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Media Justice: Madeleine McCann, Intermediatisation and 'Trial by Media' in the British Press

Greer, C. and McLaughlin, E. (2012) 'Media Justice: Madeleine McCann, Intermediatisation and 'Trial by Media' in the British Press', *Theoretical Criminology*, 16, 4: 395-417.

Abstract

Three-year-old Madeleine McCann disappeared on 3 May 2007 from a holiday apartment in Portugal. Over five-years and multiple investigations that failed to solve this abducted child case, Madeleine and her parents were subject to a process of relentless 'intermediatisation'. Across rolling 24-7 news coverage, websites, documentaries, films, *Youtube* videos, books, magazines, music and artworks, Madeleine was a mediagenic image of innocence and a lucrative news category. In contrast to Madeleine's media sacralisation, the representation of her parents, Kate and Gerry McCann, fluctuated between periods of vociferous support and prolonged and libellous 'trial by media'. This article analyses how the global intermediatisation of the 'Maddie Mystery' fed into and fuelled the 'trial by media' of Kate and Gerry McCann in the UK press. Our theorisation of 'trial by media' is developed and refined through considering its legal limitations in an era of 'attack journalism' and unprecedented official UK inquiries into press misconduct and criminality.

Keywords

Madeline McCann; Media justice; trial by media; attack journalism; inferential structure; sacrilegious crimes; social media

Introduction

Three-year-old Madeleine McCann disappeared on the evening of 3 May 2007 from a holiday apartment in Praia da Luz in Portugal. Her parents, Kate and Gerry McCann, had left their three children sleeping in the apartment while they had supper with friends approximately 120 metres away. The McCanns and their friends, who became known as ‘the Tapas 7’, took turns checking on the children. It was around 10pm when Kate McCann was heard screaming ‘Madeleine’s gone’. The police and resort manager were notified by one of the friends, and a panic-driven abducted child investigation began shortly afterwards.¹

At a time when 24-7 news was migrating online (Fenton 2009; Pavlik 2008), the case generated unprecedented global media attention. Over a five-year period that has failed to resolve the mystery of the disappearance, Madeleine was subject to a process of relentless ‘intermediatisation’. By this, we mean that ‘Madeleine’ was mediated not only through rolling news coverage, but also across a network of websites, television documentaries, films, Youtube videos, books, magazines, music and artworks. The photogenic little girl was transformed into an iconic global image. Kate and Gerry McCann were also intermediatised, and quickly became celebrities. Their representation ranged from unquestioning sympathy and support, to suspicion and innuendo, to full-blown ‘trial by media’ involving periods of abusive and defamatory speculation about the role they might have played in their daughter’s disappearance.

Despite being an exceptional global crime news story, there is no academic research examining the UK news media construction of the Madeleine McCann case. To a degree this is understandable given the density and complexity of the news data to be sifted, collated and analysed. Those who wish to know ‘what happened’ can consult Wikipedia, news and campaign websites and various popular books, including Kate McCann’s own account of events (McCann 2011). We would argue that the Madeleine McCann case is deserving of academic attention for the following reasons. It illustrates the complex interconnections between crime news reporting, ‘trial by media’ and due process in an era of ‘attack

¹ The authors would like to thank the editors and external reviewers at *Theoretical Criminology* for their constructive feedback and suggestions. Some of the ideas in this article were presented to journalists and Portuguese police officers in Lisbon, 2008. The authors are grateful to that audience for their comments and insights.

journalism', social media, and online campaigning and blogging. It provides insights into the extent to which legal and moral agency can be exercised by those subject to an intermediatised 'trial by media'. It advances understanding of the journalistic processes by which particular high-profile crimes are selected, produced and consumed. And it has led directly to or featured in an unprecedented series of government inquiries into the phone-hacking scandal that has engulfed the UK national press.

In the first section of this article we set out our theoretical framework, which develops our work on 'trial by media' (Greer and McLaughlin 2011, 2012b). We then situate our research within the context of existing studies on the newsworthiness of 'abducted children'. In the third section, we apply our theoretical framework to the identification and analysis of four key stages in the UK press construction of the Madeleine McCann case: building the news agenda; losing the news agenda; becoming the news agenda; and breaking the news agenda. We go on to consider the implications of our case study analysis for wider understanding of 'trial by media' and the limits of news media management around crime and justice in a 24-7 global communications marketplace. Finally, we suggest how our research might contribute to the development of a sociology of media justice.

Modelling 'Trial by Media': Norms, Sentiments and Practices

The exceptional aggression and adversarialism of the UK national press has been widely noted, and for many constitutes a form of 'attack journalism' (Barnett 2002; Capella and Jamieson 1997; Lloyd 2004; Milne 2005; Sabato 1991). 'Attack journalism' first emerged in the USA and is ascribed to an unpredictable dynamic created by a cluster of trends: the decline in deference to institutional authority, conflicting moralities, ideological divisions, the emergence of celebrity culture, an accommodating legal context, and technological developments that have revolutionised the communications marketplace. These trends have migrated from the USA and been reconstituted in the ultra-competitive ecosystem of UK tabloid journalism. Proliferating multi-platform news sites that provide networked consumers with an abundance of choice are challenging both the relevance and viability of the traditional printed press (Purcell and Rainer 2010; Rusbridger 2008). The result has been

intensified pressure on newspapers to deliver dramatic 'must-have' stories that demonstrate relevance by setting the news agenda. It is the press who are forced to take the biggest risks, testing legal, cultural and political boundaries in an attempt to deliver profitable print and online exclusives (Murdoch 2006). Cottle notes (2006: 412) that the news media's 'performative use' of evocative symbols, dramatic visualization and emotional narratives can be used to 'confront the strategic power of institutions and vested interests'. Whilst this neo-Durkheimian sentiment is reflected in our own analysis, we also foreground the influence of neo-liberal market conditions that promote the commodification of adversarial news as a means of economic survival (Greer and McLaughlin 2012a). The journalistic 'feeding frenzy' (Sabato 1991) that results from the successful exposure of individual or institutional wrongdoing can tip into 'trial by media'.

Our research on the UK national press leads us to define 'trial by media' (henceforth TBM) as a market-driven form of multi-dimensional, interactive, populist justice in which individuals are exposed, tried, judged and sentenced in the 'court of public opinion'. The nature and target of such trials can be diverse, ranging from the hounding of public figures and celebrities, perceived to think they are above the law or deemed to have offended in some way against an assumed moral consensus, to pre-judging the outcome of legal proceedings against 'unknowns'. Those considered to have evaded court justice may be subject to prolonged, post-trial attack journalism. As the UK press cast themselves as barometers of the public temper, arbiters of the public interest and guardians of public morality, news consumers are mobilised to engage in immediate 'red button' judgement. In so doing, TBM reclaims 'justice' from the courts and returns it to a networked citizenry. The extra-legal press scrutiny of suspected crimes and criminals can lead to formal prosecutions that otherwise would not have occurred (Greer and McLaughlin 2012a; McLaughlin 2005), and in that sense its democratic potential should not be overlooked. However, TBM is not governed by the constraints of due process, and may be activated by alleged moral transgression or professional incompetence not necessarily connected with legally codified crimes. Our research indicates that such 'trials' share the following characteristics.

In each case, hard evidence obtained from a variety of sources is combined with hearsay, conjecture, and insinuation that sensitises consumers to the transgressive actions and

disreputable lives of those who stand accused in the news-media spotlight. The default inferential structure is 'guilty until proven innocent'.² When crystallised, this inferential structure ensures that the 'wrongdoer' will be subjected to merciless, humiliating 'naming and shaming' followed by carnivalesque condemnation and ridicule (see Bakhtin, 1968). This form of intermediatized punishment is characterized by 'grotesque realism' and 'relentless savagery' (Hutton, 2000: 30). Persecution only ceases with public accounting, admission of guilt and apology. Those who maintain their innocence, exercise their right to reply or seek legal remedy risk intensified attacks. The outcomes may vary from a chilling of public sentiments towards the 'accused', through irreversible 'spoiled identity', to criminal prosecution (Greer and McLaughlin 2011, 2012b). TBM uses the humiliation of 'wrongdoers' to dramatise and clarify symbolic boundaries. It is legitimated commercially by increased circulation and web traffic, professionally by journalistic plaudits, and politically by its potential to destroy private lives and public careers (Culture Media and Sport Committee 2010). TBM can thus be used by news agencies to further commercial and ideological agendas.

In previous work we have analysed the TBM of individuals and institutions that are already newsworthy by virtue of their public profile. In this article we develop our framework by examining the TBM of two 'ordinary citizens' who became global infotainment news celebrities because of the exceptional news media reaction to the disappearance of their three-year-old daughter. Our research advances understanding of TBM in two important respects. First, it demonstrates the limited extent to which, even with the help of media professionals, the news agenda can be built and sustained in a global, intermediatised news environment prone to prioritising 'the story' over the investigation, and speculation and rumour over factual reporting. Second, it begins to identify and analyse the limits of TBM. By its very nature, TBM bypasses formal due process as a coalition of journalists, bloggers, web collectives, and news consumers interact across overlapping media spaces as proxy judge and jury. Our analysis stresses the dynamic and interactive nature of the McCann's multi-faceted TBM, and highlights the unpredictability of communication power and the

² The concept of 'inferential structures' explains how the same news content can be shaped into multiple configurations, establishing selectively representative frameworks of understanding that shape how both newsmakers and news consumers interpret the story (Lang and Lang, 1955).

possibility of legal and political contestation and cultural resistance by those who stand accused in the media spotlight.

Sacrilegious Crime: The Newsworthiness of the Abducted Child

Few crimes generate high-profile, emotionally charged news coverage and public outcry as much as the abduction of a child (Critcher 2011; Danson 1996; Fritz and Altheide 1987; Jenkins 1992; Karstedt 2002; Wilson 1985). Moeller (2002: 37) has argued that, 'in today's competitive news environment, children are perceived to be one of the few sure-fire ways to attract eyeballs – online, in print, and on television'. The 'abducted child' can be instantly and unproblematically accorded the status not only of 'ideal victim' (Bovenkerk and van San 2011; Christie 1986a; Peelo 2006), but of 'sacred victim'. Along with the very old, children are the most vulnerable members of society, and the least able to resist harm and abuse. Children are unique, however, in their embodiment of an innocence that relates to a life full of potential and not yet lived (Jenks 2005). This discourse of innocence connects intimately with the sacred status of the child, forming the basis of a deeply moralised inferential structure (Meyer 2007). In this sense, all child abductions are 'crimes against the sacred'. Yet only a minority are deemed worthy of sustained news media attention, and even fewer are constructed as 'high-profile crimes' (Chancer 2005; Greer 2007; Jewkes 2011). Disproportionate attention is given to children who are young, white, pretty and female.

Those few abducted children who generate high-profile news coverage, already 'ideal victims' by virtue of their selection, are subject to a potentially transformative process of what we term media sacralisation (cf. Alexander 1988; Douglas 1991; Durkheim 2001). Media sacralisation is driven partly by the boundary-affirming, sacred status of the innocent child, and partly by the commercial need to produce the most emotionally compelling and therefore marketable news story. It seeks to maximise the public appeal of the story by validating and amplifying the child's innocence, the parents' anguish and resilience, communal anxieties, and the evil of the abductor(s), who may not yet, or ever, be known. In this way, high-profile abducted child stories can provide the basis for momentary moral cohesion among news outlets, regardless of ideological differences.

Crucial to the process of media sacralisation, and a precondition for contemporary high-profile news coverage more generally, is the potential for visualisation. Images provided by family members emotionalise the developing drama for an at once horrified and fascinated public (Chermak 1995). High-profile abducted child cases can be regarded as ‘panic situations’: they are characterised by fear, uncertainty and desperate hope, as scarce investigative resources are negotiated and allocated to the search, and public appeals are made by police officers and anguished parents. Rolling news coverage is a critical investigative resource because it raises public consciousness of the case, which may in turn generate crucial leads (Innes 1999). The images of the abducted child become immortal representations of sacred innocence. It is through the visually-charged process of media sacralisation that high-profile crimes become paradigmatic – a benchmark against which future similar events will be assessed – and images become iconic. Normally, however, abducted child cases achieve paradigmatic status only if it is established that the child has been murdered.

The murdered child can be privately mourned and publicly memorialised (Valier 2004). Among the most newsworthy abducted child murder cases are: the Charles Lindburgh (1932), Caylee Anthony (2008) and Etan Patz (1979) cases in the USA; the Azaria Chamberlain (‘Dingo Baby’) case in Australia (1980); the Nathalie Mahy and Stacy Lemmens case in Belgium (2006) and the Moors Murders (1963-1965), the James Bulger (1993) and Holly Wells and Jessica Chapman (2002) cases in the UK. Due to their social impact at the time, and their virtual memorialisation since, these sacrilegious crimes become reference points for news media constructions of contemporary abducted child cases. In addition, the abduction and murder of a child inevitably generates anguished public deliberation on the changing nature of childhood and parenting practices, the moral state of the nation, and the adequacy of criminal sanctions (Green 2008; Smith and Snead 2008). If the child becomes the figurehead of a news media-driven campaign for legislative or policy change, then the story may retain a lasting news presence (Chancer 2005; Silverman and Wilson 2002).

Child killers are among the most reviled of all criminals (Christie 1986b; Jenkins 1998; Jones and Wardle 2008). Those convicted of such sacrilegious crimes become enduring cultural reference points as ultimate ‘folk devils’ (Cohen 1972, 2011). Whilst the abduction and

murder of children by a predatory stranger provides an archetypal TBM narrative, child murders by parents statistically are more common (Friedman and Friedman 2010). These doubly-deviant acts, that offend against the sacred status both of the 'child as innocent' and the 'parent as protector', provide for lucrative news coverage fuelled by moral outrage and punitive sentiment.

Data Sources and Design

The key methodological challenge in this analysis was establishing how best to deal with the massive amount of offline and online newspaper content generated by the disappearance of Madeleine McCann. Our primary research focus is on a number of key stages – signalled by particular 'fateful moments' in Kate and Gerry McCanns' interactions with the press – that, we would argue, have defined the narrative construction of the case. For this reason, we have not used quantitative content analysis, which tends to detach news representations from the wider social, cultural, economic, political and moral contexts within which they are produced (Greer and Reiner 2012). Rather, we have sought to develop an in-depth, qualitative analysis of the full corpus of UK national press coverage around four key stages in the case that remains fully cognisant of wider context, including developments in the Portuguese police investigation, shifting public support for the McCanns, the chaotic and unpredictable online discussion environment, and the official inquiries and Governmental reports to which the McCanns' treatment by the UK press gave rise.

This final point also helps to clarify our focus on newspapers. It is market-driven newspapers that have taken the lead in identifying, profiling and prosecuting suitable targets for TBM and are testing the boundaries of acceptable journalism at a time of heightened market uncertainty (Greer and McLaughlin 2012a). On this basis, the press analysis presented in this article was structured as follows. Stage one involved a comprehensive examination of the LexisNexis database in order to locate relevant coverage and identify 'fatal moments' in the Madeleine McCann case for closer examination. Stage two involved in-depth examination of UK national newspaper coverage during these key periods in original hard copy. This second stage was vital because, as testimony at the Leveson Inquiry has made clear

(<http://www.levesoninquiry.org.uk/>), newspapers altered and, in some cases, deleted content from their websites during the course of the McCanns' TBM: Express Newspapers removed all reference to Madeleine McCann from their website search engines in March 2008.

In addition to analysing press coverage, and in order to situate our research within a wider context, we have drawn upon a range of broadcast and online news outlets, and documentary sources. We studied the testimony given by the McCanns, their media advisers, and national newspaper editors to the Parliamentary Culture, Media and Sport Committee (2010) hearing into press standards, privacy and libel, and the Leveson inquiry (2011/12) into the culture, practice and ethics of the press. We examined the report and accompanying documentation released by the *Policia Judiciaria* on 21 July 2008, which provides the most detailed timeframe of events surrounding the disappearance and investigation. We cross-referenced our news media analysis with the various books that have been written about the Madeleine McCann case, including those by Kate McCann (2011) and former Portuguese Chief Inspector, Goncalo Amaral (2008). These supplementary sources provided an invaluable insight into the different versions of reality that constituted the disappearance of Madeleine McCann, the police investigations in Portugal and the UK, and the campaigns developed to keep Madeleine in the news and to globalise efforts to find her. We have also analysed the various websites, both pro- and anti-McCann, established in relation to the case.

Building the News Agenda: News Media Collaboration

Even though the Portuguese police had advised the McCanns and their friends not to involve the news media (McCann 2011: 78), Sky News, the BBC, GMTV and the Press Association were contacted in the early hours of 4 May and asked for help in what was defined as an abduction case. UK police and news agencies were also sent digital images of the child and her family, including the now iconic photograph of Madeleine with the distinctive fleck in her right eye. The abduction story registered in early morning UK news

bulletins and in the local press. On the evening of 5 May, Gerry McCann gave his first agenda-building public appeal to the scrum of news teams assembled in Praia da Luz:

We cannot describe the anguish and despair we are feeling as parents of our beautiful daughter Madeleine. We request that anyone with any information relating to Madeleine's disappearance, no matter how trivial, contact the Portuguese police and help us get her back safely. Please, if you have Madeleine, let her come home to her mummy, daddy, brother and sister (BBC News, 5 May).

The story dominated news headlines in the UK broadcast and print media. In the crucial early stages, the McCanns worked with journalists to reinforce the positive message that Madeleine was abducted *but alive*, and that with public assistance she would be found. This collaborative strategy helped them to establish an initial inferential structure across the news media which, our research indicates, was built around the *factual, naturally interconnected* and globally resonant news frames of 'abducted child' and 'every parent's worst nightmare'. This inferential structure ordered and interpreted the rolling news story in a way that:

- a) stressed both the urgency and feasibility of finding this abducted but *alive* child
- b) sacralised Madeleine and emphasised the agony that her abduction was causing the McCann family
- c) speculated on the motives and methods of Madeleine's abductor(s), and on where she might be
- d) reproduced an array of unconfirmed sightings and leads, and appraised the latest developments in the police investigation

Madeleine's fourth birthday on 12 May provided the impetus for a series of feature articles in the weekend news media, supplemented with more photographs, graphics and detailed maps of the location and holiday complex, as well as a fresh appeal for help. Public cooperation was incentivised by a substantial reward which, thanks to fresh donations by a consortium of wealthy supporters, stood at £2.6 million.

The crystallisation of this initial inferential structure undoubtedly amplified the international resonance of the McCann's campaign. The *Find Madeleine* website (www.findmadeleine.com), which included a blog by Gerry McCann, was launched on 16 May. It registered over 1 billion hits from 80 million unique visitors in the first three months. The campaign quickly went viral, ensuring that there were multiple clips of Madeleine embedded in YouTube. Posters featuring the now instantly recognisable image of Madeleine were displayed across Europe [Figure One about here]. The McCanns' home video footage was played at major UK sporting events and in cinemas. A cast of celebrities endorsed the campaign and made media appeals for information. The case, which was receiving saturation coverage in Portugal and the UK, went global towards the end of May. As part of a European tour to raise awareness of Madeleine's disappearance, the McCanns released fresh footage of Madeleine, prayed for her safe return in Fatima, Portugal, and had her photograph blessed by Pope Benedict XVI in Rome.

The McCanns' success in establishing this initial inferential structure and, in effect, building the news agenda, derived from four interrelated factors. First, the 'abducted child' story worked across every indicator of newsworthiness. As a highly mediagenic personification of childhood innocence, Madeleine could be constructed as an archetypal 'sacred victim'. Her respectable, articulate, and equally mediagenic parents were prime candidates for news media and public sympathy and support. Second, her image was immediately circulated on the websites of a global network of pressure groups working on behalf of missing persons. Third, the McCanns secured the services of public relations experts to help organise their news media interactions. The Mark Warner company, which owned the McCann's holiday apartment, already had a contract with Public Relations group Bell Pottinger. That group's head of crisis management, Alex Woolfall, helped to manage news media interest in the crucial early stages. When Woolfall left Portugal 10 days later, the Foreign Office stepped in and flew two professional media handlers across from London; Sheree Dodd was a former *Daily Mirror* journalist, and former BBC reporter Clarence Mitchell was then director of Downing Street's Media Monitoring Unit. Further support came from Leicestershire police, the Association of Chief Police Officers (ACPO), and friends, all of whom activated their own media connections. This input was crucial to the development of the McCanns' news strategy and the cross-media *Find Madeleine* campaign.

Fourth, there was an absence of alternative information that might challenge the McCanns' position as primary definers. Portugal's judicial secrecy laws meant that police were prohibited from speaking publicly about the investigation. Despite the largest manhunt in Portuguese history, the lack of investigative breakthroughs meant that reportable 'hard facts' were scarce. The dearth of official police information made it easier for the McCanns to establish an initial inferential structure that reproduced their perspective and priorities. Partly due to the McCanns' success in keeping Madeleine at the top of the news agenda, this rolling story became a global media phenomenon. However, as a result, the inferential structure, established around the news frames of 'abducted child' and 'every parent's worst nightmare', and that prioritised the search for Madeleine and validated her parents, would become increasingly difficult to sustain. Despite the media sacralisation of Madeleine, the narrative momentum of the case would soon be taken out of the McCanns' control by investigative developments and the commercial exigencies of the 24-7 news cycle.

Losing the News Agenda: Media Scepticism

On 15 May 2007 UK-born Robert Murat, who was acting as an unpaid translator for journalists and reporters in Praia da Luz, was made an official suspect – or *arguido* – following a police search of his mother's villa near the McCanns' holiday apartment. Murat was brought to police attention by a UK journalist, *Sunday Mirror* reporter Lori Campbell, because he reminded her of convicted Soham murderer, Ian Huntley (*Times*, 15 May, 2007: 3; *Independent*, 15 May, 2007: 4). The breakthrough sent the UK national press into overdrive. UK journalists quickly realised that their domicile exempted them from Portugal's judicial secrecy laws and, further, that the case's Portuguese location exempted them from reporting restrictions or risk of judicial censure in the UK. This meant that Murat could be subjected to a legally validated, tabloid-led TBM as his character, business dealings, personal life, movements and friendships were all dissected on UK newspaper front pages and websites. An avalanche of negative Murat coverage played back and forth for weeks, as journalists, commentators and online discussants speculated freely on whether he was an Ian Huntley 'oddball' type 'prime suspect' or a distraction to divert attention from Portuguese police incompetence. Murat's protestations of innocence did little to dampen

the tabloid appetite for his trial and sentencing as a child killer in the court of public opinion. He was rapidly transformed into a hate figure.

However, UK press attention began to shift in June with the emergence of a news media and internet backlash against the McCanns. International media coverage, vital to the McCann's *Find Madeleine* campaign but beyond the reach of their media team, became more sceptical. This scepticism was first apparent when sections of the Portuguese press reported police leaks insinuating that there were contradictions in the parents' version of events (Machado and Santos 2009). Then, at a Berlin press conference on 6 June, a journalist publicly challenged Kate and Gerry McCann: 'How do you feel with the fact that more and more people seem to be pointing the finger at you? They're saying the way you behave isn't how people would normally behave when their child is abducted. They seem to imply that you might have something to do with it' (*Sky News*, 6 June 2007). Although the question was condemned as an outrageous 'slur' across UK newspapers, it was reported in all of them, and the 'unnaturally cool' demeanour of Kate McCann was now highlighted as worthy of public deliberation. On 19 June 2007, the McCanns sent an open letter to the UK media. They thanked journalists and editors for their support, but asked for a reorientation of news attention away from what they saw as an undue focus on themselves, and back onto the search for their 'abducted child'.

In July, UK newspapers reported that anti-McCann websites were appearing in the UK and Portugal and, among other things, urging the authorities to prosecute the parents for abandoning their children (*Sunday Express*, 22 July 2007: front page; *Daily Mail*, 28 July: 17). Backlash websites accused the McCanns of using their media campaign to deflect attention from 'unanswered questions' about their role in Madeleine's disappearance. Others alleged the McCanns were refusing to face the reality that their daughter was probably dead because they were reluctant to let go of their new found celebrity status and fund (see <http://www.mccannfiles.com/index.html>; <http://mccannexposure.wordpress.com/>; <http://truthofthelie.com/>; <http://gerrymccan-abuseofpower-humanrights.blogspot.com/>). Later that month, a US television interviewer asked Gerry McCann 'why on earth' the children had been left alone. The initial inferential structure had served to sideline critical news commentary on the McCanns' decision to leave their children unsupervised while they

dined with friends. Now, stimulated by international news media scepticism, anti-McCann websites, and a frustrated police investigation that had become a source for hostile leaks, it was becoming a hot topic for UK press debate.

By August 2007, the primary focus in both the Portuguese and UK news media had shifted to the McCanns. Portuguese newspapers continued to round on the couple for their irresponsible parenting (see also Machado and Santos 2009). Kate McCann in particular was singled out: her good looks, 'perfect family' and lack of visible emotion were 'aggravating factors' in an increasingly hostile media climate. Recycling the negative sentiment and lurid allegations of anti-McCann websites, theories began to circulate in the press that the McCanns had accidentally killed Madeleine by over-sedating her, and then, with the collusion of their friends, hidden and later disposed of the body. These news reports quoted anonymous police sources. Antipathy was such that, on 8 August, UK newspapers reported that the McCanns were being subjected to a fully-fledged 'hate campaign' in Portugal. UK press attention was shifting away from the *factual* and *naturally interconnected* news frames of 'abducted child' and 'every parent's worst nightmare'. A competing inferential structure was emerging which would order and interpret the story in less sympathetic terms and subject the McCanns themselves to a tortuous and highly charged TBM.

Becoming the News Agenda: 'Trial by Media'

The McCanns UK TBM commenced in the first week of August 2007. It was given momentum and credibility in the weeks that followed by two investigative developments: the detection of DNA evidence which appeared to indicate that Madeleine had died in the apartment; and the McCanns being named as official suspects by the Portuguese police.

DNA Evidence

In the countdown to the 100 day anniversary of her daughter's disappearance, Kate McCann gave a series of interviews in which she accepted that leaving the children unsupervised had been negligent. News attention, and opinion, was divided across the content of these interviews, the implications of the Portuguese police decision to conduct a fresh search of

Robert Murat's home, and a series of alleged sightings of Madeleine in Belgium. Both the tone and focus of news coverage shifted on 7 August when the Portuguese police announced that, in light of new evidence, they now believed that Madeleine was dead. Microscopic blood samples had been detected by UK sniffer dogs in a re-examination of the McCann's apartment and sent to the British Forensic Science Service for DNA analysis. The forensic evidence appeared to substantiate the anti-McCann 'accidental death or murder' theories that were proliferating in the Portuguese press and online. The McCanns were forced to publicly deny that they had killed their daughter. In Britain, the 'accidental death' theory was dismissed in some national newspapers, and presented as more or less plausible in others. But again, it was discussed at length in all of them. The McCanns' strategy of using the news media to generate maximum publicity was backfiring: they were shifting from building the news agenda to becoming the news agenda. A parallel inferential structure was emerging, established around the *speculative* and *potentially interconnected* news frames of 'dead child' and 'guilty parents'. It was this *potential* interconnection that framed press and public debate about the McCanns' possible role, accidental or otherwise, in the death of their daughter.

By late August, speculation about the McCanns' involvement in Madeleine's disappearance was dominating the international news agenda and myriad cyber-chatrooms. On 23 August 2007 Gerry McCann walked out of a Spanish television interview after being quizzed about the traces of blood and asked if he was the last person to see his daughter alive. At the Edinburgh Television Festival on 25 August, he was given the space to criticise prejudicial and speculative news media coverage: 'We want Madeleine's image to be the face of the campaign, but the situation's changed now: it's about the news story' (*Guardian*, 26 August, 2007: 3). He described a news recycling process in which the Portuguese press printed unattributed claims based on leaks and rumours, which were picked up and reported uncritically by UK journalists. The claims would then be reprinted in the Portuguese press and online, and presented as verified because they had been reported in the UK (*Sunday Times*, 26 August, 2007: 3; *Mail on Sunday*, 26 August, 2007: 7). Gerry McCann announced that they were scaling down the public campaign and appealed to the news media to end their commercial exploitation of Madeleine. Having been subject to a Portuguese TBM based on unattributed claims and unsubstantiated allegations, the McCanns for the first

time resorted to libel law. On 31 August they sued Portuguese newspaper *Tal & Qual* for claiming that the parents were directly responsible for Madeleine's death. The McCanns hoped this action would encourage responsible and balanced reporting of the case (*Daily Telegraph*, 10 September, 2007: 4).

Suspect Status

The UK news media spotlight intensified on 6 September with reports that arrests were imminent. The following day's papers disclosed that Kate McCann feared she was about to be 'framed'. Then, on 8 September 2007, the Portuguese police named the McCanns as official suspects or *arguidos*. The sensational decision dominated UK news coverage and unleashed a stream of internet speculation and innuendo. Attention had shifted from the whereabouts of the 'abducted child' to the case against the 'guilty parents':

BOTH MADELEINE PARENTS NOW DECLARED SUSPECTS, *Guardian*, 8 September, 2007: front page.

MADELEINE'S MOTHER 'TO BE CHARGED WITH HER KILLING', *Daily Telegraph*, 8 September, 2007: front page.

FROM ANGUISHED PARENT TO GRIEVING MOTHER TO SUSPECT, *Independent*, 8 September, 2007: front page.

MADELEINE'S MOTHER IS NAMED AS SUSPECT, *Times*, 8 September, 2007, Saturday: 7.

THE ACCUSED; As both Madeleine's parents are named as suspects, police ask Kate..., *Daily Mail*, 8 September, 2007: front page

THE 22 QUESTIONS; THE HUNT FOR MADELEINE, *Daily Mirror*, 8 September, 2007: 5.

AGONY AS COPS ACCUSE MCCANNS OVER MADDIE, *Sun*, 8 September, 2007.

FIRST SUSPECT IS OFF THE HOOK, *Daily Express*, 8 September, 2007: 6.

MADDIE: TRUTH AND LIES, *Daily Star*, 8 September, 2007: front page

Despite their *arguido* status, there was no legal obligation to remain in Portugal, and on 9 September 2007 the McCanns returned home to England. Their emotional homecoming was a live headline news event. On Monday 10 September front pages reported Portuguese police claims that DNA evidence would confirm Madeleine's body had been in the McCann's rental car. Further reports suggested that Portuguese authorities were now in a position to

prosecute the McCanns. It was during this period that the previously dominant, proactive and pro-McCann position of the UK press deteriorated and the McCanns UK TBM gathered pace and momentum.

The McCanns had now made the transition from 'primary definers' to 'prime suspects', and the new inferential structure, built around the *speculative* and *possibly interconnected* news frames of 'dead child' and 'guilty parents', was beginning to crystallise across UK press coverage. Newspapers were able to use the spectral image of a sacralised Madeleine as an evocative counterpoint to images of the possibly culpable parents. Unlike the initial *factual* inferential structure that was adopted universally, the uptake of this competing *speculative* inferential structure was more tentative. Nevertheless, a heightened sense of journalistic caution in light of the putative DNA-led 'accidental death' theory was palpable as newspapers and broadcasters, including Sky and the BBC, began to distance themselves from the McCanns and their version of events. Journalistic reservations were compounded when UK consular authorities withdrew their support (McCann 2011: 261), and the trustees of the *Find Madeleine* campaign felt it necessary to clarify that funds would not be used to pay the McCanns' legal costs. The McCanns still received intermittent backing in tabloid and broadsheet editorials and opinion pieces that dismissed the allegations against them. But these supportive interventions were run alongside deliberation of the forensic evidence allegedly implicating the parents in their daughter's death. Whilst some news items condemned the 'stain of suspicion', variously 'indelible' (*Daily Telegraph*, 10 September: 4) or 'irremovable' (*Guardian*, 10 September: 32), now tarnishing the McCanns, others were slower to write-off the rising police, media and public scepticism: 'We must hope that dark, cynical viewpoint was not right all along' (*Times*, 9 September: 19); 'They are innocent until proven guilty. I just hope to God they didn't do it' (*Sun*, 11 September: 15); 'It hurts me to say this, but I now fear something is amiss with Kate and Gerry's story' (*Sun*, 15 September 2007).

The McCanns' return to England enabled them to confront the UK news media on home soil. However, because of their status as *arguidos* they were legally prohibited from speaking publicly about the police investigation and could face up to two years in prison if they broke Portugal's judicial secrecy laws. Further, the international news media, including the UK

press, had now mostly left Portugal, rendering them more reliant on Portuguese news outlets for information to keep the story rolling. The UK news process was thus fuelled by Portuguese police leaks and recycled 'McCann Charges Pending' claims, first printed in the hostile Portuguese press. Sections of the UK press substituted for the prosecution, judge and jury, and the McCanns could do little to stop their escalating representation as 'guilty of something' (McCann 2011). Speculation about their possible involvement in Madeleine's death proliferated in conventional news forums and served as a rallying point for a constellation of wilder conspiracy theories on the internet, many of which proposed different scenarios for how the McCanns, and their 'co-conspirators', could have disposed of Madeleine's body. In mid-September, it was reported that 17,000 people had signed an online petition calling for social services to remove the McCann twins from their 'dangerous' parents (*Times*, 15 September 2007: 21).

The McCanns turned to professional advisers to coordinate a fight-back against public cynicism and press coverage that now ranged from the ambivalent to the malevolent. Our research suggests that the financial backing of multi-millionaire entrepreneurs facilitated a three-pronged response. First, the McCanns appointed Kingsley Napley, a legal firm specialising in the 'reputation management' of individuals and companies involved in high-profile media or criminal investigations. Second, they employed Portuguese private investigators to boost their own search for Madeleine. Finally, they retained Clarence Mitchell on a full-time basis to co-ordinate their news media strategy. 'Team McCann' had their work cut out. A *Daily Star* (14 September 2007: 6) reader poll found that '59% of readers believe Kate and Gerry McCann know the secrets behind that fateful evening on May 3... The poll is a sharp turn-around from the displays of public support that the couple have become accustomed to'. And a *Sunday Times* (17 September 2007) poll indicated that only 20% of respondents thought the McCanns were completely innocent, with 48% believing they could have been involved in Madeleine's death. On 21 September, the *Sun*, one of the McCanns' most consistent and formidable supporters, ran a double-page feature in which two leading columnists engaged in a 'McCanns – for and against' debate. The accompanying online readers poll indicated that the nation was split in its judgment. Kate McCanns' own sense of the public's perception was summed up on the front page of the *Daily Mirror*, where she predicted, 'We'll always be suspects' (8 October 2007).

From September 2007 to February 2008, the McCanns made repeated attempts to refocus news attention on the search for their 'abducted child'. A second European-wide *Find Madeleine* campaign was announced on 15 September 2007, and launched two weeks later to considerable media attention. And the McCanns continued to enjoy the support of several media commentators, who acted as a kind of proxy defence against news media speculation, allegation and judgement. But now no UK national newspaper consistently and unconditionally backed them. Their efforts to reclaim the news agenda were recurrently undermined by the stream of backlash reports and features, which nonetheless required rebuttal, and kept the McCann's TBM centre-stage. The inventory of self-reinforcing stories reported across the press in this time period can be organised into four categories:

1. **McCann's as suspects-focused articles:** the criminal case against the McCanns; public antipathy toward 'brand McCann'; the identity, salaries and motivations of the McCanns' advisers; claims that fund donations to finance the search for Madeleine were being used to cover living costs.
2. **Kate McCann-focused articles:** Kate McCann's psychological state; her competence as a mother and her 'problematic' relationship with her daughter; the state of her marriage.
3. **Police investigation-focused articles:** the removal of the two Portuguese detectives leading the inquiry; the discovery of more DNA evidence allegedly strengthening the case against the McCanns; the biggest ever paedophile sweep in Portugal, resulting in the arrest of 80 child sex offenders, whose hard drives would be searched for clues; the decision to re-question the 'Tapas 7'; the release of a forensic artist's impression of the possible abductor.
4. **Madeleine Mystery-focused articles:** a stream of world-wide sightings; the latest 'theories' about how, why, when and where Madeleine had been abducted and/or died.

Even the McCanns' news media supporters found themselves locked-in to a contagious inferential structure built around the *speculative* news frames of 'dead child' and 'guilty parents'. In order to challenge or disrupt this inferential structure, supporters needed first to situate themselves within it. The McCanns' TBM, driven by unremitting speculation, and legitimised by their *arguido* status in Portugal, was defining news media debate.

In early 2008 an unexpected twist in the intermediatisation of Madeleine captured UK press headlines and further intensified the McCanns' TBM. Two overlapping stories – 'Maddie the Movie', and 'Maddie the Lookalike' – provided the focus for moralised media deliberation. The first related to rumours that the McCanns planned to sign a deal worth between £2million and £10million, depending on the newspaper, to make 'Maddie the Movie' – a deal that would provide a vital boost to the dwindling *Find Madeleine* campaign funds. All the national newspapers covered the story, and a glut of critical comment pieces pondered on the McCanns' possible motives for making such a deal, and what they may stand to win or lose in doing so. The second, related story involved a London-based Model and Talent Casting Agency, which was offering Madeleine McCann 'lookalikes' for hire at £300-600 per hour. Madeleine's relentless intermediatisation between 2007 and 2008 constituted a self-perpetuating feedback loop spanning news, popular culture, business, PR and marketing, even the art world. Her remarkable transformation into an instantly recognisable popular cultural artefact and prized media commodity via the movie, the lookalike, the artwork, and, above all, the news spectacle, simultaneously shifted 'the story' further beyond McCanns' control. While Madeleine's 'media sacralisation' flourished, speculation about the McCanns' economic motives was another 'aggravating factor' in their TBM. Both the iconic image of Madeleine and her parents' real time TBM were fuelling a combustible, rolling news story that was increasing newspaper readerships and web traffic by tens of thousands per day (Culture Media and Sport Committee 2010).

After five months of intensifying speculation, the McCanns' TBM reached its height in January 2008 when a flood of front-page 'Parents Murdered Daughter' stories appeared across the four Express Newspaper Group titles and in Associated Newspaper's *Daily Mail* and *London Evening Standard*. The news media verdict in these papers, with a combined circulation of several million copies and a rapidly evolving online presence, was that Kate and Gerry McCann were responsible for the death of their daughter.

Breaking the News Agenda: Media on Trial

The McCanns had considered taking legal action against the UK press in the autumn of 2007, but were advised not to proceed for fear of provoking further newspaper attacks (McCann 2011: 287). However, in response to the 'Parents Murdered Daughter' stories, in March 2008 they directed a top legal firm, Carter Ruck, to file a lawsuit against Express Newspapers for defamation and malicious falsehood. The group stood accused of publishing 110 articles between September 2007 and February 2008 that contained 'utterly false and defamatory allegations' (Statement in Open Court, available at www.carter-ruck.com). It was submitted that collectively the articles suggested the McCanns were responsible for their daughter's death, they had disposed of her body, and they had conspired to cover up their actions by deliberately diverting police attention from evidence that would expose their guilt (ibid.) In the High Court on 19 March 2008, before presiding judge Mr Justice Eady, Express Newspapers agreed to publish front-page apologies in each of its newspapers:

Kate and Gerry are completely innocent of any involvement in their daughter's disappearance'. We trust that the suspicion that has clouded their lives for many months will soon be lifted. As an expression of its regret, the *Daily Express* has now paid a very substantial sum [£550,000] into the Madeleine Fund and we promise to do all in our power to help efforts to find her. Kate and Gerry, we are truly sorry to have added to your distress. We assure you that we hope Madeleine will one day be found alive and well and will be restored to her loving family (28 March 2008).

The McCann's released a statement to publicly clarify their position and their reasons for taking the legal action (available at www.carter-ruck.com). Their lawyers also lodged a formal complaint with Associated Newspapers about 67 articles that appeared in the *Daily Mail* and *Evening Standard* during the same five month period, and 18 articles on the *Standard's* 'This is London' website. This complaint was settled by private agreement. They received an apology from the *News of the World* after taking legal action in relation to the newspaper's claim that it had permission to publish extracts from Kate McCann's diaries. Gerry McCann would later tell a Parliamentary Select Committee, 'Undoubtedly, we could have sued all the newspaper groups' (Culture Media and Sport Committee 2010: Question 213). The *Daily Express* editor, Peter Hill, agreed: 'I was surprised that the McCanns at that time sued only the *Daily Express* for libel [...] they would have been able to sue and still

could sue any newspaper at all' (ibid: Question 604). Clarence Mitchell publicly stated that the McCanns would not hesitate in bringing further legal actions if they felt it necessary.

Our research indicates that these unprecedented legal victories and the threat of further action had an immediate 'chilling' effect on UK press coverage of the case. The McCanns had made a public example of four UK national newspapers, a private example of three more, and had sent a legal warning to the rest. The legal rebalancing of power, in effect implementing a shift from 'trial by media' to 'media on trial', was reinforced when, in July 2008, Robert Murat reached an out-of-court libel settlement with four UK newspaper groups and received £600,000 in damages and a public apology.³ In October 2008, the McCanns' group of friends known as the 'Tapas Seven' received a £375,000 libel payout and a public apology from the Express Newspaper Group. Express Newspapers admitted that it had published untruthful stories suggesting that members of the group had covered up the true facts concerning Madeleine's disappearance, deliberately misled the authorities during the investigation, and been identified as potential suspects in the case. These admissions and apologies were a vital turning point in the McCanns' TBM, allowing them to regain a degree of control over the narrative construction of 'what had happened' to their daughter. The inferential structure that ordered and interpreted the story was shifting once again – this time from the news frame of 'guilty parents' to 'guilty journalists'. The McCanns' trial and sentencing in the mediatised court of public opinion, though real in its consequences, was put in perspective by the fact that sections of the UK national press had been found guilty of libel and defamation in a court of law.

The McCanns could now redouble their efforts to manage media coverage for the first anniversary of Madeleine's disappearance. The result was a blitz of interviews enabling them to reassert their 'worst nightmare' account of what had happened on the evening of the disappearance, and to make a fresh appeal for information to find their 'abducted child'. On 30 April ITV aired an exclusive documentary in which the McCanns talked about their daughter, her disappearance, and the incompetent police investigation. The interview was also used to publicise the launch of a campaign to introduce a US-style Amber Alert 'Missing

³ Murat had taken action against *Sky News* and eleven newspapers – the *Daily Express*, *Sunday Express*, *Daily Star*, *Daily Mail*, *London Evening Standard*, *Metro*, *Daily Mirror*, *Sunday Mirror*, *News of the World*, *Sun* and *Scotsman*.

Person' system across Europe, so that other parents might be spared the 'worst nightmare' of a 'abducted child'.

On 21 July 2008 the McCanns were informed that the Portuguese police investigation would be 'archived' due to lack of evidence of any crime being committed by the *arguidos*. The McCanns and Robert Murat were no longer considered suspects, although the Attorney General's office reserved the right to reopen the investigation. In an extraordinary move, in August 2008, the Portuguese police released a CD-Rom of official documents, comprising 11,223 pages of witness statements, photographs, e-mails and expert testimony. Official release from *arguido* status and the possibility of access to the Portuguese files revitalised the McCann's private investigation.

The McCanns' final legal move was made in September 2008 when a judge granted them a temporary injunction halting further sale or publication of a book written by Goncalo Amaral, the first head of the police investigation. Amaral (available at: <http://goncaloamaraltruthofthelie.blogspot.com/>) alleged that Madeleine had died in the holiday apartment and that her parents had faked her abduction.

The McCanns' TBM raised the public and, crucially, political profile of the libellous – and illegal – activities of UK national newspapers. It led directly to the establishment of the first Parliamentary inquiry into press standards, privacy and libel (Culture Media and Sport Committee 2010). Gerry McCann, Clarence Mitchell and Adam Tudor from Carter-Ruck gave evidence on 10 March 2009. This was final and formal confirmation of the McCanns' innocence: they were constructed once again, both officially and in the UK press, as victims of a horrific and still-unresolved abduction, and now also of a prolonged, defamatory TBM. Gerry McCann told MPs how, at the outset, a sympathetic news-media had helped circulate Madeleine's image around the globe and keep the case in the public eye. Ultimately, however, he argued that the search for Madeleine had been hindered by irresponsible journalism. The family had been the focus of some of the 'most sensationalist, untruthful, irresponsible and damaging reporting in the history of the press' (see House of Commons, 2010, Question Numbers 168-179). His daughter had become a news 'commodity' and 'irrelevances, half-truths or suggestions' had become front-page news (ibid.). The inquiry was covered at length across an altogether less speculative UK national press. The

inferential structure was built around three intersecting news frames – ‘abducted child’, ‘every parent’s worst nightmare’, and ‘guilty journalists’.

Conclusions

Our previous research on TBM has analysed different forms of ‘attack journalism’ aimed at publicly shaming or embarrassing, removing from office, or otherwise undermining the reputation or standing of public individuals and/or institutions. Because it was transformed into a rolling, global infotainment news event, the McCanns’ TBM was more varied, complex and protracted. While they were subject to examples of ‘exceptional reporting’, at no point – unlike Robert Murat – were all UK national newspapers united in their attacks. Even within newspapers, stories that reported rumours and allegations against the McCanns were at times countered by columns or editorials that criticised those same rumours and offered support. Yet commentators who rallied to the McCanns’ defence were forced to work within a spiralling inferential structure, built around the *arguido*-legitimated news frames of ‘dead child’ and ‘guilty parents’. It was only through resort to law and the phone-hacking scandal engulfing the UK press that the McCanns managed to reorient the news agenda, reaffirm their innocence, and end their ‘trial’.

The McCanns’ libellous treatment by sections of the UK national press has figured prominently in official UK inquiries into press criminality. Following the News International phone-hacking scandal of 2011, Lord Justice Leveson is chairing a public inquiry into the relationship between the press, the public, the police and politicians (<http://www.levesoninquiry.org.uk/>). The McCanns, who at one point suspected that their phones were being hacked by journalists, were called to give evidence. They explained that at times news coverage of Madeleine’s disappearance was ‘nothing short of disgusting’ and that they had faced a ‘virtual trial by media’ (ibid). Kate McCann’s comment that she felt ‘mentally raped’ by the deceitful actions of the *News of the World* (*Daily Telegraph*, 17 November, 2011: 2) was widely reported. Whatever Leveson and the UK Parliament decides, the legal regulations that constrain professional journalistic practice cannot govern information flows on the internet in the same way. In addition to acting as a high-profile

barometer for a particular section of public opinion, internet vilification fuelled newspaper speculation about the McCanns' involvement in the disappearance and death of their daughter. And, because there is still no trace of Madeleine, the McCanns continue to be subjected to an array of online hate campaigns which they are powerless to prevent.

The legal parameters of TBM are being established in the UK on a case-by-case basis. It remains to be seen if the legal precedent set by the McCanns in halting their TBM will promote press constraint or stimulate press innovation in setting the news agenda and demonstrating populist punitive power in a ruthlessly competitive marketplace. Sacrilegious crimes will always be newsworthy and have potential to provoke a high-impact media reaction. Those suspected of committing such crimes will continue to be subjected to TBM unless statutory or cultural constraints exist to prevent it. We would suggest, however, that the theoretical significance of TBM extends beyond the case study analysis in this article.

Our work on TBM forms part of a wider project to develop a sociology of media justice. As public deference to authority, trust in government, the credibility of expert knowledge, and confidence in criminal justice decline in the UK (Casey Report 2008: see also, <http://www.ipsos-mori.com>; <http://trust.edelman.com>), and market competition forces radical adaptations from traditional news media, networked news sites are becoming an increasingly important forum for crime and justice debates (Reiner 2012), and an increasingly influential player in establishing the parameters of those debates. 'Media justice' is evolving as a parallel and, at times, competing and much more resonant justice paradigm than that represented by and administered through the criminal courts. To an extent, the news media have always been a key site where 'open justice' is *seen to be done*. Today, however, we would argue that UK press practices are (re)defining *what criminal justice is*, and how it can and should be realised. Though the courts retain the executive power to sentence convicted offenders, the news media are pre-empting the official justice system by seeking to pronounce on guilt or innocence and, if found guilty, administering their own form of punishment deemed to fit the crime. The news media's market-based *power to punish* is substantively different from that of the criminal courts. But in shredding reputations, destroying careers, or shattering the credibility of individuals or entire institutions, it can be no less intrusive, lasting or devastating. TBM is one key indicator of

this emerging alternative paradigm of media justice. By developing and refining the concept of 'trial by media' in our analysis of the Madeleine McCann case, we are laying the foundations for a sociology of media justice that seeks to make sense of the intermediatisation of crime and justice in a context of rapid and dramatic technological, economic, cultural, political and legal change.

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Figure One – Find Madeleine

SOMEONE, SOMEWHERE, KNOWS WHERE MADELEINE IS



If you have ANY information regarding the disappearance of Madeleine McCann, please come forward in confidence.

TEL +44 (0)845 838 4699

or visit www.findmadeleine.com thank you.

