

**Department of Media and Communications**

**MC53046A**

**(Undergraduate 3rd year option)**

***Media, Law & Ethics***  
***Course Outline***

**Term: Autumn 2011**

Course Leader: Tim Crook  
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Seminar Leader: Adnan Hadzi  
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**Course outlines are also available on the Goldsmiths Website  
under [learn.gold.ac.uk/Media & Communications/](http://learn.gold.ac.uk/Media & Communications/) Media &  
Communications Undergraduate Virtual Office.**

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**Goldsmiths**  
UNIVERSITY OF LONDON

**Media Law and Ethics (Autumn 2011)**

Third year communications theory option (15cr) MC53046A

BA Single Honours Media & Communications and all other undergraduate programmes in the Department of Media & Communications.

Course Tutor: Tim Crook, Department of Media & Communications.

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Seminar Leader: Adnan Hadzi

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Lectures held in NAB LG 01 Screening Room (New Academic Building) on TUESDAYS 4 to 5.30 p.m. (Smaller lecture theatre, far right of the building in the lower ground floor.

Seminars with Tim Crook will be held WEDNESDAYS 4 to 6 p.m. Room 12, Media Research Building. (Behind New Academic Building).

Seminars with Adnan Hadzi will be held WEDNESDAYS 4 to 7 p.m. Room 13 Media Research Building. All the seminars are one hour in duration.

**Introduction to area of study**

The course investigates the nature of media law and ethical regulation for media practitioners primarily in the UK, but with some comparison with the situation in the USA and references to the experiences of media communicators in other countries. The students are directed towards an analysis of media law, as it exists, the ethical debates concerning what the law ought to be, and the historical development of legal and regulatory controls of communication. The theoretical underpinning involves a course of learning the subject of media jurisprudence- the study of the philosophy of media law, media ethicology- the study of the knowledge of ethics/morality in media communication, and media ethicism- the belief systems in the political context that influence journalistic conduct and content. The course evaluates media law and regulation in terms of its social and cultural context. It is taught in one and a half hour lectures and one-hour seminars that involve the discussion of multi-media examples of media communication considered legally and/or morally problematical.

**Learning Outcomes**

By the end of the course the student should be able to demonstrate:

1) knowledge of the wider ethical, legal, and cultural contexts of media practice in the United Kingdom and a comparison with the USA and some other countries.

- 2) understanding of the applications of freedom of expression in varying cultural and political contexts and understanding the ethical issues in news and general programme production and broadcasting.
- 3) knowledge and skills to avoid the transgression of defamation and contempt and other principal media laws primarily in the UK but with some comparison with the USA and some other countries.
- 4) an appreciation and ability to critically apply principles of ethical conduct in all fields of the media,
- 5) a critical understanding of the cultural, social and political history and context of media law making, and professional regulation,
- 6) a critical appreciation of alternative international methods of media law and those factors contributing to self-regulation by media practitioners.

#### Learning Methods

The course consists of 10 one and a half hour lectures during the Autumn term from 4 p.m. to 5.30 p.m. on Tuesday evenings in the Screen Rooming of the NAB followed by 10 one hour seminars held between 4 and 7 p.m. on Wednesday afternoons in the Media Research Building.

The seminars involve your participation in mini-trial or moot court discussions where the students divide into rival 'media law firms' and represent fictional trial issues central to contemporary media law and ethics scenarios. A panel of three judges drawn from each side in rotation week by week are engaged to adjudicate the trials and give their rulings. In the process the students are actively involved in preparing their cases in teams, rotate and share the role of presenting through advocacy in five and ten minute submissions and give reasons rulings in the role playing of judicial panels.

The students are expected to support their learning through weekly readings and analysis of contemporary media so that they can develop a critical understanding of the methods of legal and regulatory control of media communication. Attendance and participation in the seminars is essential.

The lectures are shared with MA/MSc Practice and Theory students. As 3rd year undergraduate and MA Theory students have an essay as an examination outcome they are obliged to attend the seminars during the autumn term. The course for the MA Practice students requires five further lecture/seminars in the Spring term culminating in a 3 hour unseen examination. This is why they do not attend the autumn seminars.

**Assessment**

The course will be examined by one 4,000 word essay, to be submitted on Friday 6<sup>th</sup> January 2012 between 10am - 2pm in NAB 3.02 (3rd floor, New Academic Media Building) and it will be marked in accordance with the criteria given in the student handbook.

**Two written copies and one electronic copy (CD/DVD) are required.** The essay titles will follow closely the structure of the course as outlined below. We do not assume that all aspects of the course will be covered in the written essay. But the students will be required to address directly at least one of the principal themes.

It is recommended that the students produce, in consultation with the tutor/seminar leader, a one-page essay plan before they begin work on the essay. They will have an opportunity to discuss this with the tutor in tutorials that can be arranged by email. The deadline for submitting the essay plan for feedback is Friday of Reading Week on 11th November 2011. (Visiting International students complete a 2,000-3,000 word essay which is submitted during the penultimate week (week before the last) of the Autumn term,) and the submission is made

**VISITING STUDENTS:**

Visiting students are assessed by a 2,000-3,000 word essay to be submitted in week 10 of term (Friday 9th December). Please submit a copy directly to the course leader, Tim Crook and a copy to Celeste Hawes (Curriculum Secretary) in the Media & Communications Office (NAB 2.02).

The course is also supported by a course Reader and extensive resources some of which are interactive on the course learn.gold site, and the companion website of the course book Comparative Media Law & Ethics <http://www.ma-radio.gold.ac.uk/cmle>, and key knowledge/skills resources are available in text and for MP3 audio downloads onto your Blackberries, iPhones or MP3 players. This includes a reading of the entire Chapter 12 on Intellectual Property Law and Copyright. The enrolment key for the learn.gold facility at <https://learn.gold.ac.uk/course/view.php?id=493> is 'Aristotle'.

The students also have access to DVD/Video programmes, BBC training CD/DVD Roms and relevant textbooks and monographs in the College library. An efficient understanding of UK Media Law can be achieved by undertaking the BBC College of Journalism's Legal Online course (available in the college library) and perhaps more useful and up to date learning would be achieved by visiting the BBC's College of Journalism law and editorial guidelines resources at <http://www.bbc.co.uk/journalism/law/>. The BBC's College of Journalism has a separate stream of teaching and learning resources on ethical journalism at <http://www.bbc.co.uk/journalism/ethics-and-values/>.

DVD Roms are available in the library and some of the professional 'BBC Trust' course in professional broadcast and online ethics and College of Journalism resources are linked from learn.gold. You are also likely to be given additional specific briefings on the essay topics combined with targeted bibliography at each seminar and lecture.

## Plagiarism

Essays are likely to be subjected to JISC plagiarism detection software. Plagiarism is a serious offence and incurs heavy penalties. All work submitted for examination should be your own. Where you are engaging with other people's work, this should be clearly attributed to the source. Refer to the handbook if you are at all unsure.

**You need to hand in TWO copies of your essay, you are also required to hand in an electronic version (on disc or CD) of your examined essay along with the print versions. The following formats are acceptable: rich text (rtf); word (doc); plain text (txt).**

**You must also keep a copy of your essay as we cannot return essays (unless as feedback essays).** Please see the student handbook for details of exam regulations and for information about the crucial importance of sticking to this deadline. The essay will be marked in accordance with the criteria given below

## Assessment Criteria

**0%** Non submission or plagiarized assessment – a categorical mark representing either the failure to submit an assessment or a mark assigned for a plagiarized assessment.

**1-9%** Very bad fail – a submission that does not even attempt to address the specified learning outcomes (shall be deemed a non valid attempt and unit must be resat).

**10-24%** Bad fail – represents a significant overall failure to achieve the appropriate learning outcomes. Work of very poor quality that demonstrates little or no originality and ambition and is extremely weak in content, language and structure.

**25-34%** Fail – represents an overall failure to achieve the appropriate learning outcomes. Work of poor quality that demonstrates little or no originality and ambition and contains significant flaws in terms of content, structure or language.

**35-39%** Pass – represents the overall achievement of the MAJORITY of the appropriate learning outcomes to a pass level. Work that demonstrates minimally acceptable levels of originality, clarity, planning and understanding. The work barely answers the question(s) set and is largely descriptive and unstructured. The work will, however, demonstrate some critical awareness of the topic and will ensure overall achievement of the MAJORITY of the outcomes.

**40-49%** Pass- represents the overall achievement of the appropriate learning outcomes to a threshold (satisfactory) level. Work of an overall satisfactory standard although little originality and/or ambition is demonstrated. The work is mainly descriptive and refers to only a limited range of ideas/examples. Although the work lacks a fluent argument, it exhibits some critical awareness of the topic.

**50-59%** Good (a 2.2 at degree level) – represents the overall achievement of the appropriate learning outcomes to a good level. Work of an overall good standard. It will demonstrate in overall effective application of knowledge, understandings and skill

specified in the course learning outcomes. It will show some originality and ambition together with evidence of background reading and comprehension of the topic. The analytical dimension will not be fully developed and the reading may be limited to a few texts only.

**60-69%** Very good (a 2.1 at degree level) – represents the overall achievement of the appropriate learning outcomes to a very good level. Work that overall achieves a high standard and that demonstrates the effective application of knowledge, understandings and skills specified in the course learning outcomes. The work will have achieved its goals and will demonstrate a significant degree of originality and ambition with a very good level of analytical precision, very sound preparation and an awareness of different critical perspectives.

**70-79%** Excellent (a first at degree level) – represents the overall achievement of the appropriate learning outcomes to an excellent level. Work of excellent overall quality. It will demonstrate an excellent application of knowledge, understandings and skills specified in the course learning outcomes. The work will contain evidence of a broad and systematic understanding of the subject, together with the ability to engage with complex ideas and develop original perspectives in a fluent and clear manner.

**80-89%** Outstanding (a first at degree level) – represents the overall achievement of the appropriate learning outcomes to an outstanding level. Work of outstanding overall quality. It will demonstrate an extremely effective application of knowledge, understandings and skills specified in the course learning outcomes. The work will contain evidence of a highly developed and systematic understanding of the subject, of an ability to engage with complex ideas and to develop distinctively original arguments and perspectives.

**90-100%** Exceptional – Represents the overall achievement of the appropriate learning outcomes to an exceptionally accomplished level. In the views of the examiners, the work is such that it is clear that the outcomes have all been achieved to the highest possible level for an undergraduate and that the work produced is intellectually unique and worthy of publication.

#### Course Reader and textbooks

The Course Reader provides some key elements of reading to enable you to appreciate the course curriculum and develop your research for the essay. There is a range of articles included to back up many of the topics on the course. The resources for the course at [learn.gold.ac.uk](http://learn.gold.ac.uk) back up the content of the lecture programme and also contain other useful digital texts to support your learning.

There is one **essential core** course textbook, *Comparative Media Law and Ethics*, by Tim Crook, (2009) London and New York: Routledge [companion website <http://www.ma-radio.gold.ac.uk/cmle>.] There are ten copies in the college library. The book is stocked at Blackwells in Goldsmiths, Waterstones in Gower Street, and can be obtained online with some discount from [Amazon.co.uk](http://Amazon.co.uk) and other online services.

**Further Recommended Reading:**

**UK Media Law**

Tim Crook wrote a short chapter on 'Media Law for Broadcast Journalists' with tables which is an effective summary of UK media law in *Broadcast Journalism: A Critical Introduction*, Edited by Jane Chapman, Marie Kinsey, published by Routledge in 2008.

*Media Law* (Fully Revised 5th Edition 2008) by Andrew Nicol and Geoffrey Robertson: Harmondsworth: Penguin Books.

Or:

*McNae's Essential Law for Journalists* (20th Edition 2009) by David Banks and Mark Hanna ) Oxford: Oxford University Press.

Or:

*Law for Journalists* by Francis Quinn (3<sup>rd</sup> Edition 2011) London: Pearson Longman.

There are two recommended small books and costing about £6 on discount that provide an excellent and clear discourse on the key subjects of free speech and privacy:

Free Speech: A Very Short Introduction, by Nigel Warburton, (2009) Oxford: Oxford University Press

Privacy: A Very Short Introduction, by Raymond Wacks, (2010) Oxford: Oxford University Press.

*Media & Entertainment Law* by Ursula Smartt (2011) London & New York: Routledge.

*Journalism Ethics and Regulation* by Chris Frost (3rd Edition 2011) London: Pearson Longman.

*Ethics for Journalists* by Richard Keeble (2nd Edition 2008) London: Routledge.

*The Ethical Journalist* by Tony Harcup (2007) London: Sage.

*Reputations Under Fire* by David Hooper (2008) London: Sphere Books.

*Law and the Media* by Sara Hadwin and Duncan Bloy, 2007, London: Sweet & Maxwell.

*Media Law* by Duncan Bloy (2006) London: Sage Course Companions.

**For further understanding of the system of government, politics and freedom of expression history**

*Politics UK* edited by Jones, Kavanagh, Moran and Norton (7<sup>th</sup> Edition 2010) Person Longman.

*Local Government in the United Kingdom* by David Wilson and Chris Game (5<sup>th</sup> Edition 2011) London: Palgrave Macmillan.

*Messages- Free Expression, Media and the West from Gutenberg to Google* by Brian Winston (2005) London: Routledge.

**US Media Law**

*Communications Law- Liberties, Restraints & the Modern Media* by John D. Zelezny (6<sup>th</sup> edition published in 2010) London, New York: Wadsworth/Thomson Learning.

*Media Law and Ethics* by Roy L. Moore & Michael D. Murray (3rd revised edition 2008) New York: Lawrence Erlbaum Associates Inc.

*Electronic Media Law and Regulation*, by Kenneth C. Creech, (2007 5<sup>th</sup> Edition) Oxford & New York: Elsevier.

*The Law of Journalism and Mass Communication* by Robert Trager, Joseph Russomanno, Susan Dente Ross, (2009 2<sup>nd</sup> Edition) Washington D.C. USA: CQ Press.

### **Comparative and International Media Law**

*International Libel Privacy Handbook: A Global Reference for Journalists, Publishers, Webmaster and Lawyers* edited by Charles J. Glasser Jr. (2<sup>nd</sup> edition 2009) New York: Bloomberg Press.

*Carter-Ruck on Libel and Privacy* edited by Cameron Doley and Professor Alastair Mullis (6<sup>th</sup> Edition 2010) London: LexisNexis

The Department is fortunate in having within its faculty two academics who have published significant texts on media and cultural studies ethics. From an intellectual point of view they merit reading as they represent the cutting edge of original thinking and writing in this area.

*The Ethics of Cultural Studies* by Joanna Zylinska published in 2005 by Continuum and *Listening Beyond The Echoes- Media, Ethics and Agency in an Uncertain World* by Professor Nick Couldry published in 2006 by Paradigm. In particular it is recommended that students read chapter 3 'Ethics and 'Moral Panics' and chapter 4 'Ethics, Violence and the Media' in *The Ethics of Cultural Studies* and chapter 6 'Beyond the Televised Endgame?- Reflections after 9/11' and chapter 7 'Toward a Global Media Ethics' in *Listening Beyond The Echoes- Media, Ethics and Agency in an Uncertain World*.

The position on a wide range of issues can change fundamentally week by week. The tutor will endeavour to regularly provide news up-dates on media law through additions to the learn.gold resources.

### **Recommended Journals**

*The Journal of Media Law*, edited by Eric Barendt, Thomas Gibbons, & Rachael Craufurd Smith, (established 2009) Oxford: Hart Publishing.

*Media Lawyer*, edited by Mike Dodd, (established 1994) London: The Press Association.

*The News Media & The Law* at <http://www.rcfp.org/news/mag/index.php>.

*Ethical Space- The International Journal of Communication Ethics*, Abramis Academic.

*Journal of Mass Media Ethics* published quarterly by Lawrence Erlbaum Associates.

## **CORE LECTURES**

### **Lecture One. Tim Crook**

**Course overview.** Why we have to be professional and knowledgeable about media law and ethics. The four key areas of applied skills: protection of reputation (libel and defamation); privacy (dignity, honour, 'personality rights' and human feelings, state security and corporate confidentiality); contempt (protecting criminal justice and civil law enquiries, ensuring right to fair trial and preventing media prejudice, breaching court orders); intellectual property (copyright and moral rights, 'fair dealing' for the purpose of current affairs reports, review and criticism, the different liability between literary/performance and image rights, and complying with licensing).



Why at Goldsmiths we have a comparative and international approach, focusing on the differences between US and UK media law, and the significance of European law influences from the ECHR (European Court of Human Rights in Strasbourg) and ECJ (Court of Justice of the European Union in Luxembourg).

A brief overview of the reason we have media law and ethical regulation: Moral and Political Philosophy. The Historical Development of Media Law. Religious and Philosophical roots of controlling the dissemination of information. Social and political development of customs and laws relating to communication. Plato, Aristotle, Epicureanism, Stoicism, Cynicism, Judeo-Christian ethics, Utilitarianism, Baruch Spinoza, Emanuel Kant, Jeremy Bentham, John Stuart Mill, Karl Marx, Subjectivism and Objectivism. Understanding Natural Law, Positivist Law, Rights Law, Critical and Racial Legal Studies, and the significance of feminist theory in relation to media jurisprudence.

**Topic/lecture 1 Relevant Essay Titles:**

- a) Publishing violent and distressing media sequences of terrorism actions is essentially unethical since it is an extension of terrorism. Discuss.
- b) We need less media law in the contemporary world because journalism and media are essentially political communications and an exercise of power in the public sphere. Discuss.
- c) The 'war on terror' proves that warring governments lie and deceive and are devoid of ethics. This means that any leaked information about the conflict should be released into cyberspace. Is this absolutism argument ethical?

**Guidance on writing essay titled 1a.**

Media ethicology, media jurisprudence, and media ethicism are large subjects and the essay invites you to apply the ethical doctrines articulated by the major philosophers Immanuel Kant, who is regarded as a deontologist, John Stuart Mill who is regarded as an altruistic utilitarian and Aristotle, who is seen as the originator of the virtue tradition and has inspired a contemporary movement of New Aristotelian ethicists. The essay title asks you analyse what appears to be a consequentialist assertion. The second statement appears to be a deontological assertion. You are then invited to discuss these through academic debate. The topic gives you the opportunity to apply these doctrinal positions in relation to the uncomfortable ethical decisions that UK broadcasters had to take when the kidnapers of Kenneth Bigley and Margaret Hassan tortured them and filmed their terror for release on the Internet. Bigley's execution by beheading was also filmed and transmitted on the Web. How should the decision to publish be determined ethically? Should you evaluate and give priority to the consequences of publication in terms of any good that could be achieved i.e. keeping the hostages alive, exposing any political injustice brought about by British involvement in the invasion and occupation of Iraq, or the harm that will arise i.e. the humiliation and indignity to the victims, the emotional agony and distress to their families, giving the terrorists 'the oxygen of publicity' and serving their propaganda objectives. Should you evaluate and give priority to the truth of the reality of what these videos represent, and investigate the motivation of the broadcasters? The risk of censoring the content of the videos, is that the broadcasters would be effectively covering up, or lying about the reality of what has happened to the captives, the impotence and ineffectiveness of British military security in Iraq (unable to protect its citizens). Such censorship could be considered meaningless in the context of an unregulated and uncensored Internet, where all the terror videos could

be seen by anyone and it is claimed that the video of Mr Bigley's beheading can still be viewed. Furthermore, any decision to broadcast the footage could have been motivated by the desire to exploit the voyeuristic sensationalist/entertainment value of the horror content and as this motive is immoral/amoral it is arguable that there can be no justification for publication. How does the virtue ethical doctrine apply in these circumstances? Do you believe that the best approach would be a morally consequentialist position in which you, as the editor, endeavour to reconcile the reporting of the story in terms of responsible news values without giving victory to the propaganda objectives of the hostage-takers or the United Kingdom government? Any decision by media organisations to cooperate with governments in media 'black-out' arrangements is fraught with moral philosophical and political philosophical dilemmas as was evidenced in the row over Prince Harry's deployment to Afghanistan.

#### **Relevant Media Sources:**

During the lecture you may see a sequence from Jason Burke's documentary 'Channel Terror'. Are you convinced that Al Jazeera were justified in taking a different approach to running the content of the Bigley and Hassan videos compared to ITN and BBC News? A copy of the entire programme is available in the library and a detailed summary of text of the programme content is available on learn.gold.

#### **Some Useful bibliography**

Chadwick, Ruth ed., *The Concise Encyclopaedia of Ethics in Politics and the Media*, 2001, 302.230174 CON, Oversize, (One copy.)

Christians, Clifford G. et al., *Media Ethics: Cases and Moral Reasoning*, 2003, 302.230174 MED, (Five copies.) Focus on Introduction- Ethical Foundations and Perspectives.

Day, Louis A., *Ethics In Media Communications: Cases and Controversies*, 2000, 302.230174 DAY, (Two copies.) Focus on chapters 1 Ethics and Moral Development, 2 Ethics and Society, and 3 Ethics and Moral Reasoning.

### **Lecture Two. Tim Crook**

**Introduction to Defamation law and Contempt Issues. Attacking reputation and creating prejudice.** Definitions. Explanations. Case Law. Defences in defamation. Contempt for journalists and their defences. What are the implications for journalists of the successful prosecution by the Attorney General in 2011 of 'tabloid' popular newspapers for their coverage of the police enquiry into the murder of Joanna Yeates in Bristol and the demonizing of her landlord, retired teacher Christopher Jefferies? How does media conduct in these events cross between contempt and libel? What are the similarities with the coverage of the Portuguese police enquiry into the disappearance of Madeleine McCann and the demonization of British ex-patriot Robert Murat? What are the implications of the English administrative court taking a serious view of the impact of online media prejudice in *AG v Associated Newspapers and News Group Newspapers* in 2011? Developments in statutory concepts and precedents- The defamation bill 2011-joint House of Lords and House of Commons select committee enquiry; recent cases concerning libel online, transnational jurisdiction, and Twitter. Key developments such as 'Innocent Dissemination' (1996) and the House of Lords ruling in 'Turkington' (2000). Analysing the development of the UK 'Reynolds' defence and its comparison with the US

Supreme Court case of Sullivan v New York Times. The implications of the 2006 House of Lords ruling in Jameel v Wall Street Journal. The case of George Galloway MP v Daily Telegraph. Comparing UK Libel Law with US Libel Law.

**Topic/lecture 2 Relevant Essay Titles:**

- a) The George Galloway v *Daily Telegraph* case demonstrates that there will always be a need to have England and Wales style libel laws to prevent the victimisation and persecution of individuals such as Kate and Gerry McCann, Robert Murat, and Christopher Jefferies. The US First Amendment defence established by Sullivan v New York Times 1964 would not be adequate protection. Analyse this line of argument.
- b) UK judges patronise jurors in overprotecting them from the potential impact of media publicity compared to the situation in the USA. Discuss.

**Guidance on essay Topic 2a.**

This essay requires you to examine and evaluate the current debates on English defamation law reform in the context of the High Court judgement by Mr Justice Eady and the Court of Appeal ruling supporting his decision. The central issues addressing the libel law reform debate and move by present UK coalition government to introduce a new defamation bill are addressed in the report by the UK Ministry of Justice Libel Working Group in March 2010 (Report and Galloway court rulings are available on learn.gold. *The Daily Telegraph* lost its case because their editorial coverage in 2003 accused Mr Galloway of near treasonable behaviour and being 'Saddam's little helper'. The paper was denied the public interest defence set up by the House of Lords ruling in Reynolds (1999). This defence was later strengthened; with judges being instructed not to second guess the editorial judgment of editors in the House of Lords judgement in *Jameel v Wall Street Journal* in 2006. But some media law commentators argue the defence has been weakened by the Court of Appeal Ruling in Flood v *The Times* in 2010. (available on learn.gold.)

The US first amendment libel defence for libelling public figures by mistake has a higher threshold of protection for journalists. In America, Galloway would have had to prove that the newspaper was either 'actuated by malice' and/or shown 'a reckless disregard for the truth.' He would have also had to prove that the libel actually damaged him financially if he wanted compensation. If the *Telegraph* honestly believed that the documents discovered in Baghdad were genuine and proof that Galloway had been receiving corrupt payments from Saddam Hussein's regime, were they not entitled to comment on their findings as part of a general right to freedom of expression? As George Galloway was an experienced and influential politician was he not powerful enough to give his rebuttal in the media and leave the general public to decide for themselves the veracity and reliability of the *Telegraph's* coverage? You may think his performance before the US Senate committee was clear evidence of his ability to match the power of negative media coverage. You have a strong range of library and course resources to support your research and preparation. Geoffrey Robertson QC and Andrew Nicol QC robustly analyse the significance of the Jameel ruling in 2006. (Robertson was the QC who successfully argued the case for *The Wall Street Journal*.) The differences in the US and UK libel systems are set out in the course textbook *Comparative Media Law and Ethics* and the chapter on 'Defamation in Detail', downloadable from the topic on learn.gold, and the Zelezny, Moore & Murray textbooks provide much detail and discussion about the US approach. Learn.gold also has specific topics setting out US and UK case law on libel. You should carefully consider written memoranda submissions to the House of Commons Select Committee enquiry

into press standards, libel and privacy. Many engage the debate over the problem of 'libel tourism.' You must appreciate that even if Galloway had been an American politician he could have sued the *Telegraph* in the English and Welsh system as he did the *Christian Science Monitor*, which was an American publication. This is sometimes known as 'libel tourism' and has been the source of much complaint in continuing debate over libel law reform. The situation has outraged US public opinion to the extent that many states and the US federal congress have passed laws making foreign libel court rulings against US citizens unenforceable in the American legal system.

**Relevant Media Sources:**

DVD resources: George Galloway wins libel trial- Channel Four News report and interview, Galloway's appearance before the US Senate Committee, BBC Four documentary on McLibel case. You will also need to research written memoranda and oral evidence being given to the House of Commons Culture, Media and Sport Select Committee enquiry into press standards, libel and privacy in 2009. The current defamation bill is being analysed and evaluated by a joint House of Commons and House of Lord select committee and has been receiving oral and written evidence at: <http://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-defamation-bill1/> The report of the Ministry of Justice's 'Libel Reform Group' published in March 2010 is an excellent resource on reform proposals as well as the website of the campaigning organisation Index on Censorship.

**Lecture Three. Angela Phillips**

**Ethical Judgments and Professional Codes for Media Practitioners.** BBC Editorial Guidelines. UK Ofcom code regulating television and radio content. Taste and decency in broadcasting and print. Regulating privacy for print and broadcast journalists. The operation of the Press Complaints Commission and its code of ethics. Ethical regulation is of enormous significance in professional media work. Newspaper/online and magazine employment contracts often include clauses requiring reporters/journalists to comply with the PCC code. All BBC employees are obliged to comply with their externally published editorial guidelines and the statutory regulator for all UK broadcasters (radio and television), Ofcom, applies a content code with the sanctions of reprimand, fines and the suspension of broadcasting licences. But the potential injustice and problems of 'ethical' regulation is being tested in the courts; hence the analysis in course materials of the case of British 'shock jock' radio presenter Jon Quant. The importance of ethical standards in journalism and media communication is emphasized by the fact that the course reader's first item is the British NUJ's code of ethics. The National Union of Journalists was the first British organization to advance a framework of ethical guidelines and has supported the idea of the importance and respect for individual ethical conscience for journalists and reporters working in media institutions. Angela Phillips engages in an interactive discussion workshop seminar and references the value of creating and publishing journalism that is intelligent, thoughtful of others and grounded in research, ethical and intellectual consideration. Her recent publications on this subject area inform the content of this session and include: 'An Ethical Deficit? Accountability, Norms and the Material Conditions of Contemporary Journalism' by Angela Phillips, Nick Couldry and Des Freedman in *New Media, Old News: Journalism and Democracy in the Digital Age* edited by Natalie Fenton, 2009, London: Sage;

'Transparency and the new ethics of journalism' in *Journalism Practice*, Vol.4, No.3, 2010; 'Transparency and the Ethics of New Journalism', in *Changing Journalism*, edited by Angela Phillips and Peter Lee-Wright, London & New York: Routledge, 2011.

Course convenor Tim Crook submitted evidence to the House of Commons enquiry into press standards, privacy and libel in 2009: 'Reforming UK libel, privacy and media standards through the creation of a 'Media Law and Restorative Justice Commission' in a constitutionally reforming 'Media Freedom and Restorative Justice Act' at:

<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcomeds/memo/press/m13002.htm>

**Topic/lecture 3 Relevant Essay Titles:**

a)The legal battle being waged by British radio presenter Jon Guant indicates that the UK's system of media regulation of content standards is too censorious compared with the position in the USA. Do you agree with this proposition?

b)For journalism to be truly professional, journalists need to be licensed and qualified by training and education and subject to financial, suspension and disqualification sanctions when their behaviour and publications cause harm. Discuss.

**Guidance on essay Topic 3a**

This essay invites you to focus on the Jon Gaunt, Talksport and 'health Nazis' spat with a councillor from Redbridge, London. Mr Gaunt, with the support of Liberty, challenged the human rights propriety of an Ofcom ruling that decided the broadcast offended its code on ethics in terms of being 'offensive.' The case raises a wider argument about the efficacy, legitimacy and purpose of secondary media law regulators such as Ofcom and the Press Complaints Commission. The former is statutory; the latter is voluntary. You would gain from widening your discourse by examining the arguments for and against the operation of the Press Complaints Commission, and in the context of regulation of broadcasting in the United Kingdom, the effectiveness and fairness of statutory media regulation. You have a range of sources to engage in your discussion. These include the chapter by Robertson and Nicol in the course reader along with the academic journal article by Professor Frost. You may think that Robertson and Nicol are rather scathing about the history and justice of UK print industry self-regulation. What do Robertson and Nicol have to say about statutory broadcasting regulation? The learn.gold topic gives you links to all the media regulatory bodies in the UK whose websites publish reports and adjudications. You can download the pdf of the PCC editor's codebook, which is a detailed reference tool on PCC precedents. The essay proposition invites you to focus on the justice and effectiveness of the remedies available to readers who believe they have been wronged by newspapers. Ofcom does impose penalties on broadcasters as a result of its statutory remit, but Robertson and Nicol have highlighted, that like the PCC, the victims of media misconduct have no right to compensation, which in the light of the experience of the listener who was the victim of the hoax by DJ Streetboy and Kiss100 FM in 2006 you might think was most deserved. The charity Mediawise commissions and publishes regular studies on the regulation of media ethics, some of which are available online from their website and others are published in book form and are available in the college library. Some significant empirical research into the operation of the Press Complaints Commission is available in the form of an academic journal article by Professor Chris Frost 'The Press Complaints Commission: a study of ten years of adjudications on press complaints' from *Journalism Studies*, Volume 5, Number 1, 2004, pp 101-114. [Available from College library e-resources] Powerful media celebrities are increasingly by-passing the PCC and seeking media privacy remedies in the courts,

largely as a result of the ECHR ruling in *von Hannover v Germany*, and the House of Lords judgment in *Naomi Campbell v MGN*. The Channel 4 programme *Hard News: Did you fake this film Mark?* investigates the ethical inadequacies of the 1996 Carlton television documentary on cocaine smuggling from Columbia *The Connection*, and the *Guardian* newspaper's exposé of the programme's fakery and deception. The then television regulator, ITC fined Carlton £2 million, but the weaknesses in the *Guardian's* coverage went unscathed. Even if there had been a complaint to the PCC, any remedy would have been a critical adjudication. You might like to consider the comparative justice meted out to the media institutions that had been in dispute over the ethics of media conduct and publication in relation to the programme. Your essay could engage the original recommendations of the course convenor Tim Crook who argues that the Press Complaints Commission non-retributivist and 'restorative justice' approach should be expanded to transform all UK media law and regulation into a constitutional settlement giving priority to freedom of expression and replacing the chilling effect of legal costs and damages with a capped compensatory culture.

**Useful media source:**

'Hard News: Did you fake this film Mark?' Ray Snoddy, presenter, C4, 1998. 8833 video, Goldsmiths Library, AV desk, one copy.

**Lecture Four. Tim Crook**

**State Security and Secrecy, or Spooks and Scribblers.** Britain's involvement in the US Bush administration defined 'War on Terror' after the 9/11 terrorist incidents in America has brought into sharp focus the balance between freedom of expression and the concept of 'national security.' Central to this topic has been the legal struggle by Al Qaeda suspect Binyamin Mohammed against Britain's intelligence agencies and the Foreign Office. This is also in the context of litigation and enquiries into the conduct of UK intelligence officers and service people into their complicity in torture and abuse of civilians and combatants. These processes have caused tension between the judiciary and executive about the line to be drawn in relation to 'open justice.' Is executive and legislative oversight of intelligence and special forces involvement in the treatment of prisoners of war, civilians in conflict, and terrorist suspects (through extraordinary rendition) sufficient? Whilst MI5 and MI6 depend on the Official Secrets Act as a shield against scrutiny, in the USA, the CIA, FBI and other agencies have used the PATRIOT Acts and previous provisions of 'state secrets privilege' and 'material witnesses' to maintain a cloak of secrecy on their enquiries and investigations into 'terrorism,' and other threats to the USA. All of these issues generate a debate on the influence of the intelligence agencies and espionage on notions of media freedom and issues of censorship in the 'global war on terrorism.'

This topic is supported by teaching resources on: Confidence and injunctions; Confidentiality and the administration of justice; Confidentiality and criminal investigations; Confidentiality and National Security. Other resources analyse key Official Secrets Act prosecutions such as: Jonathan Aitken, the ABC trial, Sarah Tisdell, Clive Ponting, David Shayler, Katherine Gunn, Derek Pasquil, David Keogh, and Leo O'Connor. Media law and politics as illustrated by the death of Dr David Kelly and the Hutton Enquiry. How was 'national security' used by the New Labour government,

headed by Prime Minister Tony Blair, to determine the issues in the death of Dr David Kelly and the subsequent Hutton Enquiry? What have we learnt from the Butler and Chilcot Enquiries into the use and misuse of intelligence by executive government?

**Topic/lecture 4 Relevant Essay Titles:**

a) When would you surrender the identity of your confidential sources in your role as a journalist? Discuss your answer with reference to UK and US case histories.

b) A British intelligence officer working for MI6/SIS morally objects to obtaining information from a female terrorist suspect being tortured in a country she had been 'rendered to' which uses these techniques of interrogation. But the information promises to prevent 9/11 style attacks on London. Should the law allow him to 'leak' what is going on to the British media?

**Guidance on essay 4a**

This essay question invites you to explore the media ethics and law concerning the protection of sources. Nick Martin-Clarke broke the deontological code of the NUJ that when a pledge of confidentiality has been agreed or implied, sources must be protected. In the course reader you can read his justification for reporting his source's confession to murder to the police and agreeing to give evidence as the chief prosecution witness. In British law, there is no positive legal duty to report somebody's confession to murder to the police. The course reader also includes an article by the course convenor on the ethical and legal issues arising out of the Andrew Gilligan and Dr David Kelly affair investigated by Lord Hutton during the public enquiry. There is an ironic parallel in the USA where the obligation of a journalist to protect her source was played out in the context of the invasion of Iraq and allegations of manipulative propaganda. Judith Miller of *The New York Times* was prepared to go to jail in order to protect a senior White House official who had revealed that a former ambassador, raising questions about the veracity of US claims that Iraq had weapons of mass destruction, was married to a CIA agent. Two key Supreme Court rulings setting out the US legal position on protection of sources are *Branzburg v Hayes*, Supreme Court of the United States, 1972, 408 U.S. 665 and *In Re: Grand Jury Subpoena, Judith Miller*, U.S. Court of Appeals for the District of Columbia Circuit, 2005. You should visit the online website for the periodical journal *The News Media & The Law* at <http://www.rcfp.org/news/mag/index.php>. You should consult the relevant chapters on protection of journalist sources in the recommended course textbooks, in particular Robertson and Nicol's *Media Law*. The 1996 ECHR ruling in *William Goodwin v UK* is clearly relevant. This is also true of the House of Lords ruling in *Attorney General v Guardian 1984*, where *The Guardian* faced sequestration of its assets if it did not hand over secret documents it had received anonymously, and which were later traced to a foreign office clerk, Sarah Tisdall, subsequently jailed for 6 months. Another case worth considering is the Court of Appeal ruling in *Mersey Care NHS Trust v Ackroyd (No 2)* in 2007. This is a more recent British case investigating the right of a journalist to withhold the identity of his source on application by a public authority. In the USA, the courts have even supported the right for a journalist's source to sue and collect damages if any agreed confidentiality has been negligently or deliberately breached by the journalist. You are also entitled to apply ethical doctrine in your analysis of the way journalists should discharge their duties to confidential sources of information. You can also engage European authorities. For example in 2010, the Grand Chamber of the ECHR re-affirmed a strong protection for journalists in relation to their sources in Holland after an earlier decision had found in favour of the police in an

enquiry into unofficial car racing. For a wider cultural and anthropological enquiry into the subject of 'Journalists and Their Sources', see an impressive article by Isabel Awad from *Journalism Studies*, Vol. 7, No 6, 2006. [available online via Goldsmiths college library e-resources]

**Relevant Media Sources:**

John Ware's 'Panorama' documentary on Andrew Gilligan and the BBC's reporting in the wake of the Hutton Enquiry. During the seminar you will view a short sequence highlighting the protection of source issues in the relationship between Gilligan and Dr. David Kelly.

**Guidance on essay 4b**

This essay offers you an opportunity of investigating the struggle of secret service whistleblowers to describe how espionage and the 'secret state' operate. A ruling by the UK Supreme Court in January 2010 in the case of *A v B* indicates that intelligence agents and officers have a considerable mountain to climb in challenging any official ban on the expression of their anxieties or career histories. But more particularly the Herculean battle between extraordinary rendition and torture victim, Binyamin Mohammed, with intervention by the British media and Britain's intelligence agencies over the release of CIA evidence of his alleged ill-treatment provides you with a compelling and dramatic case history. By February 2010 the struggle emerged as an explicit conflict between the Judiciary, the UK Security Service and executive government. The relevant court rulings are available on learn.gold.

It is argued that in Britain, the Official Secrets Acts have been repeatedly used by governments to suppress revelations that were, and are, politically embarrassing, rather than genuine threats to National Security. Consequently the focus of your analysis could investigate whether the law in this area has served to protect the country from the external threat of spying and espionage, or whether its main purpose has been to protect executive government from the political embarrassment of journalistic scrutiny as the result of whistle-blowers revealing injustice, incompetence and matters of public interest. David Shayler is one of two recent high profile British intelligence officers who have tried to expose iniquity. The other, Richard Tomlinson, who worked for SIS was jailed for one year and claims to be subject to continuing harassment by MI6 allied agencies abroad. He published the controversial book *The Big Breach*, Edinburgh: Cutting Edge Press in 2001. In your analysis of the intelligence agencies you should investigate whether they serve to protect the country from the external threat of 'enemies' in war or in peace. The first Official Secrets Act, in 1889, legislated for a public interest defence, but by the time of the moral panic over the Kaiser swamping Britain with spies, in 1911, future OSAs would exclude any such defence, and up until 1989 would impose strict legal liability to journalists who simply received official information. The Public Interest Disclosure Act 1998 provides no protection for members of the intelligence agencies as they are among the excluded categories. The key text to evaluate is the House of Lords ruling in *R v Shayler*, 2002, in which the former MI5 intelligence officer was denied a public interest defence. The impact of that decision was made poignantly resonant in the BBC 2 documentary broadcast in January 2003 within days of Shayler being jailed for 6 months by Mr Justice Moses. Other relevant court rulings that are worth consulting include the House of Lords ruling in 1984 in the *Guardian/Sarah Tisdall* case, and the ECHR rulings in *Guardian Observer v United Kingdom* over Peter Wright's *Spycatcher* revelations in 1991. The House of Lords ruling in *Attorney General v George Blake* in 2000 is the latest and most relevant ruling on the position of former intelligence officers seeking to profit from whistleblowing. A permanent injunction against David Shayler was



sustained by Mr Justice Eady in *Attorney General v Shayler* [2006] All ER (D) 436 (Jul). One previous result of this injunction had been the prosecution of *Punch* magazine for contempt of court when it published an article by Shayler, and the magazine's appeal to the House of Lords in 2002 was unsuccessful. A further manifestation of the absence of a public interest defence for 'crown servants' resulted in the prosecution and conviction of David Keogh and Leo O'Connor, a Downing Street civil servant and House of Commons researcher leaking and receiving a high level political memo. In an appeal, the Times and other media groups unsuccessfully challenged a perpetual prohibition of any reporting of a cross-examination exchange that accidentally took place in open court at the Old Bailey when Keogh and O'Connor were on trial: (*Re Times Newspapers Ltd* [2007] EWCA Crim 1925) The Law Lords ruling in *Attorney General v Punch Ltd* and another [2002] UKHL 50 is certainly worth reading. Shayler's former partner, Annie Machon was able to explore many of the issues that Shayler wished to discuss in public, in her book: *Spies, Lies and Whistleblowers* (2005) Sussex: Book Guild. The contrasting position in the USA is, of course, best referenced by the Supreme Court case, *New York Times Co. v United States*, 1971, 403 U.S. 713, generally known as the Pentagon Papers case. You should also consider the case of former CIA officer Frank Snepp who, like David Shayler and Richard Tomlinson, discovered in *Snepp v. United States*, 444 U.S. 507 (1980), that the US Supreme Court was not prepared to allow US intelligence agencies the right to publish information about their operations and secret service activities. In consulting all the textbooks on the subject you will find many contrasting opinions, and interpretations. You might also like to consider the steps the state of Israel took to deal with the whistleblower Mordachai Vanunu, who after revealing the secrets of Israel's nuclear weapons programme, was lured by a honey-trap to Rome, drugged and kidnapped to Israel, tried in secret, held in solitary confinement for 18 years and even after his release, is banned from meeting foreign journalists. The learn.gold topic resource contains a very detailed history and discussion on State Security by the course convenor, Tim Crook, and there is a sound interview with David Shayler and Annie Machon conducted by former MA Radio student, Nadia Ramrayker several years ago, that has been uploaded to learn.gold. This is an essay topic, offering the student an opportunity to conduct a considerable amount of research to expand the dimensions and sources for analysis and argument.

**Relevant Media Sources:**

David Shayler and his Official Secrets Act trial, BBC Two, January 2003. Episode 2 of 'True Spies' by Peter Taylor- the infiltration of BNP.

**Lecture Five. Tim Crook**

**Media Ethics debates: bribes, phone-hacking and cronies.** The 2011 Metropolitan police enquiries into *News Of The World* journalists' and private detective unlawful interception of mobile phones and the bribing of police officers for information represent the most serious moral panic, ethical and legal crises for British popular journalism in living memory. With the arrest of journalists up to the position of senior group executive and editor/managing editor, there is the possibility of criminal charges and prosecution in Crown Court trials. The 'Hackgate' scandal, propelled and generated by the investigative journalism of Nick Davies at the *Guardian* and legal advocacy of solicitor Mark Lewis generated a traditional 'moral panic' in politics and culture with the revelation that the

mobile phone of a child abduction and murder victim, Milly Dowler, had been 'hacked' and messages deleted so that people working for the *News Of The World* could hear more messages sent into the missing girl's electronic mailbox. This is a complex and intense intersection of media law, ethics, politics, and power. What are the criminal offences being investigated? What has been the role of journalism training in media law and ethics, media regulation and moral imperatives in these scenarios? What has been the significance of the voluntary closure of Britain's biggest selling Sunday newspaper by a foreign media baron in response to the 'moral panic'?

This debate is contextualised by the three strands of teaching and study in the Goldsmiths media law curriculum and set book *Comparative Media Law & Ethics*: media ethicology (moral philosophy of journalists); media jurisprudence (political and legal philosophy of journalists) and media ethicism (journalistic belief systems or their ideologies). The tension between idealism and materialism. The relevance of moral consequentialism and the role of the journalist as courtier. The course provides resources and study materials for three significant case histories exploring legal, cultural and ethical issues relevant to journalistic conduct: The case and trial of black anti-Slavery activist Robert Wedderburn- accused of blasphemy and seditious libel. The case and trial of campaigning editor W. T. Stead of the Pall Mall Gazette. The case and trial of Emile Zola and 'J'accuse'- resisting the forces of Anti-Semitism.

**Topic/lecture 5 Relevant Essay Titles:**

a)The photographing of the dying Diana, Princess of Wales after being involved in the accident in Paris in 1997 and the *News of the World's* involvement in the hacking of the mobile phone of child abduction and murder victim, Milly Dowler, have been justifiable turning points in the legal toleration of unethical and unacceptable standards of British popular journalism. Analyse this statement and evaluate changes in media law and regulation stemming from these events.

b)Would the *Guardian* have been justified in hacking into the mobile phone of a *News of the World* journalist in order to discover the Sunday newspaper's involvement in the unlawful interception of murder victims such as Milly Dowler, and those who died in the USA on 9/11 and in London on 7/7?

**Guidance on essay 5a**

This essay question gives you a rich opportunity to explore the ethical, legal and cultural studies issues arising out of the current scandal described as 'Hackgate'. The course-book provides many references and passages about the impact of the death of Diana, Princess of Wales on public and political opinion towards the popular media's harassment and invasion of privacy of public figures par excellence. It might be possible to argue that there has been jurisprudential change as a result of the death of Diana. You should evaluate the significance and impact of Resolution 1165 of the Council of Europe in 1998 and the subsequent success of Princess Caroline of Hannover in her ECHR actions against photographers taking pictures of her and her family in public places. *VON HANNOVER v. GERMANY* - 59320/00 [2004] ECHR 294 (24 June 2004) at <http://www.bailii.org/eu/cases/ECHR/2004/294.html>. J K Rowling's successful action on this principle in the English appeal court could be seen as a result of these developments. *Murray v Big Pictures (UK) Ltd* [2008] EWCA Civ 446 (07 May 2008) at <http://www.bailii.org/ew/cases/EWCA/Civ/2008/446.html>. Another important appeal court case could be the ruling in favour of Esther Thomas against the *Sun* newspaper in establishing that the content of media publication can amount to unlawful harassment under the Protection of Harassment Act 1997. *Thomas v News Group Newspapers Ltd &*

Anor [2001] EWCA Civ 1233 (18 July 2001) at <http://www.bailii.org/ew/cases/EWCA/Civ/2001/1233.html>. You next need to evaluate the implications of the *Guardian's* revelation that Milly Dowler's mobile phone was 'hacked' on behalf of the *News of the World* after she had been murdered and giving false hope to her family that she was still alive. Has the moral panic and outrage at 'tabloid media' behaviour reached a similar dimension as that which followed Diana's death after being pursued/followed by paparazzi photographers in Paris in 1997? Are they on the same scale? In your analysis you may need to distinguish between the breaking of existing laws for which there is no public interest defence for journalists and unethical behaviour that leads to legal change. What has been the impact of the scandal on the Murdoch family controlled and global News International Corporation and News Group newspapers in Britain? The essay question asks you to analyse where the political, social and legal responses have been justifiable. In this regards you can reference the development of Lord Justice Leveson's enquiry and the debate among leading moral entrepreneurs of journalistic ethics about the potential backlash on media freedom. The move by the Metropolitan Police to arrest a detective for allegedly leaking information about their investigations into *The News of the World* to the *Guardian* and the unsuccessful legal attempt to compel the *Guardian's* reporters to reveal their sources. The articles by former *Guardian* editor Peter Preston at <http://www.guardian.co.uk/media/2011/sep/11/ethics-arent-the-whole-story-when-the-news-is-really-big?> and *Independent* newspaper commentator Stephen Glover at <http://www.guardian.co.uk/media/2011/sep/11/ethics-arent-the-whole-story-when-the-news-is-really-big?> may be of assistance.

#### Lecture Six. Tim Crook

**Privacy: my right to visit brothels, snort cocaine, commit adultery and indulge in S & M without the scrutiny of your public interest.** It might be argued that the continuing conflict between 'privacy' and 'freedom of expression' rights represents the most acute battle in British media law over the last 50 or even 100 years. It commenced with the enactment of the UK Human Rights Act 1998 from October 2000 which meant that the European legal standard of balancing 'freedom of expression' with 'privacy' was introduced into the country's legal system. It has meant the British tabloid media have been losing the power to publish 'kiss'n tell' stories from the private lives of public figures and celebrities and the more serious media such as the *Guardian* and the BBC have been finding investigative enquiries into what they regard as 'public interest' issues blocked by prior restraint injunction. The *Trafigura* case generated a political row about 'superinjunctions'; extended and developed when it emerged that powerful international celebrities in the world of sport, banking and politics could obtain gagging injunctions to conceal morally questionable aspects of their private lives. And the English judges' approach to the developing 'privacy' law and imposition of injunctions has been challenged and rendered meaningless by the use of Twitter and social networking on the Internet. Central to the issue is what is and who determines the public interest? Is it what always interests the public or what should be decided as a matter of public interest by 'responsible' elites: democratically elected politicians, independent judges and the great, the good, the beautiful, or the ugly?

This topic covers and provides resources on the comparison between the USA and UK. Historical development of the legal concept. Analysis of case histories: Naomi Campbell v Daily Mirror Group. Mosley v News of the World. The John Terry injunction and further injunctions relating to Premiership football stars. Impact of European Court of Human Rights jurisprudence. The development of UK privacy through primary and secondary law. The role of moral panics in galvanizing the ideology of privacy. Equivocating the trump card in civil and constitutional rights.

**Topic/lecture 6 Relevant Essay Titles:**

- a) Privacy can only be remedied by prior restraint since subsequent damages cannot restore the confidentiality of the personal information put into the public domain. What are the legal implications of this statement in the context of recent and current legal cases in Britain and Europe.
- b) Who should determine 'the public interest' that will block the publication of truthful information in a democratic society?

**Guidance on essay 6a.**

Your central focus is undoubtedly the campaign by Max Mosley to establish at the European Court of Human Rights that the media are obliged to give notice of publication to potential victims of invasions of privacy. He was unsuccessful and the court's ruling *MOSLEY v. THE UNITED KINGDOM* - 48009/08 [2011] ECHR 774 (10 May 2011) is available online at <http://www.bailii.org/eu/cases/ECHR/2011/774.html>. Mosley plans to appeal to the ECHR Grand Chamber at Strasbourg. The course Reader contains some useful articles on the implications of ECHR privacy rulings on UK cases. Your course convenor has also written an article for *Media Lawyer* that is included on the course book's companion web-site <http://www.ma-radio.gold.ac.uk/cmle> along with a briefing on a forthcoming ruling by the ECHR's Grand Chamber on media privacy issues in relation to celebrities in Germany.

This essay requires you to fully grasp the entertaining and fascinating developments in UK media privacy law, particularly concerning the British tabloid tradition of running 'kiss and tell' stories and exposing the sexual peccadilloes of celebrities, politicians and public figures. Clearly, you should be directed to some of the compelling and relevant case histories where the twists and turns in judicial interpretation can be demonstrated. They range from the Gary Flitcroft case *A v B (a company) and another* [2002] EWCA Civ 337, *Theakston v MGN Ltd* [2002] EWHC 137 (QB), *Mazher Mahmood v George Galloway and Ron McKay*, 2006, to *Between CC and AB* [2006] EWHC 3083 QB, *Lord Browne of Madingley v Associated Newspapers Ltd*, [2007] EWHC 202 (QB), *McKennitt and others v Ash and another* [2006] EWCA Civ 1714, and most recently and spectacularly, *Max Mosley v News Group Newspapers (News of the World)* [2008] EWHC 1777 (QB). You will obviously need to discuss and analyse the shift in judicial attitudes to the exposure of infidelity and non-mainstream sexual proclivities. Most of the cases involve the adventures of tabloid and red-top newspapers, but the Niema Ash and Loreena McKennitt case concerns the impact of shifting sands on privacy in relation to the publishing world. The Canadian singer's success in injuncting publication of significant passages of the book by her former friend and employee, means that the book has been withdrawn from publication and distribution. All of the recent editions of media law textbooks discuss the rapid changes in media privacy driven, primarily by the House of Lords ruling in *Naomi Campbell v MGN* 2004 and ECHR judgment in *Von Hannover v Germany* 2004. You may also like to consider the damage that increasing media privacy law, stimulated by judicial activism to control what is regarded as tabloid

prudence, is having on serious public interest investigative journalism. The ruling in *T v BBC* in 2007, when a socially significant documentary, exploring the dilemmas of forced adoption applied to mothers with learning difficulties, was effectively blocked by Mr Justice Eady's ruling. All of these precedents are available on learn.gold and a discussion of their impact and significance is engaged by the course convenor in his written resource on 'Privacy Law in Detail.'

The topic is undergoing dynamic and rapid development. In 2010 following the US Tiger Woods' scandal where the golfing star's infidelities were covered in the American media, by contrast sporting celebrities in England have been able to avail themselves of the privacy 'superinjunction.' In the case of former England soccer captain John Terry, he was not successful, but other soccer celebrities have secured the protection of the courts. You are more than welcome to approach your academic analysis from the point of view of academic feminist theory. For example it could be argued that the privacy injunction process is misogynistic in protecting the exploitation and sexual objectifying of women by powerful male celebocrats whose indulgence in infidelity is privileged by a morally ambiguous construction of 'private dignity and honour' by the legal system.

It might be argued that there is evidence of public resistance to privacy for powerful celebrities wishing to cover up personal moral turpitude. Thousands of Twitter subscribers named a high profile premiership footballer said to be the beneficiary of a 'superinjunction' in 2011. Despite being named in the Scottish papers and in the House of Commons, the English High Court has tried to sustain the prohibition on publication. Even the Lord Chief Justice has warned that any reporting of naming in the House of Commons could still be contempt of court.

The privacy debate has been fully engaged in the House of Commons Select Committee enquiry and its website contains significant written memoranda on the subject including Sir David Eady's speech in February 2009 where he set out his jurisprudential motivation and reasoning when dealing with privacy disputes. You can also contrast his position with the attack by the editor of the *Daily Mail*, Paul Dacre on Mr Justice Eady. The US Supreme Court position on privacy is considerably more well-developed through a number of powerful case histories and it would appear that the First Amendment ensures that freedom of expression is given much greater priority.

#### **Relevant Media Sources:**

DVD resources: Media reports on Max Mosley libel case with Sky News interview with Witness E, John Leslie, 'My Year of Hell', Sky One, 2003. Channel 4 documentary on the role of the photographers in the death of Diana, Princess of Wales, 2007.

#### **Lecture Seven. Tim Crook**

**Media Law and the world: ethnocentrism, criminological tourism and rose-tinted spectacles.** The international dimension of media law focusing on the control of the right to communicate and receive information transnationally and within the 'families of legal jurisdiction'- common law, civil law, socialist law and Islamic law. The topic varies in its focus year by year in relation to the media law jurisdictions of the sovereign states of Japan, India, China, Saudi Arabia and France. What are the key distinctions, similarities, and comparisons between the defamation, contempt, national security and privacy laws of these jurisdictions? To what extent does the qualifier of freedom of the media depend

on the rule of law being subject to secular and democratic constitution, political ideological power, or religious authority and power? How important are the cultural, historical and social contexts? To what extent are we realizing global transnational freedom of expression rights manifested in the warehousing of information provision in cyberspace? The Wikileaks scenario is an important case history as is the Icelandic Modern Media Initiative and other projects to provide 'safe harbour' for information hosting that transgresses the media law of one or several sovereign legal jurisdictions. Iceland's legislative and constitutional initiative is a reaction to the realization that banking confidentiality supported by court order generated secrecy that prevented its citizens fully appreciating the conduct of its biggest bank that would eventually result in the catastrophic financial collapse of 2008. Establishing a safe haven for media freedom in the world means that it has to contemplate the setting up of technological cyber frontiers that can resist information warfare and Internet cyber-attack. The transnational issue over contrasting standards of freedom of expression value is also highlighted by the pressure imposed on Google, Yahoo, and Blackberry by authoritarian governments seeking access to encryption codes, and the identity of cyber pseudonymous communicators. For example the English judiciary maintains an injunction on the identity of a Premiership footballer despite his unmasking in Westminster Parliamentary proceedings and the Attorney General and the footballer's lawyers supports the identification of Twitter account users who named him in their thousands. Legal proceedings were taken out via the California state jurisdictional courts. However, in Scotland the footballer was identified by the mainstream media because his lawyers did not seek and obtain the equivalent of an injunction, known as an interdict, in the Scottish legal system. The AG argues that each and every individual Twitter publisher in England and Wales is liable for contempt of court. In the USA, that benefits from the First Amendment constitutional protection for free speech, US newspapers are successfully protecting the identity of anonymous speakers on their Internet news websites by engaging the shield laws introduced to protect journalist sources.

**Topic/lecture 7 Relevant Essay Titles:**

- a) Compare and contrast the media law of a minimum of two and a maximum of four different countries.
- b) The globalisation and hypermodernism of media communications means that sovereign state media law jurisdictions have become an irrelevance. Analyse this proposition in the light of Wikileaks and/or the Icelandic Modern Media Initiative.

**Guidance on essay 7a**

This essay question asks you to compare the media law of up to four different countries, though you can also compare two, or three. You are being invited to analyse whether their respective media laws are cultural constructions linked to each country's history, politics and social values. You are entitled to use, as one of the comparison countries, the media law of the United Kingdom, the USA, or any country of your choice, that may also include your own home country. Clearly the analysis would be served by an attempt to explain why aspects of the media law are intrinsic in the context of national social and cultural history. This topic is served by extensive learn.gold resources. There is an analysis of the media laws of Japan, India and France in the lecture notes and the chapter 'The Media Law of Japan, India and France' that is downloadable from the relevant topic on learn.gold. There is also specific bibliographical guidance linked to the Goldsmiths library catalogue. You might also find the brief modern historical timelines useful in order to familiarise yourself with the cultural context of each country. The question invites you to engage with media and cultural studies theory from other courses

on your programme so that you might find that there are links between the film and media culture and the nature of the media laws in either country. The media law issues could involve the policing of taste and decency in films. How do history, geography, religion, philosophy, economy and media culture determine the nature of media law in the respective countries? The learn.gold resources for 'Media Law of Japan', 'Media Law of France', and 'Media Law of India' have Internet links to their major media institutions and these may provide an opportunity to investigate further the social and cultural dynamic between media culture and media law. You may find Chapter Six 'Ethics and National Identity' of Joanna Zylinska's *The Ethics of Cultural Studies* an inspirational resource for excellent academic writing of the national cultural context of ethics. You may find it useful to engage the academic concepts of moral relativism and ethnocentrism in your analysis. Briefly, moral relativism posits that there can be no media ethical truths other than those that are constructed by the social and cultural context. Ethnocentrism is the judging of another society's law and ethics by the precepts, preconceived notions and belief in the superiority of the legal system and ethics of the society of the academic researcher. If in your argument you wish to explore what each country could gain from borrowing or importing aspects of each other's media law system, you should think about qualifying your recommendations with the risks and dangers of such a process.

**Useful Bibliography relating to media law in Japan, India, China, Saudi Arabia, France and other countries:**

*International Libel Privacy Handbook: A Global Reference for Journalists, Publishers, Webmaster and Lawyers* edited by Charles J. Glasser Jr. (2nd edition 2009) New York: Bloomberg Press.

*Carter-Ruck on Libel and Privacy* edited by Cameron Doley and Professor Alastair Mullis (6th Edition 2010) London: LexisNexis

**Relevant Media Sources:**

Viewing of extract of censored 'Sorrow and the Pity', French Television documentary by Marcel Ophuls, 1968, and extracts from the films *Lucien Lacombe* (1974) and *Au Revoir Les Enfants* (1987) by Louis Malle on the representation of collaboration in occupied France during the Second World War.

**Lecture Eight. Tim Crook**

**The Legal Problematizing of Journalism and the Commodification of Information.** **Alternative title: 'Criminalizing journalists and information is property'**. English media law has a developing tradition of injunction power against media publication that is far beyond that entertained or supported by other common law jurisdictions such as the USA or Scotland. This includes 'censorship' bans on publication of court proceedings that are also retrospective as well as contemporaneous and in future time. The English courts have also developed the concept of the classes of injunction that are binding on all media as unnamed third parties with or without service, *contra mundum* (against the world, everybody and everywhere for all time until the court decides to change the terms of the application following representations), and the superinjunction, which is a prohibition on dissemination or communicating to anyone the very existence and terms of the original injunction. Not only is the court order used as a gagging arm of the

intelligence services via the Official Secret Acts on matters concerning 'national security', but it is being increasingly used to silence the media as part of 'crime control' rather than open justice provision. The concept of the all-encompassing 'Mary Bell' order has been extended to other categories of notorious and convicted criminal on their release from prison including child killers such as Mary Bell herself, Jon Venables and Robert Thompson (the 10 year old murders of 2 year old Jamie Bulger) and relatively minor miscreants associated with notoriety such as Maxine Carr (the partner of double child killer Ian Huntley). The legal system is applying censorship provisions in anticipation of an expectation of violent deviant behaviour by persons unknown. In the process, terrorist suspects are receiving continuing statutory and common law anonymity secrecy protection. But the topic also explores the actual and potential consequences. Social witch hunts of women suspected of being Maxine Carr and vigilante action against 'Islamist terrorist suspects' by far right extremists leads to misogyny, and racist persecution of victims of mistaken identity.

The idea of protecting and concealing/controlling media information due to legal commodification as property in copyright and intellectual property rights jurisprudence is a further exploration of this topic. Copyright and IP determines what can be included or afforded as media content. The UK Copyright Designs and Patents Act 1988 has been substantially changed and reformed by European Union directives and legislation so that property rights in information products have been extended from 50 years *post mortem auctoris* (after the death of the author) to 70 years pma. Commodification of information and trade in intellectual property is substantially affected by global and transnational agreements from the Berne Convention of 1886 to TRIPS (Agreement on Trade Related Aspects of Intellectual Property Rights 1994), WIPO (The World Intellectual Property Organisation in Geneva- a UN organization). In the result journalists and media communicators only have limited legal 'licenses' to use a wide range of categories of information and multi-media in their publications- these are defences such as 'fair dealing' (UK) and 'fair use' (US) for criticism and review or news and current affairs reporting.

The tension is in securing income and remuneration for writers/artists/journalists/photographers/composers/musicians/performers against the receiving and expression rights of people in society. Associations of publishers and producers in all media lobby and litigate to assert and extend commodification of their 'products' particularly in the new information world of global cyberspace. The tension is represented by the successful campaign for music composers, performers and publishers to extend the duration of music copyright in the European Union from 50 years to 70 years, and the *creative commons* movement that seeks to widen and extend the research use/personal and file to file sharing rights of individuals. The transnational and global dimensions of this struggle have led to the arrest and attempted extradition to the USA of British student Richard O'Dwyer for alleged copyright infringement by offering links to other websites carrying unlicensed streams of tv shows and films on his website TVShack. Other cause célèbres include: The Pirate Bay case in Sweden- currently being fought through a legal appeals process where three young administrators and an investor in the BitTorrent tracker site were sentenced to one year in jail and millions of dollars in fines (site is still operational at <http://www.thepiratebay.org/>); the UK acquittal of David Rock from Cheltenham, arrested in 2007 for running TV-Links.co.uk, another website offering links to streams of pirated films etc; the acquittal in 2010 of Alan Ellis who ran OiNK that helped users to find music to unlawfully download from other sources- his lawyer argued before a jury that the site was no different to Google in the



way it published public domain links in cyberspace; and the action in Minnesota USA by Capitol Records against unlawful music track downloader Jammie Thomas ordered to pay damages of \$1.5. The US Supreme Court has ruled in favour of the media product industries on the issue of websites that avowedly facilitate illegal downloading and streaming in the 2005 case of Metro-Goldwyn-Mayer Studios, Inc., et al. v. Grokster, Ltd., et al.

**Topic/lecture 8 Relevant Essay Titles:**

- a) The re-offending by Jon Venables in his adult life indicates that anonymity for notorious child killers is self-defeating. Discuss.
- b) Intellectual property is theft. Is there any logic to this statement in the light of transnational legal action against cyberspace file-sharers?

**Guidance on essay 8a:**

The development of the all-embracing 'against the world' *contra mundum* injunction directed at the media in the case of notorious murderers reached a turning point in 2001 when Jon Venables and Robert Thompson were released from custody at the age of 18 having never served any adult imprisonment for the killing of toddler James Bulger eight years previously. They were given new identities and the media were censored from publishing anything that could lead to their identification or reveal their new lives. 9 years later the controversy over this secrecy arrangement that would have been unconstitutional in the USA was re-ignited when it became clear Jon Venables had committed a series of serious sexual offences and breached the terms of his license. In the Reader you are provided with the ruling by Mr Justice Bean at the Old Bailey in July 2010 that in his court appearance as an adult for these new offences his new identity and whereabouts would remain secret and he would only be visible in the courtroom by video-link to the judge alone.

Your discussion of the proposition should explore the utilitarian and deontological arguments for secrecy in relation to notorious adult as well as child criminals. Consequently your analysis should evaluate the merits of the case of Maxine Carr who was granted the privilege of lifetime anonymity for relatively minor criminality. Previous recipients of this privilege included Thompson and Venables, and the infamous Mary Bell who was jailed for manslaughter when only 11 years old for strangling two younger children in Newcastle. You will find the high court rulings issuing the perpetual injunctions in relation to these cases by Lady Butler Sloss and Mr Justice Eady on the topic resources at learn.gold. Paul Dougan's *Journal of Criminal Law* article 'Divisional Court: Press Freedom: Injunctions Binding the World' discusses the implications of the Maxine Carr ruling and is included in the course reader, and there is an essay by the course convenor on the coverage of the case in the media. The decisions of the court were based on a balancing exercise between Article 2, Right to Live, Article 8, Privacy and Article 10, Freedom of Expression. But the Channel 4 documentary investigating the witch hunts being conducted against women who are said to resemble Maxine Carr, or what she would like if in disguise or with a new identity, raises questions about whether the secrecy has generated more social mischief than it has cured.

You might like to analyse whether the rule of law requires public identification of convicted criminal defendants and after they have completed their sentences their right to return to the community without any risk of vigilante justice should be protected by effective policing and prosecution of offenders rather than censorship. Clearly the narrative and opinion expressed about the 'Baby P' case supports your reasoning in this essay. The second part of the question requires you to compare the legal position on anonymity rights for criminal trials participants between the UK and USA. You will find

useful references in the learn.gold resource 'Privacy in Detail', and the media law textbooks available in the college library.

Do not forget to address the text of the question in terms of serving 'no proper purpose in a civilized society.' This means that there may be some merit in reflecting on what would be the 'proper purpose' of media law and what you would understand as 'a civilized society' in terms of moral and political philosophy.

**Relevant Media Sources:**

'Witch-hunt: First Cut: Being Maxine Carr: Whispering Campaign, Channel 4, 14<sup>th</sup> December 2007, 'The release of the killers of James Bulger' ITV, 2003.

**Lecture Nine. Tim Crook**

**Can journalists kill with words and can soldiers kill journalists with impunity?**

**Answer:** as long as they are on the winning side or it can be construed as an accident. What is the position of the journalist and media communicator in the context of International Humanitarian Law during armed conflict and International Human Rights Law during social conflict in peacetime? This topic investigates how IHL and IHRL protects journalists and makes them culpable. In terms of IHL journalists have to reference the Geneva conventions, and International Criminal Court established by the 1998 treaty of Rome and inspired and developed by the ad hoc tribunals set up to pursue the prosecution of individuals for war crimes and crimes against humanity during the conflicts in the former Yugoslavia and Rwanda. Those tribunals also derived jurisprudence and international legal authority from the unprecedented Nuremberg and Tokyo tribunals set up to prosecute figures in the German Nazi and Japanese militaristic regimes of the Second World War. This is a topic that looks at perhaps the most acute construction of rights and duties for journalists. It explores the ethics and laws of journalism in war. In fact should we be talking about 'war journalism' or 'peace journalism'? In this topic we seek to define, evaluate and determine the *modus operandi* for criminally prosecuting the notions of 'Information Terrorism' and 'Hate Journalism.' In international and transnational law we have a number of international law texts that we can reference: The United Nations Charter on Human Rights 1948; the European Convention on Human Rights and Fundamental Freedoms (1950) and the International Covenant on Civil and Political Rights (1966) These debates lead to an exploration of the ethics of propaganda for journalists during times of conflict. How does the Geneva Convention apply to the deployment of the munitions of the mind?

**Topic/lecture 9 Relevant Essay Titles:**

- a) The media of hate is a core aspect of genocide, war crimes and crimes against humanity. To what extent would you agree with this statement?
- b) Do you agree or disagree with the argument that journalists and media workers need to be accorded a special and separate immunity and protection in international law?

**Guidance on essay 9a:**

As journalists fight wars with words your initial focus is likely to be on their culpability in war crimes and crimes against humanity. Your answer could also approach the topic by academically debating whether there should be a special international treaty on the use of propaganda and 'information terrorism' deployed by combatants during war. As you

have learned, the generic term 'Geneva Convention' covers a number of treaties setting out rules on how combatants should behave to each other and treat non-combatants. Failure to observe the 'Geneva Convention' leads to UN war crimes prosecutions. You need to define what you mean by propaganda as a weapon of war and what you mean by 'information terrorism' as a weapon of war. You should discourse on case histories where killing by communication and not killing by weapons, machines and ordnances has been prosecuted.

Nazi Propagandists were tried at Nuremberg. (Although the Nazi head of German Radio was acquitted.) Journalists have been prosecuted by the United Nations through 'war crimes' international law for their use of propaganda, described as 'hate journalism' during the Rwandan genocide. Furthermore, Great Britain prosecuted two propagandists who worked for the Nazis, William Joyce and John Amery, after the Second World War under the Treason Act. Both were convicted and executed. The US prosecution of their citizens, who had worked as propagandists, was much more lenient. In many respects your essay could be evaluating the morality of black propaganda techniques pioneered by the British Political Warfare Executive during WWII. Did you find the tactics deployed exceeded what should be tolerated during the waging of war, particularly in relation to 'non-combatants'? In addition, the Nazis' use of multi-media to build up a culture of hatred and dehumanisation of Jews and 'Non-Aryans' may be relevant to your analysis. Your essay can, of course, turn to the use of black propaganda and information terrorism in recent conflicts such as the invasion of Iraq in 2003 and your course reader includes a paper by Liz Harrop in the journal *Ethical Space* in which she analyses and evaluates the international legal culpability of the 'The Media's role in war propaganda.'

At the same time this question is designed to stimulate debate and argument, and enable you to think about the safety and rights of journalists during conflicts from the perspective of combatants as well as journalistic news gatherers. At a coroner's inquest in 2007, a jury returned a verdict that the ITN journalist Terry Lloyd had been unlawfully killed in 2003 near Basra. In fact Robertson and Nicol go further in their book *Media Law* by saying that he was 'recklessly murdered by US troops.' (Robertson & Nicol, 2008, p. 677) The forensic and military video evidence indicates that he was shot in the head by an US fired bullet just as he was being loaded onto the back of a truck to be taken to hospital for a non life-threatening wound inflicted when a small convey of ITN vehicles (clearly marked) had been caught in crossfire. In 2008 the UK Crown Prosecution Service announced that it was unable to launch any criminal prosecution. ITN, Reporters Sans Frontiers and other global journalist charities, and Robertson and Nicol argue 'There should be an international crime of wilfully killing a journalist during an armed conflict, whether international or internal. Such a specific crime would stress the unique and essential role played by war correspondents.' (Robertson & Nicol, 2008, p. 677) The essay title clearly invites you to determine whether this kind of crime is enforceable, is a realistic possibility given the hazards and nature of armed conflict, and whether it would be fair to place the role of the journalist above or separate to that of other non-combatants. Article 13 of the Hague Convention 1907 provides that journalists, if taken prisoner, should be treated as prisoners of war and receive minimum standards of humane treatment. The Geneva Conventions of 1949 make similar provisions. Article 79 of the First Protocol of the Geneva Conventions 1977 states that journalists working in dangerous professional missions in areas of armed conflict shall be considered as civilians.' ITN and journalism pressure groups believe that the Rome Statute of 1998, setting up the International Criminal Court, should have had a specific war crimes provision for the death even of an individual journalist in external or internal conflict. However, anyone with any military experience of conflict will be aware of how confusing

and chaotic human perception and judgment is in war. 18 year old young conscripts or volunteers, trained to use lethal force, even in a disciplined manner, have fractions of a second to make decisions that inevitably will lead to 'collateral damage.' If journalists choose to be present in conflict zones they must take the consequences. In your argument you might like to consider whether the propagandist role of journalists means that there is every reason to place them in the same category as combatants.

**Relevant Media Sources:**

'Reporters at War, Episode Two, Censorship' Discovery Channel 2004.

**Lecture Ten. Tim Crook**

**Free press, fair trials. Open justice or distorted justice?** In the final lecture and topic of the course we come almost full circle to a consideration of the ethics and laws applying to journalists covering the sensationalist juridical theatre of police enquiry and judicial trial; a function that could be considered as old as 'modern' journalism itself. In a toxic mix of exciting narrative, service to circulation, social, political and moral panic what are the challenges to the temptations and responsibilities of creative, exciting and entertaining reportage? How perspicacious and clear are the boundaries between fiction and fact? When do adjectives, adverbs, factual reporting and interpretative supposition generate contrasting values over communication that 'interferes' with the administration of justice. We focus on a variety of tragic, moving, politically and socially intense case histories that gestated language suffused with fear, hate, prejudice, hostile attitudes and vituperative comment: Michael Fagan (1982), Hawley Harvey Crippen (1912), Leo Frank (1913), Bruno Hauptmann (1933), Dr. Sam Sheppard (1955), and O.J. Simpson (1994) cases. We explore an understanding of these trials and associated media coverage as socio-anthropological *liminal* events. How do we apply the moral and political philosophical responsibilities? It can also be strongly argued by feminist theory analysis that sexism and social, political and cultural misogyny is strongly present in the popular media coverage of cases sensationalising and scandalising the role of women. Examples from the 20<sup>th</sup> century in Britain are the murder trials of Edith Thompson (on trial with her lover Frederick Bywaters 1922-3), Mrs Alma Rattenbury (on trial with her lover George Stoner 1935) and Ruth Ellis (on trial for murdering her lover David Blakely and the last woman to be executed in the UK in 1955). Are the consequences the sole result of media prejudice or the exercise of social and cultural prejudice, institutional corruption and incompetence?

**Topic/lecture 10 Relevant Essay Titles:**

- a) The US criminal justice system has a better approach to ensuring defendants have a fair trial whatever the nature of media publication prior and during court proceedings. Discuss.
- b) To what extent does misogyny and sexism play a role in denying women justice in the process of trial, verdict and sentence? Analyse this question in the light of historical and/or contemporary cases in any legal jurisdiction of your choice.

**Guidance on essay 10a:**

This essay, like others, invites you to apply anthropological, sociological, or cultural theory you have studied on other courses in your programme. You can obviously

discuss this proposition in the light of the fair trial/free media debate generated by 'trials of the century' such as the Sam Shepherd, Bruno Hauptmann, Leo Frank, Dr. Crippen and O.J Simpson cases.

You could certainly consider the positive and negative impact of intensive media coverage of trial hearings, including live television. There is a separate topic on learn.gold exploring the debate about televising the courts. Many of the instances where intense media coverage was said to have created prejudice and undermined justice involved the engagement of the theory of the moral panic as discoursed by theorists such as Stan Cohen and Stuart Hall. This could be a relevant intellectual template to apply and there is considerable bibliography available to assist you. Joanna Zylinska also writes a compelling and relevant chapter on 'Ethics and "Moral Panics"' in her book *The Ethics of Cultural Studies*. You will probably need to investigate research resources outside the College as there are several cases cited in this topic, many of them from the US jurisdiction. You are welcome to use primary and secondary sources that include media programmes as well as academic publications. Your essay is likely to attempt to evaluate whether media coverage of any of the cases contributed to injustice, the expression of prejudice and a distortion of reality. The proposition in the essay question invites you to explore that the infotainment aspect of televising the courts is no different to that of newspaper coverage. This means that voyeurism, schadenfreude, and even vicarious curiosity are essential components in the delivery of open justice and public interest in relation to the reporting of criminal trials. The US Supreme Court cases of *Estes v Texas*, 381 U.S. 532 (1965) and *Chandler v. Florida* 449. U.S. 560 (1981) provide an excellent narrative of how the US judiciary changed its attitude to the presence of cameras in the courtroom. The Course Reader includes the Supreme Court judgment in *Sheppard v. Maxwell*, 384 U.S. 333 (1966) which is regarded as a nadir in US jurisprudence as an example of media coverage prejudicing criminal proceedings and leading to a miscarriage of justice.

**Relevant Media Sources:**

DVD resources: *Courts on Camera- televising the courts*, BBC 4 2005, *Scandal: Southern knights*, *The trial of Leo Frank*. History Channel 1998, *The last secret of Dr. Crippen*, Channel Four Television 2002, *Was Dr. Crippen Innocent?* Channel 5, 2008.

**Essay questions and Seminar debates:**

For each topic there are at least two essay questions. You choose to undertake one essay and in relation to one topic. Guidance on answering the question is given in relation to one of the essays per topic.

Topic 1

- a) Publishing violent and distressing media sequences of terrorism actions is essentially unethical since it is an extension of terrorism. Discuss.
- b) We need less media law in the contemporary world because journalism and media are essentially political communications and an exercise of power in the public sphere. Discuss.
- c) The 'war on terror' proves that warring governments lie and deceive and are devoid of ethics. This means that any leaked information about the conflict should be released into cyberspace. Is this absolutism argument ethical?

Topic 2

- a) The George Galloway v *Daily Telegraph* case demonstrates that there will always be a need to have England and Wales style libel laws to prevent the victimisation and persecution of individuals such as Kate and Gerry McCann, Robert Murat, and Christopher Jefferies. The US First Amendment defence established by *Sullivan v New York Times* 1964 would not be adequate protection. Analyse this line of argument.
- b) UK judges patronise jurors in overprotecting them from the potential impact of media publicity compared to the situation in the USA. Discuss.

Topic 3

- a) The legal battle being waged by British radio presenter Jon Guant indicates that the UK's system of media regulation of content standards is too censorious compared with the position in the USA. Do you agree with this proposition?
- b) For journalism to be truly professional, journalists need to be licensed and qualified by training and education and subject to financial, suspension and disqualification sanctions when their behaviour and publications cause harm. Discuss.

Topic 4

- a) When would you surrender the identity of your confidential sources in your role as a journalist? Discuss your answer with reference to UK and US case histories.
- b) A British intelligence officer working for MI6/SIS morally objects to obtaining information from a female terrorist suspect being tortured in a country she had been 'rendered to' which uses these techniques of interrogation. But the information promises to prevent 9/11 style attacks on London. Should the law allow him to 'leak' what is going on to the British media?

Topic 5

- a) The photographing of the dying Diana, Princess of Wales after being involved in the accident in Paris in 1997 and the *News of the World's* involvement in the hacking of the mobile phone of child abduction and murder victim, Milly Dowler, have been justifiable turning points in the legal toleration of unethical and unacceptable standards of British popular journalism. Analyse this statement and evaluate changes in media law and regulation stemming from these events.
- b) Would the *Guardian* have been justified in hacking into the mobile phone of a *News of the World* journalist in order to discover the Sunday newspaper's involvement in the unlawful interception of murder victims such as Milly Dowler, and those who died in the USA on 9/11 and in London on 7/7?

Topic 6

- a) Privacy can only be remedied by prior restraint since subsequent damages cannot restore the confidentiality of the personal information put into the public domain. What are the legal implications of this statement in the context of recent and current legal cases in Britain and Europe.
- b) Who should determine 'the public interest' that will block the publication of truthful information in a democratic society?

Topic 7

- a) Compare and contrast the media law of a minimum of two and a maximum of four different countries.

b)The globalisation and hypermodernism of media communications means that sovereign state media law jurisdictions have become an irrelevance. Analyse this proposition in the light of wikileaks and/or the Icelandic Modern Media Initiative.

Topic 8

a)The re-offending by Jon Venables in his adult life indicates that anonymity for notorious child killers is self-defeating. Discuss.

b)Intellectual property is theft. Is there any logic to this statement in the light of transnational legal action against cyberspace file-sharers?

Topic 9

a)The media of hate is a core aspect of genocide, war crimes and crimes against humanity. To what extent would you agree with this statement?

b)Do you agree or disagree with the argument that journalists and media workers need to be accorded a special and separate immunity and protection in international law?

Topic 10

a)The US criminal justice system has a better approach to ensuring defendants have a fair trial whatever the nature of media publication prior and during court proceedings. Discuss.

b)To what extent does misogyny and sexism play a role in denying women justice in the process of trial, verdict and sentence? Analyse this question in the light of historical and/or contemporary cases in any legal jurisdiction of your choice.

### Further Bibliography and Viewing Resources

A number of texts are available in the college library to assist the students in further exploration of the ethical underpinning of media law and regulation. Most law affecting journalism is treated as 'positivist'- in other words we try to understand what it means and how it is applied because it a reality rather than debating whether a particular media law or body of laws ought to exist. Media Ethicology and Media Jurisprudence are the two spheres of debate and learning that provide the backdrop to studying existing Media Law. Most theorists see it as mutuality or overlapping of the Deontological, Utilitarian/Teleological and Virtuous, though other more complex categories and areas of ethics could be identified. The course recommends a selection of further texts to support learning in the area of ethics. Please bear in mind that Goldsmiths does not have a law school or department. This means that there are some established law textbooks on the subject that are only available at the University of London senate library in Gower Street to which you have access. (University College of London has the largest Law department in the country with a significant centre for media law specialism)

### Goldsmiths Library course texts (catalogue reference numbers and number of texts held given where known.)

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- Barendt, Eric & Hitchens, Lesley, *Media Law: Cases and Materials*, 2000, 302.23026 BAR (Three copies.)
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- Crook, Tim, *Comparative Media Law and Ethics*, 2010. 302.23026 CRO, (Ten copies)
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- Easton, Susan, *The Problem of Pornography: Regulation and The Right to Free Speech*, 1994, 364.17 EAS, (One copy.)
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- Lees, Sue ed., *Ruling Passions: Sexual Violence, Reputation, and the Law*, 1997, 364.153 LEE (Two copies)
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- Starkey, Guy, *Balance and Bias in Journalism- Representation, Regulation and Democracy*, (2006) Basingstoke: Palgrave Macmillan (One copy.)
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Zelezny, John D, *Communications Law: Liberties, Restraints, and the Modern Media I* 2004. (Second Edition) 302.23026 ZEL, (Two copies.)  
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Zelezny, John D., *Communications Law: Liberties, Restraints, and the Modern Media*, 2011, (Sixth Edition) 302.23026 ZEL (Two copies)  
Zylinska, Joanna, *The Ethics of Cultural Studies*, 2005, 174.93 ZYL, (Five copies.)

**More advanced law texts are available from: Senate House Library, University of London (These are large and very expensive texts used by professional lawyers and judges)**

#### **Videos and Multi-media resources in the College Library**

The audio-visual collection of the library has a selection of documentaries and films that support the course. In this course outline we indicated those programmes that have been catalogued and we give you the catalogue numbers. Copies of the BBC's *Editorial Policy* training CD-Rom (2005) are available for viewing, along with copies of the BBC's College of Journalism Legal Online (2007) course. The library has a copy of the BBC's 1995 journalist law training videos *Putting Off The Writs* and *Trials Without Errors*. A Media Law training video with accompanying booklets produced by Australia's ABC is also in the library.

*Legal Online*, BBC College of Journalism (2007) [AV desk] Goldsmiths (Two copies.)  
*Editorial Policy for Programme Makers/BBC Training & Development*. 2005. 791.4502 EDI CD-ROM [AV desk] Goldsmiths (Two copies.)  
*Putting off the writs I* produced by Kathy Flower. 1997. 15431 Video [AV desk] Goldsmiths (One copy.)  
*Trials without errors I* written & produced by Kathy Flower. 1997. 15430 Video [AV desk] Goldsmiths (One copy.)  
*The ABC guide to media law I* produced & directed by Peter Dunn. 1991. 15432 Video [AV desk] Goldsmiths (One copy.)  
*Auntie's war on smut I* produced & directed by Lucy Bowden. 2007. 791.440942 AUN DVD [2nd Floor] Goldsmiths (One copy.)  
*News from Number Ten I* reporter: Michael Cockerell; produced by Alison Cahn. 2000. 10593 Video [open access] Goldsmiths (One copy.)

*Correspondent: War spin* / reporter: John Kampfner; produced by Sandy Smith. 2003. 13992 Video [open access] Goldsmiths (One copy.)

*Riding the storm: how to tell lies and win wars* / written & presented by Maggie O'Kane; produced by Nick Davidson. 1996, 6044 Video [open access] Goldsmiths (One copy.)

*The late show: The information war* / directed by Simon Chu. 1994 4617 Video [open access] Goldsmiths (One copy.)

*The media show: the Gulf War: a media diary.* 1991 1785 Video [open access] Goldsmiths (One copy.)

*Correspondent: Kosovo: a war of words* / produced by Fiona Murch. 1999, 9359 Video [open access] Goldsmiths (One copy.)

*Timewatch: The Boer War: the first media war* / produced by Stephanie Tepper; written & directed by William Cran. 1997, 7186 Video [open access] Goldsmiths (One copy.)

*Uncovered: the whole truth about the Iraq war* / produced & directed by Robert Greenwald. 2004. 956.7 UNC DVD [open access] Goldsmiths (One copy.)

*Dr. Goebbels speaks* / written & directed by Lutz Hachmeister. 2005. 15735 Video [open access] Goldsmiths (One copy.),

*Goebbels: master of propaganda* / directed by Rees Laurence. 1993 GTV00360 Video [open access] Goldsmiths (One copy.).

*Hard News: Did you fake this film Mark?* Ray Snoddy, presenter, C4, 1998. 8833 video, Goldsmiths Library, AV desk, one copy.

*Scandal: Southern knights* / directed by Yuval Daniel; produced by Simcha Jacobovici. 1999. C 68 DVD [AV desk] Goldsmiths (Two copies.)

*The last secret of Dr. Crippen* / produced & directed by Clive Maltby. 2002. C 68 DVD [AV desk] Goldsmiths (Two copies.)

*Was Dr. Crippen innocent?* / produced by Candice Martin; directed by Andy Webb. 2008. 364.152 WAS DVD [2nd Floor] Goldsmiths (One copy.)

*Great crimes and trials of the twentieth century: series 1* / script writer : Jonathan Martin. 1995. G 73 DVD [AV desk] Goldsmiths (One copy.)

*Der ewige Jude* / directed by Fritz Hippler. 1940. 11977 Video [AV desk] Goldsmiths (1/0)

*Secret history: Sex and the Swastika* / produced & directed by Meredith Chambers. 1999 9635 Video [open access] Goldsmiths (One copy.)

*McLibel* / produced & directed by Franny Armstrong; dramatic director: Ken Loach. 2005. 15681 Video [open access] Goldsmiths (One copy.)

*McLibel* / directed by James Cellan Jones; presented by Sheena McDonald. 1997. 7329 Video [open access] Goldsmiths (One copy.)

*Court on camera* / produced & directed by Robert Murphy. 2005. 15870 Video [open access] Goldsmiths (One copy.)

*The O.J. Simpson story* / produced & directed by Malcolm Brinkworth. 2000. 10798 [open access] Goldsmiths (One copy.)

*The trial of O.J. Simpson* / produced by Debbie Geller & Theresa Sturley. 1995 5749 Video [open access] Goldsmiths (One copy.)

*The late show: O.J. mania: the media trial of O.J. Simpson* / produced by Fenton Bailey. 1994 4664 Video [open access] Goldsmiths (One copy.)

*Victorians uncovered* / produced by Mark Fielder; directed by Nicholas White, Sonali Fernando & Mary Cranitch. 2001. 11427 (Episode two of three analyses W T Stead's campaign against child prostitution.) Video [open access] Goldsmiths (One copy.)

*Dispatches: Spinning terror/reporter.* Peter Osborne; produced & directed by Dai Richards. 2006. 303.6250942 DIS DVD [open access] Goldsmiths (One copy.)

*Dispatches: State of terror/reporter.* Deborah Davies; produced & directed by Stephen Finnigan. 2002. 12654 Video [open access] Goldsmiths (One copy.)

*Shariah TV* / produced by Richard Brock. 2005. 15695 Video [open access] Goldsmiths (One copy.)

*Channel terror* / written & presented by Jason Burke; produced & directed by David Akerman. 2005. 303.625 CHA DVD [open access] Goldsmiths (One copy.)

*Secrets of Hello* / produced & directed by Dee Lahiri. 2004. 14782 Video [open access] Goldsmiths (One copy.)

*The Holocaust on trial* / written & directed by Leslie Woodhead; produced by Daniel Korn. 2000 10402 Video [open access] Goldsmiths (One copy.)

*Libel* / directed by Anthony Asquith; written by Anatole de Grunwald & Karl Tunberg; based on the play by Edward Wool 1959 6663 Video [open access] Goldsmiths (One copy.)

*World in action: Jonathan of Arabia: act two: the dagger of deceit* / produced by Ian McBride & Steve Boulton. 1997. 7441 Video [open access] Goldsmiths (One copy.)

*Dispatches: Murdering the truth* / produced by Masha Slonim & Paul Jenkins. 2007. 077 DIS

DVD [2nd Floor] Goldsmiths (One copy.)

*The Russian newspaper murders* / produced by Christine Camdessus; directed by Paul Jenkins. 2006. 077 RUS DVD [2nd Floor] Goldsmiths (One copy.)

*News media and power in Russia* / Olessia Koltsova. 2005. 302.230947 KOL Main sequence Goldsmiths (One copy.)

*Storyville: The Russian newspaper murders* / directed by Paul Jenkins; produced by Christine Camdessus. 2004. 15078 Video [2nd Floor] Goldsmiths (One copy.)

### Visiting Media Law environments

The course recommends that students visit arenas of the UK legal system and structures of local, regional and national government to observe the process of legally privileged communication. Students should endeavour to attend and observe hearings at:

- 1) Magistrates Courts,
- 2) The Crown Court,
- 3) The Royal Courts of Justice in the Strand- for hearings of criminal and civil appeals, and a variety of High Court cases,
- 4) The Coroner's court for inquests.
- 5) Employment Tribunals and the Employment Appeal Tribunal.
- 6) Public enquiries.
- 7) Meetings of local authorities such as London Borough Councils, and the Greater London Assembly.
- 8) A visit to the Palace of Westminster to observe live hearings of the House of Commons, House of Lords, Commons select committees is recommended. In addition you should take any opportunity to view the BBC's Parliamentary Digital television channel that relays live and pre-recorded sequences of these institutions.
- 9) Students from the UK nations of Wales, Scotland and Northern Ireland should also visit and attend assembly and parliamentary sessions in their respective capitals of Cardiff, Edinburgh and Belfast.

I would recommend chapter 14 on 'Court Reporting' from *Essential Reporting: The NCTJ Guide for Trainee Journalists* by Jon Smith (2007) London et al: Sage pages 173 to 192 as a useful guide to the practicalities of reporting court and other public body hearings.

The BBC's free access College of Journalism web resources are very detailed and impressive on active and up to date media law, practices, techniques, and ethics of reporting UK court hearings and fields of journalism.

See the following links

**Journalism tutor**

<http://www.bbc.co.uk/journalism/skills/writing-styles/journalism-tutor/>

**Law**

<http://www.bbc.co.uk/journalism/law/>

**Ethics and editorial guidelines**

<http://www.bbc.co.uk/journalism/ethics-and-values/>

**Media Law**

Reporting Court Cases in England and Wales

<http://www.bbc.co.uk/journalism/law/courts-in-england/>

Reporting Court Cases in Scotland

<http://www.bbc.co.uk/blogs/collegeofjournalism/law/court-reporting-in-scotland/>

Contempt

<http://www.bbc.co.uk/journalism/law/contempt/>

Defamation

<http://www.bbc.co.uk/journalism/law/contempt/>

Copyright

<http://www.bbc.co.uk/journalism/law/copyright/>

Family Cases

<http://www.bbc.co.uk/journalism/law/family-cases/>

Reporting Terror

<http://www.bbc.co.uk/journalism/law/reporting-terror/>

Reynolds Defence

<http://www.bbc.co.uk/journalism/law/reporting-terror/>

War and Law

<http://www.bbc.co.uk/journalism/law/war-law/>

Contempt Today

<http://www.bbc.co.uk/journalism/law/contempt-today/>

**Essentials of Ethical Journalism**

Truth and accuracy

<http://www.bbc.co.uk/journalism/ethics-and-values/truth-accuracy/>

Truth in Theory

<http://www.bbc.co.uk/journalism/ethics-and-values/truth-accuracy/truth-in-theory.shtml>

Accuracy and Verification

<http://www.bbc.co.uk/journalism/ethics-and-values/truth-accuracy/accuracy-and-verification.shtml>

Fact and Opinion

<http://www.bbc.co.uk/journalism/ethics-and-values/truth-accuracy/fact-and-opinion.shtml>

Alan Little's Writing Masterclass

<http://www.bbc.co.uk/journalism/skills/writing/writing-masterclass/>

Writing about immigration and assylum

<http://www.bbc.co.uk/journalism/skills/writing/accuracy/immigration-and-asylum.shtml>

Impartiality

<http://www.bbc.co.uk/journalism/ethics-and-values/impartiality/>

Independence

<http://www.bbc.co.uk/journalism/ethics-and-values/independence/>

Public Interest

<http://www.bbc.co.uk/journalism/ethics-and-values/public-interest/Accountability>

<http://www.bbc.co.uk/journalism/ethics-and-values/accountability/Sources>

<http://www.bbc.co.uk/journalism/ethics-and-values/sources/Trust and Editorial Choices>

<http://www.bbc.co.uk/journalism/ethics-and-values/trust-and-choices/Trust in radio editing>

<http://www.bbc.co.uk/journalism/ethics-and-values/trust-and-choices/trust-in-radio-editing.shtml>

Trust and radio documentary

<http://www.bbc.co.uk/journalism/ethics-and-values/trust-and-choices/trust-and-radio-documentary.shtml>

Trust and Observational Documentary

<http://www.bbc.co.uk/journalism/ethics-and-values/trust-and-choices/trust-and-observational-doc.shtml>

Trust and impact

<http://www.bbc.co.uk/journalism/ethics-and-values/trust-and-choices/trust-and-impact.shtml>

Trust and live sport

<http://www.bbc.co.uk/journalism/ethics-and-values/trust-and-choices/trust-and-live-sport.shtml>

Trust and live news

<http://www.bbc.co.uk/journalism/ethics-and-values/trust-and-choices/trust-and-live-news.shtml>

Trust and television documentary

<http://www.bbc.co.uk/journalism/ethics-and-values/trust-and-choices/trust-and-tv-documentary.shtml>

Trust and phone-ins

<http://www.bbc.co.uk/journalism/ethics-and-values/trust-and-choices/trust-and-phone-ins.shtml>

Honesty and filming

<http://www.bbc.co.uk/journalism/ethics-and-values/trust-and-choices/honesty-in-filming.shtml>

### **Reporting specialisms**

Reporting Politics

<http://www.bbc.co.uk/journalism/briefing/politics/political-correspondents/>

Reporting the military (and intelligence agencies)

<http://www.bbc.co.uk/journalism/briefing/military/reporting-the-military/>

Reporting the EU

<http://www.bbc.co.uk/journalism/briefing/reporting-the-eu/need-to-know/>

Reporting Religion

<http://www.bbc.co.uk/journalism/briefing/religion/roger-boltons-challenge/>

Reporting Science

<http://www.bbc.co.uk/journalism/reporting-science/>

Reporting Business

<http://www.bbc.co.uk/journalism/briefing/business/reporting-business/>

Reporting the Economy

<http://www.bbc.co.uk/journalism/briefing/politics/reporting-the-economy/>