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Select Committee on Communications and Digital: inquiry into the future of journalism

I'm pleased to be able to send this response to the committee following the call for evidence on the future of journalism. I'm a senior lecturer in Journalism at the University of Huddersfield and have been researching court reporting in the local media as part of a PhD I have been undertaking at Cardiff University. My response here features material I have drawn from that research. Generally speaking, it addresses the questions of the value to society of journalism, and the ways in which digital technologies have changed the practice of journalism, with a focus on the reporting of courts in the UK. This submission will briefly summarise some of the findings of the research, then include a series of recommendations for how coverage of the courts might be maintained and enhanced.

Local journalism has long been described as being in crisis (Rouger 2008, Moore 2015, Cawley 2017, Wadbring & Bergstrom 2017). In the UK, local newspapers have experienced years of declining circulations and staff cuts (Mediatique 2018), leading to questions about how effectively those institutions can continue to perform elemental normative functions of journalism, even as they remain central to the news diet of consumers (Gulyas, O'Hara & Eilenberg 2018). One of those is to report on the courts, a role traditionally undertaken by specialist reporters working on the courts beat. The courts have long served as one of the key sources of stories in local newspapers (Franklin & Murphy 1991, O'Neill & O'Connor 2008). However, financial pressures have led to a perceived decline in the number of court items covered in the local press, with some evidence that fewer journalists now attend cases (Davies 2009, Hanna 2015), especially in the magistrates' court (Howells 2016, Chamberlain et al 2019).

We might consider one of the normative functions of the press to report fairly, accurately and contemporaneously on court 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 more fully and independently report on the cases. Having access to the courts is one of the ways in which journalism is given special treatment within English law (Danbury 2014). This helps a newspaper avoid being forced to rely on second-hand information from organisations directly involved in proceedings such as police, prosecutors or others with a vested interest (Davies 2009, Wagner 2012). It is impractical for many citizens to go themselves, so journalists can act as the public's eyes and ears (Mulcahy 2011, Tilley 2014), helping to ensure that justice is seen to be done (Pape & Featherstone 2005). A court reporter's articles should help keep the public as well as civic leaders informed about court cases, as well as providing scrutiny to the legal system itself. Oversight of the workings of the judicial system by independent journalists is central to principles of open justice (Chamberlain et al 2019). There is also a developing risk in certain situations that aggrieved parties or other players who are not journalists in the traditional sense may seek to fill the gap by using journalistic-style methods to further their own political agendas (Langdon 2017, Finnegan 2019).

My research finds that while beats in general may be in decline in the UK's local press, the courts beat is now increasingly distinctive as one in which journalists are based outside their offices, a practice that has become less common on other beats. But although court reporting remains an important feature of local journalism in the UK, it is now heavily reliant on journalists who work for those major newspaper companies which have faced particularly acute financial challenges. Supplementary coverage by local agencies and weekly newspapers has withered away, and larger daily newspapers have

often assigned their court reporters to also cover the crime beat, meaning the specialist practice of court reporting faces a precarious future.

Widespread closures of local UK courts as part of government cuts since 2010 have, perhaps perversely, helped to maintain the courts beat, as reporters are more readily able to cover a variety of cases being heard at a single, centralised court location. A lack of direct competition from agencies, broadcasters and the national media means newspaper court reporters remain able to produce exclusive stories for their employers and readers, which carries a financial benefit to publishers.

A total of 22 semi-structured interviews were conducted during 2017 with local newspaper and news agency court reporters, as well as national broadcast journalists involved in court coverage. These have helped establish how journalists on the courts beat perceive their jobs have changed, particularly since the beginning of the financial crisis in journalism, during which time a relative shortfall of research into local journalism has been noted (Harte, Howells & Williams 2018, Arnold & Wagner 2018).

Developing trends include the growing use of social platforms and mobile technologies, which have changed the daily newsworld of court reporters, as well as more video cameras in the UK's courts, which have gradually shown more willingness to accommodate media interests, albeit in a piecemeal fashion. It remains to be seen the extent to which the sudden increase in the use of video links and other technologies brought about by the coronavirus outbreak, is retained in future. My research has also found that while tip-offs from court staff about interesting cases remain useful to certain reporters, especially those with greater experience, journalists covering the courts beat now spend much more time within courtrooms than past studies have suggested (see Drechsel 1983), in part because smartphones allow them to write stories, text and tweet on the go.

In my research, I make some recommendations about ways in which coverage of our courts might be maintained and enhanced. I will outline these now.

One of the restrictions imposed in the Contempt of Court Act 1981 was a ban on audio recorders in court, a restriction made with the convenience of court users such as barristers in mind, outweighing open justice considerations. Today, the technology and practice of journalism has changed, and reporters routinely bring audio recorders into court in the form of smartphones. Presently, the recording function, while technically permitted for the creation of a reporter's aide memoire (Judicial College 2014, HM Courts & Tribunals Service 2018), is seldom used, certainly not to record anything that might be published. Smartphones can be used silently and so old complaints about noise disruption should 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 giving an opening statement, or a judge delivering sentencing remarks, much in the manner of recorders left running at a press conference, seems an unobtrusive way of allowing journalists to do this.

Audio content would admittedly only be of relatively limited use, although valuable in certain circumstances, perhaps including true crime-style podcasts, a genre which has played a significant role in the increasing popularity of that medium (Berry 2015). Of greater value in daily news coverage would be a relaxation of the restrictions surrounding photography. Obliging reporters to sneak past defendants and surreptitiously capture a snatch photograph as they leave the court building, a typical daily task of the hard-pressed local newspaper court reporter, is 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.

The era of newspapers routinely sending professional photographers to take such photos is over for all but the biggest cases, so an alternative approach ought to be considered.

A lifting of the restrictions imposed by the 1925 Criminal Justice Act to allow limited photography of defendants inside courtrooms should be contemplated. Smartphones are routinely taken into court and used by journalists to liveblog, tweet and write stories. Not only could they potentially be utilised as audio recorders, but as cameras. Photography might be limited to certain times during proceedings, for example during the swearing-in of witnesses and putting of charges to defendants. It may also be beneficial to restrict photography to one journalist in each courtroom, with pictures made available on a pooled basis. A central 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 experience of the Pistorius trial in South Africa demonstrates that, when given the opportunity to take photographs within a courtroom, journalists typically restrict themselves to pictures of the defendant at key moments in a case only (Knight 2017). This significant example should offer reassurance to those who hark back to the media circuses of the OJ Simpson and Louise Woodward cases, which in their day acted as a disincentive to open justice in the eyes of many within the legal establishment here. 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 the working lives of existing court reporters easier and safer.

If access to audio and photography for journalists is further developed, then widening the use of video in court reporting is also potentially desirable. It is certainly increasingly possible to unobtrusively film court proceedings, although it does remain relatively resource intensive, requiring a trained court reporter to monitor proceedings in real time. The interviews for this thesis have confirmed that use of that content has so far been relatively sparing in the national news, although it has achieved more prominence in regional TV. Meanwhile, the qualified early success of the Local Democracy Reporting Service and the central involvement in that of the BBC, offers clues as to a potential way forward in this area.

Cairncross, the local press companies and the BBC have all indicated, in a variety of ways, a general view that the LDRS ought to be expanded and perhaps evolved into another form (Cairncross 2019, BBC 2019). There is no consensus on whether any LDRS extension might cover court reporting, but if media companies and policymakers ultimately considered that desirable, then incorporating within it the use of video cameras in certain major Crown courts could be desirable. Eight were part of the pilot scheme and such a number could be included in an extended LDRS, perhaps 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 PA, 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 interest of publishers. Limiting the scheme to the sentencing remarks of judges only might be the easiest approach, and indeed, this is the scope of what is expected to be introduced in 2020 (Ministry of Justice 2020). The apparent, if limited, successes of the LDRS and the Crown court filming pilot scheme, offer an opportunity to take this much further, and make a major development in the field of putting cameras in court.

The availability of evidence, or lack of it, as it is presented in open court is perhaps the most frustrating aspect of the job of court reporter. Being unable to get it from prosecution barristers or the CPS in a timely enough fashion to be used in daily reporting

is a regular complaint, in particular given the growing importance of video to the success of stories online. This is combined with a reduction in the quality of facilities available to reporters within court buildings, with former press rooms given over to other uses and some new courtrooms being constructed without any specific seating for journalists.

It would, however, be impractical to give journalists immediate access to all evidence in every case. This would involve significant additional cost and preparation time for court officials to produce copies for journalists who may never appear. But reporters ought to be able to request that they are given access to bundles to help them follow significant cases and reproduce key pieces of evidence in their articles. Such a request made of the CPS press office in advance by a bona fide member of the press would allow time for those copies to be prepared, and this provision could be formalised as part of the CPS media protocol. The CPS appears content to do this when national or even regional TV coverage is assured, and in the interests of open justice it could be encouraged to extend this courtesy to local newspapers too. Where there are concerns about physical evidence such as a DVD leaving the courtroom, these could be kept in press rooms instead. The existence of such rooms might be made mandatory in all courts, along with the presence of designated press seats within each courtroom, each of these being traditional norms which have been eroded, to the detriment of the media's ability to report on the courts.

Despite the general success in court reporters' use of technology, the main factor preventing further take up of live text-based coverage is the unreliability of internet access in court buildings. This varies, meaning that 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 participants such as barristers and solicitors, and instead must take their chances with a mixture of dongles and weak 3G. The simplest solution would be to give members of the press access to courts' own wifi networks. It is unclear exactly what decision, if any, prevents this happening already. Whether through a deliberate policy or not, the practice of prohibiting reporters from using wifi seems to essentially rely on the notion that journalists are not among the court participants who would need such a service. A culture change might be required so representatives of the press come to be regarded as an important part of the furniture of the court. Such reliable wifi access could also be extended to the press rooms.

A final area where relatively simple improvements would have a notable impact on the working lives of court reporters relates to access to court information. Most journalists are able to access court lists, albeit these can sometimes be out of date even 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 could ever be infallible. But this study has confirmed that the availability of the basic facts of a case, ranging from the charge itself to the personal details of the defendant to even the names of magistrates, cannot be guaranteed. 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, and also in paper form within the courts. Removing the time reporters have to spend chasing up this detail each day from their workloads would be extremely helpful to them, freeing up a time which could be spent dealing with the myriad other tasks which now form the court journalist's daily beat.

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March 2020