An underlying principle of democracy

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DAVID KELLY was the source of the story that prompted Andrew Gilligan's report, yet his tragic role in the affair seems to have been largely overlooked. The ensuing power struggle between the Government and the BBC centred on two issues: the suggestion by Gilligan that the Government had lied in relation to weapons of mass destruction, and the refusal of both journalist and broadcaster to name the source of their story.

Lord Hutton's report concludes that Dr Kelly took his own life after having been revealed as the source behind the claims made by Gilligan. If ever there was a chilling effect on journalistic sources, this has to be it.

Dr Kelly was a bona fide source behind a legitimate news story of grave concern to the public. Public concern at having been taken to war on the basis of defective intelligence is far graver than the concern that its Government might be challenged or wrongly accused over it.

Yet the conclusions of the Hutton report suggest that the media should be able to prove the basis of any allegations that they make against the Government and that the Government was not in any way to blame for the way in which Dr Kelly was revealed as the source. This strikes at the heart of freedom of speech. An underlying principle of democracy is the right to question government. A fundamental cornerstone of journalism is the reporter's right to protect his sources.

There is a worrying trend that points to judicial support for the suppression of this right. In the case of Ashworth, the House of Lords ordered The Mirror to disclose its source. Soon after came the Interbrew ruling, when various news organisations were denied an appeal by the House of Lords against a decision compelling them to hand over documents about a possible takeover bid. Two journalists still await their fate for being in contempt of the Bloody Sunday inquiry. Lord Saville of Newdigate held Lena Ferguson and Alex Thomson in contempt for refusing to reveal their sources for Channel 4 News reports in 1998.

A second concern arises from the Hutton report. Having obtained information from a source, the media may feel inhibited from publishing for fear of not being able to match the high standard of proof demanded by Lord Hutton. However, if journalists are prevented from scrutinising the actions of the executive, that is a clear infringement of the right of freedom of expression under Article 10 of the European Convention on Human Rights.

So it can be argued that Hutton's narrow focus has led to a questionable conclusion in law. Section 6 of the Human Rights Act states that it is unlawful for a public authority to act in a way that is incompatible with Article 10 of the convention. An inquiry is a public authority and to state that journalists should not question government unless they can prove the truth of a story or allegations would seem to conflict with Article 10.

As we await the outcome of yet another inquiry it is to be hoped the focus will be on the same question that the Kelly affair raised: were we taken to war on the basis of flawed intelligence? To the extent that one can maintain that the BBC reports were irresponsible journalism, they were based, it would seem, on an even less responsible act of government.

Contempt of court in the dock

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The attorney general is investigating the media coverage of the Soham trial but is it patronising to assume jurors will convict a person on the basis of what they may have read in their morning paper, asks Edgar Forbes, lecturer in media law at Bournemouth University

It is a sad indictment of our criminal justice system that it allows a sexual predator and potential murderer to get a job as a school caretaker. It is inexcusable that the police failed to protect the public from such a man - and it seems perverse that the catalogue of allegations involving Ian Huntley could not be used in evidence in his murder trial.

It may give the stoic families of Holly Wells and Jessica Chapman some solace that the murderer of their daughters is behind bars but, as they read today's front pages, they, as well as most of the public, must be asking themselves the crucial question - why is all of this disturbing and damning information only coming out now?

Had the media led the investigation, perhaps we would have known sooner - but the media are not allowed to lead investigations and are restricted from reporting on the backgrounds of suspects and witnesses.

While the home secretary, David Blunkett, launched an investigation into the failings of a system that did not detect Huntley, the attorney general, Lord Goldsmith, has announced his investigation into the media's reporting of the Soham trial.

He has referred to some of the press coverage as "frankly unacceptable" and is considering bringing action against two newspapers and a radio station.

Contempt laws exist to protect the administration of justice and to prevent juries from being influenced by stories they may read in the press. They are there to protect those accused from receiving an unfair trial because of prejudicial press reports.

In his statement about the reporting of Soham, the attorney general said about such reports: "Those consequences are felt by individuals, often those who are particularly vulnerable, such as the victims and witnesses as well as defendants. And it is in the public interest that we have a fair, decent and effective system of justice."

But do we have to suppress information to ensure fair trials? Is not the public interest best served by publishing information about suspected crimes and criminals?

Why were Huntley's previous victims too scared or unwilling to come forward before? Precisely because they feared the system of justice the attorney general is seeking to protect would fail them. It certainly failed Holly and Jessica.

Contempt laws prevent the media from reporting on a suspect's background or previous convictions. The 1981 Contempt of Court Act makes it an offence to publish something that creates a substantial risk of serious prejudice. But the difficulty lies in defining such risk or prejudice.

In the run-up to the Contempt Act becoming law, there had been discussion about loosening restrictions to allow reporting between the time someone was arrested and charged. However, following the sensational coverage of the arrest of the Yorkshire Ripper, Peter Sutcliffe, no such concessions were made.

Juries can make up their own minds

But is the public in general, and juries in particular, really that influenced by all they read? Is it patronising to assume that a juror will convict on the basis of what they may have read in their morning paper?

While the trial of Leeds United players Lee Bowyer and Jonathan Woodgate collapsed because of an interview published at the time of their assault case, the barrage of arguably prejudicial

coverage of Ian and Kevin Maxwell's high-profile fraud trial did not result in a biased jury and both were acquitted.

Similarly, the outrage poured over the front pages at the horrific murders carried out by Fred and Rosemary West did not result in their trial being unfair or the jury prejudiced.

Why is there an assumption that what is carried in the press will prejudice proceedings and thwart the system of justice? Juries are to a large extent capable of making up their own minds - especially if they have a trial judge to give them clear directions - and Mr Justice Moses certainly did so in the Soham trial.

Is the attorney general afraid, suggesting the average member of the public or a jury is so malleable that they will be biased by all they read, see or hear?

If he feels juries cannot be trusted to operate fairly because of the information and news available to them in an open and democratic society, then should not he be examining the merits of jury trials rather than seeking to censure the media or the news it delivers?

The root of evil lies in the criminals and not in the media's reporting. The justice system must bring the criminals to book rather than hold the media, which is restricted from reporting and has no control, to account for its own failings.

In their statements following Huntley's conviction, the families thanked the media who had shown them respect and restraint. The media owed them a duty to do so. They did not owe one to Huntley or Maxine Carr but had one imposed by the courts.

Last year, during the police investigations, the media were asked to provide their full co-operation and divulge notes and information relating to Huntley and Carr.

So why should it be acceptable for the media to inform the police but not the public?

Had more been known about the string of allegations surrounding Huntley then perhaps people would have been alerted to the potential dangers harboured in his character.

The official bodies, which Mr Blunkett has now ordered an investigation into, knew about Huntley but that knowledge was not put to much use.

Those critical of the press may point to the situation in the United States, where jurors are questioned about their prejudices and then doorstepped for comment following their decisions.

The judiciary in the UK is wary of what it sees as "trial by media" and the spectre of court TV.

Such concerns may be justified when one considers the coverage of the OJ Simpson or Louise Woodward trials but to deny the media's increasing role in society would be short sighted.

We have 24-hour news and internet access. Whether to address social need or commercial demands, the media have upped their game and there is now more information than ever to which the public can claim to have a "right to know".

Reading today's papers, one may well argue there is a valid case to be made for the media being given more freedom to report on matters such as the Soham trial - the newspaper headlines that so upset the attorney general certainly have greater impact than buried social services or police files.

So whose interests are greater - the public who may be threatened or the criminal who may be exposed?

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