

PETER JUKES
**BEYOND
CONTEMPT**



THE INSIDE STORY
**OF THE PHONE
HACKING TRIAL**

PREFACE: THE UNTOLD STORY

“There has never been any trial like this,” one of the defence barristers told me during a furtive smoking break outside the main doors – a place where the surprising number of journalists, lawyers and police officer smoked. He added: “There will never be another trial like this.”

The phone hacking trial had already been billed as “the trial of the century” by the *Daily Telegraph’s* Peter Osborne weeks before it opened in October 2013. But it had taken most the preceding 21st Century to get there. It was already two years since the closure of the world’s best-selling English language newspaper, the *News of the World (NOTW)*, in 2011. It was eleven years since the Sunday tabloid had hacked the mobile phone of teenage murder victim Milly Dowler in 2002. Everyone knows the wheels of justice move slowly. But the legal process seemed to be glacial.

The hacking trial was described by one of the prosecution team as the “trial nobody wanted”. Back in 2006, when royal reporter Clive Goodman was arrested, the Metropolitan Police limited their inquiries for various reasons, one to spare embarrassment to the Royal Family. For all the glamour of some of the targets of phone hacking, compared to other famous murder or terrorism trials – such as the Oscar Pistorius case in South Africa which ran concurrently – the stakes could seem minimal. There were no dead bodies, no violent attacks against other individuals, or attempts to subvert or overturn the state.

Yet, the state was somehow at risk. Two of Britain’s most senior police officers had resigned in the throes of the hacking scandal in 2011. Rebekah Brooks, former Murdoch protégé and not so long ago perhaps the most powerful woman in Britain, had achieved the extraordinary feat of being friend to three successive prime ministers. Andy Coulson, her close lieutenant and successor as editor of NOTW, had been the prime minister’s chief spokesman. Meanwhile, the list of victims of *News of the World’s* hacking ranged from senior cabinet ministers and heirs to the throne to famous actors and cooks. The Sunday tabloid had a reputation for exposing the private secrets of the rich and famous without fear – or apparent favour. In some sense the trial promised to be as sensational as its front page splashes. But it wouldn’t be – for obvious reasons. When Mr Justice Saunders said in his opening remarking remarks the case would be not only a trial of the defendants but also “British justice” he was talking about the fraught relationship between public opinion, the press and the demands for a fair trial.

The trial was unique in other ways. Normally the state, with the support of police and prosecution, holds the balance of power. Much of our legal system has evolved to help to redress that imbalance and prevent miscarriages of justice. But at the hacking trial, the financial might of News UK and News Corp reversed the situation. Privately funded criminal defences are rare: to have six of them (all of the final defendants, bar Goodman) is unprecedented. I’ll explore this

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more later, but the net effect was that the defence budget far exceeded the entire public cost of the three-year police investigation and the trial. That's what this book is really about: the real time interplay between corporate media, social media, the judiciary and the police over the eight months of the most expensive and protracted criminal trial in British legal history.

There are already several books about phone hacking. *Dial M for Murdoch*, by the Labour MP Tom Watson and my publisher Martin Hickman, explored the origins of the scandal and the legal and political campaign in Parliament to expose it. *Guardian* journalist Nick Davies is publishing his long awaited book *Hack Attack* this summer; so too will Independent on Sunday deputy editor James Hanning, who is co-writing *The News Machine* with the infamous private investigator whose notebooks provided most of the evidence for the trial (though he will receive no payment). There are therefore many things I won't be covering, because they are or will be covered elsewhere: the role of Glenn Mulcaire and the origins of phone hacking at the *News of the World*. Or its cover-up. Or the cover-up of the cover-up. Or the role of media in politics. Or David Cameron's decision to appoint Andy Coulson as his press spokesman. Or Europe's biggest planned media acquisition, the BSkyB takeover.

What follows is not even about the evidence during the trial, or at least not mainly about that. My publisher and I have already contributed three quarters of a million words on the facts and arguments that could be published contemporaneously. I'm not going to replicate what is already in the public domain – my crowd funding supporters could rightly claim their money back. This book is all about what we couldn't report at the time: the documents and legal arguments embargoed till the verdict: behind the scenes activities by lawyers, police and journalists: backstage colour and comment which, given our stringent rules about prejudicing a jury, could have landed me in deep trouble if I'd expressed.

Part of this is a story about what it's like to report a long trial. Over the time the hacking trial journalists were sequestered in the Old Bailey one of the reporters gained a husband, another nearly lost his life (but in the end, only his appendix). There was friendship, hilarity, tension, and – in the last few weeks – some contention. There was also, as Brooks once alleged in an email to Will Lewis, suggestions of an “old-fashioned *Guardian-BBC* hit job”: but not against News International. A rather curt copper in Court 12 who was rude to a female journalist when he tripped over her on the way to the evidence room behind the press seats. Two male reporters – one from the BBC and one from the *Guardian* – stepped in to her defence. Voices were raised but no blows traded.

No matter how objective I try to be about Court 12, this is also ultimately my story. Even on those days when the evidence was dull and ‘read in’ in the dry monotone of a barrister or detective, there was always something new to learn. Court reporting is, as someone once described policing, 99 per cent boredom but 1 per cent terror. You could never relax. One false move could jeopardise the trial, and lead to prison. Right at the end of the trial when the jury

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were sent out to consider their verdicts: this book came up in Court 12 as part of the discussions of reporting restrictions. When I asked a defence barrister why I was singled out, he smiled: "I don't want to have to visit you in Wandsworth Prison, Peter."

I've also decided to use myself as character in the drama, not because I want the attention but because my unfamiliarity with the law is a useful (and occasionally amusing) story-telling device for similarly baffled members of the public. Many people have also expressed an interest in how I stumbled into covering the case using social media and crowd funding. I also stumbled in other ways; a completely inexperienced 'blogger' roaming round the legal minefields of the Old Bailey.

Finally, too, I can answer the thousands of questions that so many people have had, which I could not answer for fear of falling foul of the contempt laws, or because I just didn't know. I was also constantly asked to comment on the evidence, what I thought of the guilt or innocence of the defendants, how I rated the various prosecution and defence arguments – all completely verboten in real time. Having refrained from anything but reporting for over thirty weeks now, I can speak out at last.

Yet in some ways I feel uncomfortable finally expressing an opinion. The glory of court reporting is this lack of comment. Going through the process of just saying who said what, when, has been completely refreshing. I see the phone hacking scandal and British journalism in a new light. I hope I've now developed a more sceptical ear for commentary, a sharper eye for fact, and a willingness to present both sides of an argument and to let others come to their own conclusions. Our newspapers tend to mix fact and comment in a way that would perturb American print journalists. Many of our newspapers seem more to be vehicles for provocative comment than fact-finding enterprises. That said, Fleet Street arose in the vicinity of the Inns of Court. You can see the synergy: opinionated lawyers arguing the toss, scribes penning affidavits, pamphleteers selling their scandal sheets in the tumult of the early coffee shops: a search for disclosure and judgement in the shadow of the noose.

Not all the public's interest in the criminal justice system is in the public interest. One version of the hacking trial is that it was an old-fashioned witch-hunt disguised as a modern trial. There's a lot of prurience in trial coverage – think Oscar Pistorius or O.J. Simpson. Opposite the Old Bailey is the 'Magpie and Stump pub. Though housed in bland modern building, it stands on the same place as an inn which sold special 'hanging breakfasts' to those who wanted a comfy upstairs room to watch someone swinging from the tree outside. To a certain extent, court reporters carry on that tradition, vicariously discussing the demise of defendants in the same pub. Indeed, before *News of the World* focused more on celebrity and sex, it was famous for court reporting, particularly salacious divorce and libel cases.

This book is called 'Beyond Contempt' for both lurid and serious reasons. The title was embargoed till the verdict because the resonance – an echo of 'beneath contempt' – could have been prejudicial to the defendants. As you'll see in the personal interactions ahead, that's not my

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intent. More importantly, the book explores some of the limitations of free speech, and the limitations of law, in a world of social media where every individual has become a publisher. In British law, the rights to a fair trial outweigh those of freedom of expression. As the Crown Prosecution Service points out:

*Article 10 of the European Convention on Human Rights... **the right to freedom of expression, is a qualified right**, and interference of it in the form of restrictions may be appropriate where this is necessary and proportionate in pursuit of a legitimate aim such as the protection of the **rights of others to a fair trial** (Article 6 ECHR), or to **privacy** (Article 8 ECHR).*

I suspect the hacking trial has made many journalists rethink this balance. Even Rebekah Brooks, editor of the most powerful newspapers in the land, who championed the rights of a free press, seemed to grasp the limitations of free expression when she protested about “trial by media”. Throughout the hacking trial, and indeed way before, many of the defendants complained about the *Guardian’s* hacking trial scoops. Andy Coulson’s lawyers protested to the police about the leaking of his arrest, which led to Operation Kilo, an internal police investigation which reprimanded a Weeting officer for leaking to Amelia Hill, *Guardian* journalist. Charlie Brooks, Rebekah’s husband, explained that the intensive close personal security around his wife (she texted her mum she had “more security than the Prime Minister”) was partly because she feared the “killer photo”; a paparazzo catching the moment of her arrest. He said he hid his porn from the police because he feared it would be leaked to the media. Time and time again defendants put down their ‘no comment’ police interviews partly to the fear their answers would seep into print. This tension between disclosure, open justice and a fair trial was for eight months a nail-biting, moment by moment dilemma.

It’s still something of a problem. Because of other pending related trials – there are at least twelve scheduled – this book does quite not contain everything the jury heard in evidence, or the reporters heard in legal argument. For the time being there are some names that still have to be redacted to avoid prejudicing the outcome of their trials or ongoing police investigations, or charging decisions by the Crown Prosecution Service. When I can, I will release them and update the e-book. But they are not in themselves deeply relevant to the 130 days the court sat.

Finally, this book has been written at speed, for publication as soon as possible after the verdicts, the mitigation pleas and sentencing. Because of that haste it might lack grace, contain a few typos, but – because my editor also spent every day in court – should be solid on the facts. I can’t claim to be exhaustive. The definitive work on all the trials, all the background, will have to wait for several years until all the criminal cases are over. But when it comes to the hacking trial, a window of public interest and legal opportunity has opened.

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As I used to say to my producers when writing TV drama under the tight and expensive deadlines of a shooting schedule: “Do you want it perfect? Or do you want it Tuesday?”

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