of court reporting to normative considerations of journalism, and the potential challenge to those caused by the financial crisis in newspapers, as discussed in chapter 1. The last point, documentary evidence, will be outlined next, along with some explanation of how the method of historiography has been adapted to this project.

Relevant documentary sources consulted for this thesis included two UK national newspapers, *The Times* and the *Daily Mirror*, and the main trade press publication, *Press Gazette*. The two newspapers were selected because they have each published almost continuously over an extensive period covering the history and development of court reporting in the UK, *The Times* since 1785 and the *Daily Mirror* since 1903. Each has relatively stable online archives available for a researcher to access. Some gaps do exist, for example relating to periods of industrial action among print workers at *The Times* in the late 1970s which, as we will see, is an important period in the development of court reporting and media law in the UK. But such interruptions are relatively minor. *The Times* and the *Daily Mirror* will potentially offer useful contrasts, the former being a broadsheet newspaper, the latter a tabloid. *The Times* has a long-standing and detailed interest in coverage of politics and the

law and has traditionally been considered the 'newspaper of record' in the UK, implying that developments in media law will have been considered in its pages, through news stories, leader articles and letters to the editor. The *Daily Mirror*, for several decades the most widely read newspaper in the UK, has a more populist tradition.

Today, *Press Gazette* exists only online, but previously it was a specialist printed publication providing coverage of news within the UK journalism industry. It is therefore potentially the best available documentary source to trace perceptions of the development of journalism in the UK from the perspective of the journalism industry, rather than that of lawyers, politicians or others which may be more readily reflected in a newspaper. The *Press Gazette* archive is not available online but can instead be accessed through the British Library's newspaper reading room at Boston Spa near Leeds, close enough to Huddersfield for this process to be convenient for me. Not all copies of the *Press Gazette* from the relevant time periods survive in the archive, but enough were available to give valuable extra context to the following chapter.

An initial scoping exercise took place to gauge the extent of coverage of media law matters in the pages of the two newspapers. I searched the archives of each paper for articles mentioning the phrase 'contempt of court', which as will be outlined in more depth in the next chapter, is a key concept in media law and court reporting. There were 564 articles from the *Daily Mirror* since 1903, and 5,132 from *The Times* since 1900 alone, including 4,439 news stories and 451 pieces defined as 'editorial and commentary'. Considering this volume of material is beyond the scope of this project. Therefore, I have chosen to focus the historiography more closely on how two specific time periods relating to court reporting in UK media and how those affected developments in contempt of court law and reporting restrictions, which have in turn constrained the work of local newspaper court reporters since. The next chapter will aim to provide what Dahl (1994) described as a "reliable chronology" but devoting much time to those events which, following Carr's broad outline of historiography (1961), I have selected as being particularly relevant and indeed potentially useful in solving the problems I have identified in our own time.

The two themes relate to different periods of time before the introduction into UK law of the Contempt of Court Act 1981, which as will be seen is the major substantive statute in the UK which addresses media reporting of courts. In broad terms, two legal and political controversies were particularly significant in the creation of the Act. The first was *The Sunday Times'* battle with the government over its coverage of victims of the pregnancy drug thalidomide during the 1970s. The drug had led to physical deformities among children whose mothers had taken it. The paper's coverage of a case brought by families of the thalidomide victims against the drug's manufacturer was the subject of contrasting legal rulings as to whether it constituted a contempt, ultimately resolved in the paper's favour by European judges. It was this ruling that obliged the government to bring forward proposals to legislate substantively on contempt for the first and only time. The second major controversy was the extensive media coverage of the arrest of serial killer Peter Sutcliffe, the Yorkshire Ripper, in January 1981, and the subsequent criticism of newspapers for their behaviour, including by politicians during Parliamentary debates over the provisions of what would become the 1981 Act. The media's conduct was also later the subject of a major, and highly censorious, Press Council inquiry, underlining the seriousness of newspaper misconduct in the Sutcliffe case. Subjecting each of these two controversies to scrutiny, through published material in the chosen newspapers, *Press Gazette* and other sources, allows us to see more clearly the factors which led to the development of legal restrictions on court reporters which remain in place today.

Beyond these documentary sources, other material was also consulted as part of the historiographical research. This included transcripts of Parliamentary debates in Hansard, during the 1970s and especially 1981 during the passage of the Act. Two notable reports into these issues, the 1974 Phillimore Report into the general issue of contempt and the 1983 Press Council inquiry into the media coverage of the Sutcliffe case, were also examined. In addition, a range of academic accounts were also consulted, to help provide a more thorough chapter on the history and development of court reporting.

3.2.4 Semi-structured interviews

The second research method used in this thesis is semi-structured interviews. Many studies involving interviews involve trying to find out how a particular group of people perceive things (Silverman 2017). That is the case here, in RQ2 and RQ3. The questions require findings as to the contemporary newswork of court reporters, and their perceptions as to how recent changes may have impacted on this normative function of local journalism. Interviewing such journalists is therefore a logical method to apply in answering these questions.

Semi-structured interviews may be less commonplace in journalism studies than textual or content analysis but are used widely in other social fields. They differ from structured interviews, which oblige a researcher to stick rigidly to a pre-written series of questions and can have the drawback of lacking flexibility and depth, and unstructured interviews, which impose minimal restraints on an interviewer and tend to proceed in a more conversational manner, potentially leading to more complex data. Brinkmann (2014) argues that it is not possible to avoid structure in a qualitative interview because the interviewer always has an idea as to what they want to take place during a conversation, but it is possible to provide a structure flexible enough for the interviewees to be able to contribute from their own perspectives. In the semi-structured format, interviewers must be capable of assessing when it is particularly useful for the research project to ask quite generic or unspecific questions, allowing interviewees the opportunity for broader self-expression (Tracy 2013). Yet despite those benefits of the semi-structured approach, for Hopf (2004) risks remains such as the 'ticking off' of certain boxes when preparing interviews through over-extensive guidelines and too much bureaucracy, partly caused by a lack of experience among researchers and fear of communicating intensively with strangers. This highlights two potential advantages of my background as a professional journalist. One is that I am familiar with conducting interviews with strangers, albeit in a different professional context. The second is that I am potentially more able to readily access the interviewees required to answer the research questions. Or put another way, qualitative research is often stymied by a lack of access to commercial and public sector organisations (Silverman 2017).

Bryman (2008) describes the basic elements of typical semi-structured interviews. The researcher has a list of questions or specific topics, but the interviewee has a great deal of leeway in replying. Questions may not follow on as prepared, and similarly, others may be asked as the interviewer picks up on comments made by the subject. But, by and large, all questions will be asked at some stage, with similar wording between interviews. Some of the other key benefits of semi-structured interviews are not necessarily applicable to this study, such as the level of consistency it can afford between different researchers, and different case studies. The interview guide is much less specific than the notion of a structured interview schedule, used in fully structured interviews, and in fact it can be employed to refer to even broader topics or themes rather than questions. Semi-structured interviews are valued as a highly versatile form of qualitative research. Their flexibility can allow an interviewer to pursue an area of inquiry raised by an interviewee, potentially leading to a more textured set of responses than would be the case in a fully structured interview (Lune and Berg 2017).

As I have already indicated, I am a former professional journalist and am therefore familiar with carrying out interviews with strangers. Journalistic interviews are clearly in a different context, but this still makes the technique of semi-structured interviews particularly useful technique for this project. The performance of the interviewer during the interview is important, especially when it comes to giving their full attention to the interviewee's narrative (Galletta 2013), so my own personal experience should help the success of the interviews in this project. Indeed, some interviewees commented on my own background as a reporter and how I had prior knowledge of the issues they were describing. I would argue this helped to put these interviewees at ease as they were speaking to 'one of their own'. Despite those benefits of the use of semi-structured interviews, it closes off potential positives of other approaches. Unstructured interviews, often conducted with broad topics in mind rather than pre-written questions, more readily allow for researchers to challenge and even discard assumptions they had made before beginning the interviews. A further strength of unstructured interviews can be to turn an interview into more of a conversation, with the researcher sharing experiences (Lune and Berg 2017). Despite some trepidation about unstructured interviews within the academy

because of their unpredictable nature, this is one project that might have benefitted from their use, because my own experience as a journalist could have allowed conversations of the kind just described to take place. But my relative inexperience as an academic researcher helped persuade me to opt for a more conventional style of academic interview.

Wahl-Jorgensen (2018) argued a greater understanding of the challenges facing journalism could be gleaned by studying the personal life histories of media workers, as part of the life history approach used in some academic fields but absent from research into journalists. She contrasted the ways in which reporters working for better-funded news organisations might be better positioned to respond to changes than those on local newspapers, and how a disciplinary focus on elite publications and broadcasters may serve to hide those differences. Therefore, the focus here on local newspaper and agency journalists, notwithstanding the four interviewees from national media broadcast outlets, should help to bring into focus such differences.

3.2.5 The interviews

A full list of the core questions asked in the interviews is available in Appendix 2. But I will expand a little on some of the most pertinent ones here. Studying archives can inform the development of other forms of data collection, for example the content of questions in a later semi-structured interview (Galletta 2013), and that was the case in this project. One theme which emerged from the historiography was the importance of contempt of court to the development of court reporting. This included not only repeated attempts at reform in the 19th and 20th centuries, but also the events surrounding coverage of the thalidomide scandal and the arrest of Peter Sutcliffe, which prefaced the passage of the Contempt of Court Act 1981. As this is the most notable statutory restriction on the work of court reporters in the UK, I asked the journalists interviewed 'What is your view on the Contempt of Court Act and how it affects your ability to report from court?'. The purpose of the question was to gain insight on the extent to which the Act constrains the work of journalists as they report from courts, and the reporters' views on whether it might be reformed.

The main purpose of the interviews is to gain findings to help answer RQ2 and RQ3. RQ2 asks about the working practices of court reporters, amid changes and pressures within journalism. Questions aimed specifically at eliciting responses on the first part of RQ2 included 'What does your job involve?' as well as 'How often do you attend court?' and 'How do you find the process of reporting from court?'. The purpose of these is to get a more general understanding of the daily newswork of a court reporter and begin to identify potential obstacles which might affect that work. Questions relating more closely to the second half of RQ2, included 'In what ways has your job changed in recent years?' and 'What are your experiences of using technology in the courtroom itself, including Twitter?'. These were designed to gain specific insights into how the financial and industrial pressures on local journalism may have impacted the working lives of court reporters, and to assess the extent to which court reporters had been able to take advantage of new technologies widely used in other parts of journalism, on their own specific courts beat.

RQ3 considers the potential civic impact of the findings of RQ2. Questions asked of the reporters included 'Why do you feel reporting on the courts is important?' to invite reporters to account in their own words for what, as outlined at the outset of Chapter 1, has long been considered a key normative function of journalism. I wanted to assess the extent to which other trends in both the local justice system and local journalism might have already had a civic impact within local journalism and asked the reporters 'What impact has the closure of certain magistrates' courts since 2010 had on you?' as well as 'The new BBC-funded Local Democracy Reporting Service is being rolled out this year. However, it will not include court reporting. Do you have any views on this scheme?' and 'We're gradually seeing more televising of certain courts. Is that something you welcome?'. This allowed the reporters to respond on three issues within local journalism and local justice which were particularly current at the time the interviews took place, in 2017, and about which no academic research had been published at that time.

Of the 22 interviews, two were completed in person with 20 done by telephone. The two conducted face-to-face were done so because I had a pre-existing relationship with one interviewee, while another worked close to my home. Conducting the interviews one-on-one makes it easier for a researcher to guide a conversation

towards their research interests and allows for trust to be built between interviewer and interviewee when discussing any potentially sensitive matters (Brinkmann 2014). Restrictions of cost and time, as previously discussed in section 3.2.1, necessitated the use of phone interviews in the other cases. A key strength of phone interviews is the ability to affordably reach participants from a wider geographical area (Hagan 2006, Brinkmann 2014). In my study, I was therefore able to interview journalists from Plymouth to Hull and many points in between.

A further advantage of telephone interviews is flexibility (Tracy 2013), as they can be easily delayed or rearranged to fit around the working lives of participants. Had I limited myself to in person interviews I could not have interviewed as many court reporters and therefore would probably have been obliged to broaden the scope of the research beyond court journalism. Other methodological benefits include allowing the researcher to take notes without fear of distracting the interviewee and giving the interviewee a chance to maximise their own privacy (Cachia and Millward 2011). For Lune and Berg (2017), a central disadvantage is that neither the interviewer nor subject can read visual cues. I chose to simply use audio, not least because video calling can be unreliable and might require an interviewee to go to some extra trouble, for example by downloading an app, before the interview could begin. In their comparison of telephone and face-to-face interviews, Sturges and Hanrahan (2004) found no significant differences between sets of transcripts.

To identify potential interviewees, I consulted staff lists on UK local newspaper websites for journalists with job titles such as 'court reporter' or 'court and crime reporter', and searched Twitter for accounts with phrases such as 'court reporter' or 'court journalist' in the biography. A total of 38 such journalists were identified. I made contact via email and, sometimes, Twitter direct messaging. A total of 23 individuals either did not respond, declined to take part, or had left their employers by the time when I tried to contact them. But I carried out 15 interviews with local newspaper journalists. These were primarily court reporters, or court and crime reporters, or reporters with other job titles such as 'senior reporter' but who acknowledged the courts beat was a significant part of their working life. Agency reporters have long played a role in courts coverage, so it was important to include their perspective. I identified two specialist courts agencies based in London,

alongside the generalist Press Association which continues to employ court reporters at major courts centres in London, and contacted their journalists using the same methods, interviewing one from each agency.

Potential silences include failing to capture the perspectives of former court reporters who had perhaps recently left full-time employment, and were either retired, doing another job or were not active online. Also, general news agencies which may occasionally cover local courts, or individual freelancers who might specialise in court coverage in a particular town or city, are not captured either. In addition, I secured only one interview with a journalist from Scotland, and none with court reporters working in Northern Ireland. This clearly limits any insights this thesis might be able to offer into the newswork of reporters in those different jurisdictions, and how such practices may compare to those operating in England and Wales.

Additional themes of this study relating to court reporting and the newswork of court reporters, include the use of cameras in court, and the Local Democracy Reporting Service. In the former case, broadcasters the BBC, ITN and Sky along with PA, have worked together on projects including filming in the Court of Appeal and a pilot scheme involving cameras in Crown Courts. A court reporter from PA had already been interviewed, but I felt it was important to seek the perspectives of journalists from the three main national broadcasters with experience of these projects. In addition, a BBC executive involved in organising the LDRS was interviewed, to gain further insight into a project that was then still to fully begin at the time of the interviews, and which at one time had been expected to include court reporting. Necessarily, the questions asked of those four individuals ranged more widely, to allow for discussion of the cameras projects and the LDRS. These and all other interviews conducted for the project took place between June and October 2017.

Piloting is considered a useful step in conducting interviews and other forms of social research such as surveys and questionnaires. This means carrying out initial interviews to test the questions asked, to help make sure those interview questions lead to responses which help answer the research questions and are not misunderstood by interviewees (Davies and Mosdell 2006). Early interviews can give a researcher a hint of what to expect from a broader sample and allow for changes

to be made to the list of questions, the form in which the interviews are conducted and even the chosen sample itself, should it become clear that the initial scope seems likely to prove inadequate.

3.2.6 Analysing the interviews

Most qualitative research studies rely in some form on grounded theory and on the constant comparative method for analysis. It is particularly popular in disciplines concerned with practical problems such as nursing and information systems but has also been used in journalism studies (Martin et al 2018). Grounded theory (Glaser and Strauss 1967) is a general methodology, which traditionally involves using data gathering and analysis to develop concepts and theories. As the data is gathered, the researcher can use the constant comparative method to compare that data for similarities and differences and begin to identify the emerging concepts. In this method, researchers are obliged to be constantly asking questions of both themselves and the data, to help strengthen findings that can offer insights and even potential solutions to the participants of the study (Corbin 2017). One important element of classic grounded theory is that the researcher should avoid the temptation to make pre-formulated hypotheses, based on their knowledge of the field of research (Urquhart et al 2010). Pre-conceived theoretical ideas could result hinder the way in which insights might emerge from the data. My knowledge of journalism and interest in it would certainly put me at risk of this, as outlined in section 1.2, if I used this as my sole or main research method.

Urquhart et al (2010) argued grounded theory has gradually become less concerned with its original purpose of generating theory and is more widely used in social research as a technique for analysing or coding data. I am certainly not attempting a fully realised grounded theory in this study. That means I am not using the classic methodology of grounded theory from start to finish, while attempting to generate fresh theory about the work of journalists. Examples of this in journalism studies can be found but are relatively rare (eg Martin 2008). Instead, my use of the term and the method is akin to its broader sense. As Tracy (2013) argues, the reliance on the use of the term grounded theory is misleading, and that in most cases a better

description would be the word 'iterative'. So rather than grounding the meaning solely in the data that is emerging, the analysis encourages reflection on the active interests, other literature, and theories the researcher is already bringing to the task.

I transcribed the interviews myself. This was a time-consuming process. But as already outlined, this is a PhD project I have conducted on my own, and so there was no prospect of any research assistance. Yet this did bring benefits in the analysis of the data in that it allowed me to become more familiar with the content of the interviews than had I outsourced the task. Galletta (2013) writes data analysis demands ample time and reflection, so for this project it was time well spent. Conducting the interview, transcribing it, and re-reading the transcript, draws the researcher more closely into the experiences of the interviewees and allows thematic codes to emerge. This process can be done in an ongoing and iterative fashion. Wengraf (2001) argues making notes during these moments can be the building blocks of the later interpretation, and I took care to do so.

Researchers often use software packages such as NVivo to help analyse data from interviews. I chose not to. Such software is considered effective in complex research projects, when several researchers are involved in conducting interviews, or when analysis is required quickly (Tracy 2013). None of those factors applied to this research. Yin (2016) argues more basic software packages or manual methods can be just as useful, especially with tasks NVivo is often used for, such as managing the data gathered during a project. Indeed, with smaller research projects, investing the time to set up NVivo may not be worth it. Considering I had never used it before, I decided on a different approach for this project. I used the software package Evernote, primarily as a place to store and access data. It is a desktop and mobile app designed for note taking and archiving. I found it particularly effective when used in conjunction with the Google Chrome browser extension, which allows the immediate clipping of documents from a desktop to the Evernote database. This includes PDFs of journal articles as well as news content and other online material. This allowed me to readily search that archive of notes during later phases of the research, and indeed the writing of this thesis. I was also able to access the database on tablet and mobile devices, allowing reading and the writing of notes to take place on the move when required.

3.2.7 Ethical considerations

A key ethical consideration is to consider whether to grant anonymity to interviewees. As noted in section 3.2.5, there was a relatively limited number of court reporters working in the UK at the time of the interviews in 2017. A significant proportion of those were interviewed for this project. So even where anonymity is granted, it may well be possible for readers with knowledge of the industry to work out who the interviewees were. Most interviewees said at the time of the interviews that they would be happy to be quoted by name, but others indicated they were more comfortable speaking anonymously. Wengraf (2001) argues anonymity can still be satisfied in a weak form by simply changing the names of the speakers, and that this need not erode the value of the actual research. This was the approach I took when publishing a journal article based on some of the findings in this thesis in *Journalism Practice* (Jones 2021). Indeed, anonymising interviews is standard ethical procedure at Cardiff University. Kamberelis and Dimitradis (2014) argued that while this may be a typical policy for ethics boards to maintain, anonymity is typically low down the list of priorities for individuals taking part in social research and that many prefer to have their identities made public. They speculated this may be because of a developing familiarity among the public in general with posting material on social media and called for a rethinking of traditional notions of public and private in research projects.

I was advised for this submission to quote the interviewees by name, to allow for greater insights, especially in findings which highlight regional variations between reporting practices and experience. To satisfy this request, I re-contacted all the interviewees during 2021 after rewriting the findings chapters. I sent each journalist the quotes of theirs I had selected for inclusion and asked if they were content to be named. Two said they preferred to be anonymous throughout, although some others wanted to be anonymised for certain quotes only. The interviewees are listed in section 5.1.

This research project conforms to Cardiff University's policies for ethical standards.

3.3 Summary

The promise of this project is that it will examine the past, present and future of court reporting. It will do this through researching the history and development of court reporting in the UK, the working practices of contemporary court reporters especially in local journalism, and how changes to those working practices might alter the normative civic function of journalism. Two central research methods have been adopted for the project, those of historiography and semi-structured interviews. In part, these methods have been selected because they play to my own strengths as a journalist-turned-researcher. Next, I will begin the original research of this project in earnest by using historiography, as described in this chapter, to consider how the role of the court reporter has developed.

Chapter 4: History and Development of Court Reporting

4.1 The history of court reporting

This chapter will consider RQ1, which is ‘what is the history and development of court reporting in the UK?’ As outlined in sections 3.2.2 and 3.2.3, it will use the research method of historiography. Establishing the historical context to the coverage of the UK’s courts is important as a way of presenting how the job of court reporter emerged and then developed, so the current and potential future nature of the role can be considered in later chapters, in response to RQ2 and RQ3. The norms of the courts beat constrain and inform the ways in which modern journalists perform this role, even as some aspects of their work may have changed in response to the broader industry trends already discussed during chapter 2. This chapter will consider the sources outlined in section 3.2.3, alongside other published accounts, and critically examine them to construct a narrative of how court reporting has developed.

4.1.1 Court reporting and crime reporting

This project examines court reporting rather than crime reporting. Yet these two areas of journalism are linked, in that each involves reporting on crimes and criminal matters. I will briefly explain the difference. A court reporter traditionally covers criminal and civil proceedings once they have reached a court, through attendance at hearings and trials. A crime reporter generally covers the police and their investigations into crimes, including appeals for information about crimes before suspects are arrested or charged. As already noted in section 3.2.5, some of the court reporters interviewed straddle both areas, with a job title such as ‘court and crime reporter’. The areas of court and crime each contribute a significant proportion of the content of local newspapers (Franklin and Murphy 1991, O’Neill and O’Connor 2008). Academic studies have sometimes conflated the two, considering them as a single category of story (eg Howells 2016).

Court reporting is the older of the two beats, and it was the reporting of legal proceedings which was the traditional mainstay of crime-related journalism (Chibnall 1977). Reports of legal proceedings have been recorded as early as the 16th century (Drechsel 1983). Pamphlets flourished in the 17th and 18th centuries, describing the lives of notorious criminals, to be sold at or shortly after their executions (Hanna 2015). Volumes of notorious court cases were gathered in the *State Trials* series, in part to satisfy public curiosity about sensational crimes (Thomas 1972). Coverage of the courts in newspapers began to expand with the advent of the penny press in the mid 19th century. In the UK, court stories tended to be grouped together on the inside pages during this period and into the early 20th century. (Soothill 2009). That is not to say court coverage was necessarily considered unimportant. Coverage of infamous cases, both civil and criminal, could be extensive. An 1886 edition of *The Daily Telegraph* devoted 62 columns to a single divorce case in which both a Duke and a General were involved (Tunstall 1971). In March 1901, despite the competing editorial attraction of the Boer War, an edition of the *News of the World* gave over three of its 12 pages to the trial of a man accused of murdering his wife on a beach at Yarmouth (Engel 1996).

Crime reporting gradually emerged as a separate beat within journalism. The very first edition of the *News of the World*, published in 1843, featured a crime story on its front page. Lord Northcliffe, who founded the *Daily Mail* in 1896, had the memorable slogan ‘get me a murder a day!’ (Hanna 2015), suggesting proprietors already recognised the commercial value of articles involving potentially intrusive or salacious details of crimes. But it was not until the 1920s that crime reporting became more clearly identifiable as distinct from court reporting, partly because of increasingly bitter circulation wars among newspapers and the increasing influence on British editors of the more sensational style of American tabloids (Linkof 2014). In the inter-war period, Sunday newspaper reporters were increasingly courted by detectives, who would save up “golden nuggets” of information to be released to the media to help maximise coverage through the rationing of exclusives to favoured reporters (Engel 1996, p228). During this time, criticism of press intrusion became more commonplace, focused on the ways in which crime reporters covered families at moments of grief, such in missing persons cases and immediately after the deaths of relatives (Linkof 2014). Crime reporters often sought confirmatory rather than

contradictory evidence, allowing them to deliver accessible sensational stories full of dramatic allegations and sometimes short on both detail and ambiguity (Roodhouse 2018). Political pressure to rein in the intrusive behaviour of crime reporters even led to an early attempt in 1937 at newspaper self-regulation, led by trade body the Newspaper Proprietors' Association (HC Deb 25 February 1937). This was aimed at heading off government intervention (Linkof 2014), foreshadowing what would become a familiar theme in the British press in the decades ahead. Not that the UK is alone. The critique of crime reporting as being sensational and speculative has been considered a key factor in the introduction of stricter professional and ethical standards in other countries, such as Norway (Rossland 2007).

The period after the Second World War has been described as a 'golden age' of court reporting in UK, fuelled by a post-war crime wave. Capital cases such as that of 19-year-old Derek Bentley, hanged for the murder of a policeman under 'joint enterprise' in 1953 even though it was his younger criminal associate who fired the fatal shot, were given widespread media coverage, and court stories began to feature more regularly on front pages (Soothill 2009). Newspapers battled each other harder than ever for exclusives relating to the Bentley case, which led to disillusionment among some Fleet Street reporters over the ethically questionable methods they were obliged by editors to use to secure their scoops (Procter 1958). The media's interest in major trials did decline slightly after this, attributed in part to a public weariness at the over-exposure of cases such as Bentley's, and the abolition of the death penalty leading to lower stakes in murder trials (Chibnall 1977).

4.1.2 Contempt of Court

A central tension in media reporting of legal proceedings lies between the balance of protecting the right of a defendant to a free trial, and the corresponding right of the media to be free to report on those proceedings (Giglio 1982). A further dimension is the regular conflict between journalists and legal professionals. Journalism is not stenography and any attempt to summarise rather than purely transcribe a court event has the potential to irritate or upset someone involved (Drechsel 1983). In the UK, the open justice principle has long given the media and the public statutory and

common law rights to attend most court proceedings, with limited exceptions including youth courts and certain family court hearings (Smartt 2017). Today, the competing rights of fair trial and free press are set out in articles in the European Convention on Human Rights, adopted into UK law by the Human Rights Act 1998. Article 6 protects the right to a fair trial. It states that defendants must be presumed innocent until proven guilty and that trials must generally be held in public, although it acknowledges limited occasions when the press and public might be excluded. Article 10 protects the right to freedom of expression. It notes that certain conditions apply to this right, including to protect the health or rights of others. Any attempt to depart from the UK's open justice principle and impose restrictions on the reporting of legal proceedings, must therefore adhere to Article 10.

Actions by media companies or others which may interfere with the outcome of a trial or risk putting undue influence on proceedings, can be defined as contempt of court. Contempt is a legal constraint on court reporters and has a long history within the UK's jurisdictions. The law of contempt is only one of the ways in which the due processes of the law are supported, but it does play a "key role" (Lowe and Sufrin 1996, p7). Courts can protect the administration of justice by punishing those guilty of a criminal contempt, such as journalists, with a fine or even detention in custody (Smartt 2017). References to contempt of court go back even earlier than published court reports and can be found from about 1250 onwards, although these generally concerned disruption to court proceedings in the form of physical violence, rather than interference caused by publications. The infamous Star Chamber took an interest in contempt offences, and when it was abolished in 1642 much of its jurisdiction was assumed by the common law courts. It has been argued the summary nature of dealing with contempt cases over the centuries could owe much to that earlier Star Chamber (Eady and Smith 1999).

The foundations for the modern law of contempt were laid in the 18th century, with the first case of a publisher being found guilty of a prejudicial article dating to 1720 (Phillimore 1974), while the editor of a Gloucester journal was jailed for contempt in 1728 (Danbury 2007). The ruling of the Lord Chancellor, Lord Hardwicke, in the 1742 *St James's Evening Post* case was significant concerning contempt of court as it relates to publication. The printer and publisher of the newspaper were committed to

Fleet Prison in London after publishing an article about witnesses in a pending case. Hardwicke held that it was no defence for a publisher to claim they had no knowledge of the content of the publication at question and argued that contempt need not only apply to those directly engaged in a case, but that “there may also be also a contempt of this court, in prejudicing mankind against persons before the case is heard” (see Oliver 1962). For Danbury (2007), Hardwicke was primarily concerned with the question of damage being done to the dignity of the court, and to the reputation of those involved in the trial, rather than any idea that media reporting might affect the impartiality of judges or the court. Yet Hardwicke’s broad and enduring notion of contempt, and the power of judges to jail journalists who fell foul of it, “continued to bedevil” the work of court reporters, making it harder for journalists to freely publish materials relating to legal matters, until contempt law was reformed by the 1981 Act (Eady and Smith 1999, p21). That reform will be considered in more detail later in this chapter.

The *St James’s Evening Post* case set the foundation for the “flexible yet powerful contempt law” in operation in the UK’s jurisdictions, arguably making it arbitrary and unlimited (Krause 1996, p539). Criminal contempt is triable through a summary process, taking place quickly and without a jury. This allows a court to act swiftly to bring an end to whatever behaviour is undermining its authority. Crown Prosecution Service guidance (2018a) points to the 1970 *Morris v Crown Office* case, and the Court of Appeal’s statement that judges in contempt matters have a wide power “to deal at once with those who interfere with the administration of justice” on the basis that such power is necessary to maintain law and order. Calls for change are often traced back to the aftermath of the judgment of Judge Wilmot in *R v Almon* in 1765, although this did not appear until published in his notes in 1802. This strict ruling provided the foundation in English law for the unusual summary procedure in contempt cases (Cooke 1983). Wilmot claimed judges using summary jurisdiction on contempt matters was a long established and necessary practice (Oliver 1962), although subsequent research has cast doubt on his logic (McCall-Smith 1975, Cooke 1983). Complaints about this strict regime in Parliament can be dated to 1810. Charles Dickens was among those who sought to improve the situation of those committed indefinitely for contempt. Political arguments for reform gathered

pace, but as many as eight reforming attempts between 1883 and 1908 all proved “utterly futile” (Rosen 1979, p38).

Possibly the most infamous example of media contempt in British journalism came in 1949. *Daily Mirror* editor Silvester Bolam was jailed for three months for describing murderer John Haigh as a “monster”, a “maniac” and a “vampire” at a time when he had only been charged with one crime. This was in the context of the period outlined in section 4.1.1, when major trials such as capital cases were given widespread and prominent news coverage (Engel 1996, Soothill 2009). Yet the desire of politicians to legislate lessened when compared with the previous attempts at reform, perhaps because of the more balanced approach to contempt taken by judges. The general test for media contempt had, by this post-war era, now been generally restricted to two things, a real risk the article was calculated to prejudice a fair hearing, and a solid view of the likelihood of such interference (Rosen 1979), apparently reducing the risk of contempt impinging on the everyday work of court reporters. Despite this relative stability, media concern over contempt persisted, relating to the potential uncertainty in the application of the law of contempt, the severity of the penalties and the continued summary nature of the prosecution process (Lowe and Sufrin 1996, see also Napley 1981), underlining the long shadow cast by Wilmot’s judgment.

The common law nature of contempt of court in the UK increasingly stood out during the 20th century as a “strange British institution” as laws elsewhere around legal processes became part of clear statutory offences rather than piecemeal evolution (Rosen 1979). American courts invoked broad powers around contempt infrequently, preferring to ensure fairness through more rigorous jury selection rather than restricting pre-trial media reporting (Krause 1996, Brandwood 2000), while in Canada the accused can ask the Attorney General to be tried by a judge alone to mitigate such publicity (Lowe and Sufrin 1996). Such mitigations did not develop in the UK’s jurisdictions, where the generally strict approach to contempt continued, despite renewed campaigns for change from the 1950s onwards (Cooke 1983). The piecemeal development of contempt law also persisted. Some recommendations on the innocent dissemination of material relating to inadvertent publication, which had been made by the campaign group Justice, were included in a 1960 statute, the Administration of Justice Act. It gave protection to a media company if they had

taken “reasonable care” prior to publication of material that could potentially interfere with justice, to establish whether criminal proceedings in the matter were ‘pending or imminent’. However, that Act’s failure to adequately define the terms ‘pending’ and ‘imminent’ led to further media confusion in future years (Krause 1996).

In 1957, the Tucker Committee proposed tighter restrictions on what could be reported as part of initial committal hearings and came up with a limited list of points which media companies could publish (Williams 1958, *The Times* 1958), a list which mostly remains in place today, under section 8c of the Magistrates’ Court Act 1980. It includes facts such as the name, address, occupation and age of the accused, the offence, the decision to commit for trial and whether the accused is granted bail. The Committee had been tasked with investigating whether magistrates’ hearings should be held in private, following controversy of the reporting of the case of suspected serial killer, Dr John Bodkin Adams. There had been concern over whether extensive and, in places, lurid coverage of his initial court appearance might have influenced the jury at his trial, although these fears were somewhat eased by his acquittal. Given such hearings involve a brief and one-sided account of the alleged events given by the prosecution, with a full defence reserved for the actual trial, more detailed media reports could run the risk of being prejudicial. The list of publishable points recommended by the Tucker Committee was mostly included in the later 1967 Criminal Justice Act despite media complaints restrictions on journalists were already too tight (*The Times* 1965a). These concerns were shared by Master of the Rolls Lord Denning, who argued reporters were the “watchdogs” of the legal system, and that he opposed any attempt to diminish the principle of open justice (*The Times* 1965b, p4). When the 1967 Act’s powers took effect, *The Times* billed it as the start of a “curb on court reporters” (*The Times* 1968, p3).

Pressure continued to grow on the UK government to take a renewed look at contempt, reflecting the long-standing and increasing media concerns (Young 1981). In 1971, the Lord Chancellor Lord Hailsham established a committee to do so under Lord Justice Phillimore. Lord Hailsham later said that he believed the law of contempt was “overdue for reform” at the time and that such reform was only likely through a Parliamentary report (Hansard, 7 May 1980, col 1751). The committee’s terms of reference were to “consider whether any changes are required to the law

relating to contempt of court” throughout England, Wales and Scotland (*Press Gazette* 1974a, p9). It took more than three years, delayed in part so it could reflect the implications on contempt of court of what would become a key case, that involving the *Sunday Times* and its coverage of the thalidomide scandal (Knightley et al 1979). That case has been described as “perhaps the most significant debate on press freedom ever fought in this country” (Rosen 1979, p8).

4.1.3 *The evolution of other reporting restrictions*

Before considering that case, I will briefly discuss the evolution of other reporting restrictions affecting the work of UK court journalists. A ban on the use of cameras in courts in England and Wales was imposed in 1925, in section 41 of the Criminal Justice Act. Even if this were not a specific statutory offence, taking photos in court might be regarded as a contempt if such actions led to the disruption of proceedings. Yet despite such considerations, the 1925 Act has long been the “crucial obstacle” to providing visual coverage of court proceedings (Dockray 1988, p593). It has also applied to the use of television cameras, even though the Act pre-dated the beginning of television broadcasts.

The ban followed a developing view that such images were not in the public interest. A notable early example was the decision in 1906 by Sir Gorell Barnes to prohibit sketching in the Divorce Court, when he took over as its President, on the grounds that people giving evidence in such cases might feel embarrassment and pictorial illustrations were not necessary nor in the public interest (Mason 2012). In 1910, a photograph of murderer Dr Hawley Crippen and his mistress Ethel le Neve in the dock at Bow Street Magistrates’ Court was published in newspapers. It was a clear image taken from close to the dock at ground level, although it is supposed that it may have been taken illicitly (Jaconelli 2002). A commentator in *The Law Journal* responded by describing it as a “scandal that a witness in a sensational case, whether he desires the publicity or not, should have his portrait reproduced in public print to gratify the vulgar curiosity of the multitude” (Mason 2012, p23). This argument was based on the idea the accused may be cleared, and therefore having

the photo of an innocent man circulating in this way would cause additional suffering to him and his relatives.

There was much inconsistency in the attitude of judges in this period. While the judge in the Crippen case did not expressly ban taking photographs, no more appeared after the dock picture, although sketches of the accused and witnesses were published. Yet at the same time as Crippen's full trial was taking place at the Old Bailey, the judge in another case in a neighbouring courtroom issued a warning to the court on being told that somebody was drawing a sketch (Mason 2012). More obviously taken surreptitiously than the Crippen picture was a photograph from March 1912, of the moment poisoner Frederick Seddon was being sentenced to death at the end of his trial, also at the Old Bailey. It was published the following day in the *Daily Mirror*. Taken from a high angle, it gave a clear view of all lawyers and jurors involved, as well as the judge with his black cap on (Jaconelli 2002). Home Secretary Reginald McKenna was questioned about the matter in the Commons and agreed to consider it. This did not lead directly to the introduction of a Bill, but the Home Office did begin to collect files of material relating to photography in court, another gradual step on the way to the ultimate legislation.

Moves to legislate gathered pace in the early 1920s and ultimately formed part of the 1925 Act (Mason 2012). The Lord Chancellor issued an order banning photography in the Royal Courts of Justice in central London and its precincts, although this did not extend to the criminal courts at this time. Judges had increasingly begun to consider the taking of photographs and the drawing of sketches in court to be a nuisance and photographers were regularly taking up positions within the railed enclosure of the RCJ to try to get better photos. Yet the inconsistency of judicial approaches to the matter were again highlighted by the actions of Mr Justice Avory. He allowed himself to be photographed wearing his black cap to pass a capital sentence on murderer Thomas Alloway at Winchester Assizes in 1922, with the pictures taken from the well of the court looking up, and apparently posed for (Jaconelli 2002). In 1923, Home Office Undersecretary Sir John Anderson sent the Director of Public Prosecutions, Sir Archibald Bodkin, the file on courtroom photography which civil servants had been gathering since 1912 and asked whether he felt the time was now right for legislation. Bodkin responded enthusiastically. That

March, a deputation of MPs visited the Lord Chancellor to advocate for, among other things, a ban on photography in the criminal courts (Dockray 1988).

The provision to ban court photography did not form part of the original Criminal Justice Bill presented to Parliament in 1923, but it was included when the Bill was reintroduced by the Labour government the following year. Neither became law because of the political upheaval of general elections in consecutive years. But the clause reappeared when the Bill returned to Parliament for the third and last time in 1925 (Mason 2012). Addressing the clause directly, Home Secretary William Joynson Hicks told the Commons that “everybody has suffered for a long time by prisoners in the dock and witnesses being pilloried by having their photographs taken, and this is to prevent that happening” (Hansard 11 May 1925, col 1599). This attracted relatively little Parliamentary discussion and made up only a small part of the total Act.

Dockray (1988) summarised the feelings of the creators of this part of the 1925 Act in these broad terms: still photographs in newspapers were considered to have little public benefit, while at the same time exciting prurience and morbid curiosity, so the statute was aimed at protecting participants against unnecessary and tasteless press coverage. It was suggested photography might put off some litigants and witnesses from taking part in the legal system, especially if photography was allowed while witnesses were on the stand giving evidence. Concerns were raised by some MPs over whether it would be enforceable to prevent photography in all precincts of a court and whether this phrase was too vague. Although on the other hand, some suggested the provision should be extended to include the public highway, mindful of the photographers gathering outside the Royal Courts of Justice in this era (Mason 2012). Some of the 1925 provisions have been eroded and challenged in the UK’s jurisdictions in more recent times, and these will be discussed in chapter 6, in the context of the practices of court reporters.

Another broader statute which has impinged on the work of court journalists was the Children and Young Persons Act 1933. The Act was generally concerned with consolidating a range of pieces of legislation relating to child protection in England and Wales into a single statute. Section 39 gives courts the power to protect the

anonymity of minors concerned in court proceedings, whether as the accused or a witness. Section 49 provides anonymity to those involved in proceedings before a youth court. Media companies remain able to report on such cases even though they are closed to the public, in the interests of open justice (Crown Prosecution Service 2018b). Reporters must steer clear of 'jigsaw identification' and so cannot publish any fact which may lead a reader to work out the identity of someone involved, such as the child's school. The regime has often led to misconceptions within the legal system, especially among magistrates, that the law imposes a blanket ban on identifying juveniles involved in cases in all circumstances, potentially affecting the media's ability to report on these matters (Quinn 2018).

The discourse around media law and the restrictions it places on journalists has also often focused on defamation (Hastings 1949, Dean 1953). A civil rather than criminal matter, defamation law is the publication of material which affects the reputation of a person or organisation. Attempts to make significant reforms to defamation law often ended in frustration, not just for reporters but also for those in the legal profession. As Sparrow (1970) argued, while it was often said England had the best legal system in the world, it also had "the most archaic and unsuitable law of any modern country" (p171). Defamation law was eventually reformed by statute in 1996 and again in 2013 in response not only to emerging case law but also significant changes in broader society and within the media. Such renewed attention has not been paid to the issue of contempt since the 1981 Act, the lead-up to which will be considered next (for the text of the Act, see Appendix 3).

4.2 The Thalidomide scandal and The Sunday Times

4.2.1 The initial legal battle

The impetus behind renewed calls for contempt reform during the 1970s has been attributed to the *Sunday Times* case involving the thalidomide families (eg Phillips 2011), even though the Phillimore committee had in fact been established before that case began. The creation of the committee reflected longer standing media

concerns about contempt law already outlined (Young 1981) and was at least in part established to review the inadequacies of the 1960 Act and to suggest reforms (Krause 1996). The report itself also noted the changing media landscape of the time as a reason for the committee's existence. It suggested the continuing power and ambit of the press was notable in this context, alongside the growth and influence of television. The expansion of broadcasting allowed for faster and more widespread publication of stories than in conventional newspapers, potentially making it more likely material which may fall foul of contempt law could enter the public domain, underlining the need for the law to adapt. "These considerations point to the need to preserve the principles of the law of contempt, although substantial reforms are necessary to take account of modern conditions" (Phillimore 1974, p6). Yet while such adaptation was a significant theme of the report, it began from the principle that some form of contempt law remained essential to the legal system to help protect the administration of justice (Sauvain 1975).

Despite those general concerns, the thalidomide case would loom large over the Phillimore committee's work. *Sunday Times* editor Harry Evans wanted to raise awareness of the plight of thalidomide children and their families who had still not been compensated for deformities relating to the pregnancy drug. But the paper's lawyers faced the challenge of staying on the right side of the law in the context of the outstanding civil claims against Distillers, the maker of thalidomide (Times Newspapers 1973, Evans 1983). Distillers was granted an injunction at the High Court in November 1972, preventing the *Sunday Times* from publishing an article criticising the company for its failure to properly test thalidomide. Lord Widgery held that, while the *Sunday Times'* intention to draw attention to the number of outstanding compensation claims was accepted, what was not was "an attempt to break the deadlock by applying pressure to one party with a view of inducing him to settle" (Berlins 1972). The paper was therefore obliged to focus on the emotive stories of the victims and their lives, rather than on Distillers itself (Knightley et al 1979). But it continued its legal battle, taking the case to the Court of Appeal, and presenting the first modern opportunity for the court to analyse the contempt issue. Up to that point, contempt cases heard had been based around specific instances of conduct, rather than one which called for a more general reflection (Miller 1974).

The Court of Appeal was more sympathetic to the *Sunday Times*. But the paper's success was short-lived as the Attorney General took the case to the House of Lords. As with the Court of Appeal, this was the first time the Law Lords had enjoyed an opportunity to review contempt law (Times Newspapers 1973), further underscoring the significance of the thalidomide case. The Lords backed the Attorney General, holding the article could not be published because it might prejudice the outcome of compensation claims against Distillers (Knightley et al 1979). However, each of the five Lords gave separate and, at times, wildly contrasting opinions, emphasising the confusion surrounding contempt law (Rosen 1979). The *Sunday Times* accused the Lords of failing to give clarity and pointed to the "staggering variety of opinion" from the 11 different judges who, at different stages, had now heard the arguments (Times Newspapers 1973, p153). The Lords adopted a wide definition of contempt, broad enough to include many technical contempts which carry no serious risk to the administration of justice (Eady and Smith 1999). The Phillimore Report would highlight exactly this as offering "no better illustration of the present uncertain state of the law" (Phillimore 1974, p5).

The uncertainty was perhaps unsurprising because there was little case law around which a consistent jurisprudence could evolve (Eady and Smith 1999), again underlining the potential value of the clarity that a new statute might provide. Despite the confused approach from the Lords, the decision remained the leading common law authority on contempt until the statutory reform of 1981 (Barendt et al 2014). The ruling was particularly controversial because the Lords had held that a public prejudgment could be considered contempt in all cases, whereas previous case law had tended to find that would not be typical, certainly in the case of a non-jury trial such as the thalidomide case. The Lords were seen to have laid down an absolute rule by insisting on a blanket ban, rather than the more flexible case-by-case system which had evolved over the years, the Lords' decision therefore amounting to a measurable tightening of contempt law (Miller 1974). After the Contempt of Court Act 1981 was ultimately passed, courts began to accept the point that professional judges could not be influenced by potentially prejudicial media reports. A key example of this would be the *Lonrho* case, relating to a special midweek edition of Sunday newspaper *The Observer* and commentary within it about the takeover of Harrods and the wider House of Fraser group by the Al Fayed brothers (Williams

1990). Lonrho had previously been prevented by the Monopolies and Mergers Commission from bidding for the retailer, at the same time as its purchase of the newspaper was approved, and its chief executive Tiny Rowland poured resources into his newspaper's investigations into the Al Fayed's (Trelford 2010). Lord Bridge argued that, while the potential influence of prejudicial media reports on a jury was obvious, the chances of a judge being swayed in such a fashion was "much more remote" (*In re Lonrho* [1990] 2 AC 154).

4.2.2 *The Phillimore Report*

For the thalidomide families the ongoing legal battle became somewhat academic because Distillers, prompted by the publicity, raised its offer of compensation sevenfold, a deal broadly acceptable to all sides (Times Newspapers 1973). In the meantime, the Phillimore Report was finally released in December 1974. *The Sunday Times* had argued the Lords' ruling constituted a "final decisive argument for radical recommendations" from the committee, and unsurprisingly used an editorial to call for a "great liberalisation" of contempt in civil law, and a clearer contempt law for criminal matters (Times Newspapers 1973, p153). When it came, the report was, according to the *Sunday Times* journalists involved in the thalidomide story, an "authoritative argument that the balance between the administration of justice and free speech had moved too far against the freedom of the press" (Knightley et al 1979, p303). The thalidomide case was cited in the report as a key example of this.

Phillimore called for Parliament to pass a contempt law to clarify the uncertainties. The report suggested the test should be changed from whether issues at stake in a pending case were prejudged by a publication, which the committee thought vague, or the risk of prejudice, to whether there was a risk the course of justice would be damaged. Phillimore concluded the best option would be to provide a standard definition, because listing everything prohibited would be impractical, and recommend "the best of contempt is whether the publication complained of creates a risk that the course of justice will be seriously impeded or prejudiced" (Phillimore 1974, p49). Phillimore actually argued against 'serious' risk, the eventual 1981 Act

would go on to include the word 'substantial' in its place, because he suggested the law should be more focused on preventing serious prejudice, not serious risks.

Perhaps most significantly, Phillimore also called for a change to when contempt rules should apply, arguing this had to be easy for an editor to ascertain at short notice. Phillimore feared an early point, such as an arrest or issuing of a warrant in a criminal investigation, may not be immediately announced by the police, leaving the press in the dark about whether they were at risk. In civil cases, Phillimore acknowledged it was a more difficult argument, in part because those take longer and are less often heard by juries. This means the risk of the press being stifled for an extended time is greater, as was the case with the *Sunday Times* over thalidomide, and the risk of interfering with the administration of justice could be argued to be lower, foreshadowing the comments of Lord Bridge in the later *Lonhro* case. Indeed, one of the committee members, broadcaster Robin Day, went further. He issued a short minority report, arguing there was virtually no need for a law of contempt in civil cases at all, because judges should be beyond being influenced by press coverage. Phillimore though concluded the date of setting down of trial should be the moment when proceedings become active, on the grounds it was the latest date in the procedure regarded as "convenient and ascertainable" (1974, p54).

Phillimore was broadly welcomed by the media. Evans was "delighted" and added that he failed to see how the government could fail to implement the conclusions (*Press Gazette* 1974a, p3). The National Union of Journalists said the proposals amounted to steps towards a freer press. Newspaper leader columns were also generally in favour although both the *Daily Telegraph* and *Times* were worried about the danger of prejudice in Lord Lucan-style cases, when a suspect has absconded before they arrested. At the time this was a topical issue. Lucan, an aristocrat and gambler, had disappeared the previous month, in November 1974, after his nanny was found beaten to death. Meanwhile, the *Guardian* suggested the proposed changes to the timing of contempt in criminal cases would lead to more pre-trial publicity but agreed with the committee this would probably have little impact on trials, often taking place months later. The *Daily Mail* said the proposals would do much to clarify contempt law, and a little to make it more liberal, but lamented they would not go far enough to "disturb the beauty sleep" of the rich and powerful who

use the law to shield themselves from investigative journalism (*Press Gazette* 1974b, p11). Presciently as it turned out, the *Press Gazette*'s own Night Lawyer column predicted the Phillimore proposals would get "stuck at the bottom of the in-tray", accusing Westminster of rarely doing anything to help the media (*Press Gazette* 1974b, p11).

Phillimore has been described since as "the most comprehensive and authoritative examination of the law of contempt" (Cooke 1983, p36) and it was generally accepted at the time among media and legal commentators that the report struck a "practical and well thought out balance" (Rosen 1979, p44). But official interest in reform was slight (Bailey 1982). The *Sunday Times* reporters blamed this in part of Harold Wilson. As opposition leader in 1973 he had argued in favour of a change in the law, but by 1975, as Prime Minister, he appeared less sympathetic to media interests following news stories about his personal secretary and a land deal (Knightley et al 1979).

4.2.3 Further developments towards contempt legislation

The government did eventually publish a Green Paper, a document containing tentative proposals aimed at stimulating debate and responses. Yet this was not until 1978, and it did not commit to statutory reform. The barrister and Labour MP John Ryman used an adjournment debate in the House of Commons, to complain that while ministers had by then sat on the Phillimore recommendations for three-and-a-half years, the Green Paper gave little clue as to what the government thought about the proposals (Hansard, 25 April 1978, col 1341). The Attorney General, Sam Silkin, said four of the issues raised by Phillimore, including strict liability, the legal term when a defendant is liable for what they have done regardless of their intention, were so finely poised that the government had not been able to arrive at firm conclusions (ibid, col 1350), although here I might speculate this was evidence of a general lack of enthusiasm within government for contempt reform. The Green Paper was criticised for emphasising dangers of reform as proposed by Phillimore, and the way it questioned some of the recommendations made it seem as if they would never be implemented (Lowe and Sufrin 1996). For example, while Phillimore had suggested

a publisher should have a defence that an item was a fair and accurate report of legal proceedings in open court or part of general, legitimate discussion of matters of public interest, the Green Paper suggested having such defences open to the media might tip the balance too far against accused people and litigants (see Berlins 1978). A *Times* editorial (1978) queried why a Green Paper was even necessary, given that extensive consultation and discussion had already taken place in the evidence submitted to Phillimore, and suggested it would merely lead to further delays. *The Guardian* described it as “a mean little thing, a cravenly tentative performance” among general derision among press and some legal commentators (Rosen 1979, p47).

In Europe, what Evans described as a “prodigious legal battle to define the balance between public interest in the freedom of the press and in the administration of the law” continued (Evans 1983, p70). The UK government had been expected to win, not because the European judges would necessarily agree with the Law Lords’ ruling as such, but because observers anticipated the Strasbourg court would accept the Law Lords had been within a “margin of appreciation” under the law (Zander 1978, p12). Therefore, the outcome in April 1979 was a surprise. The judges voted 11-9 that existing UK contempt law and the Law Lords’ refusal to allow the *Sunday Times* to publish the draft article on thalidomide from 1972 breached the newspaper’s right to freedom of expression under Article 10 of the European Convention on Human Rights (Shaw 1979).

The judges accepted the *Sunday Times*’ argument that there had been “interference by public authority” to its freedom of expression, a violation of Article 10(1). It then examined whether that interference was legitimate under Article 10(2). The judges held that the interference was “prescribed by law” under Article 10(2), and that the aims of that interference were legitimate. Yet they found that a violation did occur in relation to whether the interference was “necessary in a democratic society” for maintaining the authority of the judiciary. They held that public concern over the thalidomide case was not outweighed by any demonstrative need on the facts to maintain the authority of the judiciary. The European judges found a court cannot operate in a vacuum so there can never be a total embargo against prior discussion of disputes outside the courts. Indeed, often this very thing is in the public interest.

Of significance was the “moderate” tone of the actual draft article at question which, while undoubtedly featuring analysis of the evidence against Distillers, also summarised arguments in the company’s favour. The majority of judges also agreed with the Court of Appeal’s view that the case was “dormant” and therefore a future trial on the issue of negligence was unlikely, undermining the Law Lords’ ruling that a public prejudgment could be considered contempt in all cases, as discussed earlier in this chapter. The nature of the thalidomide case, and the ongoing personal tragedies affecting hundreds of individuals also helped to persuade the judges. They noted the victims and families had a “vital interest” in knowing all underlying facts of the thalidomide case, a public inquiry had not taken place, and by the time of the initial *Sunday Times* draft article had been stuck in a “legal cocoon” for several years with no guarantee their civil case would be set down for trial (*The Sunday Times v The United Kingdom* 1979 ECHR 1).

However, they noted the UK had broken the ECHR in this specific case only, and while the House of Lords ‘prejudgment’ test was not considered too strong, there was much disagreement among the judges about what if anything else was needed from contempt law reform (Lowe and Sufrin 1996). The judges held that what was most required was clarity and that, as noted by Phillimore, existing common law contempt was too vague, especially on the point of when proceedings can be considered to have started. This was a spectacular victory for the *Sunday Times*, albeit a slightly pyrrhic one as it was not being published at the time of the decision because of a lengthy dispute with printworkers’ unions (Evans 1983). The ruling gave fresh impetus to calls for contempt reform (Lowe and Sufrin 1996) and the government was duly obliged to bring proposals to Parliament, which could result in the passage of what would become the 1981 Act (Eady and Smith 1999), which will be considered in detail in section 4.3.

4.2.4 The Times on thalidomide and contempt

Throughout the legal battle over thalidomide, the case was often the subject of leader columns in *The Times*, sister paper of *The Sunday Times*. I will briefly

consider the content of those editorials and the arguments deployed within them, to help further illustrate these events as part of the historiography. *The Times* regularly used leaders to comment on contempt law in the context of thalidomide, praising its interpretation by judges once, criticising its implementation on six occasions, and calling for reform of contempt law three times. Initially, the paper praised the way in which contempt law was interpreted by the Court of Appeal judges when the overturned the original High Court decision. Its leader began by describing the law of contempt as “a necessary safeguard for the fairness and integrity of legal proceedings” underlining that *The Times* never sought to seriously consider the possibility of essentially doing away with contempt law. The paper argued that without it “a person could be bullied out of his rights at court, and the courts could be induced through the pressures of outside opinion to dispense a form of tainted justice”. But the article then lamented that “if it is applied too readily it can become instead a restraint upon legitimate public debate on matters of public interest.” The leader welcomed the ruling, saying it “must be welcome to all who value the freedom of the press to comment on important public controversies” (*The Times* 1973c).

The view of *The Times* changed dramatically once the House of Lords handed temporary victory to the Attorney General later that year. It summarised Lord Denning’s Appeal Court argument and noted that he stated contempt law did not prevent comment about litigation which was “dormant and not being actively pursued.” *The Times* criticised the Lords for failing to answer Denning’s key point and noted that Lords panel member Lord Reid “laid down as a general rule, which will be most important in future cases, that ‘it is not permissible to pre-judge issues in pending cases’” (*The Times* 1973e). *The Times* concluded by arguing it could be possible for those involved in a controversial news story to serve a writ to suppress the reporting of that story: “Is that really a tolerable situation for British law to have reached? Might not journalists or politicians in such a case have a duty to test again so great a restriction on freedom of speech?” (*The Times* 1973e)

The Times’ criticisms of contempt law were more clearly coupled with calls for change after the publication of the Phillimore Report.

“[Phillimore] tried hard to reform the existing chaotic law by making a large number of recommendations which, taken as a whole, would have the beneficial effect both of making the law more certain and of liberalising it to take account of modern conditions.” (*The Times* 1974d)

On when contempt should begin, *The Times* described these proposals as “perhaps the most significant from the point of view of everyday newspaper and broadcasting practice” but complained the Phillimore committee’s recommendations “may create as many problems as they solve.” It argued making proceedings active at the moment of charge would be too late, allowing too much time between arrest and charge during which “background, investigative and potentially prejudicial material” could be published. Moving to civil cases, *The Times* said the committee’s proposals were “unsatisfactory for the opposite reason,” arguing that making the setting down for trial date as the relevant one, opened the way for comment to be stifled for two years or more as, *The Times* noted, Lord Denning himself told the committee (*The Times* 1974d).

The eventual lifting of the injunction in 1976 was welcomed by *The Times*, but with qualifications: “Any satisfaction... must be tempered by a great deal of concern about the law which made it possible to prevent the facts from coming out until now.” Its leader complains that the law of contempt had not changed since the injunction was first made in 1972 “except that it has become, if anything, more restrictive and more confusing” (*The Times* 1976, p17). It noted that the law had effectively become the interpretation which was laid down by the Lords in their 1973 decision, which reversed the Court of Appeal ruling.

“If there were to be another thalidomide tragedy tomorrow, and court action taken, the Sunday Times would once again probably find itself unable to publish facts of the utmost relevance to the issue in question, however important to the public interest it was.” (*The Times* 1976, p17).

The Times was equivocal in commenting on the actions of the government and Distillers during the compensation row. But once the legal battle over its sister paper’s draft article turned against the *Sunday Times*, *The Times* itself became

much more willing to criticise both the courts and the government, the latter for not doing enough to reform contempt law.

4.3 The arrest of Peter Sutcliffe and The Contempt of Court Act 1981

4.3.1 The introduction of the Contempt of Court Bill

The outcome of the legal battle between the *Sunday Times* and the government over thalidomide obliged ministers to legislate on contempt. The next section of this historiography will critically examine the passage of what ultimately became the Contempt of Court Act 1981. There will be a particular focus on the extent to which public and political controversy about the arrest of the serial killer Peter Sutcliffe, the Yorkshire Ripper, in January 1981, came to play a significant role in discourse over the content of the Act.

The Lord Chancellor, Lord Hailsham, had not seemed keen on radical reform. Introducing the Contempt of Court Bill following the European ruling, he indicated he merely wanted to relax some contempt restrictions and make its application more certain, therefore maintaining the basic stance of the ultimate supremacy of the administration of justice over freedom of speech but shifting the balance slightly in favour of the latter (Lowe and Sufrin 1996). When it received its second reading in December 1980, Hailsham said the Bill had three main purposes. Those were to put into effect the bulk of the Phillimore recommendations, to harmonise the laws of England and Wales with the judgment in the *Sunday Times* case, and to bring consistency in the law of contempt as applied in the different nations of the UK (Hansard, 9 December 1980, col 657). He conceded that, had it not been for the European ruling, that lack of action may well have continued. He told peers it was “a liberalising Bill” (Ibid, col 659).

The content of the Bill attracted immediate concern from media interests. The proposal to apply contempt from the time proceedings in a case become active, such as at arrest, rather than to wait for the charging of a suspect as proposed by Phillimore, was considered a “strict new definition” (*Press Gazette* 1980a, p8). *Press*

Gazette, the journalism trade press magazine, described the Bill as “unnecessary” and “oppressive” from the standpoint that contempt was not much of an issue, as it was rarely shown to have any actual impact on a trial. The magazine was particularly exercised by the notion that proceedings could become active from the moment an arrest warrant is issued, an event journalists are unlikely to be made aware of (*Press Gazette* 1980b, pp12-13). While acknowledging the Bill deviated from Phillimore on the point about timing, Hailsham insisted this would only apply in a small number of cases (Hansard, 9 December 1980, col 662). The Bill did include provision for tape recorders to be used in court under certain restrictions. Lord Hailsham even described this as “necessary” (Ibid, col 664).

The initial debate was dominated by lawyers. Prominent barrister Lord Wigoder even said he feared lawyers might have too much sway over the content of the Bill unless journalists spoke up (Ibid, col 670). Of the journalists in the Lords only Lord Ardwick, a former editor of the *Daily Herald*, intervened in the debate. *Press Gazette* later used its front page to criticise prominent proprietors and other former editors such as Lords Rothermere and Cudlipp for not attending (*Press Gazette* 1980d). Ardwick drew on his journalistic background to appeal to Lords that the relative rarity of contempt cases was because editors were cowed by the law, stating that most “act as though the better part of valour is suppression” (Hansard, 9 December 1980, col 688). Perhaps unfortunately for this argument, the actions of many newspapers would soon cast doubt on this.

4.3.2 *The arrest of Sutcliffe*

The debate over contempt was given a new urgency by the arrest of Sutcliffe and the behaviour of both media and the police in the immediate aftermath. Before considering the response of newspapers and others, I will put the story in context. Sutcliffe was arrested in Sheffield on Friday 2 January 1981, following a series of 13 murders and other attacks on women across the north of England dating back to 1975. These crimes were so different from the general run of reporting, editors later said covering the huge development of Sutcliffe’s arrest presented problems “rarely if ever encountered before” (Press Council 1983, p57). The investigation was

considered the biggest manhunt in British criminal history and was so large and complex, the floor of the police incident room in Leeds had to be reinforced to support the paperwork generated (Bilton 2003, MacGregor 2016). Media interest had intensified during the late 1970s, especially when letters and a tape, purportedly from the killer but much later confirmed as a hoax, were widely published and broadcast by both the police and media (Bilton 2003, Zackrisson 2016). Coverage reached an “unprecedented level” following the killing of the final murder victim, Jacqueline Hill, in October 1980 (Byford 2006, p87). The significance of the investigation to national public life is illustrated by the widely reported claim that, at this stage, Prime Minister Margaret Thatcher wanted to take personal charge of it, only to be dissuaded by home secretary Willie Whitelaw (Bilton 2003). Whenever the suspected killer was apprehended and tried, it was by then inevitable the arrest and subsequent court appearances and trial would be one of the most widely covered crime and court stories in British history.

During questioning on Saturday 3 January, Sutcliffe confessed to 13 murders. The following evening, West Yorkshire Police held a news conference to announce the arrest. This took place even though Sutcliffe was not due to appear in court in Dewsbury until the Monday, and then he would only be charged with Hill’s murder. The atmosphere within police circles following Sutcliffe’s confession was celebratory and this had an impact on the way the news conference was conducted (Burn 1984). Chief Constable Ronald Gregory, grinning alongside two other jubilant colleagues, said that he was “absolutely delighted with developments at this stage” and strongly implied the arrested man was the Ripper. Both the tone and the content of this news conference would later be widely censured as effectively giving newspapers licence to almost print what they liked, with Gregory’s remarks seen as “flying in the face of the country’s long-established contempt laws” (Ibid, p276). Many senior officers were found to have enjoyed their regular contact with the media and had previously resisted the appointment of a senior officer to help with press inquiries, preferring to do this themselves (Byford 2006). Despite criticism of his conduct, Gregory later refused to resign, insisting that nothing was said at the news conference which would affect Sutcliffe’s trial, and that it was necessary to both clarify information which had begun to circulate among journalists and to “dispel speculation” (*Press Gazette* 1981a, p5). Gregory effectively argued he was merely alerting the media to

the imminence of the charge which, in the pre-1981 Act regime, was the moment at which proceedings were considered to have become active. Therefore, having given the media fair warning of this fact, he considered all subsequent publications as entirely their responsibility.

Monday morning newspaper headlines “screamed news of the Yorkshire Ripper’s arrest” and “the law of sub judice was abandoned as the people of Britain learned that the most wanted man in British criminal history had been apprehended” (Bilton 2003, p490). The phrase sub judice means matters which are the subject of active legal proceedings, and the publication of prejudicial material on a case which is sub judice can be considered a contempt of court. For the purposes of this discussion, proceedings became active at Sutcliffe’s arrest. Yet, despite that and following the content and tone of the police press conference, background articles about the long Ripper investigation were published, even though Sutcliffe had only been charged with a single murder (*Press Gazette*, 1981a). Of the national newspapers, only the *Financial Times*, *Times* and *Guardian* generally abided by contempt rules as they existed at the time. Even then, the *Guardian*’s editor later admitted that taking his paper’s front page of the Monday morning in isolation “one might have said that it ran the risk of prejudicing Mr Sutcliffe’s trial once he had been arrested and charged.” He argued his readers would have found it odd if the *Guardian* had not mentioned facts widely reported elsewhere (Press Council 1983, p51). These events would be examined at length in a Press Council report sharply critical of the conduct of many newspapers, which will be considered next.

4.3.3 Inquiry by the Press Council

The inquiry was announced on the Wednesday after Sutcliffe’s first court appearance (*The Times* 1981c) although the report was not published until 1983. While this delay meant the report could not influence the content of the 1981 Act, it does offer insight into not only the nature of newspaper coverage of the Sutcliffe arrest, but also the confused way in which the existing piecemeal contempt restrictions operated before the Act’s introduction. The three key themes of the report were the possibility that media reporting could have prejudiced the trial, the

use of chequebook journalism and the harassment of individuals involved. The former is of most concern for this thesis. The *Press Gazette* agreed with the report's main thrusts and its correspondent was extremely critical of what would be described as the "antics" of Fleet Street, a view backed by local journalists in the letters pages (eg Cairns 1983). It claimed the Sutcliffe coverage had given "powerful support" to backers of a stricter interpretation of the Contempt of Court Bill, ultimately allowing it to get through Parliament "unscathed" to the detriment of media interests (Patrick 1983a, p7).

TV broadcasts on the Sunday evening went over some Ripper background but the Monday papers did so in much more detail, and this print coverage was generally "less restrained and more detailed" (Press Council 1983, p22). The Press Council concluded the interaction of radio, TV and newspaper coverage was significant. Newspaper editors said the immediacy of broadcast coverage had spurred them on to publish material "which they might not otherwise have done." The editor of the *Northern Echo* complained he had been "appalled" by Sunday night's TV coverage and said his paper had respected existing contempt laws "despite illegal competition" from broadcasters (Ibid, p58). His counterpart at the *Yorkshire Evening Press* said print journalists had not set out to breach contempt laws but had been motivated by a desire not to be beaten professionally. In turn, broadcast executives said they felt inhibited from announcing the name of Sutcliffe on Sunday evening as they stuck to the norms of the pre-1981 contempt regime, until they saw it in the early editions of some of Monday's papers (Ibid). Sutcliffe's name was published by the Press Association news agency at 3:25am on Monday and appeared in the *Yorkshire Post*, *Daily Star*, *Sun* and *Daily Express*, and was also broadcast on local radio in Yorkshire that morning, before police confirmed the name at 7:23am. Later that day, the London *New Standard* published a picture of Sutcliffe "which virtually filled its front page" while a photo also appeared in the Darlington *Evening Despatch*. The Press Council later ruled the papers had been wrong to do so and that claiming, as the editor of the *Standard* did, that his journalists had been told by police sources that identification would not be an issue at trial, was not an adequate defence. After news of the *Standard* front page circulating in London had reached Leeds on the Monday afternoon, a senior officer warned newspapers against publishing further photos, because his facial features would indeed be part of the prosecution case.

The Press Council found “experienced newspapermen could remember no instance when so much publicity had been given to a man about to face a serious charge before he appeared in court” (Press Council 1983, p8). It described the media’s coverage of Sutcliffe’s arrest as “generally unfair and prejudicial” and said the impression given by most newspapers was that the man who had been detained was beyond doubt the Ripper and that his trial would be no more than a formality (Ibid, p75). The Council added that the presumption of innocence and public confidence in a fair trial were put “gravely at risk” first by the police and then by the press and other media (Ibid, p65), suggesting the traditional balance between a fair trial and the free press had tipped too far on this occasion.

This was not the first time the potential for ‘trial by media’ had been identified. Another notable example was that of insurance fraudster Emil Savundra, who was memorably confronted about his business practices in a television interview by presenter David Frost on ITV’s *The Frost Programme* in 1967, in front of a rowdy studio audience. Savundra was later arrested and convicted the following year. He argued at appeal the trial was unfairly prejudiced by the programme, which he claimed had taken place at a time when it was clear he would soon be charged. Lord Justice Salmon was sharply critical of the interview and commented that “trial by television is not to be tolerated in a civilised society.” He added common law might apply in cases where a charge was imminent. But in this case, noting that courts must always take account of the “countervailing importance of the freedom of the press” as well as the 11-month gap between the broadcast and the trial, and the generally very strong case against Savundra, Salmon did not consider the programme grounds enough to quash the conviction (*R v Savundranayagan and Walker* [1968] 3 All ER 439, see also Russell 1968).

On the police’s conduct in the Sutcliffe case, the Press Council report concluded that whatever shortcomings there may have been, the ultimate responsibility for what is published by a media company remains with the editor, and that whatever the police may have done could not excuse it (Press Council 1983). Concluding its findings on the ‘absolutely delighted’ news conference, the Press Council found that it would have been better had it not taken place, instead arguing that “the public interest

would have been served best by newspapers identifying the case, without giving details, and reporting only that a man had been detained and would appear in court on a serious charge” (Ibid 1983, p74). The latter point about identifying the case was only considered necessary by the Press Council as a way of putting the minds of the public at rest because of its significance.

The government had not ignored the controversial media coverage, although there was little it could do in the short term beyond warning editors about their conduct, as the Solicitor-General did on the Tuesday (*The Times* 1981a, p1). After similar comments on Monday afternoon by both a senior police officer following the *Standard* photograph, and the prosecutor at Dewsbury during Sutcliffe’s initial court appearance, this was now the third missive given to the media. Acting on behalf of the Attorney General Sir Michael Havers, who was abroad, he drew the attention of editors to “the vital principle embodied in English law that a man accused of a crime, however serious, is presumed to be innocent and is entitled to a fair trial, and of the responsibility which the law accordingly places upon editors in circumstances such as the present” (Press Council 1983, p27). *The Times* printed a leader column, stating that “rarely in modern times can the media in general have acted with such disregard for the law and the fundamental tenets of British justice” (*The Times* 1981b, p11). Even the National Union of Journalists accepted it was concerned that Sutcliffe “seems to have been publicly convicted before his trial” (Patrick 1981a, p4). It was potentially contemptuous to publish some of the articles, implying Sutcliffe’s guilt, that certain newspapers did. For example, Tuesday’s *Daily Express* claimed that the people of West Yorkshire were experiencing “the end of a dark age of fear” while the *Daily Star* quoted a taxi driver as saying that he had not seen as many women out on their own in years, and that they were celebrating as if it “were like the end of the war” (Ibid). Yet no proceedings for contempt were ever issued, with Havers stating that none were needed to remind editors of their responsibilities (*Press Gazette* 1981c). This was perhaps not surprising given Sutcliffe’s admissions that he did kill the 13 women. His trial would later focus on whether he was guilty of murder or, as his defence argued, manslaughter. Yet one might also ask why contempt law exists if it is not enforced when apparently flagrant breaches take place.

Reacting to the subsequent Press Council report, the *Press Gazette* worried the Sutcliffe affair would give ample ammunition to those seeking a more general press law (Patrick 1983a). *The Times* used a leader column to plead with editors in general to abide by voluntary self-regulation rather than risk falling victim to such a law. It also called for more transparency in journalistic practices, apparently a desire for newspapers to report on each other more frequently as an extra bolstering of self-regulation (*The Times* 1983). Others on Fleet Street generally deflected criticism and pointed fingers at rival titles (see Willis 1983, *Press Gazette* 1983a). The controversy around press coverage of Sutcliffe's arrest having been established, I will now turn to the discourse surrounding the reporting of the arrest, and the ongoing debate over the content of the Bill and its passage through Parliament. As discussed in chapter 3, articles from *The Times* and the *Daily Mirror* from the week in question will be consulted to aid the historiography, along with other sources.

4.3.4 Media coverage after Sutcliffe's arrest

Sutcliffe appeared in court at Dewsbury on the Monday afternoon while a hostile crowd gathered outside, and Tuesday's papers reported both parts of this story. While *The Times* stuck rigidly to the reporting restrictions from the 1967 Act, discussed earlier in this chapter, the *Mirror* went much further. *The Times* published a short front page article, with just six paragraphs on the court hearing, the remainder dealing with the scenes outside. It did not mention the phrase Yorkshire Ripper nor the other murders, beyond that of Hill (Kershaw 1981). By contrast, the *Mirror* published three articles, plus a further two sidebars alongside the third to make a double page spread. Its front page piece focused on the disturbances but also mentioned Sutcliffe had been questioned over the "so-called Yorkshire Ripper murders" (*Daily Mirror* 1981b, p1). Its court report was inside, and it went into as much detail as possible while staying within the law, going into the sort of bland detail almost always left out of conventional reports on similar hearings. The article included verbatim quotes from the prosecuting lawyer and even the clerk of the court (*Daily Mirror* 1981b, p2), yet in doing so the paper still generally stuck to the letter of the 1967 Act.

Much more contentiously, the *Mirror's* spread further inside appeared with a headline referring to Sutcliffe as a "man of mystery". It focused on the home of the Sutcliffes and featured quotes with neighbours and a cousin. Perhaps the most potentially prejudicial material was in a sidebar which reported on a separate police news conference held with two prostitutes, Olivia Reivers and Denise Hall. The article stated the two were "approached by Peter Sutcliffe shortly before he was arrested" and that Sutcliffe approached Hall and "asked for sex". She turned him down before he then approached Reivers, and the article stated it was Reivers who was in Sutcliffe's car at the time of his arrest, in what was a red light area of Sheffield. The article clearly stated that Sutcliffe had been attempting to pick up prostitutes on the night in question, potentially prejudicial because most of the victims in the Ripper series of murders had been working as prostitutes, the implication being that Sutcliffe may have been caught while about to commit a further attack. Although Sutcliffe had at this stage only been charged with Hill's murder, it was clearly anticipated that he would soon be charged with all the Ripper murders, and indeed the *Mirror* had itself the previous day published the names of the 13 women believed to be Ripper victims (*Daily Mirror* 1981b, pp14-15).

The difference in reporting between the two titles is notable. *The Times* stuck rigidly to norms around the reporting of active court proceedings, to the extent that it declined to mention the words 'Yorkshire Ripper'. This was even though few *Times* readers can possibly have been unaware that Sutcliffe was suspected of being the serial killer, not least because of both the 'absolutely delighted' news conference and the coverage of that and other developments in other media. The *Mirror*, while not pushing the accepted boundaries of contempt in the way some of its rivals did, as previously discussed, certainly published material that could be considered prejudicial. The involvement of the police in organising both the 'absolutely delighted' and Reivers/Hall news conferences could be seen to have reassured reporters that they were on safe ground to publish material divulged during both.

During the rest of the week, the *Mirror* significantly scaled back its reporting while the discourse over the media coverage began to play out in the pages of the *Times*. The *Mirror* only fleetingly considered this, using a sidebar on the Wednesday to note a

letter from Labour MP Tom McNally to home secretary Willie Whitelaw, urging him to investigate the media reporting of the previous days. He was particularly concerned by the publication of interviews with Sutcliffe's neighbours. Ironically, the *Mirror* printed these concerns inches away from an interview with a neighbour in a second sidebar on the same page, in which it revealed that police had driven the Sutcliffes back to their home to collect some belongings after his court appearance (*Daily Mirror* 1981c, p5).

On Wednesday and subsequently, the *Times* devoted more space to the debate over press behaviour than it had done to its own actual coverage of the Sutcliffe arrest and court appearance. While the *Mirror* gave this a brief mention on the Wednesday as noted above, it chose not to criticise the actions of its competitors beyond noting that McNally had. It did not, on Thursday, mention the launching of the Press Council inquiry, perhaps anticipating its own future censure. The *Times* did both, on the front page on each occasion, accompanied by an excoriating leader article published on the Wednesday (*The Times* 1981c). The *Times* thundered against its Fleet Street rivals, claiming that "rarely in modern times can the media in general have acted with such disregard for the law and the fundamental tenets of British justice." It noted Silvester Bolam's 1949 prison term, discussed in section 4.1.2, and wrote that "some articles within the last two days have gone nearly as far." The police were considered "partly at fault" and the editorial ticked off the elements *The Times* found objectionable, including the 'absolutely delighted' comment and the way in which the police had praised the two policemen who arrested Sutcliffe then made them available for interviews, even though *The Times* had reflected each of these in its Monday morning front page story, albeit in a much more restrained style than other titles.

The Times acknowledged the difficulties created by the existing contempt regime with the "difficult to define" issue of the imminent charge, adding that "the law did not clearly spell out the risk of contempt to which the media might become subject." But it went on: "In this case, however, the police made it clear that a suspect was shortly to be charged. The press could not have been in much doubt about imminence." This question of imminence served to highlight a vagueness in the common law contempt regime, which the Bill ultimately attempted to address, giving a court the

power to restrict publication of a report of proceedings, whether taking place or “pending or imminent”, to avoid prejudicial media stories. The *Times* went on to criticise the content of the court reporting: “The statutory restrictions on reporting the proceedings at the magistrates’ court were breached, not technically or marginally, but substantially and deliberately.” It attacked other papers and TV for running interviews with Reivers, as well as family members and neighbours of Sutcliffe. “The overwhelming effect of the coverage of most papers, and of the television news programmes, was to enhance the assumption, already implied by the police, that the man charged was guilty.” The article then touched on the thalidomide case, noting that it was perhaps an example when the public benefit of being in technical contempt of court might outweigh the right of a defendant to a fair trial. It then concluded by addressing the Contempt Bill directly. “What the coverage of the past three days has demonstrated is that it does not matter to many organs of the media what the law of contempt says. They will break it anyway if the case is spectacular enough and engenders sufficient curiosity on the part of their viewers or readers” (*The Times* 1981c, p11). Also that week, *The Times* published letters supportive of this stance sent in by two senior legal figures (Rawlinson 1981, Best 1981).

I would argue the *Mirror*’s decision to essentially end its coverage when it did is not surprising. With Sutcliffe remanded in custody, there was relatively little ‘new’ left to report on anyway. *The Times*, with its long-standing interest in coverage of both the law and Parliament, bolstered by the status of its letters page as a place where well-known individuals might choose to comment on an ongoing topic, was always more likely to alight on the legal ramifications of the week’s events. Considering the week’s news coverage in its entirety, the Press Council report suggests the *Mirror* was far from the worst offender, but despite publishing news articles which followed existing reporting restrictions, it also could not resist going further and publishing material which could have been prejudicial. This contrasted with *The Times* which, despite some details in its Monday article taken from the ‘absolutely delighted’ news conference which it so sharply criticised in its editorial two days later, stuck firmly to existing contempt laws. As a result, it devoted little space to the Sutcliffe arrest and court appearance. Instead, *The Times* was keen to cover the intensifying debate over the media’s behaviour and the Contempt Bill, contributing through its strongly worded leader. These different approaches threw into sharp relief the dilemma facing

media companies covering a criminal case of high public interest. Both offered roughly similar initial reports. But after a day, the Mirror had succumbed to at least some of the pressures of newspaper journalism, such as a professional desire to match or better its direct competitors by producing articles of greater interest to its readers. *The Times* went the other way, and by Wednesday was rather looking down its nose at the rest.

4.3.5 *The Contempt of Court Bill*

The extent to which the coverage of Sutcliffe's arrest and its aftermath affected the passage of the Contempt of Court Bill will now be assessed. This section of the chapter considers a broader period, from the Bill's introduction in December 1980 until the end of December 1981. This incorporates debates in Parliament and in newspapers regarding the Bill, and the Bill's final passage and the initial implementation of the Act.

Concern about the Sutcliffe coverage and its potential impact on the Bill was soon evident from within the media. Besides the leader in *The Times* discussed in 4.3.4, *Press Gazette's* Night Lawyer column fretted that goodwill built up by the media during the debate over contempt and the *Sunday Times's* campaign over thalidomide, may have been frittered away by a "squalid display of unprofessional licence" (*Press Gazette* 1981a, p3). Lord Hailsham was later reported to have told the Attorney General, Havers, it would be difficult to get the Contempt Bill through Parliament in an acceptable form, when the police were having as Gregory had done by giving the 'absolutely delighted' news conference (*Daily Telegraph* 2010). However, one editor argued the response of newspapers was merely down to an understandable enthusiasm at the arrest of the Ripper suspect and would not affect the trial (Thompson 1981).

The view of some police also changed quickly. Chief Constable James Brownlow of South Yorkshire Police was, by the Friday, calling for legislation to make the position on contempt clearer. Although the Ripper investigation was led by West Yorkshire Police, the arrest of Sutcliffe had taken place in Brownlow's 'patch'. He said he had

gone ahead with a news conference of his own on the Sunday night with his arresting officers, so they could meet journalists in a “controlled environment” and therefore minimise the risk of prejudicial media coverage. But he later commented that on reflection he had changed his mind that he now believed proceedings should become active at the time of arrest (Press Council 1983, pp32-33). Gregory initially told the Press Council he welcomed the inquiry and said, “the hypocrisy of certain sections of the press to suggest that the police are to blame is really quite appalling” (Ibid, p35), but then declined to give further evidence.

Police behaviour in the aftermath of Sutcliffe’s arrest was soon the subject of Parliamentary criticism once politicians returned to Westminster the following Monday. Conservative MP David Mellor, later known as a press critic during his ministerial career, attacked the police for “self-congratulation” and staging a “junket” although Havers demurred from joining in with such direct criticism of either the press or police (Noyes 1981). When debate over the Bill resumed in the Lords, Sutcliffe featured prominently. Lord Mischon, opposition front bench spokesman and a noted solicitor, argued that any relaxation of contempt should be looked at carefully following what he described as the “salutary lesson” of recent events (*Press Gazette* 1981b, p6). Crucially, Lord Hailsham said the doubts he had previously had about timing and proceedings becoming active had been “dissipated” by the Sutcliffe case (Hansard, 20 January 1981, col 399). Referring to the crowd which gathered outside the court at Dewsbury, Hailsham stated the demonstration had been “started by the press and perhaps instigated by members of the police force” and left a suspect being put “in fear of his life” (Ibid). He went on to claim the Sutcliffe case had demonstrated what could happen in the time between an arrest, a charge and a court appearance, and that this had led to “great public revulsion” (Ibid, col 400).

The action of the police in holding the ‘absolutely delighted’ news conference was widely condemned. Lord Gardiner described that as “the real trouble” (Ibid, col 401) arguing it was asking a lot of editors to accept that the police could prejudice a case as much as they liked, but journalists were unable to publish what they had been told. Lord Hailsham accepted police must obey the law of contempt in the same way as editors and even suggested in circumstances when editors were apparently provoked by the police into publishing material prematurely, it was the police rather

than the media which should shoulder most of the blame (Ibid, col 402). This might be considered a surprising contrast to the view of *Press Gazette* and its criticism of the “squalid” and “unprofessional” reporting from many Fleet Street titles. Later in June, Havers announced no media company would face contempt action for its reporting of Sutcliffe’s arrest. *The Times* noted Havers’ argument that ongoing debate over the Bill was a key factor in this, in so far as it had already led to a better understanding within the media about “the need to restrict discussion of crimes” (*The Times* 1981g).

4.3.6 Active proceedings

A central issue in the debate over the content of the Contempt of Court Bill, was the question of when proceedings can be considered to have become active in a criminal case. This problem has been described as particularly “acute” (Miller 2000, p257). In the Lords debate, Lord Hailsham was supported by the Lord Advocate, Lord Mackay, Scotland’s most senior law officer, who argued the Sutcliffe case demonstrated the period between arrest and charge as the most crucial, as the likeliest time during which prejudicial material might be published (Hansard, 20 January 1981, col 397). Lord Wigoder concluded that if Sutcliffe demonstrated anything, it was that if a case is notorious enough, whatever rules are laid down are likely to be broken (Ibid, col 398). This closely echoed the strong views aired in *The Times*’ editorial earlier that month, as discussed in 4.3.4. Having become more certain of his view that proceedings should be considered active at arrest, which would constitute a tightening of press freedom, Lord Hailsham was confronted by a similar hardening of opinion on the other side of the debate. Lord Huchinson, another noted lawyer but, on this point, more sympathetic to journalists than some of his fellow peers, argued it was impossible for reporters and editors to know whether someone was formally under arrest, or merely helping police with their inquiries (Ibid, col 402).

Lord Ritchie-Calder, a former court reporter, suggested the debate was taking place without proper regard to the practicalities of the job of being an honest journalist trying to stay on the right side of the law. He said court and crime reporters were

typically concerned with trying to determine the facts of any case, especially whether someone had or had not been arrested. The vagueness of the existing regime meant such a “man on the job who is not going out to wreck law and order” may struggle to know at what point he would be involving his newspaper in contempt (Ibid, col 398). During a later debate in the Lords on the timing of active proceedings, Hailsham again underlined the importance of the Sutcliffe case, saying that while the arguments were “nicely balanced” it was the media’s behaviour over Sutcliffe that made up his mind because “it was such a startling example that I was right” (Hansard, 10 February 1981, col 195). While the *Daily Mirror* paid far less attention to the contempt debate than *The Times*, it was this point which prompted the longest of its three articles on the subject during the passage of the Bill. It argued politicians were being asked to “gag the Press” and expressed concern appeals for wanted criminal suspects would no longer be possible under a stricter contempt regime, highlighting the example of an escaped IRA prisoner (McConnell 1981).

When the Bill received its second reading in the Commons, Havers argued the Sutcliffe case had demonstrated the Phillimore recommendation of making proceedings active at charge rather than arrest would be “dangerous” (Hansard, 2 March 1981, col 29). He went on to outline what he saw as the “decisive factor”, namely that it is generally at arrest that the name of a suspect comes into the public domain, and therefore it is at that time prejudicial material is most likely to be published (Ibid, col 32). Or to put another way, a tighter definition of active proceedings would close this ‘window’ between arrest and charge during which media interest in a suspect is high. It would follow this ought to reduce the likelihood media companies would publish potentially prejudicial material, tempting as it might be. Yet the Shadow Attorney General, John Morris, while acknowledging the centrality of the Sutcliffe case to the debate, argued the government was coming to the wrong conclusion. He blamed the excesses of media reporting on the tone and content of the ‘absolutely delighted’ news conference. He further argued that by making proceedings active at arrest, the government was merely substituting one uncertainty with another, because the media would not always be aware of an arrest or issue of a warrant (Ibid, col 46).

The 1981 Act states that proceedings become active at the initial step of criminal proceedings, with the central examples being at arrest, the issuing of a warrant, the issue of a summons or the service of an indictment. I would suggest the active proceedings requirement is a significant element of the 1981 Act because it is what most obviously distinguishes it from the existing common law. It increased restrictions on the media by making contempt possible for a longer period. That is to say, the media could now be held in contempt for material published after a suspect was arrested but before they were charged, when this had not necessarily been the case previously. Indeed, in the Sutcliffe case, the newspaper coverage had not ultimately led to contempt action being taken against any titles, despite the nature of some of the reporting after arrest described earlier in this chapter. But it was Sutcliffe which “finally tipped the scales” against the media on this point (Krause 1996, p545), obliging reporters and editors to operate in a stricter regime, ostensibly to avoid a repeat of such coverage.

The Act did introduce two general defences, on the face of it to help the media. A public interest defence provides that a publication made as part of a “discussion in good faith of public affairs or other matters of public interest” was not to be treated as a contempt, if the risk of prejudice was merely “incidental” to that discussion. As Krause (1996) noted, the defence is narrow, as it is only available to the media if their reporting of the issue goes beyond the specific proceedings and onto wider matters of public debate.

An additional defence introduced was that of innocent publication or distribution. This allows a media company a safeguard, so long as they did not know and had no reason to suspect at the time of the prejudicial publication, that proceedings were active. Finding out whether an individual has been arrested is therefore crucial for journalists and editors. This relies on police forces confirming those details to the media, and being consistent in their approach, something which police forces have been accused of not doing. Yet as police routinely arrest suspects who are never ultimately charged, simply releasing the names of all those arrested runs the significant risk of causing damage to the reputations of those individuals (see Law Commission 2012, Courts and Tribunals Judiciary 2013), a risk intensified in the modern media age as the names may remain published and readily searchable

online for months and years, a contrast to the traditionally ephemeral nature of both newspaper publishing and radio and television broadcasting. Additionally, any subsequent announcement that an arrested individual was not to be charged, was unlikely to ever attract the same level of publicity as news of an arrest.

A high-profile example of the issues at stake concerned Bristol landlord Chris Jefferies, who was arrested on suspicion of murdering his tenant Joanna Yeates in December 2010. He was later released without charge and another man was convicted. The Attorney General brought contempt proceedings against two newspapers, *The Sun* and the *Daily Mirror*, for extensive coverage which vilified Jefferies, on the basis that potential defence witnesses might be deterred from coming forward after reading the articles (*Attorney General v MGN Limited and News Group Newspapers [2011] EWHC 2074*). Jefferies was among those who later gave evidence to the Leveson Inquiry into press standards. Leveson noted that, up until this case, newspapers had routinely been getting away with prejudicial articles, because of a more liberal approach to the subject from successive Attorneys General. He also heard from the *Daily Mirror's* editor, who said the Jefferies stories were based on background briefings from police officers, the existence of which was denied by the local Chief Constable. The editor's explanation that his paper was merely republishing what it had been told by the police, offered a notable echo of the Sutcliffe case. As with Sutcliffe, it drew an official response aimed at restricting media freedoms. Leveson called for guidance to be tightened, so that the names of those who are arrested or suspected of a crime should not be released to the press nor the public, a form of words adopted by Lord Justice Treacy and Mr Justice Tugendhat in a judicial response to a consultation on the matter (see Leveson 2012, Courts and Tribunals Judiciary 2013).

4.3.7 Civil actions, substantial risk, serious prejudice and strict liability

After the leader about the media's coverage of Sutcliffe in early January, as discussed in 4.3.4, *The Times* published three further editorials relating to the passage of the Contempt Bill. The first came in April, timed to coincide with the

committee stage of the Bill as it moved through the Commons. While acknowledging some of the potentially clarifying aspects of the legislation in relation to criminal matters, it was sharply critical of the potential impact on the reporting of civil cases. This leader was the first on the matter published after Harry Evans began his brief editorship of *The Times* in March. Considering his previous editorship of *The Sunday Times* throughout the battle over thalidomide, I would suggest the article's content reflected that history. Drawing a direct line to its sister paper's legal struggles and praising the minority report issued by Robin Day as part of Phillimore seven years earlier and discussed here at 4.3.2, the leader supported Day's argument that contempt should be effectively done away with in civil cases, certainly those when a judge is sitting alone as such figures should be beyond being swayed by media reporting. The editorial urged MPs to moderate much of what the Lords had included in the Bill and was alarmed by the prospect of contempt being extended to a range of lower courts and tribunals (*The Times* 1981d). This latter point had been raised in the paper's letters pages previously by Harriet Harman, a future MP then at the centre of a separate legal battle regarding contempt, in a case brought against her by Havers after she showed court documents to a journalist. She considered the Bill as drafted could have a "severe chilling effect" on media discussion of certain sensitive matters (Harman 1981).

As if to underline the point, the paper published a separate, and even longer, comment piece criticising the Bill on the same day, by its legal manager (Whitaker 1981a). Considering the increasingly strident view *The Times* was taking on the contempt issue under Evans, as exemplified by that day's leader, the content of the piece was not surprising. Describing the Bill as "the ligature round the neck of the British press" the legal manager argued it was "unpalatable in the extreme" and that it failed to follow either the spirit or the letter of the European ruling over thalidomide. Elements of the Bill claimed as 'liberalising' were not so, he suggested, as the Bill simply codified much of what was already in case in law in areas such as active proceedings. *The Times* gave space to Hailsham two days later, who used a letter to criticise both the leader and the legal manager's article, arguing that newspapers in general had been feeding a "diet of misleading comment" about the Bill to the public for months, and insisting that it was indeed a liberalising measure, with almost all its provisions in the media's favour (Hailsham 1981a).

As the Bill continued its passage, there was a clearer concession to the media. Hailsham, having initially rejected adding the word 'substantial' as a qualifier to the risk test of when a statement could be said to be prejudicial, grudgingly agreed to accept it. The amendment was proposed by Lord Wigoder as a way of aiding the media by diminishing the scope of the new strict liability rule. As previously noted, strict liability exists when a defendant is considered liable for a particular action, regardless of their intention. Hailsham told the Lords he did not particularly agree with the change but, in the face of several members arguing for it, was happy to concede the point. Wigoder described this as a "substantial and generous concession." Lord Ardwick, once again the most prominent newspaper voice amid the lawyers, welcomed the decision on the media's behalf (Hansard, 10 February 1981, col 143). This was seen to give the effect of allowing media companies "much more latitude" by removing the possibility of a technical contempt of court, of the kind made possible the Law Lords' wide definitions of contempt in the thalidomide case (Krause 1996, p546). However, the Sutcliffe case was considered to have "doomed" any attempt to ease the provisions still further (Lowe and Sufrin 1996, p258).

Case law since the introduction of the 1981 Act has rather undermined the prevailing view at the time, that the 'substantial risk' test would aid media interests. A definition given by Lord Justice Auld in a case relating to remarks made about Ian and Kevin Maxwell, sons of the late, disgraced *Daily Mirror* owner Robert Maxwell, on an episode of satirical BBC TV show *Have I Got News For You* (*Attorney General v BBC* [1997] EMLR 76), proved significant. He considered 'substantial risk' to be a risk which is "more than remote or not merely minimal" rather than a higher threshold. This definition has been relied on in high profile contempt actions since, including the *Condé Nast* case which related to the publication of an article in GQ Magazine about an ongoing phone hacking trial relating to the activities of the *News of the World* (*Attorney General v Condé Nast* [2015] EWHC 3322). That article was deemed to have crossed the 'substantial risk' threshold even though it was a piece of commentary which included information already available in other locations online, rather than a conventional court report. Other cases have underlined that notion that there is no 'safety in numbers' when it comes to contempt, such as when the *Mail* and *Mirror* published potentially prejudicial background information about murderer

Levi Bellfield, after he had been convicted of killing schoolgirl Milly Dowler, but before the jury had reached a verdict on a separate charge (Brookman 2016).

It is arguably the 'serious prejudice' element of the strict liability test ultimately included in the 1981 Act which has been more in the media's favour than that of 'substantial risk'. It has proved a difficult obstacle for potential prosecutions to overcome. Whether any story creates a serious prejudice is judged at the time of the publication itself, and Crown Prosecution Service (2018a) guidance points to a 'fade factor' meaning that the gap between any publication and trial can lessen the possibility of prejudice. The 'fade' argument has often been deployed by media companies and has been considered a notable factor in courts gradually becoming less ready to find publishers in contempt (McCullough 2012). Although this did not assist the *Sun* and *Mirror* in the Jefferies case discussed at 4.3.6, when the Attorney General, Dominic Grieve, made a twin-track argument, both around the nature of the publicity and the notion that justice may have been impeded because defence witnesses may have been more reluctant to come forward. The judges held the negative publicity about Jefferies was a serious consideration but probably would not have been enough on its own to overturn a criminal conviction on appeal, making their acceptance of the impediment argument a potential tightening of contempt law (*Attorney General v MGN Limited and News Group Newspapers [2011] EWHC 2074*). Yet despite his interest in contempt matters, Grieve insisted he had no general desire to "act as a policeman" and regarded the 1981 Act as a sound piece of legislation, despite the potential challenges to it posed by online and social media publications made by citizens rather than established media outlets (Grieve 2012). His successor Michael Ellis began a public information campaign in 2021 warning of the potential legal consequences of citizens committing contempt on social media (Attorney General's Office 2021).

4.3.8 Audio recorders

The use of audio recorders in court was widely discussed during the Bill's progress. The Bill, as initially drafted, allowed for a broader use of audio recorders in courts than had been envisaged by Phillimore, who had argued for taping to be restricted

as an aid to producing official transcripts of court proceedings, building on a previous recommendation made by a working party (Lord Chancellor's Office 1972). The potential for wider use, even if not for publication or broadcast, was perhaps unsurprisingly criticised by the Institute for Shorthand Writers, which raised the rather parochial prospect of pirated recordings of sensational trials being passed around (Wason 1981).

During the committee stage, MPs of both main parties explicitly favoured the broader use of tape recorders, with a presumption that recorders would be allowed for a range of court participants, including journalists, unless a judge specifically ruled it out. This was resisted by Havers, who was accused of reneging on an undertaking given to the committee (Berlins 1981a). During Parliamentary debate, the Sutcliffe case was again used as justification for restricting the rights of the media. Havers argued the public would have flinched at any use of recorders during that trial. He was also concerned the broadcast of selective chunks of evidence heard in court might remind jury members of those parts and not others, not helping them come to a fair verdict (Hansard, 16 June 1981, col 896).

A Labour amendment which would have allowed for more liberal use of tape recorders in court by journalists, albeit not for broadcast purposes, fell. The continuing passage of the Bill was the subject of commentary in the *Press Gazette*, which lamented that the political mood was not favourable to the media at that moment (Patrick 1981b). Ultimately, the law as passed takes an "uncompromising" position of the publication of court tape recorders, a stance criticised as unnecessarily restrictive because it means recordings cannot be used even for the purposes of historical research or training courses (Miller 2000, p195). The 1981 Act makes it a contempt to use an audio recorder in court without the court's permission, and to publish or broadcast any such recording. This does leave a small amount of leeway for journalists, in as much as audio recording is technically permitted for the creation of a reporter's aide memoire (see HM Courts and Tribunals Service 2018).

4.3.9 Jury room deliberations

An additional outstanding issue which was considered during the passage of the Bill was that of the publication of details of jury discussions. The Lords passed an amendment in July that there should be a blanket ban on such disclosures. It had long been assumed such a publication would be a contempt, but this view was ended by the 1979 *New Statesman* case. After it had interviewed a juror from the conspiracy to murder trial of former Liberal leader Jeremy Thorpe, the magazine published an article giving details of the jurors' reasoning for acquitting Thorpe (Miller 2000). Contempt proceedings were dismissed on the grounds that, because the magazine had not threatened nor intimidated the juror, the publication was not necessarily a contempt (Hansard, 1 July 1981, col 247). Lord Widgery held that whether a contempt should occur on such occasions was all to do with the circumstances of each case (Miller 2000).

Prominent barrister Lord Hutchinson signalled the lawyers in the Lords wanted to close this apparent loophole by making all such disclosures a contempt, even for the purposes of investigative journalism or academic research (Hutchinson 1981). This indicated the extent to which legal voices were keen to re-instate the inviolability of the jury room in all circumstances. The government gave in to the lawyers and did not try to reverse Hutchinson's amendment when the Bill returned to the Commons in July, leaving "the secrets of the jury room... almost totally protected from disclosure" (Berlins 1981b). Hutchinson argued that for the jury system to continue to work, it had to be inviolate. Indeed, he even called for an outright ban on deliberations being discussed outside the jury room, including on private social occasions. The *New Statesman* responded by accusing Hutchinson of an attack on press freedom and claiming that Hutchinson and his fellow Lords could have no idea of what they were discussing since they could not serve on juries themselves. This in turn provoked a sharply worded letter from Hutchinson, describing the magazine's arguments as "rubbish" (Grant 2015). Section 8 of the 1981 Act, as passed, made it a contempt to "obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations" with the only exceptions being to help a jury within proceedings in question, or if a later criminal case involved a jury's deliberations.

The amendment was passed by the Lords despite government opposition. Lord Hailsham voted against and told the House that, although the *New Statesman* case had created a “serious mischief” it was easily fixed by accepting less severe amendments previously passed by the Commons aimed at essentially maintaining the existing legal situation. But when the Bill returned to the Commons, the government changed position to accept the more restrictive amendment passed by the Lords. Havers said because of the strength of feeling shown by experienced lawyers in the Lords, he had decided to go along with their view, while denying it was simply a case of “lawyers getting together” (Hansard, 22 July 1981, col 437). The *Press Gazette* (1981f) gloomily reflected that Parliament had, in effect, locked and bolted jury room doors forever. The efforts of Hutchinson and others were described as a “well-orchestrated campaign” to get a “last minute amendment” (Lowe and Sufrin 1996, p356) through Parliament effectively banning all communication by or with jurors. Although the 1981 Act does not mean jurors cannot say anything at all about a trial, it merely relates to the content of the jury’s actual deliberations, this means it would almost always be a contempt to disclose anything that might be considered newsworthy by a journalist. Barendt et al (2014) acknowledged this to be controversial, because it appears incompatible with freedom of expression, by severely restricting discussion in the media of jury decisions. I would argue that this was one area in which media interests were outmanoeuvred by those of lawyers.

That was certainly the prevailing view in the pages of *The Times*. The day before the Act took effect in August 1981, the paper’s legal correspondent railed against Lord Hutchinson’s amendment for being introduced “at the last possible moment” and suggesting it may have been “an abuse of proceedings of the House of Lords” (Berlins 1981c). To underline the point, on the same page the paper printed two articles by jurors discussing cases they had heard, giving apparently deliberately mundane details of them (Davy 1981, Gosling 1981). *The Times* did at least see one consolation amid the Act, that any contempt action would need the consent of the Attorney General (Berlins 1981c). The following day, the paper published five articles about the Act. While acknowledging Hailsham’s repeated claims that it was a “clear and liberal Act” (1981b, p4), it gave space to others to again state concerns the paper had long had about the Bill. This included a view that the new contempt regime was not clear enough (Carter-Ruck 1981a), that prohibiting the disclosure of

jury room discussions would do more harm than good (Baldwin and McConville 1981) and that it did not properly adhere to the ruling in the thalidomide case (Whitaker 1981b).

4.3.10 Reporting restrictions

I have previously argued in this thesis in section 1.6 that normative local coverage of the courts ought to involve the fair, accurate and contemporaneous coverage of cases of significance occurring within the circulation area of a local newspaper. Such language is likely to be familiar to any court reporter, or indeed journalist more generally. It reflects the content of two other elements of the 1981 Act, which have a particular influence on the daily practices of court journalism, but which were less contentious during the passage of the Bill than the provisions discussed in the paragraphs earlier in this chapter.

Section 4(1) of the Act provides journalists with a defence against contempt if they publish a “fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith”. This underlines the importance of attendance at court by journalists. Relying on second-hand information from another source, such as police or prosecutors, potentially robs journalists of the ability to know whether an article based on such information is indeed “fair and accurate”. This element of the law long-since pre-dated the 1981 Act. The leading authority on it is a 1925 case involving a newspaper’s substantially accurate account of somewhat prejudicial comments made by a Recorder, which established the responsibility for any prejudice lay with that individual rather than the newspaper (*R v Evening News, ex parte Hobbs [1925] 2 KB 158*, see also the discussion in Walker et al 1992). Section 4(2) gives a court the power to order the postponement of the reporting of proceedings, to avoid a substantial risk of prejudice. These postponement orders mean journalists, while still able to attend a court hearing and make notes, will not be able to publish any stories until later, for example if a series of connected trials are taking place consecutively.

Section 11 allows for a court to prohibit the publication of a name or other piece of information heard in open court if that might affect the future administration of justice. A notable occasion when media companies were successful in overturning such a prohibition order concerned the *Trinity Mirror* case of 2008. The Court of Appeal held a Crown Court had been wrong to prohibit the publication of the name of a defendant in a child pornography trial to protect the defendant's children. Sir Igor Judge argued that it was "impossible to over-emphasise the importance to be attached to the ability of the media to report criminal trials" (*Trinity Mirror and others v Croydon Crown Court [2008] 2 Cr App R 1 (CA)*). As we will see he later, he continued to be generally sympathetic to media interests in his later role as Lord Chief Justice.

4.4 Summary

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

The media lost the chance of securing a more relaxed definition of active proceedings as advocated by Phillimore and faced tighter restrictions on the use of audio recorders and the publication of jury room discussions. While concessions such as the addition of the word 'substantial' to the risk test and the introduction of a narrow public interest defence allowed Lord Hailsham to present the Act as a

liberalising one, it could have gone much further had the debate not been coloured by the Sutcliffe case. If the Act did have any liberalising effects these had little to do with the actual content of the statute and was more about the fact it did at least offer some much-needed clarity to journalists and editors.

The way in which lawyers dominated the Parliamentary debates over contempt meant media interests were always likely to come up against opposition, but the media failed to organise its supporters to have sufficient influence. *The Times* was an exception. Its particular interest in the issue of contempt during this period, especially in its leader columns, coincided with the brief editorship of Harry Evans, previously editor of *The Sunday Times* throughout the entirety of the thalidomide battle. His in-depth familiarity with that, and indeed the minutiae of the Phillimore Report, strongly suggests he was closely involved in the newspaper's stance. Yet those arguments were not enough to prevent Lord Hutchinson from ambushing the Parliamentary process at a late stage to get restrictions on the publication of jury room discussions through, even in the face of government opposition, while well-known newspaper industry figures in Parliament such as Lords Rothermere and Cudlipp remained silent.

Parliament has not looked again at the substantive law of contempt. This has remained the case even in the different media landscape created by online media and social platforms, and the renewed concerns about contempt by citizens most recently raised by Attorney General Michael Ellis in 2021 (Attorney General's Office 2021). So, the restrictions included in the 1981 Act have now had an impact on the daily working lives of generations of journalists. This has served to make the justice system potentially less open than it might otherwise have been. Exactly how court reporters do their jobs under those restrictions, and indeed amid the broader industrial challenges facing the UK's local newspaper industry previously outlined in chapter 1, will begin to be explored in the next chapter.

Chapter 5: Local Court Reporting in Practice

5.1 Local Court Reporting in Practice

Now that we have traced the history and development of court reporting in the UK, this chapter will address RQ2. It will therefore consider the working practices of court reporters in the UK and how they have been affected by financial and industrial pressures on journalism, especially local journalism.

While the method of historiography was appropriate to answer RQ1 in chapter 4, a switch in focus to modern journalism also requires a change in methodological approach to semi-structured interviews. The rationale for selecting this method was discussed in chapter 3. Of the 22 journalists interviewed, 15 were reporters working for daily local newspapers in the UK who either covered the courts full-time as a designated 'court reporter', or for whom court reporting was a significant part of their daily working life. This latter category included journalists with job titles such as 'crime reporter', 'crime and courts reporter' and 'legal affairs correspondent'. Three other reporters worked as full-time court reporters for news agencies. The other four were employed by national broadcasters in a variety of roles relating at least in part to court coverage.

The list of interviewees is below along with the jobs they held at the time of the interviews. Where the town or city in which they are generally based is not obvious from the title of the paper, I have included it in brackets. Further context about the interviews themselves has already been discussed in section 3.2.5. For the reporters who worked for newspapers, I have included the name of the papers' publisher at the time the interviews took place. The turbulent nature of the UK's local newspaper market was outlined in section 1.7. Trinity Mirror became Reach in 2018, and its status as the largest UK newspaper publisher is reflected by nine of the 22 interviewees working for that company. Johnston Press entered administration in 2018 and its assets were transferred to JPI Media, which in turn was sold to National World in 2021. CN Group, publisher of *The Mail* in Barrow among other titles, was bought by Newsquest in 2018.

Newspaper reporters:

1. Emma Davison. Court Reporter, *Huddersfield Examiner*. Trinity Mirror.
2. Ben Eccleston. Crime Reporter, *Coventry Telegraph*. Trinity Mirror
3. Rebecca Sherdley. Legal Affairs Correspondent, *Nottingham Post*. Trinity Mirror.
4. Simon Bristow. Court Reporter, *Hull Daily Mail*. Trinity Mirror.
5. Amy Fenton. Senior Reporter, *The Mail* (Barrow). CN Group.
6. Court Reporter 6. Court Reporter, *A Scottish Daily Newspaper*.
7. Chris Osuh. Court Reporter, *Manchester Evening News*. Trinity Mirror.
8. Tristan Kirk. Court Reporter, *Evening Standard* (London). ESI Media.
9. Laura Linham. Crime and Special Investigations Reporter, *Somerset Live* (Taunton). Trinity Mirror.
10. Jason Evans. Crime and Court Reporter, *South Wales Evening Post* (Swansea). Trinity Mirror.
11. Martin Naylor. Court Reporter and Legal Affairs Correspondent. *Derby Telegraph*. Trinity Mirror.
12. Stuart Arnold. Regional Reporter, *Northern Echo* (Darlington). Newsquest.
13. Court Reporter 13. Crime and Court Reporter, *A Daily Newspaper from the South of England*.
14. Tony Gardner. Court Reporter, *Yorkshire Evening Post* and *Yorkshire Post* (Leeds). Johnston Press.
15. Carl Eve. Crime Reporter, *Plymouth Herald*. Trinity Mirror.

Journalists from three news agencies were interviewed. The Strand News Service is based at the Royal Courts of Justice in central London and its reporters cover civil matters. Central News is based at the Old Bailey, London's Central Criminal Court, and focuses on crime stories. The Press Association is the UK's largest general news agency, and the reporter interviewed here is its most experienced current court journalist.

Agency journalists:

1. Sian Harrison. Court Reporter, Strand News Service.
2. Guy Toyn. Director, Central News.
3. Brian Farmer. Court Reporter, Press Association.

Four broadcast executives and journalists who play a role in their organisation's coverage of the courts, were also interviewed.

Broadcast journalists:

1. Matthew Barraclough. Head of Local News Partnerships, BBC News.
2. John Battle. Head of Compliance, ITN.
3. John Cheesman. Assignment Editor, BBC News.
4. Matt Nicholls. Cameras in Court Producer, Sky News, BBC News, ITN and Press Association (employed by a consortium of all four media companies).

As discussed in section 1.4, it is journalists working as court reporters, especially for local daily newspapers, who play a key role as the personification of the 'public' character of courts in the UK's jurisdictions (Lemmings 2012). How they do that amid the ongoing financial and industrial challenges they face, will be considered next.

5.2 Operation of the Contempt of Court Act 1981

All the reporters interviewed have spent their entire journalistic careers working under the provisions of the 1981 Act, along with other legal restrictions on the reporting of courts. While outlining the development of those restrictions provided a useful through line for the previous chapter on the history of court reporting, the purpose of this thesis is not to narrowly examine the present operations of the Act and other reporting restrictions. As previously discussed at 5.1, this chapter is primarily concerned with the working practices of court reporters amid a range of pressures beyond legal restrictions, including financial and other industrial challenges. But I will briefly consider how the Act has been applied since 1981, before addressing the court reporters' perceptions of it.

The operation of the Act proved controversial from the start. Within three months of its passage the High Court had ruled it was already being applied too widely by magistrates, inhibiting the work of local journalists. This followed a challenge brought by the Newspaper Society, representing local publishers, and the National Union of Journalists, against a ban imposed by magistrates at Horsham in West Sussex relating to the reporting in the *West Sussex County Times* of committal proceedings in an alleged gun-running case (for fuller details see Gibb 1981a, 1981b, 1981c; Hodges 1981, *Press Gazette* 1981g, 1981h; Patrick 1981c; Carter-Ruck 1981b). Despite this initial success for the local media, the trade press continued to fret about the Act's potential impact on open justice (*Press Gazette* 1981i).

Further interpretation was provided by contempt proceedings in the Michael Fagan case, which concerned an intruder who entered Buckingham Palace and The Queen's bedroom in July 1982, prompting widespread media coverage. The Attorney-General began contempt proceedings against five newspapers for contempt under the strict liability rule. Most were dismissed. For example, while both *The Sun* and the *People* stated that Fagan had a drug problem, the court found the risk of prejudice was too remote to qualify as substantial (Cooke 1983). The dismissal of most of these applications hinted that newspapers' worst fears about the Act might not be realised (Patrick 1983b). Yet press behaviour in the coverage of major crimes continued to be called into question, with the arrest of serial killer Dennis Nilsen just days after the publication of the Press Council report into Sutcliffe, described as a media "free for all" (*Press Gazette* 1983c, p22). In the initial Home Office advice on the implementation of the Act, the Sutcliffe case continued to loom large, underlining its centrality to the Act's provisions. The advice urged police holding news conferences in cases of considerable media interest, to be even more careful than the Act required to guard against both the risk of contempt but also any semblance that a fair trial might be undermined. It called for information from the police to be released to the press in "brief and neutral terms" (Press Council 1983, p191). This implied that journalists may find it harder to get detailed information from the police on such occasions, although this could have the benefit of helping protect them from the risks or temptations of potentially breaching the 1981 Act should over-zealous police share too much.

The journalists interviewed for this thesis generally acknowledged they had got so used to the Act's provisions, rarely gave it much thought in their daily work. "It's almost become so second nature, you kind of forget about it." (Court Reporter 13).

Indeed, it is sections 4 and 11, which deal with postponement and prohibition orders and proved less contentious at the time of its passage into law, which perhaps have a greater impact on the working lives of court reporters. The general principle of the Act is to avoid the publication of material which could be seriously prejudicial. Court reporters had a generally positive view of the typical use of such restrictions. "I think usually when it's imposed it's imposed for a really good reason." (Sherdley).

However, while journalists accepted the need to avoid the risk of serious prejudice, some were concerned this could be interpreted too widely.

Chris Osuh of the *Manchester Evening News*, discussed a case in which a judge agreed with a prosecutor that a defendant could not be named because of his involvement in a previous, connected trial relating to grooming gangs in Rochdale, during which he had been convicted. Yet when the defendant turned to the jury during evidence and admitted that connection voluntarily, the judge maintained reporting restrictions. The prosecutor then argued naming the defendant at that point would have upset the victims involved.

"That's where you start getting into the realms of this is not what the Contempt of Court Act... is designed to do. When journalists get exercised is when there is a misuse by overzealous prosecution teams, for whatever purposes. Or judges who think 'oh well I'll slap this on as a means of stopping whatever piece of information coming out' but there isn't an actual risk of prejudice." (Osuh)

Leaving the 1981 Act itself aside, the traditional list of limited facts which can be reported from pre-trial hearings at the magistrates' court, as outlined at section 8c of the Magistrates' Court Act 1980 and previously discussed at section 4.1.2, was considered an example of restrictions which benefitted the work of court journalists. Reporters said this was because it helped them focus on the key details of a case. "If anything, I think it sharpens up your copy." (Naylor). With reporters sometimes expected to cover several cases in a day, being able to produce certain types of

stories to an almost standard format can take a little of the pressure off a journalist's workload.

It is possible for journalists to challenge aspects of restrictions placed on them. Indeed, as outlined at section 6.2 of the Criminal Procedure Rules 2015 (Ministry of Justice 2015), a court imposing reporting restrictions must inform the media to allow a potential challenge to take place. Yet the physical absence of reporters from courts, meaning there was often no representative present to make a challenge or to be readily informed of their ability to do so, was identified as an obstacle to media interests.

“Simply because there is no journalist there to challenge them, so the barristers don't care about whether it's reported or not, they just care about winning their case, and the judges are only going to make the order based on what barristers tell them.” (Nicholls)

The lack of legal training given to magistrates could leave them little understanding of the media and its role, notwithstanding the presence of professional legal advisers in magistrates' courts. But there was further concern about whether even professional judges fully grasped the law in this area.

“A lot of them do not understand media law and they use Contempt of Court as a sort of catch-all when it shouldn't be used... sometimes judges will say, it's a sexual case, and they'll say 'well I'm going to a Contempt of Court order on this, you can't name the victim'. Well, the victim gets anonymity for life anyway and they should know that.” (Bristow)

Reporters considered that judges tended to give greater weight to demands made of them by lawyers involved in a trial. “As with all court orders I think there's sometimes a danger that judges might stray more towards the needs of defendants if their barrister argues to do so, rather than the needs of open justice and the media.” (Arnold). With many competing pressures during any legal process, those coming from the media may rank low on any judge's list of priorities. Yet the reporter quoted here, Stuart Arnold of the *Northern Echo*, said he and his editor considered the 1981 Act only an “occasional hindrance” and that he seldom took the time to challenge orders such as section 4(2) postponement orders, implying both a general

acceptance of the provisions of the Act and that the more regular presence of journalists within courtrooms may not necessarily lead to a significantly greater volume of challenges, at least not for the *Echo*.

The Court of Appeal has on occasion been notably more sympathetic to media interests than lower courts regarding various forms of reporting restrictions. In a case involving *The Guardian* and Westminster Magistrates' Court, the newspaper's application to access documents which were referred to in court during an extradition hearing but were not read out in open court, was upheld [*R (on the application of Guardian News and Media Ltd) v City of Westminster Magistrates' Court* [2013] QB 618, 631]. In that case, Lord Justice Toulson noted that it was in the interests of open justice to allow access to such documents, and that those arguments were "particularly strong" where journalistic interests were at play. Yet, as argued by Bosland and Townend (2018), while such media challenges may offer some defence of open justice, traditional newspapers and broadcasters of the kind considered by this thesis, may lack either the commercial resources or inclination, or both, to attend, report and potentially intervene in court.

Emma Davison of the *Huddersfield Examiner* more regularly attends magistrates' court than is the case for many of her peers because there is no Crown court in her newspaper's circulation area. She noted a difference in approach between the court's regular District Judge, who hears cases at Huddersfield one day each week, and magistrates, who preside on other days. Davison has known the judge for some time. If a request is made by a lawyer for an order, he will routinely address her directly in open court by her first name asking if there is anything she wants to query. That adheres to best practice outlined in the Guide to Reporting Restrictions (Judicial College 2015, p6). Magistrates at that same court never do this. "If a solicitor says to them 'can you put this order on?' they tend to just do it without really considering it, because that's what a legal professional has asked them to do." (Davison). The amateur nature of the lay magistracy might therefore be an extra obstacle to transparency in local justice.

A further notable example of such an inconsistency in approach albeit in another area of the law occurred in 2017, in a case at Croydon Magistrates' Court.

Magistrates initially agreed to a prosecutor's request to prevent the identification of a 17-year-old victim, under section 45 of the Youth Justice and Criminal Evidence Act, even though the victim's name and picture had previously been published in national media because no such order had been given at a previous hearing. After a lunch break, a District Judge began presiding instead, and upheld a challenge from a Press Association journalist on behalf of the media (*Press Gazette* 2017). This implies that any proposal which might be made regarding potential reform of contempt law must take account of the inconsistency by which such law may be applied within courtrooms, depending on whether a professional judge or lay magistrates are presiding, and as well as whether a journalist is physically present or not.

The nature of section 4(2) postponement orders can sometimes be beneficial to regular newspaper court reporters. Such orders can give journalists the opportunity to gather background details on a case during earlier proceedings, which can be published later. "When there's not as much media around, it can quite often help give you an exclusive, or give you good background and colour to pull out at a later date, at a time when you can report it." (Gardner).

This contrasts with journalists working in broadcast media. In part, the more time-consuming demands of television news such as shooting and editing packaged reports, make physical attendance at a court hearing less easy to manage for a reporter (Barnett 2011). But the Act itself can be a disincentive to broadcast coverage of court cases. "If the TV turn up to cover a case, and then an order is put on it and they know they're not going to get anything immediately, they'll quite often just pull out." (Gardner). Or to put another way, a broadcast journalist will be sent elsewhere on another story guaranteed to provide material for that day's programme or output. A newspaper reporter has more freedom to choose how to spend a day at court and may decide to spend some time gathering material that can be used later, when they know that by virtue of being the only reporter present, they are storing up an exclusive story. Such an approach may mean sacrificing a story or two for that day's online content or the following day's print paper. But even then, a skilful court journalist with contacts throughout a court complex may still be able to catch the key

points of a variety of cases taking place in different courtrooms, ensuring a steady flow of 'on the day' stories.

5.3 Reluctance of Attorney General to prosecute

Court reporters expressed concern at perceived breaches of the Act by national tabloid newspapers, of the sort widely seen in the Sutcliffe case, going effectively unpunished because of an apparent reluctance by the Attorney General to begin proceedings. In part, this echoes Barendt et al (2014) who considered the role of the AG to be "arguably very unsatisfactory" because as a member of the government, it may be considered unlikely that he or she would act against publications which his or her party may rely on for support (p576). But in legal terms, the 'substantial risk' test in the 1981 Act requires the AG to satisfy a court that a particular article or broadcast has overstepped the mark. While there are occasional examples of this (see Honess et al 2002), the greater risk of prejudice comes from the cumulative effect of many articles (Corker and Levi 1996). However, the cumulative effect of potentially prejudicial reporting can in turn make it difficult for a contempt prosecution of a particular publication to succeed. This was demonstrated in the case of Geoff Knights, the boyfriend of EastEnders actress Gillian Taylforth. He stood accused of assaulting her chauffeur during a fight in 1995, but the prosecution was halted because the judge decided pre-trial publicity in tabloid newspapers made it impossible for Knights to receive a fair trial. The AG acted against five titles but lost at the High Court which held it was possible for a judge to halt a trial because of the totality of press coverage, but for no single publication to be guilty of contempt (Davies 1996, *Attorney General v MGN [1997] 1 All ER 56*). For Smith (1997), had such articles been published prior to the 1981 Act, there would be no question that they would have been treated as a contempt, underlining a general shift in favour of freedom of speech which could be traced back to the ECHR ruling in the *Sunday Times* case in 1979. For a time in the early 2010s then-Attorney General Dominic Grieve did take a more active role, as discussed in section 4.3.7 (see also Banks 2011, Phillips 2011), although proceedings against editors and journalists are rare (Law Commission 2012).

Examples highlighted during the interviews which went unpunished included coverage of a court appearance by Finsbury Park terrorist Darren Osborne and reporting on the previous convictions of murderer Mark Dixie after he was arrested for two unrelated rapes. "I'm not arguing for prosecutions of journalists, but... if you don't clamp down on flagrant breaches like that, they'll only become more prevalent probably." (Kirk). A difference was observed in the approach of national newspapers when set against the local press. "I will challenge the editor if we can use bits of background, but I think regional papers tend to just play it safe because it's not worth the risk, whereas I think for national papers because it can hugely affect their sales, they see it as a risk worth taking." (Fenton). I would summarise this another way: a national news organisation can afford a legal bill from time to time if it makes a mistake, something anathema in the cash-strapped local press, which is obliged to stay much further within the law than it needs to, through an abundance of caution, a form of self-censorship. This implies the 1981 Act has a broader, chilling effect on the content of court coverage beyond the technical scope of the Act itself.

There was acknowledgment the lack of prosecutions was partly down to the success of the Act, in as much as its restrictions have long been widely understood by reporters. "There aren't that many prosecutions for contempt. People know the parameters in which they operate so I think it is a piece of legislation that has passed the test of time." (Battle). Given the Act has been in place for long enough to have encompassed the full careers of most journalists working in the UK today, I would suggest this demonstrates its provisions have been generally accepted.

One reporter interviewed for this study, who did not want to put their name to this part of their response, described an incident when they, along with a newsdesk colleague, had made a mistake leading to a story being published ahead of a trial which mentioned the defendant's previous conviction. The case involved a convicted rapist who was already in prison following a people trafficking trial which the paper had covered extensively. He was now facing a new, lesser charge on another matter. The reporter had spotted the familiar name on a Friday afternoon when checking lists of cases due to begin the following Monday.

“I told the newsdesk ‘we’ve got a story about a convicted rapist, he’s up for this, I’ll get something written’ and in my sort of haste... I did the one thing that I really shouldn’t have done. My intro was along the lines of ‘a convicted rapist from Coventry is up for blah blah blah’... it was towards the end of the day, it had been busy as always, so I just got it done. It went over to the newsdesk, someone checked it over, and we got it through”. (Anonymous)

The mistake only came to light after the story went live online on the Monday morning. The judge passed the details onto the Crown Prosecution Service with a recommendation to prosecute, although no action was taken. An internal investigation was also carried out by the newspaper group concerned although it ended with no disciplinary action.

“They realised that it was just a truly, truly genuine mistake and it wasn’t a case of, we had any sort of gaps in our knowledge of Contempt of Court, we were able to prove that we knew it all. It was just one of those things that even now, if you were to say me now ‘well, how did it happen?’ I still can’t really put my finger on it as to why. It’s just one of those things.” (Anonymous)

The seriousness with which this mistake was treated, by both the journalist themselves, their colleague, their employer and indeed the judge, exemplifies the importance each of those parties attached to not breaching the Act. The journalist acknowledged they feared their job was under threat. Given the mistake was simply an inexplicable slip made by a knowledgeable reporter, it is perhaps surprising that, in an era of journalists being asked to do more with less, such errors are not more frequent.

Contempt rules also apply to citizens, including those who may make claims that they are doing journalism. Themes of contempt of court, local court reporting and the use of technology in journalism became more prominent in public discourse during 2018 and 2019 as part of a sole case, that of far-right political figure Stephen Yaxley-Lennon, more widely known as Tommy Robinson. It offers a useful exemplar which touches on many of the issues considered during this thesis, not least the entry of a non-traditional media actor claiming to assume the role of a journalist because of a perceived failure by the traditional press, in a fashion probably unforeseeable to those who framed the 1981 Act.

5.4 *The Tommy Robinson case*

Robinson was arrested outside Leeds Crown Court in May 2018 after using Facebook Live to stream his own commentary on court proceedings, including heckling defendants as they entered the building. The incident took place while the jury in the second of three connected trials relating to child sexual exploitation was considering its verdicts (Rozenberg 2018, Finnegan 2019). The trial was subject to reporting restrictions under the 1981 Act, in the form of a section 4(2) postponement order. Over the course of an hour the livestream attracted more than 250,000 views before he was arrested. Robinson was already serving a suspended sentence for a similar offence committed previously at Canterbury. The same day, Robinson pleaded guilty to contempt and was sentenced to 13 months in prison, the speed of the proceedings underlining the summary nature of how courts can deal with contempt matters. Those facts were only made public the following after an application by a local journalist for reporting restrictions to be lifted (Finnegan 2018a), after a weekend of online speculation as to Robinson's whereabouts. Robinson's conviction attracted widespread, contrasting comment in both the traditional media and from his own supporters online. Claims made by Robinson during his livestream included that he was merely a journalist trying to expose secrecy within the justice system. Critics countered that he was behaving at best recklessly by putting a complicated series of ongoing trials featuring serious allegations, at risk of collapse (eg *The Sun* 2018). Supporters (eg Levant 2018) claimed Robinson was the first journalist jailed for contempt in the UK since the Bolam case in 1949, discussed in section 4.1.2. Yet as that case involved the editor of the *Daily Mirror*, I would suggest Robinson could not be considered a journalist in quite the same way, although he undoubtedly used content-creation methods and platforms now familiar to most reporters.

Robinson successfully appealed. The Court of Appeal's judgment was one of the most detailed in some time to address the topic of contempt (see *R v Stephen Yaxley-Lennon aka Tommy Robinson [2018] EWCA Crim 1856*). Appeal judges held that the summary nature of the process at Leeds was problematic. As traced in

chapter 4, such concern has long been attached to the speed of contempt proceedings. The haste was unnecessary on this occasion, the appeal judges said, because the trial judge had already ordered the recording of the livestream to be unpublished. Worse, Robinson had not been presented with which parts of his livestream constituted a contempt and which did not (Ward 2018). Robinson faced a retrial, and he was convicted at the Old Bailey in 2019. The AG brought fresh proceedings alleging Robinson had committed contempt by breaching reporting restrictions, encouraging his followers to harass the defendants creating a substantial risk their rights would be impeded, and illegally photographing and intimidating defendants as they entered the court (Attorney General's Office 2019). The Old Bailey heard Robinson had been told by security staff at Leeds Crown Court to check at the court office as to whether reporting restrictions were in place. Robinson did not do this as such, although comments made during the video indicated he had a general sense that reporting was formally restricted. Having found previous published reports relating to the case on the *Huddersfield Examiner* website dating to before restrictions were imposed, Robinson decided to take "a punt" that he would get away with mentioning the defendants' names as he filmed them (Quinn 2019).

The Robinson case highlighted several issues of interest to this thesis. The very reporting restrictions imposed under the 1981 Act and dutifully adhered to by journalists covering the trial, were the target of Robinson's claims in his livestream that justice was being heard in secret. Such claims could risk the credibility of local newspapers if they are perceived by that part of the public exposed to Robinson's views, to be somehow ignoring a major story for political reasons. This damage to legacy media institutions could be considered potentially harmful to a local public sphere. Robinson's arrest did prompt the local press to publish 'explainers' giving context to the legal situation and a simply-written discussion of the relevant parts of the 1981 Act (eg Gildea and Finnegan 2018), a welcome attempt to engage constructively amid heated online discussions about the story. Yet the case did call into the question the ongoing effectiveness of reporting restrictions under the 1981 Act. As Robinson was able to demonstrate, it is possible for individuals to piece together older news reports and fragments of other information online, to work out that a particular trial is being held even when it is subject to a postponement order.

The availability of such incomplete information and the lack of media law training on how to report on the courts responsibly exhibited by Robinson have a broader significance. They denote potential obstacles to successful coverage of the courts by new entrants in local journalism, such as the hyperlocal publishers discussed in section 2.2.5. While hyperlocal editors would have different motivations to Robinson for attempting court coverage, they could run the risk of contempt by falling foul of those twin factors, underlining the importance of the work of professional journalists in this area. The Robinson case shone a rare light on the activities of those local court reporters, and indeed the centrality of online platforms to their work. Some of Robinson's supporters used social media to threaten the reporter involved in making his initial conviction public (Tobitt 2018). She in turn argued her experience showed the value of having local reporters who attend court daily and are aware of how to make challenges of judges, as well as the value of having a social media presence and using responsibly, as her tweets from the court achieved two million views in 24 hours (Finnegan 2018b). However, as valuable as such activity by local court reporters might be, the interview responses indicated it is in decline. This will be considered next.

5.5 Decline of court coverage

Interview responses revealed the more general changes to the newsworld of journalists over recent years, as documented in chapter 2, has also applied to local newspaper court reporters. Journalists who had been covering the courts for some time noted significant evolution in their daily routines to service websites and social platforms. "Before we were very much concentrating on getting the articles together for the print product. Now it's getting everything online first." (Davison). There was widespread acknowledgement that the days of saving their best stories for the following day's newspaper had ended and that all daily local newspapers had now adopted a 'digital first' strategy.

Younger journalists including Court Reporter 13, who had been on the crime and courts beat at their newspaper since 2015, saw fewer changes. "I'm trying to think

what's changed really, not so much (has) changed, maybe before I was doing it things were a bit different." Here I would speculate this suggests the era of the most dramatic upheaval in the local press in the UK, at least in terms of the impact of the internet on the working practices of journalists, has finished, with developments now taking place more incrementally. The yearning for the 'good old days' of local journalism among more experienced staff described by Deuze and Fortunati (2011) appeared less prevalent during the interviews, perhaps because those older reporters and editors have gradually left the industry.

Cuts to editorial staffing levels have been well documented and the impact on the workload of journalists had been noted even before the digital transformation of the UK's local media market (see Pilling 1998, Davies 2009). For court reporters, this has often meant taking on additional functions previously considered part of a role such as crime reporter, and vice versa. "It's a job which has grown to fill the vacuum left by the endless rounds of job cuts really... I was the crime reporter and now I'm doing three jobs which were done by three people." (Evans). For those forced to cover both the courts and crime, this can mean spending mornings only at court before returning to the newsroom in the afternoons to finish writing up stories as well as responding to press releases from the police and other potential leads. O'Neill and O'Connor (2008) found that police and the courts were the two most-used sources for stories in local newspapers, suggesting that a 'crime and courts' reporter with a combined beat is now under huge pressure to produce a significant amount of a title's content each day.

The interviews revealed a perceived drop in the number of journalists covering the courts. Interviewees said that the local daily newspaper court reporter is now usually the only journalist from any news organisation to physically attend a court. "Sometimes I will go a month, maybe six weeks without seeing a reporter from any other organisation, even in a courthouse let alone a courtroom with me." (Naylor). This appears to be particularly true of magistrates' courts, which seldom see a journalist other than the local paper's court reporter, underlining previous findings (Chamberlain et al 2019a, 2019b). "It's been months since I last saw anybody else at magistrates' court, it's probably a couple of times a year that there's anyone else there. So, I've got the whole place to myself." (Evans)

Broadcast journalists were considered unlikely to cover the ins and outs of even a major trial.

"I often find that if it's say the opening day of a murder case... they'll be there for the openings and that's when you get all the juicy bits, but then you won't see them again for the rest of the three-week trial, until the sentencing comes up." (Eccleston)

Reporters based in certain larger cities said they would see other journalists slightly more often, but of those who put a figure on it, none had company on the press bench more than half the time. Some journalists interviewed noted this was a significant change that had taken place over recent years as financial challenges affected journalism. "(When I started) you would find maybe half a dozen journalists there on a daily basis. Now... there's only me there every day and one other freelancer, who used to be my close colleague." (Gardner).

When there is interest from other organisations in covering a case, often it is the result of stories originally published by the local newspaper journalist.

"Unless there's something that has interested the national press and PA (the Press Association), and that's usually off the back of something I've written previously, they've picked up on it and then they've come into court, it's very, very rare to see somebody else." (Davison).

Other media are therefore essentially using local newspaper court reporters as a free research arm. This helps to underline the centrality of the local press to court reporting. Yet despite the traditional and ongoing importance of the courts beat in the local press, economic reasons mean that for some newspapers it is no longer the case that even their own court reporter is based there each day.

"We have fewer reporters, so with a sort of smaller resource you can't perhaps go to court as much as we used to. So literally we used to be there every single day no matter who was on the list, what cases were on the list, now we don't go as much. We will always go for significant cases, and we'll still go probably for at least two days a week." (Fenton).

Others said they were based at court three or four days a week, although this would increase to every day in the event of an ongoing trial when they would be expected to provide extensive coverage online and in print.

Even as most local editors continue to use at least some agency copy (Robins 2016, Thornton 2017), pressures on newspaper editorial budgets have meant there is much less money for court stories from news agencies and freelancers, reducing the quantity of court coverage in the local press. Guy Toyn, Director of Central News, noted his agency's pieces now seldom appeared in local newspapers:

"I feel very sorry for the guys who are working out there and they know this is a story that they'd love to have, they turn round to the newsdesk and say 'can I get this copy in?' and they're told 'well we haven't got any budget for it' so well, you know, it's a shame." (Toyn).

There were examples in the interview responses of veteran former newspaper court reporters doing occasional freelancing. However, this appears to be something that semi-retired journalists do on an irregular basis, and there were no reports of trainees or students fulfilling this role.

"Quite often you see them just hedge their bets, they've gone along for a day, see what's interesting, and then for whatever area that person is from, or the crime happened in, they'll get in touch with the paper and say 'look 50 quid and you can have this story.'" (Fenton).

Without the experience and contacts of a former staff journalist, it seems unlikely even this marginal existence is attractive. However, there are occasional examples where a regular freelancer contributes court stories, co-ordinated with the local paper to avoid duplication of effort. Ben Eccleston of the *Coventry Telegraph*, one of the reporters juggling a dual crime and courts beat, said a veteran freelancer helped him with daily coverage of the Crown court in Warwick.

5.6 *Snatch photography*

As part of the general pressure on staffing levels at local newspapers, the number of in-house photographers has declined. This has had an impact on the working practices of court reporters. The importance of including photographs of defendants to increase the shareability of online and social media versions of stories (Harcup and O'Neill 2017), means that reporters are now often obliged to take these photos themselves. These are known as 'snatch' pictures, a phrase used within court journalism to describe photographs taken of defendants in a public street before entering or after leaving a court, usually without the consent of the subject who would not typically wish to have their identity widely publicised.

As traced in section 4.1.3, a ban on photography within the precincts of court buildings, with limited exceptions, has existed in England and Wales since 1925 (Dockray 1988, Mason 2012). Today, snatch photography has fallen to reporters themselves, who typically must walk past defendants as they are leaving the court, before using their phones to snap photos. This must take place on the street and away from the precincts of a court, to avoid breaching the 1925 law. Reporters accept there are occasions when they have been left feeling exposed and in physical danger and may choose to take these pictures covertly to avoid a confrontation. One reporter said she informally relied on the court's own security staff to be aware of what she was doing so they could intervene if necessary.

"It can be quite tricky, if you get an offender that has clocked you and they can be quite aggressive. I've had a few run ins previously where they've come up, and kind of been in my face, and said 'why are you taking a picture of me, you can't do that' so you've got to be very careful."
(Davison).

This practice raises ethical and legal questions, yet reporters involved in this activity did not reflect at length on those during the interviews, beyond acknowledging that it was a sometimes uncomfortable, if necessary, part of their job. This follows Frost (2015), who noted that British journalists tend to think of court coverage in legal rather than ethical terms, and Ward (2016), who saw a personalisation of ethics in the digital era, with individual journalists developing their own unofficial guidelines and practices. For Archard (1998), a surreptitious element to the taking of a photograph, even on a public street, could be considered an intrusion or breach of

privacy, if the subject was unaware the picture was being taken. UK press regulator IPSO considers it generally acceptable for such photography to take place, so long as there is no harassment (IPSO 2018), although it does not directly address the question of covert snatch photography in its guidance around court reporting. Its Editors' Code (2021) offers a public interest defence for journalists, including for "detecting or exposing crime, or the threat of crime, or serious impropriety". While not necessarily breaching any industry regulation, the practice could be considered unethical as well as potentially dangerous, yet wider cuts in local journalism and the ensuing pressure on the newswork of court reporters means it has become a routine part of their jobs.

5.7 Relationships with the CPS and Police

Key sources of information for court reporters in this study include the Crown Prosecution Service, the agency which prosecutes criminal cases in England and Wales, and local police forces, of which there are 46 throughout the UK. As discussed in section 2.4.1, reporters invest energy in cultivating source relationships, and Fishman (1980) considered journalists were predisposed to treat accounts of events from official sources to be factual because they are involved in upholding a normative order of what he described as 'authorised knowers'. This status can be achieved by others in the criminal justice system, such as senior police officers (Greer and McLaughlin 2010a) and individual lawyers (Munnik 2018).

The interview responses revealed the relationship between court reporters and the CPS is mixed. The CPS media protocol gives the media a general right of access to materials such as CCTV images, video footage of crime scenes and so on, once they have been presented in open court (Crown Prosecution Service 2005). It aims to ensure all media have "access to all relevant material wherever possible, and at the earliest possible opportunity". Representatives of broadcast media were positive, noting the protocol's importance in providing material for their heavily picture-led TV bulletins. In some cases, the pictures have been so compelling as to have led to a broadcast news team covering a story, which they would otherwise have ignored completely, underlining the importance of available images for the visibility and

prominence of crime and court coverage (Greer 2010). As John Battle of ITN, the maker of TV news bulletins for UK public service broadcasters ITV, Channel 4 and Channel 5 said in his interview: "I would say in terms of court reporting as a whole, the biggest transformation in court reporting in my lifetime in news, which is the best part of 25 years, is the Crown Prosecution Service media protocol."

The local newspaper journalists interviewed for this thesis were not as positive. Often, they must deal with a CPS press officer based in a different city. Many of the reporters said they often struggled to get copies of photos and CCTV in a timely enough way for them to use in their stories, undermining part of what is described in the protocol itself as its "overriding objective" (Crown Prosecution Service 2005). At a time when getting pictures or video to run online is more important to help the shareability of those articles (Harcup and O'Neill 2017), this could affect the viability of local court reporting. Laura Linham of *Somerset Live* said she could sometimes rely on a friendly barrister to discreetly pass on evidence such as DVDs, on the understanding that it be returned quickly: "The barristers are really good but the CPS press office I could quite happily throttle. They're just so frustrating to deal with." If a prosecution barrister refers the reporter to the press office, journalists say they know they will rarely get what they need in time.

Another journalist, Carl Eve, noted how he had once enjoyed an excellent relationship with a CPS press officer, but that changed when his local office in Plymouth closed. He now dealt with a more cautious press officer, based further away in Exeter.

"There's more nervousness about giving stuff to us and that's clearly post-Leveson and everything that goes with that, and not having the CPS office anymore... there are problems in getting the material back to them as soon as possible." (Eve)

I will return to the Leveson Inquiry shortly. But on that practical point, Eve had previously been able to physically drop evidence back to the CPS office in Plymouth in person, but since that office closure, he has found that barristers are often reluctant to let DVDs leave their possession in case they get lost.

The relationship between reporters and the CPS seems stronger in larger cities. For Chris Osuh of the *Manchester Evening News*: “We have a good relationship with the... CPS team so we rarely have difficulty getting CCTV released.” Another, Simon Bristow of the *Hull Daily Mail*, noted that he sometimes relied on the CPS to send him copies of opening statements so he could cover cases he had not actually attended: “Some cases we’ve splashed on (when) I’ve not even been there, I’ve just got the result. It was heard in another city and I’ve got the CPS to send me the opening and you write it up from that.” This could be because of greater press office resources in those cities, or perhaps a higher priority given to the larger-circulation newspaper titles which still operate in them.

Perhaps tallying with the experiences of broadcast media, newspaper reporters noted that their local CPS officials were more likely to move speedily to make resources available if there was also interest from a local TV news programme.

“I do sort of get the feeling the CPS think ‘oh we could get something here on TV’ and it’s not nice to think that they put TV above sort of a print-slash-digital media as we are, but I do sometimes think that can be the case.” (Eccleston)

In Scotland, prosecutions are handled by the Crown Office and Procurator Fiscal Service. It has its own media protocol (COPFS 2012), similar to that of the Crown Prosecution Service in England and Wales. A Scottish court reporter who wished to remain anonymous, reflected in their interview of her experience covering the 2016 murder trial which followed the death of schoolboy Bailey Gwynne. They noted a significant change in the way prosecutors dealt with the media when many journalists wanted to attend this case, which drew national attention. A press room was set up, a press officer was on hand to help reporters throughout the trial, and copies of exhibits were made available for the media as soon as they had been introduced into evidence. “Essentially if there was something in court that we needed to see they would do that. They’re not usually that helpful.” (Court reporter 6)

Aside from prosecutors, court reporters must also maintain relationships with the police, especially if they have crime as part of their beat. Contacts between journalists and the police tend to be formal. Reporters chasing information about

cases are invariably referred by officers to a force's PR team. "It's difficult unless you know them very well. You have to go through the press office and that kind of stuff. Access to information's tricky." (Eve). As discussed in section 2.2, past studies (Chibnall 1977, Mawby 2010) have traced the complex relationships between reporters and police communications departments, arguing that the power remains in the hands of the police press officers, who act as gatekeepers to information journalists want. This control of information has been considered to act in favour of the police, with published stories about crimes typically considered to take a pro-police standpoint (Hall et al 1978, Marsh 1991), while also offering an opportunity for media companies such as local newspapers, to warn about the consequences of deviance and praise established norms of behaviour (Chibnall 1977, Wykes 2001).

Other industrial factors have affected the relationship between court reporters and the police. Carl Eve, quoted above, was not only interviewee to point to the Leveson Inquiry into the conduct of the press, and the fallout of Operation Elveden, as central factors in a growing distance in their relationships.

"Leveson was a real key moment. There are some police forces who are still quite open, other police forces always wanted to be secretive and some used it as an excuse basically... not to be in contact with the press."
(Toyn)

Leveson (2012) focused in part on interactions between press and police, prompted by concern at the apparently close relationship between the Metropolitan Police and the News International group of newspapers, and allegations this has led to the police not properly investigating alleged phone hacking at the *News of the World*. Leveson was concerned by the perception of a cosy relationship between the police and the press and called for more formal recording of contacts between senior officers and journalists. He recommended that officers should only speak to the press on matters which they had both responsibility for and a policing purpose in doing so. This has had the effect of making the police more risk-averse in their contacts with the media, obliging journalists to look elsewhere, such as on social media, for stories, which may be less accurate (Colbran 2017). Operation Elveden which, like Leveson, was initially prompted by the 2011 phone hacking scandal, investigated payments by national tabloid journalists to the police and other public

officials. It ended in 34 convictions, including nine police officers, but only two journalists (Ponsford 2016).

Yet some reporters said they were still able to approach individual police officers for information. This seemed to be the preserve of more experienced court journalists such as Tony Gardner of the *Yorkshire Post* and *Evening Post*, a court reporter for more than 20 years and a crime reporter before that: “I see them on a daily basis and I’m on first name terms with a lot of senior police officers, and they will quite often tip me a wink on a story or tell me what’s coming up.” That relationship might be less readily available to a newer court reporter or at a newspaper which rotated the role, while Mawby (2010) argued a wariness of the media is more common among younger police recruits, who are generally expected to leave media contacts to the expanded communications departments which exist within police forces. While this suggests informal contacts between police officers and journalists may be in general decline, there are exceptions. Jason Evans of the *South Wales Evening Post* said he maintained good relationships with both the police press office and, importantly, several senior officers: “I’m a bit of a pain sometimes chasing them for stuff and asking them questions which they don’t often appreciate. But, generally, it’s quite a constructive relationship.” Evans is another more experienced journalist, and indeed worked purely as a crime reporter before taking on an expanded crime and courts role, making it less surprising he would find it easier to maintain informal connections with individual police officers.

5.8 Court-Media Relations

The relationships between journalists and the courts themselves are also of central importance to the work of court reporters. The nature of the courts beat was considered in chapter 2. That discussion indicated courts in the UK’s jurisdictions have not necessarily reacted to the potential decline in the quantity of court coverage by making it easier for journalists to do their work, even as more proactive and professionalised media management has been noted in other countries. Among the more experienced reporters interviewed for this study, there was widespread acknowledgement that less formal contacts with court staff and other individuals

working at courts proved useful. The possibility of being tipped off to an interesting case in such a way was regarded as a central reason for physically attending a court building. “That’s one of the most important parts of my job, is to get down to court, because you speak to people.” (Kirk)

These tip-offs, like those recorded by Drechsel (1983), can come from sources including ushers, security staff, solicitors, barristers and even judges. “I’ll be in court, and somebody will say ‘oh you should go to this courtroom because this is happening’ and sometimes it is just pot luck, sitting there and a great tale comes up.” (Roberts)

Emma Davison of the *Huddersfield Examiner*, who typically covers a magistrates’ court, noted that local defence solicitors often feel it can be good for business to have their names in print.

“If they want to have their case heard, they think it’ll be quite quirky and it’ll get them in the papers, some of them have... that kind of ego where they’ll say ‘oh yeah come and cover this case.’” (Davison)

Again, this seemed to be a more common occurrence for more experienced reporters. One journalist interviewed for this study wished this quote to remain anonymous, to protect the relationship they had with a source: “I had no idea it was coming up, but the District Judge there who I know very well (tipped me off), and he’s always very good for sentencing remarks.” It was acknowledged this was the exception rather than the rule, with cases in the magistrates’ court often being humdrum. “You could sit through ten really boring shoplifting cases just to get one that’s bizarre or strange or has some other quirky side.” (Evans). On the other hand, with ten or more cases typically scheduled for a morning or afternoon session for each room at a magistrates’ court, I would suggest one interesting story from such a line-up would not necessarily be a bad return for a reporter.

Reporters are also able to use relationships with court staff such as ushers, to access key background information including the names and addresses of defendants. “That’s based on trust which I’ve managed to save up over the years... I’m a fixture of the court.” (Gardner). Including the names and addresses of

defendants is important to journalists. This is in part to aid the identification of those people to avoid any potential cases of mistaken identity, especially if a defendant has a common name. Frost (2015) also considers that reporters are keen to include such detail to add credibility to their stories.

When a court reporter is not at work and a colleague substitutes for them, they are less likely to find the same level of help from court officials. "I have very good relationships with the court staff. I've built that up over a period of time, obviously there are people who come down to court not that often, and they find it very different." (Roberts)

Guy Toyn, the London-based news agency director, found that tip-offs were less common in courtrooms there.

"I think one of the problems is the turnover of reporters is so great that they don't know who they can trust, they see one face one day, and another face the next. So, it's very difficult for them." (Toyn)

Even though court staff in certain locations will provide details such as addresses and ages of defendants as a matter of course, in others the reporter must always ask, even if the journalist has been a 'regular' there for many years. Martin Naylor shared the following experience from Derby, where he has worked as a court reporter for seven years.

"If I sit down in courtroom number one, and there are four sentences that I'm interested in, I still have to handwrite a note that says 'good morning, please may I have date of birth and address details for Bill Smith, Joe Bloggs, Fred Whoever, you know, and then half an hour later, an hour later, sometimes two hours later, they finally will write them down. I still have to do that." (Naylor)

This obliges a journalist to spend time chasing this information which they could spend on other reporting tasks. He added that direct appeals to a court manager to alter this practice had been to no avail.

Reporters often expressed a preference for working at a Crown rather than a magistrates' court, in part because Crown courts were more used to dealing with

journalists. Furthermore, in magistrates' courts with a District Judge presiding, Simon Bristow of the *Hull Daily Mail* raised questions about whether justice was being played out in full.

“Sometimes... he'll have read all the papers prior to going into court so the case is not properly opened... so you've got to go to the prosecutor who doesn't really want to help and try to persuade them to fill in the gaps.”
(Bristow)

Reporters praised the general availability of physical court lists pinned up within magistrates' courts, something not typically seen in Crown courts. “You get details like an address and so forth, a date of birth, you don't get that with the Crown court lists, it tends to be detail you have to ask for.” (Arnold). It is not clear why such a practice has never evolved in all Crown courts, although journalists from different parts of the country reported varied approaches to this.

Electronic lists of forthcoming cases are typically made available to reporters in advance, albeit often on the afternoon or evening immediately preceding the date in question. These are provided online under a protocol agreed between the Courts Service, the Society of Editors and News Media Association, and should be free to access (HM Courts and Tribunal Service 2018), although they only give basic information. “You can have a look online and see if there's anything they've done before, or it might tell you a bit about the people who are involved, but you don't get much from the list.” (Harrison). Reporters said they were grateful for the provision of these lists but would especially like those from the Crown court to be more detailed. “It only has the name of the person on it, so you don't actually get what they're in for, or where they're from or anything.” (Linham). This existing system means that reporters must spend time cross-referencing the names of defendants with previous lists they have received from the magistrates' court, or their own published news stories, to try to keep track of cases as they move through the justice system. With lists typically only available on the previous afternoon or evening, there is limited time to do this checking.

Some reporters admitted the availability of such lists can put them off attending court, if they do not see anything interesting that catches their eye. “So, we might

look at the list and see five cases of minute bits of shoplifting and think well, you know, that reporter would be better served doing something else rather than going to court." (Fenton). Improving access to such information for reporters could therefore act as a disincentive to court coverage.

Chris Osuh of the *Manchester Evening News* noted a more detailed service in operation locally had been withdrawn: "There was a period where the press used to get annotated court lists, handwritten, by court staff. That had everybody's name on and the offence that they were charged with, and that made the job particularly easy." Cuts in the justice system were blamed.

Another issue which sometimes constrains reporters is a change in either the timing or location of a hearing.

"You go to a hearing and they say 'you will be sentenced on this date' and you put that date in your diary, that day arrives and then you notice it's not on the list and you go in and find out it's on another day." (Court Reporter 13)

There was acknowledgement from interviewees that receiving an update every time any case was moved would be impractical, but a more dynamic listings system which allowed for easier searching could mitigate those problems.

Weekly newspapers routinely print lists of court decisions. These have traditionally been provided by the CPS because of a government view that the publication of such information helps increase confidence in the criminal justice system (HM Courts and Tribunal Service 2018). These lists give very basic details of defendants and their crimes, usually minor cases heard by the magistrates' court. The lists have been described by editors as the first page readers turn to so they can check to see if anyone they know is listed (Pape and Featherstone 2005). "It used to involve legwork and physically going, now you can cover things remotely in a lot of circumstances." (Farmer). The lists can also help journalists with the kind of cross-checking tasks mentioned earlier in this section. However, I would argue that when printed en bloc in a newspaper, the individual cases are shorn of the context that can make court journalism valuable. "You don't actually get to report on the actual

nuances, or the details of the case.” (Gardner). The lists will only include some of the cases from a given week, and will only give details of successful convictions, potentially giving a false impression of the effectiveness of the CPS (Chamberlain et al 2019a).

Press officers less familiar with court proceedings can make errors when writing press releases about completed cases. Reporters were concerned they could unwittingly republish those errors. “You can't just write anything, sometimes the police get it wrong, sometimes you've got to be aware of Contempt of Court orders.” (Roberts). Journalists may well make mistakes in their own court reporting too, but they much preferred that prospect rather than relying on second-hand information.

“You can sometimes find that actually it is slightly inaccurate because whoever's interpreted it has maybe added it all together as one charge when it's between a fine and court costs and a victim surcharge. If you're down at court you obviously understand how things are worked out, whereas (a press officer) might just look it and take that as 'oh that's just what they've got to pay altogether as a fine' which is wrong.” (Sherdley)

Unlike a crime reporter willing to take the word of the 'authorised knower' from the police press office at face value, court journalists appear more reluctant to do so, although they do have the benefit of being able to see court cases unfold for themselves rather than having to respond to a crime which has taken place out of their sight. This raises the intriguing prospect that a journalist covering a 'crime and courts' beat may be content to trust the police press office on certain stories such as appeals for information but will treat them with much more scepticism on court matters.

Journalists are frustrated when they cannot get the names of magistrates. Official guidance clearly states that the media is entitled to such information (HM Courts and Tribunal Service 2018), but some reporters described reluctance among staff in certain magistrates' courts.

“They've got an idea they shouldn't give out a JP's name. You shouldn't be a Justice of the Peace if you don't want to be held accountable for your decision making, and the basic way of doing that is having your name in print.” (Osuh)

That quote from Chris Osuh relates to his experiences of covering magistrates' courts occasionally around Greater Manchester when much of his time is spent in the Crown court. Other interview responses suggest that magistrates more used to seeing journalists take a different approach. Emma Davison in Huddersfield did, though, concede her experience may be unusual: "They really like their names going in the paper. It's encouraged. There was a chairwoman a few years ago who said to me... they really appreciate seeing their names in the paper and being quoted."

Rebecca Sherdley explained that her local Crown court in Nottingham had, for more than a year, stopped providing addresses of defendants. Her newspaper had published an outdated one from a previous hearing, which led to a complaint from an individual involved. The newspaper's correction included the detail that the address had been supplied by the court, and Sherdley felt it was this, not the original mistake, which had led to the trouble. The court's policy was only reversed after a journalist from the Press Association discovered the issue and raised it in the *Press Gazette*.

"Sometimes you feel like the media really have some kind of respect and power down there, the courts, and then other times you sort of feel that, you don't. It's just suddenly taken away from you on a whim really, with no real explanation." (Sherdley)

There are potential ethical concerns with the publication of personal details of judges and magistrates. Frost (2015) includes them as people who might be considered at risk, clashing with the desire of journalists to publish at least the names of those individuals. No journalist interviewed reported an occasion when those details were not provided to them on account of a previous assault or similar incident against a judge or magistrates. But although such risks may be rare, and must be weighed against open justice arguments, they are not purely theoretical. A notable case of assault occurred in Ipswich in 2013, when a man was jailed for contempt for rushing out of the public gallery and attacking the judge who had just jailed his brother for causing death by dangerous driving (Brown 2013). In 2016, the Ministry of Justice admitted written threats had been sent to a hundred judges or magistrates over the previous five years (Bowcott 2016).

5.9 Summary

This chapter has considered the working practices of court reporters in the UK and how they have been affected by financial and industrial pressures on journalism, especially local journalism. The findings demonstrate the job of a court reporter is necessarily complicated. A journalist regularly covering a court must negotiate a wide range of relationships with actors within the criminal justice system, at all levels of seniority, for different purposes and often with mixed success. They have been obliged to take account of evolution in their own working practices, while sometimes contending with court attitudes which have not always kept up with those societal changes. The justice system has itself suffered from government cutbacks, which have perhaps served to make accommodations to the media a lower priority than they might otherwise have been, a trend which will be considered in detail in the next chapter. In that context, it is perhaps surprising the main law which features as part of their daily working lives has not been subject to more scrutiny or criticism from court journalists, created as it was at a time when both the justice system and the local news business were rather different.

Smartphone snatch photography is perhaps the best example within court reporting of the broadening skillset of the modern media worker, which has taken them 'beyond journalism' (Deuze and Witschge 2018). Alongside other uses of smartphones, to be considered in the next chapter, the incorporation of the previously specialist role of photographer demonstrates a new conception of a court reporter, obliged to fulfil a much broader range of newswork tasks than was traditionally the case. The focus of this thesis will turn next to the final research question, allowing space to consider in more detail the civic function of local court reporting.

Chapter 6: The Civic Function of Local Court Reporting

6.1 The Civic Function of Local Court Reporting

The final research question in this thesis allows us to consider some of the broader implications of the findings of the previous chapter. It asks the extent to which it matters that local court reporters may now be working in new ways or in straitened circumstances. RQ3 further examines the ways in which journalism may be struggling to uphold the normative conceptions of court reporting discussed in section 1.6, and in turn what that could imply for the future health of local public spheres.

This chapter addresses recent and ongoing developments in court reporting and the criminal justice system in general, including changes already being wrought to both newswork and the operation of local courts by digital technologies. It also examines other relevant interventions, including the expanded use of cameras in court within the UK's jurisdictions, and the introduction of the Local Democracy Reporting Service to help local newspapers cover other matters of public interest. But it is not just the questionable financial position of legacy media institutions which poses a potential threat to the future health of local public spheres. Courts themselves have also endured a lean time, in turn having an impact on the work of local court reporters. This will be considered next.

6.2 Cuts within the justice system

Much has been written in this thesis and elsewhere about financial pressures in local journalism, which have perhaps accelerated changes in the newswork of reporters. However, the justice system in England and Wales has also faced cuts (Ford, Gibb and Jagger 2010), with the court estate identified by the government as a target for savings because of the low utilisation of some courts, and the potential to increase the use of technology (Donoghue 2014, Simson-Caird 2016, Langdon-Down 2016), with notable interventions prioritising improving efficiency in the criminal courts (eg

Leveson 2015). A first round of cuts was announced in 2010 and was known as the Court Estate Reform Programme (CERP). A second, the Estates Reform Project (ERP), began in 2015. They have taken place against the backdrop of not only a reduced workload for magistrates, but also a drop in morale (Gibb 2010a, Halliday 2016). By 2019, more than half of the magistrates' courts in England and Wales had closed since 2010 (Bowcott and Duncan 2019). Before considering the impact on court reporters, the closures themselves will be briefly described.

Announcing the initial CERP closures, ministers argued the tradition of a court in every town was a thing of the past (House of Commons Justice Committee 2010). The general themes of the government's arguments ranged from cost-saving to the greater efficiency of multi-court sites, to a renewed push for more use of video links to allow for a greater volume of remote hearings. None of the MPs who spoke in a Commons debate mentioned media coverage at all (see Hansard, 14 December 2010), implying the relative lack of consideration of media interests exhibited during the passage of the 1981 Act and described in chapter 4, was being repeated. Concerns did feature widely in local newspaper coverage, focusing on the loss of experienced magistrates (see Cranna and Brooks-Pollock 2011, Cornall 2011, *Dewsbury Reporter* 2012). The Magistrates' Association seemed more relaxed, urging JPs to focus instead on more flexible working arrangements and new locations for hearings (Gibb 2010b), although fears among other union leaders persisted over access to justice (Gibb 2010c), which is the principle that all involved in legal proceedings can be properly and fairly advised and represented (United Nations 2019). During the later consultation over the ERP closures (Ministry of Justice 2015), again no responses were from media companies and so the potential impact of the planned closures on journalism once again does not seem to have been considered at any stage. Instead, the Ministry of Justice grouped its response into four now-familiar themes: access to justice, value for money, operational efficiency and the potential for alternative court provision (Ministry of Justice 2016b, 2016c). In general, local media reports of the closures of courts under ERP again reflected strong criticism of the cuts from magistrates and other officials, including concerns about access to justice (Howard 2017), transport time (Wright 2016, *Hartlepool Mail* 2017), young defendants being forced to attend more intimidating

court complexes (Fishwick 2016) and the economic impact of the potential closure of solicitors' offices (Ramzan 2016).

Local press coverage of the closures did also warn of an erosion of the traditional relationship between newspapers, the courts and the wider public in local communities. But perhaps counter-intuitively, the interview responses revealed the closures have helped journalists continue to cover the courts beat. "For us it means everything's in one place so it's actually advantageous." (Sherdley). Not having to travel to different parts of their area allows a court reporter to cover more than would once have been the case. One journalist interviewed for this study asked to remain anonymous for this quote, because they did not want to be seen to be welcoming the closure of courts.

"If there were three court centres and I was looking at three cases and there was one in each, then I wouldn't be able to cover them all. Whereas if they've closed two magistrates' court sand put them all through in the same place, you see that would kind of work out." (Anonymous)

Another consequence has been more cases from outwith a newspaper's traditional patch being heard in that area. A court reporter from the south of England who did not want to be named in this thesis, said they tended to ignore them for being not local enough for his paper's audience: "A lot of the trials are... to do with people not in our area that tends to be why we don't cover them." A bigger negative impact of these changes has affected journalists working on smaller titles, such as weeklies. For them, the closure of a local court has left covering court uneconomical, beyond publishing the traditional list of completed cases. "They just don't have the resources to do it anymore. Covering the magistrates' court I think is becoming a big issue really, a lot of minor cases are just going unreported." (Gardner).

One consequence has been to load further work onto court reporters working for daily newspapers, as they may be obliged to file to a sister, weekly title, as well. "It's put extra pressure on me to try to find stories for them from court, because they can't afford to send a reporter up to court for a morning or a day." (Naylor). Emma Davison of the *Huddersfield Examiner* gave the example of the closure of Dewsbury magistrates' court under CERP. That town's weekly paper, the *Dewsbury Reporter*,

owned by a rival company, used to be based opposite the court and would regularly send a journalist. But now those cases have been centralised at the court in Huddersfield, and indeed the *Reporter* is now produced at an office in Leeds shared with the *Yorkshire Post* and other titles, the weekly no longer attends. “In terms of stories it’s great because we haven’t got the competition sitting there, so we pick up a lot of stuff, which they then rip off the website usually.” (Davison). This suggests that while publics in larger cities and towns may still be able to count on a regular diet of relevant local court stories within their local public spheres, smaller towns and rural areas are at risk of losing that supply, potentially hastening the creation of ‘news black holes’ or ‘news deserts’ (Howells 2016, Abernathy 2018).

6.3 News Values and Guilty Pleas

Crime has been considered a topic covered by news organisations because it is something editors and journalists believe their audience is interested in, as discussed in section 2.2. Galtung and Ruge’s classic study of news values (1965) and Chibnall’s work on news values in the context of crime (1977) remain influential, but have been refreshed for the modern media landscape, including in a widely cited paper by Harcup and O’Neill (2001). Subsequently, scholars have put greater emphasis on the importance of the availability of visual material for use in crime stories (Greer 2010), crimes which involve children (Jewkes 2015), and the value of shareability on social and online platforms (Harcup and O’Neill 2017). Harcup and O’Neill (2017) also listed ‘exclusivity’ first in their latest typology of news values, attaching a heightened importance to ‘scoops’ which acknowledging that this concept says more about the journalistic process than any inherent newsworthiness in a particular story. In the context of this thesis, this implies a court reporter may be more tempted to cover a marginally newsworthy case if they know they are the only journalist witnessing it, and so have a guaranteed exclusive. For Harcup (2020), news relating to crime “is arguably among the more obvious examples of how the stories that tend to be packaged and delivered by the news industry are not always the news items that citizens most need.” (p91) This suggests that court reporters, and indeed crime reporters more generally, may risk of focusing on their own

exclusives or stories which are particularly entertaining, than cover cases of greater normative value to a local public sphere.

Tuchman (1978) found the news media imposes structures on time and space to allow for better planning of their operations, as outlined in section 2.3.1. Stories breaking in the afternoon might receive less attention as reporters have generally been assigned duties in the morning. This claim is an interesting one to consider in the context of local newspaper court reporters. Courts usually sit at the same time each day, allowing a journalist assigned to that beat a certain predictability of how to structure their workload, for example taking notes while the court is sitting, and writing up their stories during breaks or at the end of the day's proceedings. This in turn might allow an editor the comforting knowledge that a court reporter is likely to deliver stories for publication at predictable times, in turn helping encourage a newspaper to continue investing in a full-time court reporter, even in an era of tightened budgets. Yet it would surely also apply pressure to that reporter, to make sure that they came back from court each day with a certain number of stories to write, whether each one might fit traditional views of newsworthiness or not.

Interview responses indicated court reporters are often under pressure to cover proceedings in several courtrooms within a court complex at the same time and will often instead choose to focus on those involving guilty pleas, to allow for a greater volume of completed stories in each day. "Traditionally, in the past I've not really covered trials that often because I know they're very time consuming and it's not as good for quick turnaround of copy." (Davison).

A shorter hearing with a guilty plea, and freedom to report all details of the case heard in open court, is more likely to offer what a reporter would consider a publishable story. That is, one that allows the reporter to complete it as a whole package quickly, even if it is marginal in its newsworthiness (Brighton and Foy 2007) or features less detail overall (Soothill 2009). There may well be several such cases in a row, virtually guaranteeing some potential articles for a court reporter, even if others may ultimately prove too mundane to write about, echoing the trend noted by Gregory (2005) among Australian court reporters working online. Trying to reflect even a dramatic cross-examination from a trial in a short article is a much tougher

task and would typically require the reporter to spend a half-day or even longer sitting through those proceedings almost on the off chance that something notable happened.

Reporters stressed the essentials of a court case might give little clue as to its potential news value, which would often involve comments or some other kind of unexpected incident which took place during the proceedings.

“Sometimes you have court cases where the charge is quite minor but it's the judge's quotes and the barrister and prosecution's quotes, the things that they say in court, and even the defendant himself might shout and scream or, I remember in one instance a defendant pulled his trousers down in the dock, so it's kind of other things that are not necessarily what you'd think were news stories.” (Sherdley)

The ‘pot luck’ factor of inadvertently finding an interesting story almost by chance, perhaps while waiting for another case as previously mentioned in section 5.8, was identified by several reporters as the method by which they came by memorable stories. These factors imply that efficiency in their work, as well as the commercial considerations of covering exclusive or entertaining stories, are important for court journalists, potentially at the expense of covering other cases which may more closely uphold the normative values of court reporting.

There was also evidence of newspapers putting a greater emphasis on court reporting because of its relative efficiency. Laura Linham said the series of print titles she worked for under the *Somerset Live* banner had virtually abandoned covering Crown court until they were acquired by Trinity Mirror, now Reach, which put extra resources into court journalism.

“Crown (court) we were pretty much just completely ignoring unless there was something that we were aware of... It sort of seemed that sometimes we'd have reporters that were struggling to fill pages and there'd be fantastic stories, interesting, meaty, juice stories that just weren't getting the attention.” (Linham)

Reach has demonstrated its commitment to court reporting in other locations. It employed a court specialist as part of its launch editorial team of six reporters on its

online-only title *Leeds Live*, notable as two of the others were dedicated to football coverage (Gildea 2018). The court reporter was Stephanie Finnegan, who soon gained national prominence for her role in covering the Tommy Robinson case, discussed in section 5.4. However, another Reach reporter interviewed for this study, Jason Evans of the *South Wales Evening Post*, said he now covered a combined beat covering crime, Crown court and magistrates' court, when previously the title had employed three different journalists in those roles.

6.4 The Importance for Open Justice of Attending Court

As argued in section 1.4, the physical presence of journalists in court is potentially important to preserve the health of a local public sphere, not least because of the long-term decline of public attendance (Mulcahy 2011). That decline means the public relies almost exclusively on the media for knowledge of court cases, helping shape public knowledge of the justice system (Moran 2014, Marsh and Melville 2014). Judges and courts tend to attract lower levels of confidence than other related institutions such as the police, in part because the public in general has less accurate knowledge of what takes place within a courtroom, which in turns leads to higher levels of criticism (Hough and Roberts 2004). This could be blamed on inaccurate or incomplete media reporting, although Moran (2014) argues it is the local press which produces stories far closer to the reality of events than the national media. Helping to ensure that such local press coverage can be maintained and enhanced is a key theme of this research project.

The risk of inaccurate or incomplete media coverage of court cases is perhaps exacerbated at the local level by the practice of reporters dipping in and out of cases running at the same time in different courtrooms. While this may offer efficiencies to a hard-pressed reporter as suggested by the discussion around coverage of guilty pleas in section 6.3, only covering certain parts of an ongoing criminal trial has been criticised as unethical. Frost (2015) writes it is important to cover a major trial over days or weeks to ensure a full and contemporaneous report can be given. This is something that appears to be happening less often, for example if broadcast journalists only attend the opening of a trial, then return for sentencing, as mentioned

in section 5.5. The practice of journalists not being as present for day in and day out coverage of a case might therefore be considered unethical, especially if coming and going from a courtroom led to inaccuracies and omissions. However, this may be less likely to happen when a reporter is covering a more significant local trial. "If there's a big murder case happening that day, you'd put all your resources into that case, you wouldn't be trying to slip between that and another case." (Sherdley)

The general concept of open justice was a key justification used by court reporters in defence of their work. That is, with members of the public seldom attending court, the only way to inform them of what is taking place there is through media reporting. As Central News agency director Guy Toyn argued: "What's the point in having someone sent away for 20 years, if no-one knows it's happened? There's actually no point whatsoever." However, this claim does not consider the general purpose of punishing an offender, as well as the argument that such punishment can help to protect society generally.

Journalists highlighted the way in which court cases can provide an early warning as to issues affecting society generally, as a way of furthering the civic function of court journalism. The first time a newspaper may be aware of a particular trend in their local area, such as a new strain of drug or a novel series of scams, could be through seeing crimes being brought before the courts. "You get pieces of a jigsaw that tends to form a wider picture through prosecutions passing through the system." (Osuh). This can lead to further stories on those issues, often written by other reporters, potentially strengthening the quality of discourse within a local public sphere. Court journalists felt such information was less likely to be volunteered by actors such as council or police press offices, more concerned with promoting positive impressions of their communities, underlining the importance of reporters' physical presence at court.

Interviewees also felt that their attendance improved the behaviour of court participants, as argued by Rodrick (2014). That is, by simply being sat in court in the press seats, a reporter can keep the behaviour of others in the court on track, an example of the 'scarecrow' or watchdog functions of journalism discussed in chapters one and two.

“In courts, where they don't have a regular press presence, they tend to forget that there's a principle of open justice and they do things in a way which journalists then turn up and find is irregular. Or practices start to creep in which are not conducive to open justice.” (Osu).

Examples of those practices cited in interview responses included courts sometimes not allowing journalists into courtrooms at all, something reporters said was more prevalent at smaller magistrates' courts not regularly covered by the press, away from the larger court complexes in major cities and towns. Some journalists said when they challenged court staff, they were often not able to give an explanation as to why reporters were not permitted, and this usually required a phone call to a court manager to resolve. Ben Eccleston of the *Coventry Telegraph* described an occasion when he visited a court in Birmingham he did not normally attend.

“They went in and spoke to someone in the court and they said ‘you can't come in’ and I said ‘well actually I can come in’ and... explained the letter of the law. But I think this guy, I'd call him a jobsworth... did seem very much like ‘I've decided you're not coming in so therefore you're not.’” (Eccleston)

He defused the situation by agreeing to sit in the public gallery instead, although as will be discussed in section 6.9, this is not ideal and goes against official guidance. Experiences such as this suggest that the less often journalists attend a court, the less open the practices of that court become, further underlining the importance of court attendance as a way of upholding the normative values of local journalism.

Court reporters have long carried cards issued by their employers with a ready reckoner of legal grounds which they can use to challenge court orders. These can include those made under the 1981 Act such as postponement or prohibition orders as discussed in chapters four and five. Further examples can involve the naming of youths when they appear in an adult court, which a court can prohibit under section 39 of the Children and Young Persons Act 1933. Such restrictions are sometimes lifted after applications by media companies, such as in the case of Will Cornick, a Leeds schoolboy who murdered teacher Ann Maguire in 2014 (Pidd 2014), on the basis that it is in the public interest to identify those convicted of serious crimes. Several interviewees pointed to when they themselves had made successful

challenges. They stressed that without the presence of a reporter with the experience to make a challenge, such names would be less likely to reach the public domain. The lack of legal training of magistrates, notwithstanding the presence of legal advisers, was identified as a factor.

“I think a lot of magistrates think they should just automatically put on an (section 39) order on any youth who is a witness in any court really. They don’t seem to be fully aware of the guidance or how they’re supposed to interpret it and they’re over cautious with it.” (Fenton)

Again, returning briefly to the Robinson case from section 5.4, I would argue this demonstrated the potentially counter-productive nature of imposing reporting restrictions in such a high-profile case, because of the frenzied weekend of conspiracy theories which circulated online after his arrest. It also showed the value of a local reporter with experience of challenging restrictions, in this case Stephanie Finnegan. Although the judge also received a representation via email from a London-based national newspaper, that journalist did not go to court (Finnegan 2019).

Rotating the role of court reporter between a pool of less experienced general journalists was also identified as a possible barrier to challenging court orders, and by extension a threat to open justice. “Perhaps orders are being made that are sometimes unfair... I think there’s a real danger that becomes more prevalent if you don’t have a reporter stationed in the main courts.” (Arnold). I would suggest this could add another obstacle to the work of the occasional court reporter, who may also find they have less leeway to cover stories as confidently as they might want when compared with specialists, as Revers (2014) discovered in a study of political reporters in US local journalism.

6.5 Cameras in Court

One possible way to develop the public quality of courts within the UK’s jurisdictions, and in turn enhance open justice, would be to permit greater use of cameras to produce material for broadcast. The 1925 ban on photography within the precincts of

courts in England and Wales, described in section 4.1.3, has long been the main barrier to televising the actual proceedings of a court case. Broadcast journalists have long been obliged to leave a court to deliver their reports, with the aid of court art to illustrate events. Much discussion about the use of cameras involves the US. It inherited the tradition of open justice from England and Wales, and early American courtrooms were “huge, theatre-like set ups” to facilitate public attendance (Graham 1999, p39). Court artists and illustrators regularly attended to strengthen the visual element of newspaper coverage of notable trials (Krupp 1999).

The general shift against courtroom photography in the US can be attributed to the Lindbergh baby case of Richard Hauptmann in 1935. He was convicted of the abduction and murder of the young son of world-famous aviator Charles Lindbergh, after a trial which some commentators considered unfair because of the extensive press and radio coverage (Bock and Araiza 2015). A wide disparity developed in practices between different states (Geis and Talley 1957, Cohn and Dow 1998), and even individual counties (Blasiola 2011). International coverage of high-profile trials also led to unusual situation, such as the banning of American reporters from a Canadian court because there was no way of preventing their broadcasts reaching Canada (Walker 1996), a country which has generally been accused of failing to embrace non-text digital technologies within courts (Puddister and Small 2019).

The US Supreme Court has periodically considered the issue. The general ban on cameras was upheld in the *Estes* case in 1965, over concerns visual coverage could violate a defendant’s right to due process (Faubel 2013, Bock and Araiza 2015). Yet the 1981 *Chandler* case was considered key to a gradual softening among American courts in allowing cameras. Two Miami police officers had objected to the televising of their trial on charges of conspiracy to commit burglary. They were found guilty and although less than three minutes of courtroom footage was broadcast on television, it all related to the presentation of the prosecution’s case. In appealing to the US Supreme Court, the officers argued the presence of cameras within a courtroom was inherently prejudicial. The justices disagreed, although the safeguards inherent within Florida’s approach to televising trials, such as leaving the decision of whether to allow broadcasting to the trial judge, allowing the judge to suspend coverage at any time, and limiting the number of camera technicians allowed within a court to

minimise disruption, were significant in alleviating concerns often raised about the presence of cameras (Patterson 1982). In the years after *Chandler*, courts became increasingly lenient about the use of cameras (Winnick 2014). There have been calls for more empirical research in this area to help resolve the situation which has developed, in which cameras are neither expressly mandated nor permitted (Tilley 2014). Despite its general acceptance of the televising of trials, the Supreme Court itself has never been televised, although since 2010 weekly audio recordings of the arguments have been released (Bruno 2015).

Arguably the most prominent example of the televising of a criminal trial remains that of OJ Simpson. The former American football star, sport commentator and film actor was tried in 1995 for the murder of his ex-wife Nicole Brown and her friend Ronald Goldman. The trial was covered in an unprecedented fashion through rolling coverage on cable TV and prominent reports on nightly news (Cohn and Dow 1999, Tyndall 1999). Each day's proceedings were dissected by a range of television pundits and commentators, almost in the style of a sport broadcast (Deutsch 1999). The coverage reflected both Simpson's fame as one of the most well-known Black celebrities in the US, and the remarkable nature of his arrest the previous year, when he was the subject of a televised pursuit having initially failed to report to police as scheduled. The nature of the coverage created a great deal of intimacy with the key participants in the trial, including the judge, prosecution and defence lawyers and key witnesses (Toobin 1999). The trial judge was criticised for the perception that he had lost control of the case, amid claims he allowed lawyers to 'showboat' and play up to the cameras (Graham 1999). Simpson's main defence lawyer, Johnnie Cochran, rejected this argument, arguing cameras put all court participants on "better behaviour" and can help to ensure fairer trials in general, by dissuading prosecutors from being too tough during cross-examination on defendants from troubled backgrounds (1999, p47). Yet the coverage was characterised as something of a media circus, which encouraged judges in subsequent high-profile US cases to prohibit cameras, partly to avoid both grandstanding by lawyers and criticism of their own performance (Mauro 1999, Graham 1999, Falconer 2004).

In 1997, Louise Woodward, a nanny tried for the murder of an eight-month-old baby in the US city of Boston, was the first British person to have their trial shown on TV.

As with the Simpson case, it was broadcast extensively in the UK on Sky News, at the time still Britain's only domestic rolling news service (Stepniak 2009). It included a further echo of OJ Simpson, as one of his defence team, Barry Scheck, served as Woodward's attorney (Usborne 1997). As I well remember from my time working there, the initial guilty verdict remained at that time the highest rated moment in the history of Sky News, underlining the interest in the case in the UK. Woodward was later critical of the coverage of her trial, reserving her harshest objections to the summaries of the day's proceedings broadcast on the local nightly news in Boston. She accused the local television journalists of "downright irresponsible" reporting, focusing their brief stories on the prosecution's case and failing to cover her defence in as much detail (Woodward 2006), echoing an argument of the police officers in *Chandler* and pre-empting a key point later made by Tilley (2014). Woodward's conviction was ultimately downgraded from second-degree murder to one of involuntarily manslaughter, allowing her to go free. The relative rarity of such a judicial move led some to question whether trial judge Hiller Zobel had been influenced by media coverage in the US and UK, which had been critical of the initial verdict. Zobel attempted to pre-empt this criticism by prefacing his ruling with a quote from US President John Adams, that the law "is as deaf as an adder to the clamours of the populace" (Cohn and Dow 1998, p71)

In Bock and Araiza's study (2013) of the media coverage of a US capital case in which a police officer had been shot dead, they argued the question of cameras in court is secondary to the power dynamic in the relationship between the court and journalists. Relatively few people watched the online live stream of the trial, with far higher audiences watching summaries on the nightly TV news, meaning their understanding of the system was framed by reporters. They said visual aspects of the case did not receive the kind of even-handed treatment traditionally accorded to written journalism, pointing to the media's failure to ask for an image of the defendant that was not a standard and unflattering mug shot, with court rules, a deference to police personnel and constraints of time and space all playing a role.

Any attempt to pursue television courts of the courts in England and Wales was delayed by negative reaction to the coverage of the Simpson and Woodward trials. Senior legal figures believed the presence of cameras had distracted lawyers and

were also concerned by what they regarded as an excessive volume of coverage (Stepniak 2009, Rozenberg 2013). In an interview for this study, ITN's Head of Compliance John Battle expressed the view that once the dramatic spectacle of the Simpson case in particular fades, it is possible to see the potential benefits of filming trials more clearly.

“There is so much else within the court that can be open and can be filmed... once you've got past that point and recognised that this isn't going to be about witnesses crying in the witness box, and children being seen on national television, then the open justice considerations become much more to the forefront.” (Battle)

As outlined in chapter 4, late changes to the 1981 Act forbade publication of the details of jury room deliberations. The US experience has been different. John Cheesman, a BBC executive involved in cameras in court projects who worked on its *Breakfast* TV news programme at the time of the Woodward case, reflected that he did not expect access to jurors in a trial such as that to be replicated in the UK's jurisdictions: “We just about filled the whole programme with the jurors talking about the case. It was just extraordinary stuff... but you are never going to get to a situation (in the UK) where jurors can talk.” Brian Farmer of the Press Association argued that the laws prohibiting most broadcast coverage of courts related to “a different time”.

“I can see an argument where if you're filming a witness giving evidence, or a defendant giving evidence, that the television camera might affect their evidence. So, ok, don't film witnesses giving evidence. But filming the judges, that shouldn't be affecting what they do. Filming magistrates, it shouldn't affect what they do. Filming lawyers, it shouldn't affect what they do. So I personally can't see a problem with letting television cameras in, as long as you're not affecting evidence.” (Farmer)

The cameras debate has generally been constructed in the press as a quandary between increasing transparency in the justice system, yet also making it more sensational. Much of that discourse has perhaps overlooked the fact that most disputed are not criminal in nature and are often settled out of court anyway. Therefore, increasing television coverage of the courts might act as an incentive for further out-of-court settlements, reducing transparency (Garcia-Blanco and Bennett 2018). Bernzen (2018) argued that discussions over the use of cameras in court had not properly taken account of the Article 8 right to privacy of participants in trials, for

example if aspects of an individual's private life were mentioned in open court and then broadcast. They acknowledged that open justice considerations may often prevail over such competing interests but warned future frameworks for extending the broadcasting of court cases must be concerned with adequately protecting the privacy of those taking part in them.

In the UK's jurisdictions, similar restrictions to those in England and Wales exist in Northern Ireland (Ministry of Justice 2012) but there has never been a statutory ban in Scotland. Yet there was little difference in practice between Scotland and the rest of the UK until 1992, when Lord Justice Hope issued a notice describing the de facto ban in Scottish courts as an impediment to making programmes of a documentary or educational nature (see Bonnington et al 2000, Jaconelli 2002, Judicial Office for Scotland 2013). The first filming in a UK courtroom was carried out the following year for a BBC documentary series (Arlidge 1994, Stepniak 2009). But filming of Scottish courts remained a relative rarity, in part because it remained possible for one party to a case to effectively veto such recording, a constraint later removed because it had inhibited programme makers (Judicial Office for Scotland 2013). A high-profile Channel 4 documentary *The Murder Trial* in 2013 returned the broadcasting of Scottish cases to national prominence, with a programme on the retrial of Elgin greengrocer Nat Fraser for the murder of his estranged wife Arlene. The Scottish court reporter interviewed for this study covered that case, and said it was the only occasion they had encountered TV cameras in court, underlining how rare the practice has remained. "I've never seen or heard that since, because it's just not viable for recording, camera equipment in court ever basically." (Court reporter 6)

Moves to allow filming in courts in England and Wales progressed incrementally. Renewed momentum began in the late 1980s, alongside the first filming of Parliament, when a committee of barristers concluded the 1925 Act should be amended to permit experimental court coverage (Ministry of Justice 2012). The first video recording took place in 2004 at the Court of Appeal as part of a not-for-broadcast pilot scheme. This indicated a direction of travel towards the televising of at least some legal cases, with the attitude of the judiciary generally reflecting a gradual if reluctant acceptance (Stepniak 2009). The UK Supreme Court was established in 2009, replacing the Law Lords. Broadcasting of the new court was

allowed through a specific exemption from the 1925 Act. This was intended to replicate the previous limited arrangements for broadcasting the Law Lords, which had taken place by virtue of the general televising of the House of Lords. While live footage of the Supreme Court was made available online, its dry nature meant it only rarely featured in news bulletins (Battle 2013). For most civil and all criminal court proceedings, broadcasters must still rely on traditional court sketches (Halliday 2013).

The first television broadcast of a criminal case in England and Wales took place in 2013, again at the Court of Appeal. After a special disapplication of the 1925 Act, a process of near-live broadcasting was introduced. A reporter jointly funded by the BBC, ITN, Sky News and PA was responsible for operating this stream using a 'delay' system while sat within the courtroom. Matt Nicholls, himself an experienced newspaper court journalist, was that reporter, and was interviewed for this study. "We've got the same sort of equipment they would use for radio phone-ins or something like that. If you hear something that is not allowed to go out, you hit the button and it's removed before it goes to air." (Nicholls). In the past, such technology was not portable enough to use discreetly. Indeed, the earlier pilot in the Court of Appeal had involved mini-control rooms "set up in a corridor for criminal cases and a former gents' toilet for civil ones" (Cheesman) so as not to disturb proceedings. Broadcasters heralded video recording as simply the modern equivalent of the public gallery and within a week of the system being introduced, footage was screened on the main evening news (Bucks 2013, Battle 2013), although I would suggest the involvement of TV channels in the scheme made its initial use inevitable, as the companies would naturally be keen to see a return on their investment. Nicholls explained the planning desks of the four news organisations agree on which cases to film, a decision put to a vote when there is a dispute, such as when a national story which may be of some interest clashes with a case certain to be covered by one of the BBC or ITV regional news programmes.

Interviews for this thesis took place after four years of the project, and those involved acknowledged the material had not been used as widely as hoped. Producers had expected about 20 cases per year to feature on the national news, but the reality has been fewer. Yet there was satisfaction at the extent to which cases had been

broadcast by local TV. “I thought we’d only film 20, we’ve filmed far more. But in general terms I’ve been very pleased. When I’m really pleased is when it does make the regional news programmes, certainly in Wales they’ve been very good.” (Cheesman). Once the novelty wore off, national news editors were less keen.

The relatively dry nature of the proceedings in the Court of Appeal helps explain this. The content is rarely dramatic in and of itself, with judges and lawyers interacting with each other in sober, legalistic terms, even if the arguments and decisions made are of national interest. Complex legal arguments do not necessarily lend themselves easily to the soundbites routinely used in short television news packages. In the Court of Appeal, victims and witnesses appear less often to offer new evidence as they would in a criminal trial. Restricting filming to appeals therefore helps to protect witnesses, who may fear an infringement on their privacy, as warned by Bernzen (2018), and may decline to give evidence at all if they believed their testimony might be recorded and broadcast. It also guards against the possibility that witnesses may watch coverage of other witnesses in the case, perhaps leading them to alter their own testimony. John Cheesman, the BBC executive closely involved in the scheme, acknowledged the “money shot as far as the general public is concerned” would be a camera dwelling on the defendant in a criminal trial, and by extension this would also be likely to feature prominently in news broadcasts were such filming permitted. The Ministry of Justice has continued to rule such coverage out, insisting that “the government and the judiciary will not permit our courts to become show trials for media entertainment” (2012, p21). Yet Cheesman felt expert witnesses such as forensic scientists or social workers who might give evidence at an appeal, should fall into a different category to witnesses caught up in an event: “We would say there’s probably a good case that actually expert witnesses should be recorded, and people should be allowed to see their testimony... you could make a difference between them and witnesses of fact.” (Cheesman)

Following the Court of Appeal scheme, the same team conducted limited filming in eight Crown Courts in England and Wales. The sentencing remarks of judges were recorded but not made available for broadcast. The government again made open justice arguments in favour of the experiment, suggesting that any future

broadcasting of sentencing remarks would allow the public to see and hear a judge's decision in their own words, leading to more openness and transparency as to what happens in the courts (Ministry of Justice 2016a). Matt Nicholls described the experience as "reasonably good" with the main challenge being finding appropriate locations for cameras in each court. He hoped the sentencing remarks of major trials would in time become a common feature of nightly news: "We've shown that we can do it and I don't think any court staff could have any serious objections to the way the pilot went." (Nicholls).

John Cheesman felt the availability of such material in different regions might one day be particularly useful to local newspaper websites and would in turn lead to renewed interest in covering the courts. He predicted pooling arrangements being introduced at major Crown courts.

"There would be these stories that would bubble up and would suddenly... be on the front page of the *Daily Mail*, and its origin had just been the fact that it was a local court reporter sitting in the court, and I think you might see that sort of thing happening again, but the resource will be from the local court video reporter." (Cheesman)

This echoes the conception of local public spheres outlined by Howells (2016) and discussed in section 1.4, that a central danger of stories left unreported at a local level is that they could not then filter up to national media. Such an arrangement involving a skilled video journalist might also serve to address one criticism of local newspapers, that they have often required reporters to produce multimedia content without adequate training, in turn actively harming the paper's reputation for quality (Matthews 2014). Similar concerns surrounded the original introduction of multi-skilled video journalism to local TV newsrooms, in both the UK (Hemmingway 2008, Wallace 2009) and the US (Higgins-Dobney and Sussman 2013). But within the context of the courts scheme, the broadcast journalists involved stressed how technical obstacles had been overcome. "Judges are quite surprised at how small these cameras are. You know, you could put them in a bookcase. We're not adding new lights or audio or anything of that nature." (Battle). For the Crown court pilot, the technology needed was less even than was the case for the Court of Appeal scheme. "We're only talking about filming the judges' sentencing remarks, nothing

else. So (it's) single camera, single microphone, compared to the... setup in the Court of Appeal where we're filming the entire proceedings." (Nicholls).

In early 2020, the Ministry of Justice announced the broadcast of sentencing remarks from Crown Court trials would soon be allowed. This was formalised under the Crown Court (Recording and Broadcasting) Order 2020, a derogation of both the 1925 and 1981 Acts. It allows for filming and broadcasting of judges delivering their sentencing remarks only, with their express written permission, and subject to any other reporting restrictions which may be in force. It took effect in June 2020, although the Covid-19 outbreak has initially limited the use of this new power. More video coverage could theoretically pose a risk to the work of newspaper court reporters by providing additional competition. Yet research into coverage of the Oscar Pistorius trial in 2014 did not necessarily bear this out. The defendant was a world famous Paralympic and Olympic athlete from South Africa, who stood trial for murdering his girlfriend. The trial was extensively broadcast worldwide, with journalists even using their phones to do live video reports from the press seats of the courtroom itself during breaks in proceedings. Knight (2017) studied reporters' use of Twitter during the case and noted that only 2% of tweets had an image attached, and those were restricted to the opening day of the trial and the first day of the defendant's testimony. The rest of the time, reporters were content to provide regular text-only updates. 'Colour' shots of the general courtroom scene were not often used by the reporters because the environment was static. This could suggest that even if Crown court filming in England and Wales were to go beyond sentencing remarks, there may be limited interest from visual media, other than for the biggest moments of even of a spectacular trial.

Newspaper court reporters interviewed for this study were broadly positive about cameras in court and some expressed hope such filming might help the public better understand the justice system, a justification sometimes used by the government as part of open justice arguments around increasing the transparency of court processes. "I think it's brilliant, it's fascinating, I think it should be done more." (Davison). This aspiration echoes the experience of some other jurisdictions, where extensive broadcasting of Supreme Courts has included educational programming, leading to greater public knowledge of, and trust in, those institutions (see Ingram

2018, Scribner 2018). However, the examples of both the Freedom of Information Act and the televising of Parliament, neither of which have increased public confidence in public bodies or politicians, suggests such claims may be overstated (Garcia-Blanco and Bennett 2018), even though the latter has been considered a replacement for declining coverage of Parliamentary debates in broadsheet newspapers (Franks and Vandermark 1995).

The court reporters generally did not expect filming of cases to happen often and therefore did not believe the wider use of cameras would affect their work. "To be perfectly honest it's quite dull, the sentencing remarks of a judge, without everything else around it. And I think that's probably been realised." (Kirk). I would suggest this viewpoint chimes with the experience of the Court of Appeal material, featuring as it does judges and barristers doing the talking, and how national news editors have been relatively unwilling to use it. Even if more extensive filming of Crown or even magistrates' court cases were to be allowed in future, there was confidence the traditional skills of written journalism would remain essential. "People would still rather read a condensed report which sort of highlights the main points of the case than sit and watch it themselves." (Harrison).

6.6 The Use of Live Text-Based Communication

The broader use of video coverage of court cases may lie in the future. But the development of smartphones, and software including liveblogging platforms and Twitter, has already made the process of sending live text updates of a case from within court much easier. This has created new forms in which court reporters can publish their work. An early example of this was the near-live text updates system I was involved in at Sky News in 2003, described in section 1.2. This involved produced both a near-verbatim stenographic transcript of evidence, available to viewers via Sky's interactive red button service, along with short key points reproduced on text graphics on the main TV channel itself. During negotiations between the court and Sky, concerns were raised about the possibility of witnesses reading in full details of testimony given by others in the trial. This foreshadowed the general concerns underlined in the *Ewing* case and referred to in more detail later in

this section, that this might interfere with the administration of justice. Yet the court did not prohibit the publication of the stenography and no such issues emerged during the trial. The coverage was labour intensive and often involved staff working from a media annexe outwith the main courtroom (for another example, see Jukes 2014a, 2014b), essentially making it impractical for all but the biggest cases.

Smartphones and Twitter have since made it easier for reporters to do this work from within a courtroom itself. This has in turn created challenges for the judicial system, as more journalists seek to post live updates while cases are in progress (Lambert 2011). Differing rulings in the bail hearing of Wikileaks founder Julian Assange prompted guidance from the-then Lord Chief Justice, Lord Judge, allowing text-based communication if the judge in the case agreed, so long as journalists were doing so for the purpose of producing fair and accurate reporting on events. Lord Judge memorably told reporters in England and Wales to “Twitter as much as you wish” while members of the public would also be allowed to tweet subject to permission (Davies 2011, Lord Judge 2011, Judicial College 2015).

This guidance can be considered to have been effective, as reporters interviewed for this study reported few issues with tweeting from court. Yet courts where journalists were seen less often were considered more likely to query a reporter, reflecting the generally less accommodating atmosphere journalists noted at such courts. “I think out in the sticks, out in the regions, there is still the nervousness about tweeting from court.” (Eve). Ben Eccleston of the *Coventry Telegraph* explained how he had used Lord Judge’s guidance in such a situation, at a magistrates’ court:

“Someone came in saying ‘oh I’ve just seen the *Coventry Telegraph* are doing live tweets from this case’ so they asked who was here... and they didn’t know who I was... so I said ‘yes I’m doing the live tweets’ and they said ‘you can’t do that’ so obviously I explained that we are allowed to... and so once I showed that to them, and even the legal adviser didn’t seem completely clued up, but I showed that to them and they were ‘well if that person’s said it you should be able to carry on.’” (Eccleston)

Various jurisdictions have taken differing approaches, with changing definitions of journalism set alongside democratic traditions around the free flow of information (Johnston and Wallace 2017). For Cram (2012), online communications in general

offer such a threat to the traditional way in which our justice system operates that the system itself may need to change. Concerns about Twitter specifically include its brevity making it impossible to give a fair and accurate representation of court proceedings. The context of an individual tweet is also potentially significant, as while it may be possible to be fair and accurate over a series of tweets, if an individual tweet is shared widely and others are not, the context could be lost, even if it is posted as part of a thread.

In Scotland, there was not initially the same presumption that live tweeting is allowed, with reporters seeking to do so obliged to get permission every time, although this was slightly relaxed with updated guidance in 2015 (see Carrell 2011, Judicial Office for Scotland 2015, *Press Gazette* 2017). This approach has been perhaps surprisingly cautious, considering Scotland's more open stance on filming in court, as described earlier in the chapter. The Scottish court reporter interviewed for this study said the effect of the 2015 guidance had not yet changed practices: "We are still not supposed to even have our phones in the court... they can turn a blind eye to you if you're going to send a text message or email, so long as you do it discreetly". Elsewhere, courts in Australia have been similarly cautious (Blackham and Williams 2013), while in Canada the range of different approaches to the use of digital media in various courts has been considered a "patchwork quilt" (Hall-Coates 2015). Winnick (2014) outlined a mixed picture in the US, too. Even when Twitter had been initially allowed as a way of covering the high-profile sex crimes trial of Jerry Sandusky, an American football coach, the judge later withdrew that permission because of concern about the live tweeting of witness testimony.

As indicated earlier in this section, such open justice considerations featured in the *Ewing* case. This related to notetaking in the public gallery of courts in England and Wales (*R (Ewing) v Cardiff Crown Court* [2016] EWHC 183 (Admin)). *Ewing* had been previously ordered by a judge not to take notes on a case while sitting in the public seats. The court held that the original judge had been wrong to do this, and that for judges, magistrates or others to ask the public or indeed journalists to obtain permission before taking notes, was not compatible with open justice. The exception, laid down in internal guidance to court staff and accepted in the *Ewing* case, would be if it was possible such notetaking might interfere with the administration of justice,

perhaps by briefing a witness due to give evidence later of what had been happening in court.

Some constraints are self-imposed. Agency journalist Sian Harrison noted that tweeting the details of a case could alert rivals to it, which may prompt them to simply lift the tweets and try to turn them into an article without sending a reporter, an example of the sort of rapid repackaging of unchecked, second-hand material, memorably derided as 'churnalism' (Davies 2009), and now a well-established form of newswork within local newspapers (Wheatley and O'Sullivan 2017). On the other hand, a Tristan Kirk of the *Evening Standard* said he sometimes avoided tweeting to protect a scoop from London-based agency journalists.

"If I have come across a story that I think's a good one that'll go in the paper, then I won't tweet about it because then the agency reporters may see it and rush down and nick my story before I've got it in the paper."
(Kirk).

This suggests the news value of 'exclusivity' (Harcup and O'Neill 2017) indeed remains of great importance and, for that reporter at least, the concept still extends to his newspaper's print product.

Newspapers have often used liveblogs either instead of, or in conjunction with, Twitter. This allows regular updates on a case to be included on a page on the paper's website, bringing readers back to the site and boosting clicks, and in turn advertising revenue. This technique is often used to cover a trial, whether from a Crown court or magistrates' court. Court journalists involved in liveblogging noted these pages had proved particularly popular with readers. This often means the reporter must either live tweet the proceedings so those tweets can be embedded into a liveblog, or text updates directly to the newsdesk. Either way, an editor is involved in putting the liveblog together back in the newsroom. "Every 15 minutes I was sending a paragraph of evidence back, via text, from my phone to our web editor. She was typing herself, putting that on the liveblog that was going, all day every day, during the course of the proceedings." (Naylor).

Liveblogging is usually saved for when a trial is significant locally, although this happens regularly. “We do a lot of liveblogging now if we've got a juicy trial that a lot of people are interested in.” (Eccleston). Even when taking part in liveblogging, some reporters, but not all, often try to keep a shorthand note too, although others were prepared to sacrifice this if it meant keeping up with the demands of the liveblog, indicating that this traditional skill of court reporters has become less central to their daily newswork.

Phones or laptops can also be used so reporters can write their copy while still in court. However, the days of ringing a story to a copy taker have disappeared, with stories either emailed back to the newsroom or, increasingly, written directly into a content management system. “I have to write it, I have to sub it, I have to fit it into a newspaper shape, write a headline for it, I have to do that for two newspapers... and quite often I have to write a web version, quite often much longer.” (Gardner). This further emphasises the multiskilling required of a modern court reporter, potentially allowing less time for covering cases.

6.7 Digital Justice

It is not just journalists who have sought to increase their use of digital technologies in the courtroom. As part of the general cutbacks to the courts estate in England and Wales outlined in section 6.2, the government has increasingly aimed to improve efficiency in the justice system through more use of ‘digital justice’. Various technologies have long been used in courts for limited functions such as presentation of evidence (Ganzel 1999). But the term ‘digital justice’ is now considered to cover the increasing use of online technologies in a wider array of court processes, ranging from video links allowing participants to appear remotely, to Online Dispute Resolution (ODR).

ODR allows judges to decide cases online without the need for physical court hearings, and the extension of this to involve Artificial Intelligence-driven facilitation of low value civil court cases without the need for a human decision has also been mooted. The relative lack of use of such systems in legal processes has been

identified as a digital justice gap, when compared with dispute resolution processes used by sharing economy companies including eBay (Katsh and Rabinovich-Einy 2015, 2017). In 2018, the Lord Chief Justice of England and Wales, Lord Burnett, signalled a willingness to experiment further, and in response to the notion of a 'smartphone court' he rhetorically asked, "Why not?" (Burnett 2018). Discussions around the use of such online courts have generally concentrated on the potential speeding up of cases and related cost savings. Advocates have acknowledged it is controversial and of potential use in low-value civil cases, while stressing existing systems of courts and lawyers are too often slow and inadequate (Susskind 2018, 2019). Concerns have been raised about open justice implications, including the extent to which such proceedings may become effectively hidden from the media (Chamberlain et al 2019a, 2019b). Others query whether such modernisation is being adequately supported, as well as the potential impact on those in society who do not have access to digital technologies (The Law Society 2019). During experiments in remote hearings during the Covid-19 crisis in 2020 and 2021, reporters were often allowed to 'attend' cases virtually. This led to generally positive feedback from lawyers and journalists, yet the practice of many participants of switching off their video cameras during hearings to save internet bandwidth, raised concerns that lay people participating in court proceedings would suffer a worse and perhaps less fair experience, without the visual cues that an in-person hearing can provide (Jaganmohan 2020).

The use of video links is more established. These have been relied on since the 1980s, often for brief hearings where the defendant is a serving prisoner, on remand, or where there may be significant security costs associated with producing them at court (Susskind 2019). Extending their use has been considered a priority for justice system (Leveson 2015). This process was not fully accelerated until their more widespread adoption during the Covid-19 outbreak, which was taking place as this thesis was being completed. The effectiveness or otherwise of this rollout, and the extent to which such technologies remained in use post-pandemic, would be an obvious avenue for further research.

Video links have been criticised for making it difficult for journalists to follow the evidence (Chamberlain et al 2019a, 2019b). Sometimes, there are delays as links

are disconnected and established, while court staff are not typically IT specialists. “A lot of magistrates obviously tend to be more retired people, who aren’t quite as savvy with video links and one thing and another, so that can cause a few delays.”

(Fenton). Not all reporters were in favour of their use. “I don’t think anybody likes it, it’s a poor substitute for having somebody in the dock.” (Evans). Attempts to broaden their use had been taking place even before the pandemic. Carl Eve of the *Plymouth Herald* described his experiences of a pilot scheme in the south-west of England.

“We’ve had what they call virtual courts, a little experiment where after an arrest was made, the person would appear not necessarily in the courtroom, they would appear by video link from a police station, but different courts would take that job up on different days.” (Eve)

He said this made covering cases relevant to his readers harder because someone arrested in Plymouth may appear by video link in a court elsewhere. It may be impractical for him to reach that court meaning the case would not be covered, even if the defendant was physically sitting in a police station near the newspaper’s office and the usual local court. While offering the potential of increased efficiency for the justice system, this approach could make it far harder for local media to cover a case.

6.8 The Local Democracy Reporting Service

The realisation that local journalism and its associated civic benefits might be under threat amid the financial crisis affecting the local press, has prompted policy proposals to try to maintain and increase the number of journalists in the UK covering public institutions. The Local Democracy Reporting Service, previously referred to in chapter one, is the most significant. As it has transpired, the LDRS has not yet been used to aid court reporting. It will be considered briefly here because it is a notable intervention using public money to sustain news reporting during the financial crisis in local journalism, which has the potential to be expanded to the courts in future. The scheme pays journalists using BBC licence fee money, with content created by those reporters available to all participating news outlets, including newspapers.

The idea began to be discussed publicly in 2015 (BBC 2015b) amid claims staff cuts at newspapers were leaving large parts of the democratic landscape of the UK unreported (see House of Commons Culture, Media and Sport Committee submissions 2014 and report 2015). The BBC's own Future of News report described a "democratic deficit in parts of the UK" with some areas not properly reported and others where public services were not held to account, claiming "there are gaps in the coverage of our country, and they are growing" (BBC 2015a, p21). The News Media Association, which represents the UK's national and local press, initially criticised the idea of BBC expansion into local news provision (Turvill 2015, NMA 2015, Plunkett 2015) on the grounds it would impinge on their commercial operations, but the NMA and the BBC later reached agreement for 150 reporters to be employed by local publishers but paid for by the BBC, with a remit to "increase coverage of public services and institutions" at a cost of £8m per year (Plunkett 2016, BBC 2017). The journalists are line managed by local newspaper editors from the press publishers which have successfully bid for the contracts, although at the same time they retain some editorial autonomy and could not be used by a newspaper to cover stories outwith the local democracy beat. However, having originally been considered as part of the proposals, court reporting disappeared from the scheme. Matthew Barraclough, Head of Local News Partnerships at the BBC and the executive who runs the LDRS, explained why:

"Courts were taken off the table initially not because we don't think that there is a real need for improved court reporting, but because I think we have to be careful how much crime content we commission because there would be a limit on the amount we use. And that means there would be a public value test that would be quite challenging. You know, 'why is the licence fee payer paying for all this crime coverage, which the BBC then doesn't use?' That looks like a subsidy. Whereas with council stuff, there's no limit on what we can do with it." (Barraclough)

In other words, the BBC would never be able to run many court stories online or on local radio, because it would overwhelm those outlets and give a false sense of how much crime was taking place in a local community. Council-related stories, covering as they do a far wider range of topics, offer perhaps a healthier diet for any news consumer. Notwithstanding the apparent enthusiasm of their employers for an

expansion of the scheme, as outlined in section 1.8, the existing court reporters interviewed for this study were wary of the courts being included in the LDRS. This was because, as the only journalists now routinely covering their local court, they get a steady stream of exclusives. Some reporters expressed the view that sharing content between the press and the BBC would not ultimately benefit those papers commercially because of the power and reach of the BBC's online output. "If it is going to be shared between the BBC and regional publishers, then the BBC's always going to win in getting more audience to their website." (Court Reporter 13).

The interviews took place during 2017 when a renewed focus has been put on the local press because of the perceived failure to cover safety concerns in advance of the Grenfell Tower fire in Kensington, west London, during which 72 people died. A residents' group had previously warned of fire safety issues at the tower on a blog, but this had not been widely picked up by local media. Chris Osuh of the *Manchester Evening News* considered this the "perfect example" of where the LDRS might be useful: "Sometimes there are strong local papers and they're airing residents' issues, and the institutions are still not doing anything about it, but that key, local accountability, only local journalists can do it." Matthew Barraclough also cited Grenfell as an illustration of the potential value of the LDRS:

"You need expertise. You need somebody who understands the planning committee. You need somebody who can take council jargon and turn it into plain English. And you need somebody who can tap the audience on the shoulder and say 'actually this is really important' and that's a journalist, it's not a press officer." (Barraclough)

Helping to avoid a major public tragedy such as Grenfell might be considered a way in which local journalism might fulfil its watchdog role, one of its normative functions discussed in section 1.5. In the final section of this chapter, I will consider material which emerged from the interviews to do with the job of being a court reporter in general, as well as ways in which journalists believe their work might be made easier.

6.9 The Job of Being a Court Reporter

When asked to consider the importance of their jobs, the court reporters cited both professional and economic reasons. Unsurprisingly, they considered reporting of the courts to be an important way in which journalists act as watchdogs within their local communities. At the same time, they readily acknowledged the value of another normative role, that of the public informer, in providing entertaining or exclusive stories to help fill up the pages of a paper or put content on a website. This also has a commercial benefit for their employers.

"The old adage that justice must not only be done but must be seen to be done is true, I think people have a right to know what's going on, in their communities, and I think you know criminals should be named and shamed. And it's good copy, generally." (Bristow)

The newspaper industry is not the only part of society which has experienced budget pressures. Cuts within the justice system have also had an impact on the work of court reporters, not just through the reduction of buildings as noted in section 6.2. Courts have traditionally had press rooms within the precincts of the court where journalists can work on stories, and official guidance states that such a room should be made available where possible (HM Courts and Tribunal Service 2018). Interview responses revealed this is still the case in some locations, but not all. "In some of them the press room has been converted to something else, in some of them it's been locked, and it's got a code on the door that no-one knows, you can't get in." (Nicholls). Journalists acknowledged this was in part a result of reporters attending court less often, leaving the old press rooms ripe for alternative uses.

Within courtrooms themselves, journalists interviewed for this study also reported that reserved press seats are no longer always available, obliging them to sit in the public gallery. This trend, noted by Dodd (2012), was highlighted further by Tristan Kirk: "Those desks... get taken over by the probation service, or the court staff, and you have to sit in the public gallery as a member of the press." Such public seats are not only usually further away from proceedings than a traditional press bench, making it harder for a reporter to follow what is going on, it also obliges journalists to sit next to relatives of those involved in a case. Guidance to court staff underlines the potential danger by explicitly stating individual reporters may be at risk of intimidation if they are forced to sit in public seats, and that they should be given their own seats

in court (HM Courts and Tribunal Service 2018). If such guidance is not always followed, it may be desirable for it to be strengthened, perhaps through an intervention from the Lord Chief Justice, similar to Lord Judge's statement regarding the use of live text-based communication considered earlier in this chapter.

Reporters suggested that giving them the chance to more readily see the bundles of evidence used in the court would aid their understanding of proceedings. "I've been in loads of court cases where it's said 'if you just turn to divider whatever' it doesn't make sense unless you can see the documents." (Nicholls). As already considered in section 5.2, journalists do have a general right of access to documents referred to in court (*R (on the application of Guardian News and Media Ltd) v City of Westminster Magistrates' Court* [2013] QB 618, 631). Creating physical copies of each bundle on the off chance a reporter might be present would be impractical. However, Tristan Kirk was permitted to take the relevant documents away to be copied on one recent occasion, after baulking at a quoted £5-per-page charge for the court to do it (2018). In the US, Kansas has developed a new centralised case management system, allowing digital access to court records for journalists as well as others for free (Hammill 2020). However, the experience of Sweden offers a warning of a risk of extended such access beyond reporters to the wider public. Far-right groups have used the country's relatively open policy towards court records to take individual documents out of context and post them online, with personal details published including the names and addresses of defendants from immigrant backgrounds (see Elsrud, Lalander and Staff 2016, Rusbridger 2018).

Introducing such a policy in the UK's courts might also face technical issues, not least the lack of reliable internet access from within courtrooms themselves. This is a crucial obstacle to the ability of reporters to work in courts. The problem is exacerbated in older buildings which also have no mobile signal, preventing even texting the newsdesk. This requires journalists to wait for a natural break in proceedings before slipping out to file their articles, delaying online publication of their articles and making liveblogging impossible. Ben Eccleston of the *Coventry Telegraph* described the situation at the city's Crown court: "There's four Crown courtrooms there and the (internet) is brilliant in two of them and rubbish in the other two. So it just depends a lot on what courtroom you're in really."

A common frustration among reporters is that, although there is typically a wifi network within courts, that is routinely kept for other court users only and is not made available to the media. “That can be annoying when you haven’t got any signal, if you’re trying to file.” (Kirk). If reporters were to be given access to these official wifi networks, it would increase their ability to report on the courts more effectively.

“It’s good in theory that we can do this by mobile reporting, but on the other hand if your wifi doesn’t work and you’re spending half an hour trying to get a connection, then it doesn’t really support the sense of it, does it?” (Sherdley)

A trend for reporters working remotely is to write their copy directly into their paper’s content management systems from their laptops. This means a good internet connection is more important than ever, to maintain a constant link to the website. “It has to be quite a stable connection... because of security issues, so that can be a bit tricky.” (Davison). A fallback option is to write copy into the body of an email and send it back to an editor at the newsroom to post online, but that in turn relies on the availability of a colleague who will have other tasks to do. As we have seen, the financial crisis in the local journalism industry means over-stretched newsdesk staff may not always have the time to do this, putting the onus back onto the individual court reporter to do such work remotely.

Despite those and other frustrations, reporters also stressed they enjoyed their jobs. “I don’t think there is much I would change. It’s the best job on the paper. I’d never tell the boss, but it’s brilliant.” (Evans).

6.10 Summary

It might be surprising that considering the structural pressures within local journalism, and the frustrations associated with the specific role of court reporter, those journalists interviewed were not more negative about their careers. However, this chimes with research by Ternes, Peterlin and Reinardy (2018), which indicated

that 45% of journalists report high job satisfaction, with those reporting away from the office, as court reporters do, the happiest. Yet with local newspaper journalism becoming a more marginal occupation, especially where it involves working away from a newsroom or home office, the list of relatively minor obstacles outlined in the last part of this chapter could make the business of covering a court no longer cost effective. Therefore, there is an ever-present risk that scrutiny of the criminal justice system within a community might be reduced, further eroding the volume of independently reported, original information available to the public, and in turn damaging local public spheres.

As I have outlined in this chapter, the regular use of cameras in court has long been an aim of many within UK media. However, cameras have only been used periodically since their first appearance in Scottish courts almost three decades ago. The incremental progress towards more openness in the UK's courts shows signs of continuing, if not necessarily accelerating. The long-term impact of the Covid-19 pandemic and associated use of remote hearings and digital justice, along with the permission granted in 2020 for media companies to film judges' sentencing remarks in Crown court trials, remains an open question. It is also not yet clear how any future development of the LDRS might assist the reporting of the courts, as whatever successes it has achieved so far has been in other aspects of local journalism. The financial crisis in local criminal justice has perversely enhanced the prestige of newspaper court reporters, making it easier to do their jobs amid broader staff cuts in the local press. But, again, the question of media coverage has been absent from broader debates on that issue. This brings us on to the concluding chapter of this thesis. Suggestions will be made as to how the trend of pressure on court reporting might be arrested, and coverage of the courts preserved and expanded.

Chapter 7: Conclusion

7.1 The Extent of the Crisis in Court Reporting

One of the words often used in relation to journalism in this century is 'crisis'. It features in the title of this thesis. Yet despite dire predictions (eg Enders 2011), relatively few UK local daily newspapers have closed, suggesting the sector has proved somewhat resilient despite staff cuts leaving titles being 'hollowed out'. This research suggests that despite the ongoing financial difficulties facing the UK's legacy newspaper companies, court reporting remains a relative priority for them. Responses from interviewees on the courts beat indicate that courts are being covered less often and by fewer journalists, with newspaper reporters typically having the press bench to themselves. Yet there remains a commitment within the UK's local press to cover the courts beat at least to some extent, and a sense among those journalists who do so that they are performing an essential service. They still relish doing what one described as "the best job on the paper".

The challenges faced by journalism in the UK were considered by Dame Frances Cairncross as part of an independent report into the sector commissioned by government and published in 2019, after the interviews for this study took place, and discussed in section 1.8. Its central aim was "to examine the current and future market environment facing the press and high-quality journalism in the UK" (Cairncross 2019, p114). The review paid almost no attention to court reporting, a surprising omission considering the centrality of covering institutions such as the courts in normative accounts of journalism. Indeed, this thesis has been a surprisingly rare academic study of court reporting in local media. It is certainly not comprehensive, and there are many potential avenues for future research suggested by its findings as well as its silences. Analysis of the operation of the Local Democracy Reporting Service, a de facto news agency paid for with BBC licence fee money, which has provided reporters to cover councils and local politics for newspapers throughout the UK would be particularly welcome in the context of its possible expansion as proposed by Cairncross.

The ongoing media revolution (Nielsen 2016a) has been accompanied by a socio-technical turn within the field (Carlson et al 2018). Accounts of changing journalistic practices during this time have often focused on notions of convergence, and the exciting possibilities offered by digital tools. Normative conceptions of journalism have been recast for the digital era, with scholars arguing that it ought to reflect digital ideals of being participatory, deinstitutionalised, innovative and entrepreneurial (Kreiss and Brennen 2016). This study offers further evidence to those (Quandt 2008, Paterson 2008, Ryfe 2009, Robinson 2011, Ross 2017) who found that such claims have sometimes been premature. Alternative and developing structures in which journalism takes place, whether characterised as atypical newswork (Deuze and Fortunati 2011), distributed or networked journalism (Gillmor 2006), citizen journalism and citizen witnessing (Allan 2013), mass amateurisation (Shirky 2008), hyperlocal media (Jones 2012, Harte, Howells and Williams 2018), the alternative press (Whitaker 1981, Harcup 2012), or whatever else, have not permeated local court reporting in the UK. Indeed, the decline of agency and freelance court coverage in the UK suggests that the reverse has been true. In a more networked model, freelancers might have been expected to have increasingly replaced staff court reporters on an ad hoc basis, but this research suggests the opposite has happened. We are more reliant on the legacy institutions that are local newspapers for court coverage than ever, not less.

There are certain characteristics in fulfilling the normative tasks of local court reporting, discussed in section 1.6, which help explain this. It is time consuming, requires attendance at a specific room in a location generally unfamiliar to those not 'in the know', a sound understanding of media law, and inside knowledge of when a potentially newsworthy case is coming up. In that context, it is probably not surprising that, the innovations of live text-based communication and smartphone photography notwithstanding, court reporting remains the preserve of professional journalists working in the traditional written media. One potential challenge has been posed by Tommy Robinson and his attempts to use journalism-style digital content creation methods to publish material about court cases. His actions are discussed in section 5.4. His far-right political agenda may make him an outlier, but the fact that he ended up in prison for breaching contempt laws highlights the legal dangers facing any new entrants to the world of court reporting. Within the mainstream

media, and to paraphrase Ryfe (2016), court reporters are gathering the same sorts of information from the same kinds of people in the same sorts of stories as they ever did, even if they often use a new range of digital tools to help them do their jobs. The partial silence around court reporting within journalism studies has served to hide how this important area of journalism continues to be conducted, which undermines some of the broader trends often the focus of research into more novel parts of the industry.

The historical section of this thesis was concerned with the development of court journalism, including the evolution of reporting restrictions and the introduction of the Contempt of Court Act 1981. Chapter 4 helps illuminate how the legal restrictions on, and norms of, UK court reporting came to exist, providing context to the later chapters concerned with the newswork practices of today's journalists. Interview findings revealed reporters are generally content to abide by the 1981 Act's provisions. These include the ones which have the most regular impact on their work, such as postponement orders. These are discussed in section 4.3.10 and are referred to thereafter. They oblige journalists to sit in court and gather material which cannot be published until a later date, to help preserve a defendant's right to a fair trial. This can have the effect of allowing a newspaper reporter to save up an exclusive story, as rivals from agencies or broadcasters may either no longer have the resources to attend court as often, nor the leeway to be allowed to spend time researching a story which would not be broadcast on that given day. As discussed throughout chapter 4, the 1981 Act was billed by the government of the day as a 'liberalising' move. It has proved to be so in so far as it offers greater clarity when compared with the previous, piecemeal, common law regime.

Yet while that may be a positive to some of the individual reporters interviewed, this thesis has highlighted broader concerns from those journalists that these and other reporting restrictions are imposed almost routinely, with judges and magistrates' alike often appearing to give more weight to requests from legal professionals. In the case of lay magistrates, they must rely on the advice of their legal adviser, and interview responses have demonstrated such advisers are not necessarily aware of the law as it relates to the media and will not always be as proactive as judges in taking account of media interests. While journalists can challenge reporting

restrictions, the ability to make a challenge relies on knowing that an order has been put in place. This usually means a journalist being physically present at court. If reporters become an even less frequent sight in our courts, justice therefore risks becoming less open. It was such a postponement order that gave Tommy Robinson the space to claim to his followers that justice was taking place in secret. He was wrong. Indeed, the fact of his initial imprisonment would not have come to light when it did without a challenge to a reporting restriction made by a local journalist covering the case. But if a reporter is not present in a courtroom to fulfil the normative role of scrutinising the justice system as a local watchdog, and to make the public character of justice meaningful, justice really will increasingly take place if not technically in secret, certainly away from the eyes of anyone representing the interests of a local community. Claims have been made on behalf of the 'scarecrow' ability of journalists (Anderson, Bell and Shirky 2014). Any such quality a court reporter might be said to possess is moot if none are present.

This study has brought into focus several aspects of the daily newswork of court journalists in the UK's local press. One of the most notable issues mentioned regularly by the interviewees was how often they are the only journalists in court. This was not the case until relatively recently. It is probably the part of this thesis which lends itself most closely to the word 'crisis'. Freelance and agency reporters are seen less often outside London, restricting themselves to the biggest Crown court cases. A central reason is the erosion of freelance budgets at local newspapers. This study has found that local dailies have generally retained a commitment to employing a court specialist, or at the very least a crime and courts reporter who will attend court regularly, although there is evidence that even then magistrates' courts especially are seldom covered (Chamberlain et al 2019a, 2019b). Considering the rise in atypical newswork (Cottle 2003, Deuze and Marjoribanks 2009, Deuze and Fortunati 2011), it might have been anticipated that local news agencies, freelancers or other casual media workers might have taken on some of the load. I have found little evidence of this. The financial crisis in local news publishing means the days of paying a sustaining few pounds to a court freelancer for some news-in-brief items are almost over. This has, paradoxically, helped the prestige of the surviving daily newspaper court reporters. When those journalists come by a story they consider newsworthy, they can generally be sure they have got

an exclusive. At least, that is, until their initial report is published, and broadcast or national journalists attend a future hearing of the same case.

If we look beyond that somewhat parochial benefit the picture is gloomier. Fewer court reporters mean fewer cases with anyone bearing witness to them on behalf of the public. As well as the impact this has on the court reporter's normative role of a local watchdog, this further affects the media's ability to fulfil the task of keeping the public informed, in turn maintaining the health of a local public sphere. The findings of Howells (2016) suggest the volume of court and crime stories by a local paper decrease significantly when specialist roles are eliminated, and offices centralised. It is true that most of the cases which take place without a journalist present in the courtroom will be routine (McBarnet 1981). But some are not. The precise extent of this problem is almost unknowable, although the testimony of participants in this study about the front page stories they found by chance or were tipped off to when waiting in a courtroom for something else, suggests newsworthy events take place at courts each day without ever being reported (see also Chamberlain et al 2019a, 2019b). It is clear, again from interview responses, that the press offices of neither the police nor the CPS will usually let court reporters know about these cases after the fact. Even if they did, they may have let the most newsworthy angle out of their press release, whether by accident or design.

One complaint made of local papers is that they may have become less engaged with their core readership, even as their audience online might have grown. Many traditional town centre offices have closed, with sub-editing regularly hubbed (Moore 2015, Townend 2015, Howells 2016). Developing social media newsgathering and live publishing methods have helped the remaining journalists stay on top of their beats (Dick 2012, Shermak 2018). But I would suggest the continued presence of a reporter covering the courts in a local community, adds an additional layer to the normative role of public informer. Court reporters do not simply write stories informing readers of the detail of cases. Their work can act as an early warning system of developing trends, allowing a newspaper to better reflect its community in the round, not just how it appears on Facebook. Court reporting is one of the few remaining newspaper specialisms in which journalists encounter both local elites and

the public in person each day, Covid permitting, valuable when so much newswork is done remotely, either from centralised offices or home.

The job has also become harder for those who remain. Courts have been accused of making relatively little effort to accommodate the needs of the media (Surette 2011). The interview responses have underlined that court staff not used to seeing a journalist can make life difficult for a reporter when they do attend. They may wrongly try to restrict what they are doing, either out of ignorance of the law and official guidance or a sense that the media is unimportant. Even where journalists are a regular presence, the interview responses have revealed significant differences in how they are treated in various parts of the UK. For example, some are given relatively full details of forthcoming cases, while others must go through a tedious daily process to gain even basic information. I would suggest this variety in approaches to court-media relations is possibly unsurprising considered the localised tradition of the justice system (Herbert 2002). Attempts to introduce a more standardised experience of local justice through guidelines and training (see Hostettler 2012, Donoghue 2014) do not appear to have led to greater uniformity in the practices of courts as they relate to local journalists. However, the most recently refreshed guidelines in this area were sent to court staff in autumn 2018 (HM Courts and Tribunal Service 2018), after the interviews were conducted, so it is possible that this position has evolved since then.

Daily newspapers around the UK may have generally retained a commitment to covering their local courts. But this research shows this has involved putting more work onto the routines of court reporters. Having to combine the courts beat with covering other crime and police matters, or both Crown and magistrates' courts when those used to be separate roles, is a regular story told by the study participants. This could put those journalists at risk of burnout, making it more likely they will choose to leave journalism (Davidson and Meyers 2016, Reinardy 2017). Not that this makes court reporting unusual. Many newspaper jobs are now combined with others or no longer exist (Singer 2011b, Anderson 2013). The flexibility afforded by the adoption of 'digital first' policies and smartphones (Agarwal and Barthel 2015, Dean 2019) has allowed court reporters to introduce novel practices for covering court, including live tweeting and liveblogging, and taking on

the role of snatch photographer. Yet traditional skills such as shorthand also persist, even though interviewees accepted it was perhaps less central to their working lives as it had once been. Echoing the prediction of Paterson (2008) that Jenkins' notion of convergence (2006) would not be observed uniformly within journalism, the job of the court reporter remains a blend of skills both new and old.

A further perverse benefit for journalists brought out by the interview responses, is that the closures of many courts have made their jobs easier, not harder, because more cases are heard in centralised complexes. A trip to court is now even more of a guarantee, with a steady stream of newsworthy stories almost certain to follow. Yet newspaper reporters in the local press have not had such a positive experience of the CPS media protocol. John Battle of broadcast news provider ITN described it as the most significant development during his long involvement with court journalism. But national television broadcasters have few issues getting material from the CPS for their prestigious bulletins. Such material is not so readily available for the local newspaper reporter trying to cover a case which may be a big story in their community but has not attracted attention from TV news.

One area where clear judicial guidance has been forthcoming has been in allowing the use of live text-based communication in courts in England and Wales. The instruction in 2011 by the-then Lord Chief Justice, giving a presumption that reporters could use platforms such as Twitter for the purpose of producing fair and accurate reporting on events, has proved effective. *Coventry Telegraph* reporter Ben Eccleston, interviewed for this study, described how brandishing Lord Judge's guidance won the day, when court staff, magistrates and even legal advisers seemed unaware of it. I would suggest such clear guidance from the top of the judiciary on other matters affecting the work of court reporters, described in this thesis, might be welcome in helping to resolve them.

Progress on the introduction of cameras in the UK's courts has remained incremental. When the first Scottish documentaries were broadcast in the 1990s, it would have been surprising to have learned that viewers would not have seen much more of the inside of a British court in the next three decades (see Bonnington 2000). Even in 2003, when I was tapping summaries of evidence during the Soham

Trial from an Old Bailey corridor, industry predictions were that a transition to something more open was imminent (Wells and Dyer 2003). Yet progress has been slow. Even after the pilot scheme to film sentencing remarks of Crown court judges took place in 2016, it was a further four years before the Crown Court (Recording and Broadcasting) Order 2020 gave the go-ahead to recordings for broadcast of such remarks in England and Wales. The ongoing Covid pandemic and the use of remote hearings mean this has not yet become a fixture of the nightly TV bulletins. The experience of the Court of Appeal scheme, with local TV news programmes keener on the footage than national ones, could imply a similar future lies ahead, with clips of judges a more regular sight on *Look North* rather than *News At Ten*. It is too early to regard the LDRS as an unalloyed success. It had only barely begun at the time of much of the fieldwork for this thesis, although initial signs have been positive with widespread praise from the local press companies, the BBC and government (Linford 2019). The long-standing rivalry between the BBC and the local press, and the fact that many within newspapers blame the BBC's omnipresent free website for many of their commercial ills, a critique reflected in Cairncross (2019), means the connection may never be a completely happy marriage. As with Cairncross, the LDRS has so far been a missed opportunity to bolster coverage of the courts. But I believe it offers a model for co-operation that could be extended into other areas such as court reporting.

Many factors affect the future viability of court reporting in the UK. Local newspaper publishers could be criticised for not always preserving a full-time court reporter at each of their titles, even while continuing to make profits, the latter a key complaint of Cairncross (2019). Those publishers might also be condemned for failing to maintain a freelance budget, which would make part-time coverage of local courts just about worthwhile for agencies and individuals, including some of the journalists they have laid off in recent years, reporters whose experience has often been lost to the media. Structural trends in the news business, notably the huge growth in advertising on Facebook and Google at the expense of newspaper publishers, might also be highlighted. The government can be considered to have not adequately funded neither the courts nor the CPS, making media relations a low priority for both. This study suggests those cuts have led to a decline in the quantity and quality of facilities at court buildings, potentially acting as a further disincentive to court reporters.

Traditional notions of distance between judges, barristers and the media have generally proved hard to shift, something the legal profession in general could do more to address. But the intent of this concluding chapter is to look to the future of court reporting rather than merely the past and present. I will next turn to recommendations.

7.2 Recommendations

As both a journalist and academic, it is my aim to use my work in the latter field to contribute to addressing challenges facing the former. I have put concern for the future viability of journalism in general, and in this case local court reporting, at the centre of this thesis. I have tried to avoid getting lost in a debate between scholars, educators and journalists, in the manner described by Zelizer (2009). A key rationale for making recommendations is the scant attention paid to court reporting by even recent inquiries into the UK's local media. Not only did Cairncross almost ignore the courts, but a Welsh Assembly report on journalism also only mentioned court journalism once (National Assembly for Wales Culture, Welsh Language and Communications Committee 2018). A House of Lords committee report on investigative journalism came local court coverage a single mention (House of Lords Select Committee on Communications 2012). A different House of Lords committee, reporting on the future of UK journalism, did acknowledge court reporting in a little more depth, but again this was in response to a submission from me consisting of condensed elements of this thesis (House of Lords Communications and Digital Committee 2020). The Lords accepted the point I will make later in this conclusion, that long-standing restrictions on photography, audio and video recording in the courts in England and Wales are outdated and should be reviewed.

As welcome as that acceptance was, the fact these inquiries have barely acknowledged the courts is surprising considering the centrality of court coverage to normative conceptions of the sort of high-quality local journalism they were created to help preserve. The problem of dwindling court reporting has perhaps become a truth so widely acknowledged it has not been considered worthy of more than a superficial remark, much less any suggestions as to how the situation might be

alleviated. Indeed, proposals along those lines have been generally absent from the discourse around the courts, beyond the Bristol study conducted by Chamberlain et al (2019a) which advocated a reporting toolkit to help citizen journalists and others cover the courts more easily. This was in part inspired by their use of students and volunteers from a hyperlocal website to gather information as part of the project. Yet there so far remains relatively little evidence of an appetite for covering the courts among hyperlocal editors and other new players in the local media market.

Court reporting remains a valuable use of journalists' time, but it is a more marginal activity. Reporters face a growing range of demands, including functions not typically considered part of journalism (Deuze and Witschge 2018). What might in the past have been considered inconveniences may increasingly lead to journalists skipping court because they can produce content for their papers in other ways, and those efficiencies will outweigh the benefits of reporting from court (see Quandt 2008, O'Neill and O'Connor 2008, Boczkowski 2011, Wheatley and O'Sullivan 2017). If the government, legal profession and the media companies themselves are serious about preserving the presence of journalists in the UK's courtrooms, I argue they should consider a variety of steps to make it easier for reporters to do their jobs.

As already hinted at above, I favour a review of elements of the provisions included in the 1925 and 1981 Acts and elsewhere, as they relate to the use of photography, audio and video recording by journalists within courts. The creation of most such material for publication or broadcast remains banned. Yet the technology and practices of journalism have changed since those laws were introduced. Reporters routinely bring devices capable of all three into court each day in the form of their smartphones, which they are now permitted to use to create and publish text stories, liveblogs and tweets. This has been successful. I propose this be extended to allow journalists to make other forms of media content within court. This would have the twin effects of improving transparency within the justice system and making court stories more visible and potentially more valuable to the local newspaper companies which supply most court reporters throughout the UK.

Audio recording was banned in the 1981 Act, other than for the creation of a reporter's aide memoire (Judicial College 2015, HM Courts and Tribunal Service

2018). Lawyers who spoke during the Parliamentary debates discussed in chapter 4, were concerned at disruption caused by the noise of tape recorders. Additional concerns about the recording and broadcasting of court proceedings relate to the potential for witnesses giving evidence later in a trial, being able to access full details of testimony from an earlier stage. Smartphones can be used silently and so I argue old complaints about disruption no longer apply. Permitting journalists to record court proceedings in audio form would allow the creation of source material that could be used in journalistic content. Letting reporters put their phones on a table in front of a barrister delivering an opening statement, much in the manner of recorders left running at a press conference, would, I suggest, be an unobtrusive way of allowing reporters to do this. Audio rather than visual content might admittedly be of limited use for daily broadcasting. But it could be valuable in certain circumstances, perhaps including true crime-style podcasts. That genre has played a significant role in the increasing popularity of that medium, through programmes such as *Serial* (Berry 2015). Restrictions which might be imposed on such recording could include limiting what can be published during a trial to the words of barristers and judges rather than witnesses, to avoid the risks mentioned above. Additionally, audio content could be subject to postponement in a similar fashion to section 4(2) orders, effectively prohibiting the use of such material in daily news coverage but allowing it for longer form documentary and educational programming.

A change which could potentially offer greater value in daily news journalism would be a relaxation of some of the restrictions surrounding photography. Obliging reporters to sneak past defendants and surreptitiously capture a snatch photograph as they leave the court building is, in my view, a practice that does little for open justice. The quality of photographs is often poor and there is an ever-present danger of an angry criminal taking a dim view of what the journalist has done, leading to personal safety concerns among female reporters in particular. The 1925 restrictions were introduced, in part, because of worries about the numbers of photographers jostling for position outside major courts. But the era of newspapers routinely sending professional photographers to take such photos is over for all but the biggest cases, so it is time to look at the issue again. I would argue for a limited lifting of the restrictions imposed by the 1925 Act to allow some photography of defendants within courtrooms, in certain circumstances. As previously mentioned,

smartphones are already routinely used in court by journalists to create text content. Not only could they also be used as audio recorders, but as cameras. Photography could be limited to certain times during proceedings, perhaps during the putting of charges of defendants. It may also be beneficial to restrict photography to one pooled journalist within each courtroom, should more than one be present. A further rationale for the 1925 Act was that photographing a defendant was of limited public benefit (Dockray 1988). Yet that was an era when newspapers published few pictures, in contrast to the visual needs of modern media companies. The Pistorius trial demonstrates that, when given the opportunity to take photographs within a courtroom, journalists typically restrict themselves to pictures of the defendant at key moments (Knight 2017). This significant example should offer reassurance to those who hark back to the media circuses of the Simpson and Woodward cases. I suggest allowing photography in court would create valuable content to assist the visibility of court stories when published online, the sort of material not readily accessible to others and which can help distinguish newspaper reporters amid the crowded media landscape (Shermak 2018). It would therefore potentially make it more likely that journalists would continue to be sent to court, as well as making their working lives easier and safer.

If access to audio and photography to court journalists is further developed, then I argue that widening the use of video in court reporting is also desirable. It is certainly increasingly possible to unobtrusively film court proceedings. However, it does remain resource intensive. The well-established Court of Appeal scheme requires an experienced court reporter to monitor proceedings in real time. Such resources are likely to be beyond individual newspapers, or even the major local press companies. I would support John Cheesman's proposal from section 6.5, of an extension of the Local Democracy Reporting Service to fund a team of Crown court video reporters. They could film and make sentencing remarks from notable cases available to all participating media companies on a pooled basis. This could allow greater profile and visibility to the decisions made by judges, especially on trials of significance within local communities. But as previously discussed, it would be unlikely to have a major impact on the daily work of the court reporters interviewed for this study, busy as they are with far more than just covering the conclusions of the biggest local cases.

Cairncross, the local press companies and the BBC have all indicated a general view that the LDRS ought to be expanded and perhaps involved into another form (Cairncross 2019, BBC 2019). There is no consensus on whether such an extension might cover court reporting. But in my view incorporating within it the use of video cameras in major Crown courts would be desirable. Eight were part of the 2016 pilot scheme and I suggest such a number could be included in an extended LDRS, with a centrally funded court reporter at each location tasked with facilitating the creation of pooled video content for not only the national broadcasters and agencies, but most significantly both regional TV and the local press. Such pooled reporters might even develop the ability to operate across a series of Crown courts in each legal circuit, moving between locations depending on the interests of publishers. Legal obstacles to such a system were removed by the Crown Court (Recording and Broadcasting) Order 2020.

An obstacle to the broader use of multimedia content by court reporters, and indeed the ongoing creation of even simple text content, is the unreliability of internet access in court buildings. Meaningful liveblogging can sometimes only take place if a trial is scheduled for a certain courtroom and not another. Reporters are invariably forbidden from accessing the wifi network used by other court participants, and instead must take their chances with a mixture of dongles and sometimes weak mobile reception. I suggest the simplest solution would be to give members of the press access to courts' own wifi networks. Such reliable access could also be extended to press rooms. This thesis has revealed that such rooms have often been given over to other uses, forcing journalists to do all their work within courtrooms themselves, or in corridors. I argue the existence of such rooms reserved for use by the press should be made mandatory in courts, certainly within Crown courts which are most likely to see the media represented.

Press rooms might also assist with a further hindrance to the reporting of courts, that of access to evidence presented in open court. Local newspaper journalists interviewed for this study reported difficulty in getting hold of material such as DVDs of CCTV footage, despite their right to it under the CPS media protocol. Barristers are often unwilling to lend such evidence to others if it might mean losing track of

where it has gone, while CPS press officers based remotely seem less keen to help the media unless TV coverage of a case is assured. I propose that allowing journalists to work from a secure press room might help ease that situation. Physical evidence need not therefore leave the precincts of a court, reassuring barristers and the CPS while at the same time allowing justice to be more open. Allowing court reporters access to digital bundles of evidence would also aid their work, although the extent to which some information within them may need to be redacted could be an obstacle. I would suggest the experience of Sweden and, to a lesser extent, England in the Tommy Robinson case, suggests that making such documents more freely available online, may have undesirable consequences in the hands of bad actors rather than bona fide journalists working in good faith.

A final area where relatively simple improvements would have a notable impact on the working lives of court reporters relates to their access to court information. Most journalists can access court lists, albeit these can sometimes be out of date within hours of their publication the previous evening. The legal system can be unreliable and fast changing so no system of providing information to the media can be infallible. But this study has confirmed the easy availability of the basic facts of a case cannot presently be guaranteed, even where a journalist is present at court. I propose that, at minimum, the name, age and address of each defendant, and the charges they are facing, ought to be freely available for every case in both the Crown and magistrates' court. That detail should be available not just on request, but as part of the court lists typically provided online, as well as in paper form within courts. Removing the time reporters spend having to chase up this detail every day from their workloads would be extremely helpful, freeing up time which could be spent dealing with the myriad other tasks which now form the court journalist's daily beat.

7.3 Further research

There are many potential avenues for future research suggested by the findings and silences of this project. As discussed in chapter 2, ethnographies of working journalists are a valuable method capable of generating significant new insights into

the ways media work is conducted. This is arguably of increasing importance in the modern era now that the value of the 'classic' newsroom studies has faded.

Published ethnographies focusing purely on court reporters are rare and, beyond Drechsel (1983), have tended to feature on the sidelines of broader work. A new ethnography of a court reporter or reporters would therefore be welcome.

The limited quantitative research on court reporting has offered conflicting, and perhaps surprising, findings. This includes evidence the number of court stories in certain local newspapers increased during the 2000s (Phipps-Bertram 2014), and local titles are more likely to offer longer articles on court cases than their national cousins, despite declining resources (Moran 2014). Research synthesising the rather blunt measure of number of cases covered with an assessment of the length and quality of those article would be potentially valuable. Such an approach would further address questions of whether the quality and quantity of local court coverage has increased or decreased, the extent to which local variations might exist within the UK, as well as adding to the findings of Chamberlain et al (2019a) on the extent to which genuinely noteworthy court stories are being missed.

The LDRS was introduced as this research was taking place. The working relationship between the newspaper publishers and BBC appears smooth, perhaps surprisingly so. I would suggest this apparent harmony has more to do with the weakened state of those press companies. One of them, Johnston Press, has slid into administration, been reborn as JPI Media, then been taken over to become National World, all within the last four years. The parlous finances of newspaper companies mean they have been unable to reject the essentially 'free' extra reporters the LDRS offers. Research into how the service is operating would be valuable. This could involve a series of interviews with its reporters in a similar fashion to those conducted for this thesis, as well as other relevant parties such as council press officers and local politicians, to offer deeper insight into how it is working and the potential feasibility of its expansion to cover the courts.

Throughout the cutbacks to the courts estate, government ministers routinely expressed a desire to expand the use of technology such as video links. In more recent times, developments in the field known as digital justice have accelerated. It

seems likely one effect of the ongoing Covid pandemic will be to increase the amount of remote and digital working in society generally, including the courts. Media interests have not featured prominently in either debate. The discourse around digital justice has focused on the potential public benefit of a cheaper and faster justice system, while downplaying the disbenefit of a necessarily less transparent one. Scrutiny of the extent and impact of these changes from an open justice perspective would therefore be welcome.

7.4 Closing thoughts

In the introduction to this thesis, I wrote that a reduction in the scope and quality of local court reporting would pose a threat to our civic identities. In short, it would make us all less-informed citizens. Whether such a cut has already taken place, or is about to, is hard to judge with certainty based on the research presented here. We can at least say for sure that local court reporting has not collapsed. This is good news: there is still time to avoid that outcome.

For all the criticisms which are rightly made of the 'big four' UK local publishers in this thesis and elsewhere, this study has demonstrated their newspapers and websites are more central than ever to the daily business of reporting the courts. Simply put, journalists working for those organisations and the only ones who bear witness to the processes of our courts on our behalf on a regular basis. Cover provided by agencies and freelancers has declined. For all their positive contributions to local communities, the promise of hyperlocals has seldom been about scrutinising the courts. Broadcasters are understandably interested in allowing more extensive use of cameras in the biggest trials, not the cases heard each day in local communities. They already rely on local newspaper reporters to cover cases they can follow up later.

So, attempts to ensure reasonable court coverage is maintained and enhanced will almost certainly involve the same local daily newspaper reporters from the courts beat who were interviewed for this study, and their employers. Those companies may not be fully upholding the normative ideals of local journalism, and often attract

justified criticism for failing to do so. However, when considering court journalism, they come far closer to what the press ought to be doing than any other entity within the UK's media landscape. Some form of subsidy for court coverage, whether as part of an expanded LDRS or another means, would be a welcome way of helping to ensure those efforts are safeguarded. This research reveals that, while undoubtedly interested in providing entertaining slices of local life that have a commercial value to their publishers, court reporters are also committed to telling important local stories while also scrutinising the activities of those with power, including police, prosecutors, magistrates and judges. Giving any kind of financial help to their employers might be open to the criticism of throwing good money after bad. While that might be so, we would all be the beneficiaries.

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Appendix 1: Responses to corrections, recommendations and comments

In this Appendix, there is a response to each point made in the Corrections and Recommendations for Resubmission report, indicating briefly how it has been addressed in the thesis. It should be read in conjunction with that examiners' report.

Responses to broader corrections and recommendations	
Theory	I have followed this advice. See section 1.4 and further references throughout the thesis.
Structure	Again, I have followed this advice. The historical material relating to the evolution of court reporting is condensed into chapter 4. Chapters 5 and 6 consider the material relating to the interviews about court reporting, in more depth than before.
Interviews and Methodology	Chapter 3 includes a more detailed response to these points, so I won't repeat them here other than to highlight that I was not able to complete an ethnography for the reasons I have outlined but did follow the advice on asking the interviewees if they wished to be named.
Appendix	Appendix 1 is a response to the corrections, recommendations and comments. Appendix 2, as requested, includes more background information about the interviews. Appendix 3, as suggested verbally in the examination although left out of the written corrections, is the main text of the Contempt of Court Act 1981.
Referencing	I have addressed these issues in the reference list.
Context and Definitions	Throughout the thesis I have aimed to give more context and definitions on the examples given, and others.
Other	My name is written incorrectly throughout the corrections document. It is 'Richard Jones' as per the title page.
Responses to detailed comments	

1	Done (title page)
2	Done (contents page)
3	The abstract has been rewritten.
4	This correction was unclear to me. Each chapter in the original submission did begin on a new page. The same is the case in this version of the thesis.
5	I have tried to reflect this more throughout the thesis as requested.
6	I have done this, see additional references to this text throughout the thesis.
7	I have attempted to address these points throughout the resubmission as requested.
8	Done (1.2)
9	I removed some of these as requested.
10	This section is now 1.7. The Mediatique figure relates to both local and national jobs as stated in the original thesis, but I have added a little extra information about job losses at Reach to help make the point.
11	Removed.
12	I have added examples here.
13	Removed.
14	Removed.
15	Removed.
16	Removed.
17	This section in general has mostly been removed. Some elements survive in a rewritten form in chapter 2.
18	Done (see 1.1)
19	I have shortened this section as requested (it is now 1.3).
20	I have expanded this section to help clarify both roles.
21	I have written a little more on this to help clarify my standpoint.
22	I have expanded this section a little to help briefly clarify that critique – it is returned to later in the thesis.
23	This section has been rewritten to try to reflect this comment.

24	I have clarified here that it is both.
25	I have added a little more detail here as required.
26	I have added extra clarity and a cross-reference here as requested.
27	I don't think the correction was entirely well-made here and it seems to have featured a misreading of the original thesis (the word 'impossible' is used on its own in the correction as if it was used in isolation, in fact the original thesis said 'might become virtually impossible' which is rather different). I've clarified it a little as well in the rewrite, though.
28	Removed.
29	Removed.
30	Removed.
31	Removed.
32	Removed.
33	Removed.
34	Removed.
35	Removed.
36	RQ1 was rewritten, the research questions are now introduced in section 3.1.
37	Removed.
38	Removed.
39	The section on Cairncross has been moved as suggested and is now 1.8.
40	Removed.
41	This has been done in section 2.2.1.
42	Removed.
43	There is now much more discussion of specific local journalism studies in section 2.2.1.
44	On point a I have rephrased some of this to emphasise more clearly the evidence found by Dolliver et al. On point b – section 2.3.3 now relates to media coverage of courts as suggested.

45	This section has been rewritten to reflect media coverage of courts, as suggested by comment 44b. It is section 2.3.3.
46	Removed.
47	I have rewritten this a little to make it clearer.
48	This is a more general point about the anodyne nature of regional TV news made by those authors, rather than any comment on court coverage specifically, so I have clarified that.
49	I've rewritten this as suggested.
50	Yes I've clarified this, to explain that the reference to being 'engaged' relates to coverage of community events.
51	This seemed to be comment not a correction, I have simply noted it.
52	I have cited the book mentioned in the thesis and see also a separate section on this as suggested, at 2.3.3.
53	I have added a cross-reference to clarify this.
54	This has been rewritten and shortened to help make it clearer.
55	Some explanation added here as suggested.
56	I have rewritten this part to make the point, as suggested.
57	Removed.
58	I have rephrased and shortened this section to try to reflect this comment.
59	Removed.
60	Removed.
61	I have added a short definition in 2.3.4
62	I have added more to address this comment, including in section 2.3.2
63	Removed.
64	I have added more detail on this as requested, in 2.3.6
65	Removed.
66	Removed.
67	I've rewritten this to reflect the comment.
68	Again, this has been rephrased.

69	I have briefly expanded on this in 2.4.2 to include more detailed definitions.
70	The Chamberlain et al study used 'cases' and 'hearings' interchangeably on this point, so I have clarified it here. I take the point it is possible that some magistrates' cases take place over more than one hearing to allow for background reports, but this is an exception: the Chamberlain study found the "overwhelming" number start and finish in one go.
71	Removed.
72	Again, I have clarified this.
73	I have rephrased this section in 2.4.2 to take note of this comment.
74	This comment calls for a new 'chapter' on reporting restrictions. I presume this meant a short sub-heading rather than a whole chapter. I felt this was a bit of a tangent at this stage of the thesis so have not done so here, instead detail on reporting restrictions appears alongside the relevant findings.
75	I have incorporated previous suggestions as proposed by this comment.
76	This is addressed in section 3.2.1
77	Removed.
78	Removed.
79	See the extended sections within 3.2 which have been expanded to address this point.
80	See section 3.2.2
81	Again, addressed in section 3.2.2
82	Not in so many words. So, I have clarified this and moved it to 3.2.3 where it fits better.
83	Noted.
84	I have done this as suggested.
85	I have attempted to address this comment in 3.2.4 and 3.2.5 but most obviously in the appendices where there is a list of the core questions.

86	The interviews took place over many months so there was some reflection and evolution of the questions after the early interviews were complete, which I have highlighted here.
87	There is only one reporter from Scotland interviewed so it seems too tangential to include a lengthy discussion of Scots law here. There is further discussion of Scotland in the findings chapters, though.
88	I have taken this correction to mean there was a requirement to state the total number of court reporters identified, rather than just the ones interviewed. I have done this here.
89	Done as suggested.
90	This explanation has been expanded as required in 3.2.6.
91	I have expanded this justification, again in 3.2.6.
92	The audio distortion happened for only the briefest of periods on a small number of occasions, it is such a minor factor I have removed it from this section to avoid giving the impression it was somehow significant.
93	I have duly included the real names of those participants who agreed to be named, as suggested.
94	Removed.
95	This correction was not clearly written and could be read either way. That is, it could be asking me to expand on court reporting in the US by including more discussion about this, or it could be querying whether I need to do it at all. I've taken it to mean the latter.
96	I have done this in section 4.1.1.
97	See section 4.1.2
98	More detail added in 4.1.2
99	I have used about half a paragraph to explain this in more detail as requested, in 4.1.2
100	I have clarified this in 4.1.2
101	I have clarified this in 4.1.2
102	See more detail on this in 4.1.2 as requested

103	I have expanded on this in 4.2
104	See the extended discussion in 4.1.3
105	I have included this point as suggested.
106	I have expanded on this in 4.2
107	I have substituted 'ECHR' here.
108	This has been removed as suggested.
109	I have expanded on this in 4.2
110	I have reduced the length of the discussion of Sutcliffe's arrest, now in 4.3.2, as suggested.
111	Brief definition of sub judice now included in 4.3.2
112	Yes, it was. I have clarified this in 4.3.3
113	A section about the Emil Savundra case is now included in 4.3.3
114	Removed. I felt this paragraph was not especially relevant in retrospect.
115	See the greater specificity about the potentially prejudicial articles included in the extended discussion in 4.3.3
116	This discussion has been largely removed as requested.
117	I have clarified why this was potentially prejudicial in 4.3.4
118	This correction is misplaced: the previous paragraph mentioned who it was.
119	A little extra detail has been included outlining how the 1981 Act addressed the question of imminence.
120	This does not appear to be a correction as such, more of a general comment.
121	Removed.
122	Section 4.3.6 ends with a clearer explanation of what the Act ultimately adopted.
123	I've included a little extra about Lord Ritchie-Calder's comments to clarify this, in 4.3.6
124	This correction stops abruptly and so it is unclear what I was being asked to do, if anything.
125	There is now an expanded discussion of this at the end of 4.3.6
126	Removed.

127	See the longer discussion of substantial risk and consideration of later case law in 4.3.7
128	I have clarified what the law states about this in 4.3.8
129	I have clarified this in 4.3.9
130	These elements are now discussed more explicitly in 4.3.10
131	As suggested, this features towards the start of chapter 5. This and other corrections seem to imply an entire chapter should be given over to a discussion of how the Act works in practice: this is not the purpose of the thesis and I have largely restricted the discussion of this to section 5.2
132	See extra clarification of this detail, again at the start of chapter 5.
133	Removed.
134	See Appendix 2.
135	I have rewritten this paragraph to address this in 5.2
136	I have clarified this phrase in section 5.2
137	This is also clarified now in section 5.2
138	No, it does not. See slightly expanded discussion in 5.2
139	The quote in question has been lengthened to address this, giving more detail of the example used.
140	Removed.
141	I have addressed this with the addition of an extra paragraph in section 5.2, although it was not clear from the correction whether you had a particular case in mind.
142	I have added a line to this paragraph to address this comment.
143	I have included this useful detail. The case was that of Geoff Knights, not 'Knight' as stated in the correction.
144	I disagree with the point made in this correction. The Act does not merely ensure cash-strapped local newspapers stay within the law. It means they stay far more within the law than they need to, because of the potentially crippling nature of any financial costs which legal action may incur. This has a chilling effect on free speech.

145	When contacted, the reporter was happy to be named elsewhere in the thesis but wished to remain anonymous for these quotes. I have given more detail as suggested.
146	Removed.
147	I've expanded this section as 5.4
148	The correction here is a misreading of what was in the original thesis, which was a more qualified statement than the correction makes out. As it happens, I removed it anyway.
149	There were no obvious trends of this kind.
150	See above. I'd suggest a different form of data collection would be needed for this kind of analysis.
151	This section has been amended and moved to 6.6. More detail of how the Sky News text system worked is described in section 1.2
152	This section has been amended and moved to 6.6. There is no example as far as I have been able to find, it's more of a theoretical risk.
153	I've removed this, it is interesting in general terms but did not seem important enough to me to retain.
154	This section has been amended and moved to 6.6
155	Yes. See section 6.6
156	It's certainly not restricted to the Crown court even if that is where it is mainly used. I have clarified this, see section 6.6
157	I've expanded this discussion to explore how Reach's investment in court reporting has been mixed. It's in section 6.3
158	Removed.
159	Removed.
160	A slightly expanded version of this discussion is now in section 6.6
161	This section has been amended and moved to 5.6
162	This section has been amended and moved to 5.6
163	The Pistorius case is still mentioned and explained in section 6.5 but this reference to it has been removed.

164	The section relating to this and the next few corrections up to 169 was heavily condensed, and much of it was completely removed.
165	Removed.
166	Removed.
167	Removed.
168	Removed.
169	Removed.
170	Reference to the protocol now included. This section has been rewritten and moved to 5.7
171	See extra detail here about the case. It is now at section 5.7
172	A bit more background on Leveson is included here at 5.7
173	The correction here is not clear and seems to conflate two things: the relationship between journalists and the CPS to do with getting access to evidence, and then the relationship between journalists and the police around getting more general information. I've rewritten it a bit to try to make that more obvious. Section 5.7
174	It wasn't me who thought this as the correction implies, I was quoting the study by Mawby. I have added a line to explain this further in 5.7
175	I've included a little more detail of this in section 5.8
176	This has been rewritten and expanded as requested.
177	Removed.
178	These chapters in general have been largely restructured so this correction no longer applies.
179	The correct name of the process is 'single justice procedure' not 'judge' as stated in the correction. I have not considered the SJP in this revised thesis in the end, the expansion of other elements as required by the corrections has taken priority.
180	Removed.
181	This material is now considered in chapter 4, as suggested.
182	See the expanded discussion of the Chandler case, plus Simpson and Woodward, in section 6.5

183	Again, see more on this in 6.5
184	Removed.
185	This correction is tricky to address because it calls for this section to be both reduced and expanded. I have tried to navigate this in the way I think was being suggested. Still in section 6.5.
186	This correction was another slight misreading of the original thesis, which referred to the general right to privacy of court participants, not defendants as implied by the correction. I've rewritten it a bit to emphasise the point.
187	I have included some discussion of other issues on this point in 6.5
188	Removed.
189	This has now been addressed in 6.5.
190	This Order is referred to in 6.5
191	Megan Knight is female, not male as the correction states.
192	Short definition of access to justice now included. This section has been moved to 6.2
193	This discussion condensed slightly as requested, again at 6.2
194	Change made.
195	Removed.
196	Discussion of digital justice is now at 6.7. It is SJP, not SPJ as the correction mentions.
197	Again, the section on digital justice is at 6.7. I included the reference to the Transparency Project as requested but chose to remove the references to other jurisdictions in the interests of space.
198	I have mentioned this briefly as part of the broader discussion of digital justice at 6.7
199	This has been reduced and is now section 6.8
200	The reference and detail of the Kansas example included as requested at section 6.9

201	The original thesis stated clearly this point came from both previous research and responses from interviewees. I have re-stated it here, in 6.9.
202	I have addressed this briefly in 6.9
203	As noted previously, I have moved this section to the Introduction (section 1.8) as requested.
204	Removed.
205	Section 1.6 has more on the normative functions of local court reporting, which I now refer to in this section. The rest of this correction did not make sense to me, though. It mentions digital tools not having an impact on how court reporters 'see their role'. This section of the thesis is not about how reporters 'see their role', more the actual practices of their newswork. It was difficult to know how to address that part of the correction.
206	I've included a reference back to Robinson here as suggested.
207	I have rewritten this section of the conclusion as requested, or at least attempted to address what it seemed this correction was asking for. The correction warns against repeating or summarising what was in previous chapters, and as I have now included discussion of those reporting restrictions in chapter 4, I was wary of simply summarising that again here. There was no space in the thesis to dedicate a full chapter to a discussion of reporting restrictions, as the correction suggests. There are only seven chapters now, of which three deal with findings, so it would be impractical to devote a full chapter to discussing reporting restrictions.
208	Yes. See discussion of previous research on freelancers in chapter 2, and then findings from the interviews in 5.5.
209	I have reframed this as suggested.
210	I chose not to do this, for the reasons outlined in 3.2.1
211	No, I don't think so. As noted in interview responses, even legal advisers are not necessarily fully aware of the law as it relates to media reporting.

212	I did consider this but have not done so. I felt the variety of job roles carried out by the reporters would have made broad categorisation rather meaningless. Even among the ones which purely cover courts, some do Crown only, others magistrates' only, some both, and so on.
213	I have clarified again here what those practices are by way of a summary.
214	Removed.
215	Removed.
216	I have now explained this more clearly at the relevant section of the thesis, which is 6.6.
217	I have rewritten this as suggested.
218	This does not appear to be a correction as such, so I have just noted the comment.
219	This is slightly rewritten to make it shorter.
220	The Ewing case and the related concerns about the administration of justice are now considered at 6.6.
221	Updated to reflect this.
222	I have addressed this correction in the rewritten section.
223	There is no obvious answer to this, beyond the suggestion of clearer guidance to court staff on this issue. This seems weak to me, and likely to have little impact unless we see more reporters attending court more frequently. As it is, I have removed references to 'changing culture' on account of it being a bit vague.
224	I have not addressed this for the reasons outlined in 3.2.1

Appendix 2: Interview details

The rationale for conducting semi-structured interviews and details of how they were carried out is discussed in chapter 3. The most relevant information about the interviewees themselves is included at the start of chapter 5. The purpose of this appendix is to outline further background details about the interviews.

All interviews were conducted by phone except those of Davidson and Barraclough, which took in place in person in Huddersfield and Salford respectively.

Newspaper reporters:

Emma Davison. Court Reporter, *Huddersfield Examiner*. Trinity Mirror. 5 October 2017.

Ben Eccleston. Crime Reporter, *Coventry Telegraph*. Trinity Mirror. 22 September 2017.

Rebecca Sherdley. Legal Affairs Correspondent, *Nottingham Post*. Trinity Mirror. 25 July 2017.

Simon Bristow. Court Reporter, *Hull Daily Mail*. Trinity Mirror. 11 July 2017.

Amy Fenton. Senior Reporter, *The Mail* (Barrow). CN Group. 6 July 2017.

Court Reporter 6, *A Scottish Daily Newspaper*. 29 June 2017.

Chris Osuh. Court Reporter, *Manchester Evening News*. Trinity Mirror. 29 June 2017

Tristan Kirk. Court Reporter, *Evening Standard* (London). ESI Media. 29 June 2017.

Laura Linham. Crime and Special Investigations Reporter, *Somerset Live* (Taunton). Trinity Mirror. 29 June 2017.

Jason Evans. Crime and Court Reporter, *South Wales Evening Post* (Swansea).
Trinity Mirror. 28 June 2017.

Martin Naylor. Court Reporter and Legal Affairs Correspondent. *Derby Telegraph*.
Trinity Mirror. 27 June 2017.

Stuart Arnold. Regional Reporter, *Northern Echo* (Darlington). Newsquest. 26 June
2017.

Court Reporter 13. *A Daily Newspaper from the south of England*. Johnston Press.
23 June 2017.

Tony Gardner. Court Reporter, *Yorkshire Evening Post* and *Yorkshire Post* (Leeds).
Johnston Press. 22 June 2017.

Carl Eve. Crime Reporter, *Plymouth Herald*. Trinity Mirror. 15 June 2017.

Agency journalists:

Sian Harrison. Court Reporter, Strand News Service. 24 July 2017.

Guy Toyn. Director, Central News. 27 June 2017.

Brian Farmer. Court Reporter, Press Association. 1 June 2017.

Broadcast journalists:

Matthew Barraclough. Head of Local News Partnerships, BBC News. 20 September
2017.

John Battle. Head of Compliance, ITN. 27 October 2017.

John Cheesman. Assignment Editor, BBC News. 21 July 2017.

Matt Nicholls. Cameras in Court Producer, Sky News, BBC News, ITN and Press Association (employed by a consortium of all four media companies). 14 July 2017.

Here, I have included the list of questions used as a basis for the interviews. The semi-structured style of the interviews, as discussed in chapter 3, means the actual interviews typically involved many follow-up questions as the topics were explored. Each interview began with a warning that the interview was being recorded.

Could you begin by giving me your current job title, and tell me how long you've held that job?

What does your job involve?

What other journalism jobs did you do before this one?

In what ways has your current job changed in recent years?

Why do you feel reporting on the courts is important?

How often do you attend court?

How do you find the process of reporting from court?

What are your relationships like with court officials and with others such as lawyers?

What is your view on the Contempt of Court Act?

How does the Contempt of Court Act affect your ability to report from court?

We're gradually seeing more televising of certain courts. Is that something you welcome?

What are your experiences of using technology in the courtroom itself, including Twitter?

What impact has the closure of certain magistrates courts since 2010 had on you?

The new BBC-funded Local Democracy Reporting Service is being rolled out this year. However, it will not include court reporting. Do you have any views on this scheme?

What other thoughts or suggestions do you have about how the job of a court reporter might be made easier?

Do you have anything else you'd like to add?

Appendix 3: Contempt of Court Act 1981

Reproduced below is the text of the Contempt of Court Act 1981, as enacted on 27 July 1981. An online version incorporating the latest version and all of the schedules referred to in the text of the Act, is available here:

<https://www.legislation.gov.uk/ukpga/1981/49>

An Act to amend the law relating to contempt of court and related matters.

[27th July 1981]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Strict liability

1 The strict liability rule

In this Act " the strict liability rule " means the rule of law whereby conduct may be treated as a contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so.

2 Limitation of scope of strict liability

(1)The strict liability rule applies only in relation to publications, and for this purpose " publication " includes any speech, writing, broadcast or other communication in whatever form, which is addressed to the public at large or any section of the public

(2)The strict liability rule applies only to a publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced.

(3)The strict liability rule applies to a publication only if the proceedings in question are active within the meaning of this section at the time of the publication.

(4)Schedule 1 applies for determining the times at which proceedings are to be treated as active within the meaning of this section.

3 Defence of innocent publication or distribution

(1)A person is not guilty of contempt of court under the strict liability rule as the publisher of any matter to which that rule applies if at the time of publication (having taken all reasonable care) he does not know and has no reason to suspect that relevant proceedings are active.

(2)A person is not guilty of contempt of court under the strict liability rule as the distributor of a publication containing any such matter if at the time of distribution (having taken all reasonable care) he does not know that it contains such matter and has no reason to suspect that it is likely to do so.

(3)The burden of proof of any fact tending to establish a defence afforded by this section to any person lies upon that person.

(4)Section 11 of the [1960 c. 65.] Administration of Justice Act 1960 is repealed.

4 Contemporary reports of proceedings

(1)Subject to this section a person is not guilty of contempt of court under the strict liability rule in respect of a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith.

(2)In any such proceedings the court may, where it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for such period as the court thinks necessary for that purpose.

(3)For the purposes of subsection (1) of this section and of section 3 of the [1888 c. 64.] Law of Libel Amendment Act 1888 (privilege) a report of proceedings shall be treated as published contemporaneously—

(a)in the case of a report of which publication is postponed pursuant to an order under subsection (2) of this section, if published as soon as practicable after that order expires;

(b)in the case of a report of committal proceedings of which publication is permitted by virtue only of subsection (3) of section 8 of the [1980 c. 43.] Magistrates' Courts Act 1980, if published as soon as practicable after publication is so permitted.

(4)Subsection (9) of the said section 8 is repealed.

5 Discussion of public affairs

A publication made as or as part of a discussion in good faith of public affairs or other matters of general public interest is not to be treated as a contempt of court under the strict liability rule if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion.

6 Savings

Nothing in the foregoing provisions of this Act—

(a)prejudices any defence available at common law to a charge of contempt of court under the strict liability rule;

(b)implies that any publication is punishable as contempt of court under that rule which would not be so punishable apart from those provisions ;

(c)restricts liability for contempt of court in respect of conduct intended to impede or prejudice the administration of justice.

7 Consent required for institution of proceedings

Proceedings for a contempt of court under the strict liability rule (other than Scottish proceedings) shall not be instituted except by or with the consent of the Attorney General or on the motion of a court having jurisdiction to deal with it.

Other aspects of law and procedure

8 Confidentiality of jury's deliberations

(1) Subject to subsection (2) below, it is a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings.

(2) This section does not apply to any disclosure of any particulars—

(a) in the proceedings in question for the purpose of enabling the jury to arrive at their verdict, or in connection with the delivery of that verdict, or

(b) in evidence in any subsequent proceedings for an offence alleged to have been committed in relation to the jury in the first mentioned proceedings, or to the publication of any particulars so disclosed.

(3) Proceedings for a contempt of court under this section (other than Scottish proceedings) shall not be instituted except by or with the consent of the Attorney General or on the motion of a court having jurisdiction to deal with it.

9 Use of tape recorders

(1) Subject to subsection (4) below, it is a contempt of court—

(a) to use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the leave of the court;

(b) to publish a recording of legal proceedings made by means of any such instrument, or any recording derived directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or to dispose of it or any recording so derived, with a view to such publication ;

(c) to use any such recording in contravention of any conditions of leave granted under paragraph (a).

(2) Leave under paragraph (a) of subsection (1) may be granted or refused at the discretion of the court, and if granted may be granted subject to such conditions as the court thinks proper with respect to the use of any recording made pursuant to the leave; and where leave has been granted the court may at the like discretion withdraw or amend it either generally or in relation to any particular part of the proceedings.

(3) Without prejudice to any other power to deal with an act of contempt under paragraph (a) of subsection (1), the court may order the instrument, or any recording made with it, or both, to be forfeited; and any object so forfeited shall (unless the court otherwise determines on application by a person appearing to be the owner) be sold or otherwise disposed of in such manner as the court may direct.

(4) This section does not apply to the making or use of sound recordings for purposes of official transcripts of proceedings.

10 Sources of information

No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which he is responsible, unless it be

established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime.

11 Publication of matters exempted from disclosure in court

In any case where a court (having power to do so) allows a name or other matter to be withheld from the public in proceedings before the court, the court may give such directions prohibiting the publication of that name or matter in connection with the proceedings as appear to the court to be necessary for the purpose for which it was so withheld.

12 Offences of contempt of magistrates' courts

(1) A magistrates' court has jurisdiction under this section to deal with any person who—

(a) wilfully insults the justice or justices, any witness before or officer of the court or any solicitor or counsel having business in the court, during his or their sitting or attendance in court or in going to or returning from the court; or

(b) wilfully interrupts the proceedings of the court or otherwise misbehaves in court.

(2) In any such case the court may order any officer of the court, or any constable, to take the offender into custody and detain him until the rising of the court; and the court may, if it thinks fit, commit the offender to custody for a specified period not exceeding one month or impose on him a fine not exceeding £500, or both.

(3) The court shall not deal with the offender by making an order under section 19 of the [1948 c. 58.] Criminal Justice Act 1948 (an attendance centre order) if it appears to the court, after considering any available evidence, that he is under 17 years of age.

(4) A magistrates' court may at any time revoke an order of committal made under subsection (2) and, if the offender is in custody, order his discharge.

(5) The following provisions of the [1980 c. 43.] Magistrates' Courts Act 1980 apply in relation to an order under this section as they apply in relation to a sentence on conviction or finding of guilty of an offence, namely: section 36 (restriction on fines in respect of young persons); sections 75 to 91 (enforcement); section 198 (appeal to Crown Court); section 136 (overnight detention in default of payment); and section 142(1) (power to rectify mistakes).

13 Legal aid

(1) In any case where a person is liable to be committed or fined—

(a) by a magistrates' court under section 12 of this Act;

(b) by a county court under section 30, 127 or 157 of the [1959 c. 22.] County Courts Act 1959; or

(c) by any superior court for contempt in the face of that or any other court,

the court may order that he shall be given legal aid for the purposes of the proceedings.

(2) Where an order under subsection (1) is made by any court, the court may order that the legal aid to be given shall consist of representation by counsel only or, in any court where solicitors have a right of audience, by a solicitor only; and the court may assign for the purpose any counsel or solicitor who is within the precincts of the court at the time when the order is made.

(3)Part II of the [1974 c. 4.] Legal Aid Act 1974 shall have effect subject to the amendments set out in Part I of Schedule 2, being amendments consequential on the foregoing provisions of this section.

(4)In any case where a person is liable to be dealt with for contempt of court during the course of or in connection with Scottish proceedings he may be given legal aid, and the [1967 c. 43.] Legal Aid (Scotland) Act 1967 shall have effect subject to the amendments set out in Part II of Schedule 2.

(5)This section is without prejudice to any other enactment by virtue of which legal aid may be granted in or for purposes of civil or criminal proceedings.

Penalties for contempt and kindred offences

14 Proceedings in England and Wales

(1)in any case where a court has power to commit a person to prison for contempt of court and (apart from this provision) no limitation applies to the period of committal, the committal shall (without prejudice to the power of the court to order his earlier discharge) be for a fixed term, and that term shall not on any occasion exceed two years in the case of committal by a superior court, or one month in the case of committal by an inferior court.

(2)In any case where an inferior court has power to fine a person for contempt of court and (apart from this provision) no limit applies to the amount of the fine, the fine shall not on any occasion exceed £500.

(3)In relation to the exercise of jurisdiction to commit for contempt of court or any kindred' offence, subsection (1) of section 19 of the [1973 c. 62.] Powers of Criminal Courts Act 1973 (prohibition of imprisonment of persons under seventeen years of age) shall apply to all courts having that jurisdiction as it applies to the Crown Court and magistrates' courts.

(4)Each of the superior courts shall have the like power to make a hospital order or guardianship order under section 60 of the [1959 c. 72.] Mental Health Act 1959 in the case of a person suffering from mental illness or severe subnormality who could otherwise be committed to prison for contempt of court as the Crown Court has under that section in the case of a person convicted of an offence.

(5)The enactments specified in Part III of Schedule 2 shall have effect subject to the amendments set out in that Part, being amendments relating to the penalties and procedure in respect of certain offences of contempt in coroners' courts, county courts and magistrates' courts.

15 Penalties for contempt of court in Scottish proceedings

(1)In Scottish proceedings, when a person is committed to prison for contempt of court the committal shall (without prejudice to the power of the court to order his earlier discharge) be for a fixed term.

(2)The maximum penalty which may be imposed by way of imprisonment or fine for contempt of court in Scottish proceedings shall be two years' imprisonment or a fine or both, except that—

(a)where the contempt is dealt with by the sheriff in the course of or in connection with proceedings other than criminal proceedings on indictment, such penalty shall not exceed three months' imprisonment or a fine of £500 or both; and

(b)where the contempt is dealt with by the district court, such penalty shall not exceed sixty days' imprisonment or a fine of £200 or both.

(3)Section 207 (restriction on detention of young offenders) and sections 175 to 178 (persons suffering from mental disorder) of the [1975 c. 21.] Criminal Procedure (Scotland) Act 1975 shall apply in relation to persons found guilty of contempt of court in Scottish proceedings as they apply in relation to persons convicted of offences, except—

(a)where subsection (2)(a) above applies, when sections 415 and 376 to 379 of the said Act shall so apply; and

(b)where subsection (2) (b) above applies, when section 415 of the said Act and subsection (5) below shall apply.

(4)Until the commencement of section 45 of the [1980 c. 62.] Criminal Justice (Scotland) Act 1980, in subsection (3) above for the references to section 207 and section 415 of the Criminal Procedure (Scotland) Act 1975 there shall be substituted respectively references to sections 207 and 208 and sections 415 and 416 of that Act.

(5)Where a person is found guilty by a district court of contempt of court and it appears to the court that he may be suffering from mental disorder, it shall remit him to the sheriff in the manner provided by section 286 of the [1975 c. 21.] Criminal Procedure (Scotland) Act 1975 and the sheriff shall, on such remit being made, have the like power to make an order under section 376(1) of the said Act in respect of him as if he had been convicted by the sheriff of an offence, or in dealing with him may exercise the like powers as the court making the remit.

16 Enforcement of fines imposed by certain superior courts

(1)Payment of a fine for contempt of court imposed by a superior court, other than the Crown Court or one of the courts specified in subsection (4) below, may be enforced upon the order of the court—

(a)in like manner as a judgment of the High Court for the payment of money ; or

(b)in like manner as a fine imposed by the Crown Court.

(2)Where payment of a fine imposed by any court falls to be enforced as mentioned in paragraph (a) of subsection (1)—

(a)the court shall, if the fine is not paid in full forthwith or within such time as the court may allow, certify to Her Majesty's Remembrancer the sum payable;

(b)Her Majesty's Remembrancer shall thereupon proceed to enforce payment of that sum as if it were due to him as a judgment debt; and

(c)any payment received in respect of the fine shall be dealt with by him in the manner for the time being prescribed under section 28 of the [1833 c. 99.] Fines Act 1833 for receipts within that section.

(3)Where payment of a fine imposed by any court falls to be enforced as mentioned in paragraph (b) of subsection (1), the provisions of sections 31 and 32 of the [1973 c. 62.] Powers of Criminal Courts Act 1973 shall apply as they apply to a fine imposed by the Crown Court.

(4)Subsection (1) of this section does not apply to fines imposed by the criminal division of the Court of Appeal or by' the House of Lords on appeal from that division.

(5)The Fines Act 1833 shall not apply to a fine to which subsection (1) of this section applies.

(6) Paragraph 23(1) of Schedule 11 to the [1978 c. 44.] Employment Protection (Consolidation) Act 1978 and paragraph 30 of Schedule 1 to the [1980 c. 42.] Employment Act 1980 (which relate to the enforcement of fines imposed by the Employment Appeal Tribunal) are repealed.

17 Disobedience to certain orders of magistrates' courts

(1) The powers of a magistrates' court under subsection (3) of section 63 of the [1980 c. 43.] Magistrates' Courts Act 1980 (punishment by fine or committal for disobeying an order to do anything other than the payment of money or to abstain from doing anything) may be exercised either of the court's own motion or by order on complaint.

(2) In relation to the exercise of those powers the provisions of the Magistrates' Court Act 1980 shall apply subject to the modifications set out in Schedule 3 to this Act.

Supplemental

18 Northern Ireland

(1) In the application of this Act to Northern Ireland references to the Attorney General shall be construed as references to the Attorney General for Northern Ireland.

(2) In their application to Northern Ireland, sections 12, 13, 14 and 16 of this Act shall have effect as set out in Schedule 4.

19 Interpretation

In this Act—

- "court" includes any tribunal or body exercising the judicial power of the State, and "legal proceedings" shall be construed accordingly;
- "publication" has the meaning assigned by subsection (1) of section 2, and "publish" (except in section 9) shall be construed accordingly;
- "Scottish proceedings" means proceedings before any court, including the Courts-Martial Appeal Court, the Restrictive Practices Court and the Employment Appeal Tribunal, sitting in Scotland, and includes proceedings before the House of Lords in the exercise of any appellate jurisdiction over proceedings in such a court;
- "the strict liability rule" has the meaning assigned by section 1;
- "superior court" means the Court of Appeal, the High Court, the Crown Court, the Courts-Martial Appeal Court, the Restrictive Practices Court, the Employment Appeal Tribunal and any other court exercising in relation to its proceedings powers equivalent to those of the High Court, and includes the House of Lords in the exercise of its appellate jurisdiction.

20 Tribunals of Inquiry

(1) In relation to any tribunal to which the [1921 c. 7.] Tribunals of Inquiry (Evidence) Act 1921 applies, and the proceedings of such a tribunal, the provisions of this Act (except subsection (3) of section 9) apply as they apply in relation to courts and legal proceedings; and references to the course of justice or the administration of justice in legal proceedings shall be construed accordingly.

(2)The proceedings of a tribunal established under the said Act shall be treated as active within the meaning of section 2 from the time when the tribunal is appointed until its report is presented to Parliament.

21 Short title, commencement and extent

(1)This Act may be cited as the Contempt of Court Act 1981.

(2)The provisions of this Act relating to legal aid in England and Wales shall come into force on such day as the Lord Chancellor may appoint by order made by statutory instrument; and the provisions of this Act relating to legal aid in Scotland and Northern Ireland shall come into force on such day or days as the Secretary of State may so appoint. Different days may be appointed under this subsection in relation to different courts.

(3)Subject to subsection (2), this Act shall come into force at the expiration of the period of one month beginning with the day on which it is passed.

(4)Sections 7, 8(3), 12, 13(1) to (3), 14, 16, 17 and 18, Parts I and III of Schedule 2 and Schedules 3 and 4 of this Act do not extend to Scotland.

(5)This Act, except sections 15 and 17 and Schedules 2 and 3, extends to Northern Ireland.